

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

December 8, 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

Jo Ivey Boufford, M.D., Vice Chair

II. APPROVAL OF MINUTES

October 6, 2016

III. 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

IV. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

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

V. HEALTH POLICY/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 Rugge, 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 Information

16-26 Amendment of Sections 23.1 and 23.2 of Title 10 NYCRR
(Expansion of Minor Consent for HIV Treatment Access and Prevention)

13-27 Amendment of Section 405 of Title 10 NYCRR
(Federal Conditions of Participation and Self-Administration in Hospitals)

VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, 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

Hospice Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162096 C	Good Shepherd Hospice (Suffolk County)	Contingent Approval
2.	162134 C	United Hospice of Rockland (Rockland County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161345 C	Jamaica Hospital Medical Center (Queens County) Dr. Martin - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161325 C	University Hospital (Suffolk County)	Contingent Approval

Diagnostic and Treatment Center - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162095 C	Weill Cornell Imaging at New York Presbyterian (New York County)	Contingent Approval

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

**APPLICATIONS FOR COMPETITIVE REVIEW OF HEALTH CARE FACILITIES/AGENCIES
CON 152391 C and 161168 C**

Cardiac Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	152391 C	Peconic Bay Medical Center (Suffolk County) Dr. Kalkut - Recusal Dr. Kraut – Recusal Dr. Martin – Interest	Contingent Approval
2.	161168 C	Southampton Hospital (Suffolk County) Dr. Kalkut - Recusal Dr. Kraut – Recusal Dr. Martin – Interest	Contingent Approval

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161464 E	Massena Memorial Hospital (St. Lawrence County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162011 B	Queens Surgical Center (Queens County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161431 E	Hudson Valley Regional Community Health Centers, Inc. (Putnam County)	Contingent Approval
2.	162209 E	Bedford Medical Family Health Center Inc (Kings County)	Contingent Approval

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161356 B	USRC Forest Hills, LLC d/b/a U.S. Renal Care Forest Hills Dialysis (Queens County)	Contingent Approval

Residential Health Care Facility – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161097 E	VillageCare Rehabilitation and Nursing Center (New York County)	Contingent Approval

HOME HEALTH AGENCY LICENSURES

New LHCSA's – Affiliated with Assisted Living Programs (ALPs)

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
	161454 E	Cobbs Hill Manor, Inc. (Monroe County)	Contingent Approval
	162015 E	Argyle Center LHCSA, LLC d/b/a Centers Home Care North East (Albany, Essex, Montgomery, Schenectady, Columbia, Fulton Rensselaer, Warren, Dutchess, Greene Saratoga and Washington Counties)	Contingent Approval

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
152285 E	Helping U Homecare, Inc. (New York, Richmond, Kings, Bronx, Queens, and Nassau Counties)	Contingent Approval
161111 E	Crown of Life Care NY, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
161146 E	All Metro Aids, Inc. d/b/a All Metro Health Care (New York, Queens, Bronx, Richmond and Kings Counties)	Contingent Approval
161147 E	All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care (Nassau County)	Contingent Approval
161392 E	Paramount Homecare Agency Inc. (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)	Contingent Approval
161424 E	Robynwood Home Care LLC d/b/a Robynwood Home Care (Otsego, Delaware, Schoharie and Chenango Counties)	Contingent Approval
162038 E	Extended Holding Company, LLC d/b/a Extended at Home Care (New York, Queens, Bronx, Richmond, Kings, and Nassau Counties)	Contingent Approval
162061 E	Best Help Home Care Corp. (Kings, Queens, Bronx, Richmond, New York and Westchester Counties)	Contingent Approval

162067 E	DOJ LHSCA Operations Associates LLC d/b/a Claremont LHCSA (Bronx County)	Contingent Approval
162119 E	A.V. Pro Services, Inc. d/b/a Assisted Home Care Services (Kings, Bronx, Queens, Nassau, Richmond, and New York Counties)	Contingent Approval
162137 E	AllHealth Home Care LLC (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval

Certificates

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
The Southampton Hospital Association	Approval
Daughters of Jacob Nursing Home Company, Inc.	Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161338 E	Riverdale SNF, LLC d/b/a Schervier Nursing Care Center (Bronx County) Mr. La Rue – Recusal	Contingent Approval
2.	161413 E	Beach Terrace Care Center (Nassau County) Ms. Carver-Cheney – Recusal	Contingent Approval

3.	161450 E	Grandell Rehabilitation and Nursing Center (Nassau County) Ms. Carver-Cheney – Recusal	Contingent Approval
4.	161452 E	Oceanside Care Center, Inc. (Nassau County) Ms. Carver-Cheney – Recusal	Contingent Approval
5.	162092 E	CNH Operating, LLC d/b/a The Chateau at Brooklyn Rehabilitation and Nursing Center (Kings County) Mr. La Rue – Interest/Abstaining	Contingent Approval
6.	162120 E	170 West Avenue Operating Company, LLC d/b/a Elderwood at Lakeside at Brockport (Monroe County) Mr. Robinson - Interest	Contingent Approval
7.	162229 E	1019 Wicker Street Operating Company, LLC d/b/a Elderwood at Ticonderoga (Essex County) Dr. Ruge – Recusal	Contingent Approval

Certified Home Health Agencies– Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161477 E	Premier Home Health Care Services, Inc. (New York County) Dr. Torres – Recusal	Contingent Approval

New LHCSA’s – Affiliated with Assisted Living Programs (ALPs)

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
	162016 E	Bath Center LHCSA, LLC d/b/a Centers Home Care West (Chemung, Ontario, Yates, Genesee, Schuyler, Livingston, Steuben, Monroe and Wayne Counties) 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

CON Applications

Residential Health Care Facility – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161180 E	Nesconset ZJ1 LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Suffolk County) Ms. Carver-Cheney - Recusal	Contingent Approval
2.	161181 E	Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing (Suffolk County) Ms. Carver-Cheney-Recusal	Contingent Approval

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162117 E	One Brooklyn Health System, Inc. (Kings County)	Presented at the 12/8/16 Special Establishment/Project Review Committee No Recommendation

VIII. CERTIFICATE OF PUBLIC ADVANTAGE

Peter Robinson, Chair, Establishment and Project Review Committee

Applicant

Application of the Staten Island Performing Provider for a Certificate of Public Advantage
(COPA Application # COPA-SIPPS)

Dr. Kalkut - Recusal

Mr. Kraut – Recusal

Mr. Lawrence – Recusal

Dr. Ruge - Recusal

IX. NEXT MEETING

January 26, 2017 - NYC

February 9, 2017 - NYC

X. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
October 6, 2016

The meeting of the Public Health and Health Planning Council was held on Thursday, October 6, 2016 at the New York State Department of Health Offices at 90 Church Street, 4th Floor, Rooms 4A & 4B, NYC. Chairman, Mr. Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Ms. Judy Baumgartner	Mr. Harvey Lawrence
Dr. Howard Berliner	Dr. John Palmer
Dr. Jo Ivey Boufford	Ms. Ellen Rautenberg
Dr. Lawrence Brown	Dr. John Rugge
Ms. Kathleen Carver-Cheney	Ms. Nilda Soto
Ms. Kim Fine	Dr. Theodore Strange
Dr. Angel Gutierrez	Dr. Anderson Torres
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 - Albany via video |
| Mr. Udo Ammon – Albany via video | Ms. Sylvia Pirani - Albany via video |
| Ms. Barbara DelCogliano - Albany via video | Ms. Tracy Raleigh |
| Ms. Alejandra Diaz - Albany via video | Ms. Linda Rush - Albany via video |
| Mr. Ken Evans - Albany via video | Mr. Daniel Sheppard - Albany via video |
| Mr. Mark Furnish | Mr. George Sokul - Albany via video |
| Mr. Michael Heeran - Albany via video | Mr. Jahnoy Smith – Albany via video |
| Mr. Brad Hutton - Albany via video | Ms. Lisa Thomson |
| Ms. Celeste Johnson | Ms. Lisa Ullman |
| Ms. Yvonne Lavoie - Albany via video | Mr. Richard Zahnleuter |
| Ms. Colleen Leonard | |

INTRODUCTION

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

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.

Blood Stream Disorders

Dr. Zucker began his report by speaking on the topic of blood stream infections at health care facilities in downstate New York. The Department is currently investigating the cause of about 34 cases of blood stream infections. The infections may be associated with intravenous medications or intravenous flushes, normal saline flushes that have been obtained from two companies. One which provides pharmacy services to nursing facilities in the New York City region, and a second one that manufactures medical products, which include these saline flushes. The infections is caused by a burkholderia cepacia. The bacteria really does not pose much of a problem to those who are healthy, however, people having certain medical conditions such as weakened immune systems or chronic lung diseases may be susceptible to infections. As soon as the Department learned about the potential contaminations, the Department immediately notified the health care facilities that have received the medications or the flushes from one or both of these companies and advised them to inform their patients who could have been exposed to the bacteria, as well as instructed the facilities to refrain from using these certain intravenous products and are also helping them to locate medical supplies to maintain the services, protect the health of their patients. Additional blood stream infections that appear to be associated with the outbreak are being investigated. Other states, including Maryland and New Jersey and Pennsylvania, and the Department is working closely with the officials from those states, as well as the CDC and the FDA. The Department also briefed the county health commissioners and issued a health advisory to the hospitals in the downstate region to identify and report any additional bloodstream infections that may be associated with this outbreak. Long term care facilities have been asked to report any medications, intravenous flushes, or other intravenous products received from the two companies that are in question and they have been asked to retain any intravenous products that were obtained from either of the companies until further notice.

Medical Marijuana

Dr. Zucker updated the Council on the medical marijuana program. Since the Department debuted the program in January 2016, the Department has certified more than 8,400 patients and has registered more than 700 physicians. The Department has been working closely obviously with the doctors, patients, and registered organizations to gather information on how to improve the program. Some of the changes that the Department is making is the potential of authorizing a nurse practitioner to certify New Yorkers for medical marijuana, until now only the doctors could certify patients and feelings that allowing those practitioners to issue certifications will help more patients, especially those in rural areas because there are rural counties where there are few physicians and nurse practitioners obviously are critical there and elsewhere. The Department is also contemplating allowing registered organizations to offer home delivery services. Many patients with serious health conditions cannot leave their homes, and as a result they may have difficulty accessing medical marijuana products. In addition, the Department is reviewing the literature for the use of medical marijuana in patients suffering from chronic pain and will expect a decision on this in the coming months. For patients and caregivers who have financial hardships, the Department is considering expanding the waiver for the \$50 registration fee.

Dr. Zucker further noted other changes to the program will streamline manufacturing requirements, enabling registered organizations to advertise their participation on the program, expand the testing of medical marijuana products by independent laboratories in New York. The Department looks for ways to help patients locate registered practitioners, and encourage the federal government to relax restrictions on scientific research related to medical marijuana.

Opioid Epidemic

Dr. Zucker advised the members on the opioid epidemic. He announced the receipt of funding from the Centers for Disease Control and Prevention to address the opioid epidemic. The Department recently received a supplemental grant of \$995,000, which comes on top of the \$1.2 million grant that was received in March 2016. Prescription opioid addiction and overdose deaths have become a major public health crisis. New York is working to reduce the rate of opioid abuse, increase substance abuse treatment, and lower the drug overdose rates for all types of opioids, including heroin. The CDC funds will be used to increase access to buprenorphine, medicine used to treat opioid addiction. It will also be used to increase availability of naloxone or Narcan, which is used to reverse the opioid overdoses. Increasing accesses to these medications were recommendations made by Governor Cuomo's heroin/opioid taskforce in a report that was released this past June. The Department also wants to certify more practitioners in the use of medication-assisted treatment (MAT). MAT uses medications such as buprenorphine to treat opioid addiction which is a disease. The Department will create a mentoring program for physicians recently certified in MAT and plans to offer training and education to nurses, to nurse practitioners, to physicians' assistant, who at the moment cannot prescribe MAT, but certainly need to know that it is a viable option out there. The CDC funds will also be used to expand naloxone training and to improve the state's prescription drug monitoring program. In addition to the CDC funding, the Department has just released its first quarterly report of county-level data on opioids. It is the Department's plan to use this data to help communities identify populations that are struggling with opioids and to create interventions that best meet their needs. The Department will use the data to work towards improvements at every level, whether it is the prevention or the treatment of addiction or the management of pain.

Antimicrobial Resistance

Dr. Zucker updated the members on the issue of antimicrobial resistance activities. For about a year the Department has been working on a broad, statewide response to the global problem of antimicrobial resistance. The CDC estimates that in the United States alone there are about two million people becoming infected with bacteria that are resistant to antibiotics. About 23,000 of these individuals die as a direct result of these infections. The seriousness and the urgency of the problem was recently highlighted when there was identification of something called the MCR1 gene and the MCR1 gene has led to several cases of human resistance to what is a last-resort treatment, which is Colistin. On September 21, 2016, the General Assembly of the United Nations convened a high-level meeting on the issue of antimicrobial resistance, demonstrating the seriousness of this issue.

Dr. Zucker announced that in early November the Department will host a New York State Antimicrobial Resistance Prevention and Control Taskforce Summit, stakeholders and partners will be invited to discuss this initiative and we have several goals and to slow the emergence of antimicrobial resistance by promoting the appropriate use of antibiotics and prevent the overuse of antibiotics in food production. The Department is promoting the antimicrobial stewardship programs in hospitals and other health care settings. These programs force the staff to be accountable for antibiotic usage and to take the steps to reign it in, and prevent the spread of antibiotic resistant organisms by implementing evidence-based infection control practices while at the same time quickly detecting and controlling outbreaks. The Department would like to strengthen surveillance efforts for antibiotic resistance in humans and animals and in the environment. The Department will work with Ags and Markets, the

Department of Environmental Conservation.

Dr. Zucker noted that the Department wants to develop and use rapid, innovative diagnostic tests for identifying resistant bacteria. The Wadsworth Center bacteriology laboratory was recently designated and funded by the CDC as a regional center for antimicrobial resistance. A report of recommendation to combat antimicrobial resistance in New York State will be completed by the end of this calendar year which will include the stakeholders and partners on the taskforce.

Environmental Influences on Child Health Outcomes

Lastly, Dr. Zucker stated that the Wadsworth Center recently received a \$1.2 million award from the National Institutes of Health. The funding is part of the launch of a seven-year initiative called “Environmental Influences on Child Health Outcomes” or ECHO. The program will look at how exposure to environmental factors during development affect the health of children and adolescents and Wadsworth Center will be involved as part of the ECHO Children’s Health and Exposure Analysis Resource Center or CHEAR. This will serve as a resource for laboratories, statistical analysis of research, interpersonal and environmental exposures, and in the NIH fund the scientists can apply to have Wadsworth and/or other CHEAR laboratories, these Children’s Health and Exposure Analysis Resource laboratories, carry out sophisticated analysis in support of their research projects. The other ECHO awards are the ICAN School of Medicine at Mt. Saini in New York City, the Research Triangle Institute in Rockville, MD, the University of Minnesota in Minneapolis, MN, and WESTSTEAD, Inc. in Rockville, MD, as well. Dr. Zucker congratulated the team at Wadsworth for all the work. Wadsworth does a tremendous job in so many different things across the state and for that matter for the country.

Dr. Zucker concluded his report. To view the member’s questions and comments, please see pages 5 through 14 of the attached transcript.

Report of the Office of Public Health Activities

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

Mr. Hutton participated from Albany via video and presented a power point presentation. Mr. Hutton updated the members on the topic of water quality, given the State’s response in Hoosick Falls, in Newburgh, and in other communities, and the Council’s important role with respect to water regulations in the state sanitary code. In the Office of Public Health’s Center for Environmental Health, the Bureau of Water Supply Protection is the bureau that is primarily responsible for water supply protection and it is comprised of engineers, scientists, data management and mapping specialists, and other professionals that are technical experts in the subject area. The Bureau works to protect the health, safety, and welfare of all residents and visitors to New York through regulatory oversight, technical support, and response activities for both public and private drinking water, bulk and bottled water, and other water-related resources and issues. The Bureau works very closely with local health department partners and public water systems to advance the field through research. The Bureau regulates the operation, design, and quality of approximately 9,600 public drinking water supplies and commercial bottled water suppliers. It works to ensure that water sources are adequately protected, trains and certifies

drinking water system operators, and provides training for local health department stakeholders, develops standards and polices for individual water suppliers (otherwise known as private wells), and individual wastewater systems that is septic, reviews and approves recreational BANDING facility designs, and then addresses the aging drinking water supply infrastructure through the administration of the drinking water state revolving funds. This provides financial assistance to public water suppliers and since 1997, this fund has provided just under \$5 billion in financing to assist public water supplies with their water infrastructure projects, including \$335 million in grants to disadvantaged communities. This Bureau also oversees our legionella regulatory program, which you are familiar with through recent adoption of regulations, and conducts research and investigation of emerging drinking water issues.

Mr. Hutton further noted that in February of 2016, Governor Cuomo launched the Statewide Water Quality Rapid Response Team, which is co-chaired by both Commissioner Zucker and the Commissioner of the Department of Environmental Conservation, Basil Seggos. The team's charged with identifying and developing plans to specifically address critical drinking water contamination concerns, as well as associated ground water and surface water contamination problems. The Department is obviously an integral member of that water quality rapid response team, and since its creation the State has worked pretty aggressively to take significant steps to reduce exposure to contaminants in the drinking water supply and to hold polluters accountable. New York State has also made a pretty impressive commitment of resources to address contamination and improve drinking water quality. This includes a recent announcement of a \$5 million investment in the Stony Brook Center for Clean Water Technology, which is going to support the development of new contaminant filtration; \$400 million for water infrastructure improvements across the state; a historic commitment of \$300 million to the state's Environmental Protection Fund; a billion dollars for the state Superfund program, and \$5 billion in financing made available to the state's drinking water state revolving fund. The team is also working to prepare a comprehensive action plan to address water quality issues across the state and strengthen the State's existing programs. On September 6, 2016, Governor Cuomo signed legislation that requires all school districts in New York State to test their potable water systems for lead contamination and take responsive actions. In order to implement this new law, the Department issued emergency regulations that were titled "Lead Testing in School Drinking Water." This is included in part 67 of the Lead Poisoning Prevention and Control section of State Sanitary... not State Sanitary Code, the New York Code of Rules and Regulations. These emergency regulations require all public schools and BOCES to test all of their potable water outlets that may be used for drinking. There are 733 school districts and 37 BOCES in New York State and more than 500 school buildings, each of which probably have on the order of 100 outlets that need to be tested. They need to be tested by the end of last month for elementary schools and the end of October for middle and high schools. Emergency regulations require the reporting of sample results to the Department, the State Education Departments, and the local health departments, public notifications, and remediations if the lead level exceeds 15 parts per billion. New York will be the first state in the nation to complete lead testing in all school districts by the end of calendar year 2016. The Department has been engaging extensively with schools and local health departments to provide guidance on the implementation of the new law and the Department continues to meet with stakeholders. Permanent regulations will be following soon.

Mr. Hutton also noted that legionella control is an important activity of the Bureau of Water Supply Protection. New York has 9,000 cooling towers that are now registered in the statewide cooling tower database, which is also available on Health Data NY for public use. The Department effectively uses this information that is obtained from the registry to help the Department with legionellosis investigations and continues to develop guidance among the health departments and regulating community. The Department also developed an environmental assessment form for health care facilities requiring them to through regulation to perform certain activities and the Department has provided that EAF to general hospitals and residential health care facilities for their completion beginning September 1, 2016.

Mr. Hutton gave an overview of upcoming activities for 2017, especially as it related to the Council. The Department anticipates having regulations for the Council's consideration that are several updates to part five of the State Sanitary Code and these are important in order for the Department to maintain its role of primacy here in New York State for implementing the federal safe drinking water regulations. These revisions will include several outstanding federal drinking water rules, such as changes needed to comply with the lead and copper rule, control of microbial pathogens, disinfection byproducts, there is a revised TOTAL coliform rule, and then there is some other previously enacted changes to public health laws pertaining to water supply emergency plans, backup flow device tester certification requirements, and some other minor updates. Important to note that these revisions do not add or change the requirements for public drinking water systems, since they already have to comply with the federal regulations. They are primarily to conform regulations with these changes. Mr. Hutton also discussed the water quality hearings in August and September and that the Governor will be proposing new legislation that would require all public water systems to test for unregulated contaminants. The current federal program for unregulated contaminant monitoring rule only mandates testing for unregulated contaminants for systems that serve greater than 10,000 people, and so fewer than 200 of the state's 96,000 public water supply systems currently test for unregulated contaminants. The legislation that will be proposed will broaden the system sample to include all of those smaller systems as well. There will most certainly be some regulations that would likely come out of any enacted legislation there. Lastly, legislation is also going to be proposed that would require the testing of private wells upon the sale of property, upon new well construction, and would require landlords to conduct testing of private well and notify tenants of the results. These are both really broad, sweeping protections that are important for all New Yorkers to insure that they are protected against the unregulated contaminants that were found in communities like Hoosick Falls and Newburgh.

Mr. Hutton concluded his report. To view the complete report and questions and comments from the members, please see pages 14 through 35 of the attached transcript.

APPROVAL OF THE MINUTES OF AUGUST 4, 2016

Mr. Kraut asked for a motion to approve the August 4, 2016 Minutes of the Public Health and Health Planning Council meeting. Dr. Torres motioned for approval which was seconded by Dr. Gutiérrez. The minutes were unanimously adopted. Please refer to pages 35 and 36 of the attached transcript.

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

Mr. Kraut asked for a motion to approve the revised 2017 PHHPC meeting dates. Dr. Gutiérrez motioned for approval which was seconded by Dr. Torres. The revised meeting dates were unanimously adopted. Please refer to pages 36 and 37 of the attached transcript.

Mr. Kraut introduced Dr. Boufford and Dr. Ruge to give an update on the joint work of the Public Health Committee and Health Planning Committee.

HEALTH POLICY/PUBLIC HEALTH SERVICES

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

Dr. Jo Ivey Boufford, Chair, Public Health Planning Committee

Dr. John Ruge, Chair, Health Planning Committee

Dr. Boufford noted that the Health Planning Committee and the Public Health convened a joint meeting. The objectives of the meeting were a vehicle for the Council to look at key elements of the New York State health care reform in context and understand the progress in areas that may or may not be coming to us for any particular decision-making activity. The committee's decided to hone in on two really important areas of the reform, the integration of primary care and behavioral health services, and similarly, the engagement of primary care as a sort of front-line interface with the health care delivery system with the broader determinants of health. The committee's wanted to also provide a forum for the Council to really hear from people who are implementing these programs on the ground and begin to get a sense of the status of that implementation and some of the issues that may be coming up. Things that are working and then things that still need attention. It is the committee's goal to develop some recommendations for the Council, very much in the spirit of Dr. Ruge's approach earlier to looking at the ambulatory care, the different forms of ambulatory care in the State and seeing what the opportunities there may be there. Dr. Boufford thanked Ms. Ullman and Ms. Pirani and her team. Dr. Boufford also recognized Ms. Soto who has serves as the Chair of the Minority Health Council, as well as a member of the Council, and also Dr. Watkins, who is the Cattaraugus County Health Commissioner and comes from the furthers reaches to be with us.

Dr. Boufford explained that there was a meeting in July bringing committee members up to date on the status of related health care reforms that are addressing the integration question and the broader determinants of health question. The committee heard from representatives of DSRIP, from SHIP, the integrated outpatient regulations for the Health Department, Mental Health, and OASAS. There were presentations on the collaborative care model, a presentation on determinants of health, which is really quite related to the ongoing agenda, ongoing Prevention Agenda and domain four of DSRIP, as well as the value-based payment area in advanced primary care. Dr. Boufford stated the plan was to invite a set of organizations to come and speak to us about these issues which occurred on September 23, 2016. Commissioner Sullivan attended and gave an exciting report, a very in-depth report on what the Department is doing and Deputy Counsel Schell from OASAS similarly presenting opportunities and challenges that they have identified in the integration process. The committee's also heard from

a hospital-based integration program from one of their regional consortia looking at the data issues across different behavioral, substance abuse, and primary care practices and databases and finally from the community health center about their opportunities and challenges in the integration area. There was discussions on the need for integration around the different definitions of population health and population health management, while note forgetting the management of geographic populations and the very influence on the ability of the clinical enterprise to achieve their health goals in managing patients with particular disease entities or for whom they are responsible. There was also presentations from the PHIP, from the Finger Lakes group, which is the technical assistance provider to the population health improvement program, the sort-of regional convening and population health reform element of the reform, New York City Department of Health and from one of the PPSs that's taken on, in Staten Island, that is taken on the broader determinants of health in a very serious way.

Dr. Ruge stated that there is all kinds of public initiatives all pointing toward the need to integrate or fuse behavioral health care with primary care as a foundation for the health care system. Among these is the Prevention Agenda. The PPS and DSRIP provides funding for these initiatives. All the work in redefining advanced primary care, through SIM and other federal initiatives, are leading us all toward what we think is coming: value-based payment. In a value-based world, connecting instead of segregating behavioral health and mental health issues with physical health is really essential, so that we are not duplicating not only care, but costs. Dr. Ruge explained that with that in mind, as Dr. Boufford indicated, there was a kick-off by an alumna of the PHHPC, Dr. Sullivan, expressing really all kinds of enthusiasm for energetically connecting on a cross-agency basis everything we are doing in behavioral health and everything we are trying to do in primary care and Tricia Schell-Guy, from OASAS. Again, a level of engagement that this Council, I think, has never seen before.

Dr. Ruge noted some of the issues that have turned up that are now on the record and on the transcript, which is being mined for further data, is how better to align the reimbursement and payer models, how to improve access to data. Looking for guidance on shared records. This bleeds over into telemedicine and how do we orchestrate long-distance care, especially in rural areas and difficult areas to serve. Lots of attention on shared-space arrangements with new guidance having been issued by DOH, but more work needs to be done with CMS, especially for certain kinds of providers, namely FQHCs. And a collateral effort of a workforce workgroup looking at if we are going to do all this, how do we provide the providers to do it. So with all this, we are really at the stage of going from exposition to generation of recommendations, looking at the next regular committee meeting to once again have back-to-back meetings of the Planning and Public Health Committees to beginning to shape the recommendations and shape an eventual report.

Dr. Boufford noted that committee's talked about this broader definition of population health which is now being revisited and revised for the next cycle. The ongoing concerns as the Ad Hoc Leadership Group on the Prevention Agenda around the issues of health disparities and really looking at supporting communities that are trying to tackle that issue. The issue of partnerships has come up, and it has been an issue especially in the DSRIP program, how engaging and identifying community-based organizations that not only help to provide supportive social services, but also can help with issues like housing stock, housing quality, transportation, exercise opportunities, fresh fruits and vegetables, things that also fit in with the broader determinants of health. There is the notion of population health in the value-based

payment language, it needs still to be in those earlier conversations about the electronic health record and how some of these things, the US National Academy of Medicine has issued a couple of reports quite recently of elements of broader determinants of health that might be routinely included in a redesign or design of electronic health records and that is an opportunity for the Council to look at those as this value-based payment specificity increases. There is a number of evidence-based, standard of evidence that the federal government, CMS, is demanding for inclusion in reimbursement is quite high, so a recent issuance of their accountable care communities proposal asking for applications in primary care really focused a lot on the integration of health and social services around individual care, but they are open to the issue of evidence for broader interventions. Dr. Boufford stated that the bottom line in all of this, one of them is what... it is just clarity about definition and the other issue is the reimbursement, for primary care is still quite low, period, relative to other issues. Then to the degree that we would be asking primary care practices to take on more responsibility in this area, trying to look at ways of providing financial incentives. Finally, again, as Dr. Ruge explained that the workforce issue comes up here, as well. Obviously primary care workforce is a long-standing challenge, but as we look at new titles of community health workers and others, thinking more broadly about what they can contribute beyond patient navigation alone and looking at how they might, as they enter patients' homes, be able to scan internal environments for possible risks for asthma, accidents and falls for older people, et cetera, or as they go into communities and come from those communities they know some of the issues water quality or lead in homes or other kinds of challenges in schools.

Dr. Boufford closed by explaining that the committee's want to be sure to look at those issues as soon as they can more broadly, to hear from the workforce working group and begin to explore some of those issues and how they connect with this integration question and also with the broader determinants of health.

Dr.'s Boufford and Ruge concluded their report. To view the complete report, please see pages 37 through 59 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 Adoption

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

Dr. Gutiérrez introduced for adoption the addition of Section 415.41 to Title 10 NYCRR (Specialized Programs for Residents with Neurodegenerative Diseases) and motioned for adoption and noted Mr. La Rue's noted recusal. Dr. Torres seconded the motion. The motion to adopt passed with Mr. La Rue's recusal. Please see pages 59 through 61 of the attached transcript.

Mr. Kraut called an executive session for attorney-client privilege. The Council entered into executive session.

The members returned to the meeting room and Mr. Kraut reconvened the Full Council meeting and Dr. Kalkut to present the Project Review recommendations and establishment actions.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Dr. Gary Kalkut, Vice 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

Residential Health Care Facility - Construction

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

Dr. Kalkut called application 132129 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 59 through 61 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

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>Council Action</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>Council Action</u>
1.	161415 E	Carnegie Hill Endo, LLC (New York County)	Contingent Approval
2.	161456 E	Manhattan Endoscopy Center, LLC (New York County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 162141 E	The Bethel Methodist Home (Westchester County)	Contingent Approval

Dr. Kalkut introduced applications 161389, 131400, 162007, 162009, 162008, 161415, 161456, and 162141 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 63 through 66 of the transcript.

HOME HEALTH AGENCY LICENSURES

New LHCSA

162118 E	LifeWorx Care LLC (amends and supersedes #2545L) (New York, Bronx, Kings, Richmond, Queens and Westchester Counties)	Contingent Approval
----------	---	---------------------

Changes in Ownership

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

Dr. Kalkut called applications 162118, 2560, 2580, 2600, 151259, 152024, 161227, 161333, 161347, 161349, and 161404 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 66 of the transcript.

Certificates

Exhibit #14

Certificate of Amendment of Certificate of Incorporation

Applicant

Prospect Park Nursing Home, Inc.

Council Action

Approval

Restated Certificate of Incorporation

Applicant

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

Council Action

Approval

Dr. Kalkut introduced for consent to file Prospect Park Nursing Home, Inc. and The United Cerebral Palsy and Handicapped Persons Association of the Utica Area, Inc. and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 67 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

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161243 B	Cassena Care Dialysis at Morningside (Bronx County) Mr. La Rue - Recusal	Contingent Approval

Next, Dr. Kalkut introduced application 161243 and noted for the record that Mr. La Rue has a conflict and has exited the meeting room. Dr. Kalkut motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Mr. La Rue’s noted recusal. Mr. La Rue returned to the meeting room. Please see pages 67 and 68 of the transcript.

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162036 E	Bassett Healthcare Network (Otsego County) Mr. Robinson – Recusal (not present)	Contingent Approval

Dr. Kalkut called application 162036 and noted that Mr. Robinson has a conflict, however he was not present at the meeting and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 68 of the transcript.

Ambulatory Surgery Center – Establish/Construct

Exhibit #15

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</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 (not present)	Contingent Approval

Dr. Kalkut introduced application 152377 and noted for the record that Mr. Kraut has a conflict and has exited the meeting room and Dr. Martin had also declared a conflict but was not present at the meeting. Dr. Kalkut motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 68 and 69 of the transcript.

Residential Health Care Facilities – Establish/Construct

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

Dr. Kalkut moved to application 161156 and noted for the record Ms. Carver-Cheney has a conflict and has exited the meeting room and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Ms. Carver-Cheney’s recorded recusal. Please see pages 69 and 70 of the transcript.

Certified Home Health Agency – Establish/Construct

Exhibit #17

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</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

Dr. Kalkut calls applications 161393, 161394, and 161397 and notes for the record Ms. Baumgartner’s interest. Dr. Kalkut motions for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Ms. Baumgartner’s noted interest. Please see pages 70 and 71 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

HOME HEALTH AGENCY LICENSURES

Changes in Ownership

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
152124 E	Core Care, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	EPRC tabled the application to a future EPRC meeting

Mr. Kalkut noted for the record that at the September 22, 2016 Establishment and Project Review Committee (ERPC) it was recommended that the application be reviewed at a Special ERPC meeting on October 6, 2016. At the October 6, 2016 Special EPRC meeting, the application was tabled and will be taken up by the Committee at a future EPRC meeting. Please see pages 71 and 72 of the attached transcript.

Mr. Kraut thanked Dr. Kalkut for his report and moved to the adoption of Revised Observer Guidelines.

ADOPTION OF REVISED OBSERVERS GUIDELINES

Revised Guidelines for Committee Observers and Participants

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

Next, Mr. Kraut moved to the adoption of the Revised Guidelines for Committee Observers and Participants. Dr. Boufford seconded the motion. The recommended revisions are as follows:

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.

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.

After discussion amongst the members, the adoption was called into question. The motion to adopt carried. Please see pages 72 through 79 of the attached transcript.

Mr. Kraut next moved to the adoption of the Revised Guidelines for Observers for Full Public Health and Health Planning Council and motioned for adoption. Dr. Gutiérrez seconded the motion. The proposed revision:

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.

The motion to adopt carried. Please see pages 79 and 80 of the transcript.

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)

Mr. Kraut called for executive session for attorney client privilege. Dr. Berliner seconded the motion. Mr. Kraut also noted for the record that Mr. Zahnleuter is recusing himself from the application and will not be present during the executive session. The Council moved to executive session.

The Full Council reconvened. Mr. Kraut described application 142183 Administrative Law Judge's Report and Recommendation. Dr. Ruge made a motion to accept the report and recommendation. Dr. Kalkut seconded the motion. The motion carried. Dr. Kalkut made a second motion to modify the Administrative Law Judge's Report and Recommendation, Dr. Berliner seconded the motion to modify. Mr. Kraut stated that the Report and Recommendation should be modified to add two contingencies asking the Department to conduct a character and competence review and secondly to conduct a facility review. The vote was called into question and passed approving the modifications. See pages 80 through 92 of the attached transcript.

ADJOURNMENT:

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 OCTOBER 6, 2016
4 NEW YORK, NEW YORK
5

6

7 JEFF KRAUT: Listen, are there anybody from the public
8 that we have to... there's nobody signed up to speak or issue? OK.
9 So let's go and if there's any issue that comes up that we might
10 want to start we'll do that. But what if I do the introductory
11 comments at least? OK?

12 So, good morning. I am Jeffry Kraut. I am the Chair of the
13 Council. I have the privilege to call to order the meeting of the
14 Public Health and Health Planning Council. And we're going to
15 welcome the members, participants, and observers. I'd like to
16 remind the councilmembers, staff, and the audience that this
17 meeting is subject to the Open Meeting Law and is broadcast over
18 the internet. The webcast can be accessed through
19 [www.//NYhealth.gov](http://www.nyhealth.gov). The on-demand webcast will be available no
20 later than 7 days after the meeting for a minimum of 30 days and
21 a copy is going to be retained in the Department for up to four
22 months. Just to make sure everybody understands, we have
23 synchronized captioning. It's important that we don't speak over
24 one another; we can't do the captioning correctly if people are
25 speaking at the same time. The first time you speak, unless I
26 have otherwise identified yourself, please state your name and

1 briefly identify yourself as a councilmember or DOH staff; this
2 will be helpful to us in recording the meeting. The microphones
3 are of course hot; they pick up every sound. Try not to avoid the
4 rustling of papers next to the mic. And be sensitive about
5 personal conversations; they tend to get picked up and broadcast
6 when you are least expecting them to. And as a reminder for our
7 audience, there is a form that needs to be filled out before you
8 enter the meeting room, which records your attendance at meeting.
9 It's required by the Joint Commission on Public Ethics in
10 accordance with executive law section 166. The form is also
11 posted on the Department of Health's website, which is
12 www.NYhealth.gov under the Certificate of Need tab. In the future
13 you can fill out that form prior to coming to the Council meeting
14 and we thank you for your cooperation in fulfilling our duties.

15 I am going to... we're going to not do some of the reports
16 first and we've just had a meeting of the Codes Committee. We're
17 going to now turn the mic over to Dr. Kalkut who will be
18 reporting on a number of CON applications that were reviewed at a
19 meeting of the Committee of Establishment and Project Review.

20

21 GARY KALKUT: I think we're...

22

23 JEFF KRAUT: We're going to convene the special
24 Establishment and Project Review Committee. I am sorry.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

GARY KALKUT: Good morning. Before I get started, Dr. Berliner, you had a comment.

HOWARD BERLINER: Jeff, what happens after four months? You said that the Department...

JEFF KRAUT: I think they are archived. I think you are going to have to... I will defer to you, but when the meetings, after they are archived, they become part of the State archive, right? There's a digital archive that's kept, I think it's just harder to access. You have to make a request or something.

[It's on Total Webcasting's website. It's through the Department of Health that you can click on webcast, and then it will lead you to...]

JEFF KRAUT: But after four months.

[Yes, Robert always keeps them on there. They have been since the beginning of PHHPC.]

1 JEFF KRAUT: Yeah, OK. That's good. We don't need to
2 stretch out, I think we'll have enough time today to fill. So,
3 Gary, you wanna do the special meeting?

4
5 JEFF KRAUT: OK, thank you very much. A little later in
6 the day, we're going to come back and we're going to discuss and
7 revise the guidelines for committee observers. And this is
8 essentially to avoid certain situations that we've been
9 experiencing with respect to material coming to us in a timeframe
10 that doesn't permit the applicant adequate time to respond. So as
11 a consequence of that, we're going to... I am going to suggest we
12 modify our guidelines for the receipt of information and the
13 giving the applicants ample time to respond. Well, ample isn't a
14 good word, but giving them time to respond, and we'll come back
15 to that a little later. Could I start the... OK, so we're going to
16 wait for a quorum to exist for the Council to convene and I'll
17 come back in a moment. Could we suspend the taping?

18

19 [BREAK]

20

21 JEFF KRAUT: OK. I don't even know why I am asking. I
22 would like to welcome you back to the October 6th meeting of the
23 Public Health and Health Planning Council. I have done some of
24 the introductory remarks previously and in today's meeting, I

1 just want to go over the agenda with us. We're going to be the
2 meeting with a report from Dr. Zucker, followed by Mr. Hutton in
3 Albany talking about the Office of Public Health. Then Drs.
4 Boufford and Rugge will report on the activities of the joint
5 meeting of the Health Planning and the Public Health Committees.
6 Dr. Gutiérrez will present a regulation for adoption, followed by
7 Dr. Kalkut who will be reporting on the CON actions that we
8 reviewed in a previous meeting of the Committee on Establishment
9 and Project Review. Then we're going to discuss a revision in our
10 observer and participant guidelines and finally we'll take up the
11 matter of the administrative law judge's report and
12 recommendation with respect to an outstanding action of the
13 Council. So without further ado, I'll turn it over to Dr. Zucker.

14

15 HOWARD ZUCKER: Thank you. Thank you, chairman. Good morning.
16 We have a variety of new developments to discuss today and I
17 wanted to start with one of the issues which is a discussion on
18 blood stream infections at health care facilities in downstate
19 New York. This is something which may have been in the news, if
20 not you may hear about it soon. The Department is currently
21 investigating the cause of about 34 cases of blood stream
22 infections. The infections may be associated with intravenous
23 medications or intravenous flushes, normal saline flushes, that
24 have been obtained from two companies: one which provides

1 pharmacy services to nursing facilities in the New York City
 2 region, and a second one that manufactures medical products,
 3 which include these saline flushes. The infections is caused by a
 4 burkholderia cepacia, or better known—some people remember it
 5 when it's called (cinemonous) cepacia, I guess they change these
 6 names every once in a while—a bacteria which causes infections
 7 primarily in hospitalized patients. The bacteria really doesn't
 8 pose much of a problem to those who are healthy; however, people
 9 having certain medical conditions—weakened immune systems or
 10 chronic lung diseases (this is one of the infections that cystic
 11 fibrosis patients will often get)—may be susceptible to
 12 infections. So, as soon as the Department of Health learned about
 13 the potential contaminations, what we did is we identified..
 14 immediately notified the health care facilities that have
 15 received the medications or the flushes from one or both of these
 16 companies. We advised them to inform their patients who could
 17 have been exposed to the bacteria, and we have also instructed
 18 the facilities to refrain from using these certain intravenous
 19 products and are also helping them to locate medical supplies to
 20 maintain the services, protect the health of their patients, so
 21 that they can get whatever they need—the medications, and the
 22 flushes from another source. Additional blood stream infections
 23 that appear to be associated with the outbreak are being
 24 investigated. Other states, including Maryland and New Jersey and

1 Pennsylvania, and the Department is working closely with the
2 officials from those states, as well as the CDC and the FDA, so a
3 lot of people are involved in this issue. We have also briefed
4 the county health commissioners and issued a health advisory to
5 the hospitals in the downstate region to identify and report any
6 additional bloodstream infections that may be associated with
7 this outbreak. Long-term care facilities have been asked to
8 report any medications, intravenous flushes, or other intravenous
9 products received from the two companies that are in question and
10 they have been asked to retain any intravenous products that were
11 obtained from either of the companies until further notice. So
12 we'll keep you... this is a new and developing issue and we'll keep
13 you updated on this.

14 Next area is the issue of medical marijuana and our medical
15 marijuana program. So I want to discuss a couple of the changes
16 in the medical marijuana program and these will obviously
17 improve... are improvements for all New Yorkers. Since we debuted
18 the program in January, we have certified more than 8,400
19 patients and we have registered more than 700 physicians. And
20 that was just in the last nine months, and we're doing, as
21 programs go in the country, we are really right at the forefront
22 of moving forward on this. In that time, the Department has been
23 working closely obviously with the doctors, patients, and
24 registered organizations to gather information on how to make the

1 program better. Some of the changes that we are making, we're
2 anticipating authorizing a nurse practitioner to certify New
3 Yorkers for medical marijuana—until now only the doctors could
4 certify patients and feelings that allowing those practitioners
5 to issue certifications will help more patients, especially those
6 in rural areas because there are rural counties where there are
7 few physicians and nurse practitioners obviously are critical
8 there and elsewhere, but definitely when there are less doctors.
9 The Department is also contemplating allowing registered
10 organizations to offer home delivery services. Many patients with
11 serious health conditions cannot leave their homes, and as a
12 result they may have difficulty accessing medical marijuana
13 products. In addition, we're reviewing the literature for the use
14 of medical marijuana in patients suffering from chronic pain.
15 This has been a discussion that has been going on, so we're
16 looking at the literature on this and will expect a decision on
17 this in the coming months. Looking at all the science that's out
18 there. And for patients and caregivers who have financial
19 hardships, we are considering expanding the waiver for the \$50
20 registration fee. So, by eliminating the fee, we hope to improve
21 access to medical marijuana for patients who need it. Other
22 changes to the program will streamline manufacturing
23 requirements, it will enable registered organizations to
24 advertise their participation on the program, and it will expand

1 the testing of medical marijuana products by independent
 2 laboratories in New York. We continue to look for ways to help
 3 patients locate registered practitioners, we encourage the
 4 federal government to relax restrictions on scientific research
 5 related to medical marijuana, and more improvements are expected
 6 in the near future. We're constantly evaluating the program to
 7 make it more effective for both patients and practitioners and
 8 we're confident these changes will do just that.

9 Another issue is the opioid epidemic—issues of funding,
 10 county reports, and the MAT, which I'll go through in a minute.
 11 So I would like to announce the receipt of funding from the
 12 Centers for Disease Control and Prevention to address the opioid
 13 epidemic. We recently got a supplemental grant of \$995,000, which
 14 comes on top of the \$1.2 million grant that we received in March.
 15 As you know, prescription opioid addiction, overdose deaths that
 16 have become a major public health crisis, a true concern. New
 17 York is working to reduce the rate of opioid abuse, increase
 18 substance abuse treatment, and lower the drug overdose rates for
 19 all types of opioids, including heroin. The CDC funds will be
 20 used to increase access to buprenorphine, medicine used to treat
 21 opioid addiction. It will also be used to increase availability
 22 of naloxone or Narcan, which is obviously used to reversed the
 23 opioid overdoses. Increasing accesses to these medications were
 24 recommendations made by governor Cuomo's heroin/opioid taskforce

1 in a report that was released this past June. We also want to
2 certify more practitioners in the use of medication-assisted
3 treatment, that's the MAT, better known as MAT. MAT uses
4 medications like buprenorphine to treat opioid addiction—which we
5 need to remember is a disease, it's not a character flaw, it's a
6 disease and we need to address it that way. The Department will
7 create a mentoring program for physicians recently certified in
8 MAT. We also plan to offer training and education to nurses, to
9 nurse practitioners, to physicians' assistant, who at the moment
10 cannot prescribe MAT, but certainly need to know that it's a
11 viable option out there. The CDC funds will also be used to
12 expand naloxone training and to improve the state's prescription
13 drug monitoring program. In addition to the CDC funding, the
14 Department has just released its first quarterly report of
15 county-level data on opioids. It is our plan to use this data to
16 help communities identify populations that are struggling with
17 opioids and to create interventions that best meet their needs.
18 We will use the data to work towards improvements at every level,
19 whether it's the prevention or the treatment of addiction or the
20 management of pain. And we're in the middle of truly a terrible
21 epidemic that is destroying not only lives, but families of those
22 who have been affected across the entire state, and for that
23 matter, across the whole country. So we need to use every tool at
24 our disposal to fight this and we will do just that. On the issue

1 of antimicrobial resistance activities, we have also had some
2 news regarding our work on antimicrobial resistance. For about a
3 year now the Department has been working on a broad, statewide
4 response to the global problem of antimicrobial resistance. The
5 CDC estimates that in the United States alone we have about two
6 million people becoming infected with bacteria that are resistant
7 to antibiotics. And about 23,000 of these individuals die as a
8 direct result of these infections. The seriousness and the
9 urgency of the problem was recently highlighted when there was
10 identification of something called the MCR1 gene and the MCR1
11 gene has led to several cases of human resistance to what's a
12 last-resort treatment, which is Colistin. So, antibiotic. So, on
13 September 21st, the General Assembly of the United Nations
14 convened a high-level meeting on the issue of antimicrobial
15 resistance, which demonstrates truly the seriousness of this
16 issue. And I remember when this was coming up when I was at WHO,
17 we were talking about this, about the issue of antimicrobial
18 resistance. And in early November the Department will host a New
19 York State Antimicrobial Resistance Prevention and Control
20 Taskforce Summit, where stakeholders and partners will be invited
21 to discuss this initiative and we have several goals for that. We
22 want to slow the emergence of antimicrobial resistance by
23 promoting the appropriate use of antibiotics and prevent the
24 overuse of antibiotics in food production. We want to promote the

1 antimicrobial stewardship programs in hospitals and other health
2 care settings, for example long-term care facilities and nursing
3 homes where this is a concern. And these programs force the staff
4 to be accountable for antibiotic usage and to take the steps to
5 reign it in. We want to prevent the spread of antibiotic
6 resistant organisms by implementing evidence-based infection
7 control practices; at the same time we want to quickly detect and
8 control outbreaks that do occur. We also want to strengthen
9 surveillance efforts for antibiotic resistance in humans and
10 animals and in the environment. So this goal will involve working
11 closely with Ag and Markets, the Department of Environmental
12 Conservation, as well as the internal departments that we have
13 such as the Center for Environmental Health. And finally we want
14 to develop and use rapid, innovative diagnostic tests for
15 identifying resistant bacteria. The Wadsworth Center bacteriology
16 laboratory was recently designated and funded by the CDC as a
17 regional center for antimicrobial resistance, which will
18 obviously help us meet our goals. And a report of recommendation
19 to combat antimicrobial resistance in New York State will be
20 completed by the end of this calendar year, so by December 31st of
21 2016. It will be complete with input from the stakeholders and
22 our partners on the taskforce and we look forward to working with
23 everyone on slowing down this dangerous threat to health, it's a
24 big concern. And then we have Wadsworth and some issues with NIH.

1 The Wadsworth Center recently received a \$1.2 million award from
2 the National Institutes of Health. The funding is part of the
3 launch of a seven-year initiative called "Environmental
4 Influences on Child Health Outcomes" or ECHO. The program will
5 look at how exposure to environmental factors during development
6 affect the health of children and adolescents and Wadsworth
7 Center will be involved as part of the ECHO Children's Health and
8 Exposure Analysis Resource Center or CHEAR. This will serve as a
9 resource for laboratories, statistical analysis of research,
10 interpersonal and environmental exposures, and in the NIH fund
11 the scientists can apply to have Wadsworth and/or other CHEAR
12 laboratories, these Children's Health and Exposure Analysis
13 Resource laboratories, carry out sophisticated analysis in
14 support of their research projects. The other ECHO awards are the
15 ICAN School of Medicine at Mt. Saini in New York City, the
16 Research Triangle Institute in Rockville, MD, the University of
17 Minnesota in Minneapolis, MN, and WESTSTEAD, Inc. in Rockville,
18 MD, as well. So I would like to congratulate the team at
19 Wadsworth for all the work. Wadsworth does a tremendous job in so
20 many different things across the state and for that matter for
21 the country. So, I thank you for your attention. That's where we
22 are on this. Obviously there are many other things that are
23 always going on and the Department is always here to serve

1 everyone and move forward to do whatever we can to help everyone
2 in New York, so I am happy to answer your questions.

3

4 JEFF KRAUT: Thank you, very much, Dr. Zucker. Are there
5 any questions for Dr. Zucker? Any comments? Thank you so much. We
6 appreciate your time. You know, it's gonna be one of those... Next
7 I am gonna call on Mr. Hutton from Albany to give us an update on
8 the activities of the Office of Public Health.

9

10 BRAD HUTTON: Good morning, everyone. Can you give me a
11 thumbs up if you can hear fine? Thank you. You should also have a
12 power point projected there that I can't see. Can you also just
13 confirm that that's up? Let me know when that's up. Oh, OK, I am
14 sorry. I thought that was the thumbs down. So, given a lot of
15 attention over the last year that's been given to water quality,
16 given the State's response in Hoosick Falls, in Newburgh, and in
17 other communities, and the Council's important role with respect
18 to water regulations in the state sanitary code, I thought it
19 would be helpful this morning for me as part of my report on
20 Office of Public Health activities to just go a little bit
21 further in depth into the Department's activities with respect to
22 water protection.

23 So if we could move now to the second slide. In the Office
24 of Public Health's Center for Environmental Health, the Bureau of

1 Water Supply Protection is the bureau that's primarily
2 responsible for water supply protection and it's comprised of
3 engineers, scientists, data management and mapping specialists,
4 and other professionals that are technical experts in the subject
5 area. And the Bureau works to protect the health, safety, and
6 welfare of all residents and visitors to New York through
7 regulatory oversight, technical support, and response activities
8 for both public and private drinking water, bulk and bottled
9 water, and other water-related resources and issues. And the
10 Bureau works very closely with local health department partners
11 and public water systems to advance the field through research.
12 Next slide.

13 The Bureau regulates the operation, design, and quality of
14 approximately 9,600 public drinking water supplies and commercial
15 bottled water suppliers. It works to ensure that water sources
16 are adequately protected, trains and certifies drinking water
17 system operators, and provides training for local health
18 department stakeholders, develops standards and polices for
19 individual water suppliers (otherwise known as private wells),
20 and individual wastewater systems (that's septic), reviews and
21 approves recreational BANDING facility designs, and then
22 addresses the aging drinking water supply infrastructure through
23 the administration of the drinking water state revolving funds.
24 This provides financial assistance to public water suppliers and

1 since 1997, this fund has provided just under \$5 billion in
2 financing to assist public water supplies with their water
3 infrastructure projects, including \$335 million in grants to
4 disadvantaged communities. This bureau also oversees our
5 legionella regulatory program, which you are familiar with
6 through recent adoption of regulations, and conducts research and
7 investigation of emerging drinking water issues. Next slide.

8 And in February of 2016, Governor Cuomo launched the
9 Statewide Water Quality Rapid Response Team, which is co-chaired
10 by both Commissioner Zucker and the Commissioner of the
11 Department of Environmental Conservation, Basil Seggos. The
12 team's charged with identifying and developing plans to
13 specifically address critical drinking water contamination
14 concerns, as well as associated ground water and surface water
15 contamination problems. The Department of Health is obviously an
16 integral member of that water quality rapid response team, and
17 since its creation the State has worked pretty aggressively to
18 take significant steps to reduce exposure to contaminants in the
19 drinking water supply and to hold polluters accountable. New York
20 State has also made a pretty impressive commitment of resources
21 to address contamination and improve drinking water quality. This
22 includes a recent announcement of a \$5 million investment in the
23 Stony Brook Center for Clean Water Technology, which is going to
24 support the development of new contaminant filtration; \$400

1 million for water infrastructure improvements across the state; a
 2 historic commitment of \$300 million to the state's Environmental
 3 Protection Fund; a billion dollars for the state Superfund
 4 program; and \$5 billion in financing made available to the
 5 state's drinking water state revolving fund, which I had
 6 mentioned earlier. The team is also working to prepare a
 7 comprehensive action plan to address water quality issues across
 8 the state and strengthen the State's existing programs. Next
 9 slide.

10 Very recently, actually, on September 6th, Governor Cuomo
 11 signed legislation that requires all school districts in New York
 12 State to test their potable water systems for lead contamination
 13 and take responsive actions. I am sure in communities across New
 14 York State you have received some media coverage and are aware of
 15 some of the activities schools are undertaking. So in order to
 16 implement this new law, the Department issued emergency
 17 regulations that were titled "Lead Testing in School Drinking
 18 Water." This is actually included in part 67 of the Lead
 19 Poisoning Prevention and Control section of State Sanitary... not
 20 State Sanitary Code, the New York Code of Rules and Regulations.
 21 These emergency regulations require all public schools and BOCES
 22 to test all of their potable water outlets that may be used for
 23 drinking. So just so you get a sense for the scope involved here,
 24 there are 733 school districts and 37 BOCES in New York State and

1 more than 500 school buildings, each of which probably have on
 2 the order of 100 outlets that need to be tested. And they need to
 3 be tested by the end of last month for elementary schools and the
 4 end of October for middle and high schools. Emergency regulations
 5 require the reporting of sample results to the Department, the
 6 State Education Departments, and the local health departments,
 7 public notifications, and remediations if the lead level exceeds
 8 15 parts per billion. So New York will be the first state in the
 9 nation to complete lead testing in all school districts by the
 10 end of calendar year 2016. We have been engaging extensively with
 11 schools and local health departments to provide guidance on the
 12 implementation of the new law. And we continue to meet with
 13 stakeholders. Permanent regulations will be following soon and I
 14 am sure we will have additional information on the outcome of
 15 this testing program at future meetings of the Council. Next
 16 slide.

17 Just a very quick review, since we have covered this with
 18 you recently. Legionella control is an important activity of the
 19 Bureau of Water Supply Protection. We have 9,000 cooling towers
 20 that are now registered in the statewide cooling tower database,
 21 which is also available on Health Data NY for public use. We
 22 effectively use this information that we obtain from the registry
 23 to help us with our legionellosis investigations with the current
 24 season that we're in and we continue to develop guidance among

1 the health departments and regulating community. We also, as you
2 know, developed an environmental assessment form for health care
3 facilities that we're now newly requiring them to through
4 regulation to perform certain activities and we provided that EAF
5 to general hospitals and residential health care facilities for
6 their completion beginning September 1st and we continue to
7 develop additional guides for health care workers. Next slide.

8 So let me give you a sense for the upcoming activities for
9 2017, especially as it relates to the Council. We will... we do
10 anticipate having regulations for your consideration that are a
11 bunch of updates to part five of the State Sanitary Code and
12 these are important in order for us to, for the Department to
13 maintain its role of primacy here in New York State for
14 implementing the federal safe drinking water regulations. These
15 revisions will include several outstanding federal drinking water
16 rules, such as changes needed to comply with the lead and copper
17 rule, control of microbial pathogens, disinfection byproducts,
18 there's a revised TOTAL coliform rule, and then there's some
19 other previously enacted changes to public health laws pertaining
20 to water supply emergency plans, backup flow device tester
21 certification requirements, and some other minor updates. I think
22 the important thing here is that these revisions do not add or
23 change the requirements for public drinking water systems, since
24 they already have to comply with the federal regulations. So they

1 are primarily to conform regulations with these changes. Two
2 other things that you may have heard were announced are water
3 quality hearings in August and September is that the Governor
4 will be proposing new legislation that would require all public
5 water systems to test for unregulated contaminants. The current
6 federal program for unregulated contaminant monitoring rule only
7 mandates testing for unregulated contaminants for systems that
8 serve greater than 10,000 people, and so fewer than 200 of the
9 state's 96,000 public water supply systems currently test for
10 unregulated contaminants. And so the legislation that will be
11 proposed will broaden the system sample to include all of those
12 smaller systems as well. And there will most certainly be some
13 regulations that would likely come out of any enacted legislation
14 there. And then finally legislation is also going to be proposed
15 that would require the testing of private wells upon the sale of
16 property, upon new well construction, and would require landlords
17 to conduct testing of private well and notify tenants of the
18 results. These are both really broad, sweeping protections that
19 are important for all New Yorkers to insure that they are
20 protected against the unregulated contaminants that were found in
21 communities like Hoosick Falls and Newburgh. So there's lots to
22 come and I would stop there and see if anyone has any questions.

23

1 GARY KALKUT: Thank you for the report. I had a question
2 about current testing of private wells. Is there any that is
3 currently done and if so, what frequency or based on suspicion,
4 how is that done currently?

5

6 BRAD HUTTON: There's no current state requirement; there
7 are a few county requirements. Rockland is one that is often
8 viewed as a model where in that county there is a requirement for
9 private well testing. So there's no current statewide
10 requirement.

11

12 GARY KALKUT: So this would represent a significant change
13 for private well owners, private property. As you said, a
14 sweeping regulation.

15

16 BRAD HUTTON: It would, and you know it would be a
17 significant change, but also a significant new protection. You
18 know, anecdotally, what we understand in Rockland County is that
19 30 percent of private wells tested had some kind of an
20 exceedance, most of them for microbial contaminants, but there
21 was also single digit percentages of exceedances for other
22 contaminants.

23

24 GARY KALKUT Thank you.

1 Yes, Mr. Lawrence.

2

3 HARVEY LAWRENCE: What steps are being taken to protect
4 the water system against intentional contamination from terrorism
5 or other acts?

6

7 BRAD HUTTON: I am having a hard time hearing that
8 question. I am sorry.

9

10 Dr. Lawrence. Mr. Lawrence.

11

12 HARVEY LAWRENCE: Can you hear me now? OK. The question is
13 what steps are being taken to protect the water supply system
14 against intentional contamination in terms of acts of terrorism
15 and others?

16

17 BRAD HUTTON: I am going to invite Roger Sokol who directs
18 our Bureau of Water Supply Protection to talk about some of those
19 protections that we have in place.

20

21 ROGER SOKOL: Good morning, everyone. Public water systems,
22 community water systems that serve a population greater than
23 3,300 are required to have both an emergency response plan and
24 also to conduct a vulnerability assessment of their water system

1 with a focus being placed on potential terroristic acts of
2 contamination. These plans are required to be updated and
3 reviewed and approved by the Department every five years and with
4 that the water systems CREATE THESE vulnerability assessments to
5 sort of, if you will, harden their infrastructure and to pay
6 close attention to areas that might be potentially more
7 vulnerable [to] any sort of terrorist activity.

8

9 JEFF KRAUT: Any other questions? Dr. Berliner.

10

11 Excuse me. If the testing in...

12

13 JEFF KRAUT: Is that on? Howard? Is the light on? OK.

14

15 HOWARD BERLINER: Yeah. If the testing in schools reveals
16 above-normal contamination of some sort, what are the remediation
17 steps that you can take?

18

19 ROGER SOKOL: So if the testing is above 15 parts per
20 billion, which mirrors the state, the EPA action level, the
21 school district is required to remediate the problem at that
22 outlet and to stop it from being used until it's remediated and
23 if needed provide an alternate water source for the employees,
24 students. They are also required to have certain public

1 notification requirements of all testing results, but there are
2 even quicker notification requirements if there is an exceedance.

3

4 JEFF KRAUT: Yes, Dr. Berliner.

5

6 HOWARD BERLINER: And if the testing reveals a problem at
7 a particular school, is there any attempt to then do testing in
8 the local community? You know, of the kids that go to, you know,
9 the homes where the kids live who go to that school?

10

11 Regulations don't have any requirement on blood testing, but
12 certainly we have seen some school districts have, as part of
13 their response to exceedance, raise awareness in the community
14 about the process that students could go through or families
15 could go through to have their students tested for blood lead
16 levels.

17

18 JEFF KRAUT: OK. Dr. Palmer.

19

20 JOHN PALMER: Could you talk about the similar concerns on
21 testing, if at all, of bottled water?

22

23 BRAD HUTTON: Sure. So I think New York State, and I am
24 going to invite Dr. Sokol to come up again and talk about some of

1 our activities with bottled water, but I think the important
2 take-home message is that New York State really is a model
3 nationally. We're one of the few states that have the controls in
4 place for bottled water. We even go and do onsite reviews of
5 companies that supply bottled water to New Yorkers, so you want
6 to talk a little bit more about that, Roger?

7

8 ROGER SOKOL: Yes. So as Brad had mentioned, all bottled
9 water sold in the state is required to be CERTIFIED by the
10 Department and as part of that certification there is chemical
11 testing that is required of the bottled water sources. And that
12 testing mirrors what a public water system would have to monitor
13 for in terms of both chemical and microbiological contaminants.
14 And just so you are aware, and this is in reference to not just
15 bottlers here in New York State, but any company, regardless if
16 they are in New York, in the United States, or even outside of
17 the country, are required to comply with these regulations and
18 these regulations are in the state sanitary code as part 5-6.

19

20 JEFF KRAUT: Any other questions? Yes, Ms. Carver-Cheney.

21

22 KATHLEEN CARVER-CHENEY: Since all the wells and the water
23 sources in elementary schools have already been tested, is there

1 any preliminary data showing high lead levels or other
2 contaminants?

3

4 BRAD HUTTON: I think your question was getting at the fact
5 that water systems are already required to test for lead, so this
6 is really getting at the new requirement, gets at the testing of
7 the premise systems, you know, which is primarily concerning in
8 older buildings. So, Roger correct me if I am wrong, but any
9 public water system would be required to report any instance of
10 lead as part of their annual water quality report. And so do we
11 have a sense for the percentage of public water suppliers that
12 have had exceedances of lead.

13

14 ROGER SOKOL: It's a relatively low percentage and what
15 we're referring to is what is known as an action level
16 exceedance, and in addition to reporting that in an annual filing
17 report the regulations, both federal and also within the State
18 Sanitary Code, you do require that public water systems notify
19 all residence of an actual level exceedance within a 60-day
20 period, as well as providing information about the effects of
21 lead and ways that they may be able to reduce lead contamination
22 in their homes. I don't have an exact number of water systems in
23 the state that have an action level exceedance, but it is a
24 relatively small number, very small number compared to the total

1 number of public water systems that we do have here in New York
2 State.

3

4 JEFF KRAUT: Any other questions?

5 I can't help, there must be... I am just pulling up the
6 website about how many community water suppliers there are and
7 non-community water suppliers there are and there are close to,
8 you know, 10,000 or so in the state. So, I just, you know, when
9 you hear about the testing that's occurring, you have to
10 understand the dimension. This is not like New York City water
11 supply, eight million people. These are a lot of large community-
12 based water suppliers and there are water suppliers here that
13 serve 75 households. So, you know, you get a sense of the
14 dimension of it and I can't help but believe, you know, all of
15 this data obviously must be reported up to the Department of
16 Health, but I notice it's, in order to access it, it's a little
17 awkward depending on what the municipality is and if it's a
18 private water supply. So somebody living, that has a private
19 water supplier, I know they have to be informed every year
20 according to the law about getting information. I just can't help
21 but think that if there was a common database of all the
22 suppliers... you have the data. I know it's not on the Open Health
23 NY data portal, but just for the anxiety and, you know, cause
24 it's been in the news—any consideration for making all of the

1 water suppliers results available in one location? And also in
2 some way color coding them whether they are meeting or exceeding...
3 meeting or not meeting standards?
4

5 BRAD HUTTON: I think that's a good question and we can
6 look into that, including the prospects of using Health Data NY
7 to make the data more readily available. We'll take a look and
8 see what's feasible.

9

10 JEFF KRAUT: OK. Commissioner.

11

12 HOWARD ZUCKER: I think that's a great idea. I just want to
13 say one thing. This whole issue of environmental health has been
14 around, but it's really taken off in the recent past. And I was
15 at the Association of State and Territorial Health Offices two
16 weeks ago and we were talking a little bit about this and I feel
17 in a lot of ways that this is one of those things where we're
18 just going to learn more and more and years ago when the whole
19 issues of sort of health security came about we started to
20 realize how many things that we need to do to tackle some of the
21 things in security and I feel in a lot of ways environmental
22 health is where we're heading, in that area as well. This is, you
23 know, we've discovered a lot of issues, whether it's the lead
24 issues or it's the other issues, but this is going to be in the

1 next five to ten years one of those things that we'll learn more
2 and more about and so some of the things you bring up are
3 critical and I think that we need to tackle it all of the safety
4 of everyone.

5

6 JEFF KRAUT: OK, now you've got me started on something
7 else. But you go ahead, Dr. Berliner, and then I will...

8

9 HOWARD BERLINER: Can you tell us how much money is in
10 that fund that deals with, you know, abatement problems?

11

12 BRAD HUTTON: How much money is in the fund that deals with
13 what problems?

14

15 Abatement.

16

17 Abatement.

18

19 JEFF KRAUT: Abatement problems. Remedy. Remediation.

20

21 BRAD HUTTON: Well, there's the drinking water safe
22 revolving fund, and then there is the environmental protection
23 fund.

24

1 ROGER SOKOL: We don't have control of the environmental
2 protection fund, but the drinking water safe revolving fund, the
3 State, we receive annual what we call capitalization grants from
4 the EPA and they vary from year to year. This past year it was
5 close to \$40 million that the State received and then working
6 with our partner, the Environmental Facilities Corporation, and
7 through investments that they have made, we were able to sort of
8 leverage that money to actually, even though we received \$33
9 million, we can actually turn that into close to over \$100
10 million per year that we can give out in terms of both loans
11 and/or grants to disadvantaged communities. So it's been a very
12 successful program to help community water systems throughout the
13 state improve and maintain their critical drinking water
14 infrastructure to be in compliance with the state and federal
15 relations related to drinking water. I will add that this is
16 probably the first and one of the best programs in the country.
17 All 50 states have a revolving loan program and I think by far
18 New York has been one of the forefront in terms of giving out
19 money to community water systems.

20

21 BRAD HUTTON: Roger, Can you also mention the state
22 Superfund and the Environmental Protection Fund? Just explain
23 those other two sources?

24

1 fluoridated its water and you could see the difference in between
2 the dental condition of the kids on the reservation, much better
3 teeth, than the rest of the kids in Salamanca. Where are we now
4 on fluoridation statewide?

5

6 BRAD HUTTON: So, we unfortunately have too many residents
7 in New York that are not served by community water systems that
8 are fluoridated and so fortunately through, with the Medicaid
9 program's assistance, we have been able to provide funding to
10 water systems, to either newly fluoridate or to pay for upgrades
11 that are needed in order to continue to fluoridate. We're
12 actually, we're just finishing our third competitive grant
13 opportunity to public water systems. Through the first two rounds
14 we did provide funding, I think that it was entirely for SMALL
15 grants for existing water systems to fluoridate. We also have
16 some other programs that we provide through the Office of Public
17 Health to areas of New York State that are not served by
18 fluoridated water systems to provide dental sealants and other
19 preventative dentistry programs. So fluoridation is obviously a
20 public health intervention that we strongly support and continue
21 to try and provide funding to incentivize additional communities
22 to take on water fluoridation.

23

24 JEFF KRAUT: Thank you. Dr. Berliner.

1

2 HOWARD BERLINER: So, while the numbers that you presented
3 about the amounts of money that are potentially available for
4 remediation and other efforts seem large, I think in reality they
5 seem pretty small. And given Congress's inability to even approve
6 special funding for Flint, you know, should we be doing something
7 more in New York just to kind of have a larger buffer fund if in
8 fact it turns out to be some real problem areas?

9

10 BRAD HUTTON: Well, I think those are fair questions. You
11 know, to put it in context, I think the FIRST investment in those
12 different funds that I mentioned probably is greater than any
13 other state, but you are correct, the fact that water systems are
14 aging leaves a lot more additional work to do and I think those
15 conversations with our partners at the federal level need to
16 continue to find out who the appropriate sources of—who should
17 appropriately be funding those infrastructure improvements.

18

19 JEFF KRAUT: Thank you. I am just going to return... Before
20 we close the conversation I am going to return to what the
21 Commissioner just said about the awareness of the environmental
22 factors. You kind of group these more globally into data which
23 kind of gives you indications of the social determinants of care.
24 If you could think about it, how helpful it would be if there was

1 an accessible database that would tie into our electronic medical
2 records that, when an individual shows up and you have a geocoded
3 address and the records automatically query a State database to
4 say the presence of lead in drinking water, that at least it
5 clues in the clinician to say, "listen, you know, we kind of have
6 a social determinant screen that just picked up that you're in an
7 environment that has the potential of either, you know, lead, or
8 suspect drinking water." It might start a conversation or change
9 clinical thinking in a way when you are presented with symptoms
10 that you may not be able to understand or classify. And I think,
11 you know, it shows great opportunity as we harness the power of
12 the availability of this data, which is getting easier to pull
13 in, to use it in productive ways. And I just think these open
14 databases that both the State and cities are doing and
15 municipalities are doing holds great promise for incorporating an
16 understanding of the social determinants and environmental
17 factors in care. So that's why I am a big believer, you know, in
18 getting as much up and out there. You never know how somebody's
19 going to use it. So that's it. Well, this was a great
20 conversation. I really appreciate it and I think it's... I leaned
21 over to Dr. Boufford and I said "I wish we were spending more
22 time on issues like this than some of the other issues that we
23 deal with." Because, one, it makes us and the public aware of,
24 you know, the importance of these factors, which you don't talk

1 about it. It's kind of like the hidden science. And probably
2 Wadsworth and these kinds of public health issues have done more
3 to increasing the lifespan and the health of New Yorkers than any
4 provider that might ever walk into this room. And I think that's
5 the benefit of it, so we do appreciate the opportunity for you
6 guys to share that information with us very much. And we would
7 encourage a public health conversation of a topical interest as
8 frequently as we're able to accommodate on the agenda. OK? Thank
9 you.

10

11 BRAD HUTTON: Thank you for that, and we'll defiantly plan
12 on using my standing time on the report out for the Office of
13 Public Health and trying to just do a little bit deeper of a
14 presentation into certain public health issues.

15

16 JEFF KRUIAT: Thank you so much. I am going to turn back to
17 one of the things I skipped over. I'd like to have a motion to
18 adopt the August 4, 2016 Public Health and Health Planning
19 Council minutes. May I have a motion?

20

21 So moved.

22

23 I have Dr. Gutiérrez. I have a second by Dr. Torres. All those in
24 favor, aye?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

[Aye.]

Opposed? Abstentions? Motion carries.

Our next agenda item is to adopt our 2017 Public Health and Health Planning Council meeting dates. Due to difficulties in securing some meeting space for the March 23rd committee day, we're going to have to move that to Wednesday, March 22nd in 2017. So that's a substantive change. Please everybody take a look at it. We're moving the March 23rd committee day to Wednesday, the 22nd. And is that held in New York or... It's an Albany date. So if you could just please do that. May I have a motion to adopt the revised 2017 meeting dates? I have a motion, Dr. Torres; second, Dr. Gutiérrez. All those in favor, aye.

[Aye.]

Opposed? The motion carries. Thank you very much.

[inaudible]

Yes, Dr. Gutiérrez.

1 ANGEL GUTIERREZ: I think reminding people that September
2 and October will be on Wednesday next year.

3

4 JEFF KRAUT: Oh, OK, so we also moved, OK, cause we had to
5 move, OK. We had adopted this previously in February.

6

7 It's already HERE.

8

9 JEFF KRAUT: So, just take a look at the updated list and
10 make sure it's entered into your calendars accurately and don't
11 get caught with penalties of making flights and reservations
12 because we didn't see it ahead. Thank you. Thank you, Dr.
13 Guti rrez.

14 I am now going to turn the meeting over to Drs. Boufford and
15 Rugge to give us a report on the joint activities in the Public
16 Health Committee and Health Planning Committee.

17

18 JO BOUFFORD: Maybe I'll move over then. Thank you, Jeff.
19 Jeff teed up our conversation in that spirit of exploring issues
20 that have to do with broader population health. Our two
21 committees, the Planning Committee that Dr. Rugge chairs, and the
22 Public Health committee that I chair decided to have a series of
23 meetings. We have had two and I just want to give you an overview
24 of these. The purpose... next one. The objectives of the meeting

1 were really as a vehicle for the Council to look at key elements
 2 of the New York State health care reform sort of in context and
 3 understand the progress in areas that may or may not be coming to
 4 us for any particular decision-making activity, but so people are
 5 aware of it. And we decided to hone in on two really important
 6 areas of the reform—the integration of primary care and
 7 behavioral health services, and similarly, the engagement of
 8 primary care as a sort of front-line interface with the health
 9 care delivery system with the broader determinants of health. We
 10 wanted to also provide a forum for the Council to really hear
 11 from people who are implementing these programs on the ground and
 12 begin to get a sense of the status of that implementation and
 13 some of the issues that may be coming up. And things that are
 14 working and then things that still need attention. So eventually
 15 we hope to develop some recommendations for the Council, very
 16 much in the spirit of John's approach earlier to looking at the
 17 ambulatory care, the different forms of ambulatory care in the
 18 state and seeing what the opportunities there may be there. I
 19 want to thank Lisa Ullman and her team and Sylvia Pirani and her
 20 team and a number of... we had very good turnout of both
 21 committees, I think, for these conversations and audience
 22 members. I just want to particular recognize Nilda Soto who has
 23 joined us as the Chair of the Minority Health Council, as a member
 24 of our committee, and also Kevin Watkins, who is the Cattaraugus

1 County Health Commissioner who comes from the furthers reaches to
2 be with us and he is a stalwart, so we appreciate that. So we had
3 two meetings, a July meeting. Next slide, please.

4 Just we really talked first of all brought committee members
5 up to date on the status of related health care reforms that are
6 addressing the integration question and the broader determinants
7 of health question. We heard from representatives of DSRIP, from
8 SHIP, the integrated outpatient regulations for the Health
9 Department, Mental Health, and OASAS. And had presentations on
10 the collaborative care model. And I think we were very gratified
11 at the level of collaboration going on among the agencies and
12 really looking now at the, you know, sort of next level of the
13 more granular challenges of implementation now that the sort of
14 top-level regulatory processes are beginning to settle in. And
15 then for our... the other presentation was really looking at
16 determinants of health, which is really quite related to the
17 ongoing agenda, ongoing Prevention Agenda and domain four of
18 DSRIP, as well as the value-based payment area in advanced
19 primary care. Really looking at variables outside of the practice
20 site that may be important for patient, improvement in patient
21 health. So the plan was to invite a set of organizations to come
22 and speak to us about these issues and that's what we did on
23 September 23rd. Next slide.

1 And this is a sort of what we went through. Earlier session
2 was about the integration of primary and behavioral health
3 services and it was kicked off by Commissioner Sullivan, with a
4 really exciting report, a very in-depth report on what the
5 Department is doing and Deputy Counsel Schell from OASAS
6 similarly presenting opportunities and challenges that they have
7 identified in the integration process. And then we heard from a
8 hospital-based integration program from one of their regional
9 consortia looking at the data issues across different behavioral,
10 substance abuse, and primary care practices and databases. And
11 finally from the community health center about their
12 opportunities and challenges in the integration area. And then we
13 also moved on to the next set, [it] was a set of presenters. We
14 started out by looking at and reminding ourselves of the need for
15 integration around the different definitions of population
16 health; that we're dealing with multiple definitions in different
17 domains of the reform and we really need to be sure that the
18 population management of complex patients or beneficiaries.. and
19 beneficiaries of health plan and patients attributed to
20 providers. Those are all ways in which we are talking about
21 population health management, but we also don't want to forget
22 the management of geographic populations and the very influences
23 we have been talking about this morning that may have enormous
24 influence on the ability of the clinical enterprise to really

1 achieve their health goals in managing patients with particular
2 disease entities or for whom they are responsible. And in that
3 vein, we then had presentations from the PHIP, from the Finger
4 Lakes group, which is the technical assistance provider to the
5 population health improvement program, the sort-of regional
6 convening and population health reform element of the reform. And
7 from New York City Department of Health and from one of the PPSs
8 that's taken on, in Staten Island, that's taken on the broader
9 determinants of health in a very serious way. And I think we
10 heard really exciting levels of picking up the challenge in all
11 of these areas and then really beginning to identify some of the
12 things that are working and some of the things that still need
13 attention. So I am going to turn it over to John for those
14 details.

15

16 JOHN RUGGE: Thank you. Just in brief... I think as we know
17 there's all kinds of public initiatives all pointing toward the
18 need to integrate or maybe even more fuse behavioral health care
19 with primary care as a foundation for the health care system.
20 Among these is the Prevention Agenda that Jo has indicated. The
21 PPS and DSRIP provides funding for these initiatives. And all the
22 work in redefining advanced primary care, through SIM and other
23 federal initiatives, are leading us all toward what we think is
24 coming: value-based payment. And in a value-based world,

1 connecting instead of segregating behavioral health and mental
 2 health issues with physical health is really essential, so that
 3 we are not duplicating not only care, but costs. With that in
 4 mind, as Jo indicated, we had a kick-off by an alumna of the
 5 PHHPC, Ann Sullivan, expressing really all kinds of enthusiasm
 6 for energetically connecting on a cross-agency basis everything
 7 we are doing in behavioral health and everything we're trying to
 8 do in primary care. Tricia Schell-Guy, who I never met before—
 9 very, very sharp attorney (of all things) from OASAS. Again, a
 10 level of engagement that this Council, I think, has never seen
 11 before. And then, again, as Dr. Boufford mentioned, the
 12 organizations that were mostly about showing their stuff: how
 13 much is going on, how much progress were they making, and how
 14 committed people are to finding ways to bring these providers
 15 together for the benefit of our patients. The next slide, I
 16 think.

17 Some of the issues that have turned up that are now on the
 18 record and on the transcript, which is being mined for further
 19 data, is how better to align the reimbursement and payer models,
 20 how to improve access to data. Looking for guidance on shared
 21 records, which up until now have had Chinese walls separating the
 22 two kinds of care. This bleeds over into telemedicine and how do
 23 we orchestrate long-distance care, especially in rural areas and
 24 difficult areas to serve. So lots of attention on shared-space

1 arrangements with new guidance having been issued by DOH, but
2 more work needs to be done with CMS, especially for certain kinds
3 of providers, namely FQHCs. And a collateral effort of a
4 workforce workgroup looking at if we're going to do all this, how
5 do we provide the providers to do it. So with all this, we're
6 really at the stage of going from exposition to generation of
7 recommendations, looking at the next regular committee meeting to
8 once again have back-to-back meetings of the Planning and Public
9 Health Committees to beginning to shape the recommendations and
10 shape an eventual report. Most likely in the following cycle,
11 four months from now, again, committing a day to the two
12 committees to buff up, shape out, ship up, and prepare a report
13 for consideration by the Council, with recommendations that will
14 certainly effect DOH, but also other agencies. Oh. No. I'm going
15 back to you for social determinants. Is that OK? Yeah. And you
16 alluded to these already, but go for it.

17

18 JO BOUFFORD: Just very quickly, next one. I just, again,
19 for the record, we talked about this broader definition of
20 population health, which I mentioned earlier and the ongoing work
21 of the Prevention Agenda, which is now really being revisited and
22 revised for the next cycle, so that's a really timely opportunity
23 to look at progress and what people are finding it's relatively
24 easy to do or difficult to do. And I think our ongoing concerns

1 as the ad hoc leadership group on the Prevention Agenda around
 2 the issues of health disparities and really looking at supporting
 3 communities that are trying to tackle that issue. The issue of
 4 partnerships has come up; it's been an issue especially in the
 5 DSRIP program: How engaging and identifying community-based
 6 organizations that not only help to provide supportive social
 7 services, but also can help with issues like housing stock,
 8 housing quality, transportation, exercise opportunities, fresh
 9 fruits and vegetables, things that also fit in with the broader
 10 determinants of health. Next. And then again, as John said, there
 11 is the notion of population health in the value-based payment
 12 language and I think, you know, it needs still to be in those
 13 earlier conversations about the electronic health record and how
 14 some of these things, the US National Academy of Medicine has
 15 issued a couple of reports quite recently of elements of broader
 16 determinants of health that might be routinely included in a
 17 redesign or design of electronic health records and I think
 18 that's an opportunity for us to look at those as this value-based
 19 payment specificity increases. And again, there are a number of
 20 evidence-based... I think the standard of evidence that the federal
 21 government, CMS, is demanding for inclusion in reimbursement is
 22 quite high, so a recent issuance of their accountable care
 23 communities proposal asking for applications in primary care
 24 really focused a lot on the integration of health and social

1 services around individual care, but they are open to the issue
2 of evidence for broader interventions. And I think some of the
3 ones such as the YMCA program for exercise and pre-diabetic
4 patients and managing, preventing type-2 diabetes is making
5 headway. Some states actually already recognize that program
6 under Medicaid. Next. And I think the bottom line in all of this,
7 one of them is what... it's just clarity about definition and then
8 I think the other issue is the reimbursement, obviously, for
9 primary care is still quite low, period, relative to other
10 issues. And then to the degree that we would be asking primary
11 care practices to take on more responsibility in this area,
12 trying to look at ways of providing financial incentives. And
13 then finally, again, as John ended with, the workforce issue
14 comes up here, as well. Obviously primary care workforce is a
15 long-standing challenge, but as we look at new titles of
16 community health workers and others, thinking more broadly about
17 what they can contribute beyond patient navigation alone and
18 looking at how they might, as they enter patients' homes, be able
19 to scan internal environments for possible risks for asthma,
20 accidents and falls for older people, et cetera, or as they go
21 into communities and come from those communities they know some
22 of the issues that have come up this morning around the issues of
23 water quality or lead in homes or other kinds of challenges in
24 schools. So we want to be sure to look at those as soon as we can

1 more broadly and that's why we're very keen to, in the follow ups
2 that John mentioned, hear from the workforce working group and
3 really begin to explore some of those issues and how they connect
4 with this integration question and also with the broader
5 determinants of health. That's it. Happy to take questions.

6

7 JEFF KRAUT: Dr. Brown.

8

9 LAWRENCE BROWN: First and foremost, I'd like to commend
10 Dr. Rugge and Dr. Boufford for such outstanding efforts and I
11 must confess I was regretful that I couldn't stay the entire
12 afternoon for the last session, because it really provided a
13 better picture with respect to the issues about how the systems
14 of health care can work collaboratively because the one patient
15 has, often has, more than just one issue. And I wanted to share
16 briefly with members of the Council, as someone who works with a
17 primarily behavioral health, that those issues about the
18 workforce, the issues about the records, the issues about
19 reimbursement remain issues, as well. And one of the issues about
20 integration that is often not well appreciated by those who work
21 in medical care general health is that record issue. And it has
22 impact for even the ISTOP issue, that as someone who is a
23 provider in behavioral health, I can see all the medications that
24 my patients are taking. But if you are in general health, you

1 cannot see the fact that the patient is enrolled in medication-
2 assisted treatment. So that represents a potential challenge to
3 that patient's health and safety and something that is clearly
4 beyond what states can do, cause it's a federal regulation that's
5 in play here. But it still none the less represents a major
6 impediment for integration. So, again, I cannot say enough in
7 terms of how much I really appreciate the work by Dr. Ruge and
8 Dr. Boufford for this effort and I think you will take us to the
9 next step and demonstrate how New York State continues to be a
10 leader in this matter.

11

12 JEFF KRAUT: Dr. Kalkut.

13

14 GARY KALKUT: Also, I wanted to thank you for the report,
15 both on the behavioral health and social determinants, clearly
16 they come together in a number of ways. The DSRIP 3A1 project on
17 behavioral health is a mandatory project and there's a number of
18 elements to it, including screening in primary care practices and
19 referral for assessment... screening for depression. And, Jo, I
20 think you mentioned data and looking at, I don't know if you used
21 the words "outcomes," but depression anxiety is so broad based
22 and has such an impact on physical health, people's wellbeing-
23 often not picked up in a hospital like major psychosis or bi-
24 polar disease. How does one being to measure the impact of that

1 screening, that identification, and treatment? Because of
2 surveys, certainly, I have seen and been involved with in an AIDS
3 population, 40-50 percent have anxiety or depression by these
4 sort of scales. So the scale of the issue is enormous.

5

6 JOHN RUGGE: And also avoid using controlled substances—
7 opiates and (things of that nature).

8

9 GARY KALKUT: All tied together. Yes.

10

11 JOHN RUGGE: And this is exactly the challenge that we as
12 physicians face every day. Every patient of mine brings a psyche
13 with him or her and treating them together as a whole is
14 absolutely essential. And again, I think this also an example
15 inside the workforce we have to expand the definition of primary
16 care from sore throats and trivial care to really comprehensive
17 care of the patient and management of that patient throughout the
18 system, including when they go to those specialized behavioral
19 health units and the rest. And this, again, speaks to [something]
20 fundamentally different about the way we're approaching health
21 care these days.

22

23 JO BOUFFORD: If I could just add, I think, one of the
24 things that was really, to me, really exciting about Commissioner

1 Sullivan and the OASAS presentation was really a shift to focus
2 on prevention. So screening and prevention and it's really hard
3 to emphasize how challenging, what a difference that is, because
4 most of the funding for both has been around treatment and even
5 finding communities that are, you know, there are communities
6 within the drug-abuse world, drug, substance abuse and drug
7 management world, you know, and harm reduction or treatment or
8 others that aren't even talking to each other very clearly. So I
9 think the look at how these pieces fit together and the
10 opportunity for screening and prevention is a really new, in many
11 instances, kind of a new focus and a new conversation, but you're
12 raising an important issue—how can we show it makes a difference?
13 Because then the incentives may be placed in the system to make
14 sure it happens.

15

16 GARY KALKUT: Right. Yeah. I mean, it's always been there
17 and it's driven costs and misery and a lot of things in society.
18 Now you are going to screen for it, identify it, and how we... what
19 are we going to do and how are we going to measure it.

20

21 JOHN RUGGE: Again, this also goes to the heart of the
22 collaborative care model and instead of looking at our counselors
23 being booked and being busy in a productive way of fee-for-
24 service medicine, instead of being available, looking forward to

1 each day's panel of patients, and being available for that
2 immediate contact, the warm handoffs. And that takes a different
3 mindset and it also takes a different funding model. We're unable
4 to justify that or pay for those staff if all we're doing is
5 counting the chits of how many encounters and how much record
6 keeping we can do. I happen to live in a setting where we're
7 doing just that and it's, having tried to convert to it, it's
8 hard to imagine going back. What do... I mean, I had a patient two
9 days ago who has been disabled since 1996 in a work-related
10 accident and has gained weight, is depressed, but suddenly two
11 weeks ago stopped feeling in any way worthwhile. He is now afraid
12 to leave his home; the only reason he would leave the home was to
13 come see me as a practitioner. And what it takes to mobilize
14 resources here was not referring him to some unknown agency, but
15 engaging our care manager to expedite an appointment with our
16 psychiatric nurse practitioner and our counselors. And in that
17 kind of setting, we're going to save costs, but also we're going
18 to save a family. And so I think those of us and the presenters
19 of those people who are living this out and watching the
20 difference between what we can do for people instead of saying,
21 not my business, that's not my specialty. I can't handle that. I
22 can't handle it, but our team can. And this is, this IS WHAT
23 WE'RE DRIVING toward... And what is at risk in the post-DSRIP era

1 of going back and to having the resources or being able to
2 mobilize them around the needs of that kind of a person.

3

4 Mr. Lawrence.

5

6 HARVEY LAWRENCE: I thought it was a great session. I was
7 in for the entire session and I think, you know, when we look at
8 the health care, we really are looking at the wellness and
9 wellness of the total person, not just the medical, but also
10 quality of life and it goes to the social determinants. And I
11 think what was intriguing was not just linking health care
12 institution with other social service providers, but I think the
13 new frontier should be incorporating in the business model of
14 health care providers the social determinants of health. So that
15 for instance if there is a farmer's market in a neighborhood in
16 which a hospital exists, that maybe you purchase produce from
17 that farmer's market from the local farmers in that area,
18 community farmers. And also in terms of small business, so that
19 it becomes an opportunity to begin to impact the economic
20 vitality of the neighborhoods directly that contributes to those
21 factors that we're now identifying as the social determinants of
22 health. Because, again, to the extent that someone is employed,
23 has an opportunity to contract and open up a small business, that
24 begins to expand opportunities and also affect someone's

1 wellbeing and sense of wellbeing within the neighborhood in which
2 they live. So I think if we were to push this even further, and
3 to look at some sort of a social determinant of health index when
4 we're looking at CON applications, so that we score how people
5 are... what institutions are doing in terms of actually integrating
6 within the neighborhoods that their services are being provided
7 [for]. Bringing more... contracting more with the local CONTENTS
8 within the neighborhoods. So I think this is, this discussion
9 really in some of the neighborhoods, the poorer neighborhoods,
10 provide an opportunity for us impacting directly not just through
11 linkage with social services groups for housing and other things,
12 but also contracting and including in the business model of the
13 institution those relationships.

14

15 JEFF KRAUT: Mr. Lawrence, you know a lot of that
16 information is available. We just... it doesn't get into the room,
17 because the hospitals and other health providers tend to describe
18 those activities as part of their community service plans. And,
19 as you know, it's another element... there's information there,
20 it's just a question of it, if it's relevant to or people think
21 it's relevant to the application, they bring it into the room.
22 But we do have access to it. You know, and we could talk about
23 how to incorporate that.

24

1 JO BOUFFORD: Yeah, I think it's a very important point and
2 part of the coalition building at local levels for the Prevention
3 Agenda being led by hospitals in that community with local health
4 departments is exactly to try to being to get a handle on those
5 investments and how they can be aligned with the priorities set
6 by the broader community to really being to, you know, move what
7 hospitals are doing and are talking about under DSRIP and
8 community benefit into that Prevention Agenda conversation, you
9 know, with the local health departments and other stakeholders.
10 So it's a really, a lot of that is happening and we may want to..
11 I think the one nice thing about this next round of the
12 Prevention Agenda, is we in the spring probably be in a position
13 to talk more about that alignment, because it's starting to
14 happen.

15

16 JEFF KRAUT: I remember when we were in Rochester, you had
17 the local departments of health, health providers, and community-
18 based organizations coming and doing, giving examples of how they
19 were aligning and that was almost four years ago, three years
20 ago.

21

22 JO BOUFFORD: And the Public Health Improvement Programs,
23 the PHIPs, their goal is to really bring those players together

1 and think about, you know community-based priorities and how they
2 can be best addressed.

3

4 JEFF KRAUT: Again, we can spend the day, but Dr. Rugge.
5 And I didn't mean that figuratively. Not literally?

6

7 JOHN RUGGE: Are you volunteering? Two committees. Just to
8 say, there's sort of a dual responsibility and the one side is
9 connecting all of our work as health care providers to social
10 agencies, but the other is to ensure that our work becomes cost
11 effective, so that money is left over for things like food and
12 travel and all the rest and that's another aspect of this CON is
13 flipping the financial feasibility from are we sure this provider
14 is going to make money and therefore survive to is this cost
15 effective or the approach we need as a society to ensure services
16 that are viable.

17

18 JEFF KRAUT: Just... but. Not to be argumentative on the
19 point, but the issue is, you know, you can't lay the failure of
20 our health system or societal safety net on the back of just
21 providers. I think that's the challenge we have. And when you
22 take a look at, you know, everybody saw that outcomes chart about
23 US health care outcomes are lacking relative to Netherlands and
24 Germany and everybody else. You know, a study was done in 2013 by

1 Elizabeth Bradley and Lauren Taylor up in Yale called "The
2 American Health Paradox" about why is it that the more we pay we
3 get less in value. And they make the observation there that when
4 you look at countries that have superior outcomes, they are
5 spending a significant portion of their GDP on the social safety
6 net services—twice as much as what we spend in this country, even
7 though we spend more on health care. And you can't help but
8 notice that the personal tax rates of those countries are vastly
9 different than our top tax rate. In the Netherlands, it's 40
10 percent. And so, you know, those countries long ago made a
11 decision to integrate social services and their health care into
12 one comprehensive, almost seamless, safety net to deal with some
13 of those issues. And a lot of this takes money and infrastructure
14 and to the point that Mr. Lawrence made, the communities that are
15 affected sometimes the worst by the social determinants are also
16 the communities where the health providers struggle the hardest
17 because of the economics of delivering care. And that's why it
18 requires almost a different thinking and a different funding
19 stream to do this right. And I think that's really the challenge.
20 Yes.

21

22 HARVEY LAWRENCE: Yeah. And I guess my comments were not
23 that we needed to bring more money into the system; that may be
24 true.

1

2 JEFF KRAUT: But we're not going to get it.

3

4 HARVEY LAWRENCE: But it was essentially to look at what's
5 already in the system. And to think of it in a more creative way
6 in which we engage within the neighborhoods in which we provide
7 services so that if we integrate those neighborhoods into our
8 business model that one of the things that we want to do is to
9 look at... help with the creation of opportunities for there to be
10 small businesses that can support my institution, either with
11 laundry or some other services that I need on an ongoing basis.
12 That that in itself begins to impact the fabric of those
13 neighborhoods and either directly or indirectly provides
14 opportunities that lead to... that will impact the social
15 determinants of health for those communities.

16

17 JEFF KRAUT: Yeah. I agree. I don't know who coined the
18 phrase, but it was said to me by Phil Thompson, from MIT's
19 working on some work here in New York, and he just said it's very
20 simple—community wealth equals community health. And it's your
21 point. OK. Yes.

22

23 SCOTT LARUE: You know, I couldn't agree with Mr. Lawrence
24 more. There has to be a way that doesn't cost money to determine

1 whether a provider is involved in the community in supporting the
2 issues of local community versus one who is not. And having a way
3 to take that into consideration when you are evaluating CON
4 applications, it would seem like there is a way that could be
5 done that didn't cost a lot of money.

6

7 GARY KALKUT: Just one last comment...

8 And I certainly agree with Mr. Lawrence. You know, the social
9 safety net and provider care, certain providers, is already
10 intertwined; we just don't recognize it fully. The use of
11 hospitalization is a straight line when you look at income
12 quartiles in neighborhoods and goes up as communities get poorer.
13 And we know that behavioral health issues, substance abuse,
14 drives medical care, but physical health, admissions, ER visits,
15 and there are going to be other social determinants that we don't
16 recognize as well that do. And again, I think anxiety and
17 depression is a large one. And so they already are tied together.
18 We don't recognize it in a way that other places do because we
19 don't have those kind of programs.

20

21 Dr. Boufford.

22

23 JO BOUFFORD: Just one last comment on your statement,
24 Jeff. I think it's really important that the health-wealth

1 connection is a bi-directional arrow, so the health promotes
2 wealth and economic development in the community and the health
3 conditions have a lot to do with how well and developed that
4 community can be and this is based on a lot of international data
5 so the really important evolution in that, cause it used to be,
6 you know, if everybody's income raises, it raises all boats and
7 that is not the case. The evidence now shows that those arrows go
8 bi-directionally, but it's a really important equation to
9 remember.

10

11 JEFF KRAUT: Well, thank you very much for what was an
12 extraordinarily interesting... Dr. Palmer.

13

14 JOHN PALMER: I enjoyed listening to the conversation.
15 Unfortunately when we reflect on the number of homeless people in
16 New York City, the multiple co-morbidities that are developing
17 there, this seeming helplessness of local administration to deal
18 with those challenges as we talk about a theoretical improvement
19 of health care, integration of health care, this conflict of this
20 kind of thought process going on in my head as we speak.

21

22 JEFF KRAUT: You know, I don't recall the number off the
23 top of my head, but I think both the City and the State, I think
24 the State's number is funding almost 20,000 new housing units

1 across... I don't know if it's in the state or in the City, but
2 you're right. And you know it just encourages the point Mr.
3 Lawrence made is that whenever we're dealing with housing,
4 particularly housing that is dealing with medically frail or
5 behaviorally compromised patients, that those give us greater...
6 that's where if you can get it really integrated, there's an
7 enormous benefit of wrapping services around. Yes.

8

9 JO BOUFFORD: Sorry, I know you want to appropriately kind
10 of... But I think your point about housing, we at the New York
11 Academy of Medicine we just completed a health impact assessment
12 in East Harlem, looking at the Mayor's proposal for rezoning of
13 mandatory inclusionary housing as well as the different income
14 levels involving community and clinical leadership. And I think
15 there is no question that there are direct health benefits to
16 housing security, as well as the mixed income housing allowing
17 for economic development of amenities that might not otherwise be
18 there and I think these are really, really interesting challenges
19 and there are a number of tools available to really look at the
20 direct health connection between housing and health.

21

22 JEFF KRAUT: OK, so we've had two very robust reports and
23 discussions. Dr. Gutiérrez. Can you keep it up or not? He's going

1 to... Dr. Gutiérrez is going to give us the report on proposed
2 regulations and legislation committee.

3

4 ANGEL GUTIERREZ: Good morning. We met this morning
5 earlier. The committee discussed a new measure for adoption. Mr.
6 La Rue had a conflict of interest, I believe, and will leave the
7 room. The proposed regulation will amend part 415 of title X, to
8 establish criteria for nursing home specialty units that offer
9 services and facilities for individuals with neurodegenerative
10 diseases, meaning Huntington's Disease and amyotrophic lateral
11 sclerosis. Mr. La Rue has left the room. The Committee voted to
12 recommend adoption to the full Council, and I so move. And I
13 should say that (Genoise) Smith from the Department is available
14 to answer any questions from councilmembers.

15

16 JEFF KRAUT: So I have a motion from Dr. Gutiérrez. May I
17 have a second? Dr. Torres. Is there any discussion or any
18 questions of the Department regarding this regulation? OK,
19 anybody want to make comment? Hearing none, I'll call for a vote.
20 Is that OK, Dr. Gutiérrez?

21

22 Of course.

23

24 JEFF KRAUT: All those in favor, aye.

1

2 [Aye.]

3

4 Opposed? Abstention? The motion carries. Is that it?

5

6 ANGEL GUTIERREZ: That concludes the report from the Codes
7 Committee.

8

9 JEFF KRAUT: Thank you. OK. In a moment, I am going to
10 convene the Project Review and Establishment committee, but what
11 I am going to do is before we do, I have to... we have to enter
12 executive session to have a moment of attorney-client privilege
13 to just have an explanation. This is the first of two such
14 sessions we are going to hold today. This one will be very short,
15 but we have to go to the... if members of the Council can come back
16 into the room behind here, we just have to orient you to one
17 issue and then we'll come back. The audience, this will be very
18 short. Theoretically.

19

20 [BREAK]

21

22 JEFF KRAUT: Hello again. I am Jeffery Kraut, the Chair of
23 the Council, and I am calling back to order the meeting of the
24 Public Health and Health Planning Council on October 6, 2016.

1 I'll now turn, I'll ask Dr. Kalkut to provide us a report of the
2 Committee on Project Review and Establishment.

3

4 GARY KALKUT: Thank you, Mr. Kraut. The first application
5 is a category one, applications for construction. This is
6 application for residential health care facilities, 132129C, The
7 Brooklyn Center for Rehabilitation and Residential Care in Kings
8 County. This is to relocate the 215-bed nursing home to a
9 replacement facility to be constructed at 170 Buffalo Avenue, in
10 Brooklyn, the former site of St. Mary's Hospital, or the building
11 formerly at St. Mary's Hospital, and certifies 66 additional RHC
12 beds for a total of 281 residential health care facility beds.
13 The Department recommends approval with conditions and
14 contingencies, as does the Establishment and Project Review
15 Committee.

16

17 JEFF KRAUT: I have a motion by Dr. Kalkut. May I have a
18 second? Dr. Gutiérrez. Department of Health want to comment?

19

20 CHARLIE ABEL: No. We won't have any comments unless there
21 are questions.

22

1 JEFF KRAUT: Thank you very much. Are there any questions
2 from the council members? Hearing none, I'll call for a vote. All
3 those in favor, aye.

4

5 [Aye]

6

7 Opposed? Abstentions? The motion carries.

8

9 GARY KALKUT: Thank you. The following are the applications
10 for establishment and construction for acute care services. First
11 is 161389E, the Burdette Center, a care center in Rensselaer
12 County. This is to request a three-year extension of its limited
13 life for CON 091172. The Department recommends approval with
14 expiration of the operating certificate three years from the date
15 of the Council's recommendation letter with a condition and
16 contingencies. And the Establishment Committee, the committee
17 recommends approval with expiration three years from the date of
18 the Public Health Council recommendation and contingency
19 identical to the DOH. I make a motion.

20

21 JEFF KRAUT: Aren't you doing these as a batch?

22

23 GARY KALKUT: Oh, we can do them as a batch.

1 161400E, Saratoga Hospital, Saratoga County, and this is to
2 establish Albany Medical Center as the active parent and co-
3 operator of Saratoga Hospital. The Department recommends approval
4 with condition and contingencies, as does the Committee.

5 162007E, New York Community Hospital of Brooklyn, in Kings
6 County. This is to disestablish NYHB, Inc. as the active parent
7 and co-operator of the hospital. On this disestablishment, NYCH
8 will not have an active parent. The hospital will be a corporate
9 member of the New York Presbyterian Regional Health Network under
10 a passive-parent governing model. The Department and the
11 Committee both recommend approval with conditions and
12 contingencies.

13 Next, 162009E, New York Methodist Hospital, Kings County.
14 This is to disestablish NYHB, Inc. as the active parent and
15 establish NYP Community Programs, Inc. as the new active parent
16 and co-operator of the New York Methodist Hospital and change the
17 hospital's corporate name to New York Presbyterian/Brooklyn
18 Methodist. Both the Department and the Committee recommend
19 approval with conditions and contingencies.

20 162008E, Lawrence Hospital Center, doing business at New
21 York Presbyterian/Lawrence Hospital, in Westchester County.
22 Again, to disestablish NYP Community Services as the active
23 parent, establish NYP Community Programs as the new active parent
24 and co-operator of the New York Presbyterian/Lawrence Hospital

1 and change the hospital's corporate name. Both the Department and
2 Committee recommend approval with condition and contingencies.

3 Mr. Kraut. Can we?

4

5 JEFF KRAUT: Keep going.

6

7 GARY KALKUT: Wow. 161415E, Carnegie Hill Endo, LLC, in New
8 York County. This is a request for indefinite life for CON number
9 092188. The Department and the Committee recommend approval.
10 161456E, Manhattan Endoscopy, New York County. Request for
11 indefinite life. CON 101024. Both the Department and the
12 Committee recommend approval.

13 162141E, The Bethel Methodist Home in Westchester County.
14 Establish the Bethel Methodist Home as the new operator of the
15 20-bed residential health care facility, which is a part of
16 continuing care retirement community located at 55 Grasslands
17 Road, Valhalla, currently operated as Westchester Meadows. The
18 Department and the Committee both recommend approval with
19 conditions and contingencies.

20

21 JEFF KRAUT: So we have the batch of those applications. I
22 have a motion. I have a second. Dr. Gutiérrez. Are there any
23 questions from the Council on any one of those applications? If
24 anybody wants to have any of them removed from the batch, let us

1 know. Okay, hearing none, I'll call for a vote. All those in
2 favor, aye.

3

4 [Aye.]

5

6 Opposed? Abstentions? The motion carries.

7

8 GARY KALKUT: We move to home health agency licensures. New
9 license. 162118E, Life Works, LLC. Amends and supersedes number
10 2545L and then changes of ownership 2560L, 2580L, 2600L,
11 1512529E, 1512024E, 161228E, 161333E, 161347E, 161349E, and
12 161404E.

13

14 JEFF KRAUT: You want to just do the certificates?

15

16 GARY KALKUT: And I so moved the recommendations.

17

18 JEFF KRAUT: Alright. I have a motion on those
19 applications. I have a second, Dr. Gutiérrez. Any questions from
20 the Council? All those in favor, aye.

21

22 [Aye.]

23

24 Opposed? Abstention? The motion carries.

1

2 GARY KALKUT: Certificates of amendments. Prospect Park
3 Nursing Home, Inc. name change to United Cerebral Palsy and
4 Handicapped Persons' Association of the Utica Area, Inc. Both the
5 Department and the Committee recommend approval.

6

7 JEFF KRAUT: I have a motion. May I have a second? Dr.
8 Gutiérrez. Any questions? All those in favor, aye.

9

10 [Aye.]

11

12 Opposed? Abstentions? The motion carries.

13

14 GARY KALKUT: Application for dialysis services.
15 Establishment and construction. 161243B, Cassena Care Dialysis at
16 Morningside in Bronx County. There's a recusal by Mr. La Rue, who
17 has left the room. This is to establish and construct a 21-
18 station end-stage renal dialysis center to be located at 1000
19 Pelham Parkway South in the Bronx at Morningside Nursing Home.
20 Both the Department and the Committee recommend conditions..
21 approval with conditions and contingencies.

22

23 JEFF KRAUT: I have a motion. A second, Dr. Gutiérrez. Any
24 questions? All those in favor, aye.

1

2 [Aye.]

3

4 Opposed? Abstentions? The motion carries. Can Mr. La Rue please
5 return to the room?

6

7 GARY KALKUT: Move to application for acute care services.
8 Establish and construction. 162036E, Bassett Health Care Network
9 in Otsego County. There's a conflict by Mr. Robinson, who is not
10 present today. This is to establish Bassett Health Care Network
11 as the active parent of six hospitals, a residential health care
12 facility, a certified home health agency, and a licensed home
13 care services agency. Both the Department and the Committee
14 recommend approval with conditions and contingencies.

15

16 JEFF KRAUT: We have a motion. I have a second, Dr.
17 Gutiérrez. All those... Any questions? All those in favor, aye.

18

19 [Aye.]

20

21 Opposed? Abstentions? The motion carries.

22

23 GARY KALKUT: Applications for ambulatory surgery center.
24 Establishment and construction. This is 152377B, Northern

1 Westchester Facilities, LLC, doing business as Northern
2 Westchester Regional Surgery Center in Westchester County. Mr.
3 Kraut has left the room; Mr. Martin is not present today. So this
4 is to establish and construct a multi-specialty ambulatory
5 surgery center to be located at 2651 Strang Blvd. in Yorktown
6 Heights. Both the Department and the Committee recommend approval
7 with an expiration of the operating certificate five years from
8 the date of its issuance with conditions and contingencies. I
9 make a motion.

10

11 JO BOUFFORD: Second. Any comments, questions? All in
12 favor?

13

14 [Aye.]

15

16 Opposed? Motion passes.

17

18 GARY KALKUT: Can we bring Mr. Kraut back? Please.
19 Applications for residential health care facilities. This is
20 161156E, Renaissance Rehabilitation and Nursing Care Center in
21 Dutchess County. There's a conflict by Ms. Carver-Cheney, who is
22 leaving the room. This is to establish Renaissance Health Care
23 Group, LLC as the new operator of Renaissance Rehabilitation and
24 Nursing Care Center, a 120-bed residential health care facility.

1 The Department and the Establishment Committee recommend approval
2 with conditions and contingencies.

3

4 JEFF KRAUT: I have motion. I have a second, Dr.
5 Gutiérrez. Any questions? All those in favor, aye.

6

7 [Aye.]

8

9 Opposed? Abstentions? The motion carries.

10

11 GARY KALKUT: Applications for certified home care
12 agencies. 161393E, HCR/HCR Home Care in Clinton County. Ms.
13 Baumgartner has declared an interest. This is to acquire and
14 merge HCR/HCR Home Care Hudson Falls Certified Home Health Agency
15 and Long Term Home Health Care program and add Washington County
16 and Personal Care Services to the existing operating certificate.
17 Both the Committee and the Department recommend approval with
18 conditions and contingencies. HCR/HCR Home Care Schoharie County,
19 again an interest by Ms. Baumgartner. This is to acquire and
20 merge HCR/HCR Home Care and Delhi Certified Home Health Agency
21 and Long-Term Home Health Care program and add Delaware County
22 and add audiology services to the existing operating certificate.
23 The Department and the Committee recommend approval with
24 conditions and contingencies. And then 161397E, HCR/HCR Home Care

1 in Onondaga County. Again an interest by Ms. Baumgartner. This is
2 to acquire and merge HCR/HCR Home Care HOMER CERTIFIED Home
3 Health Agency and add Cortland County to the existing operating
4 certificate. The Department and the Committee recommend approval
5 with conditions and contingencies. I make a motion.

6

7 JEFF KRAUT: I have a motion and a second by Dr.
8 Gutiérrez. Any questions? All those in favor, aye.

9

10 [Aye.]

11

12 Opposed? Abstentions? The motion carries.

13

14 GARY KALKUT: Next is applications, individual
15 consideration and discussion. This is a change in ownership for
16 home health licenses. This is Core Care, LLC. In the 9/22
17 Establishment Committee, this was recommended as a deferral to a
18 special committee today. Today the application has been tabled
19 and will be taken up by the Committee at a future Establishment
20 Committee meeting.

21

22 Just to make a point, this is application 152124E.

23

24 Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Core Care. So that concludes.

GARY KALKUT: That concludes the business of the Establishment and Project Review and we adjourn.

JEFF KRAUT: Thank you very much. What I'd like to do now is I'd like to bring up a discussion of the revised guidelines for committee observers and participants. And I'd like to make a motion to adopt those revised guidelines. May I have a second? A second, Dr. Boufford. And let's, we'll just discuss, I think, what prompted this is we've had a couple of... so for the newer members, we have guidelines. You've probably have noticed now, we get material mailing from the Department of Health. That's when the public is aware when an application is on the calendar for consideration. And that sometimes, oftentimes, stimulates letters in support or opposition to that thing. And you have noticed, you get a couple of emails between the posting of the application up onto the day of or the night before the mailing.. the actual meeting of the Project Review. And what we have experienced in the past is a problem where sometimes the letters would come without the Department of Health having to be able to review them to see if there's any material in there which is material to our conversation. And sometimes issues arise [sic] that they don't

1 have the time to consider that. So what we ended up doing is we
2 set a deadline and the original deadline, Colleen, was...
3
4 Seventy-two hours.
5
6 Seventy-two hours before the meeting. And that's why we ask you
7 not to accept, review, or consider anything that's mailed to us
8 later than 72 hours. But now we find ourselves in a position where
9 material is, according to our guidelines, mailed to us 72 hours
10 before the meeting. Seventy-two hours and one minute before the
11 meeting in some instances. And therefore what's happened,
12 particularly when it's in opposition, the applicant is unable to
13 respond because our requirements don't permit the applicant to
14 submit any new information, so again, once we're left with
15 essentially information that hasn't been able to be validated by
16 the Department or responded to by the applicant, there's an issue
17 of fairness to the applicant, as well as our own process—that
18 it's not being subverted or manipulated or other issues. So,
19 that's one issue that we want to talk about. And then second is
20 the need to provide and require interpretive services. So, who
21 would like to go over the exact changes? I mean, should I just do
22 it or... I am doing a good job, I guess. OK. So, the highlight here
23 is what we're trying to do is we want to add language to number
24 five, which is that observers and participants who require

1 interpretive services to notify the Executive Secretary, Colleen
 2 Leonard, in advance, or to speak at the Council's staff at the
 3 time in the meeting. So in the event that we have a member of the
 4 public who wishes to speak, we need to make arrangements if
 5 there... going to [be] speaking in a language other than English,
 6 we want to arrange for interpretive services in accordance with
 7 the Governor's executive order, and that will require us... we have
 8 a two-way phone that will do that, and individuals who may be
 9 hearing impaired or otherwise need special assistance, if we are
 10 notified beforehand we can make the appropriate accommodations so
 11 every New Yorker is able to fully participate and view in the
 12 proceedings here as part of the Open Meetings Law. That's one
 13 change. And the second is there that what we want to have is that
 14 applicants will be... so we still will keep the requirement that we
 15 need 72 hours of notification for any material coming to us, but
 16 what we're then doing is giving the applicant another day to
 17 respond and we're providing applicants with the opportunity that
 18 they are given 48 hours, essentially two days before the meeting,
 19 to respond. So in three days there's a cutoff of public comment
 20 and any letters, and in two days it's applicant response to us.
 21 And that gives us 48 hours; it also requires us to read the
 22 material that is sent to us prior to the meeting. And that does...
 23 that adds language to number seven, that we would do those. We
 24 would make those changes. I think I covered both of them. It's

1 adding language to number seven. And I now... so if there is any
2 questions or any comments that people want to make, let's discuss
3 it. Ms. Carver-Cheney, then Dr. Berliner.

4

5 KATHLEEN CARVER-CHENEY: Whoever put the mics out didn't
6 give us any down here. Anyway, is 72 hours and then the applicant
7 having only one day, 24 hours, to reply. Is that really fair?

8

9 JEFF KRAUT: It's better than nothing. And I would suggest
10 that if that is... if we think it's not fair, we could push back
11 the 72 hours another day. The problem is this: the material is
12 not posted until how many?

13

14 [It's the Tuesday prior.]

15

16 JEFF KRAUT: It's the Tuesday prior to the Thursday
17 meeting. So we're trying to get, they are getting it Tuesday.
18 They essentially have the weekend to do it. It has to show up on
19 Monday. On Monday at 10am. So then we're giving the applicant
20 until Wednesday. Is it... I think if you speak to the applicants
21 who have been affected by that, they'll take the day. And if it
22 doesn't turn out to be effective, then the applicant has the
23 right to hold, to be put off, or to do things. And if we find
24 it's not workable, I am all for rolling it back. You just, you

1 know, there's a practicality here, I think, in just people need
2 time to digest the voluminous pages that are sent. Yes, Charlie.

3
4 CHARLIE ABEL: I just want to add, a week notice to the
5 PHHPC and the public is the minimum. We try to give a couple
6 extra days, that's why we put it out on the Tuesday prior, the
7 week prior to the PHHPC so that we have about a 10-day notice.
8 But it could... you know, we could be adding projects to the agenda
9 as late as Thursday. And so, you know, rolling back does become
10 difficult in...

11
12 JEFF KRAUT: Well, right. So, I think it's worth, as a
13 start, and if we find it's not a, it doesn't achieve the
14 objectives we thought it would, then I think we have to
15 reconsider that. Yes, Dr. Berliner.

16
17 HOWARD BERLINER: So the opposite, or the obverse of Ms.
18 Cheney Carvey [sic] comment which is if the... if someone in
19 opposition, let's say, writes a letter within 72 hours. The
20 applicant has now, you know, a day to respond to that. In many
21 cases that we've seen over the years, I mean, it's not just one
22 letter and then the response is then a whole series. So we're
23 kind of cut off. Does someone in opposition, assuming, or someone

1 in favor, who is not the applicant, then you can't get our
2 response in.

3

4 JEFF KRAUT: Well, the respondent still can come to the
5 public hearing and respond to the applicant's final submission.
6 You know, it's not the end of it, as you know. But there has to
7 be... you know, then, you know, but let's play that out. Then they
8 respond, and they respond... you know. There has to be an end point
9 and I think as far as the process goes, it's we are providing an
10 opportunity for the public to comment. We're taking that into
11 consideration, but we're also trying to be fair, I think,
12 balancing that against the applicant and their ability to respond
13 within our timeframe. So I just think it's, you know, we're
14 trying to achieve a balance and again if we think for some reason
15 that this is imperfect, I can tell you it's much better than when
16 we didn't have the guidelines. For those who weren't in the room,
17 you know, you'd get it on the morning of, and they'd bypass the
18 Department of Health, and you know, people make all kinds of
19 accusations. Sometimes valid, sometimes not. Yes. Dr. Watkins.

20

21 [inaudible question]

22

23 JEFF KRAUT: Yeah, if it doesn't seem to achieve, I would
24 say, what we're trying to achieve is some degree of fairness and

1 balance, and if people think that's not the case, including the
2 public, then I think we have to revisit the guidelines. That's
3 all. Yes, Mr. La Rue.

4

5 SCOTT LARUE: Being new to this, so maybe you can just
6 educate me, but why isn't there opportunity to comment or object
7 to an application at the hearing at the committee when the public
8 is able to get up and speak to it.

9

10 There is.

11

12 I am saying why do they need an additional opportunity other than
13 the public hearing that's held?

14

15 JEFF KRAUT: Yeah. The difference is because the... on let's
16 say today, the public doesn't have an opportunity to respond. So
17 all of this could occur prior to the Project Review, and then
18 following Project Review, based on what happened there, there
19 will be additional letters sent. But the public doesn't have the
20 ability at the full Council to respond and I think to some degree
21 that's what Dr. Berliner was really referring to. It was not so
22 much the Project Review Committee as it was the full Council
23 meeting. Because we're essentially giving the final say in
24 absolute terms to the applicant. And that's the issue. But, you

1 know, in all fairness, I think we do know when there's a
2 contentious application and the parties involved tend to make
3 themselves known prior. You know, it's not like, oh my god, I
4 didn't... You know, and so I think, you know, we've effectively
5 done it. It's a question of fairness, I think. That's it. OK, any
6 other questions or comments? Again, we'll revisit it if it
7 doesn't work. And then I am going to ask, I'd like to call the
8 vote. All those in favor of revising the guidelines for the
9 committee observers and participants as been sent to you. May I
10 have... all those in favor, aye.

11

12 [Aye.]

13

14 Opposed? Abstentions? The motion carries. OK, what I am going to...

15

16 [inaudible comments]

17

18 OK. And the revised guidelines. Oh, so these are. So which one
19 is?

20

21 [inaudible comments]

22

23 JEFF KRAUT: OK. And then one is for committee and then
24 the other one is for the full Council. So I'd like to have a

1 motion to revise the guidelines for observers for full Public
2 Health and Health Planning Council interactions, as well. I have
3 a second, Dr. Gutiérrez. Same requirements. Is there any
4 additional comments or conversations? All those in favor, aye.

5

6 [Aye.]

7

8 Opposed? Abstentions? The motion carries. Thank you. Now
9 what I'd like to do is we have to then... I have to have a motion
10 to, for the Council to enter executive session for attorney-
11 client privilege. It's to discuss the next item on the agenda,
12 which is the administrative law judge report and recommendation.
13 I have a motion; I have a second, Dr. Berliner. All those in
14 favor to go into executive council say aye.

15

16 [Aye.]

17

18 Opposed? Abstentions? Let's retreat into the back room. This will
19 take a little more than the... more time than the previous one and
20 then we'll come back in. What? Let's retreat to the back room.

21

22 BREAK

23

1 JEFF KRAUT: Rick Zahnleuter is recusing himself from the
2 conversation, will not be joining us in the executive session or
3 in the council meeting.

4

5 BREAK

6

7 JEFF KRAUT: I am, again I am Jeff Kraut. I am calling
8 back to order the October 6 meeting of the Public Health and
9 Health Planning Council. I am now going to move to the next item
10 on our agenda, which is the administrative law judge report and
11 recommendation. We have one matter to discuss, which is an
12 application. It is the ruling from the administrative law judge.
13 We have received voluminous materials, totaling close to 3,000
14 pages, that includes the record of our deliberations, the
15 certificate of needs that have been filed, the information
16 presented to the administrative law judge, the administrative law
17 judge's decision. The administrative law judge is recommending
18 that the Council consider approving the application of Utica
19 Partners, which is application—I just want to make sure I have
20 the right number—142183. Each of the members have had an
21 opportunity to review the material. As you recall, the facts in
22 the case are pretty well detailed in the material that was
23 provided to us that the application, we had been unable to reach
24 a decision. We submitted it to the administrative law judge

1 because there was a series of facts and information that we could
 2 not ascertain at the time the validity of some of the
 3 information. And if you recall, we actually wrote a note to the
 4 administrative law judge indicating that we were disapproving the
 5 application on two bases for the ALJ to sort some of those facts.
 6 And again, there were some members of our Council who absolutely
 7 voted no on the application. And I think we made that distinction
 8 in the record for the judge. The judge has now, as you have
 9 heard, had the conversation and careful review of the
 10 information. As a consequence of that, I'd like to start by
 11 calling a motion to consider... We will just be clear about what
 12 our opportunities are here. We can have a motion to consider to
 13 accept the recommendations of the administrative law judge. We
 14 can reject the recommendations of the administrative law judge.
 15 And what you have posted on the website and put before you are
 16 two resolutions that have prepared to either accept or disapprove
 17 the actions of the administrative law judge. And we have a third
 18 option, which is to modify that approval, as well. Once we act,
 19 the application will have to... would proceed with our action to
 20 the Commissioner. We act on establishment in this matter. The
 21 Commissioner can then determine on the construction portion of
 22 the application as to whether or not the application is going to
 23 go forward or not. So, with that in mind, I am going to start the
 24 conversation. I am going to call a motion to consider to accept a

1 resolution of approval of the administrative law judge's actions.

2 Yes.

3

4 [I would recommend having a motion first of whether or not
5 to accept or not accept the findings of the administrative law
6 judge.]

7

8 JEFF KRAUT: I am sorry. You are right. I am sorry. So
9 let's have the discussion first about the findings, then we'll
10 make a recommendation of whether or not we accept, reject, or
11 modify the... accept, disapprove, or modify the resolution as well.
12 Yes.

13

14 JOHN RUGGE: Mr. Kraut. I would move to accept the
15 findings of the administrative law judge.

16

17 JEFF KRAUT: So I have a motion to accept the findings. I
18 have a second, Dr. Kalkut. So, are there any discussion as to
19 that? Is there any concerns about the findings or you've had an
20 opportunity, everybody's had an opportunity to review that? OK.
21 Is that OK? Alright. So, if we've accepted.. we have a motion to
22 accept the findings, so I'll call for a vote. Is this.. should
23 this be a rollcall vote? So I am going to ask for a rollcall vote
24 to accept the findings of the administrative law judge. Colleen.

1

2 Ms. Baumgartner?

3

4 Aye.

5

6 Dr. Berliner?

7

8 AYE.

9

10 Dr. Boufford?

11

12 Accept.

13

14 Dr. Brown?

15

16 Accept.

17

18 Ms. Carver-Cheney?

19

20 Accept.

21

22 Ms. Fine?

23

24 Accept.

1

2 Dr. Gutiérrez?

3

4 Accept.

5

6 Mr. Holt?

7

8 Accept.

9

10 Dr. Kalkut?

11

12 Accept.

13

14 Mr. La Rue?

15

16 Accept.

17

18 Mr. Lawrence?

19

20 Accept.

21

22 Dr. Palmer?

23

24 Accept.

1

2 Ms. Rautenberg?

3

4 Accept.

5

6 Dr. Ruge?

7

8 Aye.

9

10 Ms. Soto?

11

12 ACCEPT.

13

14 Dr. Strange?

15

16 Accept.

17

18 Dr. Torres?

19

20 Accept.

21

22 Dr. Watkins?

23

24 ACCEPT.

1

2 Motion carries.

3

4 What was the count?

5

6 Eighteen.

7

8 Eighteen affirmative.

9

10 Eighteen affirmative votes. Thirteen is required.

11

12 JEFF KRAUT: OK. Eighteen affirmative votes; thirteen is
13 required for an action. I now would entertain a motion to accept
14 or... approve, disapprove, or modify the recommendations of the
15 administrative law judge.

16

17 GARY KALKUT: Make a motion to modify.

18

19 JEFF KRAUT: Do we have a second? Who seconded? Second,
20 Dr. Berliner. All those in favor? Now, I am going to... can I
21 identify what I think the modification should be?

22

23 [Yes.]

24

1 JEFF KRAUT: OK. So, in the resolution for approval, there
2 are contingencies that are listed. There are five contingencies
3 listed by the Department. I think we'd like to add an additional
4 contingency to modify the approval with directing the Department
5 of Health to conduct an additional character and competence
6 review on the applicant to make sure it's refreshed and contains
7 all the current information. And the second is to conduct the
8 facility reviews on the proposed project, which were not done in
9 the first time out. So, those would be the modifications that we
10 would suggest to the approval of the administrative law judge. Do
11 I have... could I have a motion to accept with those modifications?

12
13 Motion.

14
15 JEFF KRAUT: I have a motion. Do I have a second? Dr.
16 Torres. Motion made by Dr. Kalkut. Again, we'll call for a
17 rollcall vote.

18
19 Ms. Baumgartner?

20
21 ACCEPT.

22
23 Dr. Berliner?

24

1 ACCEPT.

2

3 Dr. Boufford?

4

5 ACCEPT.

6

7 Dr. Brown?

8

9 Accept.

10

11 Ms. Carver-Cheney?

12

13 Accept.

14

15 Ms. Fine?

16

17 YES.

18

19 Dr. Gutiérrez?

20

21 Accept.

22

23 Mr. Holt?

24

1 Accept.

2

3 Dr. Kalkut?

4

5 Accept.

6

7 Mr. La Rue?

8

9 Accept.

10

11 Mr. Lawrence?

12

13 Accept.

14

15 Dr. Palmer?

16

17 Aye.

18

19 Ms. Rautenberg?

20

21 Accept.

22

23 Dr. Ruge?

24

1 Aye.

2

3 Ms. Soto?

4

5 Accept.

6

7 Dr. Strange?

8

9 Accept.

10

11 Dr. Torres?

12

13 Aye.

14

15 Dr. Watkins?

16

17 Accept.

18

19 Eighteen affirmative votes.

20

21 JEFF KRAUT: We have eighteen affirmative votes. AND THAT

22 PASSES. We are transmitting our actions to the Commissioner.

23

24 Mic.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

JEFF KRAUT: Sorry. We have eighteen affirmative votes. The motion passes. In transmitting our actions to the Commissioner, we want to add, I think, a comment and anybody else could add whatever they'd like, but that the residents of Madison County have had to endure a significant hardship because of the inability to process this application and it is our understanding the other application is still pending action by the Department. We would wish that whatever actions are going to be taken from here on in would be done so with all deliberate speed to return the services to those communities to lessen the burden on these individuals who have to travel much greater distances than had the application been approved in a more timely manner and constructed and available to that community. So we would hope the Department and the Commissioner would act with all due speed. Is there anybody else that wants to make any other comment as part of the record? Hearing none, that will conclude today's business. I will take a motion for adjournment. I have a motion to adjourn. A second. We... yes.

20
21
22

[inaudible comment]

23
24

JEFF KRAUT: Unfortunately. The spring. How about we get the next meeting, we come for the November cycle with a date, a

NYSDOH20161006-PHHPC

2hr 10 min.

- 1 location, and a time so we can calendar it out for the spring.
- 2 OK? So, I have a motion. We stand adjourned.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 225(4), 2304, 2305 and 2311 of the Public Health Law, Sections 23.1 and 23.2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Group B of Section 23.1 is amended to read as follows:

Group B

Facilities referred to in section 23.2 of this Part must provide diagnosis and treatment, including prevention services, as provided in section 23.2(d) of this Part for the following STDs:

Human Papilloma Virus (HPV)

Genital Herpes Simplex

Human Immunodeficiency Virus (HIV)

Section 23.2 is amended to read as follows:

Each health district shall provide adequate facilities either directly or through contract for the diagnosis and treatment, including prevention services, of persons living within its jurisdiction who are infected or [are suspected] at risk of being infected with an STD as specified in section 23.1 of this Part.

* * *

Regulatory Impact Statement

Statutory Authority:

Pursuant to sections 225(4), 2304, 2305 and 2311 of the Public Health Law (PHL), the Commissioner of Health and the Public Health and Health Planning Council have the authority to adopt regulations that list the sexually transmitted diseases (STDs) for which PHL Article 23 is applicable and, in particular, that establish requirements for local health departments (LHDs) concerning STD services.

Legislative Objectives:

PHL section 2311 requires the Commissioner of Health to promulgate a list of sexually transmissible diseases. The purpose of Article 23 of the PHL, and its associated regulations, is to ensure that persons at risk for or diagnosed with an STD have access to diagnosis and treatment, thereby improving their health and public health in New York State. Additionally, providing STD diagnosis and treatment is vital to protecting the health of newborn children whose mothers may have an STD.

Needs and Benefits:

This amendment adds Human Immunodeficiency Virus (HIV) to Group B of the existing list of sexually transmitted diseases (STDs). By doing so, STD clinics operated by LHDs or providing services through contractual arrangements will be required to provide diagnosis and treatment, including prevention services, to persons diagnosed or at risk for HIV, either directly or through referral. Further, minors will be able to consent to HIV treatment, including preventative antiretroviral medications for prophylaxis. Additionally, Sections 23.1 and 23.2 are amended to

clarify that preventive services are included in the services that STD clinics provide directly or by referral, for individuals who are at high risk for STD because of past exposure.

This amendment supports the Governor's plan to end the AIDS epidemic in New York State by 2020, by connecting persons diagnosed with HIV with treatment, including prevention services. After being diagnosed, young people currently face barriers that can prevent or delay access to care, including denial and fear of their HIV infection, misinformation, HIV-related stigma, low self-esteem, lack of insurance, homelessness, substance use, mental health issues, and lack of adequate support systems. Because of these factors, many young people need the ability to consent to HIV treatment, including prevention services.

These regulations will help ensure that more young people have optimal health outcomes and do not transmit the virus to others. In addition, young people will have the ability to consent to HIV related preventive services. Young people who have been exposed to STDs are at high risk for HIV. Under the amended regulation, such individuals will be able to consent to pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP), just as they can for other reproductive or sexual health related services, so they can remain HIV negative. These amendments are necessary to provide appropriate health care rights and protections to minors and remove the barriers that can prevent or delay access to care.

Ensuring young people's right to the provision of confidential sexual health treatment is also essential to achieving federal goals. In particular, these amendments build on the goals of the National HIV/AIDS Strategy (NHAS) to reduce new infections by 25%, to increase access to care, to improve health outcomes for people living with HIV, and to reduce health disparities.

Costs to Regulated Parties:

LHDs diagnose patients for HIV by offering HIV testing, as required by PHL §2781-a. In regard to HIV treatment, including prevention services, some LHDs may experience up-front costs associated with providing treatment to additional individuals. However, these regulations do not mandate that an LHD provide treatment directly. As with the other chronic conditions already listed in Group B, LHDs may fulfill their obligation to provide HIV treatment by referring the patient to another provider; they are not required to pay for treatment.

Providing diagnosis and treatment, including prevention services, to persons diagnosed or at risk for HIV may increase the use of HIV prophylactics, which may in turn initially increase the cost of the Medicaid program. However it is anticipated that any increase in the use of prophylactic services will decrease the number of people who become HIV positive, thereby greatly decreasing Medicaid program costs in the long run. Additionally, the amendments will lower the prevalence of HIV, thereby reducing the cost of providing care to individuals who are HIV positive.

In addition, LHDs and other providers that provide HIV treatment must seek to offset any costs by billing insurance for rendered services. Remaining costs may be eligible for reimbursement from other sources that fund HIV treatment in New York, such as the HIV Uninsured Care Programs, which include: the AIDS Drug Assistance Program (ADAP), ADAP Plus, ADAP Plus Insurance Continuation (APIC), HIV Home Care Program, and the PrEP Assistance Program (PrEP-AP).

Local Government Mandates:

As discussed above, these amendments will require LHDs to provide HIV diagnosis and treatment, including prevention services, either directly or by referral. LHDs are not, however, required to provide HIV treatment directly; they may refer patients to other providers for treatment.

Paperwork:

LHDs will be required to bill public and commercial third-party payers to offset the costs of providing HIV treatment services.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

The alternative is to continue not to list HIV as an STD in New York. However, to advance the goal of ending the AIDS epidemic by the end of 2020, HIV should be listed as an STD. This will not only reduce morbidity and mortality, but will also decrease health care costs statewide by lowering the prevalence of HIV and the cost of providing care to HIV-positive individuals.

Federal Standards:

There are no Federal standards in this area.

Compliance Schedule:

The amendment will take effect when the Notice of Adoption is published in the State Register.

The Department will assist affected entities in compliance efforts.

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

Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of the Rule:

The proposed amendments to 10 NYCRR Part 23 will impact local health departments (LHDs), which are required to provide STD services as a condition of State Aid pursuant to Article 6 of the Public Health Law. In addition, local governments are responsible for the local share of the cost of the Medicaid program. The amendments will not impact small businesses (i.e., small private practices or clinics) any differently from other health care providers.

Compliance Requirements:

Pursuant to these amendments, LHDs must provide HIV diagnosis and treatment, including prevention services, either directly in an STD clinic, or by making a written or electronic prescription or referral to another health care provider. Implementation of this rule will require recordkeeping and reporting by LHDs.

Professional Services:

Those LHDs that provide HIV treatment services directly or through contract may be required to ensure the development or updating of billing systems to comply with the obligation to seek payment from insurance providers.

Compliance Costs:

LHDs diagnose patients for HIV by offering HIV testing, as required by PHL §2781-a. In regard to HIV treatment, including prevention services, some LHDs may experience up-front costs

associated with providing treatment to additional individuals. However, these regulations do not mandate that an LHD provide treatment directly. As with the other chronic conditions already listed in Group B, LHDs may fulfill their obligation to provide HIV treatment by referring the patient to another provider; they are not required to pay for treatment.

Providing diagnosis and treatment, including prevention services, to persons diagnosed or at risk for HIV may increase the use of HIV prophylactics, which may in turn initially increase the cost of the Medicaid program. However it is anticipated that any increase in the use of prophylactic services will decrease the number of people who become HIV positive, thereby greatly decreasing Medicaid program costs in the long run. Additionally, the amendments will lower the prevalence of HIV, thereby reducing the cost of providing care to individuals who are HIV positive.

In addition, LHDs and other providers that provide HIV treatment must seek to offset any costs by billing insurance for rendered services. Remaining costs may be eligible for reimbursement from other sources that fund HIV treatment in New York, such as the HIV Uninsured Care Programs, which include: the AIDS Drug Assistance Program (ADAP), ADAP Plus, ADAP Plus Insurance Continuation (APIC), HIV Home Care Program, and the PrEP Assistance Program (PrEP-AP).

Economic and Technological Feasibility:

The requirement to seek insurance recovery and the availability of other funding sources make this requirement economically feasible. There are no new technology requirements. The Department will also provide technical advice and support as needed.

Minimizing Adverse Impact:

LHDs and other providers that provide HIV treatment must seek to offset any costs by billing insurance for rendered services. Remaining costs may be eligible for reimbursement other sources that fund HIV treatment in New York, such as the HIV Uninsured Care Programs, which include: the AIDS Drug Assistance Program (ADAP), ADAP Plus, ADAP Plus Insurance Continuation (APIC), HIV Home Care Program, and the PrEP Assistance Program (PrEP-AP).

Small Business and Local Government Participation:

Community stakeholders representative of regions and businesses across New York State have been engaged in the development of the proposed amendments. Specifically, the recommendation to amend regulations to assure minors have the right to consent to HIV treatment and prevention services was specifically addressed by the AIDS Advisory Council (AAC), the AAC Ending the Epidemic Subcommittee and the AAC ETE Subcommittee STD Workgroup. The recommendation to amend regulations to assure minors have the right to consent to HIV treatment and prevention services was also specifically identified through Ending the Epidemic regional discussions held in August through November of 2015 within each Ryan White Region, with over 800 New Yorkers having participated in these discussions.

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed amendments to 10 NYCRR Part 23 will impact clinicians in rural areas no differently than throughout New York State.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This rule imposes no mandates upon entities in rural areas outside those entities noted in the law. As stated, local health departments (LHDs) must provide HIV treatment, including prevention services, either directly in an STD clinic, or by making a written or electronic prescription or referral to another health care provider. Implementation of this rule will require recordkeeping and reporting by LHDs.

Costs:

Rural health care providers are already required to offer HIV testing under PHL §2781-a. Some clinicians may experience up-front costs associated with providing HIV treatment services, including prevention services, to additional individuals. However, these regulations do not mandate health care providers to provide HIV treatment services. Any provider that does provide HIV treatment for additional patients can offset any costs by billing for services rendered.

Minimizing Adverse Impact:

As discussed above, the ability to recover costs will minimize the impact of these regulations.

Rural Area Participation:

Community stakeholders representative of regions and businesses across New York State, including those in rural areas, have been engaged in the development of the proposed amendments. Specifically, the recommendation to amend regulations to assure minors have the right to consent to HIV treatment and prevention services was specifically addressed by the AIDS Advisory Council (AAC), the AAC Ending the Epidemic Subcommittee and the AAC ETE Subcommittee STD Workgroup. The recommendation to amend regulations to ensure minors have the right to consent to HIV treatment and prevention services was also specifically identified through Ending the Epidemic regional discussions held in August through November of 2015 within each Ryan White Region, with over 800 New Yorkers having participated in these discussions.

**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 amendments, that it will not have an adverse impact on jobs and employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by Section 2803 of the Public Health Law, Part 405 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Paragraph (4) of subdivision (f) of section 405.2 is amended to read as follows:

(4) a physician, or a [registered physician's] licensed physician assistant under the general supervision of a physician, or a nurse practitioner in collaboration with a physician, is on duty at all times in the hospital except that the commissioner may approve substitute coverage, for all or part of each day, by each patient's attending physician when these physicians are immediately available to the hospital by telephone, and available in person or by telemedicine within [20] 30 minutes as needed, upon a hospital demonstrating to the commissioner that:

- (i) all patients are medically stable and patients who become medically unstable are promptly transferred to an appropriate receiving hospital in accordance with section 400.9 of this Title;
- (ii) the hospital does not operate an emergency service; and
- (iii) the entire hospital has less than 25 approved beds[;].

Paragraph (10) of subdivision (b) of section 405.3 is amended to read as follows:

(10) the provision for a physical examination and recorded medical history for all personnel including all employees, members of the medical staff, contract staff, students and volunteers, whose activities are such that a health impairment would pose a potential risk to patients. The examination shall be of sufficient scope to ensure that no person shall assume his/her duties unless he/she is free from a health impairment which is of potential risk to the patient or which might interfere with the performance of his/her duties, including the habituation or addiction to depressants, stimulants, narcotics, alcohol or other drugs or substances which may alter the individual's behavior. The hospital is required to provide such examination without cost for all employees who are required to have such examination. For personnel whose activities are such that a health impairment would neither pose a risk to patients nor interfere with the performance of his/her duties, the hospital shall conduct a health status assessment in order to determine that the health and well-being of patients are not jeopardized by the condition of such individuals. The hospital shall require the following of all personnel, with the exception of those physicians who are practicing medicine [from] from a remote location [outside of New York State], as a condition of employment or affiliation:

*

*

*

Paragraph (3) of subdivision (b) of section 405.5 is amended to read as follows:

(3) Written nursing care plans shall be kept current. Such plans shall indicate what nursing care is needed, how it is to be provided, and the methods, approaches and mechanisms for ongoing modifications necessary to ensure the most effective and beneficial results for the patient. Patient education and patient/family knowledge of care requirements shall be included in the nursing plan. The nursing care plan may be integrated into the overall interdisciplinary plan of care.

Subdivision (c) of section 405.5 is amended to read as follows:

(c) *Administration of drugs.* All drugs and biologicals shall be administered in accordance with the orders of the practitioner or practitioners responsible for the patient's care as specified under section 405.2 of this Part, and generally accepted standards of practice. They shall be administered by a licensed physician or registered professional nurse, or other personnel in accordance with applicable licensing requirements of title 8 of the New York State Education Law, except for the self-administration of medications as set forth in paragraphs (4) and (5) of this subdivision, and in accordance with [approved] hospital policies and procedures. For purposes of this subdivision, "self-administration" means administration by the patient or the patient's caregiver, including but not limited to a caregiver pursuant to section 2994-ii(3) of the Public Health Law, or a designated caregiver pursuant to section 3360(5) of the Public Health Law.

*

*

*

(4) Hospitals, in accordance with hospital policies and procedures, may authorize hospital-issued prescription and non-prescription medications to be self-administered, provided that:

(i) a practitioner responsible for the care of the patient in the hospital has issued an order permitting self-administration;

(ii) the capacity of the patient or the patient's caregiver to administer the medication has been assessed;

(iii) the patient or the patient's caregiver has been given instructions for the safe and accurate administration of the medication;

(iv) the security of the medication is addressed; and

(v) documentation is made of the administration of each medication in the patient's record, as reported by the patient or the patient's caregiver.

(5) Hospitals, in accordance with hospital policies and procedures, may authorize a patient to bring in his or her own medications, including prescription medications, non-prescription medications and medical marihuana as defined in section 3360(8) of the Public Health Law, and self-administer such medications, provided that:

(i) a practitioner responsible for the care of the patient in the hospital has issued an order permitting self-administration of the medication the patient brought into the hospital, and in the case of medical marihuana, upon presentation of the patient or designated

caregiver's registry identification card issued pursuant to section 3363 of the Public Health Law;

(ii) the capacity of the patient or the patient's caregiver to administer the medication has been assessed;

(iii) a determination is made concerning whether the patient or the patient's caregiver needs instruction on the safe and accurate administration of the medication;

(iv) the medication is identified and visually evaluated for integrity;

(v) the security of the medication is addressed;

(vi) documentation is made of the administration of each medication in the patient's record, as reported by the patient or the patient's caregiver; and

(vii) if a patient dies in the hospital, any unused prescription medication shall be destroyed or disposed of in accordance with all applicable state and federal laws and regulations. Such prescription medications may not be turned over to the patient's caregiver. In the case of medical marihuana, it may be turned over to the deceased patient's designated caregiver or to appropriate law enforcement for destruction or disposal.

Paragraph (8) of subdivision (c) of section 405.10 is amended to read as follows:

(8) The hospital shall implement policies and procedures regarding the use and authentication of verbal orders, including telephone orders. [Such orders shall be used sparingly, shall be accepted, recorded and authenticated only in accordance with

applicable scope of practice provisions for licensed, certified or registered practitioners, consistent with Federal and State law, and with hospital policies and procedures and shall be authenticated by the prescribing practitioner or, until January 26, 2012, by another practitioner responsible for the care of the patient and authorized to write such an order, within 48 hours, also in accordance with such policies and procedures and Federal and State law.] Such policies and procedures must:

- (i) Specify the process for accepting and documenting such orders;
- (ii) Ensure that such orders will be issued only in accordance with applicable scope of practice provisions for licensed, certified or registered practitioners, consistent with Federal and State law; and
- (iii) Specify that such orders must be authenticated by the prescribing practitioner, or by another practitioner responsible for the care of the patient and authorized to write such orders and the time frame for such authentication.

Subparagraph (ii) of paragraph (1) of subdivision (d) of section 405.19 is amended to read as follows:

405.19 Emergency services.

- (ii) There shall be at least one emergency service attending physician on duty 24 hours a day, seven days a week. For hospitals that exceed

15,000 unscheduled visits annually, the attending physician shall be present and available to provide patient care and supervision in the emergency service. As necessitated by patient care needs, additional attending physicians shall be present and available to provide patient care and supervision. Appropriate subspecialty availability as demanded by the case mix shall be provided promptly in accordance with patient needs. For hospitals with less than 15,000 unscheduled emergency visits per year, the supervising or attending physician need not be present but shall be available within 30 minutes of patient presentation, in person or by telemedicine, provided that at least one physician, nurse practitioner, or licensed physician assistant shall be on duty in the emergency service 24 hours a day, seven days a week. The hospital shall develop and implement protocols specifying when physicians must be present.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the promulgation of this regulation is contained in Public Health Law (PHL) section 2803. Section 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection and promotion of the health of the residents of New York State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

This regulation amends Sections 405.2 (Governing Body), 405.3 (Administration), 405.5 (Nursing Services), 405.10 (Medical Records), and 405.19 (Emergency Services).

The Centers for Medicare and Medicaid Services (CMS) requires hospitals to meet specified Conditions of Participation (CoPs) in order to participate in the federal Medicare and Medicaid programs. The CoPs outline the basic requirements related to a

hospital's structure, operations and delivery of patient care. The intent is to protect the health and safety of patients. CMS reviewed the existing CoPs and made numerous changes effective on July 16, 2012. 77 Fed. Reg. 29034 (May 16, 2012). As a result, New York State general hospital regulations are being revised to reflect the federal changes.

Sections 405.2(f)(4) and 405.19(d)(1)(ii) are being amended to create a consistent 30 minute timeframe for a physician to be available to patients, and to clarify that such availability may be provided in person or by telemedicine. Current regulations require this to occur in 20 minutes and do not mention telemedicine. Section 405.3(b)(10) is amended to provide that the existing exemption for immunization requirements applies to remote locations within New York State.

Section 405.5(b)(3) permits a nursing care plan to be integrated into the overall interdisciplinary plan of care.

Consistent with changes to the federal CoPs, section 405.5(c) allows patients to self-administer certain medications. Federal regulations at 42 CFR § 482.23(c)(6) allow hospitals the flexibility to develop and implement policies and procedures for a patient and his or her caregivers/support persons to self-administer specific medications (such as non-controlled drugs and biologicals). See 77 Fed. Reg. 29048 (May 16, 2012). In addition, section 405.10(c)(8) changes the requirements for verbal orders by removing the requirement that verbal orders be authenticated within 48 hours. In addition, these

regulations permit self-administration of medical marijuana, subject to appropriate conditions and restrictions.

Costs:

Allowing the supervising or attending physician to be available by telemedicine rather than in person, and within 30 minutes instead of 20 minutes, should not cause hospitals to incur additional costs. No additional costs should be incurred from the provision clarifying that the existing exemption for immunization requirements applies to remote locations within New York State. The provision to permit the nursing care plan to be integrated into the overall interdisciplinary plan of care should incur no additional costs. Authorization for the use and authentication of verbal orders including telephone orders may require updating policies and procedures. The provision authorizing hospitals to develop policies and procedures regarding self-administration is permissive rather than mandatory.

Local Government Mandates:

This provision does not impose any additional mandates on local governments.

Paperwork:

As noted above, policies and procedures will need to be developed and/or updated for authorization for the use and authentication of verbal orders, including telephone orders. Hospitals that authorize medications to be self-administered will need to document the administration of each medication in the patient's record.

Duplication:

This regulation does not duplicate any other State or federal regulation.

Alternatives:

The Department reviewed the federal Conditions of Participation (CoPs) against what is currently in the Part 405 regulations. The related amendments to Part 405 are needed to make State regulation consistent with federal regulation. An alternative of not including medical marijuana as a medication that can be self-administered was considered; however, the Department determined that its inclusion would help facilitate the administration of medical marijuana products in healthcare facilities and ensure continued access for patients.

Federal Standards:

This proposal does not conflict or duplicate federal provisions. These amendments amend the general hospital provisions to reflect the federal CoP.

Compliance Schedule:

This proposed amendment will become effective upon publication of a Notice of Adoption in the *New York State Register*.

Contact Person: Katherine E. Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Room 2438, ESP Tower Building
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:

The proposed regulation amends Part 405 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, to reflect changes made by the Centers for Medicare and Medicaid Services' (CMS) Conditions of Participation (CoPs) in order to participate in the federal Medicare and Medicaid programs. The proposed regulatory amendments will impact small businesses and local governments that operate hospitals pursuant to Part 405.

Compliance Requirements:

Sections 405.2(f)(4) and 405.19(d)(1)(ii) are being amended to create a consistent 30 minute timeframe for a physician to be available to patients, and to clarify that such availability may be provided in person or by telemedicine. Current regulations require this to occur in 20 minutes and do not mention telemedicine. Section 405.3(b)(10) is amended to provide that the existing exemption for immunization requirements applies to remote locations within New York State.

Section 405.5(b)(3) permits a nursing care plan to be integrated into the overall interdisciplinary plan of care.

Consistent with changes to the federal CoPs, section 405.5(c) allows patients to self-administer certain medications. Federal regulations at 42 CFR § 482.23(c)(6) allow hospitals the flexibility to develop and implement policies and procedures for a patient and his or her caregivers/support persons to self-administer specific medications (such as non-controlled drugs and biologicals). See 77 Fed. Reg. 29048 (May 16, 2012). In addition, section 405.10(c)(8) changes the requirements for verbal orders by removing the requirement that verbal orders be authenticated within 48 hours. In addition, these regulations permit self-administration of medical marijuana, subject to appropriate conditions and restrictions.

Professional Services:

Practitioners who are responsible for the care of patients and the nursing staff will need to adhere to the policies and procedures regarding the use and authentication of verbal orders, including telephone orders, in accordance with applicable scope of practice provisions for licensed, certified or registered practitioners consistent with Federal and State law. To the extent a hospital adopts policies and procedures allowing for medications to be self-administered, practitioners and nursing staff will also need to adhere to such policies and procedures.

Compliance Costs:

Allowing the supervising or attending physician to be available by telemedicine rather than in person, and within 30 minutes instead of 20 minutes, should not cause hospitals to incur additional costs. No additional costs should be incurred from the

provision clarifying that the existing exemption for immunization requirements applies to remote locations within New York State. The provision to permit the nursing care plan to be integrated into the overall interdisciplinary plan of care should incur no additional costs. Authorization for the use and authentication of verbal orders including telephone orders may require updating policies and procedures. The provision authorizing hospitals to develop policies and procedures regarding self-administration is permissive rather than mandatory.

Economic and Technological Feasibility:

This proposal is economically and technologically feasible. The amendments provide greater flexibility or require only modest updating to policies and procedures. The provisions regarding self-administration are permissive, rather than mandatory.

Minimizing Adverse Impact:

For the reasons stated above, there is no adverse impact.

Small Business and Local Government Participation:

Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can also obtain the agenda of the Codes, Regulations and Legislation Committee of the Public Health and Health Planning Council (PHHPC) and the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes, Regulations and Legislation Committee meeting.

Dear Chief Executive Officer (CEO) letters will be sent to affected parties explaining the changes proposed as a result of the federal CoPs.

RURAL AREA FLEXIBILITY ANALYSIS

No Rural Area Flexibility Analysis is required pursuant to section 202-bb(4)(a) of the State Administration Procedure Act (SAPA). It is apparent from the nature of the proposed amendment that it will not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administration Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.



Project # 162096-C
Good Shepherd Hospice at Mercy Medical Center

Program: Hospice
Purpose: Construction

County: Nassau
Acknowledged: August 12, 2016

Executive Summary

Description

Good Shepherd Hospice, a not-for-profit Article 40 Hospice Program with administrative offices located at 110 Bi-County Boulevard, Suite 114, Farmingdale, New York, requests approval to certify a 12-bed hospice inpatient unit within Mercy Medical Center, a 375-bed Article 28 acute care hospital located at 1000 North Village Avenue, Rockville Centre (Nassau County). The new unit will be housed in approximately 8,500 square feet of leased space within the hospital. There will be no conversion of Article 28 beds to accommodate the 12-bed Article 40 inpatient unit. Good Shepherd Hospice will enter into an Agreement for Goods and Services with Mercy Medical Center for the provision of laboratory, pharmacy, radiology, respiratory therapy, speech therapy, occupational therapy, physical therapy and audiology services.

Good Shepherd Hospice and Mercy Medical Center are members of Catholic Health Services of Long Island (CHSLI), a diverse health system that also consists of Catholic Home Care, Good Samaritan Hospital Medical Center, Good Samaritan Nursing Home, Maryhaven Center of Hope, Our Lady of Consolation Nursing & Rehabilitation Care Center, St. Catherine of Siena Medical Center, St. Catherine of Siena Nursing & Rehabilitation Care Center, St. Charles Hospital, St. Francis Hospital-The Heart Center and St. Joseph's Hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

Opening a 12 bed hospice inpatient unit at Mercy Medical Center will allow for patients of Nassau County to receive care they otherwise could not get in a home-like setting. After approval of this CON there will be a remaining need of 22 Hospice beds.

Program Summary

Good Shepherd Hospice is currently in compliance with all applicable codes, rules, and regulations.

Financial Summary

Total project costs of \$5,161,307 will be met through equity of \$3,161,307 and a loan for \$2,000,000 at 4.31% interest rate for a ten-year term. Catholic Health Services of Long Island has provided a letter of interest for the loan. The budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,701,690	\$3,364,368
Expenses	<u>\$3,157,920</u>	<u>\$3,319,631</u>
Gain/(Loss)	(\$456,230)	\$44,737

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 thirty hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON upon submission. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed Goods and Services Agreement, acceptable to the Department of Health. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-02 (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. Construction must start on or before February 1, 2017 and construction must be completed by March 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

December 8, 2016

Need Analysis

Background

Good Shepherd Hospice, an existing Article 40 hospice located at 110 Bi-County Boulevard, Suite 114 Farmingdale, 11735, is seeking approval to certify a 12-bed hospice inpatient unit within Mercy Medical Center, located at 1000 North Village Avenue, Rockville Centre (Nassau County). The Agency is currently certified to serve Nassau and Suffolk Counties and operates a 16-bed inpatient hospice facility at 200 Belle Terre Road, Port Jefferson (Suffolk County).

Background

Good Shepherd Hospice is authorized to provide services in Nassau and Suffolk Counties and is currently certified to operate 16 total hospice inpatient beds and offers the following services:

Audiology	Nursing
Baseline Services - Hospice	Nutritional
Bereavement	Pastoral Care
Clinical Laboratory Service	Personal Care
Home Health Aide	Pharmaceutical Service
Homemaker	Physician Services
Housekeeper	Psychology
Inpatient Certified	Therapy - Occupational
Inpatient Services	Therapy - Physical
Medical Social Services	Therapy - Respiratory
Medical Supplies Equipment and Appliances	Therapy - Speech Language Pathology

Analysis

Through the Agency, patients receive hospice services in a variety of settings, including home, skilled nursing facilities, assisted living facilities, hospitals, and at the 16-bed inpatient hospice center in Suffolk County. Good Shepherd Hospice's inpatient center provides state-of-the-art healthcare and features all of the amenities of home, including sleeping accommodations for families and a 24-hour visiting policy.

Locating the 12-bed inpatient hospice unit at Mercy Medical Center will provide needed inpatient hospice services in Nassau County. The inpatient unit will accommodate patients who cannot be managed in the home setting. Mercy Medical Center is located approximately 40 miles from the Agency's Port Jefferson location.

The 12-bed inpatient hospice unit will be located in approximately 8,440 square feet of leased space within Mercy Medical Center. There will be no conversion of Article 28 beds at Mercy Medical Center to accommodate the 12-bed, Article 40 inpatient unit.

The Hospice Bed Need Methodology for Nassau County shows a need for 46 hospice beds. Based on the most recently available hospice bed data for Nassau County, there are currently 12 hospice beds in operation, leaving a need for 34 additional beds. The allocation of resources in the county is shown in the following table:

County	Hospice Bed Need	# of Operating Hospice Beds	# of Beds Approved, Not Yet Operational	# of Beds through this project	Remaining Inpatient Bed Need
Nassau	46	12	0	12	22

Conclusion

The 12-bed unit will allow residents to receive Hospice care that cannot be managed in a home setting. Upon approval of this application, there will be a remaining need for 22 hospice beds in Nassau County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Proposal Description

The applicant proposes to construct and operate a second hospice inpatient unit, consisting of twelve hospice inpatient beds in a leased unit on the second floor of Mercy Medical Center Hospital, 1000 North Village Avenue, Rockville Centre (Nassau County). The space currently houses hospital offices, which Good Shepherd Hospice will convert to a 12-bed hospice inpatient unit. In addition to the proposed lease agreement, Good Shepherd Hospice will also contract with Mercy Medical Center Hospital to provide the proposed hospice inpatient unit with all meal preparation, meal delivery, and food services for the hospice patients and their families, including three full meals per day, nutritional supplements, and medically prescribed special diets, along with all maintenance, housekeeping, engineering, security, parking, linen, and laundry services. Good Shepherd Hospice will also contract with Mercy Medical Center Hospital to provide the following ancillary services: Laboratory, Pharmacy, Radiology, Speech-Language Pathology, Occupational Therapy, Physical Therapy, Respiratory Therapy, and Audiology.

Program Description

The proposed leased space is located on the North and East corridors on the second floor of the Molloy Pavilion of Mercy Medical Center Hospital, currently used for general office space which will be relocated elsewhere in the hospital. The Molloy Pavilion's second floor also houses a 40-bed Medical Surgical Unit in the West and South corridors, and general hospital office space is located in the adjacent main building's second floor to the south. Three elevators and three stairwells in the Molloy Pavilion's northeast corner (serving the North and East corridors) allow for private access to and from the proposed hospice inpatient unit, thus avoiding travel through other hospital units, and avoiding having hospital patients, visitors, or staff travel through the hospice unit. This bank of elevators and stairs are accessed from the hospital's main outside entrance and lobby on the first floor.

Renovations by Good Shepherd Hospice on the proposed hospice unit will create twelve private single-bedded patient rooms, each with its own private lavatory with sink and toilet. A separate spa / salon on the unit will house both a shower and a bathtub area, in addition to another sink and toilet, for patient use, and another separate shower room will house a shower, sink and toilet available for family use. Each inpatient room will contain a sleeper sofa / recliner to provide for overnight stays for family members. The unit will also house common areas designated for patient and family use, including a nourishment station, a family kitchenette with sink, refrigerator, microwave, and storage, a dining room with a capacity for 20 people, a family lounge room, a children's room with television and games, a bereavement / quiet / spiritual room, and a conference / multipurpose room for family education and meetings. The main nursing station with hand sink, and the clinical care areas, will be located on the unit directly across from the elevators and stairwells, and another nursing sub-station with hand sink will be located on the far west end of the unit. The unit will also house a locked medication room, nurse manager's office, a doctor's office, staff lounge with kitchenette, and staff work areas, lockers, and bathrooms.

There will be 24-hour RN presence on site on the hospice inpatient unit at all times. Direct-care nursing staff and home health aide staff will be assigned to the inpatient unit with a minimum of one (1) RN per shift for 1 to 6 patient beds occupied, two (2) RNs per shift for 7 to 12 patient beds occupied, one (1) Home Health Aide per shift for 1 to 4 patient beds occupied, two (2) Home Health Aides per shift for 5 to 8 patient beds occupied, and three (3) Home Health Aides per shift for 9 to 12 patient beds occupied. Additional onsite staff also includes a Social Worker, Pastoral Care Provider, Nurse Practitioner, Physician, and RN Nurse Manager. Administrative oversight of the inpatient unit will be conducted by the

full time onsite RN Nurse Manager. An interdisciplinary care team will be assigned to the hospice inpatient unit and will conduct onsite reviews of care, and volunteers will also be assigned to the hospice inpatient unit.

Conclusion

Good Shepherd Hospice is currently in compliance with all applicable codes, rules, and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant submitted a draft lease for the proposed site, summarized below:

Premises:	1000 North Village Avenue, Rockville Centre (Nassau County). Unit 2p comprised of approximately 8,500 sq. ft.
Landlord:	Mercy Medical Center
Lessee:	Good Shepherd Hospice
Term:	20 years
Rental:	\$202,130 annually (\$16,844.17/month or \$23.78 per sq. ft.) with 3% annual rate increase
Provisions:	Triple Net Lease

The lease will be a non-arm's length lease arrangement, as there is common membership with the landlord in CHSLI. The applicant indicates that the lease amount is based on an existing approved lease between Good Shepherd Hospice and St. Charles Hospital for a similar hospice inpatient center located on the St. Charles Hospital campus.

Goods and Services Agreement

The applicant has submitted a draft Goods and Services Agreement, summarized below:

Buyer:	Good Shepherd Hospice
Provider:	Mercy Medical Center
Services Provided:	Services: Clinical, Maintenance, Security and Parking. Goods and Services: Food and Linens and Laundry
Term:	3 years
Cost:	<ul style="list-style-type: none"> • Clinical services fees will be in accordance with the then prevailing Medicare rates or the same services; • Food Service - a fixed rate of \$15 per patient per day; • Maintenance Services - \$25 per hour plus cost of materials; • Linen services - \$6 per patient day; • Housekeeping - \$75,000 per year; • Pharmacy services charged at Average Wholesale Price less 20% per prescription fill.

The arrangement will be a non-arm's length lease arrangement (common membership with the provider). The applicant indicated that the cost amounts are based on an existing approved Goods and Services Agreement between Good Shepherd Hospice and St. Charles Hospital for a similar hospice inpatient center located on the St. Charles Hospital campus.

Total Project Cost and Financing

Total project costs, estimated at \$5,161,307, are broken down as follows:

Renovation & Demolition	\$3,489,167
Asbestos Abatement or Removal	\$85,000
Design Contingency	\$348,917
Construction Contingency	\$348,917
Architect/Engineering Fees	\$250,000
Construction Manager Fees	\$140,000
Other Fees	\$24,998
Movable Equipment	\$328,001
Telecommunications	\$75,000
Interim Interest Expense	\$53,875
CON Application Fee	\$2,000
CON Processing Fee	<u>\$15,432</u>
Total Project Cost	\$5,161,307

Project costs are based on a start date of February 1, 2017, with a 13-month construction period.

The applicant's financing plan appears as follows:

Cash	\$3,161,307
Loan (4.31% interest, 10-year term)	<u>\$2,000,000</u>
Total	\$5,161,307

Catholic Health Services of Long Island has provided a letter of interest for the loan at the stated terms.

Operating Budget

The applicant has submitted their first and third year operating budgets for the 12-bed unit, in 2016 dollars, summarized below:

	Year One		Year Three	
	Per Diem	Total	Per Diem	Total
<u>Revenues</u>				
Medicare	\$811.75	\$1,951,454	\$811.66	\$2,430,112
Medicaid	\$809.48	\$25,094	\$801.26	\$31,249
Private Pay/Other	\$919.06	<u>\$725,142</u>	\$919.56	<u>\$903,007</u>
Total Revenues		\$2,701,690		\$3,364,368
<u>Expenses</u>				
Operating	\$776.88	\$2,504,656	\$664.71	\$2,668,822
Capital	<u>\$202.63</u>	<u>\$653,264</u>	<u>\$162.09</u>	<u>\$650,809</u>
Total Expenses (Cost/Day)	\$979.51	\$3,157,920	\$826.80	\$3,319,631
Net Income/(Loss)		<u>(\$456,230)</u>		<u>\$44,737</u>
Utilization (patient days)		3,224		4,015

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

Medicaid	0.97%
Medicare	74.57%
Private Pay/Other	<u>24.46%</u>
Total	100.00%

The following is noted with respect the submitted budget:

- Revenue and expense assumptions are based upon Good Shepherd's Hospice historical experience operating inpatient beds.
- Utilization assumptions are based on the applicant's actual inpatient trends, prorated to the twelve-bed unit.

Based on the above, the budget is reasonable.

Capability and Feasibility

The total project cost of \$5,161,307 will be satisfied with \$3,161,307 equity and a loan from Catholic Health Services of Long Island for \$2,000,000 at the above stated terms.

The submitted budget indicates a net loss of \$456,230 and a net income of \$44,737 during the first and third years of operation, respectively. The losses will be covered through current operations. As of April 30, 2016, the facility had a net equity position of over \$5.7 million dollars, showing sufficient resources to cover the projected losses for the new inpatient unit (BFA Attachment A).

BFA Attachment A is the 2015 certified and the internal financial statements for Good Shepard Hospice as of August 31, 2016, which shows that the facility generated both positive working capital and net asset positions and generated a net loss of \$824,500 for the period. The reason for the loss is attributed to employee medical claims, due to the facility being self-insured in order to assure compliance with the Ethical and Religious Directives of the Catholic Church. In order to rectify this, Catholic Health Services is looking to modify how health benefit exposure is handled across the system to mediate the impact of these claims on the smaller entities such as Good Shepherd. BFA Attachment B is the 2014 - 2015 certified and the internal financial statements of Catholic Health Services of Long Island as of August 31, 2016, which show that the organization had an average positive working capital position and an average positive net asset position and generated an average net Income of \$70,534,666 for the period shown.

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 | 2015 certified and 1/1/2016-8/31/2016 internal financial statements of Good Shepherd Hospice |
| BFA Attachment B | 2014 - 2015 certified and the 1/1/2016-8/31/2016 internal financial statements of Catholic Health Services of Long Island |



Project # 162134-C
United Hospice of Rockland

Program: Hospice
Purpose: Construction

County: Rockland
Acknowledged: August 25, 2016

Executive Summary

Description

United Hospice of Rockland (UHR) is a voluntary not-for-profit corporation that operates an Article 40 hospice program located at 11 Stokum Lane, New City, serving the residents of Orange and Rockland Counties. In 2012, UHR opened the Joe Raso Hospice Center (JRHC), a freestanding hospice residence and hospice inpatient facility located at 415 Buena Vista Road, New City. The JRHC houses ten physical beds consisting of two dedicated inpatient-only and eight residence beds, with two of the eight residence beds dually certified for both hospice inpatient care and hospice residence care. Per this application, UHR requests approval to convert the two dedicated inpatient-only beds to two residence beds, resulting in a final hospice residence bed count of ten. Two of the ten residence beds will continue to be dually certified for both inpatient and residence level care.

residence beds will help them address the demand more effectively. The facility is currently a ten bed facility with two mixed use beds, six residence beds, and two inpatient beds. After project completion the facility will have two mixed use beds and eight residence beds. Remaining need in the county will be six.

Program Summary

United Hospice of Rockland, Inc., is currently in compliance with all applicable codes, rules, and regulations.

Financial Summary

There are no project costs associated with this application. There will be no staffing changes. The change in the designation of the two beds from inpatient-only to residence will have no impact on UHR's cash flow. The projected budget is as follows:

OPCHSM Recommendation
Approval

Need Summary

The applicant indicates there is a high demand for residence care beds in the area, and they currently maintain a patient waiting list. The conversion of inpatient beds to

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$1,969,635), Expenses (2,006,520), Gain/(Loss) (\$36,885).

The losses will be covered through philanthropic funding from a charitable lead annuity trust and fundraising.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.
[PMU]

Council Action Date

December 8, 2016

Need Analysis

Project Description

United Hospice of Rockland is a 10-bed facility located at 415 Buena Vista Road, New City, serving the residents of Rockland and Orange Counties. The facility is currently a two bed hospice inpatient unit, and an eight bed hospice residence unit, with two of the eight hospice residence beds dually certified for both hospice inpatient level of care and hospice residence level of care. The applicant is seeking approval to convert the two hospice inpatient-only beds into two hospice residence beds, for a total facility configuration of ten hospice residence beds. Two of the ten hospice residence beds will remain dually certified for both inpatient and residence levels of care, thereby no longer necessitating housing a separate inpatient-only hospice bed unit.

Background/ Analysis

United Hospice of Rockland is currently certified to offer the following services:

Audiology Baseline Services - Hospice Bereavement Clinical Laboratory Service Home Health Aide Homemaker Housekeeper Inpatient Certified Inpatient Services Medical Social Services Medical Supplies Equipment and Appliances	Nursing Nutritional Pastoral Care Personal Care Pharmaceutical Service Physician Services Psychology Therapy - Occupational Therapy - Physical Therapy - Respiratory Therapy - Speech Language Pathology
---	--

United Hospice of Rockland is authorized to provide services in Rockland and Orange Counties. This is a bed conversion to a lower level of care. Currently there is a high demand for residence beds as opposed to inpatient beds in Rockland County.

The Hospice Bed Need Methodology for Rockland County shows a need for eight inpatient hospice beds. The allocation of resources in this county is shown below in the following table:

County	Hospice Bed Need	# of Operating Hospice Beds	# of Beds Approved, Not Yet Operational	# of Beds through this project	Remaining Inpatient Bed Need
Rockland	8	4	0	-2	6

Conclusion

The conversion of two beds will allow the applicant to address the high demand for residence beds and operate more efficiently. Upon approval of this application, there will be a remaining need for six inpatient hospice beds in Rockland County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

United Hospice of Rockland, Inc., a not-for-profit corporation, currently operates an Article 40 hospice located at 11 Stokum Lane, New City, serving the residents of Rockland and Orange Counties. The provider also currently operates a freestanding hospice residence and hospice inpatient facility located at 415 Buena Vista Road, New City, that houses a two bed hospice inpatient unit and an eight bed hospice residence unit, with two of the eight hospice residence beds dually certified for both hospice inpatient level of care and hospice residence level of care.

The current proposal seeks approval to convert the two hospice inpatient-only beds into two hospice residence beds, for a total facility configuration of ten hospice residence beds (with two of the ten hospice residence beds continuing to be dually certified for both inpatient level of care and residence level of care).

Program Description

As previously approved and constructed, the one-story facility consists of four corridors constructed around an outdoor central courtyard, with access to this courtyard from each corridor. The main entrance corridor houses a reception area, administrative offices, clinical staff office, multipurpose meeting room, great room for dining and recreational use, kitchen and separate kosher kitchen, medication room, and storage. Two of the corridors house four bedrooms each of the current eight-bedroom residence unit, plus a meditation room for spiritual use, a full bathroom with spa bath and shower for patient/resident use, and a full bathroom with shower for family/guest use. The fourth corridor currently houses the two bedrooms of the inpatient-only unit, plus linen, laundry, storage, and various mechanical rooms, and will now house the two bedrooms converted to residence level of care.

As is currently operational, the kitchen, kosher kitchen, and great room's dining area are available to families for individual food storage, meal preparation, and family meals, and the great room, multipurpose room, meditation room, and outside courtyard are also available for family activities and gatherings. Each of the ten hospice residence rooms contains a private lavatory, and each room is equipped with a pull-out bed to allow family members to remain overnight in the patient's/resident's room.

Clinical staffing for the facility will remain the same, utilizing 24-hour RN coverage. The staffing schedule will continue to consist of a minimum of one RN, one LPN, and one Home Health Aide on all shifts 24 hours a day, seven days a week. The hospice Board of Directors and management staff will continue to have ultimate responsibility for the facility. An onsite RN Administrator and office manager is assigned to provide oversight of the facility, and a Medical Director is responsible for the clinical and medical care. The interdisciplinary care team consists of a Social Worker, Spiritual Care Coordinator, Medical Director, and as needed, Physical, Occupational, Speech, and/or Respiratory Therapists. The facility is also staffed with a housekeeper, a facilities manager, a chef, and various volunteers.

Conclusion

United Hospice of Rockland, Inc., is currently in compliance with all applicable codes, rules, and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted operating budgets, in 2016 dollars, for the first and third years, as summarized below:

<u>Revenues</u>	<u>Year One</u>	<u>Year Three</u>
<u>General Residence Care</u>		
Medicare	\$342,868	\$347,600
Medicaid	50,133	50,402
Commercial	<u>40,816</u>	<u>45,430</u>
Total General Residence Care	\$433,817	\$443,432
 <u>Routine Home Care</u>		
Medicare	\$587,951	\$611,155
Medicaid	558,339	583,805
Commercial/Other	<u>389,528</u>	<u>415,175</u>
Total Routine Home Care	\$1,535,818	\$1,610,135
 Total Revenue	 \$1,969,635	 \$2,053,567
 <u>Expenses</u>		
Residence	\$326,080	\$337,900
Home Care	<u>1,680,440</u>	<u>1,723,330</u>
Total Expenses	\$2,006,520	\$2,061,230
 Net Income (Loss)	 <u>(\$36,885)</u>	 <u>(\$7,663)</u>
 <u>Projected Hospice Utilization</u>		
Residence Care Days	511	511
Home Care Visits	<u>2,923</u>	<u>2,923</u>
Total	3,434	3,434

Projected utilization by payor source for years one and three is as follows:

	<u>Residence Care Days</u>	<u>Home Care Visits</u>
Medicare	78.28%	89.39%
Medicaid	11.35%	5.51%
Commercial	<u>10.37%</u>	<u>5.10%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Year One rate calculations are based upon 2016 published Medicare and Medicaid rates, along with contracted rates with third party and private payors.
- For Year Three, UHR estimated a two percent rate increase per year for Medicare and Medicaid.
- The losses will be covered through philanthropic funding from a charitable lead annuity trust and fundraising.

Capability and Feasibility

There are no project costs associated with this application and no staffing changes will be implemented.

The submitted budget shows a net operating loss of \$36,885 and \$7,663 for the first and third years of operation, respectively. The losses will be covered through philanthropic funding from a charitable lead annuity trust and fundraising. UHR has reported an additional \$1,542,952 and \$772,012 in fundraising and other revenues for 2015 and as of June 30, 2016, respectively. For 2016, UHR budgeted the use of nearly \$200,000 in assets to meet their budget requirements. Through June 30, 2016, they have not needed to use those assets due to their fundraising efforts. UHR anticipates that this trend will continue.

In 2001, donors established a trust with an investment company naming UHR as a beneficiary of the charitable lead annuity trust mentioned above. Under the terms of the split-interest trust agreement, UHR was to receive \$25,833 annually until the remaining donor's death. Based on the donors' life expectancies and a 4.8% discount rate, the present value of future benefits expected to be received by UHR was estimated to be \$278,790, which was recorded in December 2001 as a temporarily restricted contribution and as contribution receivable-charitable lead trust. The trust was revalued in December 2014, based on the life expectancy of the surviving donor; the present value of future benefits expected to be received was estimated to be \$134,020. UHR also records amortization of the discount on the estimated present value of future distributions.

BFA Attachments A is a summary of the 2015 certified financial statements and internal financial statements as of June 30, 2016 of United Hospice of Rockland, Inc. As shown, UHR experienced a positive working capital position, a net asset position and a net operating loss of \$17,815 in 2015, and a net operating income of \$423,017 as of June 30, 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 United Hospice of Rockland, Inc. - 2015 Certified Financials, Internal Financials as of June 30, 2016



**Project # 161345-C
Jamaica Hospital Medical Center**

**Program: Hospital
Purpose: Construction**

**County: Queens
Acknowledged: May 27, 2016**

Executive Summary

Description

Jamaica Hospital Medical Center (JHMC) is a 408-bed, voluntary not-for-profit, acute care hospital located at 89th Avenue & Van Wyck Expressway, Jamaica (Queens). The hospital is licensed under Article 28 of the Public Health Law and Article 31 of the Mental Hygiene Law. JHMC requests approval to convert six pediatric beds to six psychiatric beds. Upon approval by the Public Health and Health Planning Council (PHHPC), the licensed psychiatric beds will increase from 50 to 56 and the pediatric beds will decrease from 30 to 24.

On September 20, 2013, the Office of Mental Health (OMH) granted JHMC temporary approval to add six psychiatric beds to compensate for prior and anticipated psychiatric unit closers in the area. The beds have consistently remained full, and the hospital now requests they be made permanent. On May 27, 2016, OMH granted JHMC approval to formally add the six psychiatric beds to their Article 31 operating certificate, contingent upon confirmation of the Department of Health's Article 28 approval.

OPCHSM Recommendation
Contingent Approval

Need Summary

Jamaica Hospital Medical Center has an overall inpatient occupancy of 80.7% and has been experiencing psychiatric occupancy above

100%. In September of 2013, the Center added six temporary psychiatric beds at the request of OMH to compensate for the closure of St Vincent's Hospital. These beds have been fully occupied since then, and the Hospital is requesting that they be permanently added to the operating certificate. This project would also involve the downsizing of the Center's underutilized pediatric ward by decertifying six beds, leaving the total number of beds at the hospital unchanged.

Program Summary

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

Financial Summary

Total project costs of \$180,979 will be met with \$140,979 in liquid resources and \$40,000 in employee labor. Labor will be performed by engineering personnel currently employed by JHMC. The budget is as follows:

Revenues	\$19,944,101
Expenses	<u>19,343,252</u>
Gain	\$600,849

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON upon submission. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-02 Hospitals. (AER).

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
3. Construction must start on or before January 1, 2017 and construction must be completed by March 31, 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

December 8, 2016

Need Analysis

Background

Jamaica Hospital Medical Center is a 408-bed not-for-profit Hospital located at 89th Avenue & Van Wyck Expressway, Jamaica, 11418, in Queens County. This facility is proposing to convert six pediatric beds to six psychiatric beds, leaving the total number of approved beds constant. No other changes to the operating certificate are being proposed.

Need Summary

Jamaica Hospital Medical Center has an overall inpatient occupancy of 80.7% and has been experiencing psychiatric occupancy above 100%. In September of 2013, the Center added six temporary psychiatric beds at the request of OMH to compensate for the closure of St Vincent's Hospital. These beds have been fully occupied since then, and the Hospital is requesting that they be permanently added to the operating certificate. This project would also involve the downsizing of the Center's underutilized pediatric ward by the decertification of six pediatric beds, leaving the total number of beds at the hospital unchanged.

Analysis

Jamaica Hospital Medical Center is certified to provide the following beds:

Bed Category	Certified Capacity	Requested Action	Certified Capacity Upon Completion
Coronary Care	4	0	4
Intensive Care	8	0	8
Maternity	40	0	40
Medical / Surgical	228	0	228
Neonatal Continuing Care	4	0	4
Neonatal Intensive Care	5	0	5
Neonatal Intermediate Care	10	0	10
Pediatric	30	(6)	24
Physical Medicine and Rehab	22	0	22
Psychiatric	50	6	56
Transitional Care	7	0	7
Total	408	0	408

Source: HFIS

Historical occupancy statistics are provided below. Psychiatric occupancy has consistently been over 100%, and pediatric occupancy has fallen below 40%. This bed conversion is necessary to treat the existing volume of psychiatric patients at the Hospital. Upon approval, inpatient psychiatric occupancy will decline from 115.4% to 103.0%, and Pediatric occupancy will increase from 35.2% to 44.0%.

Major Service Category	Certified Beds	2011	2012	2013	2014	2015
General Medical/Surgical	269	86.8%	79.1%	75.8%	81.1%	83.2%
Pediatric	30	44.6%	41.5%	37.1%	37.0%	35.2%
Obstetric	40	60.7%	55.9%	54.3%	54.1%	55.6%
General Psychiatric	50	96.7%	104.5%	111.4%	107.6%	115.4%
High-Risk Neonates	19	77.1%	58.1%	55.9%	56.2%	54.2%
Inpatient Total	408	82.7%	77.1%	75.5%	78.9%	80.7%

Source: SPARCS, 2016

Conclusion

Jamaica Hospital Medical Center has maintained a psychiatric occupancy over 100% since 2012, even while operating six temporary beds. Permanently certifying these beds will ensure continued access to inpatient psychiatric care without increasing the number of certified beds at the hospital. The Hospital is well-utilized overall and will be reducing the underutilized pediatric service through this proposal.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

Jamaica Hospital Medical Center, an existing 408-bed hospital, located at 8900 Van Wyck Expressway in Jamaica (Queens County), requests approval to convert six pediatric beds to psychiatric beds. If approved, the hospital's licensed psychiatric beds will increase to 56 from the current 50, and pediatric beds will decrease from 30 to 24.

The Hospital had added six temporary psychiatric beds in September 2013 at the request of the Office of Mental Health in order to compensate for prior and anticipated psychiatric unit closures in the area. The beds have remained full since then, and the Hospital recognizes the need for these beds on a permanent basis.

There will be no programmatic or staffing changes as a result of this project.

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.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations is estimated at \$180,979, broken down as follows:

Renovation & Demolition	\$140,000
Design Contingency	14,000
Construction Contingency	14,000
Other Fees	10,000
CON Application Fee	2,000
CON Processing Fee	<u>979</u>
Total Project Cost	\$180,979

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

The applicant's financing plan appears as follows:

Cash equivalents	\$140,979
Employee labor	<u>40,000</u>
Total	\$180,979

BFA Attachment A is Jamaica Hospital Medical Center and Affiliate's 2014-2015 certified financial summary and internal financial summary as of June 30, 2016, which shows \$3,939,000 in investments in 2015 and \$5,593,417 in cash and cash equivalents as of June 30, 2016.

Incremental Operating Budget

The applicant has submitted their current year and first and third year incremental operating budget in 2016 dollars.

	<u>Current Year</u>		<u>First & Third Years</u>	
	<u>Per Day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>
<u>Inpatient Revenue</u>				
Medicaid FFS	\$968.71	\$4,302,056	\$968.71	\$4,302,056
Medicaid-MC	\$1,181.85	8,274,147	\$1,181.85	8,274,147
Medicare-FFS	\$947.84	3,105,135	\$1,008.89	3,305,135
Medicare-MC	\$1,146.28	2,621,546	\$1,146.28	2,621,546
Commercial-FFS	\$549.44	857,134	\$549.44	857,134
Private Pay	\$4,612.27	724,126	\$4,612.27	724,126
Bad Debt		(874,143)		(874,143)
Other Income (Charity Care Pool)		<u>734,100</u>		<u>734,100</u>
Total Inpatient Revenues		\$19,744,101		\$19,944,101
<u>Inpatient Expenses</u>				
Operating	\$1,009.79	\$19,020,389	\$1,009.79	\$19,020,389
Capital	<u>\$17.14</u>	<u>322,863</u>	<u>17.14</u>	<u>322,863</u>
Total Expense	\$1,026.93	\$19,343,252	\$1,026.93	\$19,343,252
Net Income		<u>\$400,849</u>		<u>\$600,849</u>
Inpatient Days		18,836		18,836
Utilization % (Inpatient Days)		92.15%		92.15%
Discharges		1,095		1,095

Utilization by payor for the current year and the first and third year is as follows:

<u>Payor</u>	<u>Current Year</u>		<u>First & Third Years</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid-FFS	4,441	23.58%	4,441	23.58%
Medicaid-MC	7,001	37.17%	7,001	37.17%
Medicare-FFS	3,276	17.39%	3,276	17.39%
Medicare-MC	2,287	12.14%	2,287	12.14%
Commercial-FFS	1,560	8.28%	1,560	8.28%
Private Pay	157	.83%	157	.83%
Charity	<u>114</u>	<u>.61%</u>	<u>114</u>	<u>.61%</u>
Total	18,836	100%	18,836	100%

Expense and utilization assumptions are based on the hospital's historical psychiatric inpatient experience.

Capability and Feasibility

Total project costs of \$180,979 will be met from \$140,979 in liquid resources and \$40,000 in employee labor.

The submitted budget indicates an incremental net income of \$600,849 during the first year of operation, following approval. Revenues reflect current reimbursement methodologies for inpatient psychiatric services. The budget appears reasonable.

Review of BFA Attachment A, Jamaica Hospital Medical Center and Affiliate's 2014-2015 certified financial summary and June 30, 2016 internals, shows negative working capital, negative net assets, and loss from operations. The applicant indicated the following steps are being implemented to improve operations and mitigate losses:

- Increase ambulatory care capacity, assist community physicians to increase capacity and react quickly to changes in census;
- Bring affiliated D&TCs under the Hospital for enhanced reimbursement;
- Increase the number of value based reimbursement agreements (prior 12 months \$4 million positive excess medical revenues) and continue to achieve high quality scores (receiving a \$4 million bonus in 2016);
- Renegotiate manage care contracts and prevent inappropriate denials;
- Invest in systems and software to more efficiently manage information, reduce costs, succeed in a capitated environment, and in the New York State Delivery System Reform Incentive Payment (DSRIP) program;
- Participant in the Advocated Community Providers (ACT) DSRIP Performing Provider System (PPS). The Hospital is active in designing ACP's DSRIP funds flow model and anticipates funding offsetting DSRIP project costs;
- Enhance outpatient revenue upon receiving NCQA PCMH certification under 2014 standards for all its primary care facilities (expect approval between October through December 2016); and
- Implemented initiatives to improve patient satisfaction.

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 Jamaica Hospital Medical Center and Affiliate, 2014- 2015 Certified Financial Statement and June 30, 2016 Internal Financial Statement



**Project # 161325-C
University Hospital**

**Program: Hospital
Purpose: Construction**

**County: Suffolk
Acknowledged: May 11, 2016**

Executive Summary

Description

Stony Brook University Hospital (SBUH), a 603-bed academic medical center located at 101 Nicolls Rd, Stony Brook (Suffolk County), requests approval to certify Eastern Long Island Hospital (ELIH), a 90-bed community hospital located at 201 Manor Place, Greenport (Suffolk County), as a division of SBUH through an Integration and Affiliation Agreement (IAA). Included in the acquisition are two extension clinics: Quannacut Outpatient Services, an outpatient Chemical Dependence and Rehabilitation Clinic located at 814 Harrison Avenue, Riverhead (Suffolk County) and Gladys Brooks Sports Rehab Center, an outpatient physical therapy clinic located at 46520 North Road, Southold (Suffolk County). Upon approval of the Public Health and Health Planning Council (PHHCP) and execution of the IAA between the Eastern Long Island Hospital Association (ELIHA), the owner and operator of ELIH, and the State University of New York (SUNY), SBUH will operate ELIH as a Division and under the SBUH's operating certificate and Medicare and Medicaid provider numbers.

In association with the IAA, SUNY will lease certain employees from ELIH through a to-be-formed, single-member limited liability company, to-be-registered as a Professional Employer Organization (PEO) under the laws of New York State. Under the PEO agreement, SBUH will maintain the employment of individuals in good standing and employed at ELIH, or otherwise employed by ELIH in connection with ELIH operations, and will provide the PEO with all funds needed to make payments consistent with the compensation and benefits plans, and collective bargaining rights and union

memberships in place prior to the Execution Date. ELIH will pay an additional 0.5% to the PEO as a fee for services provided.

There will be no change in beds or services as a result of this application.

ELIH is the second hospital with which SBUH will be affiliating to develop Stony Brook Medicine, a Network of regional hospitals, primary care providers, specialists, nursing homes and rehabilitations centers. A primary goal of SBUH is to create a regional, population-based health management program to improve the health of target populations, reduce the cost of care, and improve the patients' experience of care. ELIH is a major provider of services in the eastern and central areas of Suffolk County and deemed an essential partner to the development of SBUH's Network to bring population-based health care to Suffolk County's North Fork.

Previously, under CON 152083, the applicant received contingent approval for the certification of Southampton Hospital (SH) as a division of Stony Brook University Hospital.

BFA Attachment A provides an organizational chart of the entities post integration and affiliation.

OPCHSM Recommendation
Contingent Approval

Need Summary

The purpose of this project will be to collaborate with providers and promote access to subspecialists where services may be lacking, specifically in the Eastern Suffolk county area. There will not be any change in beds or services and there is no anticipated impact on utilization with this project.

Program Summary

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

Financial Summary

There is no purchase price associated with this application. Total project costs for consulting and legal fees are estimated at \$214,640 to be paid from accumulated funds.

The applicant submitted an incremental operating budget, in 2016 dollars, for the first year subsequent to the acquisition:

<u>Budget</u>	
Revenues	\$50,417,838
Expenses	<u>\$49,405,064</u>
Excess of Revenues over Expenses	\$1,012,774
<u>Enterprise Budget</u>	
Revenues	\$1,342,330,397
Expenses	<u>\$1,324,475,719</u>
Excess of Revenues over Expenses	\$17,854,678

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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]
4. Submission of an executed Integration and Affiliation Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed Lease Agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Professional Employment Agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's executed Trademark License Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Professional Employer Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Integration and Affiliation Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed Assignment and Assumption Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of a photocopy of the applicant's executed Bill of Sale, acceptable to the Department. [CSL]

Council Action Date

December 8, 2016

Need Analysis

Background

Stony Brook University Hospital (SBUH), a 603-bed academic medical center located at 101 Nicolls Rd, Stony Brook (Suffolk County), requests approval to certify Eastern Long Island Hospital (ELIH), a 90-bed community hospital located at 201 Manor Place, Greenport (Suffolk County), as a division of SBUH. The following two extension clinics are included in the SBUH acquisition:

- Gladys Brooks Sports Rehab Center - 46520 North Road, Southold, NY 11971
- Quannacut Outpatient Services - 814 Harrison Avenue, Riverhead, NY 11901

Below are the services and bed type configurations for the respective facilities:

Table 1 - Eastern Long Island Hospital Services

Ambulatory Surgery - Multi Specialty	Medical Services - Other Medical Specialties
Chemical Dependence - Detoxification	Medical Services - Primary Care
Chemical Dependence - Rehabilitation	Medical Social Services
Chemical Dependence - Rehabilitation O/P	Medical/Surgical
Chemical Dependence - Withdrawal O/P	Nuclear Medicine - Diagnostic
Clinical Laboratory Service	Podiatry O/P
Coronary Care	Psychiatric
Emergency Department	Radiology - Diagnostic
Intensive Care	Therapy - Physical O/P
Lithotripsy	

Source: HFIS

Table 2 - University Hospital Stony Brook Services

University Hospital Services	Medical Services - Other Med Specialties
Ambulance	Medical Services - Primary Care
Ambulatory Surgery - Multi Specialty	Medical Social Services
Audiology O/P	Medical/Surgical
Burn Center	Neonatal Continuing Care
Burns Care	Neonatal Intensive Care
Cardiac Catheterization - Adult Diagnostic	Neonatal Intermediate Care
Cardiac Catheterization - Electrophysiology (EP)	Nuclear Medicine - Diagnostic
Cardiac Catheterization - PCI	Nuclear Medicine - Therapeutic
Cardiac Surgery - Adult	Pediatric
Certified Mental Health Services O/P	Pediatric Intensive Care
Clinical Laboratory Service	Psychiatric
Comprehensive Psychiatric Emergency Program	Radiology - Diagnostic
Coronary Care	Renal Dialysis - Acute
Emergency Department	Therapy - Occupational O/P
Intensive Care	Therapy - Physical O/P
Linear Accelerator	Therapy - Speech Language Pathology
Lithotripsy	Transplant - Bone Marrow
Maternity	Transplant - Kidney

Source: HFIS

Table 3 - Eastern Long Island Hospital Bed Configuration

<u>Bed Type</u>	<u>Count</u>
Chemical Dependence - Rehab	20
Chemical Dependence - Detox	10
Coronary Care	3
Intensive Care	3
Medical / Surgical	31
Psychiatric	23
Total	90

Source: HFIS

Table 4 - University Hospital Stony Brook Bed Configuration

<u>Bed Type</u>	<u>Count</u>
Bone Marrow Transplant	10
Burns Care	6
Coronary Care	10
Intensive Care	52
Maternity	36
Medical / Surgical	355
Neonatal Continuing Care	10
Neonatal Intensive Care	20
Neonatal Intermediate Care	16
Pediatric	38
Pediatric ICU	10
Psychiatric	40
Total	603

Source: HFIS

Analysis

Per the applicant, compared to Suffolk County as a whole, the targeted service area has a higher percentage of people age 65 and older (27.4% vs 15.4%). The targeted area also has a lower average household income than the County overall. In many specialties SBUH and ELIH's combined regional market share exceeds 60%, including Psych/Drug Abuse (77.8%), General Medicine (62.4%), Neurology (64.6%), Pulmonary (69.2%), Neurosurgery (87.5%) and Gastroenterology (62%). Therefore, from an inpatient standpoint, there is a strong case for clinical integration and care coordination between the two facilities.

Conclusion

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

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Stony Brook University Hospital (SBUH) requests approval to acquire Eastern Long Island Hospital (ELIH) and certify it as a new division of SBUH to be known as Stony Brook Medicine Eastern Long Island Hospital.

SBUH is a teaching hospital that serves as the region's only tertiary care center and Level I trauma center. SBUH provides a full range of medical and surgical services, including psychiatry, cardiac care, trauma care, neonatal and perinatal care, and women's health care. Additionally, it provides outpatient services and operates 20 Article 28 extension clinics.

Eastern Long Island Hospital is a not-for-profit acute care hospital with a mission to provide essential healthcare services to the residents of the North Fork and Shelter Island. ELIH provides access to a wide variety of medical specialties including geriatric, digestive disease, interventional pain and behavioral health services. ELIH operates two Article 28 extension clinics which are part of the acquisition.

Through this acquisition, SBUH aims to create a regional, population-based health management program that addresses the preventive and chronic care needs of all patients served by Stony Brook or network partners, reduce the cost of care and improve patients' experience of care. There will be no change in authorized services or number or types of beds as a result 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

Integration and Affiliation Agreement

The applicant provided a draft Integration and Affiliation Agreement, which is summarized below:

Purpose:	Lease of property, plant and equipment constituting ELIH and the Related Healthcare Facilities to SUNY through SBUH, and transfer of operations and certain non-fixed assets of ELIH to SUNY and integrated into SBUH.
Assets Transferred:	Assets transferred to SBUH include: Accounts receivable; other receivables, including "Due From Affiliates" (excluding receivables customarily belonging to ELIH Foundation or as set forth on the ELIHA Consolidating Balance Sheet), and inventory will be assigned to SBUH on the Closing Date for use in the ELI Hospital Operations; Prepaid expenses and other current assets will be transferred to a SUNY-designated SBUH account; cash and cash equivalents not included in the following: ELIHA will retain cash and cash equivalents needed to fully satisfy ELIHA's outstanding line of credit to Bridgehampton National Bank or that is otherwise restricted as to use; Real Property and Fixed Assets excluding those belonging to the ELIH Foundation, leased or owned or limited as to use (net of current portion) will remain with ELIHA and be leased or subleased to SBUH; and deferred bond cost, net. ELIH Foundation will retain all cash and cash equivalents belonging to the ELIH Foundation. Unrestricted assets that reflect ELIHA's retained earnings will be distributed between ELIHA and SUNY.
Liabilities Transferred:	Liabilities transferred to SUNY include amounts due from ELIHA to third-party payors and all liabilities of ELIHA and the ELIH Entities relating to ELI Hospital Operations. ELIHA will retain liabilities as follows: The line of credit to ELIHA will remain on ELIHA's balance sheet; unless otherwise transferred, any liabilities relating to professional services or medical malpractice, of a type covered by property/casualty insurance, of a type covered by employment practices liability insurance, or relating

	to compliance; and long term debt and other ELIHA Bond related fee obligations will remain on ELIHA's balance sheet, but SUNY will pay such amounts when due as part of its rental obligation. All accrued payroll and related withholdings liabilities, accrued pension liability and accrued and unused vacation, personal days, accrued sick days and other paid time off will transfer to ELIHA PEO and be paid by SUNY as part of its payment obligations under the Professional Employer Agreement.
Governance:	From the Closing Date, and throughout the lease term, a joint advisory committee composed of 13 members (ten appointed by ELIHA and three appointed by SBUH).
Closing:	Due at Closing: executed copy of the Operating Lease; executed copies of the following: Assignment and Assumption Agreement, Intellectual Property Agreement, Professional Employer Agreement and Medical Records Agreement; assignments, rights to accounts receivables and offer documents as mutually agreed to by the Parties; assignment to SUNY of all of ELIHA's right, title and interest in the business, assets or operations of ELIHA; proof of assignment of all of the Assigned Permits and Approvals; copies of resolutions adopted by the directors of ELIHA authorizing and approving the transactions; certificates of incumbency, existence and good standing; recent UCC lien search showing no liens on any of ELI Hospital, the Facilities, or on any of the Inventory or other assets; keys, passwords and combinations to ELI Hospital the Facilities and the Related Healthcare Facilities; inventory; copies, of all Assigned Contracts; all plans, surveys, lease files, warranties, guaranties and records of repairs and maintenance relating to the Facilities; Business Associate Agreements; and instruments and documents as ELIHA and/or SUNY reasonably deem necessary to effect the Transactions.

SBUH has submitted an affidavit, acceptable to the Department of Health, in which they agree, notwithstanding any agreement, arrangement or understanding between SBUH and ELIHA to the contrary, to be liable and responsible for any Medicaid overpayments made to ELIHA and/or surcharges, assessments or fees due to ELIHA pursuant to Article 28 of the Public Health Law with respect to the period of time prior to SBUH acquiring its interest, without releasing ELIHA of its liability and responsibility.

Lease Agreement

In association with the IAA, a draft lease has been submitted to lease the real property, as summarized below:

Premises:	The ELI Hospital and each of the Facility premises
Landlord:	Eastern Long Island Hospital Association
Tenant:	The State University of New York acting through its SBUH
Term:	30 years
Rent:	Landlord's payment obligations under the ELIHA Bonds; amounts due regarding Hazardous Materials; taxes and other costs regarding utilities and services and real estate taxes and assessments; costs incurred by Landlord on behalf of ELIH Hospital that have been approved in the ELI Hospital annual budget or otherwise approved in writing by Tenant; and all reasonable continuing expenses of Landlord not related to the ELI Hospital Operations (such as audit fees, legal expenses, directors' and officers' insurance) that are approved by Tenant.
Provisions:	Utilities, Taxes, Repairs and Insurance.

Professional Employer Agreement

In association with the IAA, and material to the above Lease Agreement, the applicant submitted a draft agreement for SUNY to lease certain employees from ELIHA through a to-be-formed, single-member limited liability company, to be registered as a PEO under the laws of NYS. The terms of the PEO agreement are as follows:

Worksite Employees:	Certain of ELIHA's employees to provide the same services at the Premises, as defined by the IAA, that such employees were providing immediately prior to the IAA's Closing Date.
Employer:	ELIHA PEO, Eastern Long Island Hospital Association's to-be-formed single member LLC, to-be-registered as a Professional Employer Organization,
Client:	State University of New York through SBUH
Term:	30 years
Payment:	All annual funds needed for ELIHA PEO to make the payments consistent with the compensation and benefits plans, programs and arrangements in place prior to the Closing Date, and all other actions required hereunder by ELIHA PEO; the deficiency from available free cash arising from ELI Hospital Operations paid as a Working Capital Advance; interest, late fees and charges imposed by third parties as a result of SUNY's failure to pay; and all other costs incurred by ELIHA PEO with respect to Assigned Contracts. SBUH will pay an additional 0.5% to the PEO as a fee for services provided and pay for the following accrued liabilities: accrued payroll and related withholdings liabilities; actuarially determined additional funding obligations and accrued pension liability; accrued obligations of ELIHA under the benefit plans; accrued and unused vacation, personal days, accrued sick days and other paid time off remaining on ELIHA's Consolidating Balance Sheet as of the Closing Date; and pension withdrawal liability assessed.
Additional conditions:	The employment of the ELIHA PEO Employees shall at all times be subject to the terms and conditions set forth in any applicable collective bargaining agreements; ELIHA PEO shall obtain, keep and maintain, without limitation, substantially the same insurance coverages that ELIHA had for itself; ELIHA PEO agrees to secure and provide required workers' compensation and disability insurance coverage.

Total Project Cost and Financing

Total project costs are estimated at \$214,640, broken down as follows:

Other Fees	\$211,477
Application Fees	\$2,000
Additional Processing Fees	<u>\$1,163</u>
Total	\$214,640

The applicant will finance the above from accumulated funds.

There is no construction associated with this project. BFA Attachment B is the 2014 and 2015 certified financial statements of Stony Brook University Hospital, which indicates the availability of sufficient resources to fund the project.

Operating Budget

The applicant has submitted an operating budget for the combined SBUH/SH/ELIH operations, in 2016 dollars, for the first year of operation, as summarized below:

<u>Revenues</u>	<u>Year One</u>
Operating Revenues	\$1,285,250,197
Non-Operating Revenues	<u>57,080,200</u>
Total Revenues	\$1,342,330,397

<u>Expenses</u>	
Operating	\$1,247,304,944
Capital	<u>77,170,775</u>
Total Expenses	\$1,324,475,719

Excess of Revenues over Expenses \$17,854,678

<u>Utilization</u>	
Inpatient (Discharges)	46,771
Outpatient (Visits)	753,439

The following is noted with respect to the submitted budget:

- The budget includes Stony Brook University Hospital, Eastern Long Island Hospital and Southampton Hospital. The applicant received contingent approval to certify Southampton Hospital as a division of Stony Brook University Hospital under CON 152083.
- Revenues are based on the hospitals' historical experience incorporating projected inpatient and outpatient volume increases between the current year and year one.
- Non-operating revenues include New York State appropriations.
- The applicant states that the project makes no assumption of increasing payor rates through increased negotiating power.
- Staffing and patient mix were determined based on historical staffing and predicted market share.
- Overall expenses are expected to increase approximately 2%, including a slight decrease in depreciation and rent.
 - ELIH uses the straight-line method to amortize and/or depreciate its plant & equipment over the shorter of its useful life or lease terms.
 - SBUH depreciates its equipment using half-year convention for the first year on computer equipment over \$500 and other items over \$1500. Major Moveable Equipment is depreciated using month in service.

Utilization for the combined SBUH/SH/ELIH operations by payor source for inpatient and outpatient services is projected as follows:

	<u>Inpatient</u>	<u>Outpatient</u>
Medicaid Fee For Service	5.64%	18.30%
Medicaid Managed Care	16.66%	23.11%
Medicare Fee For Service	29.12%	28.86%
Medicare Managed Care	6.10%	3.76%
Commercial Fee For Service	22.36%	5.27%
Commercial Managed Care	11.68%	12.47%
Private Pay	5.74%	4.20%
Charity Care	0.39%	0.65%
All Other	2.31%	3.38%

Volume by payer is expected to increase approximately 2.4% for inpatient admissions and 5.4% for outpatient visits. Volume by payer was projected utilizing historical data.

Capability and Feasibility

There are no issues of capability associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$17,854,678 during the first year for the combined SBUH/SHH/ELIH operations. If SHH were removed, the excess of revenues over expenses would be \$3,276,068.

BFA Attachment B is the 2014-2015 certified financial statements of Stony Brook University Hospital. As shown, the entity had a positive working capital position and an average positive net asset position for the period shown. The entity shows an operating loss in both 2014 and 2015. However, with the addition of non-operating revenues, including New York State appropriations, the facility achieved an average excess of revenues over expenses of \$11,537,000. BFA Attachment D is the internal financials of Stony Brook University Hospital as of June 30, 2016, which shows a positive working capital position, positive net asset position and an excess of revenues over expenses of \$15,998,000.

BFA Attachment C is the 2014-2015 certified financial statements of Eastern Long Island Hospital and Affiliates. As shown, the entity had a positive working capital position and an average positive net asset position for the period shown. The entity shows a deficiency of revenue over expenses in 2014 and 2015 of \$118,486 and \$1,559,330, respectively. BFA Attachment E is the internal financial statements of Eastern Long Island Hospital and Affiliates as of June 30, 2016, which shows a positive working capital position and an average positive net asset position for the period shown. The applicant primarily attributes the deficiencies to non-recurring consulting and legal expenses resulting from ELIH's proposal to combine with another Long Island health system. The applicant anticipates that the expenses will not occur after ELIH joins the Stony Brook Medicine system and expects cost savings once ELIH is able to access SBUH contracts for purchasing supplies.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart Post Integration and Affiliation
BFA Attachment B	Stony Brook University Hospital, Certified Financial Statements 2014-2015
BFA Attachment C	Eastern Long Island Hospital, Certified Financial Statements 2014-2015
BFA Attachment D	Stony Brook University Hospital, Internal Financial Statement as of June 30, 2016
BFA Attachment E	Eastern Long Island Hospital, Internal Financial Statement as of June 30, 2016



Project # 162095-C
Weill Cornell Imaging at New York Presbyterian

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Construction **Acknowledged:** August 11, 2016

Executive Summary

Description

Weill Cornell Imaging at New York-Presbyterian, an existing Article 28 diagnostic and treatment center (D&TC) specializing in radiology and imaging services, requests approval to certify a new extension clinic to be located at 156 William Street, New York. The facility currently operates five clinic sites in Manhattan. The new extension clinic will provide magnetic resonance imaging, computed tomography scanner and diagnostic radiology outpatient services (including ultrasound, mammography and bone density scans).

Weill Cornell Imaging at New York-Presbyterian is a membership corporation whose members are NYP Services, Inc. and MRSI Management, Inc. (MRSI), both of which are New York not-for-profit corporations. The sole member of NYP Services, Inc. is New York-Presbyterian Foundation, Inc., a New York not-for-profit corporation. MRSI is related to Cornell University, a New York education corporation.

OPCHSM Recommendation
Contingent Approval

Need Summary

The proposed center will provide the following services: Medical Services-Other Medical Services, CT Scanner and Magnetic Resonance Imaging (MRI). There will be two MRIs included in this project. Based on 709.12, MRI machines have a capacity for 3,200 scans per year. The number of projected visits are 23,395 including 4,717 MRI scans in Year One.

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 \$34,201,125 will be met via Equity of \$27,759,787 and an equipment lease of \$6,441,338. The projected budget is as follows:

Revenues	\$16,015,500
Expenses	<u>12,245,348</u>
Gain	\$3,770,152

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 sublease agreement that is acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment lease that is acceptable to the Department of Health. [BFA]
4. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-03, for review and approval. The SHC documents submitted shall address the open general construction review comments #252315 (MRI room egress clearances), #252347 (Life-safety clarifications), #252355 (ADA clearance items), and mechanical comment #252479 (required ventilation). [DAS]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before January 1, 2017 and construction must be completed by March 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]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 8, 2016

Need Analysis

Analysis

The primary service area includes downtown Manhattan area, which includes the following zip codes: 10004, 10015, 10006, 10017, and 10038. The secondary service area would be the remainder of New York County. The population of New York County in 2010 was 1,585,873 with 214,153 individuals (13.5%) age 65 and over, who are heavy users of radiological imaging services. The Cornell Program on Applied Demographics (PAD) projects the 65 and over population group to grow to 264,334 by 2025 and represent 16.4% of the projected population of 1,615,772 in New York County.

The following table shows the number of projected visits for Years 1 and 3. These projections include 4,717 MRI scans in Year 1 and 5,418 scans in Year 3.

Type of Service	Year 1	Year 3
CT Scanner	2,754	3,127
MRI	4,717	5,418
Other Medical Services	15,924	19,403
Total	23,395	27,948

There are two freestanding D&TCs and four extension clinics in New York County that provide MRI and CT scanner services. Five of the six clinics are operated by the applicant. The other D&TC (New York University Dental Center) provides CT Scans, but no MRI services.

Over the past few years, WCINYP sites have experienced a steady increase in the demand for services. The various centers had a combined total volume of 118,288 in 2011 and 174,307 in 2015, an increase of 47.4 percent. The proposed hours of operation at the new site will be Monday through Friday, 8:00 am to 6:00 pm.

Relative to Regulation 709.12 Need Methodology for Acquiring Magnetic Resonance Imagers, the applicant has demonstrated the availability of appropriate equipment in the areas of computed tomography, ultrasound, angiography, conventional radiography and nuclear medicine: The applicant has also demonstrated the availability of neurologists, neurosurgeons, orthopedists, oncologists and radiologists who meet the definition of qualified specialists.

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

Conclusion

Approval of this project will increase access to imaging services in New York County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Weill Cornell Imaging at New York-Presbyterian (WCINYP), an existing Article 28 diagnostic and treatment center (D&TC) that specializes in radiology and imaging services, is seeking approval to certify a new extension clinic to provide radiology imaging services to be located on the cellar and sub cellar levels at 156 William Street in lower Manhattan (New York County). The proposed clinic will provide Magnetic Resonance Imaging (MRI) and Computed Tomography (CT) scanning, along with other diagnostic radiology outpatient services (including ultrasound, mammography and bone density scans).

Currently, WCINYP operates five radiology and imaging sites; four on the East Side of Manhattan and one on the West Side of Manhattan. Due to significant growth in the service area, WCINYP's five sites have experienced a steady increase in demand for radiological services (particularly for MRI and CT) which has resulted in increased demand for longer hours and additional weekend hours. The proposed site will permit WCINYP to provide radiology services to residents of the downtown Manhattan area.

Staffing is expected to consist of 30.5 FTEs in the first year after completion and to 38.2 FTEs by the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement (Overlease)

The applicant has submitted the executed overlease agreement for the site in which the D&TC will be located, summarized below:

Date:	June 30, 2016
Premises:	6 th Floor, the Ground Floor Premises and the Lower Level Premises of the property at 156 William Street, New York New York 10038
Landlord:	156 William Street Owner LLC
Tenant:	Cornell University
Term:	21 years and 2 months (from April 1, 2016 "Commencement Date")
Rental:	Fixed annual amounts for each five-year period, specific to the given leased floor/level (i.e., amounts vary depending on the select floor/space rented), variable % increases at the end of each five-year period.
Provisions	The Lessee shall be responsible for utilities, insurance, repairs, and maintenance.

Sublease Rental Agreement

The applicant has submitted a draft sublease agreement for the site they will occupy, summarized below:

Premises:	14,000 square feet located at 156 William Street, New York
Sublessor:	Cornell University
Sublessee:	Well Cornell Imaging at New York-Presbyterian
Term:	20 years
Rental:	Years 1-5: \$687,240 annually (\$49.09 per sq. ft.)
	Years 6-10: \$754,480 annually (\$53.89 per sq. ft.)
	Years 11-15: \$821,720 annually (\$58.69 per sq. ft.)
	Years 16-20: \$889,960 annually (\$63.57 per sq. ft.)
Provisions	The sublessee shall be responsible for insurance and repairs

The applicant has submitted real estate letters attesting to the reasonableness of the rent.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$34,201,125 broken down as follows:

Renovation and Demolition	\$18,361,084
Site Development	500,000
Design Contingency	873,160
Construction Contingency	2,720,413
Fixed Equipment	250,000
Planning Consultant Fees	1,456,064
Architect/Engineering Fees	1,782,000
Construction Manager Fees	31,000
Other Fees (Consultant)	1,000,000
Moveable Equipment	7,038,338
CON Fee	2,000
Additional Processing Fee	187,066
Total Project Cost	\$34,201,125

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

The applicant's financing plan appears as follows:

Equity	\$27,759,787
Equipment Lease	6,441,338
Total	\$34,201,125

Operating Budget

The applicant has submitted an incremental operating budget, in 2016 dollars, during the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$13,169,129	\$16,015,500
<u>Expenses</u>		
Operating	\$7,841,835	\$10,538,317
Capital	<u>1,707,031</u>	<u>1,707,031</u>
Total Expenses	\$9,548,866	\$12,245,348
Excess of Revenues over Expenses	<u>\$3,620,263</u>	<u>\$3,770,152</u>
Utilization (Scans)	23,395	27,948
Cost Per Scan	\$408.16	\$438.15

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	2.50%	2.50%
Medicaid Managed Care	5.60%	5.60%
Medicare Fee-For-Service	25.80%	25.80%
Medicare Managed Care	3.10%	3.10%
Commercial Fee-For-Service	4.30%	4.30%
Commercial Managed Care	55.20%	55.20%
Other	3.50%	3.50%

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

Capability and Feasibility

Project costs of \$34,201,125 will be met with Equity of \$27,759,787 and an equipment lease of \$6,441,338. BFA Attachment A is the 2014 and 2015 certified financial statements of Weill Cornell Imaging at New York-Presbyterian, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$3,620,263 and \$3,770,152 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position from 2014 through 2015. Also, the entity achieved an average excess of revenues over expenses of \$30,478,500 from 2014 through 2015.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	2014 and 2015 certified financial statements of Weill Cornell Imaging at New York-Presbyterian
BHFP Attachment	Map

MEMORANDUM

To: Establishment and Project Review Committee
Public Health and Health Planning Council

From: Charles P. Abel, Deputy Director
Center for Health Care Facility Planning, Licensure and Finance

Date: November 9, 2016

Subject: Competitive Review of Long Island Cardiac Catheterization
Applications

Two hospitals on Eastern Long Island have submitted CON applications requesting approval to initiate Cardiac Catheterization services: Peconic Bay Medical Center and Southampton Hospital. In accordance with the public need methodology delineated in Section 709.14 of Title 10 of NYCRR, there is need for only one additional Cardiac Catheterization provider. Thus, the projects were reviewed competitively.

The competitive review included an evaluation by Department staff and an ad hoc group from the Cardiac Advisory Committee. The Cardiac Advisory Committee is comprised of cardiac surgeons and cardiologists from around the country. Ad hoc committees convened to review CON projects or other proposals include only members not practicing in New York State with no conflicts or interests related to the proposals or applicants.

As evidenced in the attached exhibits, both projects would be approvable if not for the limitation of need based on current regulatory methodology. Both projects are programmatically, financially, and architecturally acceptable and have strong cardiac surgery partners. However, as only one application can be recommended for approval, the Peconic Bay Medical Center CON is deemed the preferred application due to its location, the advantage of it having two catheterization laboratories with one available for handling emergencies, and the existence of a helipad for enhanced accessibility. With a recommendation of approval for Peconic Bay Medical Center, the need in the region is considered met, precipitating a recommendation of disapproval on the basis of public need for the Southampton Hospital application.



**Project # 152391-C
Peconic Bay Medical Center**

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: January 13, 2016

Executive Summary

Description

Peconic Bay Medical Center (PBMC), a 140-bed, voluntary not-for-profit, Article 28 acute care hospital, is seeking approval to certify Cardiac Catheterization-Adult Diagnostic, Electrophysiology (EP) and Percutaneous Cardiac Intervention (PCI) services, construct a two-laboratory cardiac catheterization suite and relocate their helipad. The proposed program will be operating with clinical oversight from Southside Hospital (Southside) in accordance with the terms of an executed clinical service agreement. The program will be located on-site at PBMC at 1300 Roanoke Avenue, Riverhead (Suffolk County).

Southside, a 321-bed, acute care hospital located on the south shore of Suffolk County, is a full-service cardiac surgery center. It is a member of Northwell Health, Inc. and is co-operated by Northwell Health Care, Inc., which is also a member of the Northwell Health, Inc. Southside serves residents of western Suffolk County and eastern Nassau County. PBMC serves residents of eastern Suffolk County.

PCMB is expanding its facility to accommodate a new cardiac catheterization and EP suite with two new connecting bridges to the facility, new elevators and stairs.

The new first floor will accommodate a shell space of approximately 5,970 square feet for future expansion of the Emergency Department. The fit out of this space will be submitted as a separate future CON, with a full fit-out of the elevators and stairs connecting the newly relocated and enlarged helipad to the second

floor and existing Emergency Department on the first floor, and an overbuild to maintain access to the current Ambulatory Entrance.

The new second floor will accommodate 17,850 square feet and contain two Cath/EP labs and one shelled space for a future Cath/EP lab with the required support spaces. The new Cath/EP Suite will also include prep-PACU with approximately nine bays and support spaces.

OPCHSM Recommendation
Contingent Approval

Need Summary

Given discharge data and trends, one newly operational PCI program in the planning area can be expected to meet the minimum target of 200 procedures within two years of start-up as required by Section 709.14 without jeopardizing the required volume of 300 procedures at programs within one hour travel time. However, given the regulatory parameters, the planning area volume of procedures would not similarly support the addition of a second new PCI program.

Program Summary

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

Financial Summary

Total project costs, inclusive of shell space, is \$42,791,898 and will be met with \$5,869,060 in accumulated funds and \$36,922,838 in DASNY

Tax-Exempt Bond financing over 30 years at 6.5%. The Bureau of Architectural and Engineering Review has determined that this project includes shell space costs of \$1,766,523 for future expansion. As a result, the total approved current Article 28 project cost for reimbursement purposes shall be limited to \$41,025,375 until such time that the shell space is approved for Article 28 use (under a future CON) by the Department. The applicant is funding 100% of the shell space cost with equity.

The incremental budget is as follows:

Revenues	\$10,075,300
Expenses	<u>10,159,200</u>
Gain(Loss)	(\$83,900)

Northwell Health Care, Inc. has submitted a letter from the CFO of Northwell Health, Inc. stating that Northwell Health will absorb the operational losses and support the PBMC Cardiac Cath Program.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. (BFA)
3. Submission of State Environmental Quality Review (SEQR) Findings pursuant to 6 NYCRR Part 617.4(b) (6). [SEQ]
4. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-02, for review and approval to include resolution of the following:
 - a. Revision of the egress capacity factors used in the NFPA 101 Egress Exit Capacity table on the Life Safety Plan.
 - b. Indicating compliance of the relocated existing Article 28 patient registration and visitor lounge spaces allocated for the proposed elevators in the DSG-02 design development submission.
 - c. Provision of plans at the DSG-02 design development submission indicating the revised scope of work as outlined in the revised CON applications Architectural Narrative sent to DOH.
 - d. Provision of a revised Life Safety Plan indicating a required second means of egress from the proposed helipad, complying with NFPA 418, 1995. [DAS]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before June 1, 2017 and construction must be completed by June 1, 2019, 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]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 8, 2016

Need Analysis

Project Description

Peconic Bay Medical Center (PBMC), a 140 bed hospital located at 1300 Roanoke Ave., Riverhead, Suffolk County and Southampton Hospital (SH), a 125 bed hospital located at 240 Meeting House Lane, Southampton, Suffolk County both seek to add PCI-capable cardiac catheterization and electrophysiology (EP) laboratory services. Although there is need for PCI services on eastern Long Island, the geography, demography, and trend of PCI procedures of the region is such that only one of these two proposals can be approved, thus, a competitive review was performed.

Peconic Bay Medical Center's proposal is to construct a new two-laboratory adult PCI-cardiac catheterization/electrophysiology suite with two bridges to the facility and construct a new (relocated and enlarged) helipad. PBMC proposed an affiliation with Southside Hospital, part of the new Northwell Health Care Inc. system, as their cardiac surgery partner.

Southampton Hospital's project would add one onsite adult PCI-capable cardiac catheterization/electrophysiology laboratory. Southampton proposed an affiliation with University Hospital (Stony Brook) as their cardiac surgery partner.

Need Summary

Section 709.14 of Title 10 of NYCRR delineates the review criteria for public need of PCI Capable Cardiac Catheterization Laboratory Centers. Per the regulation, the planning area for determining the public need at hospitals with no cardiac surgery on-site is the area within a one hour average surface travel time.

Suffolk County Hospitals PCI Discharges - PCI Statistics by Hospital of Service					
Facility	2011	2012	2013	2014¹	2015²
Brookhaven Memorial Hospital Medical Center	0	0	19	303	358
Good Samaritan Hospital West Islip	700	629	665	951	1094
Huntington Hospital	257	306	517	538	555
Southside Hospital	572	615	766	683	767
St. Catherine of Siena Hospital	268	256	321	309	322
University Hospital (Stony Brook)	1,543	1,407	1,474	1,327	1515
Total	3,340	3,213	3,762	4,109	4,611
Year-over-Year Increases		(127)	549	347	502

Source: PCIRS

¹ Validation is essentially complete. These numbers are unlikely to change. Analysis is ongoing and expect report to be published within a few months.

² Substantial validation still to take place. There are likely to be some changes to the dataset.

PCI Centers distance from Peconic Bay Medical Center		
	Distance (miles)	Travel Time (minutes)
Brookhaven Memorial Hospital Medical Center	20.9	28
Good Samaritan Hospital West Islip	42.3	46
Huntington Hospital	44.6	55
Southside Hospital	36.9	43
St. Catherine of Siena Hospital	36.5	46
University Hospital (Stony Brook)	31.5	41

Source: Mapquest.com

PCI Centers distance from Southampton Hospital		
	Distance (miles)	Travel Time (minutes)
Brookhaven Memorial Hospital Medical Center	33.9	39
Good Samaritan Hospital West Islip	53.1	59
Huntington Hospital	59.9	74
Southside Hospital	49.1	56
St. Catherine of Siena Hospital	49.3	61
University Hospital (Stony Brook)	46.4	57

Source: Mapquest.com

Suffolk County's elderly population is expected to increase by 34.1 percent from 2015 to 2030, with populations in the North and South forks roughly comparable. Although statewide PCI discharges are decreasing overall, Suffolk County has seen a 23 percent increase in PCI procedures from 2011 to 2014.

As shown in the preceding tables, currently all of the facilities within a one hour travel time are performing greater than 300 annual PCI procedures. The two facilities with the lowest utilization, Brookhaven Memorial Hospital Medical Center and St. Catherine of Siena Hospital, continue to trend upward, along with all of Suffolk County. Additionally, Year-over-Year increases for the current providers averaged 318 additional cases per year from 2012 through 2015. However, for the general service area for the two proposals, the number of PCI procedures for the residents of the North Fork, the South Fork, and Central Eastern Long Island, has been dropping over the last three years, from 365 in 2013 to 312 in 2015.

Taken in their totality, these factors, including lengthy travel times, support the need for an additional PCI Capable Cardiac Catheterization Center in Suffolk County. However, the volume of PCI patients from the eastern Long Island area, while over 300 currently, is not enough to support two new programs or ensure that facilities within an hour travel time from the applicant locations can maintain the 300 procedure annual minimum prescribed in Section 709.14 of Title 10 of NYCRR with the addition of more than one new PCI facility.

Competitive Review

Given the need for only one new facility in the region, the two projects were reviewed competitively. On October 17, 2016, the Department presented both applications to an ad hoc group of the Cardiac Advisory Committee (CAC), an impartial advisory body comprised of renowned cardiac surgeons, cardiologists and related specialists, for clinical input. Committee members were asked to identify the strengths and weaknesses of the two proposals to assist the Department in determining if either project should be approved and, in the event both were deemed viable, which proposal was preferred. Reviewers noted that both proposals are attached to surgery-center affiliates with well-established programs and good outcomes.

Ultimately, the CAC cited three primary factors supporting an approval of PBMC's application over Southampton Hospital's:

- PBMC is more centrally located to serve residents of both the North and South forks of Long Island.
- PBMC is proposing to build two labs which would enable it to manage two simultaneous ST elevation MI (STEMI) cases or an emergent STEMI that presented during a scheduled case.
- PBMC is proposing to relocate and enlarge their helipad which would further improve timely access for emergency patients.

Conclusion

Given discharge data and trends, one newly operational PCI program in the planning area can be expected to meet the minimum target of 200 procedures within two years of start-up as required by Section 709.14 without jeopardizing the required volume of 300 procedures at programs within one hour travel time. However, given the regulatory parameters, the planning area volume of procedures would not similarly support the addition of a second new PCI program.

The Department of Health relies heavily on the expertise provided by the Cardiac Advisory Committee and agrees with its recommendation. The Department is recommending approval of the Peconic Bay Medical Center application based on PBMC's favorable location relative to the target population, the proposal for two labs allowing for the simultaneous treatment of emergency and elective cases and, the existence of a helipad for more expeditious transport of emergency cases.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Description

Peconic Bay Medical Center (PBMC), a 140-bed, voluntary not-for-profit, Article 28 acute care hospital located at 1300 Roanoke Avenue in Riverhead (Suffolk County), requests approval to certify Cardiac Catheterization-Adult Diagnostic, Electrophysiology (EP) and Percutaneous Cardiac Intervention (PCI) services, and construct a helipad and a cardiac catheterization suite. The proposed program will be operating with clinical oversight from Southside Hospital (Southside) in accordance with the terms of an executed clinical service agreement. Southside Hospital is a 321-bed, acute care hospital located at 301 East Main Street in Bay Shore (Suffolk County) that is a full-service cardiac surgery center and member of Northwell Health, Inc.

The project aims to improve patient access to high-quality, coordinated diagnostic cardiac catheterization and PCI procedures, for residents in eastern Suffolk County, improve cardiac health outcomes, and improve the continuity of care within one health system.

The proposed cardiac catheterization program will be located on-site at PBMC. PCMB is expanding its facility to construct the new cardiac catheterization/EP suite in the second floor of a new two-story addition. The first floor will contain shell space (for future expansion of the Emergency Department) and the second floor will contain two Cath/EP labs and shell space for a possible future Cath/EP lab, with the required support spaces. In addition, the hospital will construct two new connecting bridges to the facility, new elevators and stairs and the helipad will be relocated and enlarged.

The project will result in PBMC's operating certificate changing to add the following certified services:

- Cardiac Catheterization - Adult Diagnostic
- Cardiac Catheterization - Electrophysiology (EP)
- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and Cardiac Electrophysiology and they have assured the Department that their program will meet all of the requirements of 409.29(e)(1-3) and 409.29(e)(5).

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.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Clinical Services Agreement

The applicant has submitted an executed Clinical Services Agreement for Cardiac Surgery Center services and Cardiac Catheterization Laboratory services as follows:

Date:	December 22, 2015
Provider of Services	Southside Hospital located at 301 East Main Street, Bay Shore
Receiver of Services	Peconic Bay Medical Center located at 1300 Roanoke Avenue, Riverhead
Services rendered:	Southside Hospital will provide the following: back-up to laboratory patients who require Cardiac Surgery Center Services; quality improvement program; inclusion in Northwell's interventional database; training for personnel on the database; participate in a joint annual study on financial impact; involvement in research studies; and inclusions in registries and database; quality assurance activities; at least 10 meetings per year between health professionals; coverage in labs for 365 days per year, 24 hours per day and ongoing education and training.
Term:	Five years with a one-year renewal each year thereafter.

On January 15, 2016, PBMC joined Northwell Health, Inc. PBMC and Southside are members of Northwell Health, Inc., therefore there are no fees associated with the clinical services agreement.

This agreement will not take effect until PBMC receives CON approval by the New York State Department of Health to establish a cardiac catheterization laboratory program.

Total Project Cost and Financing

Total project costs, inclusive of shell space, is \$42,791,898. The Bureau of Architectural and Engineering Review has determined that this project includes shell space costs of \$1,766,523 for future expansion. As a result, the total approved Article 28 project cost for Medicaid reimbursement purposes shall be limited to \$41,025,375 until such time that the shell space is approved for Article 28 use (under a future CON) by the Department. The applicant is funding 100% of the shell space cost with equity.

Total project costs for new construction, renovations and the acquisition of fixed and moveable equipment are broken down as follows:

	<u>Current Article 28</u>	<u>Shell Space</u>	<u>Inclusive Total</u>
New Construction	\$17,515,000	\$1,313,400	\$18,828,400
Renovation & Demolition	2,299,100	0	2,299,100
Site Development	1,200,000	0	1,200,000
Design Contingency	2,101,410	131,340	2,232,750
Construction Contingency	1,225,660	65,670	1,291,330
Fixed Equipment	630,423	39,402	669,825
Planning Consultant Fees	1,681,128	105,072	1,786,200
Architect/Engineering Fees	1,027,914	45,969	1,073,883
Construction Manager Fees	1,050,705	65,670	1,116,375
Movable Equipment	9,663,387	0	9,663,387
Telecommunications	445,000	0	445,000
Financing Costs	1,959,254	0	1,959,254
CON Application Fees	2,000	0	2,000
Additional Processing Fee	<u>224,394</u>	<u>0</u>	<u>224,394</u>
Total Project Cost	<u>\$41,025,375</u>	<u>\$1,766,523</u>	<u>\$42,791,898</u>

Project costs are based on a construction start date of a two-year construction period.

The applicant's financing plan appears as follows:

Equity	\$5,869,060
DASNY Tax-Exempt Bonds (30-year term @ 6.5%)	\$36,922,838

A letter of interest for the Bond financing has been submitted by the applicant from Citigroup.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
<u>Inpatient Revenues</u>		
Medicare	\$4,045,900	\$4,040,600
Medicaid	321,600	320,200
Commercial	4,065,700	4,057,500
Private Pay	<u>522,200</u>	<u>520,900</u>
Total Inpatient Revenue	\$8,956,400	\$8,939,200
<u>Outpatient Revenues</u>		
Medicare	\$646,800	\$676,300
Medicaid	26,800	28,000
Commercial	367,800	384,600
Private Pay	<u>45,300</u>	<u>47,200</u>
Total Outpatient Revenue	\$1,086,700	\$1,136,100
Total Revenues	\$10,043,100	\$10,075,300
<u>Inpatient Expenses</u>		
Operating	\$3,970,600	\$3,964,000
Capital	<u>4,136,100</u>	<u>4,084,400</u>
Total Inpatient Expenses	\$8,106,700	\$8,048,400
<u>Outpatient Expenses</u>		
Operating	\$931,700	\$958,800
Capital	<u>1,166,500</u>	<u>1,152,000</u>
Total Outpatient Expenses	\$2,098,200	\$2,110,800
Total Expenses	\$10,204,900	\$10,159,200
Excess/(Loss)	<u>(\$161,800)</u>	<u>(\$83,900)</u>
<u>Utilization</u>	<u>Year One</u>	<u>Year Three</u>
Total Inpatient Discharges	501	501
Total Outpatient Visits	136	142

Utilization by payor source for years one and three is as follows:

	<u>Inpatient</u>	<u>Outpatient</u>
Medicare	55.9%	56.0%
Commercial	23.9%	24.0%
Medicaid	5.8%	5.9%
Private Pay	14.4%	14.1%

Utilization and expense projections are based on the experience of Northwell hospitals providing cardiac catheterization services and the expected market share of cardiac catheterization services within the PBMC service area.

Capability and Feasibility

The project cost of \$42,791,898 (inclusive of shell space) will be met through \$5,869,060 in accumulated funds and the remaining \$36,922,838 through DASNY Tax-Exempt Bonds (30-year term @ 6.5%). BFA Attachment A is a financial summary for PBMC, which indicates the availability of sufficient funds.

The submitted budget indicates an incremental loss of revenues over expenses of \$161,800 and \$83,900 during the first and third years of operation, respectively. Northwell Health Care, Inc. has submitted a letter from the CFO of Northwell Health, Inc. stating that they will absorb the operational losses and support the PBMC Cardiac Cath Program. Revenues reflect current reimbursement methodologies for Cardiac Cath services. The budget appears reasonable.

As shown on BFA Attachment A, PBMC has maintained positive working capital and net asset positions, and had operating income of \$3,392,953 as of December 31, 2014. PBMC has shown a positive operating income of \$1,833,790 as of December 31, 2015.

As shown on BFA Attachment B, PBMC has maintained positive working capital and net asset positions, and shows \$815,000 excess of revenue over expenses after non-operating gains as of June 30, 2016.

Based on the preceding and subject to the noted contingency, the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Certified Financials, Peconic Bay Medical Center, 2014 and as of December 31, 2015
BFA Attachment B	Internal Financials, Peconic Bay Medical Center as of June 30, 2016
BFA Attachment C	Northwell Health, Inc. Organizational Chart
BHFP Attachment	Map



Project # 161168-C
Southampton Hospital

Program: Hospital
Purpose: Construction

County: Suffolk
Acknowledged: April 4, 2016

Executive Summary

Description

Southampton Hospital (SH) is a 125-bed, voluntary not-for-profit, Article 28 acute care hospital located at 240 Meeting House Lane, Southampton (Suffolk County), New York. The applicant requests approval to certify Adult Diagnostic, Electrophysiology (EP) and Percutaneous Coronary Intervention (PCI) Cardiac Catheterization services, and construct a cardiac catheterization laboratory. The availability of adult PCI and EP services onsite at SH is expected to improve access to cardiac care for residents of the semi-rural east end of Long Island. The proposed services would be operated under the oversight of Stony Brook University Hospital (SBUH) in accordance with the terms of an executed clinical service agreement. SH is in the final stages of completing an affiliation with SBUH in which the Article 28 license of SH is to be transferred to SBUH. The Public Health and Health Planning Council contingently approved CON 152083 to certify SH as a division of SBUH on December 10, 2015, and finalization is pending satisfaction of outstanding contingencies.

Approval of this application would bring essential cardiac services into the community for a patient population already served through the SBUH-SH system. SH, SBUH and their affiliates propose to deliver the requested cardiac services within the context of broad-based programs to promote cardiovascular health. This includes active participation in the Delivery System Reform Incentive Payment (DSRIP) Program, prevention and screening programs that target cardiac conditions and risk factors, and concerted efforts

to build primary care capacity in the targeted service area.

OPCHSM Recommendation
Disapproval on the basis of public need pursuant to Section 709.14 of Title 10 of NYCRR

Need Summary
Given discharge data and trends, one newly operational PCI program in the planning area can be expected to meet the minimum target of 200 procedures within two years of start-up as required by Section 709.14 without jeopardizing the required volume of 300 procedures at programs within one hour travel time. However, given the regulatory parameters, the planning area volume of procedures would not similarly support the addition of a second new PCI program. Therefore, with the recommendation of approval for the competitively reviewed Peconic Bay Medical Center, disapproval of this project is recommended on the basis of public need.

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 \$775,333 is proposed to be met with accumulated funds. The incremental Budget is as follows:

Table with 2 columns: Category (Revenues, Expenses, Gain(Loss)) and Amount (\$6,752,072, 4,240,883, \$2,511,189)

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 public need pursuant to Section 709.14 of Title 10 of NYCRR

Council Action Date

December 8, 2016

Need Analysis

Project Description

Peconic Bay Medical Center (PBMC), a 140 bed hospital located at 1300 Roanoke Ave., Riverhead, Suffolk County and Southampton Hospital (SH), a 125 bed hospital located at 240 Meeting House Lane, Southampton, Suffolk County both seek to add PCI-capable cardiac catheterization and electrophysiology (EP) laboratory services. Although there is need for PCI services on eastern Long Island, the geography, demography, and trend of PCI procedures of the region is such that only one of these two proposals can be approved, thus, a competitive review was performed.

Peconic Bay Medical Center's proposal is to construct a new two-laboratory adult PCI-cardiac catheterization/electrophysiology suite with two bridges to the facility and construct a new (relocated and enlarged) helipad. PBMC proposed an affiliation with Southside Hospital, part of the new Northwell Health Care Inc. system, as their cardiac surgery partner.

Southampton Hospital's project would add one onsite adult PCI-capable cardiac catheterization/electrophysiology laboratory. Southampton proposed an affiliation with University Hospital (Stony Brook) as their cardiac surgery partner.

Need Summary

Section 709.14 of Title 10 of NYCRR delineates the review criteria for public need of PCI Capable Cardiac Catheterization Laboratory Centers. Per the regulation, the planning area for determining the public need at hospitals with no cardiac surgery on-site is the area within a one hour average surface travel time.

Suffolk County Hospitals PCI Discharges - PCI Statistics by Hospital of Service					
Facility	2011	2012	2013	2014¹	2015²
Brookhaven Memorial Hospital Medical Center	0	0	19	303	358
Good Samaritan Hospital West Islip	700	629	665	951	1094
Huntington Hospital	257	306	517	538	555
Southside Hospital	572	615	766	683	767
St. Catherine of Siena Hospital	268	256	321	309	322
University Hospital (Stony Brook)	1,543	1,407	1,474	1,327	1515
Total	3,340	3,213	3,762	4,109	4,611
Year-over-Year Increases		(127)	549	347	502

Source: PCIRS

¹ Validation is essentially complete. These numbers are unlikely to change. Analysis is ongoing and expect report to be published within a few months.

² Substantial validation still to take place. There are likely to be some changes to the dataset.

PCI Centers distance from Peconic Bay Medical Center		
	Distance (miles)	Travel Time (minutes)
Brookhaven Memorial Hospital Medical Center	20.9	28
Good Samaritan Hospital West Islip	42.3	46
Huntington Hospital	44.6	55
Southside Hospital	36.9	43
St. Catherine of Siena Hospital	36.5	46
University Hospital (Stony Brook)	31.5	41

Source: Mapquest.com

PCI Centers distance from Southampton Hospital		
	Distance (miles)	Travel Time (minutes)
Brookhaven Memorial Hospital Medical Center	33.9	39
Good Samaritan Hospital West Islip	53.1	59
Huntington Hospital	59.9	74
Southside Hospital	49.1	56
St. Catherine of Siena Hospital	49.3	61
University Hospital (Stony Brook)	46.4	57

Source: Mapquest.com

Suffolk County's elderly population is expected to increase by 34.1 percent from 2015 to 2030, with populations in the North and South forks roughly comparable. Although statewide PCI discharges are decreasing overall, Suffolk County has seen a 23 percent increase in PCI procedures from 2011 to 2014.

As shown in the preceding tables, currently all of the facilities within a one hour travel time are performing greater than 300 annual PCI procedures. The two facilities with the lowest utilization, Brookhaven Memorial Hospital Medical Center and St. Catherine of Siena Hospital, continue to trend upward, along with all of Suffolk County. Additionally, Year-over-Year increases for the current providers averaged 318 additional cases per year from 2012 through 2015. However, for the general service area for the two proposals, the number of PCI procedures for the residents of the North Fork, the South Fork, and Central Eastern Long Island, has been dropping over the last three years, from 365 in 2013 to 312 in 2015.

Taken in their totality, these factors, including lengthy travel times, support the need for an additional PCI Capable Cardiac Catheterization Center in Suffolk County. However, the volume of PCI patients from the eastern Long Island area, while over 300 currently, is not enough to support two new programs or ensure that facilities within an hour travel time from the applicant locations can maintain the 300 procedure annual minimum prescribed in Section 709.14 of Title 10 of NYCRR with the addition of more than one new PCI facility.

Competitive Review

Given the need for only one new facility in the region, the two projects were reviewed competitively. On October 17, 2016, the Department presented both applications to an ad hoc group of the Cardiac Advisory Committee (CAC), an impartial advisory body comprised of renowned cardiac surgeons, cardiologists and related specialists, for clinical input. Committee members were asked to identify the strengths and weaknesses of the two proposals to assist the Department in determining if either project should be approved and, in the event both were deemed viable, which proposal was preferred. Reviewers noted that both proposals are attached to surgery-center affiliates with well-established programs and good outcomes.

Ultimately, the CAC cited three primary factors supporting an approval of PBMC's application over Southampton Hospital's:

- PBMC is more centrally located to serve residents of both the North and South forks of Long Island.
- PBMC is proposing to build two labs which would enable it to manage two simultaneous ST elevation MI (STEMI) cases or an emergent STEMI that presented during a scheduled case.
- PBMC is proposing to relocate and enlarge their helipad which would further improve timely access for emergency patients.

Conclusion

Given discharge data and trends, one newly operational PCI program in the planning area can be expected to meet the minimum target of 200 procedures within two years of start-up as required by Section 709.14 without jeopardizing the required volume of 300 procedures at programs within one hour travel time. However, given the regulatory parameters, the planning area volume of procedures would not similarly support the addition of a second new PCI program.

The Department of Health relies heavily on the expertise provided by the Cardiac Advisory Committee and agrees with its recommendation. The Department is recommending approval of the Peconic Bay Medical Center application based on PBMC's favorable location relative to the target population, the proposal for two labs allowing for the simultaneous treatment of emergency and elective cases and, the existence of a helipad for more expeditious transport of emergency cases.

With a recommendation of approval for Peconic Bay Medical Center, the need in the region is considered met, precipitating a recommendation of disapproval on the basis of public need for the Southampton Hospital application.

Recommendation

From a need perspective, Disapproval on the basis of public need pursuant to Section 709.14 of Title 10 of NYCRR is recommended.

Program Analysis

Project Description

Southampton Hospital (SH), a 125-bed, voluntary not-for-profit, Article 28 acute care hospital located at 240 Meeting House Lane in Southampton (Suffolk County), requests approval to certify Cardiac Catheterization-Adult Diagnostic, Electrophysiology (EP) and Percutaneous Cardiac Intervention (PCI) services, and construct an adult PCI capable cardiac catheterization and electrophysiology lab. The proposed program will operate with clinical oversight from Stony Brook University Hospital (SBUH) in accordance with the terms of an executed clinical service agreement. Stony Brook University Hospital is a 603-bed, academic tertiary care facility and Level I trauma center located at Health Sciences Center SUNY in Stony Brook (Suffolk County) that is a full-service cardiac surgery provider.

Southampton Hospital is a participant in the SBUH-led Delivery System Reform Incentive Payment (DSRIP) project to address cardiovascular disease in the region. Suffolk County's congestive heart failure (CHF) mortality rate and hospitalization rates exceed NYS rates in every disease category—cardiovascular disease, diseases of the heart, coronary disease, heart attack, congestive heart failure, strokes and hypertension. The proposal aims to enhance the quality of and access to care for cardiac patients on the east end of Long Island.

Southampton will renovate its existing first floor Class C Hybrid operating room and upgrade equipment with new advanced software. Staffing is expected to increase by 15.7 FTEs in the first year after completion and remain at that level through the third year of operation.

The project will result in SH's operating certificate changing to add the following certified services:

- Cardiac Catheterization - Adult Diagnostic
- Cardiac Catheterization - Electrophysiology (EP)
- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and Cardiac Electrophysiology (EP) and they have assured the Department that their program will meet all of the requirements of 405.29(e)(1-3) and 405.29(e)(5).

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.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment is estimated at \$775,333, broken down as follows:

Renovation & Demolition	\$5,000
Design Contingency	500
Construction Contingency	500
Movable Equipment	763,103
CON Application Fee	2,000
Additional Processing Fee	4,230
Total Project Cost	<u>\$775,333</u>

Project costs are based on a two-month construction period. The applicant proposes to finance the total project cost through accumulated funds of Southampton Hospital.

Incremental Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
<u>Inpatient Revenues</u>		
Medicare	\$1,759,886	\$1,759,886
Medicaid	157,856	157,856
Commercial	794,442	794,442
Private Pay	<u>5,812</u>	<u>5,812</u>
Total Inpatient Revenue	\$2,717,996	\$2,717,996
<u>Outpatient Revenues</u>		
Medicare	\$2,509,906	\$2,509,906
Medicaid	507,554	507,554
Commercial	<u>1,016,616</u>	<u>1,016,616</u>
Total Outpatient Revenue	\$4,034,076	\$4,034,076
Total Revenues	\$6,752,072	\$6,752,072
<u>Inpatient Expenses</u>		
Operating	\$1,102,831	\$1,101,965
Capital	<u>19,307</u>	<u>38,615</u>
Total Inpatient Expenses	\$1,122,138	\$1,140,580
<u>Outpatient Expenses</u>		
Operating	\$2,997,695	\$2,995,341
Capital	<u>52,481</u>	<u>104,962</u>
Total Outpatient Expenses	\$3,050,176	\$3,100,303
Total Expenses	\$4,172,314	\$4,240,883
Gain/(Loss)	<u>\$2,579,758</u>	<u>\$2,511,189</u>

<u>Utilization</u>	<u>Year One</u>	<u>Year Three</u>
Total Inpatient Discharges	160	160
Total Outpatient Visits	359	359

Utilization by payor source for years one and three is as follows:

	<u>Inpatient</u>	<u>Outpatient</u>
Medicare	64.8%	62.2%
Commercial	29.2%	25.2%
Medicaid	5.8%	12.6%
Private Pay	0.2%	0.0%

Utilization, revenue and expense projections are based on the current cases seen at SBUH related to the service area and target market.

Capability and Feasibility

The project cost, \$775,333 is proposed to be met through accumulated funds. BFA Attachment A is a financial summary for Southampton Hospital Association and Affiliates, which indicates the availability of sufficient funds.

The submitted incremental budget indicates an excess of revenues over expenses of \$2,579,758 and \$2,511,189 during the first and third years of operation, respectively. Revenues reflect current reimbursement methodologies for the services. The budget appears reasonable.

BFA Attachment A presents the 2014 and 2015 certified financial statements of the Southampton Hospital Association and Affiliates. The Hospital had a positive working capital position, net asset position and net operating revenues of \$126,653 and \$4,903,227 for 2015 and 2014, respectively.

BFA Attachment B presents the internal financial statements of the Southampton Hospital Association and Affiliates as of June 30, 2016. As shown, the Hospital had a positive working capital position, net asset position and shows \$743,021 excess of revenue over expenses after non-operating gains.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BHFP Attachment	Map
BFA Attachment A	Financial Summary, Southampton Hospital 2014-2015
BFA Attachment B	Financial Summary, Southampton Hospital internal financial statements as of June 30, 2016



**Project # 161464-E
Massena Memorial Hospital**

**Program: Hospital
Purpose: Establishment**

**County: St. Lawrence
Acknowledged: June 29, 2016**

Executive Summary

Description

Massena Memorial Hospital, Inc. (MMH), a to-be-formed, not-for-profit (NFP) corporation, requests approval to be established as the new operator of Massena Memorial Hospital (the Hospital), a 50-bed, public municipal, acute care hospital located at 1 Hospital Drive, Massena (St. Lawrence County). The Hospital is currently owned and operated by the Town of Massena, and is accounted for as an enterprise fund distinct from the general fund of the Town. The Hospital also operates four extension clinics located in the towns of Brasher Falls, Massena, and Norfolk. The facility has Sole Community Hospital designation and is a Safety-Net Hospital under DSRIP program requirements.

A draft Asset Transfer Agreement (ATA) detailing the terms of conversion from a public municipality to NFP governance structure has been submitted, which provides for the transfer of all of the Hospital's assets, including the real property, and the assignment and assumption of all liabilities and obligations relating to the Hospital prior to closing. The ATA provides that consideration for the transfer of assets and assumption of liabilities shall be determined and agreed upon by Transferor and Transferee prior to closing based upon a fair market valuation of the assets and liabilities at that time. The transfer will not result in any change to beds or services, or result in any reduction of workforce/medical staff. There will be no change in the daily operations of the Hospital.

The applicant indicated that the purpose of this conversion is to strengthen health care delivery in Massena and the surrounding region. As a

municipal facility, the Hospital is limited and restricted from responding to changes in Federal, State and local environmental influences, which impacts their ability to maintain and grow hospital and medical care services. Conversion to a NFP will allow for participation in joint ventures, partnerships and affiliations, as well as relieve taxpayers of the responsibility of debt incurred by the current facility. The transfer will allow the hospital to cease participation in the New York State Civil Service Retirement System, allowing MMH to renegotiate labor contracts with the intent of revising both the health insurance and pension provisions.

The Hospital has received Vital Access Provider Assurance Program (VAPAP) funding of \$3.2 million and has been awarded \$5.8 million under the Essential Health Care Provider Support Program (EHCPSP) grant for debt retirement. The EHCPSP funding is intended to further the Hospital's transformation plan, which encompasses this conversion from municipal to a NFP governance structure. It is anticipated that the conversion will provide the Hospital with a path to financial sustainability and potentially lead toward an affiliation with larger medical facilities and/or systems.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

Massena Memorial Hospital is a designated safety-net provider and the sole community hospital serving Massena and nearby communities. Inpatient occupancy has declined

from 55.5% in 2011 to 33.8% in 2015 and the Hospital is struggling financially. This project would pave the way for future association agreements by converting the hospital into an independent not-for-profit company. This conversion will free the hospital to focus on improving its financial situation and expanding needed services to the community.

No changes to the certified beds or services offered by the Hospital are being proposed. Although this project does not directly address utilization issues at the Hospital, it is expected that this will be addressed as part of the Hospital's continued transformation.

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 currently identified acquisition price associated with this project. Consideration for the transfer of assets and assumption of liabilities will be determined and agreed upon prior to closing based upon a fair market valuation. The applicant has indicated that there will be approximately \$460,000 in conversion expenses (CON development, valuation services and legal fees) that will be paid for out of operating funds. The budget is as follows:

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$50,211,888	\$50,211,888
Expenses	<u>49,387,872</u>	<u>47,618,160</u>
Net Income	\$824,016	\$2,593,728

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Asset Transfer Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's executed Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's executed bylaws, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed Asset Purchase Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

December 8, 2016

Need Analysis

Project Description

Massena Memorial Hospital (the Hospital) is a 50-bed inpatient facility located at 1 Hospital Drive, Massena, 13662, in Saint Lawrence County. The Hospital is owned and operated by the Town of Massena (the Town), a public municipality. The Town is proposing to convert the Hospital into an independent non-profit. This project would establish Massena Memorial Hospital, Inc., a new not-for-profit corporation, as the sole owner and operator of Massena Memorial Hospital.

Analysis

This proposal has no impact on the number of certified beds or services at the Hospital, which are provided below for background.

Bed Type	Bed Count
Coronary Care	2
Intensive Care	2
Maternity	3
Medical/Surgical	43
Total	50

Source: HFIS, 2016

- Ambulatory Surgery - Multi Specialty
- Clinic Part Time Services
- Clinical Laboratory Service
- Coronary Care
- Emergency Department
- Intensive Care
- Level I Perinatal Care
- Lithotripsy
- Maternity
- Medical Services - Other Medical Specialties
- Medical Services - Primary Care
- Medical Social Services
- Medical/Surgical
- Nuclear Medicine - Diagnostic
- Radiology - Diagnostic
- Renal Dialysis - Acute
- SAFE Center
- Therapy - Occupational O/P

Massena Memorial Hospital is a safety-net provider and has sole community hospital status. It is located within Saint Lawrence County, a large and sparsely-populated region of the State. The Hospital is 21 miles and 29 minutes, without traffic, from the next nearest inpatient facility. This relative isolation means that this Hospital plays a critical role in providing care to the region. This project will enable the Hospital to more efficiently focus on this key role. It will improve the financial position of the Hospital and allow it to seek affiliations and take initiatives to expand inpatient and other services.

Conclusion

It is expected that converting Massena Memorial Hospital into an independent non-profit will benefit the Hospital significantly. Financial benefits related to losing the municipality status will enable the Hospital to stabilize and focus on expanding services and improving utilization, namely by recruiting physicians and focusing on affiliation with a larger hospital system. All this will help to ensure the continued availability of care from this safety net institution.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Massena Memorial Hospital, Inc. (MMH), a to-be-formed not-for-profit corporation, seeks approval to convert sponsorship from a municipal corporate structure to a not-for-profit governance structure for Massena Memorial Hospital, an existing 50 bed hospital located at 1 Hospital Drive in Massena (St. Lawrence County). Conversion to not-for-profit status will allow participation in joint ventures, partnerships and affiliations, thus strengthening health care delivery in Massena and the surrounding Northern St. Lawrence County region.

The Hospital is currently owned and operated by the Town of Massena and is accounted for as an enterprise fund distinct from the general fund of the town. As a municipal facility, the Hospital is limited and restricted from responding to the impacts of changes in Federal, State and local environmental influences on maintaining and growing a hospital and medical care services. The change in governance structure provides MMH a path to financial permanence through expansion of needed community services, opportunities to increase profitability through joint venture opportunities, full participation in value based purchasing opportunities available in the Medicare and Medicaid programs, and potential participation/affiliation with larger medical facilities and or systems.

No change in authorized services or the number or type of beds are proposed in this project.

Character and Competence

Character and Competence Reviews were conducted on the proposed Directors of Massena Memorial Hospital, Inc. as listed below:

Bedros Bakirtzian, M.D.	Edward T. Hamel
Susan J. Bellor	John J. Horan
Tina M. Buckley	David M. MacLennan
Real C. Coupal	Paul B. Morrow
Melanie A. Cunningham	Steven D. O'Shaughnessy
Patrick M. Facticeau	Loretta B. Perez
Edward J. Fay	Scott A. Wilson
Joseph D. Gray	Robert G. Wolleben

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. Wolleben disclosed that, two months after he assumed the Chief Operating Officer position of a three-hospital system, the system filed a Chapter 11 petition. Mr. Wolleben stated the system was servicing its debt according to requirements, however, it did not meet the days cash on hand requirements of the original bond covenants and the bond holders and insurers were unwilling to negotiate to avoid the Chapter 11 filing. The debt restructuring concluded with the sale of the system and Mr. Wolleben was retained as CEO for a hospital within the system.

Mr. Gray disclosed that, as the Town Supervisor, civil suits have been filed against the town-owned hospital and several tax certiori actions challenging property tax assessments have been filed against the town. Mr. Gray noted some of these suits/actions have been settled and a number of them remain pending.

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.

<h2>Financial Analysis</h2>

Asset Transfer Agreement

The applicant has submitted a draft ATA detailing the transfer of the Hospitals assets and liabilities from the Town of Massena to Massena Memorial Hospital, Inc.

Transferor:	Town of Massena, New York
Transferee:	Massena Memorial Hospital, Inc. (to-be-formed organization)
Asset/Liabilities Acquired:	All assets and liabilities are being transferred. Assets include: real property used in the operation of the Hospital (land, buildings, other improvements); inventory and supplies; all furniture, fixtures, and equipment; all books and records relating to the Hospital; all rights and interests under contracts, leases, labor agreements and other legal documents; the patient medical records subject to the terms of the Patient Medical Records Transfer Agreement; all cash, cash equivalents and securities held in accounts relating to the Hospital; accounts receivable and prepaid expenses; all rights and benefits under all contracts, agreements, leases or instruments between Transferor and any third party; and the name, goodwill and intellectual property. At Closing, transferee will assume and be responsible for all liabilities and obligations relating to the Hospital prior to Closing.
Acquisition Price:	Consideration for the transfer of assets and assumption of liabilities will be determined and agreed upon by the parties prior to closing based upon a fair market valuation.
Conversion Cost:	Approximately \$460,000 to be paid from operations.

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

Operating Budget

The applicant has submitted an operating budget, in 2016/2017 dollars, during the first year subsequent to the change in operator, as summarized below:

	<u>Current Year</u>	<u>Year One</u>
<u>Inpatient Revenues</u>		
Commercial - Fee-For-Service	\$2,764,474	\$2,764,474
Medicaid - Fee-For-Service	2,527,731	2,527,731
Medicare - Fee-For-Service	8,027,077	8,027,077
Medicare - Managed Care	1,308,417	1,308,417
Private Pay/Other	<u>671,748</u>	<u>671,748</u>
Total Inpatient	\$15,299,447	\$15,299,447

	<u>Current Year</u>	<u>Year One</u>
<u>Outpatient Revenues</u>		
Commercial - Fee-For-Service	\$16,909,875	\$16,909,875
Medicaid - Fee-For-Service	6,352,850	6,352,850
Medicare - Fee-For-Service	5,817,726	5,817,726
Medicare - Managed Care	1,299,445	1,299,445
Private Pay/Other	<u>(3,882,014)</u>	<u>(3,882,014)</u>
Total Outpatient	\$26,497,882	\$26,497,882
Other Operating Revenue	8,691,943	8,691,943
Non-Operating Revenue	(277,384)	(277,384)
Total Revenue	\$50,211,888	\$50,211,888
<u>Expenses</u>		
Operating	46,519,791	45,005,791
Capital	<u>2,868,081</u>	<u>2,612,369</u>
Total	\$49,387,872	\$47,618,160
Net Income	<u>\$824,016</u>	<u>\$2,593,728</u>
Total Patient Days	2,352	2,352
Visits	121,142	121,142

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

<u>Inpatient</u>	<u>%</u>	<u>Outpatient</u>	<u>%</u>
Commercial FFS	20.28%	Commercial FFS	32.55%
Medicaid FFS	23.81%	Medicaid FFS	28.88%
Medicare FFS	39.33%	Medicare FFS	25.49%
Medicare MC	7.61%	Medicare MC	6.03%
Private Pay/Other	8.97%	Private Pay/Other	7.05%

There are no projected changes in utilization or revenue due to this project, and no change in the daily operations of the Hospital. Expenses will decrease due to the retirement of a Municipal Bond that will be defeased prior to conversion through the \$5.8 million EHCPSP grant funding. Retirement of this debt will reduce the Hospital's annual interest payments estimated at \$255,000 per year. In addition, an ultimate decrease in employee benefits costs is anticipated. The applicant has indicated that they are committed to having a substantially similar benefit and salary structure post-conversion, as these costs are determined by existing labor contracts. However, MMH intends to renegotiate these labor contracts with the intent of revising both the health insurance and pension provisions, which they project will save the Hospital approximately \$1.5 million annually.

Capability and Feasibility

BFA Attachment A is the 2014-2015 audited financial summary of Massena Memorial Hospital - a component unit of the Town of Massena, New York. As shown, the facility had an average positive working capital position and an average positive net asset position. In addition, the facility achieved an average net income of \$249,635 for the period shown.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Financial Summary-Massena Memorial Hospital - a component unit of the
Town of Massena, New York for audited periods 2014-2015

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 8th day of December, 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 Massena Memorial Hospital, Inc. as the new operator of the 50-bed hospital at 1 Hospital Drive, Massena, which is currently operated by the Town of Massena, 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:

161464 E

Massena Memorial Hospital

APPROVAL CONTINGENT UPON:

1. Submission of an executed Asset Transfer Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's executed Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's executed bylaws, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed Asset Purchase Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



**Project # 162011-B
Queens Surgical Center**

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment and Construction **Acknowledged:** July 8, 2016

Executive Summary

Description

Queens Surgical Center, LLC, an existing New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 Freestanding Ambulatory Surgery Center (FASC). The Center will be certified for Ambulatory Surgery – Multi-Specialty service, and will initially provide the following surgical specialties: General Surgery, OB/GYN, Gastroenterology, Urology, Pain Management and Orthopedics. The applicant will lease 7,010 gross square feet on the first floor of an existing building located at 36-36 Main Street, Flushing (Queens County). The Center will include two operating rooms and two procedure rooms, along with the requisite support areas.

Ownership of the operations is as follows:

<u>Proposed Operator</u>	
Queens Surgical Center, LLC	
<u>Members</u>	
OMP, LLC	72.00%
Brian Pun (100%)	
Fuqiang Zhang	6.25%
Xuebin Yin, M.D.	6.25%
Yadong Pan	12.50%
Huifang Xiao, M.D.	3.00%

Xuebin Yin, M.D., who is board-certified in Obstetrics and Gynecology, will be the Center's Medical Director.

OPCHSM Recommendation

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

Need Summary

Queens Surgical Center, LLC, proposes to establish a multi-specialty ambulatory surgery center in Queens County, providing General Surgery, Obstetrics/Gynecology, Urology, Gastroenterology, Pain Management and Orthopedic services. The number of projected procedures is 5,676 in Year 1 with Medicaid at 5% and charity care at 2%.

Program Summary

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

Financial Summary

Total project costs of \$5,107,710 will be met through members' equity of \$510,771, with the remaining \$4,596,939 to be financed over seven years at 4.5% interest. Investors Bank has provided a letter of interest at the stated terms. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,595,093	\$6,996,734
Expenses	<u>\$5,054,775</u>	<u>\$5,386,205</u>
Gain/(Loss)	\$1,540,318	\$1,610,529

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 Project Management Agreement, acceptable to the Department. [HSP]
6. Submission of a Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
8. Submission of an executed project loan commitment, acceptable to the Department of Health. (BFA)
9. Submission of a photocopy of the applicant's Amended and Restated Operating Agreement of acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended Project Management Agreement, acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant's amended Consulting and Administrative Service Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the Articles of Organization of QMP, LLC acceptable to the Department. [CSL]
13. Submission of a photocopy of the amended and executed Operating Agreement of OMP, LLC acceptable to the Department. [CSL]
14. Submission of the applicant's fully executed lease agreement, acceptable to the Department. [CSL]
15. Submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-03, for review approval. [DAS]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The 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 submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AER]
5. Construction must start on or before January 1, 2017 and construction must be completed by October 1, 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]
6. Submission of a photocopy of proof of the applicant's filing of the Restated Articles of Organization, acceptable to the Department. [CSL]

Council Action Date
December 8, 2016

Need Analysis

Background

Queens Surgical Center, LLC, an existing NY limited liability company, is seeking approval to establish and construct a freestanding ambulatory surgery center to provide multi-specialty services at 36-36 Main Street, Flushing, 11354, in Queens County.

Analysis

The service area consists of Queens County. Queens County has a total of 13 freestanding ambulatory surgery centers: seven multi-specialty ASCs and six single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in Queens County for 2014 and 2015.

ASC Type	Facility Name	Total Patient Visits	
		2014	2015
Multi	Choices Women's Medical Center Inc.	2,142	7,928
Single	Flushing Endoscopy Center, LLC	13,379	15,116
Multi	Gramercy Surgery Center, Inc. Queens (opened 4/6/15)	N/A	328
Multi	Hillside Diagnostic and Treatment Center, LLC	1,835	1,629
Single	Mason Eye Surgery Center (opened 3/25/15)	N/A	439
Multi	New York Surgery Center Queens, LLC	2,435	3,086
Multi	North Queens Surgical Center (opened 3/5/15)	N/A	527
Multi	Physicians Choice Surgicenter	622	644
Single	Queens Boulevard ASC, LLC	8,244	9,221
Single	Queens Endoscopy ASC, LLC	13,011	12,879
Multi	Queens Surgi-Center	7,424	6,220
Single	The Endoscopy Center of Queens (opened 3/21/16)	N/A	N/A
Single	The Mackool Eye Institute LLC	6,931	6,888
Totals		56,023	64,905

Source: SPARCS-2016

For all ambulatory surgery centers in Queens County, there was a 15.9% year-to-year increase in visits from 2014 to 2015. For the Multi-Specialty ASCs in the county, there was a 40.8% year-to-year increase.

The population of Queens County in 2010 was 2,230,722 with 862,706 individuals (38.7%) aged 45 and older. This is the primary population group utilizing ambulatory surgery services. Per Cornell Program on Applied Demographics projection data, this population group is estimated to grow to 967,591 by 2025 and represent 40.7% of the projected population of 2,378,066.

The number of projected procedures is 5,676 in Year 1 and 6,022 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years 1 and 3.

Projections-162011	Year 1		Year 3	
	Volume	%	Volume	%
Medicaid – MC	284	5%	301	5%
Medicare – FFS	284	5%	301	5%
Medicare – MC	1,135	20%	1,204	20%
Commercial – FFS	1,135	20%	1,204	20%
Commercial – MC	2,384	42%	2,529	42%
Self- Pay	56	1%	62	1%
Other	284	5%	301	5%
Charity Care	114	2%	120	2%
Total	5,676	100%	6,022	100%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Affinity, Fidelis, Healthfirst and Metro Plus. Upon approval of this project, the applicant plans to reach out to the following Federally Qualified Health Centers (FQHC's) in order to provide services to the underinsured: Joseph P Addabbo Family Health Center, William F Ryan Center and Urban Health Plan. Other outreach efforts include working with the Mt. Sinai Doctors Brooklyn Heights multi-specialty group practice to assist in providing retina services. The center's doctors are working with Manhattan Eye, Ear, & Throat Hospital and Northwell HealthPlex regarding providing primary ophthalmology and retina services once the center is operational.

Conclusion

Approval of this project will provide increased access to ambulatory surgery services for the communities of Queens County.

Recommendation

From a need perspective, contingent approval for a period of five years is recommended.

Program Analysis

Program Description

Queens Surgical Center, LLC seeks approval to establish and construct a multi- specialty ambulatory surgery center to be located at 36-36 Main Street, Flushing (Queens County) which will provide general surgery, obstetrics/gynecology, urology, gastroenterology, pain management and orthopedic surgical services.

This project will consolidate a number of participating physicians' separate private practices into a single, regulated Article 28 location with the aim of enhancing efficiency, access, and quality of care. Additionally, the consolidation will allow the operator to provide screening and other outreach programs to the community that are not currently feasible through member physicians' private practices.

Proposed Operator	Queens Surgical Center, LLC
Site Address	36-36 Main Street Flushing New York 11354 (Queens County)
Surgical Specialties	Multi-Specialty: General Surgery, Obstetrics/Gynecology, Urology, Gastroenterology, Pain Management and Orthopedics
Operating Rooms	2 (Class C)
Procedure Rooms	2
Hours of Operation	Monday through Friday from 6:00 am to 6:00 pm
Staffing (1st / 3rd Year)	16.50 FTEs / 17.25 FTEs
Medical Director	Xuebin Yin, M.D.
Emergency, In-Patient & Backup Support Services Agreement and Distance	Will be provided by NewYork-Presbyterian/Queens 2.3 miles / 8 minutes
On-call service	24/7 on-call service to connect patients to the facility's on-call physician during hours when the facility is closed.

Character and Competence

The members of Queens Surgical Center, LLC are:

<u>Name</u>	<u>Membership</u>
QMP, LLC	72.00%
Brian Pun (100%)	
Huifang Xiao, M.D.	3.00%
Xuebin Yin, M.D.	6.25%
Fuqiang Zhang	6.25%
Yadong Pan	12.50%

The proposed Center's ownership is comprised of four individual members and QMP, LLC. Two of the individual members, Drs. Huifang Xiao and Xuebin Yin, are practicing physicians who are board-certified in obstetrics and gynecology and plan to perform procedures at the Center. The remaining individual members are Mr. Fuqiang Zhang, a real estate attorney in private practice, and Mr. Yadong Pan, a licensed mortgage originator employed as a Senior Loan Officer at a full service mortgage banking entity. QMP, LLC is wholly owned by Brian Pun, a real estate broker who owns and operates a title abstract company.

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.

Integration with Community Resources

A list of physicians in close proximity to the proposed facility who are accepting new patients will be maintained and made available to any patient who does not have a primary care physician. The Applicant is committed to treating all patients on the basis of need, without discrimination, and will offer charity, reduced compensation, or uncompensated care.

The Center intends on utilizing an electronic medical record and integrating into a Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE). Additionally, it plans to seek AAAHC accreditation within two (2) years of becoming operational. The role it may play within the structure of an Accountable Care Organization or Medical Home is uncertain, however, the Center plans on investigating joining a local Performing Provider System (PPS), such as the New York Hospital Medical Center of Queens PPS.

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the proposed site, the terms of which are summarized below:

Date:	September 1, 2015
Premises:	7,010 sq. ft. on the first floor at 36-36 Main Street - Unit #1S, Flushing, NY 11354
Owner/Landlord:	3636 Main Realty, LLC
Lessee/Tenant:	Queens Surgical Center, LLC
Term:	Ending August 31, 2025. Plus (2) 5-year renewal term with a 3% yearly increase
Payment:	\$665,950 (\$95 per sq. ft.) with 3% yearly increase
Provisions:	Taxes, insurance utilities and maintenance

The applicant has provided an affidavit stating the lease is a non-arm length agreement as Brain Pun is a partial owner of both the landlord and applicant. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

Project Management Agreement

The applicant has submitted an executed project management agreement (PMA), the terms of which are summarized below:

Date:	August 12, 2014
Facility:	Queens Surgical Center, LLC
Contractor:	Facility Development & Management Consulting, LLC
Services Provided:	Assist applicant in develop of an operational FASC. Including: center planning, location, financing, insurance participation agreements, design and construction, staffing, meeting regulatory requirements, and support in developing operational and financial systems.
Term:	Until licensed by New York State
Fee:	Development Fee \$150,000 (\$35,000 paid at signing, \$9,000/month for 10 months, \$15,000 paid when licensed by NYS and \$10,000 upon Medicare certification)

Administrative Service Agreement

The applicant has submitted an executed administrative services agreement (ASA), the terms of which are summarized below:

Date:	May 23, 2016
Facility:	Queens Surgical Center, LLC
Contractor:	Facility Development & Management, LLC
Services Provided:	Assist the applicant's Governing Board in providing administrative services for all aspects of the Center. The services to include assistance with equipment, supplies, personnel, policies and procedures, quality assurance/utilization, negotiations, financial and ongoing regulatory requirements.
Term:	3 years – automatically renew for one (1) year
Fee:	1 st Year Fee \$370,000 2 nd Year Fee \$540,000 (4% increase each year after 2 nd year)

The services provider, Facility Development & Management, LLC, is owned by Edward Hetrick and Ellen Johnson who are unrelated to the applicant. Queens Surgical Center, LLC retains ultimate control in all of the final decisions associated with the services provided in the PMA and ASA agreements.

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment is estimated at \$5,107,710, broken down as follows:

Renovation & Demolition	\$2,183,615
Design Contingency	218,362
Construction Contingency	218,362
Architect/Engineering Fees	124,600
Other Fees	198,841
Movable Equipment	1,885,279
Telecommunications	84,958
Financing Costs	68,954
Interim Interest Expense	94,812
CON Application Fee	2,000
CON Processing Fee	<u>27,928</u>
Total Project Cost	\$5,107,710

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

The applicant's financing plan appears as follows:

Cash Equity (members)	\$510,771
Bank Loan (4.5% interest, 7-year term)	<u>4,596,939</u>
Total	\$5,107,710

Investors Bank has provided a letter of interest.

Operating Budget

The applicant has submitted the first and third year projected operating budgets, in 2016 dollars, as summarized below:

	Year One		Year Three	
	Per Proc	Total	Per Proc	Total
<u>Revenues</u>				
Medicaid - MC	\$741.50	\$210,587	\$742.23	\$223,412
Medicare - FFS	\$1,066.92	303,004	\$1,067.96	321,457
Medicare - MC	\$907.68	1,030,214	\$907.77	1,092,954
Commercial - FFS	\$1,548.39	1,757,423	\$1,548.55	1,864,451
Commercial - MC	\$1,334.54	3,181,542	1,334.64	3,375,298
Self-Pay	\$318.95	18,180	\$321.45	19,287
Other	\$331.49	<u>94,143</u>	\$331.81	<u>99,875</u>
Total Revenues		\$6,595,093		\$6,996,734
<u>Expenses</u>				
Operating	\$644.09	\$3,655,850	\$664.97	\$4,004,428
Capital	<u>\$246.46</u>	<u>1,398,925</u>	<u>\$229.45</u>	<u>1,381,777</u>
Total Expenses	\$890.55	\$5,054,775	\$894.42	\$5,386,205
Net Income (Loss)		<u>\$1,540,318</u>		<u>\$1,610,529</u>
Utilization		5,676		6,022
Cost Per Procedure		\$890.55		\$894.42

Mr. Brain Pun, sole member of OMP, LLC (the applicant's 72% proposed owner), has provided a letter committing to contributing up to \$500,000 of the first year's received profits to local community-based organizations, e.g., Charles B. Wang Community Center, Inc. According to the applicant, this philanthropic effort will be evaluated on an annual basis, in addition to serving the Medicaid population and providing Charity Care.

The following is noted with respect to the submitted FASC budget:

- The Ambulatory Patient Group reimbursement rates reflect current and projected Federal and State government rates, with commercial and private payors reflecting adjustments based on experience in the region.
- Revenues are based upon experience of similar FASCs in New York State.
- Expense assumptions are based upon the experience of the proposed members and participating surgeons, as well as the experience of other FASCs in NYS.
- Utilization assumptions are supported by letters from ten physicians who are board-certified in their respective fields. Two of these physicians are proposed members of the Center and eight physicians are non-members. The proposed operator is committed to providing 2% to charity care patients and 5% to Medicaid patients. Utilization by payor is based on the existing payor mix experienced by the participating surgeons.
- Breakeven is approximately 77% for Year One and Three.

Capability and Feasibility

Total project costs of \$5,107,710 will be met through members' equity of \$510,771, with the remaining \$4,596,939 to be financed at 4.5% interest over seven years. Investors Bank has provided a letter of interest at the stated terms.

The working capital requirement is estimated at \$897,701 based on two months of third year expenses. Funding will be as follows: \$448,851 from the members' equity with the remaining \$448,850 satisfied through a three-year loan at 5.5% interest. Investors Bank has provided a letter of interest. Review of BFA Attachment B, Queens Surgical Center, LLC pro forma balance sheet, shows operations will start with \$959,622 equity. BFA Attachment A reveals sufficient resources to meet all the equity requirements.

Queens Surgical Center, LLC projects an operating surplus of \$1,540,318 and \$1,610,529 in the first and third years of operation, respectively. The budget appears reasonable

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

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Surrounding Hospital Responses

The Department reached out to the following hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. As you can see, none of the hospitals contacted submitted a response.

New York-Presbyterian/Queens --- **No Response**

56-45 Main Street
Flushing, New York 11355

Flushing Hospital Medical Center --- **No Response**

4500 Parsons Boulevard
Flushing, New York 11355

Long Island Jewish Forest Hills --- **No Response**

102-01 66th Road
Forest Hills, New York 11375

Mount Sinai Beth Israel --- **No Response**
Fist Avenue at 16th Street
New York, New York 10003

Long Island Jewish Medical Center --- **No Response**
270-05 76th Avenue
New Hyde Park, New York 11040

New York Community Hospital of Brooklyn --- **No Response**
2525 Kings Highway
Brooklyn, New York 11229

Supplemental Information from Applicant

The Department reached out to the applicant requesting 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.

Need and Source of Cases: The applicant believes the Center address an unmet need in that the majority of the procdures are currently being performed in private physician offices. Additionally, due to the aging population the applicant believes the need will only increase in future years.

Staff Recruitment and Retention: To the extent possible, staff will be drawn from among the current staff of the office practices of the applicant physicians. Recruitment for any additional staff will be done through accredited schools, advertisements and traditional recruiting venues.

Office-Based Cases: The applicant estimates that 3,710 (or 65.4%) of the projected Year One procedures are currently be performed in an office-based setting. The remaining procedures (approximately 1,966) are currently being done in hospitals.

DOH Comment

In the absence of comments from hospitals in the area of the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

<h2>Attachments</h2>

- | | |
|------------------|--|
| BHFP Attachment | Map |
| BFA Attachment A | Queens Surgical Center, LLC members net worth summary |
| BFA Attachment B | Pro Forma Balance Sheet of Queens Surgical 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 8th day of December, 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 new multi-specialty ambulatory surgery center to be located at 36-36 Main Street, Flushing, 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:

162011 B

Queens Surgical 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 Project Management Agreement, acceptable to the Department. [HSP]
6. Submission of a Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)

8. Submission of an executed project loan commitment, acceptable to the Department of Health. (BFA)
9. Submission of a photocopy of the applicant's Amended and Restated Operating Agreement of acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended Project Management Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended Consulting and Administrative Service Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the Articles of Organization of QMP, LLC acceptable to the Department. [CSL]
13. Submission of a photocopy of the amended and executed Operating Agreement of OMP, LLC acceptable to the Department. [CSL]
14. Submission of the applicant's fully executed lease agreement, acceptable to the Department. [CSL]
15. Submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-03, for review approval. [DAS]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The 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 submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AER]
5. Construction must start on or before January 1, 2017 and construction must be completed by October 1, 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]
6. Submission of a photocopy of proof of the applicant's filing of the Restated Articles of Organization, acceptable to the Department. [CSL]

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 # 161431-E
Hudson Valley Regional Community Health Centers, Inc.

Program: Diagnostic and Treatment Center **County:** Putnam
Purpose: Establishment **Acknowledged:** September 22, 2016

Executive Summary

Description

Hudson Valley Regional Community Health Centers, Inc., a to-be-established voluntary not-for-profit corporation, requests approval to be established as the new operator of United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. (UCPA-PSDC), an Article 28 Diagnostic and Treatment Center (D&TC) located at 15 Mount Ebo Road South, Brewster (Putnam County). The applicant also requests approval to add an extension clinic at 301 Manchester Road in Poughkeepsie (Dutchess County). The applicant will provide primary and specialty medical care, mental health and dental services to the D&TCs current patients in Putnam and Dutchess Counties. In the future, they intend to expand to serve medically underserved populations in Westchester County. Their target population will be unserved and underserved patients with chronic health conditions, focusing on those with disabilities. They will partner with UCPA-PSDC, a not-for-profit health and rehabilitation service provider that has over 30 years of experience serving persons with developmental disabilities.

The applicant intends to file an application with HRSA's Bureau of Primary Care seeking FQHC designation for the two locations through a sub-grantee agreement with Hudson River Healthcare, Inc. (HRHC), an existing FQHC operating in Putnam, Dutchess and Westchester Counties. This collaboration will partner clinical and administrative resources through a management support services agreement and sub-recipient agreement, which will create

efficiencies of an integrated healthcare service network through shared resources.

OPCHSM Recommendation
Contingent Approval

Need Summary

The main site will continue to provide the following services: Medical Services - Primary Care, Medical Services - Other Medical Specialties and Dental O/P services. The extension clinic will provide the following services: Medical Services – Primary Care and Medical Services – Other Medical specialties. The combined number of projected visits is 11,087 in Year 1.

Program Summary

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

Financial Summary

The purchase price for the operations is \$351,392 and will be paid via a loan from UCPA-PSDC at an interest rate of prime (approximately 3.50%) for a ten-year term. The projected budget is as follows:

Revenues	\$2,893,129
Expenses	<u>2,834,038</u>
Gain/(Loss)	\$59,091

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Administrative Services Agreement and Employee Lease Agreement, acceptable to the Department. [HSP]
2. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc. and Hudson Valley Regional Community Health Centers, Inc. [BFA]
3. Submission of an executed loan commitment for the purchase price, that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed technical assistance contract agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
8. Submission of an executed lease rental agreement for the site located at 75 Mount Ebo Road, acceptable to the Department of Health. [BFA]
9. Submission of an executed lease rental agreement for the site located at 301 Manchester Road, acceptable to the Department of Health. [BFA]
10. Submission of a final grant approval letter from United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. to be used as a source of financing working capital, acceptable to the Department of Health. [BFA]
11. A photocopy of the By-laws of Hudson Valley Regional Community Health Centers, Inc., which is acceptable to the department. [CSL]
12. A photocopy of the Certificate of Incorporation of Hudson Valley Regional Community Health Centers, Inc., which is acceptable to the department. [CSL]
13. A photocopy of the Administrative Support Services and Employee Lease Agreement, which is acceptable to the department. [CSL]
14. A photocopy of the Sublease between United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. and Hudson Valley Regional Community Health Centers, Inc. which is acceptable to the department. [CSL]
15. A photocopy of the master lease between United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. and the owner of the health clinic building at 301 Manchester Road, Poughkeepsie, New York 12603, which is acceptable to the department. [CSL]
16. A photocopy of the lease agreement between United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. and Hudson Valley Regional Community Health Centers, Inc. for the lease of a portion of the premises located at 15 Mount Ebo Road, Brewster, New York 10509, which is acceptable to the department. [CSL]
17. A photocopy of a proposed Certificate of Assumed Name for the applicant to use the assumed name, Hudson Valley Regional Community Health Centers, Inc. - Putnam, which is acceptable to the department. [CSL]
18. A photocopy of a proposed Certificate of Assumed Name for the applicant to use the assumed name, Hudson Valley Regional Community Health Centers, Inc. - Dutchess, which is acceptable to the department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from other adjacent entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Submission of documentation of receipt of Health Resources and Services Administration Section 330 Grant funding (as a sub-grantee), acceptable to the Department of Health. [BFA]

Council Action Date

December 8, 2016

Need Analysis

Background

Hudson Valley Regional Community Health Centers, Inc., seeks approval to become the new operator of an existing diagnostic and treatment center (D&TC) located at 15 Mount Ebo Road South, Brewster, 10509, in Putnam County and to add an extension clinic located at 301 Manchester Road, Poughkeepsie, 12603, in Dutchess County.

Analysis

The service area for the diagnostic and treatment center is Putnam County. The population of Putnam County was 99,710 in 2010. Per the Cornell Program on Applied Demographics (PAD) projection data, the population of Putnam County is projected to grow by approximately 4% to 103,733 by 2025.

The service area for the extension clinic is Dutchess County. The population of Dutchess County was 297,488 in 2010. Per PAD projection data, the population of Dutchess County is projected to grow by approximately 6.3% to 316,091 by 2025.

Hudson Valley Regional Community Health Centers states it is compliant with HRSA Section 330 requirements to be designated as Federally Qualified Health Centers (FQHC) and a corresponding application will be filed with HRSA seeking designation of these two locations as a FQHC through a sub-recipient agreement with Hudson River Healthcare, Inc. (an existing FQHC). This application proposes to establish a network of D&TCs with FQHC designation to provide coordinated primary and specialty medical services for people with disabilities and co-morbid chronic health conditions throughout both Putnam and Dutchess Counties. Per HRSA, Poughkeepsie (Dutchess County) is designated as a Low Income Medically Underserved Population.

There are three freestanding diagnostic and treatment centers and eight extension clinics operating in Dutchess County that provide primary care and other medical specialties services.

The combined number of projected visits for both sites is 11,087 in Year 1 and 12,196 in Year 3 as shown in the table below.

<u>Facility</u>	<u>Year 1 Visits</u>	<u>Year 3 Visits</u>
D&TC (Putnam County)	9,401	10,341
Extension Clinic(Dutchess County)	<u>1,686</u>	<u>1,855</u>
Total	11,087	12,196

Conclusion

Approval of this proposed project will allow for the continued access to primary care and other medical specialty services for the communities within Putnam and Dutchess Counties.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Hudson Valley Regional Community Health Centers, Inc. seeks approval to become the new operator of an existing diagnostic and treatment center located at 15 Mount Ebo Road South in Brewster (Putnam County) that is currently operated by United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. (UCPA/PSD). In addition, the applicant seeks to add an extension clinic in nearby Dutchess County to be located at 301 Manchester Road in Poughkeepsie.

The primary purpose of this project is to improve services to current patients and to expand primary and specialty medical care, mental health and dental services for individuals with chronic health conditions, primarily those with disabilities.

The Applicant will partner and collaborate with UCPA/PSD, a not-for-profit provider of services and support for persons with disabilities. The Applicant also intends on filing a corresponding application to seek designation of its two locations as Federally Qualified Health Centers (FQHC) through a sub-recipient agreement with Hudson River Healthcare, Inc., an FQHC operating in Putnam and Dutchess Counties.

Upon approval, the two sites would be certified as follows:

Site	PFI	New Certified Services and Status
Hudson Valley Regional Community Health Centers, Inc. – Putnam 15 Mount Ebo Road South Brewster, NY 10509	3921	Medical Services – Primary Care Medical Services – Other Specialties Dental (Outpatient) Services <i>Shall be designated as the Main Site</i>
Hudson Valley Regional Community Health Centers, Inc. – Dutchess 301 Manchester Road Poughkeepsie, NY 12603	TBD	Medical Services – Primary Care Medical Services – Other Specialties <i>Shall be designated as an Extension Clinic</i>

Character and Competence

The proposed Board of Directors for Hudson Valley Regional Community Health Centers, Inc. will be comprised of the following individuals:

Howard Yager	Chairperson Designate, Board Member
Arun Agarwal, M.D.	Board Member
Edwin Alvarez	Board Member – Patient Representative
Fergal Foley	Board Member
Kenneth M. Ford	Board Member – Patient Representative
Thomas Mandelkow	Board Member
Richard E. Parente	Board Member – Patient Representative
Julie T. Rotta	Board Member – Patient Representative
Rev. Christie Y. Smith	Board Member – Patient Representative

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

Dr. Agarwal disclosed one pending malpractice case.

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

Seller:	United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc.
Buyer:	Hudson Valley Regional Community Health Center, Inc.
Assets Transferred:	The buyer shall purchase the following assets: medical equipment, furniture and computer related equipment.
Assumed Liabilities:	The buyer shall assume any obligation or liabilities of the Seller.
Purchase Price:	\$351,392

The purchase price will be paid via a loan is from United Cerebral Palsy Association of Putnam and Southern Dutchess Counties. Inc., to be paid back at an interest rate of prime (approximately 3.50%) for a ten-year term.

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

Sub-Recipient Agreement

The applicant has submitted a draft sub-recipient agreement, which is summarized below:

Parties:	Hudson River Healthcare, Inc. (HRHCare) FQHC and Hudson Valley Regional Community Health Center, Inc. (Sub-Recipient)
Purpose:	This agreement is a sub-award of US Department of Health and Human Services HSRA grant funds awarded by HRHCare to Sub-Recipient. It is a cost reimbursement agreement pursuant to which HRHCare will pay Sub-Recipient for certain actual and allowable costs incurred in delivering the required services.
Services Provided:	Primary medical care, gynecological services, behavioral health, dental services, rehabilitative services, non-surgical eye care, podiatry, nursing and medical rehabilitation.
Fee:	HRHCare shall pay Sub-Recipient in consideration of performing the required services, a total amount not to exceed \$75,000 per year.
Term:	Three years with one three-year project period.

Technical Assistance Contract

The applicant has submitted a draft technical assistance contract, summarized below:

Purpose:	Provide technical assistance and training services.
Facility:	Hudson Valley Regional Community Health Centers, Inc. (HVR Community Health Centers, Inc.)
Contractor:	Solutions 4 Community Health.
Services Provided:	Technical assistance with the following: development of a quality improvement plan and quality measurement initiatives; assistance in the eClinical/Works (eCW) electronic medical records software's meaningful use standards compliance; assessment of feasibility, assistance in development of a joint commission compliance plan; assistance in the development of a Medicare "medical time" recognition plan; training for providers and clinical staff, consultation with FQHC standards and compliance and Uniform Data Set reporting and consultation and collaborating on health center and service development.
Term	From the Effective Date until terminated. Either party may terminate this Agreement upon thirty days prior written notice to the other.
Compensation:	\$100,000 per year

Administrative and Support Services Employee Lease Agreement

The applicant has submitted a draft administrative support services and employee lease agreement, which is summarized below:

Facility:	Hudson Valley Regional Community Health Centers, Inc.
Contractor:	United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc.
Services Provided:	Payment of all payroll related legal obligations, including payroll withholding taxes and other obligations related to employment and benefits, maintain all books of account, submit, post and maintain all patient account records from all payment sources, prepare and publish financial statements on a periodic basis, assemble and compile all regulatory report filing with State, local and Federal entities or as required by any of HVR Community Health Centers contract obligations, including providing UDS data to Urban Health Plan, arrange and service all types of insurance as required, prepare required information for HVR Community Health Centers accounting firm to file all required tax returns and prepare annual financial statements, administer all employee health and welfare plans, provide necessary IT infrastructure/network for information and transaction processing, provide any and all essential management support assistance necessary to ensure financial stability and efficient clinical operations. The Contractor shall furnish to HVR Community Health Centers persons to fill various administrative, clerical and other support services.
Term:	Five years with a five-year renewal period.
Compensation:	\$140,378 annually

Lease Rental Agreement

The applicant has provided a draft lease rental agreement for the 15 Mount Ebo Road, Brewster, New York site and a draft sublease agreement for the 301 Manchester Road, Poughkeepsie, New York site, which is summarized below:

15 Mount Ebo Road, Brewster Site:

Premises:	6,529 square feet of the premises located at 15 Mount Ebo, Brewster, New York.
Lessor:	United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc.
Lessee:	Hudson Valley Regional Community Health Centers, Inc.
Rental:	\$228,515 (\$35.00 per sq. ft.) in Year One with a 3% increase each year.
Term:	10 years
Provisions:	The lessee shall be responsible for insurance, repairs and utilities.

301 Manchester Road (Sublease):

Premises:	3,878 square feet located at 301 Manchester Road, Poughkeepsie, New York.
Sublessor:	United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc.
Sublessee:	Hudson Valley Regional Community Health Center, Inc.
Rental:	\$124,096 (\$32.00 per sq. ft.) with a 3% increase each year.
Term:	10 years
Provisions:	The sublessee shall be responsible for insurance, repairs and utilities.

Operating Budget

The applicant has submitted an operating budget, in 2016 dollars (based on FQHC rates), for the first and third years after the change in operator, summarized below:

	<u>Current Year</u>			<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	
<u>Revenues</u>							
Medicare	\$80.51	\$345,479	\$133.62	\$66,676	\$133.62	\$74,091	
Medicare/coinsurance		NA	33.40	16,669	33.40	18,523	
Medicare/Medicaid		NA	235.32	1,968,900	235.32	2,187,519	
Medicaid	255.76	1,250,409	235.32	400,510	235.32	440,514	
Commercial	90.75	63,343	153.04	31,895	153.04	35,199	
Self-Pay	34.91	3,491	60.51	18,757	60.51	20,633	
Other*		NA		116,650		116,650	
Total Revenues		\$1,662,722		\$2,620,057		\$2,893,129	
<u>Expenses</u>							
Operating	\$161.32	\$1,609,647	\$213.43	\$2,366,350	\$197.20	\$2,405,057	
Capital	53.68	535,580	37.70	428,981	35.17	428,981	
Total Expenses	\$215.00	\$2,145,227	\$251.13	\$2,795,331	\$232.37	\$2,834,038	
Gain/(Loss)		<u>(\$482,505)</u>		<u>(\$175,274)</u>		<u>\$59,091</u>	
Utilization (Visits)		9,978		11,087		12,196	
Cost Per Visit		\$215.00		\$252.13		\$232.37	

* Other consists of \$75,000 in HRSA Section 330 grant funding (as a sub-recipient) and \$41,650 in Meaningful Use funds.

Expense and utilization assumptions are based on the current actual UCPA Clinic experience. The first year loss will be covered from working capital.

Utilization, broken down by payor source, during the current (2015), first and third years, are as follows:

	<u>Current (2015)</u>	<u>Year One and Three</u>
Commercial	7.00%	1.88%
Medicare	43.00%	79.97%
Medicaid	49.00%	15.35%
Private Pay	1.00%	2.80%

The applicant provided a sensitized budget assuming revenues if the facility is does not become a FQHC:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,686,087	\$2,001,496
Expenses	1,883,439	1,943,433
Gains/(Loss)	(\$197,352)	\$58,063

The projected revenues in the sensitized budget are based on the current average payment rate experience of the facility per Medicare's 2016 PPS rate (\$133.62), Medicaid's APG rate (\$133.00), Commercial (\$153.04) and Uninsured/Self-Pay (\$60.51). Expenses have been reduced to eliminate rental payments and administrative and management services fee payments to UCPA-PSDC that would be suspended to ensure the continuing delivery of quality care. The Chairman of the UCPA-PSDC Board

has provided a letter attesting that if the new D&TC does not achieve federal FQHC designation, lease rental payments and administrative and management services fees will be suspended to remedy losses. The suspended payments would remain in effect until the D&TC develops an operating plan with future financial sustainability.

Capability and Feasibility

The purchase price for the operations is \$351,392. The purchase price will be paid via a loan from UCPA-PSDC at an interest rate of prime (approximately 3.50%) for a ten-year term.

Working capital requirements are estimated at \$472,340 based on two months of third year expenses. The applicant will finance \$236,170 via a loan from UCPA-PSDC at an interest rate of prime (approximately 3.50%) for a five-year term. The remaining \$236,170 will be in the form of grant funding from UCPA-PSDC. BFA Attachment A is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$236,185.

The submitted budget projects an excess of revenues over expenses of (\$175,274) and \$59,091 during the first and third years after the change in ownership. The first year loss will be offset from their working capital funds. Revenues reflect current reimbursement methodologies for diagnostic and treatment services that have FQHC status. The applicant submitted a sensitized budget that includes revenues not associated with a FQHC status. The sensitized budget projects an excess of revenues over expenses of (\$197,352) and \$58,063 during the first and third years, respectively.

BFA Attachment B is the 2014 and 2015 certified financial statements for United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. As shown, the entity had an average negative working capital position and an average positive net asset position from 2014 through 2015. Also, the entity incurred an average operating loss of \$318,213 from 2014 through 2015. The applicant indicated that the reason for the losses is due to reimbursement rates that are insufficient to support the higher intensity care required by people with disabilities. The facility has been working to increase clinical efficiency and billing cycles, but has been unable to make up for the inadequacy of the rates for the specialized services they provide.

BFA Attachment C is the internal financial statements of United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. as of September 31, 2016. As shown, the entity had a negative working capital position and a positive fund balance through September 31, 2016. Also, the entity achieved an excess of revenues over expenses of \$114,207 through September 31, 2016.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Pro Forma Balance Sheet
BFA Attachment B	Financial Summary- 2014 and 2015 certified financial statements of United Cerebral and Palsy Association of Putnam and Southern Dutchess Counties, Inc.
BFA Attachment C	Financial Summary- September 31, 2016 internal financial statements of United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc.
BHFP 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 8th day of December, 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 for an indefinite life for CON #111502, 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:

161431 E

FACILITY/APPLICANT:

Hudson Valley Regional Community Health
Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement and Employee Lease Agreement, acceptable to the Department. [HSP]
2. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc. and Hudson Valley Regional Community Health Centers, Inc. [BFA]
3. Submission of an executed loan commitment for the purchase price, that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed technical assistance contract agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
8. Submission of an executed lease rental agreement for the site located at 75 Mount Ebo Road, acceptable to the Department of Health. [BFA]
9. Submission of an executed lease rental agreement for the site located at 301 Manchester Road, acceptable to the Department of Health. [BFA]
10. Submission of a final grant approval letter from United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. to be used as a source of financing working capital, acceptable to the Department of Health. [BFA]
11. A photocopy of the By-laws of Hudson Valley Regional Community Health Centers, Inc., which is acceptable to the department. [CSL]
12. A photocopy of the Certificate of Incorporation of Hudson Valley Regional Community Health Centers, Inc., which is acceptable to the department. [CSL]
13. A photocopy of the Administrative Support Services and Employee Lease Agreement, which is acceptable to the department. [CSL]
14. A photocopy of the Sublease between United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. and Hudson Valley Regional Community Health Centers, Inc. which is acceptable to the department. [CSL]
15. A photocopy of the master lease between United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. and the owner of the health clinic building at 301Manchester Road, Poughkeepsie, New York 12603, which is acceptable to the department. [CSL]
16. A photocopy of the lease agreement between United Cerebral Palsy Association of Putnam and Southern Dutchess Counties, Inc. and Hudson Valley Regional Community Health Centers, Inc. for the lease of a portion of the premises located at 15 Mount Ebo Road, Brewster, New York 10509, which is acceptable to the department. [CSL]
17. A photocopy of a proposed Certificate of Assumed Name for the applicant to use the assumed name, Hudson Valley Regional Community Health Centers, Inc. - Putnam, which is acceptable to the department. [CSL]

18. A photocopy of a proposed Certificate of Assumed Name for the applicant to use the assumed name, Hudson Valley Regional Community Health Centers, Inc. - Dutchess, which is acceptable to the department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from other adjacent entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Submission of documentation of receipt of Health Resources and Services Administration Section 330 Grant funding (as a sub-grantee), acceptable to the Department of Health. [BFA]

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 # 162209-E
Bedford Medical Family Health Center Inc**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** September 14, 2016

Executive Summary

Description

Bedford Medical Family Health Center, Inc. is a proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 100 Ross Street, Brooklyn (Kings County). The facility's sole shareholder, Peter Ruzohorsky, M.D., requests approval to transfer 98 shares (49% ownership interest) to his daughter Ariella Ritvo as a gift. The transaction will be effectuated subject to the terms and conditions set forth in the executed Stock Conveyance Agreement. Ms. Ritvo has served as the Administrator of the D&TC for more than 15 years and will continue to run the facility's day-to-day operations. There will be no change in services provided.

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

<u>Current Ownership</u>		
<u>Stockholder</u>	<u>Shares</u>	<u>%</u>
Peter Ruzohorsky, M.D	200	100%

<u>Proposed Ownership</u>		
<u>Stockholders</u>	<u>Shares</u>	<u>%</u>
Peter Ruzohorsky, M.D	102	51%
Ariella Ritvo	98	49%
Total	200	100%

**OPCHSM Recommendation
Contingent Approval**

Need Summary
There is no Need review for this project.

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

Financial Summary
There are no project costs and no purchase price associated with this transaction. No budget analysis was necessary as this is a transfer of 49% ownership interest in the RHCF via a gift from the sole shareholder, and the facility is not proposing to change its business model, which has historically been profitable.

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 By-Laws of Bedford Medical Family Health Center Inc., 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]

Council Action Date

December 8, 2016

Program Analysis

Program Description

Bedford Medical Family Health Center, Inc., an existing Article 28 Diagnostic and Treatment Center located at 100 Ross Street in Brooklyn (Kings County), requests approval to transfer 49% shareholder interest to one new shareholder.

Bedford Medical Family Health Center is located in a Section-8 building complex in Kings County, and has been providing services primarily to an Orthodox-Jewish, Yiddish-speaking community for over three decades. Peter Ruzohorsky, M.D., the existing sole shareholder of the Center will gift 98 shares to his daughter, Ariella Ritvo, to establish the next generation of ownership at the Center and ensure that the Center serves the community well into the future.

There are no staffing or programmatic changes anticipated as a result of this application.

Character and Competence

The table below details the proposed change in ownership:

<u>Members</u>	<u>Position</u>	<u>Current</u>	<u>Proposed</u>
Peter Ruzohorsky, M.D.	President	100%	51%
Ariella Ritvo	Vice Pres./ Secretary	----	49%

Ms. Ritvo serves as the Administrator of the Center, a position she has held for over 15 years and will continue to hold. She has considerable experience in the day-to-day operation of the Center, and commits to sustain the Center and enhance its future viability.

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.

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

Stock Conveyance Agreement

The applicant has submitted an executed Stock Conveyance Agreement to transfer shares of the Center. The terms are summarized below

Date:	June 22, 2016
Transferor:	Peter Ruzohorsky, M.D.
Transferee:	Ariella Ritvo
Stocks transferred:	98 shares (49% ownership interest)
Purchase Price:	\$0

Dr. Ruzohorsky has submitted an affidavit noting that he is gifting 98 shares to his daughter, Ariella Ritvo. The applicant also submitted stock certificates dated July 3, 2016 for both Peter Ruzohorsky and Ariella Ritvo noting the proposed transfer of shares. The stock certificates provide that no person shall own 10% or more of the stock of the corporation unless approved for such ownership by the Public Health and Health Planning Council.

Capability and Feasibility

There are no project costs or purchase price associated with this transaction. BFA Attachment A provides the personal net worth statement of Ariella Ritvo, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is a transfer of 49% ownership interest in the D&TC via gift from the sole shareholder, and the facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is the 2014-2015 certified financial summary of Bedford Medical Family Health Center, Inc. and internal financials as of June 30, 2016. As shown, the facility had negative net asset position and negative working capital in 2014. The 2014 negative working capital was due to Peter Ruzohorsky, M.D., the Center's sole shareholder, taking a cash distribution. This position was reversed in 2015 and 2016 showing a positive working capital position and a positive net asset position. Also, the facility achieved a net income for each of 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	Net Worth Statement of Proposed Member
BFA Attachment B	2014 – June 30, 2016 Financial Summary- Bedford Medical Family Health 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 8th day of December, 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 transfer 49% shareholder interest to a new shareholder of the existing diagnostic and treatment center located at 100 Ross Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162209 E

Bedford Medical Family Health Center Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the By-Laws of Bedford Medical Family Health Center Inc., 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]

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 # 161356-B
USRC Forest Hills, LLC d/b/a U.S. Renal Care Forest Hills Dialysis

Program: Diagnostic & Treatment Center
Purpose: Establishment and Construction
County: Queens
Acknowledged: May 26, 2016

Executive Summary

Description

USRC Forest Hills, LLC d/b/a U.S. Renal Care Forest Hills Dialysis, a New York limited liability company, requests approval to establish and construct a 24-station Article 28 end-stage renal dialysis (ESRD) center.

- U.S. Renal Care Williamsville Dialysis (13 stations).
U.S. Renal Care Pelham Parkway Dialysis (25 stations, acquired April 4, 2016); and
U.S. Renal Care South Flushing Dialysis (25 stations), acquired April 4, 2016).

Additionally, USRC's indirect ownership of DSI Dutchess Dialysis, Inc. (24 stations) was contingently approved under CON 152118 on December 14, 2015, and is pending final approval.

The proposed members of USRC Forest Hills, LLC are as follows:

USRC Forrest Hills, LLC

OPCHSM Recommendation
Contingent Approval

Table with 2 columns: Members and %. Includes USRC Alliance, LLC (51%), U.S. Renal Care, Inc. (100%), IHS Dialysis, Inc. (29%), Nelson Shaller (100%), Wei Yue Sun, M.D. (5%), Elizabeth Liang, M.D. (5%), Laurel Win Yap, M.D. (5%), Li Yang, M.D. (5%).

Need Summary

These new stations will provide needed access to ESRD services in Queens County. Upon project completion there will still be need of 93 stations.

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.

As of mid-June 2016, U.S. Renal Care, Inc. (USRC) operated 310 outpatient ESRD centers in 29 states and the Territory of Guam. In New York State (NYS), USRC has indirect ownership in the following ESRD centers:

- U.S. Renal Care Cheektowaga Dialysis (13 stations);
U.S. Renal Care Tonawanda Dialysis (13 stations);

Financial Summary

The total project cost of \$4,061,995 will be met with \$406,200 in members' equity and an intercompany loan from USRC for \$3,655,795 at the current prime rate plus 2% (8% maximum) and a five-year term starting at the end of the draw period (2nd anniversary of the facility's Medicare Certification).

The projected budget is as follows:

	<u>Year One</u>	<u>Year three</u>
Revenues	\$1,239,032	\$4,331,671
Expenses	<u>\$2,313,560</u>	<u>\$3,773,838</u>
Net Income	(\$1,074,528)	\$557,833

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON upon delivery. [PMU]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Medical Director agreement, acceptable to the Department. [HSP]
4. Submission of an executed Intercompany Loan, acceptable to the Department of Health. [BFA]
5. Submission of an executed Promissory Note, acceptable to the Department of Health. [BFA]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. (AER)
9. Submission of a photocopy of the applicant's amended and executed Medical Director's Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended and executed Amended and Restated Administrative Service Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed lease, demonstrating site control, acceptable to the Department. [CSL]
13. Submission of a photocopy of USRC's Authority to Do Business in the State of New York, acceptable to the Department. [CSL]
14. Submission of a photocopy of IHS Dialysis Inc.'s Authority to Do Business in the State of New York, 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. Construction must start on or before March 1, 2017 and construction must be completed by August 1, 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]
3. 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)

Council Action Date

December 8, 2016

Need Analysis

Project Description

USRC Forest Hills, LLC is seeking approval to establish and construct a 24-station chronic renal dialysis center in Forest Hills (Queens County). The proposed center will be located at 68-54 Austin Street, Forest Hills. The applicant plans to provide home peritoneal dialysis in addition to in-center treatments.

Analysis

The primary service area for the new facility will be Queens County, which had a population estimate of 2,339,150 for 2015. The percentage of the population aged 65 and over was 13.8%. The nonwhite population percentage was 51.3%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Queens County and New York State are shown below.

	Queens County	New York State
Ages 65 and Over	13.8%	15.0%
Nonwhite	51.3%	29.9%

Source: U.S. Census 2015

Need Projections

The Department's methodology to estimate capacity for chronic dialysis stations is as follows:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which 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 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.
- 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 and excludes hospital-based stations.
- There are currently 525 free-standing chronic dialysis stations operating in Queens County and 210 in pipeline for a total of 735.
- Based upon DOH methodology, the 735 existing free standing stations in Queens County could treat a total of 3,308 patients annually.

		Actual		Projected	
		2014	2016	2019	
Queens County Residents					
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 County¹	Total County Residents in Treatment¹
		3,741	3,834	4,337	4,190
Free-Standing Dialysis Stations		2014	2016	2019	
A	Stations Required to Treat ²	832	852	964	932
B	Existing Stations	525	525	525	525
C	Stations In Pipeline	210	210	210	210
D	Stations Requested this CON	24	24	24	24
E	w/Approval of This CON (B+C+D)	759	759	759	759
F	Unmet Need With Approval (A-E)	73	93	205	173

¹Based upon an estimated 3% accrued annual increase

²Based upon DOH methodology (total patients/4.5)

Estimates for need are provided for 2019 because it is expected that this facility will be fully utilized by that time. 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.

Conclusion

The addition of 24 stations will expand access to dialysis services for the people of Queens County, and will help address the shortage of stations in the County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

USRC Forest Hills, LLC, a limited liability company, requests approval to establish and construct a 24 station chronic renal dialysis center at 68-54 Austin Street, in Forest Hills (Queens County).

Proposed Operator	USRC Forest Hills, LLC
Doing Business As	U.S. Renal Care Forest Hills Queens
Site Address	68-54 Austin Street Forest Hills, NY 11375 (Queens County)
Approved Services	Chronic Renal Dialysis (24 Stations) Home Peritoneal Dialysis Training and Support
Shifts/Hours/Schedule	Initially, the Center will be open: Monday, Wednesday and Friday. When fully operational, it will be open: Monday through Saturday From 5:30 am through 11:00 pm
Staffing (1st Year / 3rd Year)	7.5 FTEs increasing by 12.5 FTEs by the third year of operation
Medical Director(s)	Elizabeth Liang, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by LIJ-Forest Hills Hospital 0.6 miles / 5 minutes away

Character and Competence

The proposed members of USRC Forest Hills, LLC and their ownership interests are as follows:

Name	Membership
US Renal Care, Inc.	51.0%
Stephen M. Pirri, <i>manager</i>	
Thomas L. Weinberg	
James D. Shelton, <i>manager</i>	
John C. Brengard, <i>manager</i>	
David Eldridge	
IHS Dialysis, Inc.	29.0%
Nelson C. Shaller (100%)	
Wei Yue Sun, MD, manager	5.0%
Elizabeth Liang, MD, manager & Medical Director	5.0%
Laurel Win Yap, MD	5.0%
Li Yang, MD	5.0%

Member Elizabeth Liang, MD, will serve as the Center's Medical Director. Dr. Liang completed a Nephrology Fellowship Albert Einstein College of Medicine and is board-certified in Internal Medicine with sub-certification in Nephrology. She has admitting privileges at LIJ-Forest Hills Medical Center, the identified back-up affiliate.

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

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

The officers of U.S. Renal Care (USRC) disclosed that U.S. Renal Care acquired Dialysis Corporation (DCA) in June 2010, however, in February 2010, DCA had been subpoenaed by the Office of the Inspector General of the U.S. Department of Health and Human Service (OIG) with respect to an investigation relating to alleged improper Medicare and Medicaid billing at certain DCA clinics. The investigation related to two qui tam suits with the Department of Justice and private litigants. USRC denied any impropriety or liability by DCA in both cases, but determined that it should settle those cases with the government and private litigants which it did in May 2013 and September 2014. Both suits have been dismissed. No non-DCA facilities owned by USRC were involved in the investigations and litigation.

On September 16, 2015, the Department issued a Stipulation and Order and a \$2,000 fine to IHS of New York, Inc. as operator of Pelham Parkway Dialysis Center for violations of Article 28 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR). As detailed in a Statement of Deficiencies issued in July 2015, the Department discovered that, on or about May 27, 2015, Nelson Shaller, the owner of 100% of shares of stock in IHS of New York, Inc., had transferred all of the shares he owned to another corporation (in which he is also 100% owner) without prior approval from the Public Health and Health Planning Council. The Department directed that an appropriate Certificate of Need Application be filed and that documentation be submitted (within Department specified time frames) to complete the application process. In addition to the monetary penalty, the Department has directed IHS/Mr. Shaller to submit quarterly reports for a one year period which detail the steps taken to implement the corrective action plan and to assess their effectiveness.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score 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 nine 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.

U.S. Renal Care, Inc. operates over 300 dialysis facilities in 31 states and the Territory of Guam. As USRC will have a 51% membership interest in USRC Forest Hills, LLC, the Star Ratings profile for USRCs New York facilities is provided below. (A comprehensive list of Star Ratings for all USRC-operated centers was provided in CONs 151070 and 151072, which the Council reviewed and approved in December 2015, and in CON 152263, which the Council reviewed and approved in April 2016.)

IHS Dialysis, Inc. owns and operates clinics in Georgia, Massachusetts, and New York. (Star ratings for all IHS Dialysis facilities are listed below.)

STAR Rating for USRC-affiliated facilities operating in New York State are noted in the chart below:

U.S. Renal Care Cheektowaga Dialysis Center	2875 Union Road, Suite 13 C/D Cheektowaga NY 14225	★ ★ ● ● ●
U.S. Renal Care Williamsville Dialysis	7964 Transit Road Suite 8-A Williamsville NY 14221	★ ★ ★ ★ ★
U.S. Renal Care Tonawanda Dialysis	3161 Eggert Road Tonawanda NY 14150	★ ★ ★ ★ ●
U.S. Renal Care Pelham Parkway Dialysis (Acquired April 4, 2016)	1400 Pelham Parkway South Bldg. 5 Dialysis Center Bronx, NY 10461	★ ★ ★ ★ ●
U.S Renal Care South Flushing Dialysis (Acquired April 4, 2016)	71-12 Park Avenue Flushing, NY 11365	Facility Information Not Available
DSI Dutchess Dialysis (Acquired 1/1/2016)	2585 South Road Poughkeepsie, NY 12601	★ ★ ★ ● ●

(Information retrieved from <http://www.medicare.gov/dialysisfacilitycompare/#> on 10/20/16.)

STAR Ratings for IHS Dialysis-affiliated facilities include Pelham Parkway Dialysis and South Flushing Dialysis (noted above), as well as the following out-of-state facilities:

Advanced Directions Renal Care Center	1250 Hancock St., Suite 204N-B Quincy, MA 02169	Facility Information Not Available
U.S. Renal Care Quincy Dialysis	1250 Hancock St., Ste 110N Quincy, MA 02169	★ ★ ★ ★ ●
U.S. Renal Care Foxborough Dialysis	10 Lincoln Road Foxborough, MA 02035	★ ★ ★ ★ ●
Advanced Kidney Therapies	3200 Cobb Galleria Pkwy, Ste. 228 Atlanta, GA 30339	Facility Information Not Available

(Information retrieved from <http://www.medicare.gov/dialysisfacilitycompare/#> on 10/20/16.)

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Total Project Costs and Financing

Total project costs for renovation and moveable equipment are estimated at \$4,061,995 broken down as follows:

Renovation & Demolition	\$2,849,750
Design Contingency	11,000
Construction Contingency	284,975
Architect/Engineering Fees	110,000
Movable Equipment	782,062
Application Fees	2,000
Additional Processing Fees	<u>22,208</u>
Total Project Cost	\$4,061,995

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

The total project costs will be funded as follows:

Equity-USRC Forest Hill, LLC Members	\$406,200
USRC Intercompany Loan (prime plus 2%, 8% max., interest only during draw period, 5-year term starting at end of draw (2 nd anniversary of Medicare Certification))	<u>\$3,655,795</u>
Total	\$4,061,995

BFA Attachments A and C are, respectively, the net worth summary of USRC Forest Hills, LLC's members and the Financial Statements USRC and IHS Dialysis, Inc., which reveal sufficient resources to meet the equity requirements. The applicant has provided a draft Intercompany Loan agreement with USRC and a draft Promissory Note for the loan.

Lease Rental Agreement

The applicant submitted a draft lease agreement; the terms are summarized below:

Premises:	11,000 sq. ft. located at 68-54 Austin Street, Forest Hills, NY 11375
Landlord:	68-60 Austin Street Realty Corporation
Lessee:	USRC Forest Hills, LLC
Term:	10 years with two 5-year renewal options.
Rental:	Years 1-3: \$506,000 per year (\$46.00 per sq. ft., \$42,166.67 per month) Years 4-6: \$531,300 per year (\$48.30 per sq. ft., \$44,275 per month) Years 7-10: \$557,865 per year (\$50.72 per sq. ft., \$46,488.75 per month)
Provisions:	Tenant will be responsible for maintenance, utilities and real estate taxes.

An affidavit has been submitted stating that the lease is an arm's length lease. The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

Administrative Services Agreement

The applicant submitted a draft administrative services agreement (ASA), as summarized below:

Facility:	USRC Forest Hills, LLC
Contractor:	U.S. Renal Care, Inc.
Services Provided:	Personnel training, monitoring and oversight; assist with compensation, benefits, personnel policies, and performance standards for administrative and ancillary health care staff; provide at cost of the Licensed Operator, supplies and inventory necessary for the clinic's operation under national and regional supply agreements; assist in purchasing drugs and medical supplies; patient billing/collecting functions; assist in report preparation and filing, contract negotiations, and reimbursement related audits; assist in maintenance of financial records; manage clinics funds; obtain appropriate commercial insurance coverage; recommend operational policies and procedures to establish appropriate standards of patient care; provide access to selected proprietary software; at the Licensed Operator's cost furnish all medical and office equipment, furniture and fixtures, maintain equipment and make necessary capital improvements; assist in development of quality assurance and review programs, maintain licenses and permits including Medicaid and Medicare provider numbers; assist in compliance with all applicable federal and state rules and regulations
Term:	10 years
Fee:	Year 1 - \$95,000, Year 2 - \$195,000, Year 3 - \$345,000, Year 4 and onwards at fair market value (FMV) of services provided.

While U.S. Renal Care Inc. will provide the above services, the Licensed Operator retains ultimate authority, responsibility, and control of the operations.

There is common ownership between the applicant and the ASA provider, as shown on BFA Attachment B, post-closing organization chart.

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid-FFS	\$220.00	\$18,700	\$219.94	\$195,746
Medicaid-MC	\$240.00	\$87,600	\$240.01	\$557,064
Medicare-FFS	\$350.00	\$213,150	\$299.96	\$1,121,865
Medicare-MC	\$350.00	\$246,750	\$300.03	\$1,199,235
Commercial-FFS	\$1,098.23	\$191,092	\$950.00	\$459,800
Commercial-MC	\$1,101.81	\$187,308	\$947.86	\$519,429
Private Pay	\$760.81	<u>\$294,432</u>	\$600.28	<u>\$278,532</u>
Total		\$1,239,032		\$4,331,671
<u>Expenses</u>				
Operating	\$380.15	\$969,378	\$192.79	\$2,486,074
Capital	\$527.13	<u>\$1,344,182</u>	\$99.87	<u>\$1,287,764</u>
Total		\$2,313,560		\$3,773,838
Net Income		(\$1,074,528)		\$557,833
Total Treatments		2,550		12,895
Cost per Treatment		\$907.28		\$292.66

Utilization broken down by payor source during years one and three is as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid-FFS	85	3%	890	7%
Medicaid-MC	365	14%	2,321	18%
Medicare-FFS	609	24%	3,740	29%
Medicare-MC	705	28%	3,997	31%
Commercial-FFS	174	7%	484	4%
Commercial-MC	170	7%	548	4%
Private Pay	387	15%	464	4%
Charity	<u>55</u>	<u>2%</u>	<u>451</u>	<u>3%</u>
Total	2,550	100%	12,895	100%

The following is noted with respect to the submitted budget:

- Revenues are based on the actual experience of similar outpatient dialysis centers owned by USRC and located in the proposed center's service area. Revenues assume bundled ESRD rates for Medicaid and Medicare per the payors' current reimbursement methodologies, while the commercial rates are based on USRC's established contracts within the proposed center's services area.
- Expenses are based on current market rates and USRC's contracted rates. Expenses include consideration for the average clinical utilization of medications and medical supplies, utilities, equipment and professional fees.
- Utilization is based on USRC's standard utilization methodology for opening a new dialysis facility in a region, which includes conservative estimates during the initial start-up period.
- Breakeven utilization for the third year is 87.12% or 11,234 treatments.

The budget is reasonable.

Capability and Feasibility

Project costs of \$4,061,995 will be met via members' equity of \$406,200 and an intercompany loan from USRC for \$3,655,795 at the above stated terms. The applicant has provided a draft of the USRC Intercompany Loan agreement.

Working capital requirements are estimated at \$628,973 based on two months of third year expenses. The applicant indicated they will provide \$630,000 for working capital with \$315,000 from members' equity and \$315,000 to be satisfied through an intercompany loan from USRC Inc. with the same terms as provided for the total project cost loan. The applicant has provided a draft Intercompany Loan agreement with U.S. Renal Care, Inc. and a draft Promissory Note, which includes consideration of both the working capital requirement and the total project costs financings.

BFA Attachment A provides the members' personal net worth statements, which shows sufficient liquid resources to meet their portion of the projects equity requirements. BFA Attachment C, USRC and Subsidiaries' 2014-2015 certified financial statements and internal financials as of June 30, 2016, shows the entity maintained positive working capital and net asset positions for the period, and generated net income after taxes of \$63,434,000 in 2015 and \$19,655,525 for the six months ending June 30, 2016. As shown, USRC has sufficient liquid resources available to cover their portion of both equity requirements and to provide the funding for both intercompany loans. BFA Attachment C is IHS's 2014-2015 certified financial statements and internal financial as of June 30, 2016, which indicates the entity maintained positive working capital, had positive net assets for the period and generated net income of \$14,029,413 as of June 30, 2016. As shown, IHS has sufficient liquid resources available to cover their portion of equity requirements.

BFA Attachment D is USRC Forest Hills, LLC d/b/a U.S. Renal Care Forest Hills Dialysis' pro forma balance sheet, which shows operations will start with \$721,200 in equity.

The submitted budget indicates a net loss of \$1,074,528 for Year One and a net income of \$557,833 for Year Three. Revenues are based on the current reimbursement methodologies for dialysis services. The Year One loss is due to the start-up of operations. U.S Renal Care, Inc. has provided an affidavit stating they are prepared to cause its wholly-owned subsidiary and majority member of the Company, USRC Alliance, LLC, to take steps necessary to cause the members of the Company to contribute additional capital on a pro rata basis (in accordance with section 2.1(d) of the Company Agreement) to cover any Year One shortfalls. In the event the minority members of the Company are unwilling or unable to make such contributions, then U.S. Renal Care, Inc. is prepared to cause USRC Alliance, LLC to contribute up to \$1,100,000 to the Company to cover any such shortfalls. The submitted budget is reasonable.

BFA Attachment E is the financial summaries of U.S. Renal Care, Inc.'s NYS affiliated dialysis centers for the period 2014 through June 30, 2016, which shows that each facility had a positive working capital positions, positive net asset positions and operating surpluses for the period shown with the exception of the following:

- In 2015, USRC Tonawanda and USRC Cheektowaga had a negative working capital position due to negative intercompany payables, which misstated the current assets.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements of the members' of USRC Forest Hill, LLC
BFA Attachment B	Post- Closing Organizational Chart
BFA Attachment C	Financial Summary & U.S. Renal Care, Inc. & Subsidiaries & IHS Dialysis Inc.'s Certified 2014-2015 and 6/30/2016 Internal Financial Statements
BFA Attachment D	Pro-Forma Balance Sheet of USRC Forest Hills, LLC d/b/a U.S. Renal Care Forest Hills Dialysis
BFA Attachment E	Financial Summary 2014, 2015 & 6/30/16 - Affiliated New York's' Dialysis Centers.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of December, 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 new 24-station chronic renal dialysis center to be located at 68-54 Austin Street, Forest Hills, 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:

161356 B

USRC Forest Hills, LLC d/b/a U.S. Renal Care
Forest Hills Dialysis

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON upon delivery. [PMU]
2. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
3. Submission of an executed Medical Director agreement, acceptable to the Department. [HSP]
4. Submission of an executed Intercompany Loan, acceptable to the Department of Health. [BFA]
5. Submission of an executed Promissory Note, acceptable to the Department of Health. [BFA]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. (AER)
9. Submission of a photocopy of the applicant's amended and executed Medical Director's Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended and executed Amended and Restated Administrative Service Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed lease, demonstrating site control, acceptable to the Department. [CSL]
13. Submission of a photocopy of USRC's Authority to Do Business in the State of New York, acceptable to the Department. [CSL]
14. Submission of a photocopy of IHS Dialysis Inc.'s Authority to Do Business in the State of New York, 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. Construction must start on or before March 1, 2017 and construction must be completed by August 1, 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]

3. 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)

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 # 161097-E
VillageCare Rehabilitation and Nursing Center**

Program: Residential Health Care Facility
Purpose: Establishment

County: New York
Acknowledged: February 29, 2016

Executive Summary

Description

Village Care of New York, Inc. d/b/a VillageCare, a 501(c) (3) corporation, is seeking approval to become the active parent of Village Center for Care d/b/a VillageCare Rehabilitation and Nursing Center, a 105-bed Residential Health Care Facility (RHCF) located at 214 West Houston Street, New York (New York County). The RHCF also operates three off-site Adult Day Health Care Programs (ADHCP) as follows:

1. VillageCare ADHCP (60-slots) located at 644 Greenwich Street, New York, NY;
2. VillageCare AIDS ADHCP (50-slots) located at 121 West 20th Street, New York, NY; and
3. VillageCare AIDS ADHCP (40-slots) located at 80 Coffey Street, Brooklyn, NY.

In 2004, Village Care of New York, Inc. entered into an administrative service agreement with Village Center for Care to provide administrative, financial and management consulting services to the entity on an annual fee schedule basis. There will be no change to this agreement upon approval of this application. Village Care of New York, Inc. has been a passive parent and sole corporate member of Village Center for Care since March of 1997. Village Care of New York, Inc. will have the authority to make decisions for its affiliates as stated in its certificate of incorporation and bylaws. The board of directors will consist of people from the community and the CEO/President of Village Care.

Village Care of New York, Inc. will incur no additional cost or expense in serving as active parent and will collect no additional revenue from Village Center for Care.

As active parent and co-operator, Village Care of New York, Inc. will have the power and authority to make decisions for its affiliates 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 or dismissal of Village Center for Care management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation;
- approval of Village Center for Care operating and capital budgets;
- adoption or approval of Village Center for Care operating policies and procedures;
- approval of certificate of need applications filed by or on behalf of Village Center for Care;
- approval of Village Center for Care debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- approval of Village Center for Care contracts for management or for clinical services; and
- approval of settlements of administrative proceedings or litigation to which the Village Center for Care is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

Village Care of New York, Inc.'s exercise of powers will allow the following for Village Center for Care providers:

- Formulate consistent corporate policies and procedures across the system;
- Ensure a consistent approach to regulatory compliance, standards of care, and medical staff credentialing;
- Organize the network providers into an efficient and accessible continuum of care responsive to community needs;
- Collaborate in areas designed to conserve resources, such as joint purchasing;
- Facilitate clinical integration and the use of best practices;
- Share resources; and
- Reflect common mission, philosophy, values and purposes.

BFA Attachment A presents the organizational chart of Village Care of New York, Inc. post-closing.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. VillageCare Rehabilitation and Nursing Center's occupancy was 95.9% in 2011, 96.5% in 2012, 96.1% in 2013 and 96.3% in 2014.

Program Summary

The governing boards of both Village Center for Care and VillageCare of New York are identical. No negative information has been received concerning the character and competence of the board members or related facilities. No changes in the program or physical environment are proposed in this application. There is an administrative services agreement between Village Care New York and Village Center for Care.

Financial Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of 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 a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of all documents establishing the new active parent of the Applicant, which are acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed, amended and completed by-laws, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of VillageCare of New York executed and amended by-laws, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the consulting and administrative 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]
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

December 8, 2016

Need Analysis

Background

VillageCare of New York seeks approval to be established as the active parent of Village Center for Care d/b/a VillageCare Rehabilitation and Nursing Center, a 105-bed Article 28 residential health care facility, located at 214 West Houston Street, New York, 10014, in New York County.

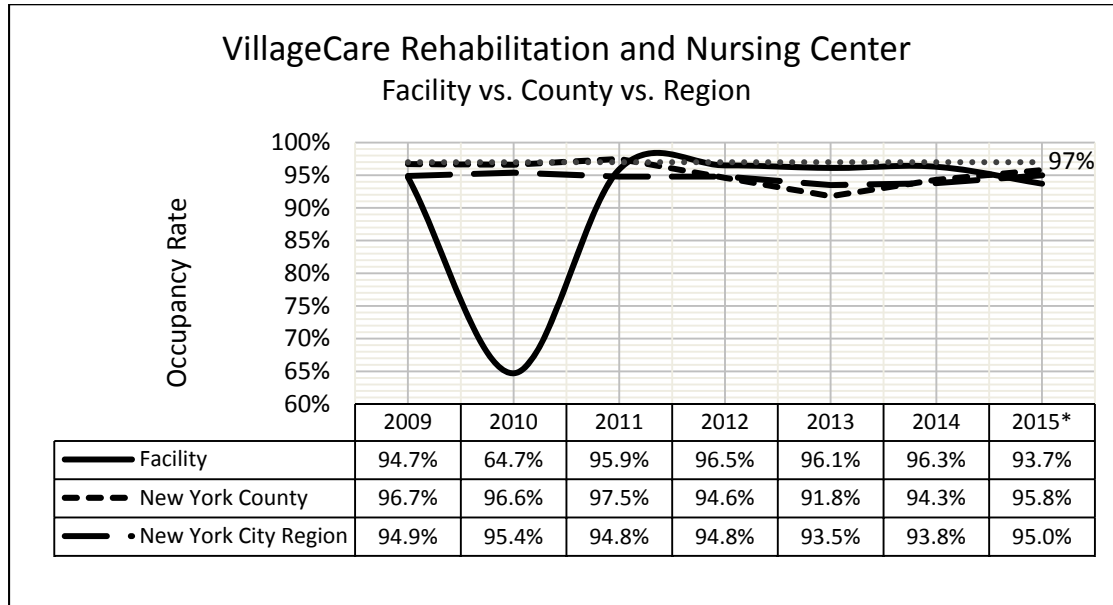
Analysis

The current need methodology shows a need for 9,482 beds in the New York City Region as indicated in the following table:

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 overall 2014 occupancy for New York County and the New York City Region is 94.3% and 93.8%, respectively, as indicated in the following chart:



*unaudited; facility reported data

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.

VillageCare Rehabilitation and Nursing Center's Medicaid admissions of 7.3% and 6.2% for 2013 and 2014, respectively, did not exceed New York County 75% rates of 19.3% and 18.0% in 2013 and 2014, respectively. As a contingency and condition of approval, Village Care will be required to submit a plan to enhance access to Medicaid residents, commit to achieving the required proportion of Medicaid residents, and submit annual reports on the progress.

Conclusion

Designation as an active parent and co-operator is expected to enhance Village Care of New York, Inc. facilities and contribute to a greater marketing presence for the Corporation and its providers.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	VillageCare Rehabilitation and Nursing Center	Same
Address	214 West Houston Street New York, New York 10014	Same
RHCF Capacity	105	Same
ADHC Program Capacity	1. VillageCare ADHCP (60-slots) located at 644 Greenwich Street, New York; 2. VillageCare AIDS ADHCP (50-slots) located at 121 West 20 th Street, New York; and 3. VillageCare AIDS ADHCP (40-slots) located at 80 Coffey Street, Brooklyn.	Same
Type of Operator	Not for Profit Corporation	Same
Class of Operator	Voluntary	Same
Operator	Village Center for Care	Village Center for Care <u>Active Parent</u> Village Care of New York <u>Board</u> Emma DeVito – President and CEO David H. Sidwell – Chairman Daniel Fox, PhD – Vice Chairman/Secretary Patricia M Owens – Treasurer Eleanor S. Applewhaite John W. Behre, Jr Lynne P. Brown, PhD Elizabeth Margaritis Butson Mary Caracappa Lisa M. Coleman Gail Donovan Rev. James J. Gardiner Glenna Michaels Leroy Sharer Richard Walgren

Character and Competence - Background

Facilities Reviewed

Village Center for Care d/b/a VillageCare Home Care	06/2006 to present
VillageCare Rehabilitation and Nursing Center	06/2006 to present
VillageCareMax Managed Long Term Care Plan	06/2012 to present
Fully Integrated Dual Advantage Plan (FIDA)	06/2012 to present
Village Care Plus (LHCSA)	06/2006 to present
Village Care at 46 and Ten	06/2006 to present

Individual Background Review

The governing bodies of both Village Center for Care and VillageCare of New York are identical and consist of the following members of the Board of Directors.

Emma DeVito is a licensed New York State nursing home administrator in good standing. She is currently the Chief Executive Officer of VillageCare Health Care system and Chief Operating Officer / Executive Vice President of Village Center of New York. Ms. DeVito concurrently lists employment as President and Chief Executive Officer of Village Center for Care, Village Care Plus, and Village Housing Development Fund Corp. since 1991. Ms. DeVito has been President and Chief Executive Officer of VillageCareMax since it opened in 2012. Ms. DeVito discloses dual board memberships in Village Center for Care and VillageCare of New York since 2004.

Daniel Fox, Ph D. served as president and Chief Executive Officer of Milbank Memorial Fund from 1990, until his retirement in 2007. Mr. Fox currently serves as the Vice Chair and Board Secretary. Mr. Fox discloses dual board memberships in Village Center for Care and VillageCare of New York since 1993.

Patricia M. Owens discloses that she is self-employed as a consultant for health care disability programs and policies. Ms. Owens discloses dual board memberships in Village Center for Care and VillageCare of New York since 1992.

David H. Sidwell reports that he retired in 2007 from Morgan Stanley, where he held the position of Chief Financial Officer. Mr. Sidwell discloses he is a director of the National Council of Aging and dual board memberships in Village Center for Care and VillageCare of New York since 1998.

Eleanor Applewhaite reports that she retired in 2004 from Educational Broadcasting Corporation. Ms. Applewhaite is an attorney in good standing. Ms. Applewhite discloses dual board membership in Village Center for Care and VillageCare of New York since 2007.

John W. Behre, Jr is an attorney in good standing and practices at JDF. Mr Behre discloses dual board membership in Village Center for Care and VillageCare of New York since 2010.

Lynne P. Brown reports that she has been employed at New York University since 1982 in the areas of public affairs, government relations, and event planning. Ms. Brown discloses dual board memberships in Village Center for Care and VillageCare of New York since 2014.

Elizabeth M. Butson reports that she has been retired since 1992. Ms. Butson discloses dual board memberships in Village Center for Care and VillageCare of New York since 2007.

Mary Caracappa is a certified public accountant in good standing. Ms. Caracappa reports employment at Morgan Stanley since 1986 where she holds the position of Managing Director of New Products. Ms. Caracappa discloses dual board memberships in Village Center for Care and VillageCare of New York since 2012.

Lisa M. Coleman lists current employment as a Fund Manager at JP Morgan Asset Management. Ms. Coleman discloses dual board memberships in Village Center for Care and VillageCare of New York since 2014.

Gail Donovan reports that she was employed as Chief Hospitals Operation Officer at Mount Sinai Health System from September 2013 to January 2014. Prior to a merger between Mount Sinai and Continuum Health Partners, Ms. Donovan discloses that she had been employed at Continuum Health Partners for thirty years. The most recent title she held was Executive Vice President and Chief Operating Officer for hospital and corporate operations. Ms. Donovan discloses dual board memberships in Village Center for Care and VillageCare of New York since 2013.

Reverend James J. Gardiner, SA serves on the staff of Franciscan Monastery of the Holy Land since 2010 as well as an ordained member of the Friars of Atonement, Inc. religious order since 1960. He discloses that he is a board member of St. Pauls Center of New York since 2004, and dual board memberships in Village Center for Care and VillageCare of New York since 2005.

Glenna Michaels is the Founder and President of Michaels Associates which is a consulting group established to provide expert support in the design, development and financing of health delivery systems, since 1985. Ms. Michaels discloses dual board memberships in Village Center for Care and VillageCare of New York since 2005.

Leroy Sharer, Jr., MD is a licensed physician in NY and NJ in good standing. Dr. Sharer is employed as Director, Division of Neuropathology and Professor of Pathology at Rutgers New Jersey Medical School, since 1981. Dr. Sharer discloses dual board memberships in Village Center for Care and VillageCare of New York since 2009.

Richard Walgren is a NYS licensed real estate broker in good standing. Mr Walgren discloses that he has been employed as Executive Vice President Sales of Macklowe Properties, a real estate business, since May 2011. Mr. Walgren discloses dual board memberships in Village Center for Care and VillageCare of New York since 2012.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as board members of both Village Center for Care and VillageCare of New York.

A review of the operations of the subject facility, VillageCare Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-09-008 for surveillance findings on 4/16/08 Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

A review of the operations of the affiliated VillageCare certified home health agencies (CHHAs), and licensed home care services agencies (LHCSAs), for the time period identified above reveals that there were no enforcements.

A review of VillageCareMax Managed Long Term Care Plan (MLTCP), and fully integrated dual advantage plan (FIDA) since their inception reveals that there were no enforcements.

A review of Village Housing Development Fund which operates VillageCare at 46 and Ten (Assisted Living Program, including Enriched Housing and LHCSA) revealed the following:

- The facility was fined \$2,000 civil penalty pursuant to an enforcement action taken in July 2011 based on a March 2011 onsite inspection, citing violations in 486.5(a)(4)(iii) Endangerment, and 486.5(a)(4)(v) Endangerment.

Conclusion

A review of all personal qualifying information indicates there is nothing in the background of the board members and officers of both Village Center for Care and Village Care of New York, Inc. to adversely affect their positions on the boards or as officers. All health care facilities are in current compliance with all rules and regulations. The individual background review indicates the proposed board members 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

Financial Analysis

There will be no change in authorized services, the number or type of RHCF beds or utilization as a result of approval of this project.

Capability and Feasibility

The applicant has stated that upon approval of this application by the Public Health and Health Planning Council, Village Care of New York, Inc. will obtain consent for the proposed changes from necessary lenders, insurers and trustees. There will be no change in the daily operations of each health care facility, although each facility is expected to experience cost benefits from the active parent designation.

BFA Attachments B and C are the 2014-2015 financial summaries of Village Care of New York, Inc. and Subsidiaries and Village Center for Care, respectively. Review of the 2014-2015 certified financial statements of the two entities indicates they have maintained positive working capital and net assets positions, and maintained positive net income with the exception of Village Care of New York, Inc., which incurred an operating loss in 2014 related to one of their skilled nursing facility operations. The loss is non-recurring and the entity's 2015 financials show an operating gain of \$12.7 million.

BFA Attachments D and E are, respectively, the internal financial summaries of Village Care of New York, Inc. and Subsidiaries and Village Center for Care as of June 30, 2016, which indicates the entities maintained positive working capital, positive net assets positions and positive net income with the exception of Village Center for Care, which incurred an operating loss of \$741,201. The loss was related to their Certified Home Health Care Agency operations, which is in the planning process for closure. Village Care of New York, Inc. has provided documentation stating that they understand the importance of home care in the continuum of post-acute care services. As a result, while VillageCare Home Care will be discontinuing operations, a solid plan is in place to effectively partner with one or more operational CHHAs to maintain continuity of care and, over time, enhance the overall performance of VillageCare's post-acute offerings to their patients and community.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

- BFA Attachment A Organizational Chart
- BFA Attachment B 2014-2015 Financial Summary of Village Care of New York, Inc. and Subsidiaries
- BFA Attachment C 2014-2015 Financial Summary of Village Center for Care
- BFA Attachment D June 30, 2016 Financial Summary of Village Care of New York, Inc. and Subsidiaries
- BFA Attachment E June 30, 2016 Financial Summary of Village Center for Care

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 8th day of December, 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 VillageCare of New York as the new active parent of Village Center for Care d/b/a VillageCare Rehabilitation and Nursing Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161097 E

VillageCare Rehabilitation and Nursing 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 a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of all documents establishing the new active parent of the Applicant, which are acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed, amended and completed by-laws, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of VillageCare of New York executed and amended by-laws, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the consulting and administrative 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]
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*.

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Cobbs Hill Manor, Inc.
Address: Rochester
County: Monroe
Structure: For-Profit Corporation
Application Number: 161454

Description of Project:

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

This LHCSA will be associated with an Assisted Living Program to be operated by Cobbs Hill Manor, Inc. The LHCSA and the ALP will have identical ownership.

The applicant has authorized 200 shares of stock, which are owned as follows: David Tosoetto owns 50 shares, David Stapleton owns 50 shares. The remaining 100 shares are unissued.

The Board of Directors of Cobbs Hill Manor, Inc. comprises the following individuals:

David M. Tosoetto, CEO/President/Treasurer
Manager, David Communities, LLC

Affiliation:

Mount View Assisted Living, Inc. (2015-present)

David Stapleton, Vice President/Secretary
Manager, David Communities, LLC
Owner, David Homes and Vanderbilt Properties

Affiliation:

Mount View Assisted Living, Inc. (2015-present)

A search of the individuals and entity 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 Monroe County from an office located at 1175 Monroe Avenue, Rochester, New York 14620:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	Nutrition
Housekeeper		

A seven (7) year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

Mount View Assisted Living, Inc. (2015-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 information provided by the Adult Care Facility Policy and Surveillance unit has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

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

Recommendation: Contingent Approval

Date: September 15, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Argyle Center LHCSA, LLC d/b/a Centers Home Care North East
Address: Argyle
County: Washington
Structure: Limited Liability Company
Application Number: 162015

Description of Project:

Argyle Center LHCSA, LLC d/b/a Centers Home Care North East, a to be formed limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program, to be operated by Washington AH Operations LLC d/b/a Argyle Center for Independent Living. The LHCSA and the ALP will have identical ownership.

The proposed membership of Argyle Center LHCSA, LLC comprises the following individuals:

Kenneth Rozenberg, EMT, NHA (NY and NJ) Managing Member – 90%
Chief Executive Officer, Centers Health Care
Chief Executive Officer, Bronx Center for Rehabilitation & Health Care

Affiliations:

- Amazing Home Care (LHCSA) 05/2006 to present
- Banister Center for Rehabilitation (Rhode Island) 08/2016 to present
- Boro Park Center for Rehabilitation and Healthcare 05/2011 to present
- Bronx Center for Rehabilitation and Health Care 10/1997 to present
- Bronx Center for Renal Dialysis (D&TC) 01/2011 to present
- Brooklyn Center for Rehabilitation and Residential Health Care 05/2007 to present
- Buffalo Center for Rehabilitation and Nursing (FKA Delaware Nursing & Rehab Center (Receivership) 06/2014 to 12/2015
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care (fka Wartburg Lutheran Home for the Aging) (receiver) 06/2008 to 05/2011
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Bushwick Center for Renal Dialysis (D&TC) 06/2014 to present
- Center Plan for Health Living (MLTC) 01/2013 to present
- Centers Home Health Revival (fka Alpine Home Health Care) (CHHA) 07/2008 to present
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Daughters of Jacob Nursing Home Company (receiver) 08/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2004 to 03/2016
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 11/2010 to present
- Hope Center for HIV and Nursing Care 04/2015 to present
- Indian River Rehabilitation and Nursing Center 12/2014 to present
- Northwoods Rehabilitation and Nursing Center at Moravia 11/2014 to 03/2016
- Park View Center for Rehabilitation and Healthcare (Rhode Island) 05/2016 to present
- Queens Center for Rehabilitation and Residential Health Care 10/2004 to 03/2016

- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present
- Senior Care Emergency Ambulance Services (EMS) 06/2005 to present
- Steuben Center for Rehabilitation and Healthcare 07/2014 to present
- The Grand Rehabilitation and Nursing at Chittenango (FKA Stonehedge Health & Rehabilitation Center – Chittenango) (REC) 07/2008 to 04/2011
- The Grand Rehabilitation and Nursing at Chittenango 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome (FKA Stonehedge Health & Rehabilitation Center – Rome) (receiver) 07/2008 to 04/2011
- The Grand Rehabilitation and Nursing at Rome 05/2011 to present
- University Nursing Home 08/2001 to present
- Washington Center for Rehabilitation and Healthcare 02/2014 to present
- Waterfront Center for Rehabilitation and Healthcare (receiver) 08/2011 to 12/2012
- Waterfront Center for Rehabilitation and Healthcare 12/2012 to present
- Williamsbridge Manor Nursing Home 11/1996 to present
- Wartburg Nursing Home (receiver) 06/2008 to 05/2011
- Washington Center Adult Home (AH) 02/2014 to present

Jeffrey M. Sicklick, Member, NHA (NY and NJ) – 10%
Administrator, Bronx Center for Rehabilitation

Affiliations:

- Boro Park Center for Rehabilitation and Healthcare 05/2011 to 04/2016
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2004 to 11/2015
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 05/2013 to present
- Queens Center for Rehabilitation and Residential Health Care 02/2008 to 10/2015
- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present
- Steuben Center for Rehabilitation and Healthcare 07/2014 to present
- The Grand Rehabilitation and Nursing at Chittenango 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome 05/2011 to present
- Washington Center for Rehabilitation and Healthcare 02/2014 to present
- Waterfront Center for Rehabilitation and Healthcare 01/2013 to present
- Washington Center Adult Home (AH) 02/2014 to present

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Kenneth Rozenberg NHA license #04036 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The State of New Jersey has indicated that Kenneth Rozenberg NHA license #2841 holds an active NHA license which expires June 30, 2017.

The Bureau of Professional Credentialing has indicated that Jeffrey M. Sicklick NHA license #03579 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of Emergency Medical Services has indicated that Kenneth Rozenberg holds a Paramedic Certification #082942 and is in good standing. Disciplinary action against this individual or his certification has never been taken.

A seven (7) year review of the operations of the following agencies/facilities was performed as part of this review (unless otherwise noted):

- Amazing Home Care
- Banister Center for Rehabilitation (Rhode Island) 08/2016 to present
- Boro Park Center for Rehabilitation and Healthcare 05/2011 to present
- Bronx Center for Rehabilitation and Health Care
- Bronx Center for Renal Dialysis 01/2011 to present
- Brooklyn Center for Rehabilitation and Residential Health Care 08/2009 to present
- Buffalo Center for Rehabilitation and Nursing (fka Delaware Nursing & Rehab Center) 06/2014 to 12/2015
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care (fka Wartburg Lutheran Home for the Aging) 08/2009 to 05/2011
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Bushwick Center for Renal Dialysis 06/2014 to present
- Center Plan for Health Living 01/2013 to present
- Centers Home Health Revival (fka Alpine Home Health Care)
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Daughters of Jacob Nursing Home Company 08/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2009 to 03/2016
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 11/2010 to present
- Hope Center for HIV and Nursing Care 04/2015 to present
- Indian River Rehabilitation and Nursing Center 12/2014 to present
- Northwoods Rehabilitation and Nursing Center at Moravia 11/2014 to 03/2016
- Park View Center for Rehabilitation and Healthcare 05/2016 to present
- Queens Center for Rehabilitation and Residential Health Care 08/2009 to 03/2016
- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present
- Senior Care Emergency Ambulance Services, Inc.
- Steuben Center for Rehabilitation and Healthcare 07/2014 to present
- The Grand Rehabilitation and Nursing at Chittenango (fka Stonehedge Health & Rehab Center – Chittenango) 08/2009 to 04/2011
- The Grand Rehabilitation and Nursing at Chittenango 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome (fka Stonehedge Health & Rehabilitation Center – Rome) 08/2009 to 04/2011
- The Grand Rehabilitation and Nursing at Rome 05/2011 to present
- University Nursing Home 08/2009 to present
- Washington Center for Rehabilitation and Healthcare 02/2014 to present
- Waterfront Center for Rehabilitation and Healthcare 08/2011 to 12/2012
- Waterfront Center for Rehabilitation and Healthcare 12/2012 to present
- Williamsbridge Manor Nursing Home
- Wartburg Nursing Home 08/2009 to 05/2011
- Washington Center Adult Home 02/2014 to present

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies reviewed, for the periods identified above reveals the following:

Alpine Home Health Care was fine one thousand dollars (\$1,000) pursuant to a Stipulation dated February 3, 2014 for not responding to Emergency Preparedness survey.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed, for the periods identified above, reveals the following:

Bronx Center for Rehabilitation and Health Care was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

Essex Center for Rehabilitation and Health Care was fined six thousand dollars (\$6,000) pursuant to a Stipulation and Order dated March 9 2016 for surveillance findings on August 19, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

Fulton Center for Rehabilitation and Healthcare was fined fifty-two thousand dollars (\$52,000) pursuant to a Stipulation and Order dated January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. Deficiencies were found under 10 NYCRR 451.3(e)(2)(ii)(b) Notification of Changes; 415.12 Quality of Care: Highest Practical Potential; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(c)(2) Quality of Care: Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.26 Administration; 415.27(a-c) Quality Assurance; and 415.4(b)(1)(2)(3) Investigate/Report Allegation.

Northwoods Rehabilitation and Nursing Center at Moravia was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

Richmond Center for Rehabilitation and Specialty Healthcare was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated January 25, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.

Richmond Center for Rehabilitation and Specialty Healthcare was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated March 9, 2016 for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

Richmond Center for Rehabilitation and Specialty Healthcare was fined eighteen thousand dollars (\$18,000) pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.

Stonehedge Health & Rehabilitation Center - Chittenango (nka: The Grand Rehabilitation and Nursing at Chittenango) was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1, 2) Quality of Care: Accidents and Supervision; and 415.26(b)(3)(4) Governing Body.

Chittenango Center for Rehabilitation and Health Care (nka: The Grand Rehabilitation and Nursing at Chittenango) was fined twenty thousand dollars (\$20,000) pursuant to a Stipulation and Order dated February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores; and 415.12(d)(1) Quality of Care: Catheters.

Washington Center for Rehabilitation and Healthcare was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated April 6, 2016 for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.27(a-c) Administration: Quality Assessment and Assurance.

Waterfront Center for Rehabilitation and Healthcare was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

Waterfront Center for Rehabilitation and Healthcare was fined was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated April 6, 2016 for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.

Waterfront Center for Rehabilitation and Healthcare was fined twenty-four thousand dollars (\$24,000) pursuant to a Stipulation dated April 19, 2016 for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month By Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Emergency Medical Services and Trauma Systems has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the 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.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Rhode Island has indicated that Banister Center for Rehabilitation and Park View Center for Rehabilitation and Healthcare have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 4573 State Route 40, Argyle, New York 12809:

Albany	Columbia	Dutchess
Essex	Fulton	Greene
Montgomery	Rensselaer	Saratoga
Schenectady	Warren	Washington

The applicant proposes to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval
Date: October 26, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Helping U Homecare, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 152285E

Description of Project:

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

Helping U Homecare, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its February 12, 2015 meeting and subsequently licensed as 2259L001 effective September 29, 2015. At that time the name of the corporation was NMC Home Care Agency of NY, Inc. and the sole shareholder was Natalya Chornaya. A corporate name change was approved by the Department of State on November 6, 2015 and the name on the agency's license was subsequently changed.

Helping U Homecare, Inc. has authorized 200 shares of stock, which will be owned by Polina Mesh.

The Board of Directors of Helping U Homecare, Inc. will be comprised of the following individual:

Polina Mesh, HHA, President
Retired

The New York State Home Care Registry indicates no issues with the certification of the health care professional associated with this application.

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

The applicant proposes to serve the residents of the following counties from an office located at 111 East 125th Street, 1st Floor, New York, New York 10035:

New York	Kings	Queens
Richmond	Bronx	Nassau

The applicant proposes to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval
Date: October 25, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Crown of Life Care NY, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 161111

Description of Project:

Crown of Life Care NY, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law. This application amends and supersedes application number 2389L which was contingently approved by the Public Health and Health Planning Council at the February 18, 2015 meeting. At that time the membership of Crown of Life Care NY, LLC consisted of Toby Kahan (95%) and Caroline Nonan, RN (5%). This application was submitted due to the withdrawal of Caroline Nonan from the membership of the limited liability company.

Crowne of Life Care, Inc. was previously approved as a home care services agency by the Public Health Council at its May 16, 2003 meeting and subsequently licensed 1180L001.

The following individual is the sole member of Crown of Life Care NY, LLC:

Toby Kahan
Administrator, Crowne of Life Care, Inc.

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

The applicant proposes to serve the residents of the following counties from an office located at 4626 New Utrecht Avenue, Brooklyn, New York 11219:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval
Date: November 3, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: All Metro Aids, Inc.
d/b/a All Metro Health Care
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 161146

Description of Project:

All Metro Aids, Inc. d/b/a All Metro Health 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.

All Metro Aids, Inc. d/b/a All Metro Health Care was previously approved as a home care services agency by the Public Health Council at its November 19, 2010 meeting and subsequently assigned license number 1905L001 effective September 26, 2011.

The currently approved organizational structure of All Metro Aids, Inc. d/b/a All Metro Health Care is All Metro Health Care Services, Inc. is the sole shareholder of All Metro Aids, Inc. d/b/a All Metro Health Care. The sole shareholder of All Metro Health Care Services, Inc. is AM Holdco, Inc. The sole shareholder of AM Holdco, Inc. is AM Intermediate Holdco, Inc. The sole shareholder of AM Intermediate Holdco, Inc. is AM Holdco, LLC.

In this proposal, OEP AM, Inc., a Delaware corporation, proposes to purchase all 1000 shares of common stock of AM Intermediate Holdco, Inc.,

On October 6, 2015, and in accordance with Section 765-1.14 of Title 10 NYCRR, OEP AM, Inc. submitted an affidavit to New York State Department of Health stating it will operate in the ordinary course of business and take all actions necessary to maintain and not impair licensure, and refrain from exercising control until approval has been granted by the Public Health and Health Planning Council.

The sole member of OEP AM, Inc. is OEP AM Holdings, LLC. The sole member of OEP AM Holdings, LLC is OEP VI, L.P. & Affiliates.

The Board of Directors of OEP AM, Inc is comprised of the following individuals:

Gregory Belinfanti – President Senior Managing Director, One Equity Partners	Bradley Coppens – Vice-President Senior Managing Director, One Equity Partners
--	--

The managers of OEP AM Holdings, LLC are the following:

OEP AM Manager, LLC	One Equity Partners VI, I.P.
---------------------	------------------------------

The Board of Directors of OEP VI, L.P. & Affiliates Inc is comprised of the following individuals:

James Bradley Cherry – Director Senior Managing Director, One Equity Partners	Christoph Giulini – Director Senior Managing Director, One Equity Partners Europe GmbH
---	--

Gregory Belinfanti – Director Disclosed Above	Johann-Melchior Von Peter - Director Senior Managing Director, One Equity Partners Europe GmbH
--	--

James Koven – Director
Senior Managing Director,
One Equity Partners Capital Advisors

Richard Cashin – Director
President, One Equity Partners Capital
Advisors

Paul Schorr VI- Director
Senior Managing Director,
One Equity Partners

David Han – Director
Senior Managing Director,
One Equity Partners

The Board of Directors of All Metro Aids, Inc. d/b/a All Metro Health Care, All Metro Home Care Services, Inc., All Metro Health Care Services, Inc., AM Holdco, Inc. and AM Intermediate Holdco, Inc are exempt from a character and competence review due to the fact that they were previously approved by the Public Health and Health Planning Council for this Licensed Home Care Services Agency.

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

The applicant proposes to continue to serve the residents of the following counties from an office located at 80 Broad Street, 14th Floor, New York, New York 10004:

New York
Queens

Bronx
Richmond

Kings

The applicant proposes to provide the following health care services:

Nursing
Physical Therapy
Speech-Language Pathology
Housekeeper

Home Health Aide
Nutrition
Homemaker

Personal Care
Occupational Therapy
Medical Social Services

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

All Metro Home Care Services of New York, Inc. (LHCSA - Lynbrook, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Mount Vernon, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Port Jefferson Station, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Albany, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Babylon, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – New York, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Buffalo, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Rochester, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Liverpool, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Schenectady, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Corning, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Binghamton, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Liverpool, NY)
All Metro Aids, Inc. (LHCSA – New York, NY)
All Metro Home Care Services of Florida, Inc. (CHHA – West Palm Beach, FL)
All Metro Home Care Services of Florida, Inc. (CHHA – Lauderdale Lakes, FL)
CareGivers America, LLC (LHCSA – Allentown, PA, 2015-present)
CareGivers America, LLC (LHCSA – Berwick, PA, 2015-present)
CareGivers America, LLC (LHCSA – Clarks Summit, PA, 2015-present)
CareGivers America, LLC (LHCSA – Dallas, PA, 2015-present)
CareGivers America, LLC (LHCSA – Tannersville, PA, 2015-present)
CareGivers America, LLC (LHCSA – Pottsville, PA, 2015-present)
CareGivers America, LLC (LHCSA – Honesdale, PA, 2015-present)

CareGivers America, LLC (LHCSA – Landsdale, PA, 2015-present)
CareGivers America, LLC (LHCSA – Lehighton, PA, 2015-present)
CareGivers America, LLC (LHCSA – Milford, PA, 2015-present)
CareGivers America, LLC (LHCSA – Montrose, PA, 2015-present)
CareGivers America, LLC (LHCSA – Sayre, PA, 2015-present)
CareGivers America, LLC (LHCSA – Selinsgrove, PA, 2015-present)
CareGivers America, LLC (LHCSA – Williamsport, PA, 2015-present)
CareGivers America Home Health Services, LLC (LHCSA – Clarks Summit, PA 2015-present)
CareGivers America Home Health Services, LLC (LHCSA – Allentown, PA 2015-present)
CareGivers America Medical Supply, LLC (DME – Clarks Summit, PA 2015-present)

All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care was fined twelve thousand dollars (\$12,000.00) pursuant to a stipulation and order dated May 24, 2011 for inspection findings of March 13, 2008, May 7, 2009 and June 18, 2010 for violations of 10 NYCRR Sections 766.1(a)(1) – Patient Rights; 766.4(d) – Medical Orders; 766.5(b)(1) – Clinical Supervision; 766.5(b)(3) – Clinical Supervision; 766.9(a) –Governing Authority; and 766.11(f)(ii) – Personnel.

All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care was fined five thousand five hundred dollars (\$5,500.00) pursuant to a stipulation and order dated February 24, 2014 for inspection findings of July 18, 2013 for violations of 10 NYCRR Sections 766.3(b) and (d) – Plan of Care; 766.4 (d) – Medical Orders; 766.5 (b) – Clinical Supervision; 766.9(a)(c)(j) and (l) – Governing Authority; and 766.11(g) – Personnel.

All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care was fined five thousand five hundred dollars (\$5,500.00) pursuant to a stipulation and order dated February 24, 2014 for inspection findings of July 18, 2013 for violations of 10 NYCRR Sections 766.3(b) and (d) – Plan of Care; 766.4 (d) – Medical Orders; 766.5 (a) and (b) – Clinical Supervision; 766.9(a)(c)(o)(j) and (l) – Governing Authority; and 766.11(g) – Personnel.

The information provided by the Division of Home and Community Based Services has indicated that the home care services agency has provided sufficient supervision to prevent harm to the health, safety, and welfare of residents and to prevent recurrent code violations.

The information received from the State of Pennsylvania indicated that all of the home care agencies owned by the applicant are in current compliance and that no enforcement actions have been taken against any of the agencies.

The State of Florida's Agency for Health Care Administration did not respond to the applicant's request for a Schedule 2D. Therefore, the applicant submitted a notarized affidavit attesting that the following Florida agencies are currently licensed and in compliance with all applicable federal and Florida regulations:

All Metro Home Care Services of Florida, Inc. (CHHA – West Palm Beach, FL)
All Metro Home Care Services of Florida, Inc. (CHHA – Lauderdale Lakes, FL)

Gregory Belinfanti disclosed that on March 20, 2014, MModal and subsidiaries filed a voluntary bankruptcy under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court in the Southern District of New York. Mr. Belinfanti was a partner in the investment partnership and also served on MModal's Board of Directors. On July 31st, 2014, MModal completed its financial restructuring and emerged from bankruptcy.

Gregory Belinfanti also disclosed that "following a voluntary self-disclosure to the Secretaries and Exchange Commission, and based upon what the Department of Justice described as extraordinary cooperation, on December 30, 2013, ArthroCare entered into a Deferred Prosecution Agreement with the United States Securities and Exchange Commission and the Department of Justice related to allegations of securities and related fraud committed by then

terminated management employees. The DPA was for a term of 24 months and the required ArthroCare to maintain a compliance program. ArthroCare met of the terms of the DPA resulting in early termination of the DPA on May 22, 2015.”

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

Contingency

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

Recommendation: Contingent Approval

Date: September 2, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: All Metro Home Care Services of New York, Inc.
d/b/a All Metro Health Care
Address: Lynbrook
County: Nassau
Structure: For-Profit Corporation
Application Number: 161147

Description of Project:

All Metro Home Care Services of New York, Inc. d/b/a All Metro Health 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.

All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care was previously approved as a home care services agency by the Public Health Council at its November 19, 2010 meeting and subsequently assigned license numbers 1650L001 through 1650L013.

The currently approved organizational structure of All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care is All Metro Health Care Services, Inc. is the sole shareholder of All Metro Home Care Services of New York, Inc. The sole shareholder of All Metro Health Care Services, Inc. is AM Holdco, Inc. The sole shareholder of AM Holdco, Inc. is AM Intermediate Holdco, Inc. The sole shareholder of AM Intermediate Holdco, Inc. is AM Holdco, LLC.

In this proposal, OEP AM, Inc., a Delaware corporation, proposes to purchase all 1000 shares of common stock of AM Intermediate Holdco, Inc., through a Stock Purchase Agreement.

On October 6, 2015, and in accordance with Section 765-1.14 of 10 NYCRR, OEP AM, Inc. submitted an affidavit to New York State Department of Health stating it will operate in the ordinary course of business and take all actions necessary to maintain and not impair licensure, and refrain from exercising control until approval has been granted by the Public Health and Health Planning Council.

The sole shareholder of OEP AM, Inc. is OEP AM Holdings, LLC. The sole member of OEP AM Holdings, LLC is OEP VI, L.P. & Affiliates.

The Board of Directors of OEP AM, Inc is comprised of the following individuals:

Gregory Belinfanti – President Senior Managing Director, One Equity Partners	Bradley Coppens – Vice-President Senior Managing Director, One Equity Partners
--	--

The managers of OEP AM Holdings, LLC are the following:

OEP AM Manager, LLC	One Equity Partners VI, I.P.
---------------------	------------------------------

The Board of Directors of OEP VI, L.P. & Affiliates Inc is comprised of the following individuals:

James Bradley Cherry – Director Senior Managing Director, One Equity Partners	Christoph Giulini – Director Senior Managing Director, One Equity Partners Europe GmbH
Gregory Belinfanti – Director Disclosed Above	Johann-Melchior Von Peter - Director Senior Managing Director, One Equity Partners Europe GmbH

James Koven – Director
Senior Managing Director,
One Equity Partners Capital Advisors

Richard Cashin – Director
President, One Equity Partners Capital
Advisors

Paul Schorr VI- Director
Senior Managing Director,
One Equity Partners

David Han – Director
Senior Managing Director,
One Equity Partners

The Board of Directors of All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care, All Metro Home Care Services, Inc., All Metro Health Care Services, Inc., AM Holdco, Inc. and AM Intermediate Holdco, Inc are exempt from a character and competence review due to the fact that they were previously approved by the Public Health and Health Planning Council for this Licensed Home Care Services Agency.

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

The applicant proposes to continue to serve the residents of the following counties from the indicated addresses:

Address	Counties Served
170 Earle Avenue, 1st Floor Lynbrook, NY 11563	Nassau, Suffolk, Queens
4 West Prospect Avenue Mount Vernon, NY 10550	Dutchess, Orange, Putnam, Rockland, Westchester, Bronx
1010 Route 112 Port Jefferson Station, NY 11776	Nassau, Suffolk
1450 Western Avenue, Suite 104 Albany, NY 12203	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington
181 West Main Street Babylon, NY 11702	Nassau, Suffolk, Queens
80 Broad Street, Floor 14 New York, NY 10004	Bronx, Kings, New York, Queens, Richmond
170 Franklin, Suite 205 Buffalo, NY 14202	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming
1350 University Avenue, Suite C Rochester, NY 14607	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates
526 Old Liverpool Road Liverpool, NY 13088	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins
650 Franklin Street, Suite 102 Schenectady, NY 12035	Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren
4 East William Street, Suite 101 Corning, NY 14830	Allegany, Chemung, Livingston, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates

49 Court Street, Suite 255 Binghamton, NY 13901	Broome, Chemung, Chenango, Cortland, Tioga, Tompkins
4709 Crossroads Park Drive, Suite 108 Liverpool, NY 13088	Cayuga, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence

The applicant proposes to provide the following health care services:

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

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

All Metro Home Care Services of New York, Inc. (LHCSA - Lynbrook, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Mount Vernon, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Port Jefferson Station, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Albany, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Babylon, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – New York, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Buffalo, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Rochester, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Liverpool, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Schenectady, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Corning, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Binghamton, NY)
All Metro Home Care Services of New York, Inc. (LHCSA – Liverpool, NY)
All Metro Aids, Inc. (LHCSA – New York, NY)
All Metro Home Care Services of Florida, Inc. (CHHA – West Palm Beach, FL)
All Metro Home Care Services of Florida, Inc. (CHHA – Lauderdale Lakes, FL)
CareGivers America, LLC (LHCSA – Allentown, PA, 2015-present)
CareGivers America, LLC (LHCSA – Berwick, PA, 2015-present)
CareGivers America, LLC (LHCSA – Clarks Summit, PA, 2015-present)
CareGivers America, LLC (LHCSA – Dallas, PA, 2015-present)
CareGivers America, LLC (LHCSA – Tannersville, PA, 2015-present)
CareGivers America, LLC (LHCSA – Pottsville, PA, 2015-present)
CareGivers America, LLC (LHCSA – Honesdale, PA, 2015-present)
CareGivers America, LLC (LHCSA – Landsdale, PA, 2015-present)
CareGivers America, LLC (LHCSA – Lehighton, PA, 2015-present)
CareGivers America, LLC (LHCSA – Milford, PA, 2015-present)
CareGivers America, LLC (LHCSA – Montrose, PA, 2015-present)
CareGivers America, LLC (LHCSA – Sayre, PA, 2015-present)
CareGivers America, LLC (LHCSA – Selinsgrove, PA, 2015-present)
CareGivers America, LLC (LHCSA – Williamsport, PA, 2015-present)
CareGivers America Home Health Services, LLC (LHCSA – Clarks Summit, PA 2015-present)
CareGivers America Home Health Services, LLC (LHCSA – Allentown, PA 2015-present)
CareGivers America Medical Supply, LLC (DME – Clarks Summit. PA 2015-present)

All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care was fined twelve thousand dollars (\$12,000.00) pursuant to a stipulation and order dated May 24, 2011 for inspection findings of March 13, 2008, May 7, 2009 and June 18, 2010 for violations of 10 NYCRR Sections 766.1(a)(1) – Patient Rights; 766.4(d) – Medical Orders; 766.5(b)(1) – Clinical Supervision; 766.5(b)(3) – Clinical Supervision; 766.9(a) –Governing Authority; and 766.11(f)(ii) – Personnel.

All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care was fined five thousand five hundred dollars (\$5,500.00) pursuant to a stipulation and order dated February 24, 2014 for inspection findings of July 18, 2013 for violations of 10 NYCRR Sections 766.3(b) and (d) – Plan of Care; 766.4 (d) – Medical Orders; 766.5 (b) – Clinical Supervision; 766.9(a)(c)(j) and (l) – Governing Authority; and 766.11(g) – Personnel.

All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care was fined five thousand five hundred dollars (\$5,500.00) pursuant to a stipulation and order dated February 24, 2014 for inspection findings of July 18, 2013 for violations of 10 NYCRR Sections 766.3(b) and (d) – Plan of Care; 766.4 (d) – Medical Orders; 766.5 (a) and (b) – Clinical Supervision; 766.9(a)(c)(o)(j) and (l) – Governing Authority; and 766.11(g) – Personnel.

The information provided by the Division of Home and Community Based Services has indicated that the home care services agency has provided sufficient supervision to prevent harm to the health, safety, and welfare of residents and to prevent recurrent code violations.

The information received from the State of Pennsylvania indicated that all of the home care agencies owned by the applicant are in current compliance and that no enforcement actions have been taken against any of the agencies.

The State of Florida's Agency for Health Care Administration did not respond to the applicant's request for a Schedule 2D. Therefore, the applicant submitted a notarized affidavit attesting that the following Florida agencies are currently licensed and in compliance with all applicable federal and Florida regulations:

All Metro Home Care Services of Florida, Inc. (CHHA – West Palm Beach, FL)
All Metro Home Care Services of Florida, Inc. (CHHA – Lauderdale Lakes, FL)

Gregory Belinfanti disclosed that on March 20, 2014, MModal and subsidiaries filed a voluntary bankruptcy under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court in the Southern District of New York. Mr. Belinfanti was a partner in the investment partnership and also served on MModal's Board of Directors. On July 31st, 2014, MModal completed its financial restructuring and emerged from bankruptcy.

Gregory Belinfanti also disclosed that "following a voluntary self-disclosure to the Secretaries and Exchange Commission, and based upon what the Department of Justice described as extraordinary cooperation, on December 30, 2013, ArthroCare entered into a Deferred Prosecution Agreement with the United States Securities and Exchange Commission and the Department of Justice related to allegations of securities and related fraud committed by then terminated management employees. The DPA was for a term of 24 months and the required ArthroCare to maintain a compliance program. ArthroCare met of the terms of the DPA resulting in early termination of the DPA on May 22, 2015."

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

Contingency

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

Recommendation: Contingent Approval
Date: September 2, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Paramount Homecare Agency Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 161392

Description of Project:

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

Paramount Homecare Agency Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 8, 2011 meeting and subsequently licensed as 1952L001.

LHCSA application number 2436L was contingently approved by the Public Health and Health Planning Council at its October 8, 2015 meeting. That application approved a 100% stock transfer of the shares Paramount Homecare Agency Inc. to Roman Offengeym, LPN. This stock transfer became effective on April 4, 2016 with no change to the license number.

The purpose of this application is to transfer 80% of the shares of stock from Roman Offengeym, LPN to Mariya Offengeym, RN.

Paramount Homecare Agency Inc. has authorized 200 shares of stock, which will be owned as follows: Mariya Offengeym - 160 shares and Roman Offengeym - 40 shares.

The Board of Directors of Paramount Homecare Agency Inc. is comprised of the following individuals:

Mariya Offengeym, RN, President/Chairman
RN/Director of Patient Services, Paramount Homecare Agency Inc.

Roman Offengeym, LPN, Secretary/Treasurer, Director of Operations
Previously Approved By PHHPC

Roman Offengeym, LPN is exempt from character and competence review due to the fact that he was previously approved by the Public Health and Health Planning Council for this operator.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the health care professionals associated with this application.

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

The applicant proposes to continue to serve the residents of the following counties from an office located at 161 Kings Highway, Suite 2, Brooklyn, New York 11204:

Kings	Queens	New York
Bronx	Richmond	Nassau

The applicant proposes to continue to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval

Date: September 29, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Robynwood Home Care LLC d/b/a Robynwood Home Care
Address: Oneonta
County: Otsego
Structure: Limited Liability Company
Application Number: 161424

Description of Project:

Robynwood Home Care LLC d/b/a Robynwood Home Care, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Robynwood LLC d/b/a Robynwood Home Care was previously approved as a home care services agency by the Public Health and Health Planning Council at its April 5, 2012 meeting and subsequently licensed as 2034L001 effective July 25, 2012.

This LHCSA will be associated with the Assisted Living Program to be operated by Robynwood ALP LLC. The LHCSA and the ALP will have identical ownership.

The membership of Robynwood Home Care LLC d/b/a Robynwood Home Care comprises the following individuals:

Samuel Tennenbaum, EMT – 50%
CEO, Sage Healthcare Partners
COO, Rockhall Management

Affiliations:

Lighthouse Inn North (ALF, Florida, July 2014 – Present)
Lighthouse Inn South (ALF, Florida, July 2014 – Present)

Avraham Satt – 50%
President, Sage Healthcare Partners

The Bureau of Emergency Medical Services indicates no issues with the certification 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 43 Walnut Street, Oneonta, New York 13820:

Otsego Delaware Schoharie Chenango

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care
Physical Therapy Occupational Therapy

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Lighthouse Inn North (ALF, Florida, July 2014 – Present)
Lighthouse Inn South (ALF, Florida, July 2014 – Present)

The information provided by the State of Florida indicated no enforcement actions were taken against Lighthouse Inn North and Lighthouse Inn South for surveys performed between July 2014 and present.

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

Contingency

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

Recommendation: Contingent Approval

Date: November 3, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Extended Holding Company, LLC
d/b/a Extended at Home Care
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 162038

Description of Project:

Extended Holding Company, LLC d/b/a Extended At Home Care, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

AHS Criticare, LLC was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 6, 2015 meeting and subsequently assigned license number 2313L001 effective January 25, 2016. The sole member of AHS Criticare, LLC is Simon Aronshtein.

The sole member of Extended Holding Company, LLC d/b/a Extended At Home Care is Extended Nursing Personnel CHHA, LLC d/b/a Extended Home Care (CHHA).

The membership of Extended Nursing Personnel CHHA, LLC d/b/a Extended Home Care, and Extended Holding Company, LLC d/b/a Extended At Home Care are identical and comprise the following individuals:

Lenore Mahoney - 46%
Managing Director, Extended Nursing
Personnel CHHA, LLC d/b/a Extended Home
Care
Managing Director, Extended MLTC, LLC

Claudia Taglich - 46%
Managing Director, Extended Nursing
Personnel CHHA, LLC d/b/a Extended Home
Care
Managing Director, Extended MLTC, LLC

Affiliations
Extended Nursing Personnel CHHA, LLC
d/b/a Extended Home Care (CHHA)
Extended MLTC, LLC (2011-present)

Affiliations
Extended Nursing Personnel CHHA, LLC
d/b/a Extended Home Care (CHHA)
Extended MLTC, LLC (2011-present)

Vincent Achillarre - 8%
Managing Director, Extended Nursing
Personnel CHHA, LLC d/b/a Extended
Home Care
Managing Director, Extended MLTC, LLC

Affiliations
Extended Nursing Personnel CHHA, LLC
d/b/a Extended Home Care (CHHA)
Extended MLTC, LLC (2011-present)

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

The applicant proposes to serve the residents of the following counties from an office located at 360 West 31st Street, Suite 304, New Yoke, New York 10001:

New York	Bronx	Kings
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Extended Nursing Personnel CHHA, LLC d/b/a Extended Home Care (CHHA)
Extended MLTC, LLC (2011-present)

On December 17, 2009, Extended Nursing Personnel CHHA, LLC d/b/a Extended Home Care entered into agreements of settlement with the Office of New York Attorney General and the United States Attorney for the Eastern District of New York settling alleged liabilities incurred in connection with its submission of claims to Medicare and Medicaid for services by home health aides who lacked proper certification. Extended Nursing Personnel CHHA, LLC d/b/a Extended Home paid a \$9.5 million dollar settlement and was released from any civil or administrative liability for the matters under investigation. As part of settlement Extended Nursing Personnel CHHA, LLC d/b/a Extended Home also agreed to enter into a five year Corporate Integrity Agreement with the New York State Office of the Medical Inspector General. That agreement expired its terms on December 14, 2014.

The information provided by the Division of Home and Community Based Services has indicated that the home care services agency has provided sufficient supervision to prevent harm to the health, safety, and welfare of residents and to prevent recurrent code violations.

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

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

Contingency

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

Recommendation: Contingent Approval
Date: October 20, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Best Help Home Care Corp.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 162061

Description of Project:

Best Help Home Care Corp., a business corporation, requests approval for a change in ownership and legal entity of a licensed home care services agency under Article 36 of the Public Health Law.

Best Help Home Care Corp. was previously approved as a home care services agency by the Public Health and Health Planning Council at its June 7, 2012 meeting and subsequently licensed as 1623L001 effective April 30, 2015.

At the time of licensure Mushe Kurayev was the sole shareholder, owning all 200 shares of stock. On March 9, 2016 19 shares (9.5%) of stock were transferred to Yevgeny Gerovich.

The purpose of this application is to transfer the remaining 181 shares of stock from Mushe Kurayev to Yevgeny Gerovich.

Best Help Home Care Corp. has authorized 200 shares of stock, which will be solely owned by Yevgeny Gerovich.

The Board of Directors of Best Help Home Care Corp. will be comprised of the following individual:

Yevgeny Gerovich, President/Director/Secretary/Treasurer
Manager, Best Help Home Care Corp.
President/Owner, Platinum Express Inc.

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

The applicant proposes to serve the residents of the following counties from an office located at 1733 Sheepshead Bay Road, Suite 12, Brooklyn, New York 11235:

Kings	Bronx	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
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):

Best Help Home Care Corp. (March 2016 – Present)

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies 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: September 30, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: DOJ LHCSA Operations Associates LLC
d/b/a Claremont LHCSA
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 162067

Description of Project:

DOJ LHCSA Operations Associates LLC d/b/a Claremont LHCSA, 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.

DOJ Home Care Agency, Inc. was previously approved as a home care services agency by the Public Health Council at its November 19, 2010 meeting and was subsequently licensed as 1748L001 effective August 15, 2014.

The purpose of this application is to seek approval for DOJ LHCSA Operations Associates LLC d/b/a Claremont LHCSA to acquire DOJ Home Care Agency, Inc. through an asset purchase agreement.

This LHCSA will be associated with the assisted living program to be operated by DOJ ALP Operations Associates LLC and will serve the assisted living program residents.

The members of DOJ LHCSA Operations Associates LLC d/b/a Claremont LHCSA comprise the following individuals:

Kenneth Rozenberg, EMT, NHA (NY and NJ) Managing Member – 98%
Chief Executive Officer, Centers Health Care
Chief Executive Officer, Bronx Center for Rehabilitation & Health Care

Affiliations:

- Amazing Home Care (LHCSA) 05/2006 to present
- Banister Center for Rehabilitation (Rhode Island) 08/2016 to present
- Boro Park Center for Rehabilitation and Healthcare 05/2011 to present
- Bronx Center for Rehabilitation and Health Care 10/1997 to present
- Bronx Center for Renal Dialysis (D&TC) 01/2011 to present
- Brooklyn Center for Rehabilitation and Residential Health Care 05/2007 to present
- Buffalo Center for Rehabilitation and Nursing (FKA Delaware Nursing & Rehab Center (Receivership) 06/2014 to 12/2015
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care (fka Wartburg Lutheran Home for the Aging) (receiver) 06/2008 to 05/2011
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Bushwick Center for Renal Dialysis (D&TC) 06/2014 to present
- Center Plan for Health Living (MLTC) 01/2013 to present
- Centers Home Health Revival (fka Alpine Home Health Care) (CHHA) 07/2008 to present
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Daughters of Jacob Nursing Home Company (receiver) 08/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2004 to 03/2016
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 11/2010 to present

- Hope Center for HIV and Nursing Care 04/2015 to present
- Indian River Rehabilitation and Nursing Center 12/2014 to present
- Northwoods Rehabilitation and Nursing Center at Moravia 11/2014 to 03/2016
- Park View Center for Rehabilitation and Healthcare (Rhode Island) 05/2016 to present
- Queens Center for Rehabilitation and Residential Health Care 10/2004 to 03/2016
- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present
- Senior Care Emergency Ambulance Services (EMS) 06/2005 to present
- Steuben Center for Rehabilitation and Healthcare 07/2014 to present
- The Grand Rehabilitation and Nursing at Chittenango (FKA Stonehedge Health & Rehabilitation Center – Chittenango) (REC) 07/2008 to 04/2011
- The Grand Rehabilitation and Nursing at Chittenango 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome (FKA Stonehedge Health & Rehabilitation Center – Rome) (receiver) 07/2008 to 04/2011
- The Grand Rehabilitation and Nursing at Rome 05/2011 to present
- University Nursing Home 08/2001 to present
- Washington Center for Rehabilitation and Healthcare 02/2014 to present
- Waterfront Center for Rehabilitation and Healthcare (receiver) 08/2011 to 12/2012
- Waterfront Center for Rehabilitation and Healthcare 12/2012 to present
- Williamsbridge Manor Nursing Home 11/1996 to present
- Wartburg Nursing Home (receiver) 06/2008 to 05/2011
- Washington Center Adult Home (AH) 02/2014 to present

Jeffrey M. Sicklick, Member, NHA (NY and NJ) – 2%
Administrator, Bronx Center for Rehabilitation

Affiliations:

- Boro Park Center for Rehabilitation and Healthcare 05/2011 to 04/2016
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2004 to 11/2015
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 05/2013 to present
- Queens Center for Rehabilitation and Residential Health Care 02/2008 to 10/2015
- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present
- Steuben Center for Rehabilitation and Healthcare 07/2014 to present
- The Grand Rehabilitation and Nursing at Chittenango 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome 05/2011 to present
- Washington Center for Rehabilitation and Healthcare 02/2014 to present
- Waterfront Center for Rehabilitation and Healthcare 01/2013 to present
- Washington Center Adult Home (AH) 02/2014 to present

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Kenneth Rozenberg NHA license #04036 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The State of New Jersey has indicated that Kenneth Rozenberg NHA license #2841 holds an active NHA license which expires June 30, 2017.

The Bureau of Professional Credentialing has indicated that Jeffrey M. Sicklick NHA license #03579 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of Emergency Medical Services has indicated that Kenneth Rozenberg holds a Paramedic Certification #082942 and is in good standing. Disciplinary action against this individual or his certification has never been taken.

A seven (7) year review of the operations of the following agencies/facilities was performed as part of this review (unless otherwise noted):

- Amazing Home Care
- Banister Center for Rehabilitation (Rhode Island) 08/2016 to present
- Boro Park Center for Rehabilitation and Healthcare 05/2011 to present
- Bronx Center for Rehabilitation and Health Care
- Bronx Center for Renal Dialysis 01/2011 to present
- Brooklyn Center for Rehabilitation and Residential Health Care 08/2009 to present
- Buffalo Center for Rehabilitation and Nursing (fka Delaware Nursing & Rehab Center) 06/2014 to 12/2015
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care (fka Wartburg Lutheran Home for the Aging) 08/2009 to 05/2011
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Bushwick Center for Renal Dialysis 06/2014 to present
- Center Plan for Health Living 01/2013 to present
- Centers Home Health Revival (fka Alpine Home Health Care)
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Daughters of Jacob Nursing Home Company 08/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2009 to 03/2016
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 11/2010 to present
- Hope Center for HIV and Nursing Care 04/2015 to present
- Indian River Rehabilitation and Nursing Center 12/2014 to present
- Northwoods Rehabilitation and Nursing Center at Moravia 11/2014 to 03/2016
- Park View Center for Rehabilitation and Healthcare 05/2016 to present
- Queens Center for Rehabilitation and Residential Health Care 08/2009 to 03/2016
- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present
- Senior Care Emergency Ambulance Services, Inc.
- Steuben Center for Rehabilitation and Healthcare 07/2014 to present
- The Grand Rehabilitation and Nursing at Chittenango (fka Stonehedge Health & Rehab Center – Chittenango) 08/2009 to 04/2011
- The Grand Rehabilitation and Nursing at Chittenango 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome (fka Stonehedge Health & Rehabilitation Center – Rome) 08/2009 to 04/2011
- The Grand Rehabilitation and Nursing at Rome 05/2011 to present
- University Nursing Home 08/2009 to present
- Washington Center for Rehabilitation and Healthcare 02/2014 to present
- Waterfront Center for Rehabilitation and Healthcare 08/2011 to 12/2012
- Waterfront Center for Rehabilitation and Healthcare 12/2012 to present
- Williamsbridge Manor Nursing Home
- Wartburg Nursing Home 08/2009 to 05/2011
- Washington Center Adult Home 02/2014 to present

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies reviewed, for the periods identified above reveals the following:

Alpine Home Health Care was fine one thousand dollars (\$1,000) pursuant to a Stipulation dated February 3, 2014 for not responding to Emergency Preparedness survey.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed, for the periods identified above, reveals the following:

Bronx Center for Rehabilitation and Health Care was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

Essex Center for Rehabilitation and Health Care was fined six thousand dollars (\$6,000) pursuant to a Stipulation and Order dated March 9 2016 for surveillance findings on August 19, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

Fulton Center for Rehabilitation and Healthcare was fined fifty-two thousand dollars (\$52,000) pursuant to a Stipulation and Order dated January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. Deficiencies were found under 10 NYCRR 451.3(e)(2)(ii)(b) Notification of Changes; 415.12 Quality of Care: Highest Practical Potential; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(c)(2) Quality of Care: Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.26 Administration; 415.27(a-c) Quality Assurance; and 415.4(b)(1)(2)(3) Investigate/Report Allegation.

Northwoods Rehabilitation and Nursing Center at Moravia was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

Richmond Center for Rehabilitation and Specialty Healthcare was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated January 25, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.

Richmond Center for Rehabilitation and Specialty Healthcare was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated March 9, 2016 for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

Richmond Center for Rehabilitation and Specialty Healthcare was fined eighteen thousand dollars (\$18,000) pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.

Stonehedge Health & Rehabilitation Center - Chittenango (nka: The Grand Rehabilitation and Nursing at Chittenango) was fined four thousand dollars (\$4,000) pursuant to a Stipulation and

Order dated November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1, 2) Quality of Care: Accidents and Supervision; and 415.26(b)(3)(4) Governing Body.

Chittenango Center for Rehabilitation and Health Care (nka: The Grand Rehabilitation and Nursing at Chittenango) was fined twenty thousand dollars (\$20,000) pursuant to a Stipulation and Order dated February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores; and 415.12(d)(1) Quality of Care: Catheters.

Washington Center for Rehabilitation and Healthcare was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated April 6, 2016 for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.27(a-c) Administration: Quality Assessment and Assurance.

Waterfront Center for Rehabilitation and Healthcare was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

Waterfront Center for Rehabilitation and Healthcare was fined was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated April 6, 2016 for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.

Waterfront Center for Rehabilitation and Healthcare was fined twenty-four thousand dollars (\$24,000) pursuant to a Stipulation dated April 19, 2016 for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month By Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Emergency Medical Services and Trauma Systems has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the 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.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Rhode Island has indicated that Banister Center for Rehabilitation and Park View Center for Rehabilitation and Healthcare have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of Bronx County from the office located at 1160 Teller Avenue, Bronx, New York 10456

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Respiratory Therapy	Speech-Language Pathology
Physical Therapy	Occupational Therapy	Audiology	Nutrition

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

Contingency

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

Recommendation: Contingent Approval

Date: October 25, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: A.V. Pro Services, Inc. d/b/a Assisted Home Care Services
Address: St. Albans
County: Queens
Structure: For-Profit Corporation
Application Number: 162119

Description of Project:

A.V. Pro Services, Inc. d/b/a Assisted Home Care Services, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

A.V. Pro Services, Inc. d/b/a Assisted Home Care Services was previously approved by the Public Health Council at its May 2, 2008 meeting and subsequently assigned license number 1533L001 effective April 1, 2010. At that time, the ownership of A.V. Pro Services, Inc. d/b/a Assisted Home Care Services, Inc. consisted of Abdon Victor (51 shares) and Rachele Victor (49 shares) with 100 shares unissued.

The applicant has authorized 200 shares of stock which will be owned as follows: Yury Grobshteyn - 66.5 shares, Jeff Paperman - 66.5 shares, Abdon Victor - 33.5 shares and Rachele Victor - 33.5 shares.

The proposed Board of Directors of A.V. Pro Services, Inc. d/b/a Assisted Home Care Services comprises the following individuals:

Yury Grobshteyn, Chairman/Director of Operations
President, Uni-Care Services, Inc.

Abdon Victor, Vice-Chairman

Rachele Victor, Treasurer

Jeff Paperman, Secretary
Office Manager, Real Care, Inc.

Abdon Victor and Rachele Victor are exempt from character and competence review due to the fact that they were previously approved by the Public Health Council for this operator.

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

The applicant proposes to continue to serve the residents of the following counties from an office located at 200-15 Linden Boulevard, St. Albans, New York 11412:

Kings
Bronx

Queens
Nassau

Richmond
New York

The applicant proposes to continue to provide the following health care services:

Nursing
Physical Therapy
Speech-Language Pathology
Nutrition

Home Health Aide
Occupational Therapy
Audiology
Homemaker

Personal Care Aide
Respiratory Therapy
Medical Social Services
Housekeeper

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

Contingency

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

Recommendation: Contingent Approval
Date: October 24, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: AllHealth Home Care LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 162137

Description of Project:

AllHealth 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.

AllHealth Home Care LLC was previously approved by the Public Health Council at its March 12, 2010 meeting and subsequently licensed 1847L001 effective January 1, 2011.

The purpose of this application is to seek approval for Wasa Health LLC to acquire 74.25% membership of the LHCSA through an Asset Purchase Agreement.

The proposed members of AllHealth Home Care LLC comprise the following entity and individuals:

Wasa Health, LLC – 74.25%

Lyudmila Motovich – 24.75%

Elana Sims , RN – 1%

The following individual is the sole member of Wasa Health LLC:

Esther R. Fass
Assistant Administrator, Quality Healthcare, Inc.

Lyudmila Motovich and Elana Sims are exempt from character and competence review due to the fact that they were previously approved by the Public Health Council for this operator.

A search of Esther Fass revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations of the AllHealth Home Care LLC (1/1/2011-present) was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1122 Coney Island Avenue, Brooklyn, New York 11230:

Bronx
Queens

Kings
Richmond

New York
Westchester

The applicant proposes to continue to provide the following health care services:

Nursing
Occupational Therapy
Nutrition

Home Health Aide
Physical Therapy
Homemaker

Personal Care
Audiology
Housekeeper

Medical Social Services
Speech-Language Pathology

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

Contingency

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

Recommendation: Contingent Approval

Date: September 19, 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 8th day of December, 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>
161454 E	Cobbs Hill Manor, Inc. (Monroe County)
162015 E	Argyle Center LHCSA, LLC d/b/a Centers Home Care North East (Albany, Essex, Montgomery, Schenectady, Columbia, Fulton Rensselaer, Warren, Dutchess, Greene Saratoga and Washington Counties)
162016 E	Bath Center LHCSA, LLC d/b/a Centers Home Care West (Chemung, Ontario, Yates, Genesee, Schuyler, Livingston, Steuben, Monroe and Wayne Counties)

152285 E Helping U Homecare, Inc.
(New York, Richmond, Kings, Bronx, Queens, and Nassau Counties)

161111 E Crown of Life Care NY, LLC
(Bronx, Queens, Kings, Richmond, Nassau and New York Counties)

161146 E All Metro Aids, Inc. d/b/a All Metro Health Care
(New York, Queens, Bronx, Richmond and Kings Counties)

161147 E All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care
(Nassau County)

161392 E Paramount Homecare Agency Inc.
(Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)

161424 E Robynwood Home Care LLC d/b/a Robynwood Home Care
(Otsego, Delaware, Schoharie and Chenango Counties)

162038 E Extended Holding Company, LLC d/b/a Extended at Home Care
(New York, Queens, Bronx, Richmond, Kings, and Nassau Counties)

162061 E Best Help Home Care Corp.
(Kings, Queens, Bronx, Richmond, New York and Westchester Counties)

162067 E DOJ LHSCA Operations Associates LLC
d/b/a Claremont LHCSA
(Bronx County)


162119 E A.V. Pro Services, Inc.
d/b/a Assisted Home Care Services
(Kings, Bronx, Queens, Nassau, Richmond, and New York Counties)

162137 E AllHealth Home Care LLC
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter
General Counsel 

Date: November 3, 2016

Subject: Proposed Certificate of Amendment of Certificate of Incorporation of The South Hampton Hospital Association: Purposes Change

The Southampton Hospital Association is the not-for-profit operator of Southampton Hospital; however, via submission of project 152083-C, Southampton Hospital will become a division of Stony Brook University Hospital. This project has received contingent approval. Therefore, The Southampton Hospital Association is removing Article 28 purposes language from its Certificate of Incorporation.

Attached is the proposed Certificate of Amendment of Certificate of Incorporation of The South Hampton Hospital Association, 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.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

**THE SOUTHAMPTON HOSPITAL ASSOCIATION
Under Section 803 of the Not-For-Profit Corporation Law**

The undersigned, being the President of The Southampton Hospital Association (the "Corporation"), hereby certifies:

1. The name of the Corporation is The Southampton Hospital Association and that is the name under which the Corporation was originally incorporated.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on February 10, 1944, under the Not-For-Profit Corporation Law of the State of New York.
3. The Corporation is a corporation as defined in paragraph (a) of section 102 of the Not-For-Profit Corporation Law of the State of New York. The Corporation is a charitable corporation under paragraph (c) of section 201 of said Law and will remain a charitable corporation after the filing of this Amendment.
4. The Certificate of Incorporation of the Corporation, as previously amended, is hereby further amended to (i) change the number of the Corporation's directors to not less than 15 nor more than 30 individuals and (ii) change the Corporation's purpose to the following: to promote the health of people in the communities on the East End of Long Island by (a) participating in an affiliation with the State University of New York, acting through Stony Brook University Hospital ("SUNY/SBUH"), pursuant to a series of agreements providing for the operation of Southampton Hospital and related medical facilities by SUNY/SBUH under specified conditions, and (b) actively supporting the development of facilities and resources needed to provide healthcare services to the people in those communities. In no event will the Corporation operate an Article 28 facility as defined in the New York State Public Health Law without having first received approval to do such from the Public Health and Health Planning Council.
5. The foregoing amendments were adopted by action of the Corporation's Board of Directors at a meeting duly held on December 19, 2015.
6. The Secretary of State is designated as the agent of the Corporation upon whom process may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: 240 Meeting House Lane, Southampton, New York 11968, Attention: President.

Date: November 2, 2016



Robert S. Chaloner

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
July 30, 2008.



Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

Cicero Consulting Associates

VCC, Inc.

701 Westchester Ave. • Suite 210W • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

White Plains Unit
Frank T. Cicero, M.D.
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Rose Murphy
Michael D. Ungerer
Noella Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Malala
Linda Cammisa, R.N.

Albany Unit
William B. Carmello
Joseph F. Pofit
Albert L. D'Amato
Mark Van Guysling
Rosemarie Porco-Nash
Martha H. Pofit
Paul M. Tenan
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg

November 2, 2016

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

Eric Mantey, Esq.
Bureau of House Counsel
NEW YORK STATE DEPARTMENT OF HEALTH
Corning Tower, Room 2482
Empire State Plaza
Albany, New York 12237

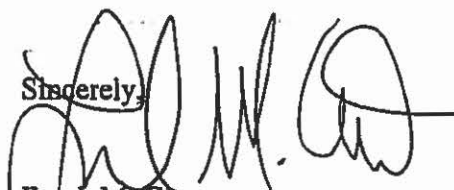
RE: THE SOUTHAMPTON HOSPITAL ASSOCIATION
Certificate of Amendment of the Certificate of Incorporation

Dear Mr. Mantey:

On behalf of our client, Southampton Hospital, and in accordance with New York Public Health Law § 2801-a(1), we are seeking approval from the Public Health and Health Planning Council (PHHPC) for an Amendment to the Certificate of Incorporation of The Southampton Hospital Association, which is the not-for-profit operator of Southampton Hospital.

This request is being submitted in light of the contingent approval of Project No. 152083-C, through which Southampton Hospital will become a division of Stony Brook University Hospital. In order to effectuate that transaction as of January 1, 2017, Southampton Hospital's attorneys indicate that it must amend its Certificate of Incorporation on or before December 31, 2016. To this end, please refer to Attachment No. 1 for the proposed, executed Certificate of Amendment of the Certificate of Incorporation of The Southampton Hospital Association that will need to be filed with the Department of State. The Hospital understands that PHHPC approval is needed for the amendment to be approved, given that, among other things, it changes the corporation's purposes (the Article 28 purpose will be eliminated). In addition, please refer to Attachment No. 2 for the original Certificate of Incorporation and all approved Amendments for The Southampton Hospital Association.

Please feel free to contact me if you have any questions. Thank you for your assistance in this matter.

Sincerely,

Frank M. Cicero

cc: Mr. Robert Chaloner, President and Chief Executive Officer, Southampton Hospital

State of New York

State Board of Charities

The Capitol-At Albany

~~As the basis of the Incorporation~~

of

The Southampton Hospital Association

124
Whereas application has been made to the State Board of Charities for its approval of the incorporation of The Southampton Hospital Association and whereas on due inquiry and investigation it appears to said Board desirable and proper that such association shall be so incorporated.

Now Therefore, In pursuance of and in conformity with the provisions of chapter 40 of the Laws of the State of New York enacted February 17, 1909, the said State Board of Charities hereby certifies that it approves of the incorporation of the said The Southampton Hospital Association, located at Southampton N.Y. the certificate of incorporation of which is hereunto annexed.

In Witness Whereof, the said Board has this 17th day of November 1909 caused these presents to be subscribed by its President and attested by its Secretary and its official seal to be hereunto affixed.

William R. Stewart President

(L.S.) Attest: Robert W. Hill, Secretary

State of New York, Attorney General's Office,

Albany, October 22, 1909

I, Edward R. O'Malley, Attorney-General of the State of New York, do hereby certify that I have examined as to form, the annexed certificate of the Southampton Hospital Association and that the same is in accordance with

Certificate of Incorporation

of the

Southampton Hospital Association

We, the undersigned, all being persons of full age Citizens of the United States, and Residents of the State of New York, desiring to form a hospital corporation pursuant to Article 7 of the Membership Corporation Law, being Chapter 35 of the Consolidated Laws, do hereby make, sign, acknowledge and file this certificate for such purposes as follows:-

First: The name of the proposed corporation is The Southampton-Hospital Association.

Second: The particular object for which the corporation is to be formed is to establish and maintain a general hospital at Southampton, Suffolk County, New York, and to receive, collect and hold either by gift, bequest, devise, or otherwise, funds and property, either real or personal and to use and disburse the same in furtherance of the objects of the said corporation.

Third: The principal office of the corporation is to be located in the Town of Southampton, Suffolk County, New York.

Fourth: The names and places of residence of the persons to be its directors until the first annual meeting are as follows:

Name	Residence
George Warrington Curtis	Southampton, New York
William Lewis Donnelly	Southampton, New York
David Joseph Gilmartin	Southampton, New York
Harry Pelham Robbins	Southampton, New York
Alfred Egmont Schermerhorn	Southampton, New York
Willis Dale Van Brunt	Southampton, New York

STATE OF NEW YORK, }
County of Suffolk, } ss.:

I, R. FORD HUGHES, Clerk of the County of Suffolk and Clerk of the Supreme Court of the State of New York in and for said County (said Court being a Court of Record) DO HEREBY CERTIFY that I have compared the annexed copy of Certificate of Incorporation: The Southampton Hospital Association with original recorded in Suffolk County Clerk's office in Liber 6 of Certificates of Incorporation page 235.

and that it is a just and true copy of such original record and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said County and Court this 7th day of Feb. 1944

R. Ford Hughes
Clerk.

Fifth: The date for holding its annual meeting shall be on the last Friday of June.

In Witness Whereof we have made, signed, acknowledged and filed this certificate this ninth day of October 1909.

GEORGE WARRINGTON CURTIS	L.S.
WILLIAM LEWIS DONNELLY	L.S.
DAVID JOSEPH GILMARTIN	L.S.
HARRY PELHAM ROBINS	L.S.
ALFRED ROBERT SCHERMERHORN	L.S.
WILLIS DALE VAN BRUNT	L.S.

State of New York,
County of Suffolk, ss.:

On this 9th day of October 1909, before me personally came George Warrington Curtis, William Lewis Donnelly, David Joseph Gilmartin, Harry Pelham Robins, Alfred Robert Schermerhorn and Willis Dale Van Brunt to me personally known and known to me to be of the persons described in and who made, signed and executed the foregoing certificate, and they severally duly acknowledged to me that they made, signed and executed the same for the uses and purposes therein set forth.

JAMES H. PIERSON L.S.
Notary Public,
Suffolk County, N.Y.

I hereby approve of the annexed Certificate of Incorporation of The Southampton Hospital Association and the filing thereof.

ABEL E. BLACKMAR
Justice of the Supreme Court
of the State of New York

Dated December 9, 1909
Brooklyn, New York.

Recorded 20th December 1909 @ 12-M.

Liber 6 of Certificates of Incorporation page 235
WILLIAM F. FLANAGAN,
Clerk.

4

STATE OF NEW YORK

No. 98

Int. 98

IN ASSEMBLY

January 10, 1944

Cl. 7 L. 1944

Introduced by Mr. REQUX—read once and referred to the Committee on Judiciary

AN ACT

To validate, legalize and continue the existence of Southampton Hospital Association

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

- 1 Section 1. A certificate of incorporation of Southampton Hos-
- 2 pital Association, drawn pursuant to the statute then known as
- 3 article seven of the membership corporations law (chapter thirty-
- 4 five of the consolidated laws), signed and acknowledged by George
- 5 Washington Curtis, William Lewis Donnelly, David Joseph Gil-
- 6 martin, Harry Pelham Robbins, Alfred Egmont Schermerhorn and
- 7 Willis Dale Van Brunt on the ninth day of October, nineteen
- 8 hundred nine, approved on the twenty-second day of October,
- 9 nineteen hundred nine by Attorney-General Edward R. O'Malley,
- 10 approved on the seventeenth day of November, nineteen hundred
- 11 nine, by the state board of charities and approved on the ninth

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

5

1 day of December, nineteen hundred nine by Abel E. Blackmar,
2 justice of the supreme court, having been filed and recorded in
3 the office of the clerk of the county of Suffolk on the twentieth day
4 of December, ~~nineteen hundred nine~~ as required by the governing
5 statute which was then section five of the general corporation law
6 but, through inadvertence, no duplicate original or certified copy
7 of such certificate having been filed at that time or subsequently in
8 the office of the secretary of state or of the department of state,
9 and such association having acted on the twentieth day of December,
10 nineteen hundred nine, and continuously thereafter, as, and in
11 the belief that it was and is a hospital corporation duly organized
12 and existing under and pursuant to the provisions of the mem-
13 bership corporations law, being chapter thirty-five of the consoli-
14 dated laws, such association upon the filing in the department of
15 state of the state of New York, within thirty days after this act
16 takes effect, of a copy of its aforesaid certificate of incorporation,
17 ~~only certified by the clerk of the county of Suffolk~~, shall be deemed
18 to be a valid membership corporation and to have been such on
19 the twentieth day of December, ~~nineteen hundred nine~~, and at all
20 times thereafter, with the same force and effect as if its certificate
21 of incorporation or a duplicate original thereof had been filed timely
22 in the department of state, and all acts done or performed by
23 such association or in its name by its directors and officers, not
24 otherwise unlawful, shall be valid as corporate acts of said asso-
25 ciation.

26 § 2. This act shall take effect immediately.



Certified Copy

of

Certificate of Incorporation

of the

The Southampton Hospital Association

X 43

2

(copy)

Certificate of Inc.

Arthur W. Schuman

10th, 1944

provisional to Chapter

Seven, Jan 1, 1944

Arthur W. Schuman

Secretary

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 30, 2008.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

Certificate of Report of Existence
of

SOUTHAMPTON HOSPITAL ASSOCIATION

Exact Name of Corporation

Pursuant to Section 57 of the Membership Corporations Law

1. The name of the corporation is Southampton Hospital Assoc.. The
Name of Corporation

original name was Southampton Hospital Association.

If name has been changed, insert original name.

2. The certificate of incorporation was filed in the Department
of State on February 10th, 1944
Date of Incorporation

3. The corporation was formed pursuant to Article 7, Membership Corporation Law
Chapter 35 - Consolidated Laws
Cite Incorporation Statute

4. The existence of the foregoing corporation is hereby continued.

20
To be signed by an officer,
trustee, director or five
members in good standing.

Albert P. Loening
Albert P. Loening - President

State of New York }
County of Suffolk } SS.:

On this 27th day of December, 1950, before me

personally appeared Albert P. Loening to me personally known

and known to me to be the person(s) described in and who executed

the foregoing certificate, and (he) ~~(they)~~ thereupon acknowledged

to me that (he) ~~(they)~~ executed the same for the uses and purposes

therein mentioned.

ASSUNTA J. CANCELLIERI, No. 2606
Notary Public in the State of New York
Residing in Suffolk County
Commission Expires March 30, 1951

Assunta J. Cancellieri
Notary Public

County of Suffolk

NOTE: If the foregoing acknowledgment is taken without the State of
New York, the signature of the notary public should be
authenticated by a certificate of the clerk of the county in
which such notary has power to act, or other proper officer.

8 E X - 20

Certificate of Report of
Existence of

Exact Name of Corporation

Pursuant to Section 57
of the
Membership Corporations
Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 17 1951

FILING FEE \$5.00

Thomas Gleason
Secretary of State

Saukhampton Corp. Corp.
Saukhampton N. Y.

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
July 30, 2008.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

706330

- CERTIFICATE OF
- (1) INCREASE IN NUMBER OF DIRECTORS; and
 - (2) CHANGE OF TIME OF ANNUAL MEETING.

of:

SOUTHAMPTON HOSPITAL ASSOCIATION

PURSUANT TO SECTION 30 OF THE MEMBERSHIP CORPORATIONS LAW.

WE, THE UNDERSIGNED, being respectively the President and the Secretary of the SOUTHAMPTON HOSPITAL ASSOCIATION, do certify and state:

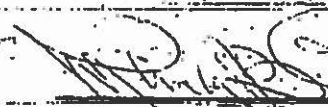
1. The name of the corporation is SOUTHAMPTON HOSPITAL ASSOCIATION.

2. The Certificate of Incorporation was filed on the 10th day of February 1944 in the Office of the Secretary of State for the State of New York, and on the 20th day of December 1909 in the Office of the Clerk of the County of Suffolk, State of New York.

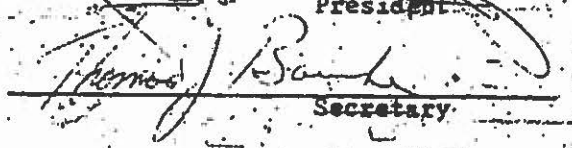
3. The number of directors of the corporation previously authorized is twenty-five (25). The number of directors as changed by this certificate shall be not less than twenty-five (25) nor more than forty (40).

4. The time previously fixed for holding the annual meeting of members of the corporation is the last Friday of June of each year. Henceforth, the annual meeting of members shall be held on the last Saturday of June of each year.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this certificate this 16 day of September, 1968.



 President



 Secretary

STATE OF NEW YORK)
(ss.)
COUNTY OF SUFFOLK)

On this 16 day of September, 1968, before me personally came MAURICE B. CUNNINGHAM and THOMAS J. BOURKE to me known to be the persons described in and who executed the foregoing certificate of change and they thereupon severally duly acknowledged to me that they executed the same.

Paul H. Fordham
Notary Public

PAUL H. FORDHAM
NOTARY PUBLIC, State of New York
No. 331733700 - Suffolk County
Commission Expires March 30, 1969

N

STATE OF NEW YORK)
(SS.)
COUNTY OF SUFFOLK)

MAURICE B. CUNNINGHAM and THOMAS J. BOURKE, being
severally duly sworn, each for himself, deposes and says: that
MAURICE B. CUNNINGHAM is the President of the SOUTHAMPTON HOSPITAL
ASSOCIATION, and that THOMAS J. BOURKE is the Secretary thereof;
that they were authorized to execute and file the foregoing
~~certificate of amendment changing (1) the number of directors and~~
(2) the time of the annual meeting of the SOUTHAMPTON HOSPITAL
ASSOCIATION, pursuant to Section 30 of the Membership Corpora-
tions Law, by the concurring vote of a majority of the members
of the corporation present at an annual meeting held on the 29th
day of June, 1968, upon notice pursuant to section 43 of the
Membership Corporations Law, and that they subscribed such
certificate by virtue of such authority.


Maurice B. Cunningham


Thomas J. Bourke

Sworn to before me this
16 day of September, 1968.


Notary Public

PAUL H. FORDHAM
NOTARY PUBLIC, State of New York
No. 52-1273700 - Suffolk County
Commission Expires March 30, 1969

CERTIFICATE OF
(1) INCREASE IN NUMBER OF
MEMBERS, AND
(2) CHANGE OF TIME OF ANNUAL
MEETING

HOSPITAL ASSOCIATION

NEW YORK
STATE
SECRETARY OF STATE
RECEIVED
SEP 19 1968
10 5 0

Handwritten signature
SECRETARY

Handwritten signature
PRESIDENT

Handwritten signature
2/10/77

Handwritten signature
9/17

Handwritten signature

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 30, 2008.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State



**RESTATED CERTIFICATE OF INCORPORATION
OF
THE SOUTHAMPTON HOSPITAL ASSOCIATION
(Under Section 805 of the Not-for-Profit Corporation Law)**

F 981215000143

The undersigned, John J. Ferry, Jr., M.D. and William H. Duggan, Jr., Esq., being respectively the President and Secretary of Southampton Hospital Association (the "Association"), to amend and restate the Certificate of Incorporation of the Association in accordance with Section 805 of the Not-for-Profit Corporation Law, hereby certify the following:

1. The name of the corporation is The Southampton Hospital Association and the corporation was formed under the name The Southampton Hospital Association.
2. The Certificate of Incorporation of the corporation (the "Certificate") was filed on December 20, 1909, under the Membership Corporation Law.
3. The Certificate, as amended and as now in full force and effect, shall be, and it hereby is, amended to provide that the Peconic Health Corporation is the sole member of the Association with certain express powers and that the Peconic Health Corporation shall appoint the Board of Directors of the Association.
4. The Certificate is hereby restated to set forth its entire text, as amended, as follows:

FIRST: The name of the corporation is The Southampton Hospital Association.

SECOND: The purpose of the corporation is to establish and maintain a general hospital at Southampton, Suffolk County, New York and to receive, collect and hold property either by gift, bequest, devise, or otherwise funds and

1

property, either real or personal, and to use and disburse the same in furtherance of the objects of the corporation.

THIRD: The principal office of the corporation is to be located in the Town of Southampton, County of Suffolk, New York.

FOURTH: The sole member of the corporation shall be the Peconic Health Corporation and, as the sole member of the corporation, the Peconic Health Corporation shall have the following powers:

(A) Authority and responsibility for appointing the corporation's Board of Directors;

(B) Authority and responsibility for developing, approving, and overseeing the implementation of the mission and goals of the corporation consistent with the needs of the Peconic Health Corporation and of the community served by the Southampton Hospital;

(C) Authority and responsibility for developing, approving, and overseeing the implementation of the strategic plan of the Southampton Hospital consistent with the needs of the Peconic Health Corporation and of the community served by the Southampton Hospital;

(D) Authority and responsibility for developing, approving, and overseeing the long range plan of the Southampton Hospital consistent with the needs of the Peconic Health Corporation and of the community served by the Southampton Hospital;

(E) Authority and responsibility for developing, approving, and overseeing the operating budget of the Southampton Hospital consistent with the needs of the Peconic Health Corporation and of the community served by the Southampton Hospital;

(F) Authority and responsibility for developing, approving, and overseeing the capital budget of the Southampton Hospital consistent with the needs of the Peconic Health Corporation and of the community served by the Southampton Hospital;

(G) Authority and responsibility for approving any capital indebtedness for the Southampton Hospital except that which is required for compliance with the Internal Revenue Code of 1986, as amended from time to time;

(H) Authority and responsibility for approving and submitting to the New York State Department of Health certificates of need for any new clinical programs or services of the Southampton Hospital that meet the threshold

dollar amount established by law for submission of certificate of need applications (or their legal equivalent) to the New York State Department of Health;

(I) Authority and responsibility for approving any academic affiliation involving the Southampton Hospital;

(J) Authority and responsibility for approving the addition or deletion of clinical services at the Southampton Hospital;

(K) Authority and responsibility for negotiating and approving any and all managed care contracts or other contracts having a material effect upon the Southampton Hospital; and

(L)⁵⁷ Authority and responsibility for approving the officers of the corporation.

FIFTH: The number of directors of the corporation shall not be less than twenty-five (25) nor more than forty (40). The Board of Directors of the corporation shall be appointed by the Peconic Health Corporation.

SIXTH: The Secretary of State is designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is 240 Meeting House Lane, Southampton, New York 11968.

5. The foregoing amendments and restatement of the Certificate were authorized by the vote of the directors of the Association at a meeting of the directors on December 7, 1996 followed by the vote of the members of the Association on March 8, 1997.

IN WITNESS WHEREOF, we have made and subscribed this Certificate and hereby affirm under the penalties of perjury that its contents are true as of this 8 day of March, 1997.

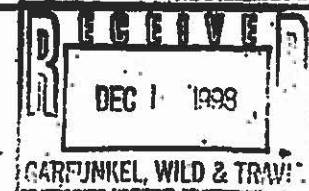

John J. Ferry, Jr., M.D., President


William H. Dugan, Jr., Esq., Secretary



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER-BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL



December 1, 1998

Frederick I. Miller, Esq.
Garfunkel, Wild & Travis, P.C.
Attorneys at Law

111 Great Neck Road
P. O. Box 220602
Great Neck, New York 11021

Re: Restated Certificate of Incorporation of Southampton Hospital Association.

Dear Mr. Miller:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 25th day of October, 1996, to consider the application of Peconic Health Corporation, Project #961026, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Incorporation of Southampton Hospital Association, dated March 8, 1997.

Sincerely,

Karen S. Westervelt
Executive Secretary

4

F 981215000143

12

8

	RESTATED CERTIFICATE OF INCORPORATION OF THE SOUTHAMPTON HOSPITAL ASSOCIATION	(Under Section 80c of the Not-for-Profit Corporation Law)	<p style="text-align: center;">BILL</p> <p>GARFUNKEL WILD & TRAVIS, P.C. ATTORNEYS AT LAW 111 GREAT NECK ROAD GREAT NECK, N.Y. 11021 (516) 393-2300</p>
--	---	--	--

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED DEC 15 1998

TAX \$

BY:

OC
Suffolk

12

5 981215000153

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 30, 2008.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

E-12

F06060900025

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

THE SOUTHAMPTON HOSPITAL ASSOCIATION

Under Section 803 of the Not-For-Profit Corporation Law


The undersigned, being the Chief Financial Officer of The Southampton Hospital Association, hereby certifies:

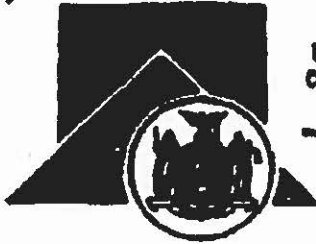
1. The name of the corporation is The Southampton Hospital Association (the "Corporation") and that is the name under which the Corporation was originally incorporated.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on February 10, 1944 under the New York State Membership Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York. The Corporation is a Type B corporation under Section 201 of said law and will remain a Type B corporation after the filing of this Amendment.
4. The Certificate of Incorporation of the Corporation is hereby amended by deleting in its entirety Article FOURTH which names Peconic Health Corporation as the corporate member, and renumbering the following Articles accordingly.
5. This Amendment to the Certificate of Incorporation of the Corporation was authorized by vote of the Board of Trustees of the Corporation at a duly held meeting of the

Board held on July 23, 2005 and by Peconic Health Corporation ("Peconic"), the sole member of the Corporation.

6. The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: 240 Meeting House Lane, Southampton, New York 11968, Attention: President.

Dated: MARCH 16, 2006


NAME: CHRISTOPHER J. SCHULTEIS
TITLE: CHIEF FINANCIAL OFFICER



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

June 8, 2006

Mr. Robert Wild
Garfunkel, Wild and Travis
Peconic Health Corporation
111 Great Neck Road
Great Neck, New York 11021

Re: Certificate of Amendment of the Certificate of Incorporation of Southampton Hospital Association

Dear Mr. Wild:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of January, 2006, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Southampton Hospital Association, dated March 16, 2006.

Sincerely,

Donna W. Peterson
Executive Secretary

/md

3

060609000.215

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE SOUTHAMPTON HOSPITAL ASSOCIATION

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

RECEIVED
2006 JUN -8 PM 12:00

102
STATE OF NEW YORK
DEPARTMENT OF STATE

JUN 09 2006

Filer:

FILED
TAX S
BY WWS
DFF

GARFUNKEL WILD & TRAVIS
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

E-12

E-12

DRAWDOWN

WWS/G.T.

060609000.215

2006 JUN -9 AM 10:01

2006 JUN -9 AM 9:08

FILED

RECEIVED

4

FILING RECEIPT

=====

ENTITY NAME: THE SOUTHAMPTON HOSPITAL ASSOCIATION

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROCESS PROVISIONS

COUNTY: SUFF

=====

FILED:12/17/2015 DURATION:***** CASH#:151217000408 FILM #:151217000379

FILER:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

ATTENTION: PRESIDENT AND CHIEF EXECUTIVE OFFICER
240 MEETING HOUSE LANE
SOUTHAMPTON, NY 11968

REGISTERED AGENT:

=====

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

FEES	65.00	PAYMENTS	65.00
	-----		-----
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

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 18, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

E-12

15121700 0379

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SOUTHAMPTON HOSPITAL ASSOCIATION
Under Section 803 of the Not-For-Profit Corporation Law**

The undersigned, being the President and Chief Executive Officer of The Southampton Hospital Association (the "Corporation"), hereby certifies:

1. The name of the Corporation is The Southampton Hospital Association, and that is the name under which the Corporation was originally incorporated.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on February 10, 1944, under the Not-For-Profit Corporation Law of the State of New York.

3. The Corporation is a corporation as defined in subparagraph (a) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.

4. The Certificate of Incorporation of the Corporation, as amended, is hereby amended to effectuate a change in the membership of the Corporation and reflect the withdrawal of the Corporation's sole corporate member, Peconic Health Corporation, dba East End Health Alliance, by deleting in its entirety Article SIXTH, which designates East End Health Alliance as the sole member of the Corporation.

151217000379

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized by the Board of Trustees of East End Health Alliance, the sole member of the Corporation, at a duly held meeting on April 1, 2015.

6. This Amendment to the Certificate of Incorporation of the Corporation was authorized by the Board of Directors of the Corporation at a duly held meeting on April 25, 2015.

7. The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: 240 Meeting House Lane, Southampton, New York 11968, Attention: President and Chief Executive Officer.

IN WITNESS WHEREOF, the undersigned has executed and has verified this Certificate of Amendment this 27th day of April, 2015.



Name: Robert S. Chaloner
Title: President and Chief Executive Officer

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

November 20, 2015

Frank Cicero
Cicero Consulting Associates VCC Inc.
701 Westchester Avenue
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of The Southampton Hospital Association

Dear Mr. Cicero:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council and Health Planning Council held on the 6th day of August, 2015, I hereby certify that the Public Health and Health Planning Council consents to the filing of the, Certificate of Amendment of the Certificate of Incorporation of The Southampton Hospital Association, dated April 27, 2015.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl

15121700 03A

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SOUTHAMPTON HOSPITAL ASSOCIATION
Under Section 803 of the Not-For-Profit Corporation Law

FILED

2015 DEC 17 PM 12:28

RECEIVED

2015 DEC 16 PM 3:06

loc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED DEC 17 2015

TAX \$ _____

BY: me

FILED BY:

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NY 11021

E-12

DRAWDOWN

408

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Southampton Hospital Association, dated November 2, 2016.



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter,
General Counsel

Date: November 3, 2016

Subject: Daughters of Jacob Nursing Home Company, Inc.: Certificate of Incorporation Purposes Change and Name Change

Daughters of Jacob Nursing Home Company, Inc. is seeking approval to amend its Certificate of Incorporation to change its corporate name and to eliminate purpose language related to the operation of a nursing home. The proposed new name of the not-for-profit corporation is Daughters of Jacob Support Organization, Inc.

These changes are necessitated by the fact that the corporation sold its nursing home effective September 15, 2016 after PHHPC approved the sale pursuant to project No. 132128-E. PHHPC approval of the purposes change is required pursuant to Not-for-Profit Corporation Law § 804 and approval of the corporate name change is required pursuant to 10 NYCRR § 600.11(a)(1).

There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation of Daughters of Jacob Nursing Home Company, Inc. nor is there an objection to the name change. The proposed Certificate of Amendment of the Certificate of Incorporation of Daughters of Jacob Nursing Home Company, Inc. is in legally acceptable form.

Attachments.

New York State
Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.
(Name of Domestic Corporation)

Under section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

Daughters of Jacob Nursing Home Company, Inc.

If the name of the corporation has been changed, the name under which it was formed is

Home and Hospital of the Daughters of Jacob Nursing Home Company, Inc.

SECOND: The certificate of incorporation was filed by the Department of State on

August 26, 1969

THIRD: The law the corporation was formed under is

the Membership Corporations Law and the Public Health Law

FOURTH: The certificate of incorporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph 1 of the Certificate of Incorporation regarding the name of the Company is hereby amended to read in its entirety as follows:

DAUGHTERS OF JACOB SUPPORT ORGANIZATION, INC.

Paragraph II of the Certificate of Incorporation regarding the purposes of the Company

Is hereby *[check the appropriate box]* added amended to read in its entirety as follows:

FIRST: The purposes for which the Company is formed are exclusively charitable, educational and scientific in nature and more particularly:

(a) To establish, maintain and operate an adult home as defined in Section 2(25) of the Social Services Law of the State of New York; provided, however, that the Company shall not establish or operate such adult home without the prior written approval of the New York State Department of Health.

(b) To establish, maintain and operate an assisted living program as defined in Section 461-l of the New York State Social Services Law; provided, however, that the Company shall not establish or operate such assisted living program without the prior written approval of the New York State Department of Health.

(c) To apply for and receive grants, contracts and funds from federal, state and local government agencies, foundations or any other similar sources, to further the purposes of the Company.

(d) To accept, receive and acquire by way of gift, devise, bequest, lease, purchase or otherwise, and to hold, invest and reinvest all property real or personal, including shares of stock, bonds and securities of other corporations and to dispose of property, real or personal, by gift, lease, sale or otherwise, all as may be necessary or desirable for the attainment of the purposes of the Company.

(e) To do anything and everything reasonably and lawfully necessary, proper, suitable or convenient for the achievement of the foregoing purposes or for the furtherance of the purposes of the Company.

(f) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes of the Company.

(g) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Company's property to further the purposes of the Company.

In furtherance of the foregoing purposes, the Company shall have all of the general powers enumerated in Section 202 of the NFPCL, together with the power to maintain a fund or funds of real or personal property for any corporate purposes. The Company shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes herein above set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitations and condition that, notwithstanding any other provisions of this

The Company is eligible under the provisions of section 461-b (1)(a) of the New York Social Services Law, as amended by Chapter 591 of the Laws of 1999, to engage in the foregoing purposes because the Company is a not-for-profit corporation. The foregoing provision may not be deleted, modified or amended without the prior approval of the New York State Department of Health.

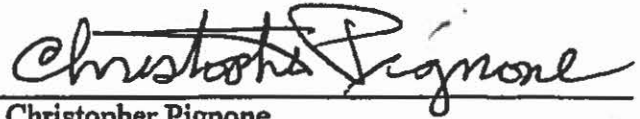
The Company shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code. Nothing herein shall authorize the Company, directly or indirectly, to do any act or establish or maintain any institution, or engage in, or include among its purposes, any of the activities mentioned in Sections 404(o) or 404(t) of the NFPCL or any of the other activities mentioned in Sections 404(a) through (w) of the NFPCL, although the Company is hereby authorized to become a member or stockholder of and/or provide financial and other support to corporations which do engage in or include such activities among their purposes. No substantial part of the activities of the Company shall consist in carrying on propaganda or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code during any fiscal year or years in which the Company has chosen to utilize the benefits authorized by that statutory provision.) The Company shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office.

Nothing contained in this Certificate of Incorporation shall authorize the Company to establish, operate or maintain a hospital, home care services agency, hospice, health maintenance organization or comprehensive health services plan as provided for by Articles 28, 36, 40 and 44 respectively, of the Public Health Law, or to provide a hospital service or health related service.

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Company is c/o Findlay House, 1175 Findlay Avenue, Bronx, New York 10456, Attn: Christopher Pignone.

SEVENTH: The certificate of amendment was authorized by a vote of a majority of the entire board of directors. The member of the Company is DOJ Support Organization.

IN WITNESS WHEREOF, this Certificate has been signed this 4th day of October, 2016 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

A handwritten signature in black ink, reading "Christopher Pignone". The signature is written in a cursive style with a horizontal line drawn through the middle of the name.

Christopher Pignone
Controller

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

CHRISTINA VAN VORT

Partner Director

Licensed in NY

Email: cvanvort@garfunkelwild.com

Direct Dial: (516) 393-2269

FILE NO.: 12081.0005

October 17, 2016

Ms. Colleen M. Leonard
Executive Secretary
New York State Department of Health
Public Health and Health Planning Counsel
Corning Tower Building – 1805
Empire State Plaza
Albany, New York 12237

Re: Daughters of Jacob Nursing Home Company, Inc. (the "Company")

Dear Ms. Leonard:

Our firm is legal counsel to Daughters of Jacob Nursing Home Company, Inc. (the "Company"). Enclosed on behalf of the Company is an executed copy of the proposed Certificate of Amendment of the Certificate of Incorporation of the Company.

In addition, we enclose a complete copy of all documents on file with the NYS Department of State.

The Certificate of Incorporation of the Company is being amended to update the purposes of the Company to delete its purpose to operate a nursing home. Please note that the Company sold its nursing home effective September 15, 2016. The sale was approved by the Public Health and Health Planning Counsel, Project No. 132128-E. A copy of the approval letter is attached for your convenience. As such, I request that the Public Health and Health Planning Counsel issue a letter confirming that its consent is not needed to file the proposed Certificate of Amendment of the Certificate of Incorporation with the New York State Department of State.

Please review the proposed Certificate of Amendment, and if acceptable, enclose the appropriate letter indicating that consent is not needed and return the original Certificate of Amendment of the Certificate of Incorporation to us so that we may complete the filing process.

NEW YORK

NEW JERSEY

CONNECTICUT

Ms. Colleen M. Leonard

October 17, 2016

Page 2

In addition, please acknowledge your receipt of the enclosed by providing your stamp or signature in the space provided below on the enclosed copy of this letter and by returning same to the undersigned in the enclosed, postage-paid, self-addressed envelope.

Sincerely,



Christina Van Vort

Enclosures

ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge receipt of the proposed Certificate of Amendment of Certificate of Incorporation of Daughters of Jacob Nursing Home Company, Inc.

Name:

Title:

GARFUNKEL WILD, P.C.

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany New York 12237

(518) 402-0964
PHHPC@health.ny.gov

March 2, 2015

Meghan McNamara, Esq.
Hinman Straub Attorneys at Law
121 State Street
Albany, New York 12207

Re: Application No. 132128 B DOJ Operations Associates, LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare (Bronx County)

Dear Ms. McNamara:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of the DOJ Operations Associates, LLC d/b/a Triboro Center for Rehabilitation and Specialty Healthcare 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 and Health Planning Council's approval of the project. The Public Health and Health Planning Council had considered this application and imposed the contingencies at its meeting of December 4, 2014. You are expected to comply with the conditions listed on the December 14, 2014 letter from James M. Clancy.

Public Health and Health Planning 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, New York, New York 10007 or (212) 417-5990, within 30 days of receipt of this letter.

Certificate of Need staff are interested in your experience with the CON process for this project. Please take a short survey to let us know how we are doing. Thank you.

The link to the survey is below:

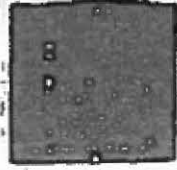
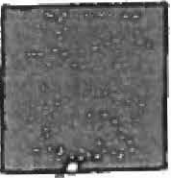
<https://www.surveymonkey.com/s/9Y6258P>

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

Enclosure



State of New York }
Department of State } ss:

053930

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 29 1997

Secretary of State

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.

Under Section 803 of the Not-
For-Profit Corporation Law.

The undersigned, being the President and the Secretary respectively of DAUGHTERS OF JACOB NURSING HOME COMPANY, INC. certify:

1. The name of the corporation is DAUGHTERS OF JACOB NURSING HOME COMPANY, INC. The name under which the corporation was originally incorporated was HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.

2. The Certificate of Incorporation was filed in the Office of the Department of State of the State of New York on the 26th day of August, 1969.

3. Article II of the Certificate of Incorporation is to be amended. Present Article II of the Certificate of Incorporation which reads as follows is to be eliminated:

II

"The purposes for which the company is to be formed are to provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law."

4. The new Article II of the Certificate of Incorporation intended to be substituted for the foregoing by the Certificate of Amendment is as follows:

II

"The purposes for which the Company is to be formed are to provide either separately, or in combination, the following:

Nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

Health related services for persons of low income which provide or offer lodging, board and physical care including, but not limited to, the recording of health information, dietary supervision and supervised hygienic services incident to such service, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law."

5. Article VIII of the Certificate of Incorporation is to be amended. Present Article VIII of the Certificate of Incorporation which reads as follows is to be eliminated:

VIII

"The duration of the Company is for a period of two years from the date of the filing of this certificate by the Secretary of State."

6. The new Article VIII of the Certificate of Incorporation intended to be substituted for the foregoing by this Certificate of Amendment is as follows:

VIII

"The duration of the Company shall be perpetual."

7. ~~Article XII of the Certificate of Incorporation is to be amended. Present Article XII of the Certificate of Incorporation which reads as follows is to be eliminated:~~

XII

"No part of the net income or net earnings of the Company shall inure to the benefit or profit of any private individual, firm or corporation.

8. The new Article XII of the Certificate of Corporation intended to be substituted for the foregoing by this Certificate of Amendment is as follows:

XII

"The Company is organized and shall be operated as a non-profit organization, shall not have power to issue certificates of stock or to declare or pay dividends, and shall be operated exclusively for the purposes enumerated in Article II hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Company shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Company shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Company shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Company the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Company,

copy of incorporation for which these are officers and
you is to be made available to the public

distribute all of the remaining assets of the Company exclusively for the purposes of the Company or for a similar public use or purpose, to such organization or organizations organized and operating exclusively for charitable purposes as shall at the time qualify as an-exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provision of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government within the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of this Company. In no event shall the assets of this Company upon dissolution be distributed to a director, officer, employee or member of this Company.

The dissolution of this Company and any distribution of the assets of this Company incident thereto shall be subject to such law, if any, then in force as may require the approval or consent thereto by any Court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.


9. The manner in which the Amendment of the Certificate of Incorporation was authorized was by the concurring vote of all members of the Board of Directors of the corporation

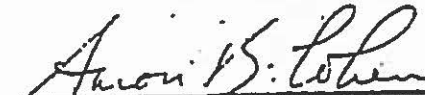
books of the company or any other records
of the company except as provided in the
articles of incorporation of the company

OF THE BOARD OF DIRECTORS
present at a special meeting, duly called for that purpose
upon due notice to all ^{BOARD} members of record given in the
manner required for a special ^{BOARD} meeting of the corporation;
said meeting was held at 321 East 167th Street, Bronx, New
York on the 22nd day of July, 1970 at 2:00 P. M. A quorum
was present; the Certificate of Incorporation of this corpor-
ation does not require the consent of more than a majority
of ^{BOARD} members to amend its Certificate of Incorporation. There
are no members ^{OF THE CORPORATION} eligible to vote.

8. The corporate purposes are not enlarged,
limited or otherwise changed except as above set forth.

IN WITNESS WHEREOF, we have executed this
Certificate this 2nd day of December, 1970.


Herbert A. Seltzer, President


Aaron B. Cohen, Secretary

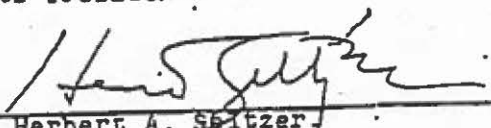
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

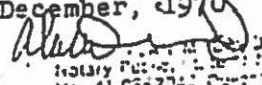
HEREBERT A. SELTZER, being duly sworn, deposes
and says:

That deponent is the President of DAUGHTERS OF
JACOB NURSING HOME COMPANY, INC., the corporation named in
the foregoing Certificate of Amendment of Certificate of
Incorporation; deponent has read the foregoing Certificate
of Amendment of Certificate of Incorporation, and knows the
contents thereof; that the same is true to deponent's own
knowledge except as to the matter therein stated to be

~~alleged on information and belief, and as to those matters~~
deponent believes it to be true; this verification is made
by deponent because DAUGHTERS OF JACOB NURSING HOME COMPANY,
INC., is a Not-For-Profit Corporation; deponent is an
officer thereof, to wit: its President.

Subscribed and sworn to
before me this 2nd day
of December, 1970


Herbert A. Spitzer


Notary Public, State of New York
No. 41-056730 Queens County
Term Expires March 30, 1971

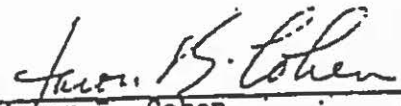
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

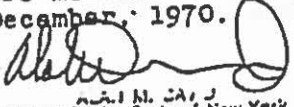
AARON B. COHER, being duly sworn, deposes and
says:

That deponent is the Secretary of DAUGHTERS OF
JACOB NURSING HOME COMPANY, INC., the corporation named in
the foregoing Certificate of Amendment of Certificate of
Incorporation; deponent has read the foregoing Certificate
of Amendment of Certificate of Incorporation, and knows the
contents thereof; that the same is true to deponent's own
knowledge except as to the matter therein stated to be
~~alleged on information and belief, and as to those matters~~

deponent believes it to be true; this verification is made
by deponent because DAUGHTERS OF JACOB NURSING HOME COMPANY,
INC., is a Not-For-Profit Corporation; deponent is an
officer thereof, to wit: its Secretary.

Subscribed and sworn to
before me this 2nd day
of December, 1970.


Aaron B. Coher


Notary Public, State of New York
No. 41-056730 Queens County
Term Expires March 30, 1971

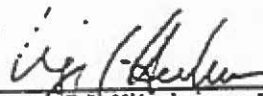
ENTRERED ON THE RECORDS

CONSENT TO CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF DAUGHTERS
OF JACOB NURSING HOME COMPANY, INC.
COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M.D., Commissioner of
Health of the State of New York, do this 1st day of
February, 1971, pursuant to Article 28-A of the Public
Health Law, hereby certify that I consent to the filing
of the foregoing Certificate of Amendment of Certificate
of Incorporation of Daughters of Jacob Nursing Home
Company, Inc. with the Secretary of State of the State
of New York.

Dated: February 1, 1971

HOLLIS S. INGRAHAM, M.D.
Commissioner of Health

By 
Roger C. Herdman, M.D.
Deputy Commissioner

The undersigned has no objection to the granting of
judicial approval hereon, and waives statutory notice.

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL
STATE OF NEW YORK

Dated: 1970. By Assistant Attorney General

APPROVAL OF CERTIFICATE OF AMENDMENT OF CERTIFI-
CATE OF INCORPORATION OF DAUGHTERS OF JACOB
NURSING HOME COMPANY, INC. BY JUSTICE OF THE
SUPREME COURT OF THE STATE OF NEW YORK, COUNTY
OF THE BRONX

GEORGE STARKE

The undersigned, a Justice of the Supreme Court
of the State of New York, County of the Bronx, wherein is
located the principal office of the Daughters of Jacob
Nursing Home Company, Inc. hereby approves the within
Certificate of Amendment of Certificate of Incorporation of
Daughters of Jacob Nursing Home Company, Inc. and the filing
thereof.

Dated: *BRONX, NY*
February 4, 1970.

George Starke
J.S.C.
JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK
FIRST JUDICIAL DISTRICT

RECORDED
INDEXED
FEB 3 1970

Dated: *FEB 3, 1970*
By *Richard J. Wallerstein*
Assistant



STATE OF NEW YORK
DEPARTMENT OF HEALTH
PUBLIC HEALTH COUNCIL

RICHARD N. MATTON
EXECUTIVE SECRETARY

State of New York
PUBLIC HEALTH COUNCIL
Albany, New York

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken, after due inquiry and investigation, at a meeting of the Public Health Council held on the 22nd day of January, 1971, I hereby certify that the certificates of amendment to the certificate of incorporation of Daughters of Jacob Nursing Home Co., Inc., extending the existence of the corporation to perpetuity, providing for the disposition of assets on dissolution, and extending the purposes and powers, is APPROVED.

Richard N. Matton
SECRETARY

Albany, New York
Dated: February 1, 1971

COUNCIL

ABRAHAM S. MOORE, M.D.
CHAIRMAN
GEORGE BALM, M.D.
BLONVA R. BOND
DETLEV BRONK, M.D.

CONDON E. BROWN
HERMAN E. WILTBOR, M.D.
GERALD B. MANLY, M.D.
GEORGE R. METCALF
W. KENNETH RILAND, D.O.

JOHN F. ROACH, M.D.
HOWARD A. RUSK, M.D.
WILLIAM M. WISELY, D. ENG.
HOLLIS S. INGRAHAM, M.D.
EX OFFICIO

9

887008-10

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION

DAUGHTERS OF JACOB NURSING
HOME COMPANY, INC.

778505-8

8/24/69 Corp

revised 4/22/70

B. W. & Type D

orig - Home and Hospital of the
Daughters of Jacob Nursing Home
Company, Inc.

8/24/69

Duration 3 years

E

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED FEB 5 1971

TAX & FILING FEE \$ 30

File P. Emery

Secretary of State

P-03 Emery

LAW OFFICES
OF
WEISMAN, CELLER, ALLAN, SPETT & SHEINBERG
1801 BROADWAY
NEW YORK, N.Y. 10030

10

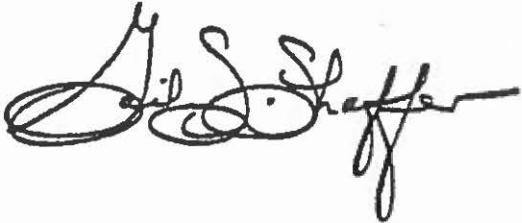
State of New York }
Department of State } ss:

053900

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 23 1947



Secretary of State

667425

CERTIFICATE OF TYPE OF
NOT-FOR-PROFIT CORPORATION OF

DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.

Under Section 113 of the Not-For-Profit Corporation Law

We the undersigned, President and Secretary of DAUGHTERS OF JACOB NURSING HOME COMPANY, INC., certify:

1. The name of the corporation is DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.

2. The name under which the corporation was originally incorporated was HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.

3. The Certificate of Incorporation of the corporation was filed by the Department of State on August 26, 1969, and the corporation was formed pursuant to the Membership Corporations Law and the Public Health Law.

4. The post office address within the State of New York to which the Secretary of State shall mail a copy of any notice required by law is 321 East 167th Street, Bronx, New York 10456

5. Under Section 201 (Purposes) of the Not-For-Profit Corporation Law, DAUGHTERS OF JACOB NURSING HOME COMPANY, INC. is a Type D Not-For-Profit Corporation as defined in this chapter.

IN WITNESS WHEREOF, we have executed this Certificate this

26th day of October, 1970.


Herbert A. Seltzer, President


Aaron B. Cohen, Secretary

STATE OF NEW YORK
COUNTY OF BRONX

SS.:

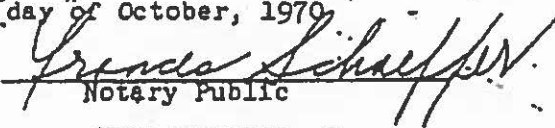
HERBERT A. SELTZER and AARON B. COHEN, each being severally duly sworn, severally depose and say, each for himself, that he, Herbert A. Seltzer, is the President of DAUGHTERS OF JACOB NURSING HOME COMPANY, INC., and he, Aaron B. Cohen, is the Secretary of said corporation; that they have read the foregoing Certificate of Type of Not-For-Profit Corporation of DAUGHTERS OF JACOB NURSING HOME COMPANY, INC., under Section 113 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters they believe it to be true.


Herbert A. Seltzer, President


Aaron B. Cohen, Secretary

Sworn to before me this

26th day of October, 1970


Notary Public

Notary Public for the State of New York
Qualified in the County of
Commission Expires March 10, 1972

867415 - B

membr

Home (4) Hospital of the Daughters of Jacob
Nursing Home (Co), Inc. 8/26/69 NY

CERTIFICATE OF TYPE OF
NOT-FOR-PROFIT CORPORATION

of

DAUGHTERS OF JACOB NURSING
HOME COMPANY, INC.

Bront
assd 4/22/70

dy

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED NOV 5 1970

TAX & FILING FEB 3 1971

Secretary of State

BY 03 Bront
Type

3

LAW OFFICES
OF
WEISHAN, CELLER, ALLAN, SPETT & SHEINBERG
1201 BROADWAY
NEW YORK, N.Y. 10038

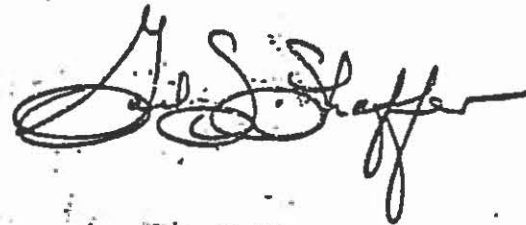
State of New York }
Department of State } ss:

053900

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 29 1897



Secretary of State

CERTIFICATE OF CHANGE OF NAME
OF
HOME AND HOSPITAL OF THE
DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.

To

DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.

Pursuant to Section 40 of the General Corporation Law

WE, Blanche D. Ratner and Bessie Levine, being
respectively the President and Secretary of HOME AND HOSPITAL
OF THE DAUGHTERS OF JACOB NURSING HOME COMPANY, INC., a
membership corporation, hereby certify as follows:

1. The name of this corporation is HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.
2. The Certificate of Incorporation was filed in the office of the Secretary of the State of New York on the 26th day of August 1969.
3. The new name to be assumed by this corporation is DAUGHTERS OF JACOB NURSING HOME COMPANY, INC.

IN WITNESS WHEREOF, we have made, signed and
acknowledged this Certificate this 11th day of March, 1970.

Blanche D. Ratner
President

Bessie Levine
Secretary

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

On this 11th day of March, 1970 before me personally came BLANCHE D. RATNER and BESSIE LEVINE, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Change of Name and they thereupon severally duly acknowledged to me that they executed the same.

Notary Public, State of New York
No. 0938330
Qualified in West County
Commenced Highest March 30, 1970

Irving S. Stern
Notary Public

STATE OF NEW YORK }
COUNTY OF NEW YORK }

SS.

BLANCHE D. RATNER and BESSIE LEVINE, being duly sworn, depose and say, and each for herself deposes and says:

THAT she, Blanche D. Ratner, is the President of HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB NURSING HOME COMPANY, INC., and she, Bessie Levine, is the Secretary thereof;

THAT they were duly authorized to execute and file the foregoing Certificate of Change of Name of said corporation by the votes cast in person or by proxy of a majority of the members of record of the corporation who are entitled to vote;

THAT said votes were cast at a meeting of the members called for that purpose upon like notice as that required for annual meetings of the said corporation, the said meeting having been held on the 6th day of January 1970.

Blanche D. Ratner
Blanche D. Ratner

Bessie Levine
Bessie Levine

Sworn to before me this 11th
day of March, 1970.

Henry S. Steph
Notary Public

HENRY S. STEPH
Notary Public, State of New York
No. 03. 2
Qualified in Br. 1. 2. 3.
Commission Expires March 20, 1971

2

I, HOLLIS B. INGRAHAM, Commissioner of Health
of the State of New York, do this 13th day of April, 1970
pursuant to Article 28-A of the Public Health Law, hereby
consent to the filing of the foregoing Certificate of
Change of Name of HOME AND HOSPITAL OF THE DAUGHTERS OF
JACOB NURSING HOME COMPANY, INC. to DAUGHTERS OF JACOB
NURSING HOME COMPANY, INC. with the Secretary of State of
the State of New York.

HOLLIS B. INGRAHAM
Commissioner of Health

By: Donald G. Jackson

Deputy Commissioner



STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

1450 WESTERN AVENUE
ALBANY, NEW YORK 12203

BALDWIN MAULL
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE

GEORGE K. WYMAN
COMMISSIONER

FELIX INFANSTO
COUNSEL AND CHIEF SECRETARY

March 25, 1970

Honorable John J. Ghezzi
Deputy Secretary of State
Division of Corporations
162 Washington Avenue
Albany, New York 12225

Re: Certificate of Change of Name of Home and
Hospital of the Daughters of Jacob Nursing Home Company, Inc. to
Daughters of Jacob Nursing Home Company, Inc.

Dear Mr. Ghezzi:

The present purpose of Home and Hospital of the Daughters of Jacob Nursing Home Company, Inc. approved by the State Board of Social Welfare June 17, 1969 and filed with the Secretary of State August 26, 1969 authorizes the corporation "To provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons..."

The corporation currently is licensed by the Department of Health to operate a nursing home, and this Department has no objection to the change of the name of Home and Hospital of the Daughters of Jacob Nursing Home Company, Inc. to Daughters of Jacob Nursing Home Company, Inc.

Very truly yours,

STATE BOARD OF SOCIAL WELFARE

Felix Infansto
FELIX INFANSTO
Secretary

4

778505-1 829135-5

Ment
8/26/69

Bronx Co

4/6

CERTIFICATE OF CHANGE OF NAME
OF
HOME AND HOSPITAL OF THE
DAUGHTERS OF JACOB NURSING
HOME COMPANY, INC.

To

DAUGHTERS OF JACOB NURSING
HOME COMPANY, INC.

JK

Approved

OK
To file
8/26/69

STATE DEPARTMENT OF STATE
FILED APR 22 1970
TAN 300
BINGLES 300

Secretary of State

JK
13-Bronx

LAW OFFICES
OF

WEISHAN, CELLER, ALLAN, SPETT & SHEINBERG
1301 BROADWAY
NEW YORK, N.Y. 10020

5

RECEIVED
APR 13 1970
BUREAU OF HOSPITAL
CONSTRUCTION FINANCING

Consent Committee
8-2-69 ONL

CERTIFICATE OF INCORPORATION

of

HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB
NURSING HOME COMPANY, INC.

Pursuant to the Membership Corporation Law
and the Public Health Law.

WE, the undersigned, for the purpose of forming
a nursing home company pursuant to the Membership Corpora-
tions Law and the Public Health Law of the State of New York
hereby certify:

I

The name of the proposed corporation is
HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB
NURSING HOME COMPANY, INC.

II

The purposes for which the Company is to be formed
are to provide nursing home accommodations for sick, invalid,
infirm, disabled or convalescent persons of low income, and
to this end to plan, construct, erect, build, acquire, alter,
reconstruct, rehabilitate, own, maintain and operate a
nursing home project pursuant to the terms and provisions of
the Public Health Law.

III

The territory in which the operations of the Company
will be principally conducted is the State of New York.

IV.

The principal office of the Company is to be located
in the City of New York, County of The Bronx, State of New
York.

The number of directors of the Company shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Company. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Company.

VI

The names and residences of the directors of the Company until the first annual meeting are:

<u>Name</u>	<u>Address</u>
Milton C. Weisman	575 Park Avenue New York, N. Y. 10021
Philip A. Vogelmann	35 East 76th Street New York, N. Y. 10021
Walter H. Weinstein	1008 Fifth Avenue New York, N. Y. 10028
Matthew B. Rosenhaus	Picatinny Road Morristown, New Jersey
Blanche D. Ratner	207 West 86th Street New York; N. Y. 10024

VII

The names and residences of the subscribers to this Certificate of Incorporation are:

<u>Name</u>	<u>Address</u>
Milton C. Weisman	575 Park Avenue New York, N. Y. 10021
Philip A. Vogelmann	35 East 76th Street New York, N. Y. 10021

Walter H. Weinstein

1008 Fifth Avenue
New York, N. Y. 10028

Matthew B. Rosenhaus

Picatinny Road
Morristown, New Jersey

Blanche D. Ratner

207 West 86th Street
New York, N. Y. 10024

VIII

The duration of the Company is for a period of two years from the date of the filing of this Certificate by the Secretary of State.

IX

The real property of the Company shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law.

X

The Company has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XI

All income and earnings of the Company shall be used exclusively for its corporate purposes.

XII

No part of the net income or net earnings of the Company shall inure to the benefit or profit of any private individual, firm or corporation.

XIII

All of the subscribers to the Certificate of Incorporation are of full age. At least two-thirds of them are citizens of the United States and at least one of them

is a resident of the State of New York. At least one of the persons named as a director of the Company is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 5th day of September, 1967.

Milton C. Weisman
Milton C. Weisman

Philip A. Vogelman
Philip A. Vogelman

Walter H. Weinstein
Walter H. Weinstein

Matthew B. Wosenhaus
Matthew B. Wosenhaus

Blanche D. Ratner
Blanche D. Ratner

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 5th day of September, 1967, before me personally came MILTON C. WEISMAN, to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation of HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB NURSING HOME COMPANY, INC. and he duly acknowledged to me that he executed the same.

Pauline Justice

PAULINE JUSTICE
NOTARY PUBLIC
STATE OF NEW YORK
COMM. EXPIRES MARCH 30, 1968

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

On this 7th day of September, 1967, before me personally came PHILIP A. VOGELMAN, WALTER H. WEINSTEIN, MATTHEW B. ROSENHAUS and BLANCHE D. RATNER, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation of HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB NURSING HOME COMPANY, INC. and they duly acknowledged to me that they executed the same.

Francis Schaffer
Notary Public

FRANCIS SCHAFER Notary Public
State of New York No. 22347 210
Comm. Expires March 30, 1968

5

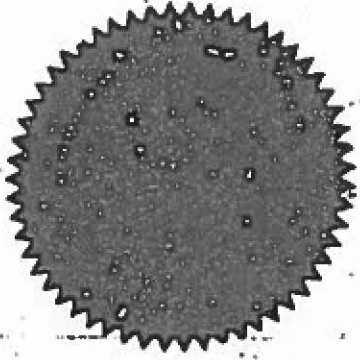


State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the seventeenth day of June, 1969, due inquiry and investigation having been made, the Board approved the application of HOME AND HOSPITAL OF THE DAUGHTERS OF JACOB NURSING HOME COMPANY, INC., No. 6-54, a membership corporation, for approval of the proposed certificate of incorporation pursuant to Section 35 of the Social Services Law and Article 28-A of the Public Health Law, empowering it to establish, maintain and operate a 300 bed nursing home in the County of Bronx, New York.



In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this eighteenth day of June, in the year one thousand nine hundred and sixty-nine.

[Signature]
Secretary

6

CONSENT OF INCORPORATION BY
COMMISSIONER OF HEALTH

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health

of the State of New York, do this 24 day of June, 1969
pursuant to Article 28-A of the Public Health Law hereby
certify that I consent to the filing of the foregoing
Certificate of Incorporation of HOME AND HOSPITAL OF THE
DAUGHTERS OF JACOB NURSING HOME COMPANY, INC., with the
Secretary of State of the State of New York.

Hollis S. Ingraham, M.D.
Commissioner of Health

By Donald G. Dickson
Donald G. Dickson, M.D.
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of
the State of New York, County of The Bronx; wherein is located
the principal office of HOME AND HOSPITAL OF THE DAUGHTERS OF
JACOB NURSING HOME COMPANY, INC., hereby approves the within
Certificate of Incorporation of HOME AND HOSPITAL OF THE
DAUGHTERS OF JACOB NURSING HOME COMPANY, INC. and the filing
thereof.

Dated: July 1, 1969

Samuel A. Spiegel
Justice of the Supreme Court
SAMUEL A. SPIEGEL

Notice of Application
(This is not to be construed as
approval on behalf of any
Department or Agency of the
State of New York, nor an
authorization of activities
otherwise limited by law.)

Dated: 7/1/69
Louis J. Lepore
Attorney General

By William A. Allen
Assistant Attorney General

778505

4/11/17

CERTIFICATE OF INCORPORATION

of

HOME AND HOSPITAL OF THE
DAUGHTERS OF JACOB NURSING
HOME COMPANY, INC.

Pursuant to the Membership
Corporations Law and the
Public Health Law.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED AUG 26 1969.

TAX \$ None
FILING FEE \$ 50

John P. Eminger
Secretary of State

By MB
P O 3 Brown

1969 JUL -7 AM 8: 56

LAW OFFICES
OF
WEISMAN, CELLER, ALLAN, SPETT & SHEINBERG
1501 BROADWAY
NEW YORK, N.Y. 10036

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Daughters of Jacob Nursing Home Company, Inc, dated October 4, 2016.



Project # 161338-E
Riverdale SNF, LLC d/b/a Schervier Nursing Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Bronx
Acknowledged: May 23, 2016

Executive Summary

Description

Riverdale SNF, LLC (Riverdale), an existing New York limited liability company, requests approval to be established as the new operator of Frances Schervier Home and Hospital d/b/a Schervier Nursing Care Center (SNCC), a 364-bed, New York not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 2975 Independence Avenue, Bronx (Bronx County). Upon approval, the entity will do business as Schervier Nursing Care Center. There will be no change in beds or services provided as a result of this application.

Bon Secours New York Health System, Inc. (BSNYHS) is the sole member of SNCC. Upon approval of this application request, ownership of the operations will transfer to Riverdale SNF, LLC whose members are Eliezer Zelman (10%) and Aaron Lankry (90%).

BSNYHS is a not-for-profit corporation established to direct and oversee the various operating programs of BSNYHS under the direction of its sole member, Bon Secours Health System, Inc. (BSHS), a Maryland nonstock corporation. BSNYHS, as the sole member of SNCC, decided to sell substantially all of the assets of SNCC because the RHCF has been operating at a loss in recent years and they believe the transaction will help ensure continued access to care. A competitive bidding process was initiated to identify buyers interested in purchasing SNCC, its related realty and the adjacent senior apartment/affordable housing building. The property is subject to zoning lot restrictions that require the premises to be treated as one zoning lot. From a field of eleven potential buyers, one was selected based

on the prospective buyer's diversity of local facility culture, prior experience with similar transactions from Catholic sponsorships, economic strengths and community service considerations. The proceeds from the sale of the operating interest and real estate of the RHCF will be used to expand senior home care, clinically integrated networks for population health, and related community services for seniors across the Bon Secours Health System.

On March 31, 2016, Frances Schervier Home and Hospital entered into an Asset Purchase Agreement (APA) with Riverdale SNF, LLC for the sale and acquisition of the operating interests of the RHCF for a purchase price of \$50,000. Concurrently on March 31, 2016, Frances Schervier Home and Hospital and BSNYHS entered into a Real Estate Purchase Agreement (REPA) with 2975 Independence Avenue, LLC and 775 Kappock Street, LLC for the sale and acquisition of the land and building of the nursing home (Tax Lot 382) and the surrounding non-Article 28 real property (Tax Lot 469) for a purchase price of \$86,950,000. 2975 Independence Avenue, LLC will purchase the land, building and improvements, and rights associated with the land, fixtures, and all personal property of the nursing home. The applicant will lease the premise from 2975 Independence Avenue, LLC. There is no common ownership, officers or directors or management between the proposed owners of Riverdale SNF, LLC and 2975 Independence Avenue, LLC.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds at this facility. Schervier Nursing Care Center's occupancy was 95.9% in 2012, 93.7% in 2013, and 94.3% in 2014. Overall occupancy for 2016 at this facility is 97.2%. Current occupancy, as of June 29, 2016 is 98.1%, with 7 vacant beds.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. The applicant has stated there will be no administrative services or consulting agreements.

Financial Summary

Riverdale SNF, LLC will acquire the RHCF's operations for \$50,000 to be funded with owners' equity. There are no project costs associated with this application. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$47,798,700
Expenses	<u>\$47,085,279</u>
Net Income	\$713,421

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to the Department. Include with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
6. Submission of documentation attesting to the allocation of the realty purchase price between the Article 28 space (Nursing Home) and the non-Article 28 space, acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of a signed Certificate of Assumed Name, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of a signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of a signed amended Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of a signed and dated Lease Agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

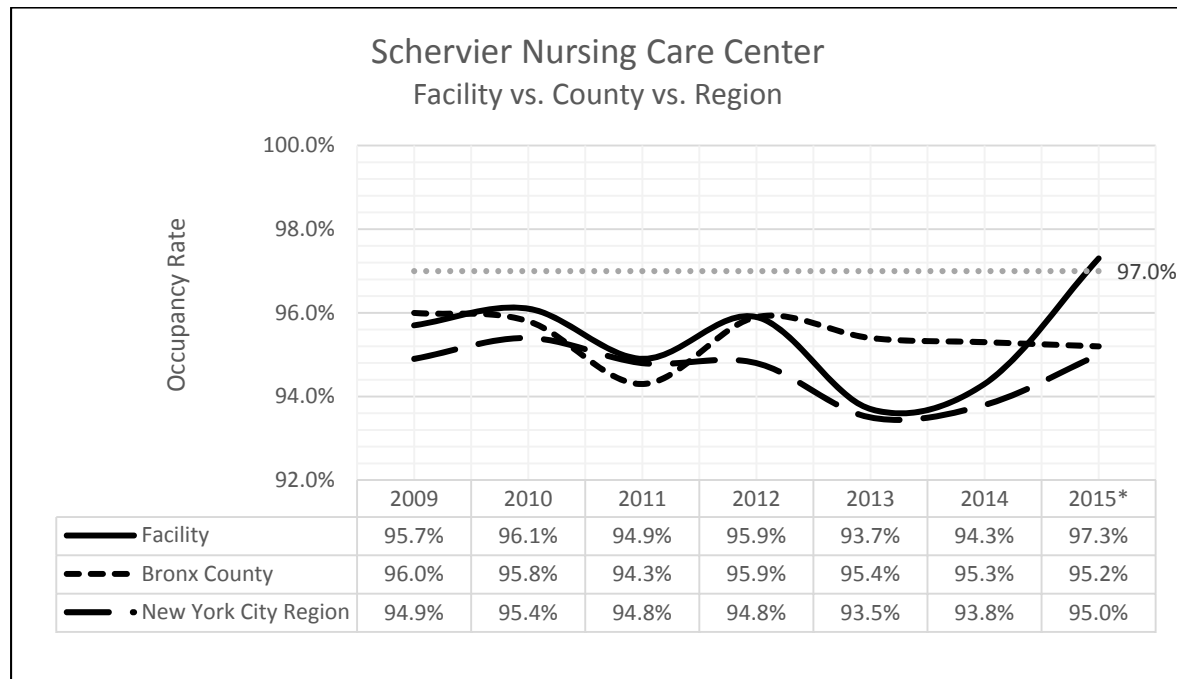
Council Action Date
December 8, 2016

Need Analysis

Analysis

There is currently a need of 9,482 beds in the New York City Region as indicated in the following table:

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



*unaudited, facility reported data

The overall occupancy for the New York City Region was 93.8% for 2014. Schervier Nursing Care Center's occupancy was 95.9% in 2012, 93.7% in 2013, and 94.3% in 2014. During 2013 and 2014, the current operators performed an evaluation of its shifts in census over the years. The analysis was to gain a better understanding of the short-term and long-term needs of the community as well as the typical referral pattern that was made to the facility. As a result, the fluctuations were attributable to the fact that the operator had internally closed to reallocate resources from one subacute unit because of the low census. The operators repurposed the unit in an effort to regularly serve both short-term and long-term patients. While this became an economic challenge for a period of time, it appears to have been beneficial as the facility's losses decreased and occupancy increased.

In 2016, the facility has been at or above the Department's planning optimum and the applicant will be undertaking the following strategies, consistent with past successful experiences at their other nursing homes, to retain a consistently high level of occupancy:

- Meetings with the local community leaders: Each community has specific needs, and the local community leaders and operators will collaborate to determine what those "needs" are and develop programs within the nursing facility to address them;
- Meeting with the local hospitals: To ensure a cooperative effort in identifying and developing both short-term and long-term programs the hospitals feel are lacking in the community, the operators will collaborate on services within the nursing home. This could be in the area of bariatric care, dialysis and end stage renal disease, and dementia.

- Meetings with the local physicians: To determine what the medical community feels is lacking in the area, the operators will work with the local physicians to develop programs and services to address the specific needs of the community. This could be in the area of IV care, pulmonary services, or trach care.

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.

Schervier Nursing Care Center’s Medicaid admissions of 18.7% in 2013 did not exceed the Bronx County’s 75% rate in 2013 of 29.8%. Schervier Nursing Care Center’s Medicaid admissions of 29.9% exceeded Bronx County’s 75% rate in 2014 of 29.1%.

Conclusion

Contingent approval will maintain an existing resource to the residents of Bronx County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Schervier Nursing Care Center	Schervier Nursing Care Center
Address	2975 Independence Avenue Bronx, NY. 10463	Same
RHCF Capacity	364	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary / Not-for-profit	Proprietary
Operator	Franciscan Sisters of the Poor, Inc.	Riverdale SNF, LLC Membership: Aaron Lankry 90.0% *Jay Eliezer Zelman 10.0 100.0% *Managing Member

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Achieve Rehabilitation Center	12/2008 to present
Eastern Shore Rehabilitation and Nursing Center (AL)	12/2011 to 5/2016
Graceland Rehabilitation and Nursing Center (TN)	05/2015 to present
North Campus Rehab (FL)	02/2015 to present
Superior Rehabilitation and Nursing Center (TN)	07/2015 to present

Individual Background Review

Aaron Lankry currently serves as the rabbi at Bais Medrash Orch Chaim in Monsey, New York. Previously he served as rabbi at Fifth Avenue Sephardic Community Center in Manhattan (2008 to 2011), and rabbi at Beit Edmond J. Safra Synagogue in Aventura, FL. Rabbi Lankry discloses the following nursing home ownership interests:

Eastern Shore Rehabilitation and Nursing Center (AL)	12/2011 to 5/2016
Graceland Rehabilitation and Nursing Center (TN)	05/2015 to present
North Campus Rehab (FL)	02/2015 to present
Superior Rehabilitation and Nursing Center (TN)	07/2015 to present

Jay Eliezer Zelman is currently employed as the Regional Director of Operations for Global Healthcare Service Group, indicated as a healthcare operations business. Previously Mr. Zelman was the administrator of record at Achieve Rehab and Nursing Facility, from March 2003 to March 2013. Mr. Zelman holds a New York State nursing home administrator license in good standing, and a New Jersey nursing home administrator license, also in good standing. Mr. Zelman discloses the following nursing home ownership interest:

Achieve Rehab and Nursing Center	12/2008 to present
----------------------------------	--------------------

Character and Competence - Analysis

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

A review of operations for Graceland Rehabilitation and Nursing Center (TN) for the period identified above indicates the nursing home incurred a Civil Monetary Penalty of \$10,270.

A review of operations for Achieve Rehab and Nursing Center for the period identified reveals that there were no enforcements.

A review of operations for Eastern Shore Rehabilitation and Nursing Center (AL), North Campus Rehab (FL), and Superior Rehabilitation and Nursing Center (WI) indicates there were no enforcements.

The Department's access to information for non-New York State facilities is limited and relies on disclosure by the applicant, interviews and documentation from non-New York State regulatory entities when available, and review of publically available information from websites like Medicare.gov Nursing Home Compare. The information presented is assumed to be accurate and complete based on such information.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
New York			
Achieve Rehab and Nursing Facility	***	****	*
Alabama			
Eastern Shore Rehabilitation and Health Center	***	***	*
Tennessee			
Graceland Nursing Center	*	*	***
Florida			
North Campus Rehabilitation and Nursing Center	**	***	*
Wisconsin			
Superior Nursing and Rehabilitation Center	*	*	**

Project Review

No changes in the program or physical environment are proposed in this application. The applicant has indicated there will be no administrative services or consulting agreements.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed Asset Purchase Agreement for the purchase of the operating interests, as summarized below:

Date:	March 31, 2016
Seller:	Frances Schervier Home and Hospital
Buyer:	Riverdale SNF, LLC
Asset Acquired:	Non-Fixed Equipment; Assigned Contracts; resident records; Medicare and Medicaid provider numbers and provider agreements; all permits related to the business; resident/patient prepayments; security deposits; inventory in stock; telephone numbers facsimile numbers; and goodwill
Excluded Assets:	Cash and Cash Equivalents; accounts receivable; books of accounts; refunds, settlements, or retroactive adjustments prior to close; personnel records; credits, prepaid expenses, deferred charges; the names "Bon Secours" and "Frances Schervier; assets of the Employee Plans; religious art and artifacts;
Assumption of Liabilities:	Unused sick, personal, and/or vacation days and other benefits;

Purchase Price:	\$50,000 less Employee Benefits Credit and any Bed Reduction Credit plus the assumption of the Assumed Liabilities.
Payment of Purchase Price:	\$50,000 Equity
Covenants:	Per section 7.2 the buyer shall continue to operate the skilled nursing facility for a minimum of 5 years, and make capital investments in the business in accordance with Schedule 7.2 with a minimum of \$250,000 in the first twelve months subject to penalty if not achieved.

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

Purchase Agreement for the Real Property

The applicant has submitted the executed REPA with associated Exhibits for the RHCF and surrounding real property acquisitions. The closing of the REPA transactions are to take place concurrent with to be conducted pursuant to the nursing home contract. The terms of the REPA are summarized below:

Date:	March 31,2016
Tax Lot 382 Seller:	Frances Schervier Home and Hospital
Tax Lot 382 Buyer:	2975 Independence Avenue LLC
Tax Lot 382 Premises:	Land and buildings on Tax Lot 382 including 2975 Independence Avenue, Bronx, NY
Tax Lot 469 Seller:	Bon Secours New York Health System, Inc.
Tax Lot 469 Buyer:	775 Kappock Street LLC
Tax Lot 469 Premises:	Land and buildings on Tax Lot 469, known as 726 West 231st Street, Bronx, NY
Assets Transferred:	The Premises' land, building and appurtenances including plans, specifications, architectural and engineering drawings, prints, surveys, soil and substrata studies relating to the Premises in Seller's possession; operating manuals and books, data and records regarding the Premises; licenses, permits, certificates of occupancy and other approvals issued by any government authority; and all trade fixtures and all equipment, machinery, materials, supplies and other personal property attached or appurtenant to the Building or located at and used in the operation or maintenance of the Land or Building to the extent same are owned by Seller
Purchase Price: #	\$86,950,000 minus any credits against the Purchase Price pursuant to the Nursing Home Contract plus all other amounts due and owing under this Agreement net of any Closing Adjustments.
Payment of Purchase Price	\$5,500,000 Deposit held in Escrow \$81,450,000 Due at Closing

The allocation of the purchase price between the Article 28 space (Nursing Home) and the non-Article 28 space has not been finalized to date.

The applicant states there are no common officers, directors or managers between the Proposed Operator and any of the other entities. The applicant members of Riverdale SNF, LLC do not have ownership interest in the proposed realty buyers, 2975 Independence Avenue LLC and 775 Kappock Street LLC. The membership of both proposed real property buyers is as follows: Eliezer Scheiner 45%, Teddy Lichtschein 45%, and Zevi Kohn 10%. The applicant states that, concurrent with the above, the real property buyer will purchase additional assets that they believe will bring the aggregate purchase costs to \$110 million.

The proposed real property owners have paid a \$5,500,000 deposit, which is being held in escrow, and will pay an additional \$7,543,000 at closing from their personal resources. A letter from Signature Bank has been received acknowledging liquid resources to cover the equity requirement. The remaining \$73,907,000 will be financed at an interest rate of approximately 4% with a term and payout period of 30 years. HHC Finance has provided a bank letter of interest for the financing.

The applicant will lease the nursing home premises and landlord's personal property at 2975 Independence Avenue, Bronx, NY 10463 from the Tax Lot 382 Buyer, 2975 Independence Avenue LLC, under the terms of the lease referenced below.

Lease Rental Agreement

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

Premises:	364-bed Skilled Nursing Facility located at 2975 Independence Avenue, Bronx, NY
Lessor:	2975 Independence Avenue, LLC
Lessee:	Riverdale SNF LLC
Terms:	10 years
Rental:	\$6,600,000 net annual basic rent (payable in equal monthly installments).

The lease arrangement is an arm's lease agreement and the applicant has submitted an affidavit attesting to the fact.

Operating Budget

The applicant has submitted an operating budget, in 2017 dollars, during the first year subsequent to the change in operator, as summarized below:

Revenues	Current Year (2015)		Year One	
	Per Diem	Total	Per Diem	Total
Commercial - FFS	\$505.58	\$797,294	\$431.53	\$3,914,425
Medicare - FFS	\$604.07	8,309,603		0
Medicare - MC		0	\$765.01	10,905,200
Medicaid - FFS	\$326.50	33,990,311		0
Medicaid - MC		0	\$295.49	29,484,800
Private Pay	\$415.84	<u>2,688,000</u>	\$415.86	<u>2,694,375</u>
Subtotal		\$45,785,208		\$46,998,800
Other Operating Revenue*		\$799,900		\$799,900
Non-Operating Revenue #		<u>5,084,156</u>		<u>0</u>
Total Revenue		\$51,669,264		\$47,798,700
<u>Expenses</u>				
Operating	\$420.61	\$50,327,988	\$304.33	\$39,436,800
Capital	<u>\$15.81</u>	<u>1,989,935</u>	<u>\$59.02</u>	<u>7,648,479</u>
Total Expenses	\$436.42	\$52,317,923	\$363.35	\$47,085,279
Net Income		<u>(\$648,659)</u>		<u>\$713,421</u>
Utilization (Patient days)		125,902		129,587
Occupancy		94.76%		97.54%

* Other Operating Revenue includes: (a) Cafeteria, Gift Shop, Rebates/Refunds from Vendors, and Interest Income; (b) Revenue from Services provided to related and unrelated entities; and (c) the Nursing Home's portion of shared savings payments under Value Based Purchasing.

Non-Operating Revenue includes: Independent Living Service Revenue for \$1,964,597, Home Health Care for \$2,304,779, CHHA for \$761,153, and miscellaneous non-operating revenue for \$53,627.

The following is noted with respect to the submitted budget:

- Medicare revenues are projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2016 and are increased by 2% per annum for inflations to reflect 2017 dollars. Medicare Part A rates were determined by taking a benchmark of comparable facilities.

- Medicaid Managed Care revenues are projected based on the current operator's 2016 Medicaid FFS rate as benchmark.
- Private and Commercial revenues are projected based on similar facilities in the same geographical area and are increased by 2% per annum for inflation to reflect 2017 dollars.
- Expense assumptions are based on the historical experience of the facility, taking into consideration the following reductions to be implemented:
 - Salary and Wages decrease by \$2,529,956 related to FTE reductions (70 total) in the following areas: Management, Technicians, LPNs, Aides, Infection Control, Environment and Food Service, and Clerical. It is noted that the applicant will be increasing FTEs for Registered Nurses by 6.9 FTEs. Employee Health Benefits decrease by \$2,296,210 related to the reduction of FTE's.
 - Professional Fees decrease by 1,632,432.
 - Purchased Services decrease by \$2,458,801.
 - Other Direct Expenses decrease by \$2,521,947.
- Utilization was at 94.76% in 2015, but recent self-reported occupancy as of June 2016 was at 98.1%.
- Breakeven utilization in the first year is projected at 97.5% or 127,653 patient days.
- Utilization by payor source for the first and third years is anticipated as follows:

	<u>Current</u>	<u>First and Third</u>
Medicaid - MC	82.69%	77.00%
Medicare - MC	10.93%	11.00%
Commercial	1.25%	7.00%
Private Pay	5.13%	5.00%

Capability and Feasibility

The purchase price for the operating interests is \$50,000 and will be met via member's equity. The purchase price for the real estate interest (Tax Lots 382 and 469) is \$86,950,000. The members of the real property owners have paid a \$5,500,000 deposit, which is being held in escrow, and will pay an additional \$7,543,000 at the time of closing from personal resources. Realty members Eliezer Scheiner and Teddy Lichtschein will be providing the additional equity. A letter from Signature Bank was submitted acknowledging liquid resources to cover the equity requirement. The remaining \$73,907,000 will be financed at an interest rate of approximately 4% with a term and payout period of 30 years. HHC Finance has provided a bank letter of interest for the financing at the stated terms.

Working capital requirements are estimated at \$8,035,800, which is equivalent to two months of the third year expenses. The applicant will finance \$4,017,900 at an interest rate of 5% for a five-year term. The remaining \$4,017,900 will be provided from member's equity. A bank letter of interest from HHC Finance for the working capital loan at the stated terms has been provided.

BFA Attachment A is the personal net worth statement of the proposed operator, which indicates the availability of sufficient resources to fund both the equity contribution for the purchase price and the working capital requirement.

BFA Attachment D shows the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$4,010,800.

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

<u>Operating</u>	<u>Annual 2015</u>	<u>Year One</u>
Revenues	\$51,669,264	\$47,798,700
Expenses	<u>52,317,923</u>	<u>47,085,279</u>
Net Operating Income	(\$648,659)	713,421
Incremental Net Income:		<u>\$1,362,080</u>

The increase in projected income comes from a decrease in total expenses based on administrative efficiencies under new management. The most significant decrease will be from Salaries and Employee Benefits tied to the change in staffing pattern. Salaries accounts for a reduction of \$2,529,956 and Employee Benefits accounts for a reduction of \$2,296,210.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy paper provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is Bon Secours New York Health System, Inc. Consolidated Financial Statements for the period 2014 through August 31, 2016 as well as a financial summary of Schervier Nursing Care Center. As shown, the Consolidated Financial Statements showed an average negative working capital position and an average negative net asset position from 2014 through August 31, 2016. Also, Schervier Nursing Care Center had an average operating net loss of \$2,425,688 for the period 2014 through August 31, 2016.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Member
BFA Attachment B	Organizational Chart – Bon Secours Health System
BFA Attachment C	2014- August 31, 2016 Consolidated Financial Statements – Bon Secours New York Health System, Inc. and 2013- August 31, 2016 Financial Summary - Schervier Nursing Care Center
BFA Attachment D	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of December, 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 Riverdale SNF, LLC as the new operator of Frances Schervier Home and Hospital d/b/a Schervier Nursing Care Center a 364-bed not-for-profit Article 28 RHCF, 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:

161338 E

FACILITY/APPLICANT:

Riverdale SNF, LLC
d/b/a Schervier 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to the Department. Include with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
6. Submission of documentation attesting to the allocation of the realty purchase price between the Article 28 space (Nursing Home) and the non-Article 28 space, acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of a signed Certificate of Assumed Name, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of a signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]

10. Submission of a photocopy of a signed amended Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of a signed and dated Lease Agreement, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within two 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]

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 # 161413-E
Beach Terrace Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Nassau
Acknowledged: June 9, 2016

Executive Summary

Description

Beach Terrace Care Center, Inc., a New York Proprietary Business Corporation that operates a 182-bed, Article 28 Residential Health Care Facility (RHCF) located at 640 West Broadway, Long Beach (Nassau County), requests approval to transfer 40% ownership interest (80 shares) from two withdrawing members to one new member. One of the current shareholders, Abraham N. Klein, died in 2012 bequeathing all of his ownership interest to his wife, Sara Dinah Klein, who also has ownership interest in the facility. As Executrix of the estate, and in accordance with the terms of her husband's Last Will and Testament, Mrs. Klein is assigning her late husband's shares in the Center (18 shares, 9% ownership), as well as all of her shares (62 shares, 31% ownership) to their son-in-law, Avraham Weits, for a purchase price of \$4,396,480.

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

Current Ownership

<u>Stockholders</u>	<u>Shares</u>	<u>%</u>
Dorothy Rubin	82	41%
Sara Dinah Klein	62	31%
Martin Zwick	20	10%
Liebel Rubin	18	9%
Abraham N. Klein	18	9%
Total	200	100%

Proposed Ownership

<u>Stockholders</u>	<u>Shares</u>	<u>%</u>
Dorothy Rubin	82	41%
Avraham Weits	80	40%
Martin Zwick	20	10%
Liebel Rubin	18	9%
Total	200	100%

There are no other changes to the current ownership of the facility.

Requests to transfer decedent Abraham Klein's ownership interest in Grandell Rehabilitation and Nursing Center, Inc. (CON 161450) and Oceanside Care Center, Inc. (CON 161452) to Avraham Weits are concurrently under review.

OPCHSM Recommendation
Contingent Approval.

Need Summary
There is no Need review for this project.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicant identified as a new member. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary
There are no project costs associated with this application. The purchase price for 80 shares in Beach Terrace Care Center, Inc. is \$4,396,480 and will be met via two promissory notes—one for \$929,402 for the shares related to the Estate of Abraham N. Klein and one for \$3,467,078 related to Mrs. Klein's shares. The promissory notes each provide for a 30-year maturity date with interest computed on the unpaid principal balance at the IRS Long-term Applicable Federal Rate for Quarterly Payments (1.94% as of October 2016) computed based on the rate at

the time of closing. Interest only will be payable quarterly commencing December 31, 2016, with principal for both notes payable by December 31, 2046.

No budget analysis was necessary, as this is an assignment of 40% ownership interest in the RHCF via two Assignment and Assumption Agreements with Sara Dinah Klein, a current shareholder and Executrix of decedent

shareholder's estate. The other current shareholders are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

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 a proposed Amended Certificate of Incorporation of Beach Terrace Care Center, Inc, which is acceptable to the department. (CSL)
2. Submission of a photocopy of a proposed Amended Bylaws of Beach Terrace Care Center, Inc, which is acceptable to the department. (CSL)
3. Submission of the schedule 15 attachment titled, "Statement of Relationship between Donor and Donee", fully executed by Sara Dinah Klein, 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]

Council Action Date

December 8, 2016

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Beach Terrace Care Center	Same
Address	640 West Broadway Long Beach, NY 11561	Same
RHCF Capacity	182	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Beach Terrace Care Center, Inc.	Same
	<u>Current Stock Ownership</u>	<u>Proposed Stock Ownership</u>
	Dorothy Rubin 82	Dorothy Rubin 82
	Sara Dinah Klein 62	Avraham Weits 80
	Martin Zwick 20	Martin Zwick 20
	Liebel Rubin 18	Liebel Rubin 18
	Estate of Abraham N. Klein 18	
	200	200

Character and Competence-Background

Facilities Reviewed

None

Individual Background Review

Avraham Weits lists his current employment as Certified Financial Officer at Hopkins Center, Bensonhurst Center, Grandell Center, Oceanside Center and Beach Terrace Care Center. Mr. Weits was previously employed as Controller at Queens Nassau Nursing Home. Mr. Weits disclosed no nursing home ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence for the new member.

Project Review

This application proposes a transfer of a total of 80 shares from two withdrawing shareholders to Avraham Weits; 18 shares from the estate of Abraham Klein and 62 shares from Sara Dinah Klein. Abraham N. Klein died in 2012 with his ownership interest bequeathed to his wife, Sara Dinah Klein, who was appointed executrix of his estate. Avraham Weits is the Kleins' son-in-law.

This transaction is in compliance with the requirements for the transfer of ownership for deceased operators as outlined in Title 10 NYCRR §401.3(b)(1) and §401.1(c).

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 applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has 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

Assignment and Assumption Agreements

The applicant has submitted executed Assignment and Assumption Agreements for shares in the RHCF, to be effectuated upon final non-contingent approval by the Public Health and Health Planning Council. The terms are summarized below:

Agreement #1 for shares related to the Estate of Abraham N. Klein:

Date:	September 15, 2016
Assignor:	Estate of Abraham N. Klein by Sara Dinah Klein (Executrix)
Assignee:	Avraham Weits
Shares Acquired:	18 shares of stock (9%)
Purchase Price:	\$929,402
Payment of Purchase Price:	Promissory Note for the full amount executed on 9/15/2016

Agreement #2 for Mrs. Klein's shares:

Date:	September 15, 2016
Assignor:	Sara Dinah Klein
Assignee:	Avraham Weits
Shares Acquired:	62 shares of stock (31%)
Purchase Price:	\$3,467,078
Payment of Purchase Price:	Promissory Note for the full amount executed on 9/15/2016

The principal amounts and terms of the respective promissory notes are as follows:

Promissory Note #1 (30 years, interest rate*)	\$929,402
Promissory Note #2 (30 years, interest rate*)	<u>\$3,467,078</u>
Total	\$4,396,480

* Based on the IRS Long-term Applicable Federal Rate for Quarterly Payments determined at the time of closing (1.94% as of October 2016). Interest only will be payable quarterly commencing December 31, 2016, with principal for both notes payable by December 31, 2046.

Capability and Feasibility

The purchase price for the 80 shares in Beach Terrace Care Center, Inc. is \$4,396,480 and will be met via two promissory notes at the terms stated above. BFA Attachment A provides the personal net worth statement of Avraham Weits, which shows the availability of sufficient liquid resources.

No budget analysis was necessary, as this is an assignment of 40% ownership interest in the RHCF via two Assignment and Assumption Agreements with Sara Klein, a current shareholder and Executrix of decedent shareholder's estate. The other current shareholders are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is a financial summary of Beach Terrace Care Center, Inc. for 2015 (certified) and the internal financials for the six months ending June 30, 2016, which show the facility had a positive working capital position, positive net income and a positive net asset position 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 Net Worth Statement of Proposed Member
BFA Attachment B 2015 certified financial summary and internals as of June 30, 2016 - Beach Terrace 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 8th day of December, 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 transfer of 40% ownership interest from two (2) withdrawing members to one (1) new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161413 E

Beach Terrace Care Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of a proposed Amended Certificate of Incorporation of Beach Terrace Care Center, Inc, which is acceptable to the department. (CSL)
2. Submission of a photocopy of a proposed Amended Bylaws of Beach Terrace Care Center, Inc, which is acceptable to the department. (CSL)
3. Submission of the schedule 15 attachment titled, "Statement of Relationship between Donor and Donee", fully executed by Sara Dinah Klein, 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]

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 # 161450-E
Grandell Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Nassau
Acknowledged: June 23, 2016

Executive Summary

Description

Grandell Rehabilitation and Nursing Center, Inc., a New York Proprietary Business Corporation that operates a 278-bed, Article 28 Residential Health Care Facility (RHCF) located at 645 West Broadway, Long Beach (Nassau County), New York, requests approval to transfer 50% ownership interest (100 shares) from one withdrawing member to one new member. One of the current shareholders of the RHCF, Abraham N. Klein, died in 2012 and named his wife, Sarah Dinah Klein, the Executrix of his estate. In accordance with the terms of her husband's Last Will and Testament, Mrs. Klein decided to assign all of her late husband's shares in the Center to their son-in-law, Avraham Weits, who is the operating entity's Chief Financial Officer, for a purchase price of \$3,953,061.

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

Table with 3 columns: Shareholders, Shares, % for Current Ownership. Includes Liebel Rubin and Abraham N. Klein (Estate).

Table with 3 columns: Shareholders, Shares, % for Proposed Ownership. Includes Liebel Rubin and Avraham Weits.

There are no other changes to the current ownership of the facility.

Requests to transfer decedent Abraham Klein's ownership interest in Oceanside Care Center, Inc. (CON 161452) and Beach Terrace Care

Center, Inc. (CON 161413) to Avraham Weits are concurrently under review.

OPCHSM Recommendation
Contingent Approval

Need Summary
There is no Need review of the project.

Program Summary
No negative information has been received concerning the character and competence of the proposed new member. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary
There are no project costs associated with this application. The purchase price for 100 shares in Grandell Rehabilitation and Nursing Center, Inc. is \$3,953,061 and will be met via a promissory note. The promissory note provides for a 30-year maturity date with interest computed on the unpaid principal balance at the IRS Long-term Applicable Federal Rate for Quarterly Payments (1.94% as of October 2016) computed based on the rate at the time of closing. Interest only will be payable quarterly commencing December 31, 2016, with principal for the note payable by December 31, 2046.

No budget analysis was necessary, as this is an assignment of 50% ownership interest in the RHCFC via an Assignment and Assumption Agreement initiated by Mrs. Klein, the Executrix of the estate of the current shareholder Abraham Klein. The other current shareholder remains in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

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 a proposed Amended Certificate of Incorporation of Grandell Rehabilitation and Nursing Center, Inc, which is acceptable to the department. (CSL)
2. Submission of a photocopy of a proposed Amended Bylaws of Grandell Rehabilitation and Nursing Center, Inc, 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]

Council Action Date

December 8, 2016

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Grandell Rehabilitation and Nursing Center	Same
Address	645 West Broadway Long Beach, NY 11561	Same
RHCF Capacity	278	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Grandell Rehabilitation and Nursing Center	Same
	<u>Current Stock Ownership</u>	<u>Proposed Stock Ownership</u>
	Estate of Abraham N. Klein 100	Avraham Weits 100
	Liebel Rubin <u>100</u>	Liebel Rubin <u>100</u>
		<u>200</u>

Character and Competence-Background

Facilities Reviewed

None

Individual Background Review

Avraham Weits lists his current employment as Certified Financial Officer at Hopkins Center, Bensonhurst Center, Grandell Center, Oceanside Center and Beach Terrace Care Center. Mr. Weits was previously employed as Controller at Queens Nassau Nursing Home. Mr. Weits disclosed no nursing home ownership interests.

Character and Competence- Analysis

No negative information has been received concerning the character and competence for this new member.

Project Review

This application proposes to transfer 100 shares from the estate of Abraham Klein to new shareholder Avraham Weits. Mr. Klein, died in 2012 with his ownership interest bequeathed to his wife, Sara Dinah Klein, who was appointed executrix of the estate. Avraham Weits is the Kleins' son-in-law.

This transaction is in compliance with the requirements for the transfer of ownership for deceased operators as outlined in Title 10 NYCRR §401.3(b)(1) and §401.1(c).

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 applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has 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

Assignment and Assumption Agreement

The applicant has submitted an executed Assignment and Assumption Agreement for the transfer of 100 shares in the RHCF, to be effectuated upon final non-contingent approval of this application by the Public Health and Health Planning Council. The terms are summarized below:

Date:	September 15, 2016
Assignor:	The Estate of Abraham N. Klein
Executrix of the Assignor:	Sara Dinah Klein
Assignee:	Avraham Weits
Shares Acquired:	100 shares of stock (50%)
Purchase Price:	\$3,953,061
Payment of Purchase Price:	Promissory Note for the full amount executed on 9/15/2016

The promissory note provides for a 30-year term with interest computed based on the IRS Long-term Applicable Federal Rate for Quarterly Payments determined at the time of closing (1.94% as of October 2016). Interest only will be payable quarterly commencing December 31, 2016, with the principal amount due by December 31, 2046.

Capability and Feasibility

The purchase price for the 100 shares in Grandell Rehabilitation and Nursing Center, Inc. is \$3,953,061 and will be met via a promissory note at the terms states above. BFA Attachment A provides the personal net worth statement of Avraham Weits, which shows the availability of sufficient liquid resources.

No budget analysis was necessary, as this is a transfer of 50% ownership interest in the RHCF via an Assignment and Assumption Agreement from the estate of the decedent shareholder, with the other current shareholder remaining in the ownership structure. The facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is the 2015 financial summary of Grandell Rehabilitation and Nursing Center, Inc. As shown, while the facility had a negative working capital position and the facility maintained a positive net asset position and generated \$1,058,090 in net income. BFA Attachment C is the internal May 31, 2016 financial summary of Grandell Rehabilitation and Nursing Center, Inc. As shown, the facility had a positive working capital position, a positive net asset position and generated \$1,266,860 in net income for the year-to-date.

Conclusion

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of Proposed Member
BFA Attachment B	2015 Certified Financial Summary, Grandell Rehabilitation and Nursing Center, Inc.
BFA Attachment C	2016 Internal Financial Summary, Grandell Rehabilitation and Nursing 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 8th day of December, 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 transfer of 50% ownership interest to one (1) new member from one (1) withdrawing member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161450 E

Grandell Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of a proposed Amended Certificate of Incorporation of Grandell Rehabilitation and Nursing Center, Inc, which is acceptable to the department. (CSL)
2. Submission of a photocopy of a proposed Amended Bylaws of Grandell Rehabilitation and Nursing Center, Inc, 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]

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 # 161452-E
Oceanside Care Center, Inc.

Program: Residential Health Care Facility
Purpose: Establishment

County: Nassau
Acknowledged: June 23, 2016

Executive Summary

Description

Oceanside Care Center, Inc. (the Center), a New York proprietary business corporation that operates a 100-bed Article 28 residential health care facility (RHCF) located at 2914 Lincoln Avenue, Oceanside (Nassau County), requests approval to transfer all 200 shares (100% ownership interest) to two new shareholders from the withdrawing shareholders. One of the current shareholders, Abraham N. Klein, died in 2012 bequeathing all of his ownership interest in the Center to his wife, Sarah Dinah Klein. As Executrix of the estate, and in accordance with the terms of her husband's Last Will and Testament, Ms. Klein will transfer all of her late husband's shares in the Center (110 shares, 55% ownership) to their son-in-law, Avraham Weits, pursuant to the terms of an Assignment and Assumption Agreement and Promissory Note. The other current owner, Liebel Rubin, is gifting his entire interest (90 shares, 45% interest) to Moishe Heller. Mr. Rubin has provided an affidavit and letter documenting his intent to gift his shares to Mr. Heller.

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

<u>Current Ownership</u>		
<u>Stockholders</u>	<u>Shares</u>	<u>%</u>
Abraham N. Klein (Estate)	110	55%
Liebel Rubin	90	45%
Total	200	100%
<u>Proposed Ownership</u>		
<u>Stockholders</u>	<u>Shares</u>	<u>%</u>
Avraham Weits	110	55%
Moishe Heller	90	45%
Total	200	100%

Requests to transfer decedent Abraham Klein's ownership interest in Grandell Rehabilitation and Nursing Center, Inc. (CON 161450) and Beach Terrace Care Center, Inc. (CON 161413) to Avraham Weits are concurrently under review.

OPCHSM Recommendation
Contingent Approval

Need Summary
There is no Need review of this project.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicant identified as new members. No changes in the program or physical environment are proposed in this application.

Financial Summary
The purchase price for the transfer of Mr. Klein's 110 shares is \$4,040,351 and will be met via a promissory note for \$4,040,351 that provides for a 30-year term with interest computed on the unpaid principal balance at the IRS Long-term Applicable Federal Rate for Quarterly Payments (1.94% as of October 2016) at the time of closing. Interest only will be payable quarterly commencing December 31, 2016, with principal payable by December 31, 2046. There is no purchase price associated with Moishe Heller's 45% ownership interest.

The projected budget is as follows:

Revenues	\$11,326,279
Expenses	<u>11,148,174</u>
Net Income	\$178,105

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 a proposed Amended Certificate of Incorporation of Oceanside Care Center, Inc, which is acceptable to the department. (CSL)
2. Submission of a photocopy of a proposed Amended Bylaws of Oceanside Care Center, Inc, which is acceptable to the department. (CSL)
3. Submission of the schedule 15 attachment titled, "Statement of Relationship between Donor and Donee", executed by Sara Dinah Klein, which is acceptable to the department. (CSL)
4. Submission of the schedule 15 attachment titled, "Statement of Relationship between Donor and Donee", executed by Liebel Rubin, 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]

Council Action Date

December 8, 2016

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Oceanside Care Center, Inc.	Same
Address	2914 Lincoln Avenue Oceanside, NY 11572	Same
RHCF Capacity	100	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Oceanside Care Center, Inc.	Same
	<u>Current Stock Ownership</u>	<u>Proposed Stock Ownership</u>
	Leibel Rubin 90	Moishe Heller 90
	Estate of Abraham N. Klein 110	Avraham Weits 110
	200	200

Character and Competence-Background

Facility Reviewed

Hamilton Park Nursing and Rehabilitation Center

9/2009 to current

Individual Background Review

Avraham Weits lists his current employment as Certified Financial Officer at Hopkins Center for Rehabilitation and Healthcare, Bensonhurst Center for Rehabilitation and Healthcare, Grandell Rehabilitation and Nursing Center, Oceanside Care Center and Beach Terrace Care Center. Mr. Weits was previously employed as Controller at Queens Nassau Nursing Home. Mr. Weits discloses no health facility ownership interests.

Moishe Heller lists his current employment as Corporate Administrator at Grandell Rehabilitation and Nursing Center, Queens Nassau Nursing Home, and Park Terrace Care Center. Mr. Heller was previously employed as an Administrator at Oceanside Care Center from 2003 to 2010. Mr. Heller holds a nursing home administrator license in good standing and discloses an ownership interest in the following nursing home:

Hamilton Park Nursing and Rehabilitation Center

9/2009 to current

Character and Competence

No negative information has been received concerning the character and competence of the above applicants identified as new shareholders.

A review of operations at Hamilton Park Nursing and Rehabilitation Center for the period identified above reveals the following:

- A federal CMP of \$1,300 was assessed for September 25, 2009 survey findings.

Quality Review

Provider Name	Overall	Health Inspection	MDS Quality Measures
Oceanside Care Center Inc	*	**	**
Hamilton Park Nursing and Rehabilitation Center	**	**	**

Project Review

This application proposes to transfer 100% ownership interest (200 shares) from two withdrawing shareholders to two new shareholders. From the estate of Abraham Klein, 110 shares will be sold to Avraham Weits and Mr. Liebel Rubin is gifting his 90 shares to Moishe Heller. This transaction is in compliance with the requirements for the transfer of ownership for deceased operators as outlined in Title 10 NYCRR §401.3(b)(1) and §401.1(c).

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 applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has 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

Assignment and Assumption Agreement

The applicant has submitted an executed Assignment and Assumption Agreement for the transfer of 110 shares in the RHCf to Mr. Weits, to be effectuated upon final non-contingent approval of this application by the Public Health and Health Planning Council. The terms are summarized below:

Date:	September 15, 2016
Assignor:	Estate of Abraham N. Klein by Sara Dinah Klein (Executrix)
Assignee:	Avraham Weits
Shares Acquired:	110 shares of stock (55% ownership)
Purchase Price:	\$4,040,351
Payment of Purchase Price:	Promissory Note for the full amount executed on 9/15/2016

The promissory note provides for a 30-year term with interest computed based on the IRS Long-term Applicable Federal Rate for Quarterly Payments determined at the time of closing (1.94% as of October 2016). Interest only will be payable quarterly commencing December 31, 2016, with the principal amount due by December 31, 2046.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no outstanding Medicaid liabilities as of October 13, 2016.

Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, for the first year after the transfer of 100% ownership, summarized below:

	<u>Current Year (2015)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$248.14	\$5,528,825	\$245.09	\$5,460,913
Medicare FFS	\$672.96	3,690,501	\$681.42	3,736,929
Private Pay	\$291.45	<u>2,210,933</u>	\$280.57	<u>2,128,437</u>
Total Revenues		\$11,430,259		\$11,326,279
<u>Expenses</u>				
Operating	\$280.83	\$9,927,519	\$284.49	\$10,057,064
Capital	<u>30.87</u>	<u>1,091,110</u>	<u>30.87</u>	<u>1,091,110</u>
Total Expenses	\$311.69	\$11,018,629	\$315.36	\$11,148,174
Net Income		<u>\$411,630</u>		<u>\$178,105</u>
Patient Days		35,351		35,351
Occupancy		96.85%		96.85%
Breakeven Occupancy				95.35%

Utilization broken down by payor source during the first year after the transfer of 100% ownership is summarized below:

	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	63.03%	63.03%
Medicare FFS	15.51%	15.51%
Private Pay	21.46%	21.46%

Revenue, expense and utilization assumptions are based on current operations. The Medicare and Private Pay rates are based on the average first quarter 2016 rates experience for these payors, and the Medicaid rate is based on the facility's current 2016 Medicaid payment rate. This application is solely for a change in the composition of shareholders of an existing corporation. There will be no change in beds or operations, nor is there any change in the facility's forecasted revenues and expenses.

Capability and Feasibility

The purchase price for Avraham Weits' 55% ownership interest is \$4,040,351. Payment of the purchase price will be via a promissory note of \$4,040,351 at the terms stated above. There is no purchase price associated with Moishe Heller's ownership interest.

Working capital requirements are estimated at \$1,858,929, which is equivalent to two months of first year expenses. The applicant will provide equity from personal resources to meet the working capital needs. Avraham Weits has submitted an affidavit indicating that he will provide equity disproportionate to his ownership interest. BFA Attachment A is the personal net worth statements of the proposed new shareholders of Oceanside Care Center, which indicates the availability of sufficient funds to meet the working capital requirement.

The submitted budget indicates a net income of \$178,105 during the first year after the transfer of 100% ownership interest. The submitted budget appears reasonable.

BFA Attachment B is the 2014 and 2015 certified financial statements of Oceanside Care Center. The facility had an average negative working capital position and an average positive stockholders position from 2014 through 2015. Also, the facility achieved an average net income of \$562,163 from 2014 through 2015. The applicant indicated that the reason for the average negative working capital position is that the facility did renovations in 2014 and 2015 and as a result, the facility incurred a sizeable accounts payable balance.

BFA Attachment D is the internal financial statement of Oceanside Care Center as of August 31, 2016. As shown, the facility had a negative working capital position and a positive stockholders position through August 31, 2016. Also, the facility achieved a net income of \$512,021 through August 31, 2016. The applicant indicated that the reason for the average negative working capital position is that the facility did renovations in 2014 and 2015 and as a result, the facility incurred a sizeable accounts payable balance.

BFA Attachment C is the financial summary of Hamilton Park Nursing and Rehabilitation Center. The facility had an average negative working capital position and an average positive net asset position from 2014 through 2015. Also, the facility achieved a net income of \$1,962,190 in 2015. The applicant indicated that the reason for the average negative working capital position is the result of a major construction project undertaken by the facility in 2013 in which the facility added 50 RHCF beds and incurred over \$5,000,000 in construction costs. As a result of the costs of expanding and improving the facility, the facility incurred a sizeable accounts payable balance.

BFA Attachment E is the internal financial statement of Hamilton Park Nursing and Rehabilitation Center as of June 30, 2016. As shown, the facility had a negative working capital position and positive retained earnings for the period. The applicant indicated that the reason for the average negative working capital position is the result of a major construction project undertaken by the facility in 2013 in which the facility added 50 RHCF beds and incurred over \$5,000,000 in construction costs. As a result of the costs of expanding and improving the facility, the facility incurred a sizeable accounts payable balance. Also, the facility achieved a net income of \$817,549 for the period through June 30, 2016.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements of Proposed Members
BFA Attachment B	2014 -2015 Financial Summary Oceanside Care Center
BFA Attachment C	2014 -2015 Financial Summary Hamilton Park Nursing and Rehab. Center
BFA Attachment D	August 31, 2016 internal financial statements of Oceanside Care Center
BFA Attachment E	June 30, 2016 internal financial statements of Hamilton Park Nursing and Rehabilitation Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of December, 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 transfer of 100% ownership interest to two (2) new members from the two (2) withdrawing members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161452 E

Oceanside Care Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of a proposed Amended Certificate of Incorporation of Oceanside Care Center, Inc, which is acceptable to the department. (CSL)
2. Submission of a photocopy of a proposed Amended Bylaws of Oceanside Care Center, Inc, which is acceptable to the department. (CSL)
3. Submission of the schedule 15 attachment titled, "Statement of Relationship between Donor and Donee", executed by Sara Dinah Klein, which is acceptable to the department. (CSL)
4. Submission of the schedule 15 attachment titled, "Statement of Relationship between Donor and Donee", executed by Liebel Rubin, 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]

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 # 162092-E
CNH Operating, LLC d/b/a The Chateau at Brooklyn
Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Kings
Acknowledged: August 5, 2016

Executive Summary

Description

CNH Operating, LLC, a New York limited liability company, requests approval to be established as the new operator of Crown Nursing Home Associates, Inc. d/b/a The Chateau at Brooklyn Rehabilitation and Nursing Center f/k/a Crown Nursing and Rehab Center, a 189-bed Article 28 Residential Health Care Facility (RHCF) located at 3457 Nostrand Avenue, Brooklyn (Kings County). Upon Public Health and Health Planning Council (PHHPC) approval of this CON application, the applicant will operate the facility under the name The Chateau at Brooklyn Rehabilitation and Nursing Center. There will be no change in beds or services provided.

On May 1, 2016, Crown Nursing Home Associates, Inc., the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with CNH Operating, LLC for the sale and acquisition of the operating interest of the RHCF, to be effective upon approval by PHHPC. The purchase price for the operating interests is \$3,500,000 plus the net of assumed accounts receivables and payables at closing, estimated at \$1,362,532 as of April 1, 2016. Concurrently, Second Haring, LLC, the real property owner, entered into a Purchase and Sale Agreement (PSA) with CNH Property, LLC to purchase the RHCF's real estate for \$27,813,450. Upon PHHPC approval, CNH Property, LLC will lease the premises to CNH Operating, LLC for a term of 35 years. There is a relationship between CNH Property, LLC and

CNH Operating, LLC in that the entities have several members in common.

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

Current Operator

Crown Nursing Home Associates, Inc.	
<u>Members</u>	<u>%</u>
Dr. Jacob Dimant	10%
Dr. Rose Dimant	10%
Elliot A. Dimant	40%
Kevin B. Teitler	40%

Proposed Operator
CNH Operating, LLC

<u>Members</u>	<u>%</u>
Devorah Freidman	43%
Sharon Einhorn	43%
Eli Schwartz	5%
Yossie Zucker	5%
Akiva Rudner	2%
Steven Sax	2%

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

Current Landlord

Second Haring, LLC

<u>Members</u>	<u>%</u>
Dr. Jacob Dimant	1.0%
Dr. Rose Dimant	1.0%
Elliot A. Dimant	49.0%
Kevin B. Teitler	49.0%

Proposed Landlord
CNH Property, LLC

<u>Members</u>	<u>%</u>
Mark Freidman	43.0%
Neil Einhorn	43.0%
Eli Schwartz	5.0%
Yossie Zucker	5.0%
Akiva Rudner	2.0%
Steven Sax	2.0%

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Utilization was 93.9% in 2013, 89.4% in 2014, and 87.9% in 2015. Current utilization, as of October 19, 2016 is 98.9%, with two vacant beds.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in current compliance with all rules and regulations. The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs associated with this proposal. The purchase price for the operating interests is \$3,500,000 plus the net of assumed accounts receivables and payables at closing, estimated at \$1,362,532 as of April 1, 2016. The applicant will finance the purchase of the operations via a bank loan for \$3,500,000 at 5%

interest with a five-year term and 25-year amortization. The term of the loan will be for an initial five years with the understanding that this will be a bridge-to-HUD loan. The remaining \$1,362,532 will be paid from proposed members' equity. Devorah Freidman has submitted an affidavit attesting that she is willing to contribute resources disproportionate to her ownership interest percentage to provide needed equity.

The purchase price for the real property is \$27,813,450, which will be financed with a bridge-to-HUD loan of \$25,000,000 at 5% over five years and amortized over 25 years, with the remaining \$2,813,450 to be paid with equity from the proposed members. A \$2,000,000 deposit for the property has been paid and is being held in escrow.

M&T Bank has provided a letter of interest for the respective operating and realty financings at the above stated terms. Proposed members Yossie Zucker (operations and realty) and Mark Freidman (realty) have submitted affidavits attesting that if HUD financing is not available after the five years, a term loan for the remaining mortgages will be obtained.

The projected budget is as follows:

Revenues	\$21,137,900
Expenses	<u>20,542,893</u>
Gain	\$595.007

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 agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
7. Submission of the applicant's fully executed lease agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

December 8, 2016

Need Analysis

Background

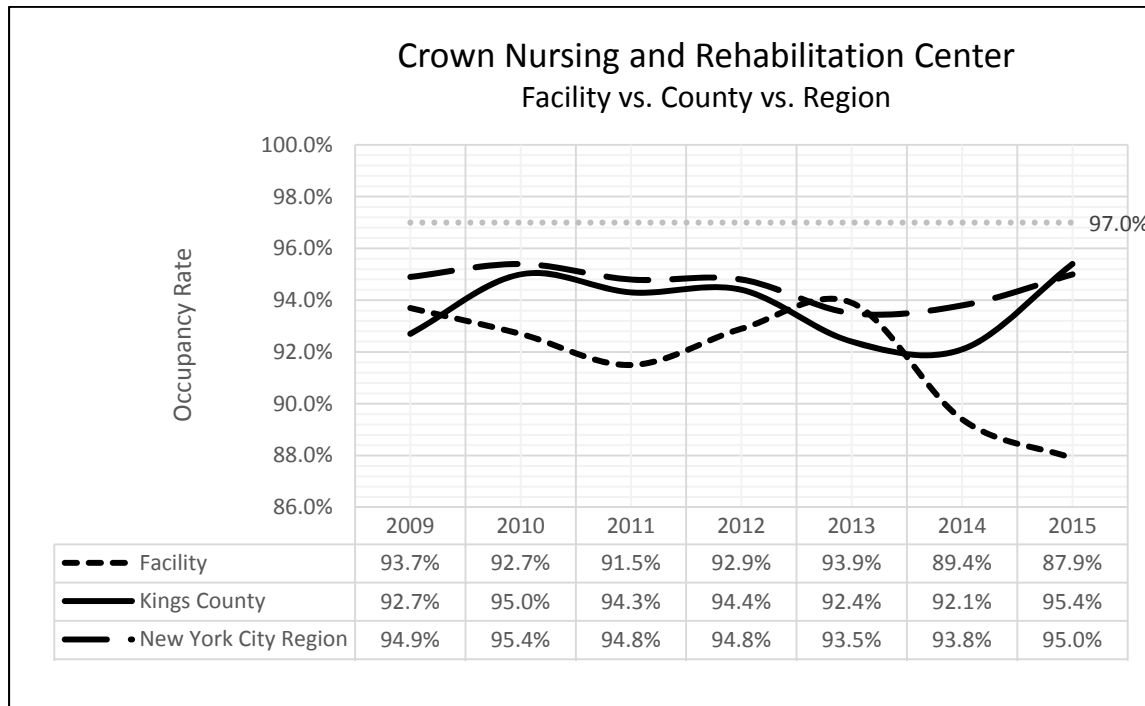
CNH Operating, LLC d/b/a The Chateau at Brooklyn Rehabilitation and Nursing Center, seeks approval to become the established operator of Crown Nursing Home Associates, Inc., a 189-bed Article 28 residential health care facility (RHCF) located at 3457 Nostrand Avenue, Brooklyn, 11229 in Kings County.

Analysis

There is currently a need for 9,715 beds in the New York City Region, as indicated in the following table:

2016 Projected Need	51,071
Current Beds	41,644
Beds Under Construction	-288
Total Resources	41,356
Unmet Need	9,715

The overall occupancy for Kings County was 95.4% for 2015 and was 95% for the entire region, as indicated in the following chart:



According to the applicant, from 2012 to 2015, the facility underwent substantial renovations which interrupted services, resulting in rooms being unavailable for occupancy. The renovations lasted 36 months and were completed in phases. This work included repairs of the exterior façade due to damage from Superstorm Sandy. Other work included:

- Nurse call system replacement;
- Cable television wiring of the entire building;
- Security cameras installation;
- Elevator upgrade (done in phases and took 18 months to complete);
- Update and one-for-one replacement of finishes of the first floor (29-bed unit) requiring closure of rooms on a rotating basis;
- Updating and renovations of the lobby and administrative offices;

- Renovations to the HVAC systems, which are located along the front entry way of the building and impaired access to the building;
- Boiler replacement requiring work on heating units in rooms;
- Fire alarm upgrades;
- Closure of the sixth floor gym for a prolonged period to replace roof which resulted in water damage and replacement of the entire ceiling system, along with renovations to the current rehab space;
- Wiring of the building for IT installation of a new EMR and work kiosks;
- Exterior work including new waterproofing; and
- Inspection and repairs of building envelope impairing access as required periodically by the City of New York.

While this work was being performed, administration was working on improving quality by building new robust systems and services to reduce re-admissions. These projects and practices have effectively led to an increase in referrals.

The facility's ability to accept difficult-to-serve residents contributes to their high case mix, which is currently 1.25 overall and 1.20 for Medicaid-only residents. The facility also treats higher acuity residents without hospital assistance, as indicated by its low hospital readmission rate.

In addition, the facility has developed strong working relationships with local area hospitals that help ensure the prompt discharge of patients appropriate for skilled nursing care. The clinical operations team at the RHCF continually works to monitor and improve functions that significantly affect resident outcomes.

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.

Crown Nursing's Medicaid admissions of 19.6% in 2013 did not exceed Kings County's 75% rates of 24.8% in 2013. Crown Nursing's Medicaid admissions of 69.9% in 2014 exceeded Kings County's 75% rate of 22.2% in 2014.

Conclusion

Contingent approval of this application will maintain a continued need of skilled nursing services for the Medicaid population as well as the community in which it serves.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Chateau at Brooklyn Rehabilitation and Nursing Center	The Chateau at Brooklyn Rehabilitation and Nursing Center
Address	3457 Nostrand Avenue Brooklyn, NY	Same
RHCF Capacity	189	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Crown Nursing Home Associates, Inc.	CNH Operating LLC <u>Members</u> *Devorah Friedman 43.0% *Sharon Einhorn 43.0% Eliezer Schwartz 5.0% Yossie Zucker 5.0% Akiva Rudner 2.0% Steven Sax 2.0% <i>*Managing Member</i>

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center	01/2015 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present
The Enclave at Port Chester Rehabilitation and Nursing Center	7/2016 to present
The Emerald Peek Rehab & Nursing Center	4/2016 to present
Chatham Hills Subacute Care Center (NJ)	2/2015 to present

Provider Name	Overall	Health Inspection	Quality Measures
Sans Souci Rehabilitation and Nursing Center	****	****	****
Dumont Center for Rehabilitation and Nursing	*	*	****
Bellhaven Nursing & Rehab Center	****	****	*****
Ramapo Manor Ctr For Rehab & Nursing	***	***	***
St James Rehab & Health Care Center	****	****	**
The Grand Pavilion For R & N At Rockville Centre	**	***	**

Provider Name	Overall	Health Inspection	Quality Measures
The Riverside	***	**	*****
Cortlandt Healthcare LLC	**	***	*
Crown Heights Center For Nursing & Rehabilitation	*****	***	*****
The Phoenix Rehabilitation and Nursing Center	****	****	*****
The Enclave at Port Chester Rehab and Nursing Ctr	***	****	**
The Emerald Peek Rehab and Nursing Center	*****	****	*****

Individual Background Review

Devorah Friedman holds a New York State speech language pathologist license and is considered to be in good standing. She is currently employed as the owner/operator of Bellhaven Center for Rehabilitation and Nursing. Ms. Friedman discloses the following ownership interests in health facilities:

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
The Enclave at Port Chester Rehabilitation and Nursing Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

Sharon Einhorn discloses no employment history over the last 10 years. Ms. Einhorn discloses the following ownership interests in health facilities:

Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

Eliezer Schwartz is a sales executive at Qualmed Supplies, a janitorial supply company in Linden, New Jersey. Previously he was a sales representative for Superior Laundry, a commercial laundry service located in Brooklyn, New York. Mr. Schwartz discloses the following health facility ownership interest:

Cortlandt Healthcare	03/2014 to present
The Enclave at Port Chester Rehabilitation and Nursing Center	7/2016 to present
Chatham Hills Subacute Care Center (NJ)	2/2015 to present

Yossie Zucker is a New York State certified public accountant with license currently inactive. Mr. Zucker is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker discloses the following ownership interests in health facilities:

Ramapo Manor Center for Rehabilitation and Nursing	07/2012 to present
St. James Rehabilitation and Healthcare Center	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center	01/2015 to present

Akiva Rudner held a New York State nursing home administrator's license which is currently inactive. He currently serves as Chief Operating Officer at CareRite LLC, a nursing home consulting service. Mr. Rudner discloses the following ownership interests in health facilities:

St. James Rehabilitation & Healthcare Center	08/2012 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center	01/2015 to present

Steven Sax has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Previously, Mr. Sax was the assistant administrator to the Sans Souci Rehabilitation and Nursing Center in Yonkers, New York. Steven Sax discloses the following ownership interest in health facilities:

St. James Rehabilitation and Healthcare Center	08/2012 to present
Cortlandt Healthcare	03/2014 to present

Solomon Reichberg is the Director of Marketing at Five Star Staffing Services, Inc., a health care staffing company located in Brooklyn, New York. Previously, he was a sales representative at Approved Storage and Waste Hauling, Inc., a medical waste hauler based out of Mount Vernon, New York. Mr. Reichberg discloses no ownership interest in health facilities.

Character and Competence - Analysis

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

A review of Sans Souci Nursing Home for the period reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of Dumont Center for Rehabilitation and Nursing Care for the period reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order for surveillance findings on April 13, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Resident Rights: Advance Directives, 415.5(g) Quality of Life: Social Service, 415.12 Quality of Care: Highest Practical Potential, 415.26 Administration: 490 Administration, and 415.15(a) Administration: Medical Director.
- A federal CMP of \$45,070 was issued for the Immediate Jeopardy on 4/13/15 and is pending appeal.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of Bellhaven Center for Rehabilitation and Nursing, Ramapo Manor Center for Rehabilitation & Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, The Riverside, Cortlandt Healthcare, Crown Center for Nursing and Rehabilitation (The Chateau at Brooklyn Rehabilitation and Nursing Center as of 7/28/16), The Phoenix Rehabilitation and Nursing Center and The Enclave at Port Chester for the time periods identified above reveals that there were no enforcements.

A review of Chatham Hills Subacute Care Center in NJ reveals there were no enforcements for the time period reviewed. This information was received from the State of New Jersey, and from a review of the CMS website.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in current compliance with all rules and regulations. The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA for the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	May 1, 2016
Purchaser:	CNH Operating, LLC
Seller:	Crown Nursing Home Associates, Inc.
Purchased Assets:	All assets used in the operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$3,500,000 plus the net value of assumed accounts receivables and payables at closing, estimated at \$1,362,532 as of April 1, 2016, current estimated totaling of \$4,862,532.
Payment of Purchase Price:	\$4,862,532 due at time of closing.

The purchase price for the operations is proposed to be satisfied as follows:

Cash Equity (due at closing)	\$1,362,532
Bank Loan (5-year term and 25-year amortization, bridge-to-HUD, 5% interest)	<u>\$3,500,000</u>
Total	\$4,862,532

M&T Bank has submitted a letter of interest at the stated terms. Proposed operating member Yossie Zucker submitted an affidavit attesting that if HUD financing is not available after the five years, a term loan for the remaining mortgage will be obtained. Devorah Freidman has submitted an affidavit attesting to contribute resources disproportionate to her ownership interest percentage to provide needed equity.

Department staff note that the APA states the purchaser is obligated to contribute to the pension plan as of May 1, 2016, in the event that current operations do not provide the necessary cash flow. As of September 21, 2016, no contributions have been made to the pension plan since current operations have been able to sustain contributions to the pension plan.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without

releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid overpayment liabilities.

Purchase and Sale Agreement for the Realty

The applicant has submitted an executed real estate PSA related to the purchase of the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	May 1, 2016
Seller:	Second Haring, LLC
Buyer:	CNH Property, LLC
Property Purchased:	3457 Nostrand Avenue, Brooklyn, New York 11229
Purchase Price:	\$27,813,450
Payment of Purchase Price:	\$2,000,000 paid and held in escrow \$25,813,450 due at time of closing.

The purchase price for the realty is proposed to be satisfied as follows:

Cash Equity (paid, held in escrow)	\$2,000,000
Additional Cash Equity due at Closing	\$813,450
Bank Loan (5-year term, 25-year amortization, bridge-to-HUD, 5% interest)	<u>\$25,000,000</u>
Total	<u>\$27,813,450</u>

M&T Bank has provided a letter of interest to finance a bridge-to-HUD mortgage for the realty at the above stated terms. Proposed realty member Mark Freidman submitted an affidavit attesting that if HUD financing is not available after the five years, a term loan for the remaining mortgage will be obtained. Neil Einhorn and Mark Freidman have contributed a \$2,000,000 deposit in escrow, collectively, with the remaining cash of \$813,450 to be paid through equity from the proposed members of CNH Property, LLC.

BFA Attachment F is the PSAs for two vacant parcels of land (Facility Land) located at 3457 Nostrand Avenue, Brooklyn, which have separate agreements under this application. The two parcels will be sold and transferred from Second Haring, LLC to CNH Property, LLC under the PSA.

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 189-bed RHCF located at 3457 Nostrand Avenue, Brooklyn, New York 11229
Landlord:	CNH Property, LLC
Lessor:	CNH Operating, LLC
Terms:	35 years commencing on execution of the lease.
Rental:	Amount equal to debt service due under the mortgages, plus additional rent to include HUD-related costs and reserve for replacement, which is \$2,780,000 annually (\$231,666.67/month)
Provisions:	Triple Net

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

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>First Year</u>
<u>Revenues</u>				
Medicaid	\$216.49	\$9,327,542	\$244.67	\$10,805,600
Medicare	\$671.66	4,643,840	\$663.62	4,440,300
Commercial	\$333.53	3,190,563	\$350.01	4,918,400
Private Pay	\$585.94	<u>615,240</u>	\$505.03	<u>1,013,600</u>
Total Revenues		\$17,777,185		\$21,177,900
<u>Expenses</u>				
Operating	\$282.09	\$17,098,687	\$258.04	\$17,266,800
Capital	<u>8.59</u>	<u>520,849</u>	<u>48.96</u>	<u>3,276,093</u>
Total Expenses	\$290.68	\$17,619,536	\$307.00	\$20,542,893
Net Income		<u>\$157,649</u>		<u>\$595,007</u>
Total Patient Days		60,615		66,914
Occupancy %		87.87%		97.0%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2015 payor and 2015 RHCF-4 cost report information. Historical utilization for base year 2015 was 87.87%.
- The historical utilization from January 1, 2016 to August 31, 2016 is 94.14%.
- For budget year one, Medicaid revenues are projected based on the current operating and capital components of the facility's 2016 Medicaid FFS rate plus assessments. Medicare and Private Pay rates are based on average per diems experienced during 2016.
- The increase in capital between current year and first year is due to the \$2,780,000 annual rent expense per the proposed lease arrangement. The lease amount is equal to the debt service payments due under the mortgages, plus additional rent to include HUD-related costs and reserve for replacement.
- Breakeven utilization is 94.09% for the first year.
- Utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid	66.5%	66.0%
Medicare	7.7%	10.0%
Private/Other	25.8%	24.0%

Capability and Feasibility

The purchase price for the operation is \$3,500,000 plus the net of assumed accounts receivables and payables at closing, estimated at \$1,362,532 as of April 1, 2016. The applicant will finance the purchase of the operations via a bank loan for \$3,500,000 at 5% interest with a five-year term and 25-year amortization. The term of the loan will be for an initial five years with the understanding that this will be a bridge-to-HUD loan. M&T Bank has provided a letter of interest at the stated terms. The remaining \$1,362,532 will be paid with equity from the proposed members. Devorah Freidman has submitted an affidavit stating she is willing to contribute resources disproportionate to her ownership interest percentage to provide needed equity.

The purchase price of the real property is \$27,813,450 will be financed with a bridge-to-HUD loan of \$25,000,000 at 5% over 5 years and amortized over 25 years. The remaining \$2,813,450 will be paid from the proposed members' equity. A contract deposit of \$2,000,000 for the property has already been paid and is being held in escrow.

M&T Bank has provided a letter of interest for the realty financing at the stated terms. Proposed members Yossie Zucker (operations and realty) and Mark Freidman (realty) have submitted affidavits

attesting that if HUD financing is not available after the five years, a term loan for the remaining mortgages will be obtained.

The working capital requirement is \$3,423,816 based on two months of first year's expenses and will be satisfied from existing facility funds and proposed members' equity. The seller is assuming certain current assets and current liabilities through the APA, therefore working capital is calculated as follows; Cash, accounts receivable, inventory and prepaid expenses (\$5,951,966) less accounts payable, due third party payors, accrued payroll and accrued expenses (\$3,760,078 as of May 31, 2016) for a balance of \$2,191,888. The remaining \$1,231,928 will be from the proposed members' equity. Devorah Freidman has submitted an affidavit stating that she is willing to contribute resources disproportionate to her ownership percentage. BFA Attachment A, net worth of the proposed members of CNH Operating, LLC, shows sufficient equity levels for working capital. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$4,863,000. It is noted that assets will change to include \$1,231,928 in cash for working capital, thus members' equity would be \$6,094,928.

The submitted budget indicates that net income of \$595,007 will be generated for the first year. BFA Attachment E is the budget sensitivity analysis based on current utilization of the facility for the last five months as of May 31, 2016, which shows the budgeted revenues would decrease by \$209,408 resulting in a net income in year one of \$385,599. The facility has shown an increase in Medicare Rehab and Private Pay residents in 2015 and over the past five months, which is shown in the increase in Medicaid case mix of 1.1019 in 2014 to 1.2011 in 2016. Also, the facility's utilization has been maintained at an average of 96.63% over the additional three-month period from June 1 to August 31, 2016. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B, financial summary of Crown Nursing and Rehab Center, indicates that the facility has experienced negative working capital in 2013-2014, maintained positive working capital in 2015, maintained a positive equity position and generated an average annual net income of \$324,111 for the 2013-2015 period shown, and a net operating income of \$749,731 as of May 31, 2016. The 2013-2014 negative working capital is due to higher than expected accounts payable, whereas the facility has worked toward paying down these payables in 2015 and 2016 by improving administrative functions and changing the admission processes.

BFA Attachments C, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown with the exception of The Grand Pavilion for Rehab At Rockville and Cortlandt Healthcare in 2014, and The Grove at Valhalla in 2015, which was due to the occurrence of the change of ownership in those years. The following years show positive net operating income.

Based on the preceding and subject to noted contingencies, 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	CNH Operating, LLC, Proposed Members Net Worth
BFA Attachment B	Financial Summary, Crown Nursing and Rehab
BFA Attachment C	Affiliated Residential Health Care Facilities
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Budget Sensitivity Analysis
BFA Attachment F	Vacant Facility Land Agreements

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 8th day of December, 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 CNH Operating, LLC as the new operator of the 189-bed residential health care facility located at 3457 Nostrand Avenue, Brooklyn currently operated as Crown Nursing & Rehab Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

162092 E

FACILITY/APPLICANT:

CNH Operating, LLC d/b/a The Chateau at
Brooklyn Rehabilitation and Nursing 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 agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
7. Submission of the applicant's fully executed lease agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within two 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)

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 # 162120-E
170 West Avenue Operating Company, LLC d/b/a Elderwood of Lakeside at Brockport

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: August 17, 2016

Executive Summary

Description

170 West Avenue Operating Company, LLC, d/b/a Elderwood of Lakeside at Brockport, a New York limited liability company, requests approval to be established as the new operator of Lakeside-Beikirch Care Center, Inc., a 120-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 170 West Avenue, Brockport (Monroe County). The sole member of 170 West Avenue Operating Company, LLC is 170 West Avenue Operating Holdco, LLC, whose members are Warren Cole (50%) and Jeffrey Rubin (50%). Upon approval of this application, the name of the facility will be Elderwood of Lakeside at Brockport. A separate entity, 170 West Avenue, LLC, will acquire the rights to the real property. There will be no change in beds or services provided.

On February 4, 2016, Lakeside-Beikirch Care Center, Inc., the current RHCF operator, entered into an Asset Purchase Agreement (APA) with Post Acute Partners Acquisition, LLC (PAP), which is owned equally by Mr. Cole and Dr. Rubin, to sell the operating assets and certain property assets of the RHCF for \$11,500,000. Upon Public Health and Health Planning Council approval, PAP will assign the rights and title under the APA to 170 West Avenue Operating Company, LLC and 170 West Avenue, LLC, respectively. As part of the APA, PAP entered into a Ground Lease with the University of Rochester to secure site control of the facility. 170 West Avenue, LLC will enter into a Lease Agreement with 170 West Avenue Operating Company, LLC, subject to the overriding Ground Lease. There is a relationship between 170

West Avenue, LLC and 170 West Avenue Operating Company, LLC, in that Warren Cole and Jeffrey Rubin are the managing members of 170 West Avenue Operating Company, LLC, each with a 50% indirect membership interest, and are also the 50% members and managers of 170 West Avenue, LLC.

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

Current Operator
Lakeside-Beikirch Care Center, Inc. 100%

Proposed Operator
170 West Avenue Operating Company, LLC
Members
170 West Avenue Operating Holdco, LLC 100%
Warren Cole (50%)
Jeffrey Rubin (50%)

Warren Cole and Jeffery Rubin each have a 50% ownership interest in eleven New York RHCFs. BFA Attachment E presents the financial summaries of the proposed members' affiliated RHCFs.

Concurrently under review, the applicant members of 170 West Avenue Operating Company, LLC are seeking approval to be established as the new operator of Heritage Commons Residential Health Care (CON 162229).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Lakeside – Beikirch Care Center, Inc.'s utilization was 91.1% in 2013, 96.2% in 2014, and 92.0% in 2015. Current utilization, as of September 28, 2016 is 93.3%, with eight vacant beds.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

PAP agreed to acquire the RHCF's operations and certain property assets (furniture and equipment) for \$11,500,000. The purchase price will be funded by \$2,300,000 in members' equity and a \$9,200,000 loan at 6% interest for 5-years plus an additional five years at the borrower's option with a 10-year amortization period. Capital Funding, LLC has provided a letter of interest for the loan at the stated terms. PAP will assign its rights and title to the RHCF's operations and real property to 170 West Avenue Operating Company, LLC and 170 West Avenue, LLC, respectively, for \$10. There are no project costs associated with this proposal. The projected budget is as follows:

Revenues	\$13,162,107
Expenses	<u>13,143,878</u>
Gain/(Loss)	\$18,229

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval of 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
4. Other factors as determined by the applicant to be pertinent. (RNR) Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Building Lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed Ground Lease, acceptable to the Department of Health. [BFA]
7. Submission of executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
8. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
9. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
10. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants amended and completed operating agreement, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicants amended and completed articles of organization, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicants amended and completed assignment of rights, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the certificate of authority to do business in New York State by 170 West Avenue Operating Holdco, LLC, which is acceptable to the Department. [CSL]

15. Submission of a photocopy of 170 West Avenue Operating Holdco, LLCs amended and completed operating agreement, which is acceptable to the Department. [CSL]
16. Submission of a fully completed administrative services agreement, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of 170 West Avenue Operating Holdco, LLCs amended and completed articles of organization, which is acceptable to the Department. [CSL]
18. Submission of a list providing the name, membership interest and percentage ownership interest in the 2nd level member and indirect ownership percentage in the Article 28 LLC, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
December 8, 2016

Need Analysis

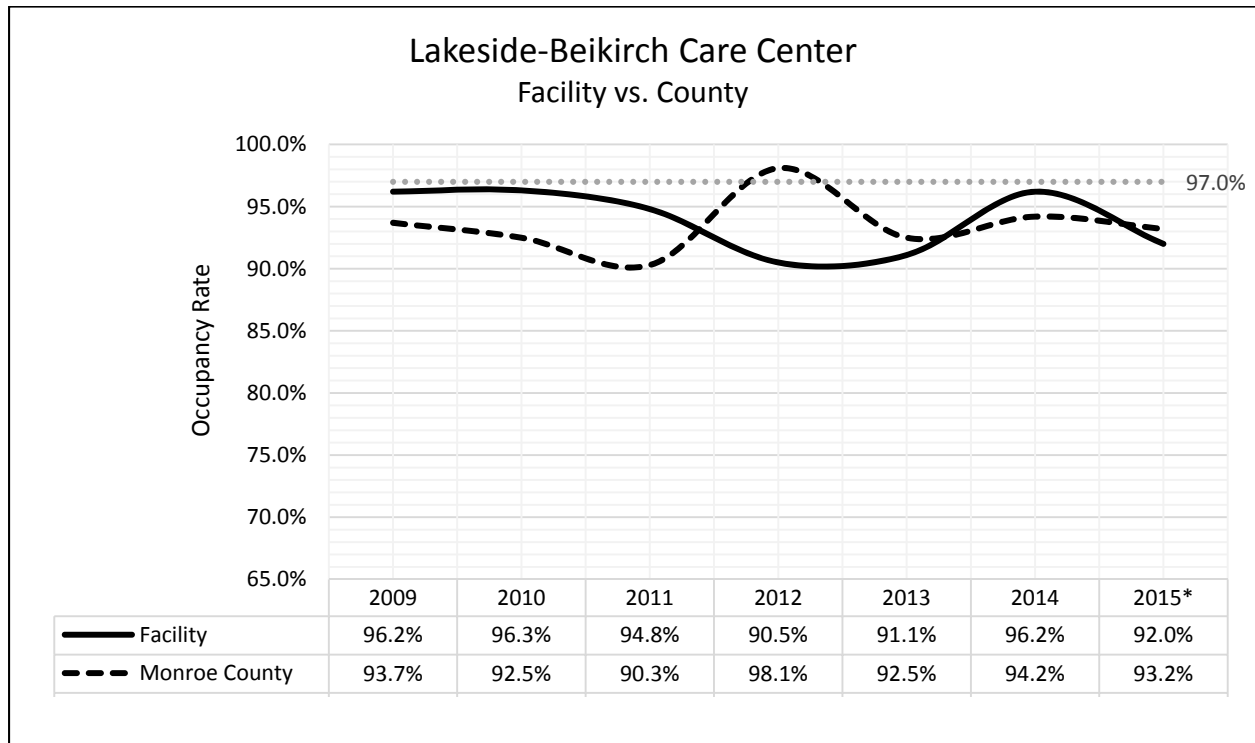
Project Description

170 West Avenue Operating Company, LLC seeks approval to become the established operator of Lakeside – Beikirch Care Center, Inc., a 120-bed Article 28 residential health care facility (RHCF) located at 170 West Avenue, Brockport in Monroe County. Upon approval of this application, the name of the facility will be changed to Elderwood of Lakeside at Brockport.

Analysis

There is currently a surplus of 941 beds in Monroe County as indicated in the following table:

2016 Projected Need	4,167
Current Beds	5,142
Beds Under Construction	-34
Total Resources	5,108
Unmet Need	-941



*2015 unaudited; facility reported data

The overall occupancy for Monroe County was 94.2% for 2014. Lakeside-Beikirch's utilization was 91.1% in 2013, 96.2% in 2014, and 92.0% in 2015. Current utilization, as of September 28, 2016, is 93.3%, with eight vacant beds. While current utilization is low, it should be noted that overall utilization for 2016 at this facility is 95.0%.

According to the applicant, the low utilization was mostly attributable to multiple changes in the position of Administrator during 2013-2015. In April of 2013, Lakeside Memorial Hospital, which is part of Lakeside Health System (the same health system as this facility) closed. The hospital was attached to this facility, and as a primary referring source to the nursing home, its closure negatively impacted Lakeside-Beikirch's admissions.

As stated previously, overall utilization for 2016 is 95.0%. The facility indicates it was able to increase utilization through a strategic marketing plan. The plan was executed in order to reverse the public perception that Lakeside-Beikirch was no longer in operation. As part of this plan, Lakeside-Beikirch hired an admissions nurse during the last quarter of 2015 whose responsibility was to decrease the turnaround time from referral to acceptance. This key step allowed the facility to be more responsive to the referring sources. In April, 2016, the current Administrator was hired and began reaching out to the community, strengthening relationships with Unity Hospital, The Landing Assisted Living, Highland Hospital, and Strong Memorial Hospital.

The applicant noted the following plan to increase utilization:

- A key component of the strategic marketing plan is retention of the admissions nurse.
- The applicant also plans to enhance the marketing plan by continuing to expand referral sources in the community. The applicant plans to work closely with local health care and social services providers, including hospitals, adult care facilities, assisted living programs, senior citizen centers, religious organizations, community centers and the Monroe County Department of Social Services in an effort to cultivate and further strengthen relationships.
- In addition, the applicant will focus on ensuring access to higher-acuity, short-term care needed by the residents of the community. Short-term postsurgical care will be provided with the expectation of returning to "community" living (home).
- It is expected that the facility will attract an increasing number of managed long term care plan (MLTCP) contracts;
- Implement programs and services designed to facilitate DSRIP initiatives to prevent avoidable hospitalizations, reduce hospital admissions, and provide a resource to enable timely discharges from hospitals for patients needing skilled nursing facility care.

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.

Lakeside-Beikirch's Medicaid admissions of 21.9% in 2013 and 21.3% in 2014 exceeded Monroe County's 75% rates in 2013 and 2014 of 12.8% and 15.5%, respectively.

Conclusion

Contingent approval of this application will maintain a needed resource in Monroe County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Lakeside-Beikirch Care Center, Inc.	Elderwood of Lakeside at Brockport
Address	170 West Avenue Brockport	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Inc.	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Lakeside-Beikirch Care Center, Inc.	170 West Avenue Operating Company, LLC <u>Members</u> 170 West Avenue Operating Holdco, LLC 100.00% Warren Cole (50.00%) Jeffrey Rubin (50.00%)

Character and Competence - Background

Facilities Reviewed

NYS Nursing Homes

Elderwood at Hamburg	07/2013 to present
Elderwood at Liverpool	07/2013 to present
Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Wheatfield	07/2013 to present
Elderwood at Hornell	04/12/16 to present
Elderwood at Uihlein at Lake Placid	10/04/16 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Williamsville	07/2013 to present
Elderwood Assisted Living at Wheatfield	07/2013 to present
Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present
Elderwood Assisted Living at Waverly	07/2013 to present
Tonawanda Manor	02/2016 to present
McCauley Manor at MercyCare	04/2016 to present

NYS Licensed Home Care Agency

Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present
Elderwood Assisted Living at Waverly	07/2013 to present
Elderwood Assisted Living at Tonawanda	04/2016 to present

<u>NYS Licensed Pharmacy</u>		
Woodmark Pharmacy of New York, LLC		07/2013 to present
<u>Alabama</u>		
Laurelton Rehabilitation and Nursing Center	SNF	10/2006-5/2008
<u>California</u>		
Care Alternatives of California	HOS	07/2005-10/2009
<u>Connecticut</u>		
Danbury Health Care Center	SNF	07/2005-10/2009
Darien Health Care Center	SNF	07/2005- 2007
Golden Hill Health Care Center	SNF	07/2005-10/2009
Long Ridge of Stamford	SNF	07/2005-10/2009
Newington Health Care Center	SNF	07/2005-10/2009
River Glen Health Care Center	SNF	07/2005-10/2009
The Highlands Health Care Center	SNF	07/2005-10/2009
West River Health Care Center	SNF	07/2005-10/2009
Westport Health Care Center	SNF	07/2005-10/2009
Wethersfield Health Care Center	SNF	07/2005-10/2009
Partners Pharmacy of Connecticut	RX	07/2005-10/2009
<u>Kansas</u>		
Care Alternatives of Kansas	HOS	07/2005-10/2009
<u>Maryland</u>		
Montgomery Village Health Care Center	SNF	07/2005-10/2009
<u>Massachusetts</u>		
Brookline Health Care Center	SNF	07/2005-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	07/2005-10/2009
Cedar Hill Health Care Center	SNF	07/2005-10/2009
Concord Health Care Center	SNF	07/2005-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	07/2005-10/2009
Holyoke Health Care Center	SNF	07/2005-10/2009
Lexington Health Care Center	SNF	07/2005-10/2009
Lowell Health Care Center	SNF	07/2005-10/2009
Milbury Health Care Center	SNF	07/2005-10/2009
New Bedford Health Care Center	SNF	07/2005-10/2009
Newton Health Care Center	SNF	07/2005-10/2009
Peabody Glen Health Care Center	SNF	07/2005-10/2009
Redstone Health Care Center	SNF	07/2005-10/2009
Weymouth Health Care Center	SNF	07/2005-10/2009
Wilmington Health Care Center	SNF	07/2005-10/2009
Care Alternatives of Massachusetts	HOS	07/2005-10/2009
Partners Pharmacy of Massachusetts	SNF	07/2005-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2013- present
<u>Michigan</u>		
Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009
<u>Missouri</u>		
Care Alternatives of Missouri	HOS	07/2005-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-05/2008
Partners Pharmacy of Missouri	RX	07/2005-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HHA	2007-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Care One at Dunroven	SNF	07/2005-10/2009
Care One at East Brunswick	SNF	07/2005-10/2009
Care One at Evesham	SNF	07/2005-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	07/2005-10/2009
Care One at Hamilton	SNF	07/2005-10/2009
Care One at Holmdel	SNF	07/2005-10/2009
Care One at Jackson	SNF	07/2005-10/2009
Care One at King James	SNF	07/2005-10/2009
Care One at Livingston	SNF	09/2005-10/2009
Care One at Livingston	ALF	09/2005-10/2009
Care One at Madison Avenue	SNF	07/2005-10/2009
Care One at Moorestown	SNF	07/2005-10/2009
Care One at Moorestown	ALF	07/2005-10/2009
Care One at Morris	SNF	07/2005-10/2009
Care One at Morris Assisted Living	ALF	07/2005-10/2009
Care One at Pine Rest	SNF	07/2005-10/2009
Care One at Raritan Bay MC	LTA	07/2005-10/2009
Care One Harmony Village at Moorestown	SNF	07/2005-10/2009
Care One at Teaneck	SNF	04/2007-10/2009
Care One at The Cupola	SNF	07/2005-10/2009
Care One at The Highlands	SNF	07/2005-10/2009
Care One at Valley	SNF	07/2005-10/2009
Care One at Wall	SNF	07/2005-10/2009
Care One at Wayne	SNF/ALF	07/2005-10/2009
Care One at Wellington	SNF	07/2005-10/2009
Ordell Health Care Center	SNF	07/2005-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2006-10/2009
South Jersey Health Care Center	SNF	07/2005-10/2009
Woodcrest Health Care Center	SNF	07/2005-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Partners Pharmacy of New Jersey	RX	07/2005-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	07/2005-10/2009
-------------------------------	-----	-----------------

Ohio

Bellbrook Health Care Center	SNF	07/2005-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Presque Isle Rehabilitation and Nursing Center	SNF	10/2006-10/2009
The Rehab and Nursing Center at Greater Pittsburgh	SNF	10/2006-10/2009
Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doyleston	SNF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Senior Living at Lancaster	HOM	02/2011-present
Care Alternatives of Pennsylvania	HOS	07/2005-10/2009

Puerto Rico

Medicare Y Mucho Mas Medicare Advantage Plan 07/2005-11/2009

Rhode Island

Chestnut Terrace Rehabilitation and Nursing SNF 02/2014-present
Scallop Shell Nursing and Rehabilitation Center SNF 12/2010-present

Virginia

Colonial Heights Health Care Center SNF 07/2005-10/2009
Glenburnie Rehabilitation SNF 07/2005-10/2009
Hopewell Health Care Center SNF 07/2005-10/2009
Valley Health Care Center SNF/ALF 4/2002-10/2009
Westport Health Care Center SNF 4/2002-10/2009
Care Alternatives of Virginia HOS 4/2002-10/2009
Partners of Virginia, LLC RX 4/2002-10/2009

ACU acute care/hospital ICF intermediate care facility/group home
ALF assisted living facility IRF intermediate rehab facility
HHA home health agency LTA long term acute care hospital
HOM homecare RX pharmacy
HOS hospice SNF skilled nursing facility/nursing home

Individual Background Review

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole has had extensive health facility ownership interests, which are listed above.

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility ownership interests, which are listed above.

In the ten year period preceding the formation of Post Acute Partners in early 2010 both Dr. Rubin and Mr. Cole held minority ownership interests, and in some circumstances also held management positions in a group of affiliated, privately held companies which owned and operated various health care facilities and/or services in various states other than the State of New York. Upon their separation from the companies in late 2009, they relinquished their management positions, and since that time they have no authority or ability to direct, influence or otherwise affect the operations of the companies' holdings.

A review of the facilities that Mr. Cole and Dr. Rubin held and relinquished prior to the formation of Post Acute Care Partners was undertaken at their time of acquisition of Elderwood Senior Care, and revealed no issues of character and competence.

Character and Competence - Analysis

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

A review of operations for the NYS affiliated facilities, identified above, reveals that there were no enforcements.

Review of the out-of-state facilities for which Mr. Cole and Dr. Rubin hold current ownership interests is noted below.

A review of Chestnut Terrace Rehabilitation and Nursing (now Elderwood at Riverside), and Scallop Shell Nursing and Rehabilitation of Rhode Island (now Elderwood of Scallop Shell at Wakefield), Presque Isle Rehabilitation and Nursing Center and The Rehabilitation and Nursing Center at Greater Pittsburg in Pennsylvania for the periods indicated above reveals that there were no enforcements. This information was obtained from an affidavit signed by the applicants, as well as the Medicare.gov Nursing Home Compare website.

A review of Woodmark Pharmacy of Massachusetts for the period indicated above reveals that there were no issues with licensing and certification, as provided by the State of Massachusetts website.

The applicants have submitted an affidavit regarding the six pediatric intermediate care facilities in which they attest to the provision of a substantially consistent high level of care.

An affiliate of the applicant (Niagara Advantage Health Plan, LLC d/b/a Elderwood Health Plan MLTC) was approved for enrollment as a Managed Long Term Care Plan by NYSDOH on April 1, 2016.

A review of CMS's Nursing Home company information for the NYS facilities is as follows:

Provider Name	Overall	Health Inspection	Quality Measures
Elderwood at Amherst	****	***	***
Elderwood at Cheektowaga	***	***	***
Elderwood at Grand Island	***	**	*****
Elderwood at Hamburg	***	***	****
Elderwood at Hornell	**	**	****
Elderwood at Lancaster	*****	****	*****
Elderwood at Liverpool	***	**	*****
Elderwood at Waverly	***	***	**
Elderwood at Wheatfield	***	***	***
Elderwood at Williamsville	****	****	**
Uihlein Living Center**	**	**	**

** Now Elderwood at Uihlein at Lake Placid

Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into an administrative services agreement with Elderwood Administrative Services, LLC. Elderwood Administrative is 100% owned by Post Acute Partners Management, LLC jointly owned by Warren Cole and Jeffrey Rubin.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the operating interests of the RHCF, to be effective upon PHHPC approval of this application. The terms of the agreement are summarized below:

Date:	February 4, 2016
Seller:	Lakeside-Beikirch Care Center, Inc.
Buyer:	Post Acute Partners Acquisition, LLC
Asset Acquired:	All rights, title and interest in business and operation of the Facility; furniture, fixtures and equipment, machinery and furnishings; inventory, supplies, other articles of personal property; transferable contracts, agreements, leases and undertakings; all licenses, agreements, provider numbers, approvals, accreditation, orders and authorizations issued by or required by governmental entity; all intellectual property and other intangible rights, privileges or interests; The name "Lakeside-Beikirch Care Center"; security deposits and prepayments; manuals/computer software; resident /patient records; Goodwill; all books and records relating to the Facility; licenses and permits; Medicare and Medicaid provider numbers; rate increases and/or lump sum or other payments, resulting from rate appeals, audits or otherwise; patient claims accounts receivable on and after Closing Date; leases; and assets of Seller relating to the Facility.
Excluded Assets:	Seller's cash, money market accounts, cash equivalents and short term investments, all bank accounts, any claims, lawsuits, liabilities, obligations, contracts, agreements or debts of seller; any taxes or other obligations or liability of seller prior to closing date.
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the facility on and after the closing date.
Purchase Price:	\$11,500,000
Payment of Purchase Price:	\$350,000 Escrow Deposit after signing and Due Diligence. \$11,150,000 at the closing.

The purchase price for the operations will be satisfied as follows:

Equity (170 West Avenue Operating Company, LLC's Members)	\$2,300,000
Loan (5-year plus 5-year at borrower's option, 6%, 10-year amortization)	<u>\$9,200,000</u>
Total	\$11,500,000

The applicant states that the allocation of the purchase price will not be finalized until Closing. (Tentatively the \$11,500,000 purchase price is allocated as follows: \$9,310,000 to the realty entity and \$2,190,000 to the operating entity). BFA Attachment A is the net worth summaries for the proposed members of PAP, which shows sufficient liquid assets to meet equity requirements.

PAP will assign its rights under the APA related to RHCF operations to 170 West Avenue Operating Company, LLC. As prescribed by the APA, pursuant to the Ground Lease, Lakeside Memorial Hospital Inc./University of Rochester will lease its rights, title and interest in the real property and the facility,

including fixed machinery and fixed equipment situated thereon, to PAP. PAP will assign its rights under the APA related to the RHCF building to 170 West Avenue, LLC.

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. Currently there are no outstanding Medicaid liabilities.

Assignment of Rights

The applicant has submitted a proposed Assignment of Rights for the assignment of the assets associated with the APA, as shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee-Operating Assets:	170 West Avenue Operating Company, LLC (Operator)
Rights Assigned: (Operating Assets)	Assignor assigns to operator its rights under the APA to purchase the operating assets with respect to the facility
Assignee-Leasehold Interest:	170 West Avenue, LLC
Leasehold Assets Assigned:	Land, Buildings and structures as defined by the Ground Lease.
Price:	\$10.00

Lease Rental Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Premises:	120-bed RHCF located at 170 West Avenue, Brockport, NY 14420
Landlord:	170 West Avenue, LLC
Lessee:	170 West Avenue Operating Company, LLC
Term:	10 years with four 5-year renewal options.
Rental:	Debt Service of Landlord (\$533,162 in year 1 and \$445,103 in year 3)
Provisions:	Triple Net

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

It is noted that the RHCF Lease Agreement is governed by the above referenced Ground Lease between PAP and the University of Rochester.

Administrative Services Agreement

The applicant has submitted a draft Administrative Service Agreement, summarized as follows:

Provider:	Elderwood Administrative Services, LLC
Company/Facility:	170 West Avenue Operating Company, LLC
Services Provided:	Assistance in connection with: accounts receivable, billing, accounts payables, payroll, budgets, financial reporting, regulatory reports, bookkeeping, human resources, information technology, marketing and business development, reimbursement, ancillary and other services, insurance and risk management, and corporate compliance.
Term:	From Effective Date until December 31, 2016, with automatic 1-year renewals
Fee:	\$54,842 per month adjusted and reviewed annually.

The sole member of the administrative services provider entity is Post Acute Partners Management, LLC whose members are Warren Cole and Jeffrey Rubin. 170 West Avenue Operating Company, LLC will maintain responsibility and authority over the daily management and operations of the facility.

Operating Budget

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

	<u>Current Year</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>Revenue</u>						
Medicaid-FFS	\$211.18	\$5,251,815	\$207.55	\$4,908,871	\$213.20	\$4,202,056
Medicaid-MC		\$0	\$189.96	\$499,207	\$192.56	\$669,724
Medicare-FFS	\$358.65	\$898,774	\$467.44	\$1,428,031	\$476.75	\$1,804,507
Medicare-MC	\$552.39	\$1,659,935	\$477.28	\$1,742,085	\$486.98	\$1,867,076
Private Pay	\$416.32	\$4,134,486	\$467.31	\$4,030,511	\$490.67	\$5,301,208
All other		<u>\$124,290</u>		<u>\$553,402</u>		<u>\$630,894</u>
Total Revenue		\$12,069,300		\$13,162,107		\$14,475,465
<u>Expenses</u>						
Operating	\$273.46	\$11,023,640	\$292.55	\$12,172,858		\$12,648,790
Capital	<u>\$20.98</u>	<u>\$845,732</u>	<u>\$23.34</u>	<u>\$971,020</u>		<u>\$876,769</u>
Total Expenses	\$294.44	\$11,869,372	\$315.88	\$13,143,878		\$13,525,559
Net Income		<u>\$199,928</u>		<u>\$18,229</u>		<u>\$949,905</u>
Utilization (Days)		40,311		41,610		41,610
Occupancy		92%		95%		95%

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

- The current year reflects the facility's actual 2015 revenues, expenses and utilization experience.
- The Medicaid rate is based on the facility's current 2016 Medicaid Regional Pricing rate. The Medicare rate is determined based on the facility's current 2016 rate and adjusted for year one based on the historical CMS increases. The Private Pay rate is determined based on facility's 2016 payment rates and adjusted based on the applicant's plan to provide higher quality clinical services.
- Expenses and staffing assumptions were based on the current operator's model and staffing pattern, adjusted based on the applicant's experience. Operating expenses are projected to increase by \$1,149,218, while capital expenses inclusive of rent are projected to increase by \$125,288. Salaries, Wages and Employee Benefits are projected to increase due to an increase from in-house therapy, RN/Nursing and CNA staff used in place of third party contracted labor, offset by a decrease in Professional Fees. Medical and Surgical Supplies expenses are projected to increase due to higher drug costs. All other expenses are adjusted for inflation.
- The projected utilization for the facility is 95% for the first and third years. It is noted that utilization for the past three years has averaged around 94.53% and current occupancy was 93.3% as of September 28, 2016. Due to DSRIP initiatives, the proposed operator expects that the need for subacute rehabilitative care in the service area will increase and the need for medical care resulting from emergency room diversion from area hospitals will increase. The applicant plans to position the facility to meet long term needs through programs and services designed to facilitate DSRIP Initiatives.
- Breakeven utilization is projected at 94.87% or 41,552 patient days for the first year.
- Utilization by payor source for the first and third years after the change in ownership is summarized below:

<u>Payor</u>	<u>Current</u>		<u>Years One & Three</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid -FFS	24,869	62%	23,652	57%
Medicaid -MC	-	0%	2,628	6%
Medicare-FFS	2,506	6%	3,055	7%
Medicare-MC	3,005	7%	3,650	9%
Private Pay	<u>9,931</u>	<u>25%</u>	<u>8,625</u>	<u>21%</u>
Total	40,311	100%	41,610	100%

Capability and Feasibility

There are no project costs associated with this application. Post Acute Partners agreed to acquire the rights to the RHCF's real property and operating interest for \$11,500,000. The purchase price will be funded by \$2,300,000 in members' equity and a \$9,200,000 loan for 5 years plus an additional 5 years at the borrows option, 6% interest, and 10-year amortization period. Capital Funding, LLC has provided a letter of interest for the loan at the stated terms. PAP will assign its rights and title to the RHCF's operations and real property to 170 West Avenue Operating Company, LLC and 170 West Avenue, LLC, respectively, for \$10.

The working capital requirement of \$2,190,646 is based on two months of first year expenses. Working capital will be funded with \$1,095,323 in members' equity and a \$1,095,323 loan at 3.75% interest for a five-year term. Capital Funding, LLC has provided a letter of interest for the working capital loan. Review of the operating members' net worth (BFA Attachment A) shows that members have sufficient liquid resources to meet both the project equity and working capital requirements.

The submitted budget projects net profit of \$18,229 in Year One and \$949,905 in Year Three after the change in ownership. The applicant projects additional expenses of \$1,274,506 and \$1,656,150 in Year One and Year Three, respectively, based on increases in rent (debt service) and increase in salaries and wages needed to accommodate the increase in utilization, but partially offset by savings in professional fees. BFA Attachment C is 170 West Avenue Operating Company, LLC's pro forma balance sheet as of the first day of operation, which shows operations will start with \$3,285,323 (operating) and \$110,000 (realty) in equity. Assets include intangible assets of \$1,840,000, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If intangible assets were eliminated from the equation, the total net assets are a positive \$1,445,323. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy paper provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is the Financial Summary of Lakeside-Beikirch Care Center, Inc. As shown, the RHCF had an average positive working capital position of \$827,813, an average negative net assets position of \$923,401 and an average income of \$114,424 for the period. The entity has generated a net operating loss of \$20,169 as of June 30, 2016.

BFA Attachment E is the financial summary of affiliated RHCFs for the period 2014 through June 30, 2016, which shows the facilities had a positive working capital positions, positive net assets positions and operating surpluses for the period shown except the following:

- Elderwood at Grand Island (2850 Grand Island Boulevard Operating Company, LLC) demonstrates negative working capital for the period shown. The applicant attributes the negative working capital to the timing of short-term working capital needs (due to the timing of payroll and collections). The facility shows a nominal loss year-to-date 2016, which the applicant attributes to increased prescription drug costs. The applicant anticipates improved results as of the end of the calendar year.
- Elderwood at Cheektowaga (225 Bennett Road Operating Company, LLC) and Elderwood at Hamburg (5775 Maelou Drive Operating Company, LLC) show negative working capital as of December 31, 2015. The applicant attributes the negative working capital to the timing of short-term working capital needs (due to the timing of payroll and collections). While Elderwood at Cheektowaga demonstrates positive operating income through June 30, 2016, the facility experienced a net loss in 2015 which they attributed to a lower than normal census.

- Elderwood at Waverly (37 North Chemung Street Operating Company, LLC) shows positive working capital and positive net income as of December 31, 2015, but an operating loss and negative working capital through June 30, 2016. The applicant attributes the results to extensive renovations, approved under CON 151015, described as requisite renovations to accommodate outpatient therapy services. The applicant believes the associated noise and disruption caused potential residents to choose alternate facilities. However, the applicant believes the facility will show positive operating income by the end of the year and occupancy will return to normal, as the project is complete.

The applicant notes that the above referenced entities have access to revolving credit lines that cover temporary negative working capital balances.

It is noted that the proposed operators established membership in the above referenced affiliated facilities as of July 28, 2013. Financial statements for 1 Bethesda Drive Operating Company, LLC (Elderwood at Hornell) and 185 Old Military Road Operating Co (Uihlein Living Center in Lake Placid) were not evaluated as the applicant was not established as the operator of the facilities until April 12, 2016 and August 2, 2016 respectively.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Finger Lakes HSA Review & Recommendation

MEMO

TO: CON Project File
RE: CON Project 162120
DATE: August 25, 2016

Service Location: 170 West Avenue
Brockport, N.Y., 14420

Description:

The applicant, 170 West Avenue Operating Company, LLC proposes to be establish itself as the new operator of Lakeside-Beikirch Care Center. The care center is a 120 bed residential health care facility, located at 170 West Ave, Brockport (Monroe County) N.Y. There is no construction proposed in this application. If approved, the name of the facility will change from Lakeside-Beikirch to Elderwood of Lakeside at Brockport.

Project Capital Cost:

\$11.5M, with first year incremental operating costs of \$1,372,133.00

Projected Changes to Community Capacity:

The proposed does not change community capacity. However, due to its remote location, it may be appropriate to consider this area separately from the rest of the county. Other areas of the county are more urban and have multiple facilities addressing the populations' need. Table 1 below shows the 2015 and 2020 Bed Need for Monroe County as well as current bed capacity. Based on the bed need and percentage of the elderly population the Elderwood of Lakeside at Brockport service area needed 202 beds in 2015 and will need 166 beds in 2020. Since the facility has 120 beds, it is within the bed need for this area of the county.

Table 1- Monroe county Bed Capacity and Need

2016 Bed Capacity	5177
2015 Bed Need	5067
2020 Bed Need	4165

Projected Changes to Community Access:

Although the expansion does not represent an increase in the geographical access to services it does increase the potential availability. While Monroe County currently has a current surplus of skilled nursing beds, the beds are located in the Brockport area. This facility is located in an area that is Northwestern part of Monroe County near small villages such as Hamlin and Clarkson. In this location the population of those over the age of 85 is over 4% of the population in all of Monroe County.

The operator states that it will continue to endorse and agree to meet “Medicaid Access” requirements. In addition the operator states that the nursing home “will accept Medicaid pending residents.”¹

Comments:

Currently Lakeside Beikirch Care Center has an overall Medicare Compare quality rating of 3 stars. The ten other facilities, which Post-Acute Partners (the principals in 170 West Ave. Operating Company, LLC) operate, have an average score of 3.4 stars.

Recommendation: Approval

Contingencies: None

Conditions: None

Attachments

BFA Attachment A	Net worth summary, members of Post Acute Partners Acquisition, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Pro Forma Balance Sheet, 170 West Avenue Operating Company, LLC
BFA Attachment D	Financial Summary, Lakeside-Beikirch Care Center, Inc.
BFA Attachment E	Financial Summary, affiliated nursing home facilities

¹ Schedule 18A, p. 4.

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 8th day of December, 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 170 West Avenue Operating Company as the new operator of the 120-bed residential health care facility located at 170 West Avenue, Brockport currently operated as Lakeside-Beikirch Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

162120 E

FACILITY/APPLICANT:

170 West Avenue Operating Company LLC
d/b/a Elderwood at Lakeside at Brockport

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
4. Other factors as determined by the applicant to be pertinent. (RNR)Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Building Lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed Ground Lease, acceptable to the Department of Health. [BFA]
7. Submission of executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
8. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
9. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
10. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants amended and completed operating agreement, which is acceptable to the Department. [CSL]

12. Submission of a photocopy of the applicants amended and completed articles of organization, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicants amended and completed assignment of rights, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the certificate of authority to do business in New York State by 170 West Avenue Operating Holdco, LLC, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of 170 West Avenue Operating Holdco, LLCs amended and completed operating agreement, which is acceptable to the Department. [CSL]
16. Submission of a fully completed administrative services agreement, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of 170 West Avenue Operating Holdco, LLCs amended and completed articles of organization, which is acceptable to the Department. [CSL]
18. Submission of a list providing the name, membership interest and percentage ownership interest in the 2nd level member and indirect ownership percentage in the Article 28 LLC, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within two 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)

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 # 162229-E
1019 Wicker Street Operating Company, LLC
d/b/a Elderwood at Ticonderoga

Program: Residential Health Care Facility
Purpose: Establishment

County: Essex
Acknowledged: September 22, 2016

Executive Summary

Description

1019 Wicker Street Operating Company, LLC d/b/a Elderwood at Ticonderoga, a New York limited liability company, requests approval to be established as the operator of Heritage Commons Residential Health Care (Heritage Commons), an 84-bed Article 28 residential health care facility (RHCF) located on the Inter-Lakes Health campus at 1019 Wicker Street, Ticonderoga (Essex County). A separate entity, 1019 Wicker Street, LLC, will acquire rights to the real property. There will be no change in beds or services provided.

On May 23, 2016, Post Acute Partners Acquisition, LLC (PAP), a Delaware limited liability company licensed to do business in New York State, entered into an Asset Purchase Agreement (APA) with Moses Ludington Nursing Home Company, Inc. (MLNHC), the current RHCF operator, to acquire the operating interests and certain property assets (furniture and equipment) of Heritage Commons for \$50,000. The APA also included the sale and acquisition by PAP of Moses Ludington Adult Care Facility, a 23-bed NYS licensed Adult Home (AH) locate on the same campus. As part of the APA, PAP entered into a Ground Lease with MLNHC to secure site control of the skilled nursing facility. PAP will assign its rights and title to the operating interests and the purchased/leased real property assets to 1019 Wicker Street Operating Company, LLC and 1019 Wicker Street, LLC, respectively. 1019 Wicker Street, LLC will lease the RHCF premises to 1019 Wicker Street Operating Company, LLC. There is a relationship between

the proposed operating and realty LLCs in that the entities have common membership.

The seller indicated that Inter-Lakes Health (ILH), the sole corporate member of MLNHC, in conjunction with the University of Vermont Health Network, Inc., retained Stroudwater Associates to perform an assessment to inform the Board's discussion of the viability of the nursing home and Moses-Ludington Hospital (MLH), a 15-bed Critical Access Hospital also located on the Inter-Lakes campus. Stroudwater's assessment concluded that ILH could not survive as an independent hospital and nursing home. Both the nursing home and hospital had been experiencing losses over the prior years, and projections for the future were no better. The Board decided to sell the nursing home as it was a significant financial drain on the system. They believe that selling the RHCF offers the greatest opportunity to preserve access to nursing home care in the community, and will permit the restructuring of MLH as a Division of Elizabeth Community Hospital. The Board marketed the nursing home, initially receiving three responses, and after almost a year of discussions with one potential purchaser, determined to pursue the sale with PAP.

The seller anticipates that the proposed operator will enter into a long-term lease agreement, with an option to buy the real estate utilized by the RHCF and AH. MLNHC is currently servicing a United States Department of Housing and Urban Development (HUD) insured mortgage that has a maturity date in 2031. The lease payments

will be utilized to service the mortgage. The seller indicated that if the option to purchase were subsequently exercised by PAP, the sale proceeds would be used to satisfy, in part, the outstanding HUD mortgage. Regulatory agreements dictate that HUD and Berkadia Commercial Mortgage, Inc., the current lender, approve the new operator before any change in ownership. Furthermore, HUD and Berkadia must approve the lease that MLNHC enters into with PAP. HUD and Berkadia have been apprised of the proposed transactions and the approval process is underway.

The current and proposed operator of the RHCF are as follows:

<u>Current Operator</u>	
Moses Ludington Nursing Home Company, Inc.	100%

<u>Proposed Operator</u>	
1019 Wicker Street Operating Company, LLC	
<u>Members</u>	<u>%</u>
1019 Wicker Street Operating Holdco, LLC	100%
Warren Cole	(50%)
Jeffery Rubin	(50%)

BFA Attachment B presents an Organizational Chart of the facility after the requested change.

Warren Cole and Jeffery Rubin have ownership interest in eleven New York RHCFs. BFA Attachment E presents the financial summaries of the proposed members' affiliated RHCFs.

On October 3, 2016, the applicant submitted an application for the change in ownership of the AH, which is under review by the Department's Division of ACF/Assisted Living Surveillance. Concurrently under review, the applicant members are seeking approval to be established as the new operator of Lakeside Beikirch Care Center, Inc., a 120-bed RHCF located in Brockport, Monroe County (CON 162120).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no change to beds or services at this facility. Heritage Commons utilization was 90.6% in 2013, 94.6% in 2014, and 94.6% in 2015. Current utilization, as of September 28, 2016 is 94.0%, with 5 vacant beds.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

PAP agreed to acquire the RHCF's operations and certain property assets (furniture and equipment) for \$50,000. The purchase price will be met with members' equity. PAP will assign its rights and title to the RHCF operations and real property to 1019 Wicker Street Operating Company, LLC and 1019 Wicker Street, LLC, respectively, for \$10. There are no project costs associated with this proposal. The projected budget is as follows:

	<u>First Year</u>
Revenues	\$7,840,413
Expensed	<u>\$7,665,339</u>
Gain/(Loss)	\$175,074

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 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
4. Other factors as determined by the applicant to be pertinent. (RNR)Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed Ground Lease, acceptable to the Department of Health. [BFA]
7. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
8. Submission of an executed Limited Guaranty Agreement, acceptable to the Department of Health. [BFA]
9. Submission of documentation of approval by HUD and Berkadia Commercial Mortgage, Inc. for the change in operator of the nursing home, acceptable to the Department of Health. [BFA]
10. Submission of documentation of approval by HUD and Berkadia Commercial Mortgage, Inc. for the Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
11. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's amended and completed operating agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's amended and completed articles of organization, which is acceptable to the Department. [CSL]

14. Submission of a photocopy of the applicant's amended and completed assignment of rights, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the certificate of authority to do business in New York State by 1019 Wicker Street Operating Holdco, LLC, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of 1019 Wicker Street Operating Holdco, LLC's amended and completed operating agreement, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of 1019 Wicker Street Operating Holdco, LLC's amended and completed articles of organization, which is acceptable to the Department. [CSL]
18. Submission of a list providing the name, membership interest and percentage ownership interest in the 2nd level member and indirect ownership percentage in the Article 28 LLC, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

December 8, 2016

Need Analysis

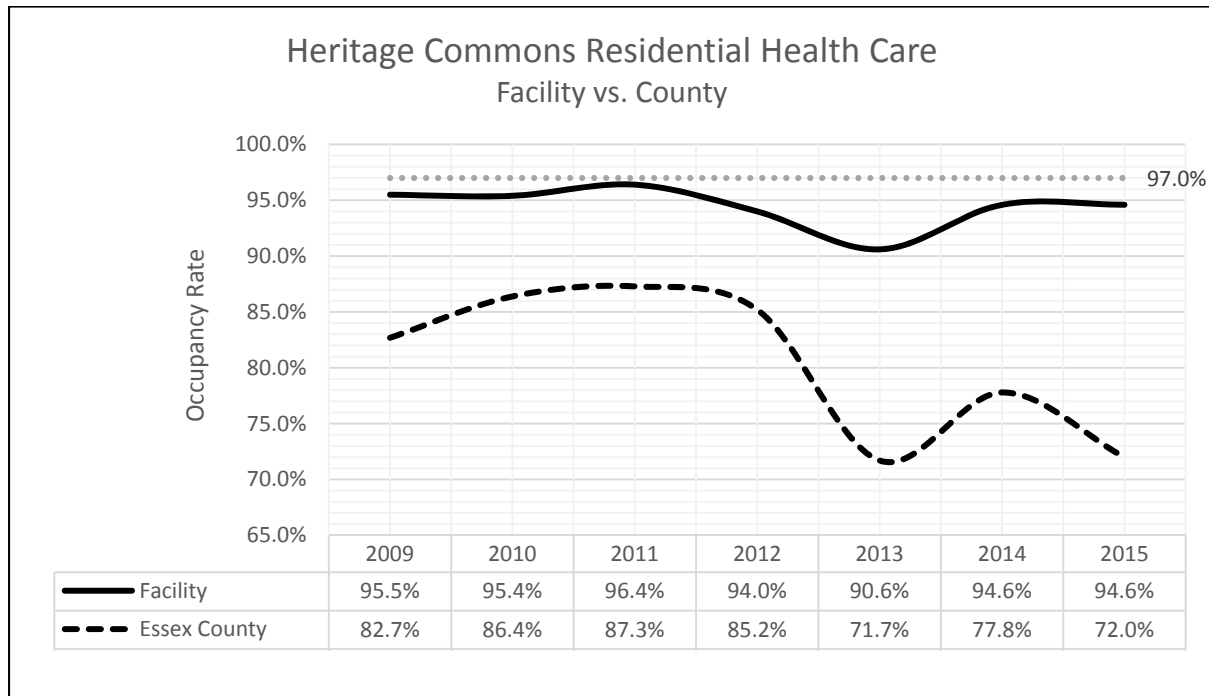
Project Description

1019 Wicker Street Operating Company, LLC, seeks approval to become the established operator of Heritage Commons Residential Health Care, an 84-bed Article 28 residential health care facility (RHCF) located at 1019 Wicker Street, Ticonderoga, 12883 in Essex County. Upon approval of this application, the name of the facility will become Elderwood at Ticonderoga.

Analysis

There is currently a need for 28 beds in Essex County as indicated in the following table:

2016 Projected Need	368
Current Beds	340
Beds Under Construction	0
Total Resources	340
Unmet Need	28



Heritage Commons Residential Health Care's (Heritage Commons) utilization was 90.6% in 2013, 94.6% in 2014, and 94.6% in 2015. According to the applicant, between 2012 and 2014 ten beds in the rehabilitation unit were temporarily closed due to an inability to recruit adequate nursing and therapy staff.

In July of 2016, the facility retained a new full-time Administrator, Director of Nursing and Assistant Director of Nursing. The admissions process was streamlined to shorten the length of time from referral to admission. Additional therapy and nursing staff were added, which allowed the facility to accommodate admissions that it previously couldn't due to inadequate staffing. As a result, utilization at Heritage Commons increased to 96.4% as of September 1, 2016.

The applicant noted the following plan to increase utilization:

- Commitment to achieving the goal of maintaining occupancy at least the 95% level and to retain the staffing needed to support utilization;
- An application has been submitted to the Department to begin a Nurse Aide Training Program to increase the supply of certified nursing assistants;
- Contracts are being signed with staffing agencies to recruit another occupational and physical therapist to support the rehabilitation program;
- Training has been obtained to prepare nursing staff for the upcoming CMI assessment window;
- A consultant Respiratory Therapist will be added to provide training and assessment to support more admissions, provide better care, and enhanced revenue from both Medicare and Medicaid; and

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.

For 2013, Heritage Commons' Medicaid admissions rate of 34.3% fell just shy of Essex County's 75% rate of 34.4%. Heritage Commons' Medicaid admission rate of 41.3% in 2014 exceeded Essex County's 75% rate of 39.0%.

Conclusion

Contingent approval of this application will maintain this facility as a viable, long term care resource in Essex County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Heritage Commons Residential Health Care	Elderwood at Ticonderoga
Address	1019 Wicker Street	Same
84		Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Inc.	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Moses Ludington Nursing Home, Inc.	1019 Wicker Street Operating Co., LLC <u>Members</u> Warren Cole 50.00% Jeffrey Rubin 50.00% 100.00%

Character and Competence - Background

Facilities Reviewed

NYS Nursing Homes

Elderwood at Hamburg		07/2013 to present
Elderwood at Liverpool		07/2013 to present
Elderwood at Amherst		07/2013 to present
Elderwood at Grand Island		07/2013 to present
Elderwood at Lancaster		07/2013 to present
Elderwood at Cheektowaga		07/2013 to present
Elderwood at Williamsville		07/2013 to present
Elderwood at Waverly		07/2013 to present
Elderwood at Wheatfield		07/2013 to present
Elderwood at Hornell		04/12/16 to present
Elderwood at Uihlein at Lake Placid		10/04/16 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Williamsville		07/2013 to present
Elderwood Assisted Living at Wheatfield		07/2013 to present
Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present
Tonawanda Manor		02/2016 to present
McCauley Manor at MercyCare		04/2016 to present

NYS Licensed Home Care Agency

Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present
Elderwood Assisted Living at Tonawanda		04/2016 to present

NYS Licensed Pharmacy

Woodmark Pharmacy of New York, LLC		07/2013 to present
------------------------------------	--	--------------------

Alabama

Laurelton Rehabilitation and Nursing Center	SNF	10/2006-5/2008
---	-----	----------------

California

Care Alternatives of California	HOS	07/2005-10/2009
---------------------------------	-----	-----------------

Connecticut

Danbury Health Care Center	SNF	07/2005-10/2009
Darien Health Care Center	SNF	07/2005- 2007
Golden Hill Health Care Center	SNF	07/2005-10/2009
Long Ridge of Stamford	SNF	07/2005-10/2009
Newington Health Care Center	SNF	07/2005-10/2009
River Glen Health Care Center	SNF	07/2005-10/2009
The Highlands Health Care Center	SNF	07/2005-10/2009
West River Health Care Center	SNF	07/2005-10/2009
Westport Health Care Center	SNF	07/2005-10/2009
Wethersfield Health Care Center	SNF	07/2005-10/2009
Partners Pharmacy of Connecticut	RX	07/2005-10/2009

Kansas

Care Alternatives of Kansas	HOS	07/2005-10/2009
-----------------------------	-----	-----------------

Maryland

Montgomery Village Health Care Center	SNF	07/2005-10/2009
---------------------------------------	-----	-----------------

Massachusetts

Brookline Health Care Center	SNF	07/2005-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	07/2005-10/2009
Cedar Hill Health Care Center	SNF	07/2005-10/2009
Concord Health Care Center	SNF	07/2005-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	07/2005-10/2009
Holyoke Health Care Center	SNF	07/2005-10/2009
Lexington Health Care Center	SNF	07/2005-10/2009
Lowell Health Care Center	SNF	07/2005-10/2009
Milbury Health Care Center	SNF	07/2005-10/2009
New Bedford Health Care Center	SNF	07/2005-10/2009
Newton Health Care Center	SNF	07/2005-10/2009
Peabody Glen Health Care Center	SNF	07/2005-10/2009
Redstone Health Care Center	SNF	07/2005-10/2009
Weymouth Health Care Center	SNF	07/2005-10/2009
Wilmington Health Care Center	SNF	07/2005-10/2009
Care Alternatives of Massachusetts	HOS	07/2005-10/2009
Partners Pharmacy of Massachusetts	SNF	07/2005-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2013- present

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009
---	-----	-----------------

Missouri

Care Alternatives of Missouri	HOS	07/2005-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-05/2008
Partners Pharmacy of Missouri	RX	07/2005-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HHA	2007-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Care One at Dunroven	SNF	07/2005-10/2009
Care One at East Brunswick	SNF	07/2005-10/2009
Care One at Evesham	SNF	07/2005-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	07/2005-10/2009
Care One at Hamilton	SNF	07/2005-10/2009
Care One at Holmdel	SNF	07/2005-10/2009
Care One at Jackson	SNF	07/2005-10/2009
Care One at King James	SNF	07/2005-10/2009
Care One at Livingston	SNF	09/2005-10/2009
Care One at Livingston	ALF	09/2005-10/2009
Care One at Madison Avenue	SNF	07/2005-10/2009
Care One at Moorestown	SNF	07/2005-10/2009
Care One at Moorestown	ALF	07/2005-10/2009
Care One at Morris	SNF	07/2005-10/2009
Care One at Morris Assisted Living	ALF	07/2005-10/2009
Care One at Pine Rest	SNF	07/2005-10/2009
Care One at Raritan Bay MC	LTA	07/2005-10/2009
Care One Harmony Village at Moorestown	SNF	07/2005-10/2009
Care One at Teaneck	SNF	04/2007-10/2009
Care One at The Cupola	SNF	07/2005-10/2009

Care One at The Highlands	SNF	07/2005-10/2009
Care One at Valley	SNF	07/2005-10/2009
Care One at Wall	SNF	07/2005-10/2009
Care One at Wayne	SNF/ALF	07/2005-10/2009
Care One at Wellington	SNF	07/2005-10/2009
Ordell Health Care Center	SNF	07/2005-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2006-10/2009
South Jersey Health Care Center	SNF	07/2005-10/2009
Woodcrest Health Care Center	SNF	07/2005-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Partners Pharmacy of New Jersey	RX	07/2005-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	07/2005-10/2009
-------------------------------	-----	-----------------

Ohio

Bellbrook Health Care Center	SNF	07/2005-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Presque Isle Rehabilitation and Nursing Center	SNF	10/2006-10/2009
The Rehab and Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doyleston	SNF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Senior Living at Lancaster	HOM	02/2011-present
Care Alternatives of Pennsylvania	HOS	07/2005-10/2009

Puerto Rico

Medicare Y Mucho Mas	Medicare Advantage Plan	07/2005-11/2009
----------------------	-------------------------	-----------------

Rhode Island

Chestnut Terrace Rehabilitation and Nursing	SNF	02/2014-present
Scallop Shell Nursing and Rehabilitation Center	SNF	12/2010-present

Virginia

Colonial Heights Health Care Center	SNF	07/2005-10/2009
Glenburnie Rehabilitation	SNF	07/2005-10/2009
Hopewell Health Care Center	SNF	07/2005-10/2009
Valley Health Care Center	SNF/ALF	4/2002-10/2009
Westport Health Care Center	SNF	4/2002-10/2009
Care Alternatives of Virginia	HOS	4/2002-10/2009
Partners of Virginia, LLC	RX	4/2002-10/2009

ACU acute care/hospital	ICF intermediate care facility/group home
ALF assisted living facility	IRF intermediate rehab facility
HHA home health agency	LTA long term acute care hospital
HOM homecare	RX pharmacy
HOS hospice	SNF skilled nursing facility/nursing home

Individual Background Review

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole has had extensive health facility ownership interests, which are listed above.

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility ownership interests, which are listed above.

In the ten year period preceding the formation of Post Acute Partners in early 2010, both Dr. Rubin and Mr. Cole held minority ownership interests, and in some circumstances also held management positions in a group of affiliated, privately held companies which owned and operated various health care facilities and/or services in various states other than the State of New York. Upon their separation from the companies in late 2009, they relinquished their management positions, and since that time they have no authority or ability to direct, influence or otherwise affect the operations of the companies' holdings.

A review of the facilities that Mr. Cole and Dr. Rubin held and relinquished prior to the formation of Post Acute Care Partners was undertaken at their time of acquisition of Elderwood Senior Care, and revealed no issues of character and competence.

Character and Competence - Analysis

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

A review of operations of the NYS affiliated facilities identified above reveals that there were no enforcements.

Review of the out-of-state facilities for which Mr. Cole and Dr. Rubin hold current ownership interests is noted below:

A review of Chestnut Terrace Rehabilitation and Nursing (now Elderwood at Riverside), and Scallop Shell Nursing and Rehabilitation of Rhode Island (now Elderwood of Scallop Shell at Wakefield), Presque Isle Rehabilitation and Nursing Center and The Rehabilitation and Nursing Center at Greater Pittsburg in Pennsylvania for the periods indicated above reveals that there were no enforcements. This was information was obtained from an affidavit signed by the applicants, as well as the Medicare.gov Nursing Home Compare website.

A review of Woodmark Pharmacy of Massachusetts for the period indicated above reveals that there were no issues with licensing and certification, as provided by the State of Massachusetts website.

The applicants have submitted an affidavit regarding the six pediatric intermediate care facilities in which they attest to the provision of a substantially consistent high level of care.

An affiliate of the applicant (Niagara Advantage Health Plan, LLC d/b/a Elderwood Health Plan MLTC) was approved for enrollment as a Managed Long Term Care Plan by NYSDOH on April 1, 2016.

A review of CMS's Nursing Home company information for the NYS facilities is as follows:

Provider Name	Overall	Health Inspection	Quality Measures
Elderwood at Amherst	****	***	***
Elderwood at Cheektowaga	***	***	***
Elderwood at Grand Island	***	**	*****
Elderwood at Hamburg	***	***	****
Elderwood at Hornell	**	**	****
Elderwood at Lancaster	*****	****	*****
Elderwood at Liverpool	***	**	*****
Elderwood at Waverly	***	***	**
Elderwood at Wheatfield	***	***	***
Elderwood at Williamsville	****	****	**
Uihlein Living Center**	**	**	**

** Now Elderwood at Uihlein at Lake Placid

Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into an administrative services agreement with Elderwood Administrative Services, LLC. Elderwood Administrative is 100% owned by Post Acute Partners Management, LLC which is jointly owned by Warren Cole and Jeffrey Rubin.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF operating interests, to be effective upon PHHPC approval of this application. The terms of the agreement are summarized below:

Date:	May 23, 2016
Purchaser:	Post Acute Partners Acquisition, LLC
Seller:	Moses Ludington Nursing Home Company, Inc.
Assets Transferred:	Inventory; right, title and interest of Seller to all furniture, furnishings, equipment, computers, machinery, mechanical systems, security systems, vehicles and office equipment; real property records; assumed contracts and all assumed admission agreements; licenses in connection with the facilities; trademarks, trade names, service marks, trade dress used in connection with the operation of the facilities; patient records and books and records; and all other items of tangible and intangible personal property used in connection with the use, operation and maintenance of the facility.
Excluded Assets:	Seller's bank accounts, cash, cash equivalents and securities, financial investments (other than move-in deposits, patient deposits and other trust funds; replacement and tax escrow reserves; interest in moneys held in HUD reserves and escrow accounts; prepaid expenses, including insurance; accounts receivable; refunds or reimbursements; actions, claims, disputes, litigation, judgments and demands; seller's rights and benefits under this agreement; all of the seller's other assets, properties not located at and/or utilized in connection with the operation of the facility; employee benefit plans and assets; federal, state and local income tax returns; non-transferrable or non-assignable permits and licenses; and seller's financial books and records.
Assumed Liabilities:	Assumed Contracts and Assumed Admissions Agreements as they relate to periods after the effective time.
Purchase Price:	\$50,000
Payment of Purchase Price:	\$50,000 deposit held in escrow to be applied to the purchase price at closing.
Guaranty:	Per section 7.1, 4.17 and related agreement, the University of Vermont Health Network, Inc. guarantees to Post Acute Partners up to \$1,000,000 to address any of the purchaser's indemnified losses, identified as obligations prior to the effective date, inaccuracies and omissions and any excluded liabilities.

The purchase price for the operations is proposed to be satisfied with members' equity. The applicant states that the allocation of the purchase price will not be finalized until Closing. BFA Attachment A is the net worth summaries for the proposed members of Post Acute Partners, which shows sufficient liquid assets to meet equity requirements.

The applicant notes that PAP is only acquiring the furniture and equipment associated with the operations and not the building or property. As prescribed by the APA, pursuant to the Ground Lease, MLNHC will lease its interest in the land, buildings, structures and easement rights to alleys and strips adjoining the real property to PAP.

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. Currently there are no outstanding Medicaid liabilities.

Assignment of Rights

The applicant has submitted a proposed Assignment of Rights for the assignment of the assets associated with the APA, as shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Skilled Nursing Operator:	1019 Wicker Street Operating Company, LLC
Adult Home Operator:	1019 Wicker Street AL Operating Company, LLC
Real Estate Operator:	1019 Wicker Street, LLC
Skilled Nursing Operating Assets Transferred:	Assets associated with the operation of the skilled nursing facility of Heritage Commons
Adult Home Operating Assets Transferred:	Assets associated with the operation of the adult home of Moses Ludington Adult Care Facility
Real Estate Assets Transferred:	Assets associated with the real property with respect to the facility located at 1019 Wicker Street, Ticonderoga, NY 12883.
Assignment Fee:	\$10

Health Care Facility Lease Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Premises:	1019 Wicker Street, Ticonderoga, New York 12883 upon which an 84-bed skilled nursing facility is located.
Landlord:	1019 Wicker Street, LLC
Tenant:	1019 Wicker Street Operating Company, LLC
Term:	10 years with four (4) extension terms of five (5) years each at the tenant's discretion provided the Ground Lease has not expired.
Rent:	Equal to amounts due from landlord to ground lessor under the ground lease in accordance with the scheduled payment terms due thereunder; amounts due from landlord to any lender under any loan related to the property; and other amounts necessary to cover any additional debt service of landlord.
Provisions:	Triple Net

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

The above referenced Ground Lease governs the Health Care Facility Lease Agreement. The applicant states that the Ground Lease is in process and not final, but projects \$400,000 per annum in rent based on anticipated amounts due from the landlord to the ground lessor. The applicant does not anticipate additional amounts due based on amounts paid from the landlord to lender or other amounts due to cover additional debt service of the landlord.

Administrative Services Agreement

The applicant has submitted a draft Administrative Service Agreement, summarized as follows:

Provider:	Elderwood Administrative Services, LLC
Company:	1019 Wicker Street Operating Company, LLC
Services Provided:	Assistance including: accounts receivable; billing; accounts payable; payroll; budgets; financial reporting; regulatory reports; bookkeeping; human resources; information technology; marketing and business development; reimbursement; ancillary and other services; insurance and risk management; and corporate compliance.
Term:	From Effective Date until December 31, 2016, with automatic 1-year renewals.
Fee:	\$34,373.63 per month with periodic adjustments based on a consideration of the fees, the scope of operations, the changes in the purchasing power of money, the services being performed, the size of nonprofessional workforce and the expenses of the provider, reflecting the fair market value.

The sole member of the administrative services provider entity is Post Acute Partners Management, LLC whose members are Warren Cole and Jeffrey Rubin. 1019 Wicker Street Operating Company, LLC will maintain responsibility and authority over the daily management and operations of the facility.

Operating Budget

The applicant has provided the current year (2015), and first and third year operating budgets subsequent to the change in ownership, in 2016 dollars, summarized as follows:

Revenues	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Commercial	\$297.63	\$83,337	\$420.00	\$766,500	\$432.60	\$789,495
Medicare	\$317.68	\$410,762	\$374.01	\$682,576	\$489.82	\$893,918
Medicaid	\$194.83	\$4,442,253	\$210.72	\$4,214,743	\$216.19	\$4,324,244
Private Pay	\$311.57	\$1,440,068	\$329.51	\$1,804,094	\$345.99	\$1,894,299
All Other		<u>\$1,608,413</u>		<u>\$372,500</u>		<u>\$566,277</u>
Total		\$7,984,833		\$7,840,413		\$8,468,233
Expenses						
Operating	\$262.26	\$7,604,369	\$249.44	\$7,265,339	\$263.50	\$7,675,107
Capital	<u>\$34.65</u>	<u>\$1,004,611</u>	<u>\$13.73</u>	<u>\$400,000</u>	<u>\$13.73</u>	<u>\$400,000</u>
Total Expenses	\$296.90	\$8,608,980	\$263.17	\$7,665,339	\$277.24	\$8,075,107
Net Income		<u>(\$624,147)</u>		<u>\$175,074</u>		<u>\$393,126</u>
Patient Days		28,996		29,127		29,127
Utilization %		94.57%		95.00%		95.00%

The following is noted with respect to the submitted budget:

- The Current Year represents the facility's 2015 experience.
- The revenue assumptions are based on the applicant's experience, via affiliated entities, operating other NYS RHCFS.
- Budgeted Other Operating Revenue includes the following: additional charges to residents for cable services, cafeteria meals for families and one-time charges.
- The First Year budget eliminates revenue associated with prior period adjustments, lease revenue that will not continue after the change of ownership and Vital Access Provider funding.
- The basis for the First and Third Year rates are as follows:
 - Based on the applicant's experience in contract negotiations, they project 3% increases each year after the first year for existing commercial payor contracts.
 - The budgeted Medicare revenue is based on their anticipation that Medicare rates will increase by 2% due to a planned focus on short-term postsurgical care for higher-acuity Medicare residents, which would result in higher Medicare reimbursement rates.
 - The budgeted Private Pay revenue is based on 5% yearly increases based on their plan to provide higher-quality clinical services.
- The applicant projected staffing based on department specific staffing models by position and shift.
- A reduction in employee benefits is anticipated based on a reduction in Worker's Compensation expense resulting from their work safety program, and the transition of health insurance and other benefit programs from the current operator to the applicant.
- Utilities are projected based on similar costs incurred at other facilities operated by the applicant.
- Utilization assumptions are based on the applicant's experience and plans to focus on increasing patient access to higher-acuity, short-term, subacute rehabilitative and post-surgical care. The applicant projects a need for subacute rehabilitative care in the service area. A focus on such patients plus emergency room diversions from area hospitals will help to increase occupancy.
- Noted in relation to the projected utilization, the applicant states the facility recently implemented a strategic marketing plan with what they believe are positive results.
- Breakeven utilization is projected at approximately 92.88% for Year One.

- Overall utilization is 95% in Years One and Three, while utilization by payor source is as follows:

	<u>Current</u>	<u>%</u>	<u>First Year</u>	<u>%</u>	<u>Third Year</u>	<u>%</u>
Commercial	280	0.97%	1,825	6.27%	1,825	6.27%
Medicare	1,293	4.46%	1,825	6.27%	1,825	6.27%
Medicaid	22,801	78.63%	20,002	68.67%	20,002	68.67%
Private Pay	<u>4,622</u>	<u>15.94%</u>	<u>5,475</u>	<u>18.80%</u>	<u>5,475</u>	<u>18.80%</u>
	28,996	100.00%	29,127	100.00%	29,127	100.00%

Capability and Feasibility

There are no project costs associated with this application. Post Acute Partners has agreed to acquire the rights to the RHC's real property and operating interests for \$50,000. The acquisition price will be met with \$50,000 in members' equity. Post Acute Partners will assign its rights to the operating interest of the RHC to 1019 Wicker Street Operating Company, LLC and will transfer the leasehold rights to the property to 1019 Wicker Street, LLC for a total of \$10.

The working capital requirement of \$1,277,556 is based on two months of first year expenses. Working capital will be met with members' equity. Review of the operating members' net worth (BFA Attachment A) shows sufficient assets overall to meet equity requirements.

BFA Attachment C is 1019 Wicker Street Operating Company, LLC's pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,324,295.

The applicant projects net income of \$175,074 in the Year One based on an increase in operating revenue of \$1,208,702 and a \$943,641 reduction in total operating costs offset by a \$1,353,122 reduction in non-operating revenue (prior period adjustments, lease revenue and Vital Access Provider funding that will not continue after the change in ownership).

The increase in operating revenue is related to an anticipated increase of 131 patient days total (532 additional Medicare plus 2,398 Commercial and Private Pay offset by a reduction of 2,799 Medicaid patient days), which the applicant anticipates achieving through their plan to focus on higher-acuity, short-term care patients. The change in utilization by payor source coincides with anticipated increases in reimbursement rates across all payor sources, ranging from 6% and 41% with the largest reimbursement rate increase coming from Medicare and Commercial payor sources, the largest areas of utilization growth.

The applicant projects a reduction in expenses based mostly on a \$471,178 reduction in Interest, a \$133,433 reduction in Depreciation and Rent and a \$1,402,016 reduction in Purchased Services and Other Direct Expenses, partially offset by a \$740,261 increase in Salaries and Wages concurrent with the addition of 9.49 FTEs, and a \$243,597 increase in Professional Fees. The applicant attributes reductions in Purchased Services and Other Expenses to contract labor within these categories being retained in-house (reflected in the increase in Salaries and Wages). FTE reductions in laundry, food service and social services are in line with their staffing model for these departments and their plan to focus on improving clinical and therapy services. The applicant anticipates adding 3.85 FTEs in physical and occupational therapy, reducing Management by 8.79 FTEs, and reducing RN staff by 4.0 FTEs.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy paper provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, the 2014-2016 financial summary of Heritage Commons Residential Health Care, indicates that the facility had a net asset deficit, generated an annual operating deficit and maintained a negative working capital position for the period shown.

BFA Attachment E, financial summary of affiliated RHCs, shows the facilities maintained positive net income from operations for 2015 and 2016, as of June 30, with the exception of the following:

- Elderwood at Grand Island (2850 Grand Island Boulevard Operating Company, LLC) demonstrates negative working capital for the period shown. The applicant attributes the negative working capital to the timing of short-term working capital needs (due to the timing of payroll and collections). The facility shows a nominal loss year-to-date 2016, which the applicant attributes to increased prescription drug costs. The applicant anticipates improved results as of the end of the calendar year.
- Elderwood at Cheektowaga (225 Bennett Road Operating Company, LLC) and Elderwood at Hamburg (5775 Maelou Drive Operating Company, LLC) show negative working capital as of December 31, 2015. The applicant attributes the negative working capital to the timing of short-term working capital needs (due to the timing of payroll and collections). While Elderwood at Cheektowaga demonstrates positive operating income through June 30, 2016, the facility experienced a net loss in 2015 which they attributed to a lower than normal census.
- Elderwood at Waverly (37 North Chemung Street Operating Company, LLC) shows positive working capital and positive net income as of December 31, 2015, but an operating loss and negative working capital through June 30, 2016. The applicant attributes the results to extensive renovations, approved under CON 151015, described as requisite renovations to accommodate outpatient therapy services. The applicant believes the associated noise and disruption caused potential residents to choose alternate facilities. However, the applicant believes the facility will show positive operating income by the end of the year and occupancy will return to normal, as the project is complete.

The applicant notes the above referenced entities have access to revolving credit lines that cover temporary negative working capital balances.

It is noted that the proposed operators established membership in the above referenced affiliated facilities as of July 28, 2013. Financial statements for Elderwood at Hornell (1 Bethesda Drive Operating Company, LLC) and Elderwood of Uihlein at Lake Placid (185 Old Military Road Operating Company, LLC) were not evaluated as the applicant was not established as the operator of the facilities until April 12, 2016 and October 4, 2016, respectively.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net worth summary, members of Post Acute Partners Acquisition, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Pro Forma Balance Sheet, 1019 Wicker Street Operating Company, LLC
BFA Attachment D	Financial Summary, Heritage Commons Residential Health Care
BFA Attachment E	Financial Summary, affiliated nursing home facilities

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 8th day of December, 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 1019 Wicker Street Operating Company, LLC as the new operator of the 84-bed residential health care facility located at 1019 Wicker Street, Ticonderoga, currently operated as Heritage Commons Residential Health Care, 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:

162229 E

FACILITY/APPLICANT:

1019 Wicker Street Operating Company, LLC
d/b/a Elderwood at Ticonderoga

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
4. Other factors as determined by the applicant to be pertinent. (RNR)Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed Ground Lease, acceptable to the Department of Health. [BFA]
7. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
8. Submission of an executed Limited Guaranty Agreement, acceptable to the Department of Health. [BFA]
9. Submission of documentation of approval by HUD and Berkadia Commercial Mortgage, Inc. for the change in operator of the nursing home, acceptable to the Department of Health. [BFA]
10. Submission of documentation of approval by HUD and Berkadia Commercial Mortgage, Inc. for the Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]

11. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's amended and completed operating agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's amended and completed articles of organization, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's amended and completed assignment of rights, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the certificate of authority to do business in New York State by 1019 Wicker Street Operating Holdco, LLC, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of 1019 Wicker Street Operating Holdco, LLC's amended and completed operating agreement, which is acceptable to the Department. [CSL]
17. Submission of a photocopy of 1019 Wicker Street Operating Holdco, LLC's amended and completed articles of organization, which is acceptable to the Department. [CSL]
18. Submission of a list providing the name, membership interest and percentage ownership interest in the 2nd level member and indirect ownership percentage in the Article 28 LLC, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within two 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)

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 # 161477-E
Premier Home Health Care Services, Inc.**

Program: Certified Home Health Agency
Purpose: Establishment

County: New York
Acknowledged: July 6, 2016

Executive Summary

Description

Premier Home Health Care Services, Inc. (Premier) is a New York proprietary business corporation that operates an Article 36 Certified Home Health Agency (CHHA) located at 5 Bryant Park, 1065 Avenue of the Americas, 5th Floor, New York. Premier requests approval to acquire and merge HHH Certified Home Health Agency (HHH), a voluntary not-for-profit CHHA located at 55 Grasslands Road in Valhalla, and add Bronx and Westchester County and Homemaker, Housekeeper, Nutritional, Personal Care and Therapy-Respiratory services to their operating certificate. The goal of this acquisition is to expand Premier’s community-based service delivery platform in the New York City, Nassau, Suffolk and Westchester county regions.

Hebrew Hospital Home of Westchester, Inc. (HHHW), which filed for Chapter 11 bankruptcy on January 8, 2016, is the current operator of HHH. On July 22, 2015 (to be effective July 25, 2015), Premier and HHH entered into an Interim Consultative & Management Services Agreement (MSA), subject to approval by the Commissioner of Health as a management agreement in accordance with Title 10 NYCRR §763.11(d). The Department’s Bureau of House Counsel approved the MSA on August 4, 2016. Due to identified patient and compliance concerns expressed by Premier, all of the then existing HHH patients were transferred to other community-based CHHA programs as of July 25, 2016. The CHHA remained operational and open for admissions as Premier implemented a comprehensive reorganization plan under the MSA. As of August 25, 2016, HHH had three active patients that were receiving services. Upon approval by the Public Health and Health

Planning Council (PHHPC) of this application, and subject to patient choice, the patients will transfer to Premier.

It is Premier’s intent to close the HHH Valhalla office location and operate from only Premier’s current New York County location. At this time, there will be no branch office related to the new service area.

The seller indicated that HHHW’s Board of Directors, on the advice of financial consultants, determined to sell the CHHA, as well as its facility, due to ongoing financial instability and the unlikely prospect of regaining financial viability. They retained The Marwood Group (an investment banker) to assist in the identification of qualified purchasers and the solicitation of offers. After review of potential purchasers of the CHHA, they determined it in their best interest to enter into an agreement with Premier. As the seller is in bankruptcy proceedings, the proceeds from the sale of the CHHA are not within their discretion, but subject to review and approval of the bankruptcy court. There is no property relevant to the transaction.

BFA Attachment C presents the organizational chart after the acquisition.

OPCHSM Recommendation
Contingent Approval

Need Summary
The applicant is licensed to operate in Kings, New York and Queens Counties. The HHH CHHA is certified to operate in Bronx, Kings,

New York, Queens and Westchester Counties. This proposal to merge HHH CHHA into the Applicant would include adding Bronx and Westchester Counties to the Applicant's operating certificate. Upon approval of this project, HHH CHHA would close and the Applicant would continue to provide the services heretofore provided by the HHH CHHA.

Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the stockholders and board members of the applicant Premier Home Health Care Services, Inc., to adversely affect their positions in the organization. The applicant has the appropriate character and competence under Article 36 of the New York State Public Health Law.

Financial Summary

There are no project costs associated with this application. The acquisition price for HHH CHHA is \$250,000. Premier will address the acquisition price by cancelling a \$250,000 promissory note between the buyer and the seller. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,378,695	\$1,564,176
Expenses	<u>\$1,291,907</u>	<u>\$1,392,063</u>
Gain/(Loss)	\$86,788	\$172,113

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed promissory note associated with the Asset Purchase Agreement, acceptable to the Department of Health. (BFA)
2. Submission of a copy of the "Final Order" from the Bankruptcy Court for the Southern District of New York (Case 16-10028-MEW), acceptable to the Department of Health. (BFA)

Approval conditional upon:

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

Council Action Date

December 8, 2016

Need Analysis

Project Description

Premier Home Health Care Services, Inc. (the Applicant) is an existing Certified Home Health Agency (CHHA) located at 5 Bryant Park, 1065 Avenue of the Americas, New York, in New York County. The applicant is requesting CON approval to acquire and merge HHH CHHA, a CHHA located at 55 Grasslands Road, Valhalla. HHH CHHA is currently operated by Hebrew Hospital Home of Westchester Inc., a voluntary not-for-profit corporation. HHH CHHA will be merged into the Applicant organization, and will close.

Analysis

The services currently offered by the Applicant are listed below. This proposal would add Homemaker, Housekeeper, Nutritional, Personal Care and Respiratory Therapy to the operating certificate of the Applicant, as these services are currently offered by HHH CHHA. The proposal would also add Bronx and Westchester Counties to the operating certificate of the Applicant.

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

Conclusion

This proposal to merge Hebrew Hospital Home into Premier Home Health Services will allow the Applicant to realize operational and cost efficiencies while continuing to serve the patients in its care. Upon approval, there will be no disruptions in care since all certifications and counties served will be retained.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Premier Home Health Care Services, Inc., a proprietary Article 36 certified home health agency (CHHA), proposes to purchase, acquire and merge Hebrew Hospital Home of Westchester, Inc. d/b/a HHH CHHA, a voluntary Article 36 certified home health agency (CHHA), into the existing Premier Home Health Care Services, Inc. CHHA.

Premier Home Health Care Services, Inc. CHHA is currently approved to serve Kings, New York, and Queens Counties, and is authorized for the services of Home Health Aide, Medical Social Service, Medical Supplies/Equipment/Appliances, Nursing, Physician Services, Therapy-Occupational, Therapy-Physical, and Therapy-Speech Language Pathology. HHH CHHA is currently approved to serve Bronx, Kings, New York, Queens, and Westchester Counties, and is authorized for the services of Home Health Aide, Homemaker, Housekeeper, Medical Social Service, Medical Supplies/Equipment/Appliances, Nursing, Nutritional Services, Personal Care, Therapy-Occupational, Therapy-Respiratory, Therapy-Physical, and Therapy-Speech Language Pathology. As a result of the proposed acquisition and merger of HHH, the Premier Home Health Services, Inc. CHHA will be adding Bronx and Westchester Counties to its approved geographic service area, and will be adding Homemaker, Housekeeper, Nutritional Services, Personal Care, and Therapy-Respiratory to its authorized services. Accordingly, upon acquisition and merger, HHH will officially close, surrender its operating certificate, and terminate its Home Health Agency Medicare Provider Number.

Premier Home Health Care Services, Inc. will remain at its sole practice location office at 5 Bryant Park, 1065 Avenue of the Americas, 5th Floor, New York (New York County), and its legal entity / corporate operator, Premier Home Health Care Services, Inc., will remain at 445 Hamilton Avenue, 10th Floor, White Plains.

In addition to its New York State Article 36 CHHA, Premier Home Health Care Services, Inc. also currently operates Article 36 Licensed Home Care Services Agencies (LHCSAs) in New York State located in fourteen practice locations, each with its own LHCSA license, under the corporate name of Premier Home Health Care Services, Inc. The corporation Premier Home Health Care Services, Inc., is a registered utilization review agent with Office of Health Insurance Programs (OHIP) Bureau of Managed Care Certification and Surveillance, pursuant to Article 49 of the Public Health Law. The two sole stockholders of Premier Home Health Care Services, Inc., Arthur Schwabe and Paul Schwabe, are also the sole stockholders of the following corporations that operate Article 36 LHCSAs in New York State: Priority Home Care, Inc., consisting of six practice locations each with its own LHCSA license; Barele, Inc., d/b/a Omega Home Health Services, consisting of one practice location and LHCSA license; and At Home, Ltd, consisting of one practice location and LHCSA license.

Premier Home Health Care Services, Inc. also currently operates LHCSAs outside of New York State, under the corporate name of Premier Home Health Care Services, Inc., as follows: in New Jersey located in three LHCSA practice locations, in Connecticut located in one LHCSA practice location, in North Carolina located in five LHCSA practice locations, and in Illinois, located in two LHCSA practice locations. The two sole stockholders of Premier Home Health Care Services, Inc. are also the sole stockholders of the following additional corporations located outside of New York State, as follows: Maranatha Home Care, Inc., d/b/a A Better Health Care, in Florida (LHCSA), consisting of one practice location; Premier Home Health Care of Massachusetts, Inc., in Massachusetts (Domestic Services Agency), consisting of three practice locations; and Premier Live-Ins, Inc., in Massachusetts (Employment / Recruiting / Staffing Agency), consisting of three practice locations.

Premier Home Health Care Services, Inc. is authorized to issue 200 shares of stock at no par value. All shares are currently issued and outstanding, with 100 shares (50%) issued to and held by Arthur Schwabe, and 100 shares (50%) issued to and held by Paul Schwabe.

The members of the Board of Directors of the applicant Premier Home Health Care Services, Inc., are as follows:

Arthur Schwabe (50% stockholder/100 shares), Board President
Occupation: Chief Executive Officer, Premier Home Health Care Services, Inc. (CHHA and LHCSAs)

Affiliations

Premier Home Health Care Services, Inc. (CHHA in NY, and LHCSAs in NY, NJ, CT, NC, IL); Priority Home Care, Inc. (LHCSAs in NY); Barele, Inc., d/b/a Omega Home Health Services (LHCSA in NY); At Home Ltd (LHCSA in NY); Maranatha Home Care, Inc., d/b/a A Better Health Care (LHCSA in FL); Premier Home Health Care of Massachusetts, Inc. (Domestic Service Agencies in MA); and Premier Live-Ins, Inc. (Staffing Agencies in MA).

Paul Schwabe (50% stockholder/100 shares),
Board Vice President, Secretary, and Treasurer
Occupation: Chief Executive Officer, Premier Staffing (Staffing Agency)

Affiliations

Premier Home Health Care Services, Inc. (CHHA in NY, and LHCSAs in NY, NJ, CT, NC, IL); Priority Home Care, Inc. (LHCSAs in NY); Barele, Inc., d/b/a Omega Home Health Services (LHCSA in NY); At Home Ltd (LHCSA in NY); Maranatha Home Care, Inc., d/b/a A Better Health Care (LHCSA in FL); Premier Home Health Care of Massachusetts, Inc. (Domestic Service Agencies in MA); and Premier Live-Ins, Inc. (Staffing Agencies in MA).

The above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

A seven year review of the compliance/enforcement history of the New York State operations of the following CHHA and LHCSAs was performed as part of this review:

- Premier Home Health Care Services, Inc. CHHA (1 location/operating certificate)
- Premier Home Health Care Services, Inc. LHCSAs (14 locations/licenses)
- Priority Home Care, Inc. LHCSAs (6 locations/licenses)
- Barele, Inc., d/b/a Omega Home Health Services LHCSA (1 location/license)
- At Home, Ltd LHCSA (1 location/license).

The New York State Department of Health's Division of Home and Community Based Services reviewed the compliance history of the affiliated certified home health agency and licensed home care service agencies in New York State listed above, for the time period 2009 to present. It has been determined that the New York State certified home health agency and licensed home care service agencies have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative actions imposed during that time.

A seven year review of the compliance/enforcement history of the out-of-state operations of the following LHCSAs were requested from each regulating state:

- New Jersey - Premier Home Health Care Services, Inc. LHCSAs (3 locations/licenses)
- Connecticut – Premier Home Health Care Services, Inc. LHCSA (1 location/license)
- North Carolina - Premier Home Health Care Services, Inc. LHCSAs (5 locations/licenses)
- Illinois - Premier Home Health Care Services, Inc. LHCSAs (2 locations/licenses)
- Florida - Maranatha Home Care, Inc., d/b/a A Better Health Care LHCSA (1 location/license)
- Massachusetts - Premier Home Health Care of Massachusetts, Inc. Domestic Agencies (3 locations/licenses)

New Jersey, Connecticut and Illinois all reported that all of their Premier Home Health Care Services, Inc. LHCSA providers are all in current compliance, with no enforcement or administrative actions taken against any of them within the previous seven years.

Massachusetts reported that all three of their Premier Home Health Care of Massachusetts, Inc. providers are all agencies that provide domestic services such as home companion care, housekeeping, caretaking, laundering, cooking, etc. Massachusetts reports that such agencies do not require active licensure or registration by the Massachusetts Department of Labor Standards.

To date, we have not received any responses from North Carolina or Florida. The applicant has submitted a signed and notarized affidavit stating that, to the best of the applicant's knowledge, all of their affiliated providers in North Carolina and Florida are currently in compliance, with no enforcements or administrative actions taken against them within the previous seven years.

Conclusion

A review of all personal qualifying information indicates there is nothing in the background of the stockholders and board members of the applicant Premier Home Health Care Services, Inc., to adversely affect their positions in the organization. The applicant has the appropriate character and competence under Article 36 of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant provided an executed Asset Purchase Agreement (APA), to be effective with approval of the PHHPC and the "Final Order" from the Bankruptcy Court for the Southern District of New York, Manhattan Division (Case 16-10028-MEW). The terms are summarized below:

Effective Date:	July 22, 2015
Seller:	Hebrew Hospital Home of Westchester, Inc.
Buyer:	Premier Home Health Care Services, Inc.
Sellers Corporate Office:	55 Grasslands Road, Valhalla, NY 10595
Purchased Assets:	NYSDOH CHHA Operating Certificate No. 700613, effective 7/7/14; data and records pertaining to the business; supplies, medical supplies and inventory; telephone numbers used by the business; intangible property used exclusively in the business; and rights of the seller under warranties relating to tangible assets. Free and clear of all encumbrances.
Excluded Assets:	All cash and cash equivalents and deposit accounts; accounts receivable; corporate minutes, stock books, tax returns and financial records; insurance policies; personnel records; claims for refunds; seller's third-party payor reimbursement numbers; assets and properties identified as corporate assets or used in other businesses of Seller or its affiliates; any assets sold or intangible personal property suspended or sold in the ordinary course of business prior to the closing date; bank account of seller and; computer software or programs which are proprietary.
Assumed Liabilities:	Liabilities and obligations (including accounts payable) out of operations from and after the Closing Date.
Excluded Liabilities:	Claims arising out of breach of seller or negligence prior to contract date; liabilities under collective bargaining agreement
Purchase Price:	\$250,000
Payment of Purchase Price:	Paid by means of cancellation of Loan Amount (as defined by the associated Promissory Note).

The applicant states that no liabilities will be assumed upon approval by the PHHPC.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the HHH-CHHA and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 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 CHHA had only nominal Medicaid liabilities outstanding as of July 22, 2016.

Promissory Note

The applicant provided a draft copy of the Promissory Note, summarized below:

Borrower:	Hebrew Hospital Home of Westchester, Inc.
Holder:	Premier Home Health Care Services, Inc.
Loan Amount:	\$250,000 loaned on July 25, 2015 per the APA (to be offset against the purchase price at Closing)
Interest:	None
Maturity Date:	Closing of the APA
Conditions:	The borrower is under no obligation to make payments prior to the maturity date; in the event the associated APA is validly terminated then the Loan Amount becomes payable.

Interim Consultative & Management Services Agreement

The applicant provided an executed Interim Consultative & Management Services Agreement (MSA), which is summarized below:

Date:	July 22, 2015 (signatory date) to be effective July 25, 2015*
Agency:	Hebrew Hospital Home of Westchester, Inc.
Manager:	Premier Home Health Care Services, Inc.
Agency Location:	55 Grasslands Road, Valhalla, NY 10595
Responsibilities of Manager:	Conduct, supervise and manage the day-to-day operation of the CHHA including but not limited to: operational and fiscal plan, selection/provision of management staff, operational management, nursing liaisons, administrative support, patient intake, OASIS preparation, patient assessment and care planning, patient and employee supervision, quality assurance program, emergency disaster plan development/implementation, subcontract field personnel selection, selection of all vendors and medical supply vendors, training, compliance and scheduling, insurance and payer verification, reporting, billing and collection, financing, operating insurance (if applicable), payment of operating costs, dissemination of all such revenues collected.
Term:	Three years from the Effective Date
Compensation:	An amount equal to the income earned by the Agency CHHA.
Notes:	All employees providing services shall be employees of the manager, with their compensation, benefits and expenses the responsibility of the manager. All income and revenue from the activities of the agency on or after the Effective Date shall be deposited into accounts in the name of Agency. Any purchase or lease of real property shall be at the sole cost of the manager however, the Agency will be liable for existing leases. Agency consents to the Manager relocating the CHHA to 445 Hamilton Avenue, 10th floor, White Plains, NY 10601. The Governing Authority and the Agency shall retain full legal authority over the operation of Agency services.

* As of August 4, 2016, the Department's Bureau of House Counsel approved the MSA.

Operating Budget

The applicant has submitted the projected incremental first and third year operating budgets, in 2016 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>		
Commercial	\$99,000	\$126,000
Medicare	1,240,000	1,395,000
Medicaid	<u>39,695</u>	<u>43,176</u>
Total Revenues	\$1,378,695	\$1,564,176
<u>Expenses</u>		
Operating	\$1,155,707	\$1,251,746
Capital	<u>136,200</u>	<u>140,317</u>
Total Expenses	\$1,291,907	\$1,392,063
Net Income or (Loss)	\$86,788	\$172,113
Utilization (Cases)	500	562
Utilization (Visits)	6,554	7,367
Utilization (Hours)	1,382	1,556

The budget reflects Premier's projected pro-forma revenues and expense. Operating under the terms of the MSA, the applicant stated that they have not maintained and do not possess available separate internal financial statements for this operation. Premier separated the revenue and expenses relative to this operation effective July 1, 2016, and will continue to do so on a going forward basis. According to the applicant, 2015 HHH's financial statements are not available.

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Cases</u>	<u>%</u>	<u>Cases</u>	<u>%</u>
Commercial	75	15%	84	15%
Medicare	400	80%	450	80%
Medicaid	15	3%	17	3%
Charity	<u>10</u>	<u>2%</u>	<u>11</u>	<u>2%</u>
	500	100%	562	100%

Charity Care is expected to be 2%. In the event that the consumer is ineligible for Medicare, Medicaid or other insurance coverage, or has exhausted their payment resources, the applicant will provide services free of charge. The applicant will credit this amount toward the charity care expectation.

Rate and revenue projections are as follows:

- The majority of the applicant's business is Medicare.
- Medicare revenue is based on an average episodic payment of \$3,100, which they expect to remain constant through Year Three. The applicant expects Medicare revenue growth through an expected 12.5% increase in cases and visits.
- Growth in Commercial and Medicaid utilization is projected, commensurate with the projected increase in Medicare utilization. However, the Medicaid reimbursement rate is expected to drop 4.43% reducing the expected increase in revenue. The Commercial rate is expected to increase 13.64% by Year Three. The combined Commercial and Medicaid revenue growth is nominal and, if eliminated, would have no impact on the entity's projected net income.

The applicant states that all census assumptions, expenses and revenues are based on historical experience of Premier's existing CHHA operations and associated revenues and costs.

Capability and Feasibility

The \$250,000 purchase price for the CHHA assets will be addressed by cancelling a loan to the seller of equal value.

The working capital requirement is estimated at \$215,318 based on two months of first year expenses. Funds will be provided from the ongoing operations of Premier Home Health Care Services, Inc.

Premier projects the first and third years will show surpluses of \$86,788 and \$172,113, respectively. BFA Attachment D is the pro forma balance sheet, which shows \$750,000 in equity. The budget appears to be reasonable.

BFA Attachments A is Premier Home Health Care Services, Inc.'s 2014 and 2015 certified financial statements, which shows the entity maintained negative working capital, average positive net income of \$6,398,439, and had an average equity position of \$18,372,216. BFA Attachment B is Premier Home Health Care Services, Inc.'s internal financial statement as of June 30, 2016, which shows \$14,163,169 in net income, and \$30,407,391 in equity and demonstrates the facility reduced their negative working capital position.

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 2014 and 2015 certified financial statements, Premier Home Health Care Services, Inc.
- BFA Attachment B June 30, 2016 internal financial statements, Premier Home Health Care Services, Inc.
- BFA Attachment C Organizational Chart, Premier Home Health Care Services, Inc.
- BFA Attachment D Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of December, 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 HHH Certified Home Health Agency and add Bronx and Westchester County as well as Homemaker, Housekeeper, Nutritional, Personal Care and Therapy-Respiratory services 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

161477 E

Premier Home Health Care Services, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed promissory note associated with the Asset Purchase Agreement, acceptable to the Department of Health. (BFA)
2. Submission of a copy of the “Final Order” from the Bankruptcy Court for the Southern District of New York (Case 16-10028-MEW), acceptable to the Department of Health. (BFA)

APPROVAL CONDITIONED UPON:

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

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

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Bath Center LHCSA LLC d/b/a Centers Home Care West
Address: Bath
County: Steuben
Structure: Limited Liability Company
Application Number: 162016

Description of Project:

Bath Center LHCSA LLC d/b/a Centers Home Care West, a to be formed limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with Assisted Living Program to be operated by Bath Center ALP LLD d/b/a Bath Center for Independent Living. The LHCSA and the ALP will have identical ownership.

The proposed membership of Bath Center LHCSA LLC d/b/a Centers Home Care West comprises the following individuals:

Kenneth Rozenberg, EMT, NHA (NY and NJ) Managing Member – 92%
Chief Executive Officer, Centers Health Care
Chief Executive Officer, Bronx Center for Rehabilitation & Health Care

Affiliations:

- Amazing Home Care (LHCSA) 05/2006 to present
- Banister Center for Rehabilitation (Rhode Island) 08/2016 to present
- Boro Park Center for Rehabilitation and Healthcare 05/2011 to present
- Bronx Center for Rehabilitation and Health Care 10/1997 to present
- Bronx Center for Renal Dialysis (D&TC) 01/2011 to present
- Brooklyn Center for Rehabilitation and Residential Health Care 05/2007 to present
- Buffalo Center for Rehabilitation and Nursing (FKA Delaware Nursing & Rehab Center (Receivership) 06/2014 to 12/2015
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care (fka Wartburg Lutheran Home for the Aging) (receiver) 06/2008 to 05/2011
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Bushwick Center for Renal Dialysis (D&TC) 06/2014 to present
- Center Plan for Health Living (MLTC) 01/2013 to present
- Centers Home Health Revival (fka Alpine Home Health Care) (CHHA) 07/2008 to present
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Daughters of Jacob Nursing Home Company (receiver) 08/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2004 to 03/2016
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 11/2010 to present
- Hope Center for HIV and Nursing Care 04/2015 to present
- Indian River Rehabilitation and Nursing Center 12/2014 to present
- Northwoods Rehabilitation and Nursing Center at Moravia 11/2014 to 03/2016
- Park View Center for Rehabilitation and Healthcare (Rhode Island) 05/2016 to present

- Queens Center for Rehabilitation and Residential Health Care 10/2004 to 03/2016
- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present
- Senior Care Emergency Ambulance Services (EMS) 06/2005 to present
- Steuben Center for Rehabilitation and Healthcare 07/2014 to present
- The Grand Rehabilitation and Nursing at Chittenango (FKA Stonehedge Health & Rehabilitation Center – Chittenango) (REC) 07/2008 to 04/2011
- The Grand Rehabilitation and Nursing at Chittenango 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome (FKA Stonehedge Health & Rehabilitation Center – Rome) (receiver) 07/2008 to 04/2011
- The Grand Rehabilitation and Nursing at Rome 05/2011 to present
- University Nursing Home 08/2001 to present
- Washington Center for Rehabilitation and Healthcare 02/2014 to present
- Waterfront Center for Rehabilitation and Healthcare (receiver) 08/2011 to 12/2012
- Waterfront Center for Rehabilitation and Healthcare 12/2012 to present
- Williamsbridge Manor Nursing Home 11/1996 to present
- Wartburg Nursing Home (receiver) 06/2008 to 05/2011
- Washington Center Adult Home (AH) 02/2014 to present

David S. Greenberg, LNHA (NY and NJ) – 5%
 Administrator, Boro Park Center for Rehabilitation and Healthcare

Affiliations:

- Corning Center for Rehabilitation & Healthcare 2013-present
- Steuben Center for Rehabilitation & Healthcare 2014-present
- Warren Center for Rehabilitation and Nursing 2016-present

Jeffrey M. Sicklick, Member, NHA (NY and NJ) – 3%
 Administrator, Bronx Center for Rehabilitation

Affiliations:

- Boro Park Center for Rehabilitation and Healthcare 05/2011 to 04/2016
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2004 to 11/2015
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 05/2013 to present
- Queens Center for Rehabilitation and Residential Health Care 02/2008 to 10/2015
- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present
- Steuben Center for Rehabilitation and Healthcare 07/2014 to present
- The Grand Rehabilitation and Nursing at Chittenango 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome 05/2011 to present
- Washington Center for Rehabilitation and Healthcare 02/2014 to present
- Waterfront Center for Rehabilitation and Healthcare 01/2013 to present
- Washington Center Adult Home (AH) 02/2014 to present

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Kenneth Rozenberg NHA license #04036 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The State of New Jersey has indicated that Kenneth Rozenberg NHA license #2841 holds an active NHA license which expires June 30, 2017.

The Bureau of Professional Credentialing has indicated that David S. Greenberg NHA license #04990 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The State of New Jersey has indicated that David S. Greenberg NHA license #2050 holds an active NHA license which expires June 30, 2017.

The Bureau of Professional Credentialing has indicated that Jeffrey M. Sicklick NHA license #03579 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of Emergency Medical Services has indicated that Kenneth Rozenberg holds a Paramedic Certification #082942 and is in good standing. Disciplinary action against this individual or his certification has never been taken.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Amazing Home Care
- Banister Center for Rehabilitation (Rhode Island) 08/2016 to present
- Boro Park Center for Rehabilitation and Healthcare 05/2011 to present
- Bronx Center for Rehabilitation and Health Care
- Bronx Center for Renal Dialysis 01/2011 to present
- Brooklyn Center for Rehabilitation and Residential Health Care 08/2009 to present
- Buffalo Center for Rehabilitation and Nursing (fka Delaware Nursing & Rehab Center) 06/2014 to 12/2015
- Buffalo Center for Rehabilitation and Nursing 12/2015 to present
- Bushwick Center for Rehabilitation and Health Care (fka Wartburg Lutheran Home for the Aging) 08/2009 to 05/2011
- Bushwick Center for Rehabilitation and Health Care 05/2011 to present
- Bushwick Center for Renal Dialysis 06/2014 to present
- Center Plan for Health Living 01/2013 to present
- Centers Home Health Revival (fka Alpine Home Health Care)
- Corning Center for Rehabilitation and Healthcare 07/2013 to present
- Daughters of Jacob Nursing Home Company 08/2013 to present
- Dutchess Center for Rehabilitation and Healthcare 08/2009 to 03/2016
- Essex Center for Rehabilitation and Healthcare 03/2014 to present
- Fulton Center for Rehabilitation and Healthcare 04/2012 to present
- Holliswood Center for Rehabilitation and Healthcare 11/2010 to present
- Hope Center for HIV and Nursing Care 04/2015 to present
- Indian River Rehabilitation and Nursing Center 12/2014 to present
- Northwoods Rehabilitation and Nursing Center at Moravia 11/2014 to 03/2016
- Park View Center for Rehabilitation and Healthcare 05/2016 to present
- Queens Center for Rehabilitation and Residential Health Care 08/2009 to 03/2016
- Richmond Center for Rehabilitation and Specialty Healthcare 04/2012 to present

- Senior Care Emergency Ambulance Services, Inc. 07/2014 to present
- Steuben Center for Rehabilitation and Healthcare 08/2009 to 04/2011
- The Grand Rehabilitation and Nursing at Chittenango (fka Stonehedge Health & Rehab Center – Chittenango) 05/2011 to present
- The Grand Rehabilitation and Nursing at Chittenango 08/2009 to 04/2011
- The Grand Rehabilitation and Nursing at Rome (fka Stonehedge Health & Rehabilitation Center – Rome) 05/2011 to present
- The Grand Rehabilitation and Nursing at Rome 08/2009 to present
- University Nursing Home 01/2016 to present
- Warren Center for Rehabilitation and Nursing 02/2014 to present
- Washington Center for Rehabilitation and Healthcare 08/2011 to 12/2012
- Waterfront Center for Rehabilitation and Healthcare 12/2012 to present
- Williamsbridge Manor Nursing Home 08/2009 to 05/2011
- Wartburg Nursing Home 02/2014 to present
- Washington Center Adult Home

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies reviewed, for the periods identified above reveals the following:

Alpine Home Health Care was fine one thousand dollars (\$1,000) pursuant to a Stipulation dated February 3, 2014 for not responding to Emergency Preparedness survey.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed, for the periods identified above, reveals the following:

Bronx Center for Rehabilitation and Health Care was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

Essex Center for Rehabilitation and Health Care was fined six thousand dollars (\$6,000) pursuant to a Stipulation and Order dated March 9 2016 for surveillance findings on August 19, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

Fulton Center for Rehabilitation and Healthcare was fined fifty-two thousand dollars (\$52,000) pursuant to a Stipulation and Order dated January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. Deficiencies were found under 10 NYCRR 451.3(e)(2)(ii)(b) Notification of Changes; 415.12 Quality of Care: Highest Practical Potential; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(c)(2) Quality of Care: Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.26 Administration; 415.27(a-c) Quality Assurance; and 415.4(b)(1)(2)(3) Investigate/Report Allegation.

Northwoods Rehabilitation and Nursing Center at Moravia was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

Richmond Center for Rehabilitation and Specialty Healthcare was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated January 25, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.

Richmond Center for Rehabilitation and Specialty Healthcare was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated March 9, 2016 for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

Richmond Center for Rehabilitation and Specialty Healthcare was fined eighteen thousand dollars (\$18,000) pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.

Stonehedge Health & Rehabilitation Center - Chittenango (nka: The Grand Rehabilitation and Nursing at Chittenango) was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1, 2) Quality of Care: Accidents and Supervision; and 415.26(b)(3)(4) Governing Body.

Chittenango Center for Rehabilitation and Health Care (nka: The Grand Rehabilitation and Nursing at Chittenango) was fined twenty thousand dollars (\$20,000) pursuant to a Stipulation and Order dated February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores; and 415.12(d)(1) Quality of Care: Catheters.

Washington Center for Rehabilitation and Healthcare was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated April 6, 2016 for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.27(a-c) Administration: Quality Assessment and Assurance.

Waterfront Center for Rehabilitation and Healthcare was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

Waterfront Center for Rehabilitation and Healthcare was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated April 6, 2016 for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.

Waterfront Center for Rehabilitation and Healthcare was fined twenty-four thousand dollars (\$24,000) pursuant to a Stipulation dated April 19, 2016 for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month By Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Emergency Medical Services and Trauma Systems has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the 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.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Rhode Island has indicated that Banister Center for Rehabilitation and Park View Center for Rehabilitation and Healthcare have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 7002 Mt. Washington Road, Bath, New York 14810:

Chemung	Genesee	Livingston	Monroe
Ontario	Schuyler	Steuben	Wayne
Yates			

The applicant proposes to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval
Date: October 26, 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 8th day of December, 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>
161454 E	Cobbs Hill Manor, Inc. (Monroe County)
162015 E	Argyle Center LHCSA, LLC d/b/a Centers Home Care North East (Albany, Essex, Montgomery, Schenectady, Columbia, Fulton Rensselaer, Warren, Dutchess, Greene Saratoga and Washington Counties)
162016 E	Bath Center LHCSA, LLC d/b/a Centers Home Care West (Chemung, Ontario, Yates, Genesee, Schuyler, Livingston, Steuben, Monroe and Wayne Counties)

152285 E Helping U Homecare, Inc.
(New York, Richmond, Kings, Bronx, Queens, and Nassau Counties)

161111 E Crown of Life Care NY, LLC
(Bronx, Queens, Kings, Richmond, Nassau and New York Counties)

161146 E All Metro Aids, Inc. d/b/a All Metro Health Care
(New York, Queens, Bronx, Richmond and Kings Counties)

161147 E All Metro Home Care Services of New York, Inc. d/b/a All Metro Health Care
(Nassau County)

161392 E Paramount Homecare Agency Inc.
(Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)

161424 E Robynwood Home Care LLC d/b/a Robynwood Home Care
(Otsego, Delaware, Schoharie and Chenango Counties)

162038 E Extended Holding Company, LLC d/b/a Extended at Home Care
(New York, Queens, Bronx, Richmond, Kings, and Nassau Counties)

162061 E Best Help Home Care Corp.
(Kings, Queens, Bronx, Richmond, New York and Westchester Counties)

162067 E DOJ LHSCA Operations Associates LLC
d/b/a Claremont LHCSA
(Bronx County)

162119 E A.V. Pro Services, Inc.
d/b/a Assisted Home Care Services
(Kings, Bronx, Queens, Nassau, Richmond, and New York Counties)

162137 E AllHealth Home Care LLC
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)



**Project # 161180-E
Nesconset ZJ 1 LLC d/b/a
Nesconset Center for Nursing and Rehabilitation**

Program: Residential Health Care Facility
Purpose: Establishment

County: Suffolk
Acknowledged: March 22, 2016

Executive Summary

Description

This application amends and supersedes CON 142278. Nesconset ZJ 1 LLC d/b/a Nesconset Center for Nursing and Rehabilitation, a New York limited liability company, requests approval to be established as the operator of Nesconset Center for Nursing and Rehabilitation, a 240-bed, proprietary, Article 28 residential health care facility (RHCF) located at 100 Southern Boulevard, Nesconset (Suffolk County). The RHCF operates two off-site Adult Day Health Care Programs (ADHCPs) in Suffolk County which are part of the application: a 90-registrant ADHCP located at 575 Clayton Street in Central Islip and a 75-registrant ADHCP located at 45 Rocky Point Road in Middle Island. Nesconset Acquisition, LLC currently operates the facility. As part of this application there will be a reduction of 12 RHCF beds, bringing the total certified beds down to 228. There will be no change in services provided.

On September 18, 2014, Nesconset Acquisition, LLC entered into an Asset Purchase Agreement (APA) with Nesconset ZJ 1 LLC for the sale and acquisition of the operating interests of the RHCF and the two ADHCPs upon approval by the Public Health and Health Planning Council (PHHPC). Concurrently, Nesconset NC Realty, LLC, the current RHCF real property owner, entered into a Contract of Sale (COS) with Nesconset ZJ Realty 1 LLC for the sale and acquisition of the real property interest of the skilled nursing facility. The applicant will lease the RHCF premises from Nesconset ZJ Realty 1 LLC and enter into an Assignment and Assumption Agreement to transfer goodwill and

leasehold improvements to Nesconset ZJ Realty 1 LLC in exchange for the assumption of liabilities related to the acquisition of the operating interest. There is a relationship between Nesconset ZJ 1 LLC and Nesconset ZJ Realty 1 LLC in that the entities have several members in common.

Concurrent with the above APA and COS transactions, the current ADHCP real property owners, Islip DC Realty, LLC (Central Islip site) and MDDC Realty, LLC (Middle Island site), entered into Contracts of Sale with Central Island Realty 1 LLC and Middle Island Realty 1 LLC, respectively, for the sale and acquisition of the real property associated with the ADHCP sites. The applicant will lease the ADHCP premises from Central Island Realty 1 LLC and Middle Island Realty 1 LLC. There is a relationship between Nesconset ZJ 1 LLC, Central Island Realty 1 LLC and Middle Island Realty 1 LLC in that the entities have several members in common.

The closing of the RHCF and ADHCP real property COSs will be concurrent with the closing of the APA upon approval of this application by the PHHPC.

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

<u>Current Operator</u>	
Nesconset Acquisition LLC	
<u>Members</u>	<u>%</u>
Robert Heppenheimer	33.34%
Anupadevi Lamba	33.33%
Smita Lodha	33.33%

<u>Proposed Operator</u>	
Nesconset ZJ 1 LLC	
<u>Members</u>	<u>%</u>
Nesconset ZJ 1 Holding, LLC	51%
Zipporah Farkas	(50%)
Joseph Schlanger	(50%)
Nesconset Investors, LLC	49%
Leslie Rieder	(40%)
Jonah Jay Lobell	(50%)
Samuel Rieder	(10%)

Concurrently under review, the applicant members of Nesconset ZJ 1 LLC are seeking approval to acquire the operating and realty interests in Hilaire Rehab and Nursing (CON 161181).

OPCHSM Recommendation
Contingent Approval

Need Summary

Occupancy as of June 1, 2016 was 94.6%. With the reduction of twelve beds, occupancy is expected to reach the Department's planning optimum.

Program Summary

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.

Financial Summary

Nesconset ZJ 1 LLC will acquire the operating assets of the RHCF and ADHCPs for \$6,000,000, which will be funded as follows: \$1,160,000 from members' equity with the remaining \$4,840,000 to be assumed by Nesconset ZJ Realty 1 LLC, the proposed real property owner.

Nesconset ZJ Realty 1 LLC will purchase the real property for \$21,950,000. The realty entity will fund the \$26,790,000 total amount required to acquire the real property and assume Nesconset ZJ 1 LLC's debt, as follows: \$2,990,000 from members' equity and a \$23,800,000 loan with a 25-year term, self-amortizing, interest at 30 Day LIBOR plus 7.15% subject to a LIBOR rate floor of 0.5%. Central Island Realty 1 LLC will purchase the real property for one of the ADHCPs for \$5,400,000 funded as follows: \$900,000 from members' equity and a \$4,500,000 loan with a 25-year term, self-amortizing, interest at 30 Day LIBOR plus 7.15% subject to a LIBOR rate floor of 0.5%. Middle Island Realty 1 LLC will purchase the other ADHCP real property for \$5,000,000 funded as follows: \$800,000 from members' equity and a \$4,200,000 loan with a 25-year term, self-amortizing, interest at 30 Day LIBOR plus 7.15% subject to LIBOR rate floor of 0.5%. The 30 Day LIBOR rate was 0.534% as of October 24, 2016.

There are no project costs associated with this proposal. The projected budget is as follows:

	<u>RHCF</u>	<u>ADHCP</u>	<u>Total</u>
Revenues	\$28,275,500	\$7,731,300	\$36,006,800
<u>Expenses</u>	<u>\$30,264,200</u>	<u>\$3,918,200</u>	<u>\$34,182,400</u>
Gain/(Loss)	(\$1,988,700)	\$3,813,100	\$1,824,400

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 assignment and assumption agreement associated with the asset purchase agreement, acceptable to the Department of Health. (BFA)
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
6. Submission of an executed real property loan commitment associated with the purchase of 45 Rocky Point Road, Middle Island, acceptable to the Department of Health. (BFA)
7. Submission of an executed real property loan commitment associated with the purchase of 575 Clayton Street, Central Islip, acceptable to the Department of Health. (BFA)
8. Submission of an executed real property loan commitment associated with the purchase of 100 Southern Boulevard, Nesconset, acceptable to the Department of Health. (BFA)
9. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's dated and executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of evidence of site control, acceptable to the Department. [CSL]
12. Submission of photocopy of an amended and executed Asset Purchase Agreement, acceptable to the Department. [CSL]

13. Submission of a photocopy of the executed and amended Operating Agreement of Nesconset Investors, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of Nesconset Investors LLC application for Authority to Do Business in the State of New York, acceptable to the Department. [CSL]
15. Submission of a plan, acceptable to the Department, to correct the known physical plant Life Safety Code deficiencies. [AER]

Approval conditional upon:

1. The project must be completed within two 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. Correction of all known physical plant Life Safety Code deficiencies within three years of change of ownership of the RHCF. [AER]

Council Action Date

December 8, 2016

Need Analysis

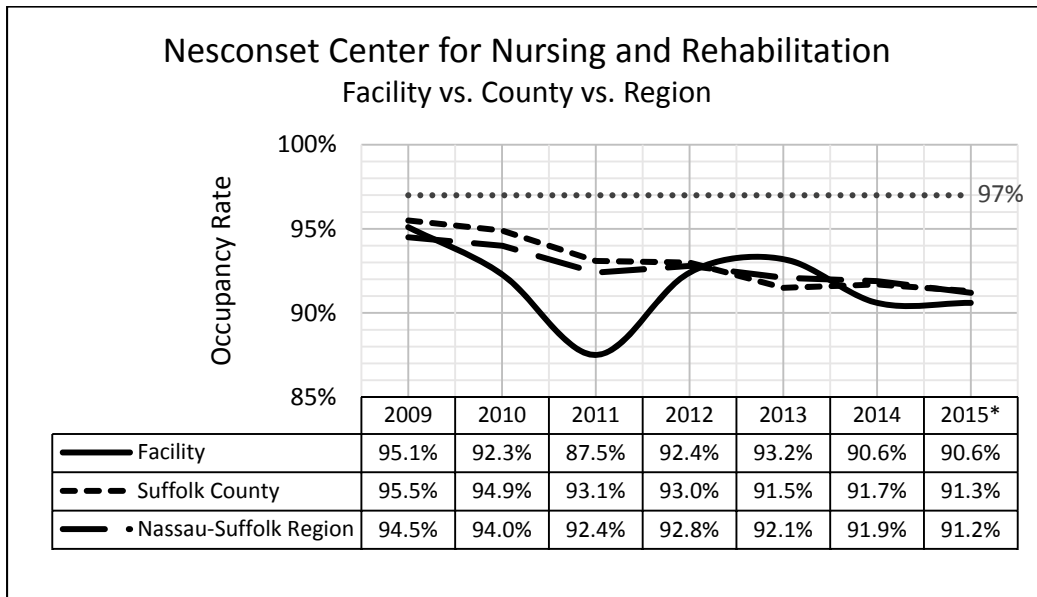
Project Description

Nesconset ZJ 1, LLC, seeks approval to become the established operator of the Nesconset Center for Nursing and Rehabilitation, a 240-bed Article 28 residential health care facility (RHCF), located at 100 Southern Boulevard, Nesconset, Suffolk County. Upon approval, the facility will reduce its total bed capacity by 12 RHCF beds, for a certified capacity of 228 RHCF beds.

Analysis

There is currently a need for 2,003 beds in the Nassau-Suffolk Region as indicated in the table below:

2016 Projected Need	16,962
Current Beds	15,352
Beds Under Construction	-393
Total Resources	14,959
Unmet Need	2,003



*unaudited; facility reported data

The overall 2014 occupancy for the Nassau-Suffolk Region is 91.9% and has been declining over the last six years.

Occupancy at Nesconset Center as of June 1, 2016 was 94.6%. With the reduction of 12 certified beds, occupancy is expected to reach the Department's planning optimum. In addition to the 12-bed reduction, the applicant intends to increase occupancy in the following ways:

- Implement an outreach/education program with Senior Planning Services to admit Medicaid-pending patients. The proposed owner has used Senior Planning Services in partnership with other facilities under their operation and, as a result, Medicaid-pending admissions comprise over 60% of annual long-term care admissions. Acceptance of Medicaid-pending patients may reduce placement of these residents outside their preferred service area.
- Change the model of care to one that directly supports DSRIP program goals and community needs, including: reduce potentially preventable hospital admissions/readmissions through the implementation of the INTERACT model; create a Congestive Heart Failure (CHF) Program as a subset of the INTERACT model to provide daily monitoring, early identification of instability and intervention to avoid hospitalization of CHF patients; provide transfusion and IV therapy services; integrate Palliative Care into the care model; and continue a pulmonary rehabilitation program.

- Design and implement cultural and ethnic programs for the growing Asian Indian, Korean, Chinese, Pakistani, Arab, West Indian and sub-Saharan African populations in the community. The program will develop small ethnic neighborhoods within the facility to address specific cultural, linguistic and spiritual practices and needs of residents. The proposed owner implemented a similar program in New Jersey which increased RHCf facility admissions by 11 new residents in one month.

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.

Nesconset Center for Nursing and Rehabilitation’s Medicaid admissions for 2013 and 2014 are 19.0% and 13.9%, respectively. This facility did not exceed the Suffolk County 75% Medicaid admission threshold rates in 2013 and 2014 of 19.4% and 16.7%, respectively. Thus the facility will be subject to corresponding contingencies upon approval.

Conclusion

Contingent approval of this application will result in maintaining a needed resource for the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Nesconset Center for Nursing and Rehabilitation	Nesconset Center for Nursing and Rehabilitation
Address	100 Southern Boulevard, Nesconset	Same
RHCf Capacity	240	228
ADHC Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Nesconset Acquisition, LLC	Nesconset ZJ 1 LLC <u>Members</u> Nesconset ZJ 1 Holding, LLC 51% Zipporah Farkas (50%) Joseph Schlanger (50%) Nesconset Investors, LLC 49% *Jonah Lobell (50%) Leslie Rieder (40%) Samuel J. Rieder (10%) * Managing Member

Character and Competence - Background

Facilities Reviewed

New York

Newfane Rehabilitation & Health Care Center 12/2015 to present

Massachusetts Nursing Homes

The Reservoir Center for Health and Rehabilitation 06/2012 to present

Colony Center for Health and Rehabilitation 06/2012 to present

Country Center for Health and Rehabilitation 06/2012 to present

Eliot Center for Health and Rehabilitation 06/2012 to present

Newton Wellesley Center for Alzheimer's Care 06/2012 to present

Sachem Center for Health and Rehabilitation 06/2012 to present

Maine Nursing Homes

Augusta Center for Health and Rehabilitation 06/2012 to present

Brentwood Nursing Center for Health and Rehabilitation 06/2012 to present

Brewer Center for Health and Rehabilitation 06/2012 to present

Eastside Center for Health and Rehabilitation 06/2012 to present

Kennebunk Center for Health and Rehabilitation 06/2012 to present

Norway Center for Health and Rehabilitation 06/2012 to present

Winship Green Center for Health and Rehabilitation 06/2012 to present

New Hampshire Nursing Homes

Dover Center for Health and Rehabilitation 06/2012 to present

New Jersey Nursing Home

Warren Haven Nursing Home 09/2015 to present

Individual Background Review

Zipporah Farkas has no previous nursing home experience or ownership interests. Ms. Farkas has a high school diploma and lists no employment history, however she lists volunteer work which is not nursing home related and therefore not being disclosed in this report.

Joseph Schlanger lists his employment as the Executive Director of Warren Haven Nursing Home in Oxford, NJ, since September 2015. Previously, Mr. Schlanger was the Executive Director at Chapin Hill at Red Bank, a nursing home located in Red Bank, New Jersey. He has held this position for over seven years. He has received a Bachelor in Hebrew letters degree. Mr. Schlanger discloses ownership interest in the following health facility:

Warren Haven Nursing Home (NJ) 9/2015 to present

Jonah Lobell lists his employment as the President of Meridian Capital Group, LLC, a mortgage company located in New York, New York. He was previously a licensed stockbroker (Series 7), with license expiring in 2012. Mr. Lobell also continues to consult for his previous employer, Paramount Bio Sciences, a venture capital and drug development firm located in New York, New York. He has received a Bachelor of Arts degree and a Juris Doctor degree. Jonah Lobell discloses the following ownership interests in health facilities:

Newfane Rehabilitation & Health Care Center (NY) 12/2015 to present

The Reservoir Center for Health & Rehabilitation (MA) 06/2012 to present

Colony Center for Health and Rehabilitation (MA) 06/2012 to present

Country Center for Health and Rehabilitation (MA) 06/2012 to present

Eliot Center for Health and Rehabilitation (MA) 06/2012 to present

Newton Wellesley Center for Alzheimer's Care (MA) 06/2012 to present

Sachem Center for Health and Rehabilitation (MA) 06/2012 to present

Augusta Center for Health and Rehabilitation (ME) 06/2012 to present

Brentwood Nursing Center for Health and Rehabilitation (ME) 06/2012 to present

Brewer Center for Health and Rehabilitation (ME) 06/2012 to present

Eastside Center for Health and Rehabilitation (ME)	06/2012 to present
Kennebunk Center for Health and Rehabilitation (ME)	06/2012 to present
Norway Center for Health and Rehabilitation (ME)	06/2012 to present
Winship Green Center for Health and Rehabilitation (ME)	06/2012 to present
Dover Center for Health and Rehabilitation (NH)	06/2012 to present

Leslie Rieder lists his employment as Principal in Rieder Communities, a real estate investment company located in New York, New York. He lists a Bachelor of Science degree. Mr. Rieder discloses no ownership interest in health facilities.

Samuel J. Rieder lists his employment as the Director of Acquisitions at Rieder Communities, a real estate investment company located in New York, New York. He indicates he has a Certificate in Real Estate and a Bachelor in Talmudic Law degree. Mr. Rieder discloses no ownership interest in health facilities.

Character and Competence - Analysis

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

The health facility experience for the proposed operators is based primarily in non-New York State facilities. The Department's access to information for non-New York State facilities is limited and relies on disclosure by the applicant, interviews and documentation from non-New York State regulatory entities (when available), and review of publically available information including Medicare.gov (Nursing Home Compare). The information presented is assumed to be accurate and complete based on assurances and attestations provided by the applicant.

A review of Medicare.gov (Nursing Home Compare), as well as affidavit submitted by the applicant for The Reservoir Center for Health and Rehabilitation, Country Center for Health and Rehabilitation, Eliot Center for Health and Rehabilitation, Newton Wellesley Center for Alzheimer's Care, and Sachem Center for Health and Rehabilitation in the state of Massachusetts for the periods identified above did not disclose enforcement actions against the facilities.

The applicant disclosed that for Colony Center for Health and Rehabilitation (MA) there was an enforcement dated 9/18/2014 under 483.20(k)(3)(ii) – Qualifications of Facility Staff (F0282) & 483.25(h) – Accidents and Supervision (F0323) with a scope and severity of G. The fine was \$3,000, which has been paid. The facility is currently in compliance.

Information received from the State of Maine for Augusta Center for Health and Rehabilitation, Brewer Center for Health and Rehabilitation, Kennebunk Center for Health and Rehabilitation, Norway Center for Health and Rehabilitation, and Winship Green Center for Health and Rehabilitation for the periods identified above did not disclose enforcement actions against the facilities.

The applicant disclosed that Brentwood Nursing Center for Health and Rehabilitation (ME) there was an enforcement dated 2/13/2014 under 483.25 – Quality of Care (F0309) with a scope and severity of G. The fine was \$2,500 which has been paid, and the facility is currently in compliance.

The applicant disclosed that for Eastside Center for Health and Rehabilitation (ME) there was an enforcement dated 2/29/2016 under 483.25(h) – Accidents and Supervision (F0323) with a scope and severity of G & 483.25(c) – Pressure Ulcers (F0314) which was an immediate jeopardy. The fine was \$13,650 which has been paid at a reduction of 35%, and the facility is currently in compliance.

Information was received from the State of New Hampshire stating that Dover Center for Health and Rehabilitation did not have any enforcement actions for the periods identified above.

A review of Medicare.gov (Nursing Home Compare), as well as affidavit submitted by the applicant for Warren Haven Nursing Home in New Jersey for the periods identified above did not disclose enforcement actions against the facility.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
---------------	---------	-------------------	------------------

New York

Newfane Rehab and Health Care Center	**	**	****
--------------------------------------	----	----	------

Massachusetts

Reservoir Center for Health & Rehabilitation, The	**	**	**
Colony Center for Health & Rehabilitation	***	**	*****
Country Center for Health & Rehabilitation	***	**	**
Eliot Center for Health & Rehabilitation	*	*	***
Newton Wellesley Center for Alzheimer's Care	*****	****	*****
Sachem Center for Health & Rehabilitation	**	*	*****

Maine

Augusta Center for Health & Rehabilitation, LLC	*****	***	*****
Brentwood Center for Health & Rehabilitation, LLC	***	**	****
Brewer Center for Health & Rehabilitation, LLC	****	***	***
Eastside Center for Health & Rehabilitation, LLC	**	*	*****
Kennebunk Center for Health & Rehabilitation, LLC	**	*	*****
Norway Center for Health & Rehabilitation, LLC	*****	*****	****
Winship Green Center for Health & Rehab, LLC	****	****	****

New Hampshire

Dover Center for Health & Rehabilitation	*	*	****
--	---	---	------

New Jersey

Warren Haven Rehab and Nursing Center	*	**	**
---------------------------------------	---	----	----

Project Review

This application proposes to establish Nesconset ZJ 1, LLC as the operator of Nesconset Center for Nursing and Rehabilitation. Nesconset ZJ 1, LLC is an existing New York State limited liability company whose members include two newly formed New York State limited liability companies, Nesconset ZJ 1 Holding, LLC and Nesconset Investors, LLC. Nesconset ZJ 1 Holding, LLC and Nesconset Investors, LLC are not known to be the operator of record for any health facility, or a member of any health care related operating entities.

No administrative services or consulting agreements are proposed in this application. A 12-bed decertification is included on this application. 12 two bedded rooms will be converted to one bedded rooms to be used for short term rehabilitation. All of the rooms subject to bed reduction are located in the same wing of the nursing home.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in current compliance with all rules and regulations. The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the operating interests of the RHCF and the ADHCPs. The agreement will become effectuated upon PHHPC approval of this CON application. The terms of the agreement are summarized below:

Date:	September 18, 2014
Seller:	Nesconset Acquisition LLC
Purchaser:	Nesconset ZJ 1 LLC
Assets Transferred:	All rights, title and interest in the business assets lien free. The assets include: the business and operation of a 240-bed nursing home and adult day health care programs at 575 Clayton Street, Central Islip, New York 11722 and 45 Rocky Point Road, Middle Island, New York 11953; leases, inventory, supplies, and other articles of personal property; all Assumed Contracts; resident funds held in trust; any and all trade names, logos, trademarks and service marks; all security deposits and prepayments for future services; all menus, policies and procedures manuals and computer software; all telephone numbers, telefax numbers and domain names; copies of all financial books and records relating to the Facility; all resident/patient records; all employee and payroll records; Seller's Medicare and Medicaid provider agreements and provider numbers; goodwill and licenses and permits.
Excluded Assets:	House on the Middle Island property, Shares of Agewell MLTC, Shares of NYHCA, ADL Server, retroactive rates increases for services prior to closing date, accounts receivable prior to the closing date, securities, real estate tax funds prior to closing date and the assets in the 401(k) and deferred compensation plans.
Assumed Liabilities:	Those occurring after the closing date.
Purchase Price:	\$6,000,000
Payment:	\$300,000 contract deposit \$5,700,000 due at closing

Upon closing, the applicant will retain the supplies on hand, property and equipment and nursing home license, and will transfer the remaining assets to Nesconset ZJ Realty 1 LLC, the proposed real property owner.

The purchase price is proposed to be satisfied as follows:

Equity (Nesconset ZJ 1 LLC Members)	\$1,160,000
Assumed Liability (Nesconset Realty ZJ 1 LLC)	<u>\$4,840,000</u>
Total	\$6,000,000

BFA Attachment A is the net worth summary for the proposed owners, which shows sufficient resources to meet the equity requirement.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 24, 2016, the facility had outstanding Medicaid liabilities totaling \$19,920.46.

Assignment and Assumption Agreement

The applicant has submitted a proposed Assignment and Assumption Agreement for the assignment of the assets associated with the APA, as shown below:

Assignor:	Nesconset ZJ1 LLC
Assignee:	Nesconset ZJ Realty 1 LLC
Assets Transferred:	Goodwill; leasehold improvements; furniture, fixtures, equipment of Nesconset Center for Nursing and Rehabilitation, except those used in the operation of the facility.
Excluded Assets:	All assets not specified above
Considerations:	Liabilities remaining after equity contributions made by members toward the Purchase Price as defined in the Asset Purchase Agreement.

Purchase Agreement for the Real Property

The applicant has submitted executed real estate purchase agreements for the RHCF and ADHCP real property acquisitions. The terms are summarized below:

Date:	September 18, 2014
Seller/Realty (RHCF):	Nesconset NC Realty, LLC
Purchaser Realty:	Nesconset ZJ Realty 1 LLC
Asset Transferred Realty:	100 Southern Boulevard, Nesconset, New York 11767
Purchase Price:	\$21,950,000
Payment of Purchase Price:	\$1,200,000 deposit paid on date of agreement \$20,750,000 due two days prior to closing

Date:	September 18, 2014
Seller/Realty (ADHCP):	MDDC Realty, LLC
Purchaser Realty:	Middle Island Realty 1 LLC
Asset Transferred Realty:	45 Rocky Point Road, Middle Island, New York 11953
Purchase Price:	\$5,000,000
Payment of Purchase Price:	\$280,000 deposit paid on date of agreement \$4,720,000 due two days prior to closing

Date:	September 18, 2014
Seller/Realty (ADHCP):	Islip DC Realty, LLC
Purchaser Realty:	Central Island Realty 1 LLC
Asset Transferred Realty:	575 Clayton Street, Central Islip, New York 11722
Purchase Price:	\$5,400,000
Payment of Purchase Price:	\$300,000 deposit paid on date of agreement \$5,100,000 due two days prior to closing

The proposed financing for the RHCF realty agreement, inclusive of the assumption of the \$4,840,000 liability related to the acquisition of the operating entity, is as follows:

Equity (Nesconset ZJ Realty 1 LLC Members)	\$2,990,000
Loan (25 years, self-amortizing, 30 Day LIBOR (floor 0.5%) + 7.15%)	<u>\$23,800,000</u>
Total	\$26,790,000

The proposed financing for the Middle Island ADHCP realty agreement is as follows:

Equity (Middle Island Realty 1 LLC Members)	\$800,000
Loan (25 years, self-amortizing, 30 Day LIBOR (floor 0.5%) + 7.15%)	<u>\$4,200,000</u>
Total	\$5,000,000

The proposed financing for the Central Islip ADHCP realty agreement is as follows:

Equity (Central Island Realty 1 LLC Members)	\$900,000
Loan (25 years, self-amortizing, 30 Day LIBOR (floor 0.5%) + 7.15%)	<u>\$4,500,000</u>
Total	\$5,400,000

BFA Attachment A is the members' net worth summaries, which reveals sufficient resources to meet the equity requirements. Letters of interest for the respective loans have been provided by Formation Lending Group to finance the purchases at the above stated terms.

Lease Agreement

The applicant has submitted executed lease agreements to lease the RHCF and ADHCP real property, as summarized below:

Date:	December 31, 2014
Landlord:	Nesconset ZJ Realty 1, LLC
Tenant:	Nesconset ZJ 1 LLC
Premises:	100 Southern Boulevard, Nesconset, NY 11767, the parcel upon which the Nesconset ZJ1 LLC 240-bed skilled nursing facility sits
Term:	30 years from commencement
Rent:	\$3,095,054 per annum (\$257,921.17 per month)
Provisions:	Triple Net

Date:	December 31, 2014
Landlord:	Central Island Realty 1, LLC
Tenant:	Nesconset ZJ 1 LLC
Premises:	575 W. Lowell Ave a/k/a 575 Clayton Street, Central Islip, NY 11722, the parcel upon which a 90-registrant Adult Day Health Care Program known as Islip Adult Day Care Center sits
Term:	30 years from commencement
Rent:	\$556,352 per annum (\$46,362.67 per month)
Provisions:	Triple Net

Date:	December 31, 2014
Landlord:	Middle Island Realty 1, LLC
Tenant:	Nesconset ZJ 1 LLC
Premises:	45 Rocky Point Road, Middle Island, NY 11953, the parcel upon which a 75-registrant Adult Day Health Care Program known as Middle Island Adult Day Health Care Program sits
Term:	30 years from commencement
Rent:	\$519,157 per annum (\$43,263.08 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. There is a relationship between the proposed operator and the proposed real property owners in that they share four members in common.

Operating Budget

The applicant has provided the current year (2015) budget at 240 beds, and their budget at 228 beds, in 2016 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

RHCF	<u>Current Year (240 Beds)</u>		<u>Year One (228 Beds)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues				
Commercial	\$373.97	\$330,964	\$454.39	\$2,791,300
Medicare	\$572.52	\$5,978,286	\$657.46	\$7,328,700
Medicaid	\$283.80	\$18,523,872	\$276.36	\$15,599,900
Private Pay	\$416.56	\$1,321,752	\$454.39	\$2,417,800
Other Operating Revenue*		<u>\$360,441</u>		<u>\$137,800</u>
Total Revenues		\$26,515,315		\$28,275,500
Expenses				
Operating	\$355.32	\$28,344,085	\$341.50	\$26,998,300
Capital	<u>\$25.42</u>	<u>\$2,027,771</u>	<u>\$41.31</u>	<u>\$3,265,900</u>
Total Expenses	\$380.74	\$30,371,856	\$382.81	\$30,264,200
Net Income		<u>(\$3,856,541)</u>		<u>(\$1,988,700)</u>
Utilization (patient days)		79,771		79,059
Occupancy		91.06%		95.00%

* Cafeteria, gift shop, discounts/rebates, TV & radio rentals, vending machine and medical record fees.

The following is noted with respect to the submitted budget:

- Revenue assumptions for Medicare, Private Pay and Commercial payors are based on the current operator's actual 2016 payment rates for the respective payors. The Medicaid rate is based on facility's 2015 Medicaid Regional Pricing rate with a 2.5% increase to project to rate year 2016.
- Expense assumptions are based on the historical experience of the facility, taking into consideration reductions to reflect the decertification of 12 RHCF beds and other cost containment measures.
- Expenses are expected to decline in Year One based on:
 - Reductions to salaries and benefits, purchased and contracted services and administrative costs related to the elimination of the Executive Director and Director of Human Services positions (reflected in the applicant's projected elimination of 13.8 FTEs in Year One);
 - Reduced legal fees; and
 - Reductions in laundry, housekeeping and patient food costs.
- Other revenue for cafeteria, gift shop, television and radio rentals, medical records fees and vending machine commissions were projected based on historical experience, adjusted to remove miscellaneous income and recovery of bad debts.
- Current Year (2015) occupancy is based on the facility's current 240 RHCF certified bed count. First Year occupancy is based on 228 certified beds, incorporating the decertification of 12 RHCF beds.
- The applicant believes anticipated program changes will support their participation in the Stony Brook University Hospital PPS and facilitate a transition to value based reimbursement.
- Utilization by payor source for the RHCF for the first year after the change in operator is as follows:

	<u>Current Year (240 Beds)</u>		<u>Year One (228 Beds)</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial	885	1.11%	6,143	7.77%
Medicare	10,442	13.09%	11,147	14.10%
Medicaid	65,271	81.82%	56,448	71.40%
Private Pay	<u>3,173</u>	<u>3.98%</u>	<u>5,321</u>	<u>6.73%</u>
Total	79,771	100%	79,059	100%

The current year (2015) and first year operating budget for the ADHCPs is summarized as follows:

<u>ADHCP</u>	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid	\$189.23	\$8,150,611	\$157.61	\$7,468,900
Private Pay	\$189.79	\$124,121	\$214.91	\$262,400
Total	\$189.24	\$8,274,732	\$159.05	\$7,731,300
<u>Expenses</u>	\$101.53	\$4,439,617	\$80.60	\$3,918,200
Net Income		<u>\$3,835,115</u>		<u>\$3,813,100</u>
Utilization (Visits)		43,726		48,610

- ADHCP projections reflect the combined expenses and revenues of the Central Islip and Middle Island sites.
- The projected ADHCP visits will be 97.49% Medicaid and 2.51% Private Pay in Year One.
- Maximum ADHCP visits are 54,340 based on a seven-day week with reduced weekend capacity. ADHCP utilization is projected at 89.46% in Year One.

The combined revenues and expenses during the current and first year for the RHCF and ADHCP services are as follows:

<u>Combined Budget</u>	<u>Current Year</u>	<u>First Year</u>
Revenues	\$34,790,047	\$36,006,800
Expenses	\$34,811,473	\$34,182,400
Gain/(Loss)	-\$21,426	\$1,824,400

The projected budget appears reasonable.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the operating interests in the RHCF and ADHCPs is \$6,000,000, which will be funded with \$1,160,000 from member's equity with liability for the remaining \$4,840,000 to be assumed by the proposed real property owner, Nesconset ZJ Realty 1 LLC. Concurrent with the closing of the APA, Nesconset ZJ Realty 1 LLC will purchase the RHCF real property for \$21,950,000 funded as follows: \$2,990,000 in members' equity along with a \$23,800,000 loan at the above stated terms (includes the assumption of the \$4,840,000 liability for the operating interest). Central Island Realty 1 LLC will purchase the Central Islip ADHCP's real property for \$5,400,000 funded with \$900,000 members' equity along with a \$4,500,000 loan at the above stated terms. Middle Island Realty 1 LLC will purchase the Middle Island ADHCP's real property for \$5,000,000 funded with \$800,000 members' equity and a \$4,200,000 loan at the terms stated above. BFA Attachment A is the members' net worth summaries, which shows sufficient liquid assets to complete the transactions.

The working capital requirements are estimated at \$5,697,067 based on two months of the first year expenses. The applicant indicated working capital would be satisfied in excess of the two-month requirement with \$3,100,000 in members' equity and a \$3,100,000 five-year term loan at 6.5% interest. The applicant submitted a letter of interest in regard to the financing. As referenced above, there are sufficient resources to satisfy the project's equity requirements.

The submitted budget projects net profit of \$1,824,400 in Year One after the change in ownership based in part on a \$629,073 reduction in expenses concurrent with the decertification of 12 RHCF beds. BFA Attachment D is Nesconset ZJ 1 LLC's pro forma balance sheet as of the first day of operation, which shows members' equity of \$4,260,000. As a result of the proposed Assignment and Assumption Agreement, leasehold improvements and goodwill are not included in the proposed operator's balance sheet.

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. Suffolk County has transitioned to Medicaid Managed Care for new enrollees. The applicant states that Nesconset has entered into contracts with fourteen Managed Long Term Care plans in Suffolk County.

BFA Attachment C is the 2014-2016 financial summary of Nesconset Acquisition, LLC. As shown, the facility had an average negative working capital position of \$1,410,903, average positive net assets of \$2,662,933 and generated an average loss of \$876,301 for the period. The applicant indicated that the negative performance was due to excessive management and accounting fees, excessive salaries for select administrative, food service and custodial personnel, and excessive contract service costs. These expenses are being brought into line or will be eliminated with the change in operator. The ADHCP operations favorably impact the profitability the overall operations.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Summary for the members of Nesconset ZJ1 LLC
BFA Attachment B	Current and Proposed Owners of the real property
BFA Attachment C	Nesconset Acquisition, LLC 2014-2016 financial summary
BFA Attachment D	Pro Forma Balance Sheet for Nesconset ZJ1 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 8th day of December, 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 Nesconset ZJ 1 LLC as the new operator of the 240 bed facility located at 100 Southern Boulevard, Nesconset, currently operated by Nesconset Acquisition, LLC , and decertify 12 RHCF beds (Amends and Supercedes Project No. 142278), 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:

161180 E

FACILITY/APPLICANT:

Nesconset ZJ1 LLC d/b/a Nesconset Center
for Nursing and Rehabilitation

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 assignment and assumption agreement associated with the asset purchase agreement, acceptable to the Department of Health. (BFA)
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
6. Submission of an executed real property loan commitment associated with the purchase of 45 Rocky Point Road, Middle Island, acceptable to the Department of Health. (BFA)
7. Submission of an executed real property loan commitment associated with the purchase of 575 Clayton Street, Central Islip, acceptable to the Department of Health. (BFA)
8. Submission of an executed real property loan commitment associated with the purchase of 100 Southern Boulevard, Nesconset, acceptable to the Department of Health. (BFA)
9. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's dated and executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]

11. Submission of a photocopy of evidence of site control, acceptable to the Department. [CSL]
12. Submission of photocopy of an amended and executed Asset Purchase Agreement, acceptable to the Department. [CSL]
13. Submission of a photocopy of the executed and amended Operating Agreement of Nesconset Investors, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of Nesconset Investors LLC application for Authority to Do Business in the State of New York, acceptable to the Department. [CSL]
15. Submission of a plan, acceptable to the Department, to correct the known physical plant Life Safety Code deficiencies. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within two 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. Correction of all known physical plant Life Safety Code deficiencies within three years of change of ownership of the RHCF. [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 # 161181-E
Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Suffolk
Acknowledged: March 22, 2016

Executive Summary

Description

This application amends and supersedes CON 142279. Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing, a New York limited liability company, requests approval to be established as the operator of Hilaire Rehab & Nursing, a 76-bed, proprietary, Article 28 residential health care facility (RHCF) located at 9 Hilaire Drive, Huntington (Suffolk County). The facility is currently operated by Hilaire Farm Skilled Living & Rehabilitation Center, LLC (Hilaire Farm). A separate entity, Huntington Realty 1, LLC, will acquire the real property. There will be no change in beds or services provided.

On September 18, 2014, Hilaire Farm entered into an Asset Purchase Agreement (APA) with Huntington Acquisition 1, LLC for the sale and acquisition of the operating interests of the RHCF. Concurrently, the realty owner, Skillaire, LLC, entered into a Real Estate Purchase Agreement (REPA) with Huntington Realty 1, LLC for the sale and acquisition of the facility's real property. The APA and REPA will close at the same time upon approval of this application by the Public Health and Health Planning Council (PHHPC). There is a relationship between Huntington Acquisition 1, LLC and Huntington Realty 1, LLC in that the entities have several members in common. The applicant will lease the premises from Huntington Realty 1, LLC.

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

Current Operator

Hilaire Farm Skilled Living & Rehabilitation Center, LLC

<u>Members</u>	<u>%</u>
Robert Heppenheimer	33.34%
Anupadevi Lamba	33.33%
Ajay Lodha	33.33%

Proposed Operator

Huntington Acquisition 1, LLC
d/b/a Hilaire Rehab & Nursing

<u>Members</u>	<u>%</u>
Huntington ZJ1 Holding LLC	51%
Zipporah Farkas (50%)	
Joseph Schlanger (50%)	
Nesconset Investors LLC	49%
Jonah Lobell (50%)	
Leslie Rieder (40%)	
Samuel J Rieder (10%)	

At closing, Huntington Acquisition 1, LLC will enter into an Assignment and Assumption Agreement with Huntington Realty 1, LLC to transfer goodwill and leasehold improvements in exchange for Huntington Realty 1, LLC assuming the liabilities related to the acquisition of the operating interest. Huntington Acquisition 1, LLC will retain the operating license and equipment necessary to operate the facility, and Huntington Realty 1, LLC will assume the operator's mortgage liability at the time of closing.

Concurrently under review, the applicant members of Huntington Acquisition 1, LLC and the realty members of Huntington Realty 1, LLC are seeking approval to acquire the operating and realty interests, respectively, in Nesconset Center for Nursing and Rehabilitation (CON 161180).

OPCHSM Recommendation
Contingent Approval

Need Summary

The change in ownership will not result in any change in beds or services. Hilaire's occupancy was 89.4% in 2012, 89.5% in 2013 and 86.3% in 2014. Occupancy as of May 4, 2016 is 78.9%.

Program Summary

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.

Financial Summary

Huntington Acquisition 1, LLC will acquire the RHC operating assets for \$1,900,000 funded with members' equity of \$610,000 and the remaining \$1,290,000 to be assumed by the proposed real property owner, Huntington Realty 1, LLC.

Huntington Realty 1, LLC will purchase the real property for \$5,750,000 and will fund the total \$7,040,000 required to acquire the real property and assume Huntington Acquisition 1, LLC's debt with \$540,000 from members' equity, and a loan for \$6,500,000 with a 25-year term, self-amortizing, interest at 30 Day LIBOR plus 7.15% subject to a LIBOR rate floor of 0.5%. The 30 Day Libor rate was 0.534% as of October 24, 2016. Formation Lending Group has provided a letter of interest. There are no project costs associated with this application. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$9,940,500
Expenses	<u>\$9,827,500</u>
Net Income	\$113,000

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed assignment and assumption agreement associated with the asset purchase agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
8. Submission of a photocopy of Nesconset Investors, LLC's application Authority to Business in the State of New York, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed and amended Operating Agreement of Nesconset Investors, LLC, acceptable to the Department. [CSL]
10. Submission of an amended Operating Agreement for Huntington ZJ 1 Holding, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the amended and executed Certificate of Amendment of Articles of Organization of Huntington Acquisition 1, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of evidence of site control, acceptable to the Department. [CSL]
13. Submission of a plan, acceptable to the Department, to correct the known physical plant Life Safety Code deficiencies. [AER]

Approval conditional upon:

1. The project must be completed within two 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. Correction of all known physical plant Life Safety Code deficiencies within three years of change of ownership of the RHCF. [AER]

Council Action Date

December 8, 2016

Need Analysis

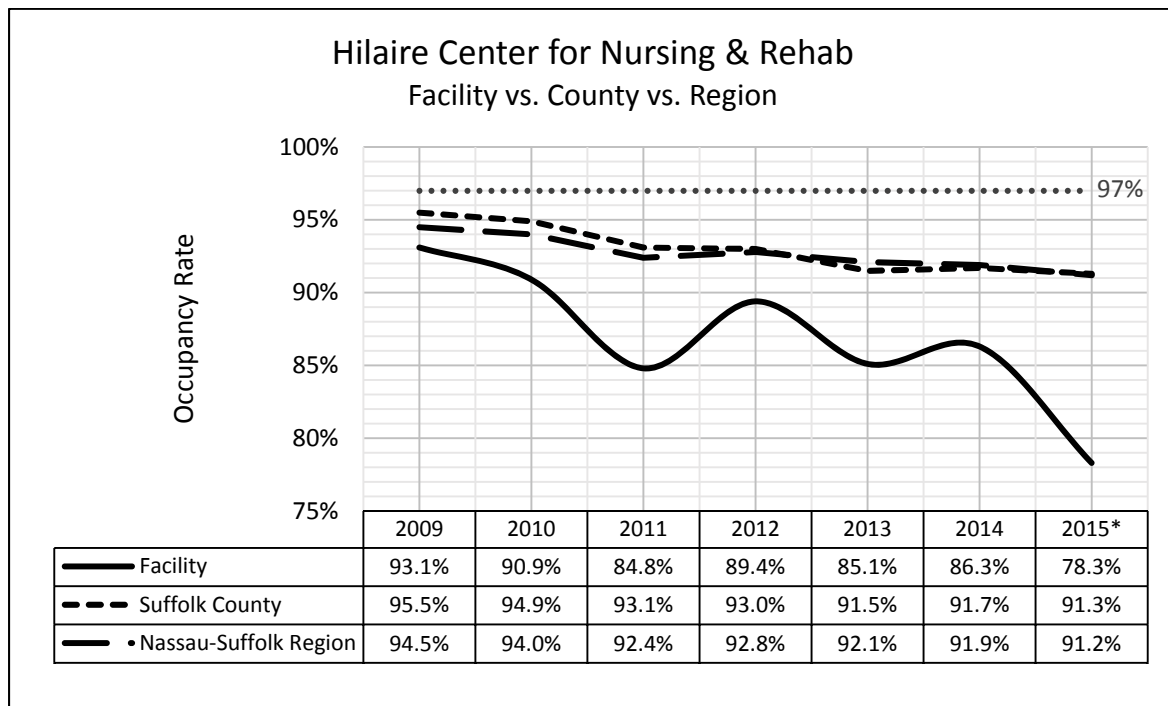
Project Description

Huntington Acquisition 1, LLC, seeks approval to become the established operator of Hilaire Rehab & Nursing, a 76-bed, Article 28 residential health care facility (RHCF) located at 9 Hilaire Drive, Huntington, Suffolk County.

Analysis

There is currently a need for 2,003 beds in the Nassau-Suffolk Region as indicated in the table below:

2016 Projected Need	16,962
Current Beds	15,352
Beds Under Construction	-393
Total Resources	14,959
Unmet Need	2,003



*unaudited; facility reported data

The overall 2014 occupancy for the Nassau-Suffolk Region was 91.9%. Hilaire's occupancy was 89.4% in 2012, 85.1% in 2013 and 86.3% in 2014. According to the applicant, the facility experienced historically low occupancy due to a patient population that relies heavily on rehabilitative services, which, due to the related shorter lengths of stay, contributes to lower occupancy rates. The recent decline in occupancy in 2015 is attributed to replacement of the facility's administrator as well as the current owner being out of the country for an extended period of time, resulting in a lack of leadership to focus on resident admissions.

The facility is located in a stately mansion, which provides a homelike environment for residents. The small size of the facility, with all private, single rooms, facilitates individualized care and a high staff-to-patient ratio. The proposed operators plan to use these features to increase the facility's occupancy to the Department's planning optimum by Year 3. To achieve this, the proposed operator will implement the following:

- Establish an enhanced relationship with Huntington Hospital, located one mile away, and North Shore LIJ Health System to facilitate admissions.
- Initiate an outreach/education program with Senior Planning Services to admit Medicaid-pending patients. The proposed owner has used Senior Planning Services in partnership with other facilities under their operation and, as a result, Medicaid-pending admissions comprise over 60% of annual long-term care admissions. Acceptance of Medicaid-pending patients may reduce placement of these residents outside their preferred service area.
- Change the model of care to one that directly supports DSRIP program goals and community needs including: reduce potentially preventable hospital admissions/readmissions through the implementation of the INTERACT model; create a Congestive Heart Failure (CHF) Program as a subset of the INTERACT model to provide daily monitoring, early identification of instability and intervention to avoid hospitalization of CHF patients; provide transfusion and IV therapy services; integrate Palliative Care into the care model; and continue a pulmonary rehabilitation program.

Although no bed reductions is requested for Hilaire Nursing and Rehab, this application is being considered concurrently with CON #161180 for Nesconset Nursing Center, for which the Applicant has agreed to decertify 12 beds in connection with the purchase of that facility by the same prospective owners as those for Hilaire. Therefore, from a planning perspective, there will be an overall reduction in excess bed capacity in the Nassau-Suffolk region in the processing of these two transactions.

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.

Hilaire's Medicaid admissions for 2013 and 2014 are 10.3% and 15.1%, respectively. This facility did not exceed the Suffolk County 75% Medicaid admission threshold rates in 2013 and 2014 of 19.4% and 16.6%, respectively. The facility will be subject to corresponding contingencies upon approval.

Conclusion

Approval of this application will maintain a needed resource for the residents of Suffolk County and the Nassau-Suffolk Region.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Hilaire Rehab & Nursing	Hilaire Rehab & Nursing
Address	9 Hilaire Drive, Huntington	Same
RHCF Capacity	76	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Hilaire Farm Skilled Living & Rehabilitation Center, LLC	Huntington Acquisition 1, LLC <u>Members</u> Huntington ZJ 1 Holding, LLC 51% * Zipporah Farkas (50%) Joseph Schlanger (50%) Nesconset Investors, LLC 49% *Jonah Lobell (50%) Leslie Rieder (40%) Samuel J. Rieder (10%) * Managing Member

Character and Competence - Background

Facilities Reviewed

New York

Newfane Rehabilitation & Health Care Center 12/2015 to present

Massachusetts Nursing Homes

The Reservoir Center for Health and Rehabilitation 06/2012 to present
 Colony Center for Health and Rehabilitation 06/2012 to present
 Country Center for Health and Rehabilitation 06/2012 to present
 Eliot Center for Health and Rehabilitation 06/2012 to present
 Newton Wellesley Center for Alzheimer's Care 06/2012 to present
 Sachem Center for Health and Rehabilitation 06/2012 to present

Maine Nursing Homes

Augusta Center for Health and Rehabilitation 06/2012 to present
 Brentwood Nursing Center for Health and Rehabilitation 06/2012 to present
 Brewer Center for Health and Rehabilitation 06/2012 to present
 Eastside Center for Health and Rehabilitation 06/2012 to present
 Kennebunk Center for Health and Rehabilitation 06/2012 to present
 Norway Center for Health and Rehabilitation 06/2012 to present
 Winship Green Center for Health and Rehabilitation 06/2012 to present

New Hampshire Nursing Homes

Dover Center for Health and Rehabilitation 06/2012 to present

New Jersey Nursing Home

Warren Haven Nursing Home 09/2015 to present

Individual Background Review

Zipporah Farkas has no previous nursing home experience or ownership interests. Ms. Farkas has a high school diploma and lists no employment history, however she lists volunteer work which is not nursing home related and therefore not being disclosed in this report.

Joseph Schlanger lists his employment as the Executive Director of Warren Haven Nursing Home in Oxford, NJ, since September 2015. Previously, Mr. Schlanger was the Executive Director at Chapin Hill at Red Bank, a nursing home located in Red Bank, New Jersey. He has held this position for over seven years. He has received a Bachelor in Hebrew letters degree. Mr. Schlanger discloses ownership interest in the following health facility:

Warren Haven Nursing Home (NJ)	9/2015 to present
--------------------------------	-------------------

Jonah Lobell lists his employment as the President of Meridian Capital Group, LLC, a mortgage company located in New York, New York. He was previously a licensed stockbroker (Series 7), with license expiring in 2012. Mr. Lobell also continues to consult for his previous employer, Paramount Bio Sciences, a venture capital and drug development firm located in New York, New York. He has received a Bachelor of Arts degree and a Juris Doctor degree. Jonah Lobell discloses the following ownership interests in health facilities:

Newfane Rehabilitation & Health Care Center (NY)	12/2015 to present
The Reservoir Center for Health & Rehabilitation (MA)	06/2012 to present
Colony Center for Health and Rehabilitation (MA)	06/2012 to present
Country Center for Health and Rehabilitation (MA)	06/2012 to present
Eliot Center for Health and Rehabilitation (MA)	06/2012 to present
Newton Wellesley Center for Alzheimer's Care (MA)	06/2012 to present
Sachem Center for Health and Rehabilitation (MA)	06/2012 to present
Augusta Center for Health and Rehabilitation (ME)	06/2012 to present
Brentwood Nursing Center for Health and Rehabilitation (ME)	06/2012 to present
Brewer Center for Health and Rehabilitation (ME)	06/2012 to present
Eastside Center for Health and Rehabilitation (ME)	06/2012 to present
Kennebunk Center for Health and Rehabilitation (ME)	06/2012 to present
Norway Center for Health and Rehabilitation (ME)	06/2012 to present
Winship Green Center for Health and Rehabilitation (ME)	06/2012 to present
Dover Center for Health and Rehabilitation (NH)	06/2012 to present

Leslie Rieder lists his employment as Principal in Rieder Communities, a real estate investment company located in New York, New York. He lists a Bachelor of Science degree. Mr. Rieder discloses no ownership interest in health facilities.

Samuel J. Rieder lists his employment as the Director of Acquisitions at Rieder Communities, a real estate investment company located in New York, New York. He indicates he has a Certificate in Real Estate and a Bachelor in Talmudic Law degree. Mr. Rieder discloses no ownership interest in health facilities.

Character and Competence - Analysis

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

The health facility experience for the proposed operators is based primarily in non-New York State facilities. The Department's access to information for non-New York State facilities is limited and relies on disclosure by the applicant, interviews and documentation from non-New York State regulatory entities (when available), and review of publically available information including Medicare.gov (Nursing Home Compare). The information presented is assumed to be accurate and complete based on assurances and attestations provided by the applicant.

A review of Medicare.gov (Nursing Home Compare), as well as affidavit submitted by the applicant for The Reservoir Center for Health and Rehabilitation, Country Center for Health and Rehabilitation, Eliot Center for Health and Rehabilitation, Newton Wellesley Center for Alzheimer's Care, and Sachem Center for Health and Rehabilitation in the state of Massachusetts for the periods identified above did not disclose enforcement actions against the facilities.

The applicant disclosed that for Colony Center for Health and Rehabilitation (MA) there was an enforcement dated 9/18/2014 under 483.20(k)(3)(ii) – Qualifications of Facility Staff (F0282) & 483.25(h) – Accidents and Supervision (F0323) with a scope and severity of G. The fine was \$3,000, which has been paid. The facility is currently in compliance.

Information received from the State of Maine for Augusta Center for Health and Rehabilitation, Brewer Center for Health and Rehabilitation, Kennebunk Center for Health and Rehabilitation, Norway Center for Health and Rehabilitation, and Winship Green Center for Health and Rehabilitation for the periods identified above did not disclose enforcement actions against the facilities.

The applicant disclosed that for Brentwood Nursing Center for Health and Rehabilitation (ME) there was an enforcement dated 2/13/2014 under 483.25 – Quality of Care (F0309) with a scope and severity of G. The fine was \$2,500 which has been paid, and the facility is currently in compliance.

The applicant disclosed that for Eastside Center for Health and Rehabilitation (ME) there was an enforcement dated 2/29/2016 under 483.25(h) – Accidents and Supervision (F0323) with a scope and severity of G & 483.25(c) – Pressure Ulcers (F0314) which was an immediate jeopardy. The fine was \$13,650 which has been paid at a reduction of 35%, and the facility is currently in compliance.

Information was received from the State of New Hampshire stating that Dover Center for Health and Rehabilitation did not have any enforcement actions for the periods identified above.

A review of Medicare.gov (Nursing Home Compare), as well as affidavit submitted by the applicant for Warren Haven Nursing Home in New Jersey for the periods identified above did not disclose enforcement actions against the facility.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
---------------	---------	-------------------	------------------

New York

Newfane Rehab and Health Care Center	**	**	****
--------------------------------------	----	----	------

Massachusetts

Reservoir Center for Health & Rehabilitation, The	**	**	**
Colony Center for Health & Rehabilitation	***	**	*****
Country Center for Health & Rehabilitation	***	**	**
Eliot Center for Health & Rehabilitation	*	*	***
Newton Wellesley Center for Alzheimer's Care	*****	****	*****
Sachem Center for Health & Rehabilitation	**	*	*****

Provider Name	Overall	Health Inspection	Quality Measures
---------------	---------	-------------------	------------------

Maine

Augusta Center for Health & Rehabilitation, LLC	*****	***	*****
Brentwood Center for Health & Rehabilitation, LLC	***	**	****
Brewer Center for Health & Rehabilitation, LLC	****	***	***
Eastside Center for Health & Rehabilitation, LLC	**	*	*****
Kennebunk Center for Health & Rehabilitation, LLC	**	*	*****
Norway Center for Health & Rehabilitation, LLC	*****	*****	****
Winship Green Center for Health & Rehab, LLC	****	****	****

New Hampshire

Dover Center for Health & Rehabilitation	*	*	****
--	---	---	------

New Jersey

Warren Haven Rehab and Nursing Center	*	**	**
---------------------------------------	---	----	----

Project Review

This application proposes to establish Huntington Acquisition 1, LLC as the operator of Hilaire Rehab and Nursing. Huntington Acquisition 1, LLC is an existing New York State limited liability company whose members include two newly formed New York State limited liability companies, Huntington ZJ 1 Holding, LLC and Nesconset Investors, LLC. Huntington ZJ 1 Holding, LLC and Nesconset Investors, LLC is not known to be the operator of record on any health facility, or be the member of any health care related operating entities.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in current compliance with all rules and regulations. The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the RHCF's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	September 18, 2014
Seller:	Hilaire Farm Skilled Living & Rehabilitation Center, LLC
Purchaser:	Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing
Assets Transferred:	All rights, title and interest in the business assets lien free, the business and operation of the facility. The assets include leases, inventory, supplies, and other articles of personal property, all assumed contracts, resident funds held in trust, trade names, logos, trademarks and service marks, all security deposits and prepayments for future services, all menus, policies and procedures manuals and computer software, telephones numbers, telefax numbers and domain names, copies financial books and records relating to the facility, all resident/patient records, all employees payroll records, Seller's Medicare and Medicaid provider numbers, goodwill will and licenses and permits.
Excluded Assets:	Pre-closing accounts receivables; retroactive rate increases for services prior to closing date, securities, refunds and settlements prior to closing, and assets in 401 (k) and deferred compensation plans.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	\$1,900,000
Payment:	\$100,000 escrow deposit (paid at the time of signing) \$1,800,000 due at closing.

Upon closing, the applicant will retain the nursing home license, supplies on hand, and the equipment necessary to operate the facility. The applicant will transfer the remaining assets to the new real property owner.

The purchase price will be satisfied as follows:

Equity (Huntington Acquisition 1, LLC Members)	\$610,000
Assumed Liability (Huntington Realty 1, LLC)	<u>\$1,290,000</u>
Total	<u>\$1,900,000</u>

BFA Attachment A is the net worth summary for the members of Huntington Acquisition 1, LLC, which reveals sufficient resources to meet the equity requirements.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 31, 2016, the facility had no outstanding Medicaid liabilities.

Assignment and Assumption Agreement

The applicant has submitted a draft Assignment and Assumption Agreement to assign certain assets to Huntington Realty 1, LLC, as summarized below:

Assignor:	Huntington Acquisition 1, LLC
Assignee:	Huntington Realty 1, LLC
Assets Transferred:	Goodwill, leasehold improvements, furniture, fixtures and equipment of Hilaire Rehab & Nursing, except those used in the operation of the facility.
Assets Excluded:	All assets not specified above
Considerations:	Liabilities remaining after equity contribution made by members towards the purchase price as defined in the Asset Purchase Agreement.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed real estate purchase agreement related to the purchase of the RHCF's real property. The agreement close concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	September 18, 2014
Seller Realty:	Skillaire, LLC
Purchaser Realty:	Huntington Realty 1, LLC
Asset Transferred: (Realty)	All rights, title and interest in the real property including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 9 Hilaire Drive, Huntington, New York 11743 and further identified as (Section 97, Block 2, Lots 85,86, and 87 in the County of Suffolk).
Purchase Price:	\$5,750,000 (realty)
Payment of Purchase Price:	\$320,000 escrow deposit (paid at the time of signing) \$5,430,000 due at closing (includes assumed liability of operator)

The purchase price, inclusive of the assumption of liabilities related to the acquisition of the operating interest, is proposed to be satisfied as follows:

Equity (Huntington Realty 1, LLC Members)	\$ 540,000
Loan ((25 years, self-amortizing, 30 Day Libor (0.5% floor) + 7.15%)	<u>\$6,500,000</u>
Total	<u>\$7,040,000</u>

BFA Attachment A is the proposed members' net worth summaries of Huntington Realty 1, LLC, which reveals sufficient resources to meet the equity requirements. A letter of interest has been provided by Formation Lending Group to finance the above referenced purchases.

Lease Agreement

An executed lease was submitted to lease the RHCF real property. The terms are summarized below:

Date:	December 31, 2014
Premises:	76-bed RHCF located at 9 Hilaire Drive, Huntington, NY 11743
Owner/Landlord:	Huntington Realty 1, LLC
Lessee:	Huntington Acquisitions 1, LLC
Term:	323 months
Rent:	\$669,628 per year (\$55,802 per month)
Provisions:	Triple Net. Tenant responsible for taxes, insurance, maintenance & utilities.

The applicant has submitted an affidavit indicating that the lease agreement will be non-arm's length.

Currently, Medicaid capital reimbursement is based on return of/return on equity methodology, which will not be altered upon the change in ownership.

Operating Budget

The applicant has provided the current year (2015) budget and their operating budget, in 2016 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid-FFS	\$272.16	\$4,245,643	\$260.92	\$4,239,200
Medicare-FFS	\$526.06	\$2,340,449	\$636.24	\$3,992,400
Private Pay	\$290.04	\$713,220	\$438.94	\$1,682,000
All Other		<u>\$40,187</u>		<u>\$26,900</u>
Total Revenue		\$7,339,499		\$9,940,500
 <u>Expenses</u>				
Operating	\$363.41	\$8,179,724	\$344.33	\$9,074,500
Capital	<u>\$23.80</u>	<u>\$535,832</u>	<u>\$28.57</u>	<u>\$753,000</u>
Total	\$387.21	\$8,715,556	\$372.90	\$9,827,500
Net Income		<u>(\$1,376,057)</u>		<u>\$113,000</u>
Utilization (Patient days)		22,508		26,354
Occupancy		81.0%		95.0%

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

- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate.
- The Medicare rate is the actual daily rate experienced by the facility during 2015, adjusted based on applicant's experience with similar sized facilities out of state. Private Pay and Other payment rates are based on the facility's actual 2015 rates.
- Expense assumptions are based on the current experience of the facility in 2015, adjusted to the projected census in the first and third years. Lease rental expense per the executed lease has been included.
- The breakeven utilization is projected at 93.92% or 26,054 patient days.
- Utilization by payor for the current and first year after the ownership change is summarized below:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	15,600	69.3%	16,247	61.7%
Medicare-FFS	4,449	19.8%	6,275	23.8%
Private Pay	<u>2,459</u>	<u>10.9%</u>	<u>3,832</u>	<u>14.5%</u>
Total	22,508	100.0%	26,354	100.0%

Capability and Feasibility

The purchase price for the RHCf's operating interest is \$1,900,000 and will be funded via \$610,000 in members' equity with the remaining \$1,290,000 to be assumed by the proposed real property owner, Huntington Realty 1, LLC. Concurrently, Huntington Realty 1, LLC will purchase the real property for \$5,750,000 to be funded as follows: \$540,000 in members' equity and a \$6,500,000 loan at the above stated terms (includes assumption of \$1,290,000 operating interest liability). Formation Lending Group has provided a letter of interest for the loan. BFA Attachment A is the members' net worth summaries for the operator and realty entities, which shows sufficient assets to complete the transactions. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,637,916 based on approximately two months of Year One expenses. The applicant will provide \$818,958 from the members' equity with the remaining \$818,958 to be satisfied through a five-year term loan at 6.5% interest rate. Formation Lending Group

has provided a letter of interest. As referenced above, the members have sufficient liquid resources to meet both the project equity and working capital requirements.

The submitted budget projects net profit of \$113,000 in Year One after the change in ownership. The budget was created taking into consideration the proposed new owners' experience operating similar sized facilities (out of state RHCFS). The proposed operator projects to increase occupancy by refocusing on implementing various programs, as stated above. BFA Attachment D is Huntington Acquisition 1, LLC's and Huntington Realty 1, LLC's pro forma balance sheet, which shows the entities will start with \$1,428,959 (operating) and \$540,000 (realty) in members' equity, respectively. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy paper provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period. Suffolk County has transitioned to Medicaid Managed Care for new enrollees.

BFA Attachment C is the 2014 - 2015 certified Financial Summary of Hilaire Farm Skilled Living & Rehabilitation Center, LLC and their internal financials as of June 30, 2016. As shown, the RHCF had an average negative working capital position of \$1,183,368, average positive net assets of \$160,848, and an average negative income of \$735,784 for the period. The applicant indicated that the reason for the negative performance was due to low occupancy. During this period, the facility's average occupancy was 82.36%. The proposed sale of the nursing home is expected to result in improved utilization due to the aforementioned service enhancements and the satisfaction of liabilities with no impairment on the assets, thus improving the total net asset position. As shown on BFA Attachment C, the consolidated certified financial statement of Hilaire Farm Skilled Living & Rehabilitation Center and Skillaire, LLC for 2015 shows that the RHCF and the realty entity had a negative working capital position of \$1,385,750 and negative net assets position of \$260,611.

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	Net Worth of Proposed Members of Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing and Huntington Realty 1, LLC
BFA Attachment B	Pre and Post Ownership of the RHCF Realty
BFA Attachment C	Financial Summary of Hilaire Farm Skilled Living & Rehabilitation Center, LLC and 2015 Certified Financial Statement of Hilaire Farm Skilled Living & Rehabilitation Center, LLC and Skillaire, LLC
BFA Attachment D	Pro Forma Balance Sheet, Huntington Acquisitions 1, LLC d/b/a Hilaire Rehab & Nursing and Huntington Realty 1, 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 8th day of December, 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 Huntington Acquisition 1, LLC as the new operator of the 76-bed facility located at 9 Hilaire Drive, Huntington, currently operated by Hilaire Farm Skilled Living and Rehabilitation Center, LLC (Amends and Supercedes Project No. 142279), 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:

161181 E

FACILITY/APPLICANT:

Huntington Acquisition1, LLC
d/b/a Hilaire Rehab & Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed assignment and assumption agreement associated with the asset purchase agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
8. Submission of a photocopy of Nesconset Investors, LLC's application Authority to Business in the State of New York, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed and amended Operating Agreement of Nesconset Investors, LLC, acceptable to the Department. [CSL]
10. Submission of an amended Operating Agreement for Huntington ZJ 1 Holding, LLC, acceptable to the Department. [CSL]

11. Submission of a photocopy of the amended and executed Certificate of Amendment of Articles of Organization of Huntington Acquisition 1, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of evidence of site control, acceptable to the Department. [CSL]
13. Submission of a plan, acceptable to the Department, to correct the known physical plant Life Safety Code deficiencies. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within two 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. Correction of all known physical plant Life Safety Code deficiencies within three years of change of ownership of the RHCF. [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 # 162117-E
One Brooklyn Health System, Inc.**

**Program: Hospital
Purpose: Establishment**

**County: Kings
Acknowledged: August 16, 2016**

Executive Summary

Description

One Brooklyn Health System, Inc., a to-be-formed New York not-for-profit (NFP) corporation, seeks approval to be established as co-operator of the following three Article 28 acute care hospitals (collectively “the Hospitals”):

- Brookdale Hospital Medical Center (BHMC), a 530-bed, voluntary NFP teaching hospital, located at 1 Brookdale Plaza, Brooklyn (Kings County);
- Interfaith Medical Center (IMC), a 287-bed, voluntary NFP acute care hospital located at 1545 Atlantic Avenue, Brooklyn (Kings County); and
- Kingsbrook Jewish Medical Center (KJMC), a 303-bed voluntary NFP acute care hospital, located at 585 Schenectady Avenue, Brooklyn (Kings County).

On July 19, 2016, the Hospitals entered into a Letter of Intent regarding this initiative. Each hospital will have equal representation on the board of One Brooklyn Health System, Inc. Each hospital will be a voting member of One Brooklyn Health System, Inc. There will be no change to the boards of the three hospitals as a result of this application. The applicant entity will serve as an umbrella planning and coordinating organization with the Hospitals and will not prepare financial statements.

There are no costs associated with this Certificate of Need application. There will be no changes in licensed services or beds as a result of this approved application. There are no projected changes in the staffing, utilization, revenues or expenses of BHMC, IMC and

KJMC as a direct result of this proposal. Each hospital will remain separate not-for-profit corporations certified under Article 28, maintaining separate operating certificates following completion of the establishment of One Brooklyn Health System, Inc.

As co-operator, One Brooklyn Health System, Inc. will have the ability to exercise the approval the submission of Certificate of Need applications filed by or on behalf of each hospital, as described in 10 NYCRR 405.1(c), as they relate to grant funding under *The Kings County Health Care Facility Transformation Program*, so long as each hospital remains a member of One Brooklyn Health.

After approval of this application, One Brooklyn Health System, Inc. will become a grant-eligible, NFP, Tax-exempt Corporation that we anticipate will file a joint application with BHMC, IMC and KJMC in connection with The Kings County Health Care Facility Transformation Program. The statute enacting this program authorizes up to \$700 million in capital funding to support projects that preserve and/or expand essential health care services in communities within Brooklyn that are experiencing significant health care disparities and health care needs as compared to other communities. The majority of areas of Brooklyn serviced by BHMC, IMC and KJMC meet this criteria. Statute further requires that these capital projects be consistent with a plan to replace inefficient and outdated facilities as part of a merger, consolidation, acquisition or other significant corporate restructuring activity intended to create a financially sustainable system of care. By collaborating in the development of a strategic framework for a

regional planning and operating structure through this grant funding, it is the goal of the applicant to create a high quality and financially sustainable system of care in the region.

While full Establishment approval will be the result of project approval, consistent with the Letter of Intent executed by the Hospitals, One Brooklyn Health System's sole Article 28 power will be the power to approve new CON applications filed by or on behalf of each hospital in the system. The approval of the board of Directors or Trustees of each hospital will be required for the delegation of additional powers by the hospital to One Brooklyn Health System.

BFA Attachment A presents the proposed organizational chart.

OPCHSM Recommendation
Contingent Approval

Need Summary

There are no projected changes to services, beds, utilization, or staffing as a result of this application.

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 and no projected incremental changes in staffing, utilization, operating expense or operating revenue associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a photocopy of the executed Certificate of Incorporation of One Brooklyn Health System, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of One Brooklyn Health System, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Bylaws of One Brooklyn Health System, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment to the Certificate of Incorporation of the Brookdale Hospital Medical Center, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Amendment to the Bylaws of the Brookdale Hospital Medical Center, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Interfaith Medical Center, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Amendment to the Bylaws of Interfaith Medical Center, acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Amendment to the Certificate of Incorporation of Kingsbrook Jewish Medical Center, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Amendment to the Bylaws of Kingsbrook Jewish Medical Center, acceptable to the Department. [CSL]

Approval conditional upon:

1. The proposal must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the proposal within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

December 8, 2016

Need Analysis

Description

One Brooklyn Health System, Inc. is seeking approval to be established as co-operator of Brookdale Hospital Medical Center a 530 bed hospital located at 1 Brookdale Plaza, Brooklyn, 11212; Interfaith Medical Center a 287 bed hospital located at 1545 Atlantic Ave., Brooklyn, 11213; and Kingsbrook Jewish Medical Center a 303 bed hospital located at 585 Schenectady Ave., Brooklyn, 11203.

This proposal will not have any direct impact on public need. There will be no changes to utilization, beds, or services. There are also no anticipated changes to staffing, revenue or expenditures.

Conclusion

Approval of the proposal will allow for the filing of a joint application with the Hospitals in connection with *The Kings County Health Care Transformation Program*.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

One Brooklyn Health System, Inc., a to-be-formed New York not-for-profit corporation, seeks approval to be established as operator of the following Kings County hospitals:

Name

Brookdale Hospital Medical Center (530 beds)

1 Brookdale Plaza
Brooklyn, New York 11212

Interfaith Medical Center (287 beds)

1545 Atlantic Avenue
Brooklyn, New York 11213

Kingsbrook Jewish Medical Center (303 beds)

585 Schenectady Avenue
Brooklyn, New York 11203

As co-operator, One Brooklyn Health System will have the ability to exercise the approval of submission of Certificate of Need applications filed by or on behalf of each Hospital related to grant funding under *The Kings County Health Care Facility Transformation Program*.

There will be no change to the Boards of the involved hospitals and each will remain separate not-for-profit corporations certified under Article 28, maintaining separate operating certificates following completion of the proposal. Additionally, there are no changes in staffing, services, or beds for any of the hospitals as a result of approval of this proposal.

Character and Competence

Each hospital will have equal representation on the board of One Brooklyn Health System. The proposed board members are:

Name	Affiliation/Position
Alexander Rovt, Ph.D.	Chair, Brookdale Hospital Medical Center President, One Brooklyn Health System, Inc.
Robert Waterman, D.Min.	Chair, Interfaith Medical Center Vice-President, One Brooklyn Health System, Inc.
Henna White	Chair, Kingsbrook Jewish Medical Center Treasurer, One Brooklyn Health System, Inc.

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.

Ms. White disclosed an affiliation with Rutland Nursing Home. The Department issued Stipulations and Orders to Rutland Nursing Home on March 19, 2012, April 30, 2013 and June 24, 2015 with respective fines of \$22,000, \$4,000 and \$12,000. These sanctions were imposed for deficiencies relating to Quality of Care (specifically, in the areas of nutrition, pressure sores, accidents, and administration). As a result of deficient practices noted during complaint investigations and surveys, the Centers for Medicare and Medicaid Services (CMS) placed the facility into a denial of payment for new admissions from April 2-11, 2012 and again from April 28 through June 7, 2012.

Interfaith Medical Center

On March 28, 2013, the Department identified an Immediate Jeopardy (IJ) situation and cited in the area of Patient Rights. Specifically, the facility failed to monitor and supervise patients; implement their rapid response policy in a timely manner; and provide BCLS (basic cardiac life support) to a critically injured patient on a behavioral health inpatient unit as a result of a homicide attempt by another patient.

On July 23, 2015, the Department again identified an IJ situation and cited the facility in the area of Patient Rights. It was determined that the facility failed to ensure a qualified team responded to a code. Review of code responses throughout the facility revealed that, 87% of the time a code was initiated, an anesthesiologist (the person responsible for intubating patients) was not present. In addition, concerns were raised about code respondents being appropriately certified for advanced cardiac life support (ACLS).

Kingsbrook Jewish Medical Center

On August 13, 2014, the Department identified an Immediate Jeopardy situation at the facility during a complaint investigation. It was determined that the facility failed to provide a safe environment for patients through staff education and implementation of policies and procedures. Additionally, the facility failed to assure that the building and grounds were safe and secured and that surveillance equipment was adequately maintained. Specifically, staff failed to initiate appropriate precautions to maintain the safety of a confused, at-risk patient who exhibited previous elopement attempts. The patient was found dead on facility grounds on August 4, 2013 after he eloped from the Emergency Department the day prior. Systemic failures were identified relating to an ineffective elopement policy and staff's failure to initiate an elopement code in a timely manner. The Department also discovered that, 10 days post-incident, the facility had not yet implemented any corrective measures to prevent a reoccurrence.

Conclusion

The review found that any citations noted above were properly corrected with appropriate remedial action. 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 costs or working capital requirements associated with this application.

BFA Attachment B is a summary of the 2014 - 2015 consolidated certified financial statements of Brookdale Hospital Medical Center and their internal financial statements as of September 30, 2016. As shown, BHMC experienced a negative working capital position, a net deficit position and an operating loss of \$33,698,000 in 2015, which includes \$68,883,464 State support from the Interim Access Assurance Fund (IAAF), Vital Access Provider Assistance Program (VAPAP) funding and Value Based Payment - Quality Improvement Program (VBP-QIP) funding as of December 31, 2015. As of September 30, 2016, BHMC experienced a negative working capital position, a net deficit position and an operating loss of \$3,796,360. BHMC is budgeted to receive \$140 million in State Fiscal Year (SFY) 2016-17 under the VBP-QIP.

BFA Attachment C is a summary of the 2014 - 2015 consolidated certified financial statements of Interfaith Medical Center and their internal financial statements as of September 30, 2016. As shown, IMC experienced a negative working capital position, maintained a positive net asset position and experienced an operating loss of \$11,587,000 in 2015, which includes \$46,130,863 State support from IAAF funding, VAPAP and VBP-QIP as of December 31, 2015. As of September 30, 2016, IMC experienced a negative working capital position, a positive net asset position and an operating loss of \$39,834,233. IMC is budgeted to receive \$50 million in SFY 2016-17 under the VBP-QIP. In addition, IMC was awarded \$2,138,459 grant funding under the Capital Restructuring Financing Program (CRFP) in 2016.

BFA Attachment D is a summary of the 2014 - 2015 consolidated certified financial statements of Kingsbrook Jewish Medical Center and Rutland Nursing Home, Inc. and the combined entity's internal financial statements as of September 30, 2016. As shown, the combined entity experienced a negative working capital position, maintained a negative net asset position and had an operating loss of \$1,591,000 in 2015, which includes State support of \$35,135,585 from VAPAP, IAAF and VBP-QIP funds as of December 31, 2015. The 2015 operating loss was attributable to the nursing home operation that experienced an operating loss of \$20,145,000, whereas the Medical Center operation had a gain of \$18,554,000 in 2015. As of September 30, 2016, the consolidated entity experienced a negative working capital position, a negative net asset position and experienced an operating loss of \$41,125,652. The Medical Center operation accounted for \$22,705,521 of the total operating loss as of September 30, 2016. KJMC is budgeted to receive \$50 million in SFY 2016-17 under the VBP-QIP. In addition, KJMC was awarded \$2,957,850 grant funding under the Capital Restructuring Financing Program in 2016.

Conclusion

Independently, the Hospitals are expected to require ongoing annual operating subsidies totaling over \$240 million under VBP-QIP and are otherwise not financially sustainable as independently governed entities. By collaborating in the development of a strategic framework for a regional planning and operating structure that will allow the applicant to apply for grant funding under *The Kings County Health Care Facility Transformation Program*, it is the goal of the applicant to create a high quality and financially sustainable system of care in the region.

Recommendation

From a financial perspective, approval is recommended.

Attachments

- BFA Attachment A Proposed Organizational Chart
- BFA Attachment B Brookdale Hospital Medical Center – certified 2014 - 2015 and as of June 30, 2016 internal Financial Statements
- BFA Attachment C Interfaith Medical Center – certified 2014 - 2015 and as of June 30, 2016 internal Financial Statements
- BFA Attachment D Kingsbrook Jewish Medical Center – certified 2014 - 2015 and as of June 30, 2016 internal Financials

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 8th day of December, 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 One Brooklyn Health System, Inc., as the co-operator of three Article 28 acute care hospitals: Brookdale Hospital Medical Center, Interfaith Medical Center and Kingsbrook Jewish Medical Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162117 E

One Brooklyn Health System, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a photocopy of the executed Certificate of Incorporation of One Brooklyn Health System, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of One Brooklyn Health System, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Bylaws of One Brooklyn Health System, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment to the Certificate of Incorporation of the Brookdale Hospital Medical Center, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Amendment to the Bylaws of the Brookdale Hospital Medical Center, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Interfaith Medical Center, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Amendment to the Bylaws of Interfaith Medical Center, acceptable to the Department. [CSL]
10. Submission of a photocopy of the Certificate of Amendment to the Certificate of Incorporation of Kingsbrook Jewish Medical Center, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Amendment to the Bylaws of Kingsbrook Jewish Medical Center, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The proposal must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the proposal 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*.