

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

March 9, 2017

*The Full Council will convene immediately following the Special Establishment and Project Review Committee which is scheduled to begin immediately following the Committee on Codes, Regulations and Legislation meeting
(Scheduled to begin at 9:15 a.m.)*

- *90 Church Street 4th Floor, Room 4A & 4B, New York City*
- *New York State Department of Health Offices at 584 Delaware Avenue, 2nd Floor Video Conference Room, Buffalo, NY 14202*
- *New York State Department of Health Offices at the Triangle Building, 335 East Main Street, 1st Floor Conference Room, Rochester, New York 14604*

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

December 8, 2016

III. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Adoption

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

For Information

17-01 Amendment of Subpart 5-1 of Title 10 NYCRR
(Public Water Systems)

15-03 Amendment of Parts 86, 425 and 759 of Title 10 NYCRR
(Adult Day Health Care Services for Registrants with AIDS)

IV. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

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

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

Residential Health Care Facility – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162251 C	Fox Run at Orchard Park (Erie 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.	162380 C	Rochester General Hospital (Monroe County) Mr. Robinson – Conflict/Recusal 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 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 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162324 E	Northern Westchester Hospital (Westchester County) Mr. Kraut – Recusal	Contingent Approval
2.	162330 E	Phelps Memorial Hospital (Westchester County) Mr. Kraut – Recusal	Contingent Approval
3.	162353 E	Northwell Quality and Medical Affairs, Inc. (Nassau County) Mr. Kraut – Recusal	Contingent Approval
4.	162391 E	Winthrop-University Hospital (Nassau county) Dr. Kalkut – Recusal	Contingent Approval

- | | | | |
|----|----------|---|---------------------|
| 5. | 162396 E | WMC Health Network –
Ulster, Inc.
(Ulster County)
Dr. Berliner – Interest | Contingent Approval |
| 6. | 162407 E | Upper Alleghany Health System
(Cattaraugus County)
Ms. Baumgartner – Recusal
Dr. Watkins - Recusal | Contingent Approval |

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162290 E Melville SC, LLC d/b/a Melville Surgery Center (Suffolk County) Mr. Kraut - Recusal	Contingent Approval

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	152135 E Delmar Acquisition I LLC d/b/a Bethlehem Commons Nursing and Rehabilitation Center Ms. Carver-Cheney - Recusal	Contingent Approval

HOME HEALTH AGENCY LICENSURES

New LHCSA

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
162276	The Bristol Home, Inc. d/b/a Bristol Home Care (Allegany, Genesee, Cattaraugus, Niagara, Chautauqua, Orleans, Erie and Wyoming Counties) Dr. Watkins - Recusal	Contingent Approval

Certificates

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Loretto Management Corporation Mr. LaRue – Interest/Abstained	Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161262 E	YGC at Woodycrest, LLC d/b/a Woodycrest Center (Bronx County) Ms. Carver-Cheney – Interest Dr. Martin – Abstained at E/PRC	Contingent Approval
2.	162261 E	CLR Glens Falls LLC d/b/a The Stanton Nursing and Rehabilitation Center (Warren County) Dr. Ruge - Recusal Dr. Martin – Abstained at E/PRC	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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162255 E	CLR Schenectady LLC d/b/a The Capital Living Nursing and Rehabilitation Center (Schenectady County) Dr. Martin – Abstained at E/PRC	Contingent Approval

2.	162256 E	CLR Carthage LLC d/b/a The Country Manor Nursing and Rehabilitation Center (Jefferson County) Dr. Martin – Abstained at E/PRC	Contingent Approval
3.	162257 E	CLR Minoa LLC d/b/a The Crossings Nursing and Rehabilitation Center (Onondaga County) Mr. LaRue - Opposed Dr. Martin – Abstained at E/PRC	Contingent Approval
4.	162258 E	CLR New Paltz LLC d/b/a The Mountain View Nursing and Rehabilitation Center (Ulster County) Dr. Martin – Abstained at E/PRC	Contingent Approval
5.	162259 E	CLR Granville LLC d/b/a The Orchard Nursing and Rehabilitation Center (Washington County) Dr. Martin – Abstained at E/PRC	Contingent Approval
6.	162260 E	CLR Troy LLC d/b/a The Springs Nursing and Rehabilitation Center (Rensselaer County) Dr. Martin – Abstained at E/PRC	Contingent Approval

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162026 E	Manhattan RSC, LLC d/b/a Manhattan Reproductive Surgery Center (New York County)	Presented at the 3/9/17 Special Establishment/Project Review Committee No Recommendation

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162212 E	Griffis Surgery Center (Oneida County)	Contingent Approval
2.	162300 E	Plattsburgh ASC, LLC d/b/a Cataract Center for the Adirondacks (Clinton County)	Contingent Approval
3.	162358 B	North Fork, SC, LLC (Suffolk County)	Contingent Approval

Diagnostic and Treatment – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161303 E	Smile New York Outreach, LLC (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.	161200 E	Kennedy Pavilion RH LLC d/b/a The Pavilion at Queens for Rehabilitation & Nursing (Queens County)	Contingent Approval
2.	162274 E	Rockaway Operations Associates LLC d/b/a Far Rockaway Center for Rehabilitation and Nursing (Queens County)	Contingent Approval

HOME HEALTH AGENCY LICENSURES

New LHCSA

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2296 L	Deer Run at River Ridge LLC d/b/a The Sentinel at Amsterdam (Montgomery, Saratoga, Fulton, Schenectady, Otsego, and Schoharie Counties)	Contingent Approval
2604 L	Greater Adult Neighbors, Inc. d/b/a Arcadia Home Care Agency (Sullivan County)	Contingent Approval

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2643 L	Ideal Home Health Inc. (Bronx, Kings, New York, Queens, and Richmond Counties)	Contingent Approval
151296	Crickett Care, Inc. (Bronx, Westchester, Putnam, and Rockland Counties)	Contingent Approval
152390	A-Plus Care HHC Inc. (Kings, Bronx, Queens, Richmond, New York and Westchester Counties)	Contingent Approval
161335	SeniorBridge Family Companies (NY), Inc. (New York County) *WITHDRAWN AT APPLICANTS REQUEST	
162087	CareGuardian, Inc. d/b/a Hometeam (New York, Kings, Queens, Bronx, and Richmond Counties)	Contingent Approval
162411	Blue Parasol, LLC (Bronx, Queens, Kings, Richmond, New York, and Westchester Counties)	Contingent Approval

CATEGORY 5:

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

NO APPLICATIONS

V. NEXT MEETING

Wednesday, March 22, 2017 – ALBANY
April 6, 2017 – ALBANY

VI. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
December 8, 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. Vice Chair, Dr. Jo Ivey Boufford presided.

COUNCIL MEMBERS PRESENT

Ms. Judy Baumgartner	Dr. Glenn Martin
Dr. John Bennett	Mr. Peter Robinson
Dr. Howard Berliner	Ms. Ellen Rautenberg
Dr. Jo Ivey Boufford	Dr. John Ruge
Dr. Lawrence Brown	Dr. Theodore Strange
Ms. Kathleen Carver-Cheney	Dr. Anderson Torres
Ms. Kim Fine	Dr. Kevin Watkins
Dr. Angel Gutierrez	Dr. Patsy Yang
Mr. Thomas Holt	Dr. Howard Zucker- ex officio
Dr. Gary Kalkut	
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. Johanne Morne – Albany via video |
| Ms. Barbara DelCogliano - Albany via video | Ms. Sylvia Pirani - Albany via video |
| Ms. Alejandra Diaz - Albany via video | Ms. Tracy Raleigh |
| Mr. Ken Evans - Albany via video | Ms. Linda Rush - Albany via video |
| Mr. Mark Furnish | Mr. Daniel Sheppard |
| Mr. Michael Heeran - Albany via video | Ms. Lisa Thomson |
| Ms. Celeste Johnson | Ms. Lisa Ullman |
| Ms. Yvonne Lavoie - Albany via video | Mr. Richard Zahnleuter |
| Ms. Colleen Leonard | |
| Ms. Ruth Leslie | |

INTRODUCTION

Dr. Boufford called the meeting to order and welcomed Council members, meeting participants and observers.

APPROVAL OF THE MINUTES OF OCTOBER 6, 2016

Mr. Kraut asked for a motion to approve the October 6, 2016 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutiérrez motioned for approval which was seconded by Dr. Kalkut. The minutes were unanimously adopted. Please refer to page 26 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Ms. Boufford introduced Dr. Zucker to give the Report of Department of Health Activities.

Medical Marijuana Program

Dr. Zucker began his report by giving the Council an update on the medical marijuana program. New York's medical marijuana program has been a healthcare success with more than 11,000 certified patients and 750 registered physicians. The Department is currently acting on a number of recent recommendations to further strengthen the program and to increase patient access and that includes the empowerment clause, nurse practitioners and physician assistants to certify patients for the program. Presently there are 19,000 licensed practitioners in New York State and as of November 30, 2016 nurse practitioners can register with the Department by taking the Department approved medical use of medical marijuana course that is online and then submitting the course completions to the department. Once that happens the department will process the registrations to confirm that they are in good standing and notify them electronically when they are registered. In addition New York has about 11,000 physician assistants and the Departments also filed proposed rulemaking that would enable the PAs to register with the Department to certify patients for medical marijuana they could do so as long as they are supervising physicians also registered to certified patients. The proposed rulemaking was published on November 30, 2016 and the amendment for PAs would not take effect until it is filed for adoption after the 45 day public comment period. Both nurse practitioners and physician assistants are already authorized to prescribe controlled substances including opioids. In addition the Department has proposed amendments that will allow hospitals to permit patients to self-administer certain medications including medical marijuana. The proposed amendment also allows caregivers to administer the medication in the hospital, and hospitals who choose to do so must have policies and procedures in place and ensure medication safely administered and also securely stored. These regulations will be published in the New York State register on November 21, 2016 and will have a 45 day comment period as well.

The Commissioner further noted that the Department very recently filed a proposed regulatory amendment to add chronic pain as a qualified condition for medical marijuana. It defines chronic pain as any severe debilitating pain that the practitioner determines the grades health and functional capability where the patient has contraindications, has experienced intolerable side effects or otherwise experienced failure of one or more previously tried therapeutic options and where there is documented medical advice of such pain having lasted three months or beyond or more beyond onset or the practitioner recently anticipates such pain to last three months or more beyond onset. The amendment will be published in the New York State register on December 21, 2016. It will then be subject to the 45 day comment period before it can be adopted. The Department will be posting additional information online for patients and practitioners about the addition of chronic pain as a qualifying condition and also help patients with chronic pain may be certified for the program.

Dr. Zucker also noted that the Department is providing guidance to register organizations licensed to manufacture and dispense medical marijuana in New York on wholesaling their products to other registered organizations. This will make more varieties of products available at dispensaries across the state. Effective immediately registered organizations may submit proposals to sell and to distribute approved medical marijuana products and or medical marijuana that has been extracted pursuant to the regulations which is the extracts of the registered organizations. As part of the Department's efforts to make more medical marijuana products available to patients across the state, registered organizations will be allowed to manufacture and dispense additional brands beyond the initial five required by regulation. In allowing the wholesaling of extracts and removing the brands will help ensure continuous availability of medical marijuana products even if crop fails and allows registered organizations to retain critical extracts to keep making their products without having to wait for their own new crops to be ready. Registered organizations that wish to sell and distribute their extracts and or approved medical marijuana products to other registered organizations within New York State must first submit a proposed operating plan for wholesaling to the department and receive the Departments prior written approval. Registered organizations interested in manufacturing additional brands must submit the brand information to the department and receive prior written approval as well.

Advanced Home Health Aides

Dr. Zucker announced that legislation was recently signed by the Governor to create the job category of advanced home health aide. These will be home health aides who receive additional training and act under the supervision of a licensed registered nurse to carry out advanced tasks. Some of those tasks include the administering of routine or prefilled medications that are easy to give such as injections like insulin. Advanced home health aides will be supervised by RNs employed by homecare agencies, by hospice programs, or enhanced assisted-living residences. The law will make it easier for New Yorkers to live in their homes instead of being in any kind of specific institutional settings. It will provide support to family members who act as caregivers. The Department and the State Education Department are developing regulations to specify the advanced tasks that are to be performed by advanced health home aids. Individuals who do meet those qualifications, the training in the competency requirements outlined in the regulations will be able to work as an advanced home health aide and listed in the state homecare registry.

AIDS

Dr. Zucker called attention to the observance of world AIDS day held the first week of December. The event coincided with new legislation signed by the Governor that will increase access to testing and treatment for individuals living with HIV AIDS. The legislation will eliminate barriers to HIV testing by extending the requirement to offer HIV testing to persons over the current upper age limit of 64. It will continue working to normalize the offer of HIV testing so individuals who remain undiagnosed are identified. Under the new law registered nurses will be able to screen patients for syphilis, for gonorrhea, and chlamydia as well. The law also increases access to post-exposure prophylaxis by allowing pharmacists to dispense up to a seven-day "starter kit". In addition the law enables disclosure of HIV AIDS related medical information to approved researchers. This change removes the barriers of HIV AIDS research by expanding access to data so researchers can learn more about how HIV AIDS interacts with other medical conditions. The epidemic, the governor's plan to reduce the prevalence of new

cases of HIV infection to 750 by the year 2020 is already making excellent progress on efforts to link people diagnosed with HIV to care has had success rate of 75 percent, and in just one year the number of persons with HIV aids in the state to achieve viral suppression is increased by 6000. It went from 71,020 in 2013 to 77,020 in 2014 and the Department will have the information about 2015 soon.

Dr. Zucker stated that building on these successes the Governor has set new goals of zero AIDS mortality and zero HIV transmission through injection drug use by the end of 2020. Among the proposals to achieve these goals are requiring all types of service providers and care coordinators to track the viral suppression rates of the HIV-positive persons and serve and ensuring that teens can get life-saving HIV treatment and preventive services confidentially. This would expand access to HIV preventative services to use a high-risk specifically post exposure prophylaxis as well as pre-exposure prophylaxis (PREP). PREP is a once daily pill that protects individuals from HIV infection and it is an important prevention tool that is not currently available to them without parental consent. Governor Cuomo also announced that the State is requesting approval from CMS for an amendment to his partnership plan waiver. The amendment would authorize federal Medicaid matching funds to advance the initiative of ending AIDS is an epidemic in New York State, a move that could bring \$45 million in federal funds to help us and the epidemic. The Department will continue to fight to bring an end to the epidemic has been devastating to New York.

Antimicrobial Resistance

Next, Dr. Zucker discussed antimicrobial resistance. New York State has an Antimicrobial Resistance Task Force. In November 2016, the Task Force held its first summit. The United Nations recently called our world leaders to focus on developing a broad coordinated approach to addressing the problem of antimicrobial resistance. Not just in human health but in animal health is well as in agriculture. Bringing health issues up in the United Nation is a major step forward when health issues get on to the forefront of some of these areas. New York also has had a task force in place. The summit in November brought together stakeholders from various agencies and levels of government including the CDC. The good news is that there is growing awareness of antibiotic resistance of both the patient and the health professional. Awareness clearly is not enough, in order to move forward, there is a need to take present action to stem the tide of this growing epidemic. This is an issue that is very important. The Task Force will look at how to develop new initiatives to combat antimicrobial resistance and working with external partners we will shape New York's future. The response to the problem we will leave the State, the Department will lead as our State will lead the nation in this fight against antimicrobial resistance.

Health Exchange Market

Lastly, Dr. Zucker explained the New York State of Health, the Department's health exchange marketplace will review the details of the incoming good administrations policies regarding health insurance. Since its start three years ago the New York state of health has had tremendous success and rolling more than 3 million New Yorkers and affordable health coverage. Additionally New York has significantly reduce the number of uninsured to the marketplace opened in 2013. A number of uninsured New Yorkers has declined by nearly 850,000. Between 2013 and 2015 the rate of uninsured from the percentage perspective has

dropped from 10percent to 5percent. In the interim we will continue to focus on ensuring that all New Yorkers have the best possible healthcare and insurance options. The Department will review the details of the incoming get ministrations policies regarding Medicaid. However, the change of the administration will not affect federal DSRIP waiver, because DSRIP has helped New Yorkers begin the process of fundamentally restructuring the states healthcare delivery system by reinvesting the Medicaid program, reducing avoidable hospital use, and helping us to significantly reduce New York's Medicaid spending per person.

The Commissioner encouraged the Council members to get the flu shot and wished them a happy healthy holiday season.

Dr. Zucker concluded his report. To view the member's questions and comments, please see pages 26 through 41 of the attached transcript.

CERTIFICATE OF PUBLIC ADVANTAGE

Dr. Boufford introduced Mr. Robinson to consider the Certificate of Public Advantage (COPA) application.

Applicant

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

Dr. Bennett – Recusal

Dr. Kalkut - Recusal

Mr. Kraut – Recusal – not present at meeting

Mr. Lawrence – Recusal

Dr. Ruge - Recusal

Mr. Robinson briefly described the application of the Staten Island Performing Provider for a Certificate of Public Advantage COPA-SIPPS and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 41 and 42 of the attached transcript.

Office of Primary Care and Health Systems Management Activities

Dr. Boufford introduced Mr. Sheppard to give the Office of Primary Care and Health Systems Management Activities report.

Mr. Sheppard began his report and stated that he along with his colleagues from the Department went across the State on a listening tour, speaking with healthcare providers regarding a whole range of topics such as transactional issues, process transactional issues to broader healthcare transformation. The major themes were modernizing the CON process to better align with the way providers are currently trying to organize themselves to achieve not just financial sustainability, but adapt to the new models of healthcare, and also how to align CON with new medical technologies and particularly a focus on looking at clinical outcomes and how these technologies have changed clinical outcomes both with respect to the level of procedural risk and the time that recovery takes.

Mr. Sheppard discussed many topics such as Article 28 small clinic standards, setting up standards that have less physical environment requirements if the scope of services provided in those settings is, has much lower procedural risk and infection risks, with smaller physical environment standards in a way that still protects patient safety but allows those services to penetrate deeper into communities. He also mentioned that he was able to attend the listening session on rural health that was conducted by the CMS alliance to modernize healthcare. The hospitals and community-based organizations that were there were from new England and the Northeast New York. Some of the things were echoed in the New York specific tour, there is some real significant focus on the challenges that rural health providers are facing as healthcare shifts to performance-based reimbursement models and how do you develop, how do small providers develop process and outcome measures that recognize the challenges that world providers have and then how do you develop tools to address those challenges, population that does not have access to public transportation and obviously low, very sparse population.

Mr. Sheppard spoke on many more topics. To see his complete report, please see pages 42 through 60 of the attached transcript.

Next, Dr. Boufford gave an update on the joint work of the Public Health Committee.

PUBLIC HEALTH SERVICES

Report on the Activities of the Public Health

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

Dr. Boufford stated that the Public Health Committee and the Ad Hoc Leadership Committee to Support the Prevention Agenda had a joint meeting in November. The group meets about three or four times a year and it consists of about 40 members of state-level organizations ranging from professional associations to regional business groups and everything in between. It has served for about five years now to advise the major goals and any revisions of the prevention agenda plan and also served as the public advisory group for the state application to be accredited by national bodies for its public-health accreditation. Mr. Francis, Commissioner Zucker attended and presented, along with a team from Schenectady, Ellis Hospital health department and other stakeholders. The committee spoke about the background on the stages of the prevention agenda and the planning that is ongoing now for the next five year

Ms. Pirani stated that at the end of December the Department will be collecting the local health improvement plan from every hospital and county health department, and in some counties. The Department will be reviewing those and providing feedback and using that to start planning for the next state health assessment which will describe the public health challenges throughout the state as well as how the planning has resulted in some improvements and where our challenges still remain, especially in the areas of disparities, and then will use that, will do that next year in 2017. And then in 2018 get stakeholders together, subject matter experts from the communities and from healthcare systems and from the ad hoc committee to start identifying a priorities and developing updated action plan so we can address them. So we look forward to working with you with the ad hoc committee on this process.

Dr. Boufford concluded her report and introduced Dr. Ruge. Please see pages 60 through 67 of the attached transcript.

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.

Dr. Ruge presented a brief power point presentation. He stated that accommodation of initiatives which are coming together around value-based payment we are trying to make progress in the two big, two of the big opportunities pertain to the integration of behavioral health with the rest of healthcare, especially primary care and expanding healthcare resources to address the broader social determinants of health. This has been done is through the joint committee is recognized how behavioral health is being integrated. In addition, the prevention agenda highlights this need and the DSRIP program accommodates, propels behavioral health integration. In addition, the committees have heard from the other agencies, OASAS, OMH, about initiatives they have been doing in their sectors.

Dr. Ruge explained that there are essentially four big areas that the Committee's are trying to address and develop recommendations for. One is guidance on billing and reimbursement and how to achieve integration in a sense is one tiny example and where in certain settings it is possible to bill for primary care visit and behavioral health visit in the same day but not both which is highly defeating if a patient has to drive 30 miles to get the care. The Committee is looking at pretty granular recommendations. Support for information sharing and relying on data and there have been significant legal and other barriers to sharing information about the behavioral health needs of patients who may be indeed maybe driving all the other medical needs and all the other medical costs. Somehow we have to pull the data and information together to make it available.

Dr. Ruge further explained that shared space is another issue. Integration means cool location and at the least but it means really more than that. It means of sharing many times the very same room and the key characteristic of the very same week and there has been significant progress made in terms of coordinating both state and federal regulations, but this is still a work in progress and there are some internal contradictions between what it means to have shared space versus co-location in ways that remain. Hopefully we can work through. Lastly, all this depends on workforce that is cross-trained, that is sensitive to one another on behavioral health and then the primary care side, and there is a separate group working on exactly this determinants. When it comes to social determinants, the real experts at the head of the table rather than here at this microphone. But likewise we are recognizing that this is not only about clinical care that we depend upon the prevention agenda as outlining the initiatives we need to undertake. This should lead to the building and maintaining of community partnerships that go beyond healthcare to include many other kinds of organizations and community

coalitions. That we are now defining social determinants even broader than social to say it's all kinds of determinants including economic that we need to do and all this will be reflected and is already being reflected in the value-based movement that we're having that is represented by DSRIP and the community-based organizations being a required element for emerging organizations as they are, they're working to improve value.

Dr. 's Boufford and Ruge concluded their report. To view the complete report, please see pages 67 through 81 of the attached transcript.

REGULATION

Dr. Boufford 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 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)

Dr. Gutiérrez briefly described for information the proposed Amendment of Sections 23.1 and 23.2 of Title 10 NYCRR (Expansion of Minor Consent for HIV Treatment Access and Prevention) and Amendment of Section 405 of Title 10 NYCRR (Federal Conditions of Participation). Please see pages 81 through 83 of the attached transcript.

Dr. Boufford then moved to the next item on the agenda and introduced Mr. Robinson to give the Report of the Committee on Establishment and Project Review.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Dr. Peter Robinson, Chair, Establishment and Project Review Committee

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162117 E	One Brooklyn Health System, Inc. (Kings County) Dr. Boufford – Recusal Mr. Kraut – Recusal – not present Dr. Strange – Interest	Contingent Approval

Dr. Gutiérrez introduced application 162117 and noted for the record that Dr. Boufford has a conflict and has exited the meeting room and Dr. Strange has an interest. Dr. Gutiérrez motioned for approval. Ms. Fine seconded the motion. The motion carried with the noted recusal. Please see pages 83 and 84 of the attached transcript.

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

Diagnostic and Treatment Center - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 162095 C	Weill Cornell Imaging at New York Presbyterian (New York County) Dr. Brown – Recusal	Contingent Approval

Mr. Robinson called application 162095 and noted Dr. Brown’s conflict. Dr. Brown exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Dr. Brown returned to the meeting room. Please see page 84 and 85 of the attached transcript.

Hospice Services - Construction

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

Mr. Robinson calls applications 162096 and 162134 and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries. Please see page 85 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</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>Council Action</u>
1.	161325 C	University Hospital (Suffolk County)	Contingent Approval

Mr. Robinson calls application 161345 and notes for the record that Dr. Martin has an interest. He also calls application 161325 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries with Dr. Martin’s abstention. Please see page 86 of the transcript.

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**

CON Applications

Cardiac Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	152391 C	Peconic Bay Medical Center (Suffolk County) Dr. Kalkut - Recusal Dr. Kraut – Recusal – not present Dr. Martin – Interest Dr. Strange – Recusal	Contingent Approval

2.	161168 C	Southampton Hospital (Suffolk County) Dr. Kalkut - Recusal Dr. Kraut – Recusal – not present Dr. Martin – Interest Dr. Strange – Recusal	Contingent Approval
----	----------	---	---------------------

Mr. Robinson notes that for applications 152391 and 161168 Mr. Kraut who is not present has declared a conflict and Dr. Kalkut and Dr. Strange have conflicts and have exited the meeting room and Dr. Martin has an interest. Mr. Robinson motions for approval application 152391 and Dr. Gutiérrez seconds the motion. Next, Mr. Robinson motions for approval application 161168, Dr. Gutiérrez seconds the motion. Department staff describe both applications and there was discussion amongst the members. Mr. Robinson makes a motion to modify his original motion for application 152391 and 161168 to add a recommendation that the Commissioner consult with the Cardiac Advisory Committee, both in terms of current standards but the potential for reviewing cardiac cath volumes and quality standards on the basis of teams as well as geographic locations so that consideration can be at least part of the deliberation. Dr. Gutiérrez accepted the modification of the motions. Mr. Robinson makes a motion for application 152391 with the noted amendments, Dr. Gutiérrez seconds the motion. The motion carries with 2 opposed, and the noted recusals from Dr. 's Kalkut, and Strange and Dr. Martin's interest. Mr. Robinson motions for approval with the noted amendment to application 161168. Dr. Gutiérrez seconds the motion. The motion carries with two members opposing and Dr. 's Kalkut and Strange's recusal and Dr. Martin's noted in interest. Dr. 's Kalkut and Strange return to the meeting room. Please see pages 86 through 104 of the attached transcript.

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.	161464 E	Massena Memorial Hospital (St. Lawrence County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</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>Council Action</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>Council Action</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 Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161097 E	VillageCare Rehabilitation and Nursing Center (New York County)	Contingent Approval

Mr. Robinson called applications 161464, 162011, 161431, 162209, 161356, and 161097 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 104 through 106 of the attached transcript.

HOME HEALTH AGENCY LICENSURES

New LHCSA

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)	

Mr. Robinson called applications 161454 and 162015 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 106 of the attached transcript.

Changes in Ownership

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

Mr. Robinson called applications 152285, 161111, 161146, 161147, 161392, 161424, 162038, 162061, 162067, 162119, and 162137 and motioned for approval. Dr. Gutiérrez seconded the motion, the motion carries. Please see page 107 of the attached transcript.

Certificates

Certificate of Amendment of Certificate of Incorporation

Applicant

Council Action

The Southampton Hospital Association

Approval

Daughters of Jacob Nursing Home Company, Inc.

Approval

Next, Mr. Robinson’s motions for consent to file for the Southampton Hospital Association and Daughters of Jacob Nursing Home Company, Inc.’s Certificate of Amendment of Certificate of Incorporation. Dr. Gutiérrez seconds the motion. The motion carries. Please see pages 107 and 108 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161338 E	Riverdale SNF, LLC d/b/a Schervier Nursing Care Center (Bronx County) Mr. La Rue – Recusal	Contingent Approval

Mr. Robinson described application 161338 and noted for the record that Mr. La Rue has a conflict and has exited the meeting room and Ms. Carver-Cheney has an interest. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Mr. La Rue's noted conflict and Ms. Carver-Cheney's interest. Mr. La Rue returned to the meeting room. Please see pages 108 and 109 of the attached transcript.

- | | | | |
|----|----------|---|---------------------|
| 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 |

Mr. Robinson called applications 161413, 161450, and 161452 and noted for the records that Ms. Carver-Cheney has a conflict and has left the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries with Ms. Carver-Cheney's noted recusal. Ms. Carver-Cheney returned to the meeting room. Please see pages 109 and 110 of the attached transcript.

- | | | | |
|----|----------|--|---------------------|
| 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 |
|----|----------|--|---------------------|

Mr. Robinson introduces application 162092 and notes for the record that Mr. La Rue has an interest and motions for approval. Dr. Gutiérrez seconds the motion. The motion carries with the noted interest. See page 110 of the transcript.

- | | | | |
|----|----------|---|---------------------|
| 6. | 162120 E | 170 West Avenue Operating
Company, LLC d/b/a Elderwood
at Lakeside at Brockport
(Monroe County)
Mr. Robinson - Interest | Contingent Approval |
|----|----------|---|---------------------|

Mr. Robinson calls application 162120 and notes for the record that he has an interest. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carries with Mr. Robinsons noted interest. Please see page 111 of the attached transcript.

7.	162229 E	1019 Wicker Street Operating Company, LLC d/b/a Elderwood at Ticonderoga (Essex County) Dr. Ruge – Recusal	Contingent Approval
----	----------	--	---------------------

Mr. Robinson called application 162229 and notes for the record that Dr. Ruge has a conflict and has exited the meeting room. Mr. Robinson motions for approval, Dr. Gutiérrez seconds the motion. The motion carries with Dr. Ruge’s recusal. Dr. Ruge returns to the meeting room. Please see pages 111 and 112 of the attached transcript.

Certified Home Health Agency – Establish/Construct

Exhibit #17

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

Mr. Robinson moved to application 161477 and noted for the records that Dr. Torres has a conflict and has exited the meeting room. Mr. Robinson motions for approval and Dr. Brown seconds the motion. The motion carries with Dr. Torres’ recusal. Dr. Torres returns to the meeting room. Please see pages 112 and 113 of the attached transcript.

HOME HEALTH AGENCY LICENSURES

New LHCSA – Affiliated with Assisted Living Programs (ALPs)

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
----------	---	---------------------

Mr. Robinson calls application 162016 and notes for the records that Ms. Baumgartner has an interest. Mr. Robinson motions for approval. Dr. Kalkut seconds the motion. The motion to approve carries with Ms. Baumgartner’s noted interest. Please see page 113 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 161180 E	Nesconset ZJ1 LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Suffolk County) Ms. Carver-Cheney - Recusal	Contingent Approval

Mr. Robinson calls application 161180 and notes for the record that Ms. Carver-Cheney has a conflict and has exited the meeting room. Mr. Robinson motions for approval. Dr. Strange seconds the motion. The motion carries with one member opposed and Ms. Carver-Cheney's recusal. Please see pages 113 and 114 of the attached transcript.

2. 161181 E	Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing (Suffolk County) Ms. Carver-Cheney-Recusal	Contingent Approval
-------------	---	---------------------

Mr. Robinson moves to application 161181 and notes for the record that Ms. Carver-Cheney has a conflict and has remained outside the meeting room. Mr. Robinson motions for approval, Dr. Strange seconds the motion. The motion to approve carries with one member opposing and Ms. Carver-Cheney's recusal. Ms. Carver-Cheney returns to the meeting room. Please see pages 114 and 115 of the attached transcript.

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

NO APPLICATIONS

ADJOURNMENT:

Dr. Boufford announced the upcoming PHHPC meetings and adjourned the meeting.

1 ANGEL GUTIERREZ: Good morning again. My name is Angel
2 Gutierrez, I'm calling to order the committee meeting. There
3 are two proposals on the agenda today for information. First one
4 is expansion of minor consent for HIV treatment access and
5 prevention. This proposal would amend sections 23.1 and 23.2 of
6 Title 10 to add HIV to the current list of sexually transmitted
7 diseases and provides minors the ability to consent to HIV
8 prevention treatment and services. On a personal note; it's
9 about time. We have Joanne (Moore) from the Department
10 available and will provide us with information on this proposal.
11 She's in Albany. Ms. Moore.

12

13 JOANNE MOORE: Good morning. Thank you for the
14 introduction. Good morning to all the council members. Thank
15 you for the opportunity this morning to talk about proposing
16 amendment as it relates to public health law section 23.1 and
17 23.2 of title 10. I assume everyone has a copy of the
18 amendments? Am I correct?

19

20 ANGEL GUTIERREZ: Yes, we do.

21

22 JOANNE MOORE: Yes, wonderful. So, I'd like to start just
23 by briefly looking at the proposed amendments under section
24 23.1. What this proposes is that we add HIV as an STD to group
25 B. so in addition to that you will also see, and because it's so

1 brief, I'll simply read: in group B facilities referred to in
2 section 23.2 of this part must provide a diagnosis and treatment
3 including prevention services [which is an additional amendment]
4 as provided in section 23.2D of this part, the following STDs,
5 and the addition of HIV would be made to HPV, and genital herpes
6 simplex. In section 23.2 we add the addition of a reference
7 again to prevention services. This is a specific reference as
8 it relates to the previously approved adoption of HPV as well as
9 the addition of reference to PREP or pre-exposure prophylaxis
10 and PEP post-exposure prophylaxis. The additional amendment is
11 to also remove reference to the past language of
12 and the addition of at-risk. The proposed amendments to not add
13 any additional burden to the local health departments as
14 referenced in 23.2 as because those STDs are within group B
15 allow for local health departments to either treat directly or
16 by referral or contract.

17 So, the reasoning behind this; so, historically HIV was not
18 included as an STD in this section. The main reason for that is
19 because up until earlier this year the regulations as related to
20 STD contained historic, archaic language. Since that time,
21 earlier this year we had the opportunity to update the language
22 that was contained as it related to STDs and making the ability
23 for us to address many of the historic concerns.

24 So as you know the amendment of making HIV an STD also
25 relates to minor consent, and I would like to offer a bit of

1 background as to how this is related. Today in New York State
2 young people are able to consent to STD screening and STD
3 treatment. However, as it relates to HIV minors can consent to
4 treatment, excuse me, minors can consent to screening and if
5 diagnosed a young person cannot consent to care. This is found
6 to be a growing inconsistency that is a challenge across New
7 York State and in particular for minors that are considered at-
8 risk, including those young people who are homeless or
9 identified as runaway youth. Over a five year period, young
10 people between the ages of 13 and 19 represented about 900 new
11 HIV diagnoses, and while from 2011 through
12 2015 we have seen a reduction in the number of diagnoses in
13 individuals 13-19, we still have to be accountable to those
14 other hundreds of young people that need to have access to
15 quality care and treatment.

16 So in 2014 alone, while we're able to estimate that about
17 80 percent of young people did in fact receive some type of
18 care, that leaves the remaining 20 percent who were not in
19 treatment at any point, but more importantly where we are
20 concerned is that we realized that among those young people that
21 did access care, viral suppression rates which is the highest
22 quality outcome to being in treatment only came to 56 percent
23 which is lower than the state average of 69 percent. So that
24 for us speaks to the fact that number one, we have to ensure
25 that young people have access to continuous care, and number 2,

1 we have to have the ability to address whatever barrier causing
2 young people to not achieve viral suppression at higher rates.
3 Additionally, proposal of _____ and adding HIV as an STD
4 offers the opportunity for young people to be able to access
5 prevention treatments and advancements that we've seen most
6 recently. Again, my _____ to preexposure prophylaxis
7 and post-exposure prophylaxis.

8 This conversation has certainly been expanded, and just as
9 background to talk about some of the historic steps that have
10 been taken since 2014, many of you may be familiar with the
11 New York State in 2014, our Governor declared that we were ready
12 and in position to be able to end the AIDS epidemic by the end
13 of 2020. And so as a result of that Governor's announcement in
14 2014 a number of steps were taken. A taskforce that was made up
15 of experts from across the state related to HIV, STD,
16 were brought together and were able to through public comment
17 provide and develop a blueprint which became publicly released
18 in April 2015. ...the epidemic blueprint details
19 specific recommendations that look to advance the three points
20 that the Governor also announced at the time of announcing New
21 York State's position which includes increased access to HIV
22 testing, linkage and retention and care for the purpose of
23 achieving viral suppression, and increased access to PREP or
24 pre-exposure prophylaxis. The taskforce made up of 53
25 individuals also identified what we referred to as a fourth

1 point which addresses the most significant barriers to care
2 including social and structural barriers. Additionally the
3 taskforce charged with providing recommendation to help us
4 achieve the goal of significantly reducing HIV infections from
5 at that time an estimated 3000 to 750. Also developed steps or
6 provided recommendation on policy that they felt could actually
7 move the state to zero new infections. So within the blueprint
8 the ability for minors to be able to consent to HIV treatment if
9 diagnosed as well as the access to prevention services is
10 detailed. On blueprint number eight, blueprint number 12 and
11 again ... zero, which guarantees minors the right to consent to
12 HIV and STI treatment, diagnosis, prevention, and prophylaxis
13 including sexual health related immunization.

14 So, I say that to say as we look to significantly reduce
15 HIV infections across the state, certainly the inclusion of
16 minors and their ability to consent if diagnosed HIV to treatment
17 and our ability to consent to prevention services for the
18 purpose of not ever having to reach an HIV diagnosis is
19 essential in order for us to achieve our goal and is essential
20 when considering the quality of life for young people,
21 particularly those young people at higher risk as it relates to,
22 as I mentioned before, those youth that are sexually active that
23 are considered to be homeless and are considered to be runaway
24 youth. So the amendment of adding HIV as an STD allows the
25 opportunity for us to expand our ability to engage young people

1 in care and in prevention and ultimately will
2 towards ending the epidemic by the end of 2020. Thank you.

3
4 ANGEL GUTIERREZ: Thank you Ms. Moore. Are there any
5 questions from the committee or council members for Ms. Moore?
6 Are there any comments from the public or questions from the
7 public? If not, Ms. Moore and I thank you for your efforts on
8 your staff and I'm looking forward to having you coming back to
9 ask for final approval on this. We do not require a vote at this
10 point. For information also is the federal conditions of
11 participation. This proposal will amend part 405 to incorporate
12 federal conditions of participation regarding telemedicine
13 authentication of medical records, integrating the nursing care
14 plan into the overall disciplinary plan of care and patient self
15 medication while in the hospital. Ruth Leslie from the
16 Department is available and will provide us with information on
17 this proposal. Ms. Leslie, please go ahead.

18
19 RUTH LESLIE: Thank you and good morning everyone. As you
20 just heard, this proposal amends various sections in section 10
21 of NYCRR part 405. ...the hospital code regulatory
22 requirements and the reason that we're taking these or taking on
23 these changes are to become consistent with changes that were
24 made in the federal Medicare conditions and participation by CMS
25 back in 2012. These regulations were actually first presented to

1 you and to this committee in November 2013. However, subsequent
2 to that meeting concerns were raised internally regarding one of
3 the provisions including that had to do with self-administration
4 of hospital prescription and non-prescription medications as
5 well as self-administration of medications that were brought -
6 that could be brought in by the patient from home. These
7 concerns needed to be readdressed before this package could come
8 forward to the committee for their consideration.

9 In the meantime, the creation of the medical marijuana
10 program prompted additional discussions about the self-
11 administration of medical marijuana in hospitals and we've been
12 adding those discussions with the Bureau of Narcotics
13 Enforcement our division of legal affairs. Also in the meantime
14 while the reg was being discussed internally, CMS issued
15 additional to the hospital conditions of
16 participation in July 2013. Hospital program staff had reviewed
17 those provisions and we decided that additional amendments to
18 the hospital code were not necessary given that existing
19 language kind of encompassed those federal changes already. So,
20 we fast forward to today, the regulations that you have in front
21 of you are essentially what was reviewed by the Codes Committee
22 in 2013 with the exception of the medical marijuana provisions.

23 So, we'll go through the key elements of this to refresh
24 everyone's memory and then also to address the new parts of this
25 reg set. So the key elements are the, even this, one of the

1 provisions amends on-call response by supervising and attending
2 physicians from 20 minutes to 30 minutes either in-person or via
3 telemedicine. The change in 405.2 are specific to hospitals
4 that have fewer than 25 beds, and the change in 405.19 applies
5 to hospitals with fewer than 15,000 emergency department visits.
6 In either case, this change is really most helpful to our
7 smaller hospitals that may be in rural areas of our state and it
8 allows a little bit of extra time for response but also allows
9 telemedicine solution to assist on-call physicians to help in
10 the assessment of patients more quickly if needed. It does not
11 replace the ability and the necessity of the physician to
12 respond in person should the need be there but it adds an extra
13 communication tool for the physicians and the hospitals to meet
14 the on-call requirements. In part 405.3 this amends the history
15 and physical exam requirements to expand existing exemption for
16 immunization for physicians practicing remotely including New
17 York State physicians that are practicing remotely.

18 Part 405.5 ...here update requirements concerning nursing
19 care plans to allow them to be integrated into the overall
20 multidisciplinary plan of care. This change reflects CMS focus
21 on multidisciplinary care teams and planning. Also amending
22 part 405.5 it allows for patients to self-administer medications
23 that are either hospital issued prescription medications and
24 non-prescription medications and/or their own medications that
25 they would bring in from home. These medications may include

1 prescription, non-prescription medications and medical marijuana
2 provided that the hospital develops policies and procedures that
3 guide staff for through this whole process of how self-
4 administration would occur. Provided that there is an order for
5 the self-administration to occur, that the patient or the
6 patient's care giver capacity to self-administer has been
7 assessed, the security of the medication has been addressed, and
8 in the case of medical marijuana specifically, patient or their
9 care giver has presented their medical marijuana registry ID
10 card. The medication is identified and evaluated for integrity.
11 Documentation is made in the patient's medical record as
12 reported by the patient or their care giver, and if the patient
13 expires in the hospital, any unused prescription medication is
14 destroyed or disposed of in accordance with all applicable state
15 and federal laws and regulations. The medication is not to be
16 turned over to care giver and in the case of medical marijuana
17 it may be turned over to the deceased person designated care
18 giver according to the appropriate law enforcement or
19 destruction for disposal. It should be noted that these
20 provisions for self-administration within hospitals are
21 voluntary. Hospitals do not have to take steps to put these
22 provisions into place should they not want to entertain this,
23 but if they do the regulation follows the federal conditions
24 very closely, but also adds specific provisions for medical
25 marijuana.

1 Lastly, provisions changes to part 405.10 removes the
2 requirement that verbal orders be authenticated within 48 hours
3 consistent with a federal change that occurred in 2012. In
4 some, these regulations are necessary to keep the hospital code
5 consistent with changes in federal conditions of participation.
6 We are making these changes to make clear - to make it
7 consistent both our federal rules as well as our state rules and
8 we are entertaining very frequent questions about verbal orders,
9 telemedicine as well as whether patients can bring medical
10 marijuana into the hospitals for self-administration. So with
11 that, I'm going to close and open for questions if there are
12 any.

13

14 ANGEL GUTIERREZ: Thank you Ms. Leslie. Are there any
15 questions for Ms. Leslie from the attendants? Yes.

16

17 JOHN BENNETT: Just help me on the issue on if the patient
18 dies if they're using their own medications, if it's anything
19 other than marijuana it has to be destroyed or disposed of but
20 if it's marijuana it can be turned over to their care giver?
21 Help me understand why that is. I'm a little confused.

22

23 ANGEL GUTIERREZ: Ms. Leslie, you heard the question?

24

25 RUTH LESLIE: I did hear the question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[unidentified]: I think in both cases we're trying to implement a set of rules in New York that are compatible with the federal laws, so if it's not medical marijuana we're simply following the Medicare conditions of participation. In the case of medical marijuana there is a issue about the hospital laying their hands on it at all. So it's purely something that's happening under state law and this was how we could accommodate both federal and state law.

JOHN BENNETT: That doesn't help me. I still don't understand. The way I'm reading this, if it's medical marijuana you turn it over to the patient's care giver after the patient is dead. Now the patient's care giver may not have a need or even, since it's medical marijuana it's patient-specific? You're basically giving marijuana - maybe I'm not understanding correctly, you'd be giving basically giving marijuana to someone who doesn't have a medical need for medical marijuana and marijuana is still, recreational marijuana is illegal in New York State.

[unidentified]: Well, this is what happened if it was in the community under the medical marijuana regulation and the care giver is somebody who can possess it.

1 JOHN BENNETT: Really? I'm not a lawyer, but that sounds
2 odd to me.

3

4 ANGEL GUTIERREZ: Maybe I can tag along to Dr. Bennett's
5 comment because I had a separate question before you asked
6 yours, Dr. Bennett. 50 years ago it was not uncommon to find on
7 the charts an order written by a physician that calls for
8 "spirit fermenti," which was basically wine or alcoholic
9 beverage of some kind or other. And that somehow disappeared.
10 So, and I remember that people who will bring their own bottle,
11 and the bottle would go home with them. So help us understand
12 how that pairs up with this and I did raise my eyebrows when I
13 heard that. I suppose that - I don't know. If you are
14 authorized to buy marijuana for medical purposes, and I'm not
15 sure that you need a prescription, I see Dr. Martin raising his
16 hand so..

17

18 GLENN MARTIN: I was just asking for clarity. Right now if
19 a patient who has received medical marijuana under doctors
20 authorization etc., etc., dies, what are you supposed to do with
21 the marijuana? Is the caregiver responsible for it already to
22 destroy it, sell it, use it, or is the law silent on what
23 happens?

24

1 MR. ZAHNLEUTER: I can help with that. With medical
2 marijuana, and it's important to realize it is medical
3 marijuana, it's not just marijuana or not just recreational
4 marijuana, the law is silent about what happens when a patient
5 or when the care giver ends up with the medical marijuana after
6 it's no longer needed. So this regulation follows form with the
7 State law. I see what you're saying that there might be a
8 position there where after a death there is a drug floating, but
9 that same thing might happen with any prescription drug. Right?

10

11 GLENN MARTIN: Yeah, no, I understand.

12

13 MR. ZAHNLEUTER: So this is medical marijuana which is
14 not illegal for under the circumstances that we have here under
15 State law.

16

17 GLENN MARTIN: No, and having run the psych ER for years
18 and having to deal with illicit substances, hospitals are not
19 particularly designed or want to hold on to. I can see them not
20 wanting to do this and I can see leaving it there. Would be
21 nice if the law had sort of closed the loop and said what - they
22 want to transfer responsibility back to the care giver. That's
23 why. So there really isn't any responsibility.

24

1 MR. ZAHNLEUTER: That's true. You're putting your
2 finger right on the problem which is if the care giver doesn't
3 take it, what will happen? The hospital doesn't not want it and
4 will not possess it and we can't put a person in jeopardy by
5 having it in the hospital. So we want to give it back to where
6 it came from.

7
8 ANGEL GUTIERREZ: Any further questions or comments? Yes,
9 Dr. Rugge.

10
11 JOHN RUGGE: Just in the interest of redundancy regarding
12 405.19 it seems very clear that with emergency department with
13 less than 15[sic] encounters per year, there not be a need for a
14 physician to be on site within any period of time. Telemedicine
15 would substitute. I guess just to clarify. But also as a
16 question; when would this go into effect assuming the PHHPC
17 passes the proposal?

18
19 RUTH LESLIE: My understanding is that when that the -- ...

20
21 [unidentified[: So this is going to be proposed in the
22 state register on December 21 and then there's a 45 day comment
23 period and hopefully we'll be able to issue a final regulation
24 which is identical to what has been proposed, but of course we
25 have to respond to public comments. So, December 21 plus 45

1 days then we have the opportunity to finalize it and to become
2 effective upon the publication of the notice of the final rule
3 in the State register. December 21 plus 45 days plus as soon as
4 we can, we'll finalize it and then it gets published
5 in the state register and it's effective.

6

7 JOHN RUGGE: So you would anticipate by say, April 1? Is
8 that a reasonable estimate?

9

10 ANGEL GUTIERREZ: It has to come back here. This is not
11 for vote today, so...

12

13 JOHN RUGGE: It's coming back here for final - so there's
14 public comment first and then the PHHPC?

15

16 ANGEL GUTIERREZ: Right. So at least one cycle that we're
17 going to wait.

18

19 JOHN RUGGE: So we would anticipate in the April/May
20 cycle. Would that be reasonable?

21

22 ANGEL GUTIERREZ: That's what I would anticipate.

23

24 JOHN RUGGE: OK. Thank you.

25

1 ANGEL GUTIERREZ: Are there any other questions of the
2 committee? Yes, Dr. Bennett.

3

4 JOHN BENNETT: (inaudible) ...on the signing of orders, I
5 just have a question. It states that orders would have to be
6 signed within 48 hours but then it says the prescribing
7 practitioner responsible for the care and the timeframe for such
8 authentication [sic]. Are we giving the facilities leeway in
9 terms of changing the 48 hours? Or to the orders have to be
10 signed within 48 hours? I'm struggling to understand that.

11

12 RUTH LESLIE: So it's really up to hospitals to determine
13 their own policy for authenticating their verbal orders. They
14 are open to keeping the 48 hour rule that has been in place.
15 They can do that. They can adopt it as their own policy. They
16 can adopt a shorter timeframe or whatever is suitable for their
17 needs.

18

19 JOHN BENNETT: Can they adopt a longer timeframe?

20

21 RUTH LESLIE: They could, but I think there are other
22 factors in play here that may affect the hospital's decision of
23 how long or short that window could or should be, and there's
24 the old issues with that as well. So I think that something for

1 each hospital to take back to their council for
2 discussion.

3

4 [unidentified]: And these issues are fully developed by
5 the federal government with the federal Medicare conditions of
6 participation. So our intent here is to allow what CMS allows
7 for the Medicare program. So you know, you should really look
8 to the federal government to what's allowed under the federal
9 rules.

10

11 ANGEL GUTIERREZ: It surely sounds to me as though we
12 will allocate some of the aggravating issues with getting orders
13 by physicians authenticated in nursing homes where we're
14 requiring a signature when in fact the same physician is allowed
15 to call a pharmacy and give an order or do it through a computer
16 without having to go and sign the order in the pharmacy. So are
17 there any questions from committee or council? Any comments from
18 the public? If not again, Ms. Leslie thank you very much and
19 this is not for vote. With this I end the committee meeting and
20 thank you very much.

21

22 PETER ROBINSON: OK, Good morning Dr. Gutierrez. Good
23 morning everyone. I'd like to convene a special meeting of the
24 Establishment and Project Review Committee to take up one
25 application. And let me introduce that and then get a more

1 detailed summary from the Department. This is application
2 162117E, One Brooklyn Health System Inc., in Kings County. This
3 is to establish One Brooklyn Health System Inc., as the co-
4 operator of three article 28 acute care hospitals in Brooklyn.
5 Those are Brookdale Hospital Medical Center, Interfaith Medical
6 Center, and Kingsbrook Jewish Medical Center. I do believe Dr.
7 Boufford has declared -

8

9 JO BOUFFORD: I'm not a member of this committee. I can
10 leave.

11

12 PETER ROBINSON: Sorry. And is leaving the room. The
13 Department is recommending approval with a condition and a
14 contingency. May I have a motion? Dr. Gutierrez. Dr. Berliner,
15 second. Mr. Abel.

16

17 CHARLIE ABEL: Thank you. So these three hospitals that
18 have come together and submitted an application for a coal
19 operator three hospitals being Interfaith, Kingsbrook Jewish
20 medical center, and Brookdale, and a proposed cooperater one
21 Brooklyn health system, those three hospitals has been
22 struggling financially for years, and under for the last more
23 than two years now the state has had extraordinary subsidies,
24 subsidy programs and have been directing a large portion of
25 those subsidies to these three facilities in order to keep them

1 running so that they could define a plan for financial
2 stability. In fact this year there's about \$240 million going to
3 those three hospitals and then some unfortunately is not
4 expected to be reused without something seriously, some serious
5 restructuring. These are three independent hospitals right now
6 and they've come together to form a system, a cooperator system
7 in an effort to try to restructure and become more efficient.
8 And reduce its dependence on specialty subsidies. And that's
9 really what we have before you. Collaboration among these three
10 hospitals in the form of a closed cooperator, one that at least
11 initially will be positioned to help these three facilities plan
12 for the future and assist in the submission of certificate of
13 need applications, and as well as help them with a proposed
14 application that we expect will result from the future issuance
15 of a request for applications for the Brooklyn transformation
16 program. Now that Brooklyn transformation program is \$100
17 million worth of state grants is defined in our review because
18 we do list, we want to provide the purpose of the transaction
19 for the PHHPCS consideration. But that process is a complete and
20 separate process from the application that you have before you.
21 I think we've all seen numerous cooperator applications from
22 many hospitals this year, last year, it's a DSRIP strategy to
23 try to position these facilities to joint planning, to be able
24 to create a more sustainable path for them in the future. So
25 that's what we have before you, and the department has reviewed

1 the application and find it to be acceptable and we recommend
2 approval. Thank you.

3

4 PETER ROBINSON: Thank you Mr. Abel. Are there questions
5 of the Department from the committee? Dr. Berliner.

6

7 HOWARD BERLINER: So, Charlie, in the applications for
8 the state money, to the applications for the state money, would
9 they be, would the applications be made as individual
10 institutions or through this new consortium?

11

12 CHARLIE ABEL: I don't want to speculate..

13

14 HOWARD BERLINER: From these particular hospitals?...

15

16 CHARLIE ABEL: From my perspective I don't want to
17 speculate on what that process would be because it hasn't been
18 defined yet, but if Mr. Sheppard would like to say anything
19 different.

20

21 DAN SHEPPARD: No, I mean, Dr. Berliner so..could you please
22 repeat your question?

23

1 HOWARD BERLINER: The question is really just in applying
2 for these funds would each hospital still do it separately or
3 would they apply together as one under this new rubric?

4

5 DAN SHEPPARD: So, I think Charlie is accurate in that'll
6 be determined by the hospitals and One Brooklyn Health System.
7 As part of.

8

9 PETER ROBINSON: Dr. Bennett.

10

11 JOHN BENNETT: So, as I understand it, the purpose of this,
12 it says the limited purpose would be to approve CON applications
13 particularly with this grant money. So, just asking the question
14 although I think it's answered here, but I want to focus on it a
15 little bit, One Brooklyn Health System is not going to be the
16 active parent of these institutions and will not be entering
17 into contractual arrangements with commercial payers as a result
18 of this? Question number one.

19

20 CHARLIE ABEL: if you'd like, I can address that question
21 right now. Right now One Brooklyn Health is not proposed to be
22 an active parent. In fact, each of the three facilities, their
23 history has been very much so that they want to retain their
24 independence and they do want to maintain their autonomy, and in
25 a cooperator arrangement they realize that there are some

1 benefits to having a common cooperator but the organizational
2 structure, at least for now is actually inverted, so One
3 Brooklyn Health is not a parent but actually a group that is
4 composed of the three - representatives of the three facilities.
5 So with respect to - I don't know what the three facilities
6 intent is for the One Brooklyn Health System other than they
7 assume in their application that this entity will better
8 position those three hospitals to be able to apply for any
9 future grants.

10

11 DAN SHEPPARD: Dr. Bennett, Just to build on what Charlie
12 is saying, I mean this is what before you is an initial step by
13 these three hospitals to come together for the initial purpose
14 of positioning themselves with alignment with the statute
15 authorizing the capital program, which I can describe what I
16 mean by that in a minute, to - so, the path that these three
17 hospitals follow is going to be determined by those hospitals
18 working together. This is a first step and so want to emphasize
19 that. And by my reference to alignment with the capital
20 statute, I think it's important to understand that the statute
21 is very narrow, the structure of the statute is very narrow. It
22 defines eligibility as hospitals in extreme financial distress
23 serving communities within Brooklyn that have the highest rates
24 of health disparities relative to other areas of Brooklyn, and
25 that the projects sort of the third important point under the

1 statute and those projects must be in support of a plan for
2 financial sustainability that involves a merger consolidation or
3 other significant corporate restructuring. So I think by virtue
4 of their location populations they serve, they're in alignment
5 with the first two provisions they met, financial distress being
6 the other, but also that the other strengthening factor for any
7 application or really significant factor is that it be
8 associated, the projects be associated with the plan again for
9 consolidation, merger consolidation or significant corporate
10 restructuring and so this application is really addressed at
11 that last element of the statute.

12

13 JOHN RUGGE: So, by virtue of creating this cooperator,
14 they actually consolidating or is this a step toward
15 consolidation?

16

17 DAN SHEPPARD: It's a step towards consolidation. And so
18 they'll make the determination with, I mean, if this were to be
19 approved it will position them to take those, to have those
20 further discussions to present an application in response to
21 this capital program that would in effect reflect that next
22 step. Again, one step at a time.

23

24 JOHN RUGGE: Just to be clear, this is not in lieu of
25 further consolidation. This does not substitute for

1 consolidation. This is not taken so they can avoid any further
2 merger or other action.

3

4 DAN SHEPPARD: No, it's not. In fact, this in and of
5 itself, this state in and of itself with probably - they would
6 need to take further steps that would likely be expressed in
7 their application for the funds. This is I guess sort of a
8 foundational element of them taking those next steps is probably
9 the best way I could characterize it.

10

11 PETER ROBINSON: I'll just note for the record that Dr.
12 Strange has joined the committee and has declared an interest in
13 this application. Any other questions from the committee? Is
14 there anyone from the public that would like to speak? The
15 applicant, questions only is what I understand? Thank you.
16 Hearing no other questions, I'm going to call the question; all
17 in favor?

18

19 [Aye]

20 Opposed? That motion carries. Thank you. And I will now
21 adjourn this special meeting of the Establishment and Project
22 Review Committee and invite our council chair to return.

23

24 JO BOUFFORD: Good morning everyone. I'm Jo Boufford,
25 Vice Chair of the Council and have the privilege in the absence

1 of Jeff Kraut to call this meeting to order and welcome members,
2 participants, observers and our Commissioner, Commissioner
3 Zucker. Let me remind everyone on the rules of the road on
4 webcasting. First, council members, staff, and the audience,
5 this meeting is subject to the open meeting law and is broadcast
6 over the internet. The webcast can be accessed at the
7 Department of Health's website. The on-demand webcast will be
8 available no later than 7 days after the meeting for a minimum
9 of 30 days and then a copy is retained in the Department for
10 four months. Some other suggestions, because there is
11 synchronized captioning, it is important that people do not talk
12 over each other, because as one can imagine that's challenging.
13 First time you speak, would you please state your name and
14 whether you are a council member or department staff in order to
15 assist in the broadcasting company recording the meeting. The
16 microphones are hot and pick up every sound so please watch your
17 paper shuffling and sidebar conversations and other activities
18 during the meeting. And as a reminder for the audience, if you
19 have not yet completed one, there is a form that needs to be
20 filled out to record your attendance at these meetings required
21 by the joint commission on public ethics in accordance with
22 executive law section 166. This form is also on the website,
23 and we thank you for your consideration, cooperation on these
24 guidelines.

1 Let me give you a quick overview of today's meeting. First
2 we will hear reports from the department starting with
3 Commissioner Zucker then Mr. Sheppard will give an update on the
4 activities of the office of primary care and health systems
5 management. Mr. Hutton has returned his time to the council for
6 other business as far as public health is concerned. I will give
7 a report on the activities of the public health committee. Dr.
8 Right on the joint meetings of the public health and health
9 planning committee . Dr Gutierrez on regulation and Mr. Robinson
10 will be reporting on a number of the CON applications reviewed
11 by the committee on establishment and project review. We will
12 also have a review of a certificate of public advantage
13 application and we have been advised to take that up immediately
14 following Commissioner Zucker's presentation to avoid the risk
15 of losing egg for him as the meeting goes forward due to a
16 number of recusals . So with that, I think we will start by
17 adopting the minutes. May I have a motion for adoption of the
18 minutes of October 6? Dr. Gutierrez. Second Dr. Kalkut. All in
19 favor?

20 [aye]

21 Anybody opposed? And it's a pleasure to hear from
22 Commissioner Zucker.

23

24 HOWARD ZUCKER: Thank you Dr. Boufford. Thank you very
25 much. Good to be here. There's a lot of information to cover

1 this morning. I wanted to begin with a discussion of our medical
2 marijuana program. Because we've had several changes to the
3 program recently. New York's medical marijuana program as many
4 of you know has been a healthcare success with more than 11,000
5 certified patients and 750 registered physicians to date. The
6 Department of Health is currently acting on a number of recent
7 recommendations to further strengthen the program and to
8 increase patient access and that includes the empowerment
9 clause, nurse practitioners and physician assistants to certify
10 patients for the program. Presently there are 19,000 licensed
11 practitioners in New York State and as of November 30, 2016
12 nurse practitioners can register with the department by taking
13 the department approved medical use of medical marijuana course
14 that's online and then submitting the course completions to the
15 department. Once that happens the department will process the
16 registrations to confirm that they are in good standing and
17 notify them electronically when they are registered. In addition
18 we have about 11,000 physician assistants and the departments
19 also filed proposed rulemaking that would enable the PAs to
20 register with the department to certify patients for medical
21 marijuana they could do so as long as they are supervising
22 physicians also registered to certified patients. The proposed
23 rulemaking was published on November 30, 2016 and the amendment
24 for PAs would not take effect until it is filed for adoption
25 after the 45 day public comment period. So both nurse

1 practitioners and physician assistants are already authorized to
2 prescribe controlled substances including opioids is just a
3 piece of information that I'm sure you may know, and if you
4 don't just worth knowing. Empowering them to use, sorry, to
5 issue medical marijuana certifications will help patients
6 suffering from severe debilitating, or life-threatening
7 conditions and this is particularly in the world counties where
8 there are often very few physicians and I think it's important
9 that we address that. In addition the department has proposed
10 amendments that will allow hospitals to permit patients to self-
11 administer certain medications including medical marijuana. The
12 proposed amendment also allows caregivers to administer the
13 medication in the hospital, and hospitals who choose to do so
14 must have policies and procedures in place and ensure medication
15 safely administered and also securely stored. These regulations
16 will be published in the New York State register on November 21
17 and will have a 45 day comment period as well.

18 Program will be presenting regulations here at today's
19 meetings for this past Tuesday the department filed a proposed
20 regulatory amendment to add chronic pain as a qualified
21 condition for medical marijuana. It defines chronic pain as, I'm
22 going to give you the exact wording on this as "any severe
23 debilitating pain that the practitioner determines the grades
24 health and functional capability where the patient has
25 contraindications, has experienced intolerable side effects or

1 otherwise experienced failure of one or more previously tried
2 therapeutic options and where there is documented medical advice
3 of such pain having lasted three months or beyond or more beyond
4 onset or the practitioner recently anticipates such pain to last
5 three months or more beyond onset" and legal words usually have
6 long sentences and comments. The amendment will be published in
7 the New York State register on December 21, 2016. It will then
8 be subject to the 45 day comment period before it can be
9 adopted. The department will be posting additional information
10 online for patients and practitioners about the addition of
11 chronic pain as a qualifying condition and also help patients
12 with chronic pain may be certified for the program.

13 The department is providing guidance to register
14 organizations licensed to manufacture and dispense medical
15 marijuana in New York on wholesaling their products to other
16 registered organizations. And this will make more varieties of
17 products available at dispensaries across the state. Effective
18 immediately registered organizations may submit proposals to
19 sell and to distribute approve medical marijuana products and or
20 medical marijuana that has been extracted pursuant to the
21 regulations which is the extracts of the registered
22 organizations. As part of the department's efforts to make more
23 medical marijuana products available to patients across the
24 state, registered organizations will be allowed to manufacture
25 and dispense additional brands beyond the initial five required

1 by regulation. In allowing the wholesaling of extracts and
2 removing the brands will help ensure continuous availability of
3 medical marijuana products even if crop fails and allows
4 registered organizations to retain critical extracts to keep
5 making their products without having to wait for their own new
6 crops to be ready. And registered organizations that wish to
7 sell and distribute their extracts and or approved medical
8 marijuana products to other registered organizations within New
9 York State must first submit a proposed operating plan for
10 wholesaling to the department and receive the departments prior
11 written approval. Registered organizations interested in
12 manufacturing additional brands must submit the brand
13 information to the department and receive prior written approval
14 as well. The reason I went into a lot about the marijuana is
15 because there has been a lot of questions and I thought that
16 would be good for the committee to hear the update of exactly
17 where we are on this.

18 On the next issue is the advanced home health aides. So we
19 also have some good news here about the legislation which was
20 recently signed by the governor to create the job category of
21 advanced home health aide. These will be home health aides who
22 receive additional training and act under the supervision of a
23 licensed registered nurse to carry out advanced tasks. So some
24 of those tasks include the administering of routine or prefilled
25 medications that are easy to give such as injections like

1 insulin. Advanced home health aides will be supervised by RNs
2 employed by homecare agencies, by hospice programs, or enhanced
3 assisted-living residences. The law will make it easier for New
4 Yorkers to live in their homes instead of being in any kind of
5 specific institutional settings. And it will provide support to
6 family members who act as caregivers. The health department and
7 the state education department are developing regulations to
8 specify the advanced tasks that are to be performed by advanced
9 health home aids. And individuals who do meet those
10 qualifications, the training in the competency requirements
11 outlined in the regulations will be able to work as an advanced
12 home health aide and listed in the state homecare registry.
13 Again, this is our goal to do everything we can for those who
14 require assistance with her younger old.

15 Third here is ending the epidemic. So I'd like to call
16 attention to last week's observance of world AIDS day, the event
17 coincided with new legislation signed by the Governor that will
18 increase access to testing and treatment for individuals living
19 with HIV AIDS. The legislation will eliminate barriers to HIV
20 testing by extending the requirement to offer HIV testing to
21 persons over the current upper age limit of 64. And will
22 continue working to normalize the offer of HIV testing so
23 individuals who remain undiagnosed are identified. Under the new
24 law registered nurses will be able to screen patients for
25 syphilis, for gonorrhea, and chlamydia as well. The law also

1 increases access to post-exposure prophylaxis by allowing
2 pharmacists to dispense up to a seven-day "starter kit". In
3 addition the law enables disclosure of HIV AIDS related medical
4 information to approved researchers. This change removes the
5 barriers of HIV AIDS research by expanding access to data so
6 researchers can learn more about how HIV AIDS interacts with
7 other medical conditions. And the epidemic, the governor's plan
8 to reduce the prevalence of new cases of HIV infection to 750 by
9 the year 2020 is already making excellent progress on efforts to
10 link people diagnosed with HIV to care has had success rate of
11 75percent, and in just one year the number of persons with HIV
12 aids in the state to achieve viral suppression is increased by
13 6000. So it went from 71,020 in 2013 to 77,020 in 2014 and we'll
14 have the information about 2015 soon.

15 Building on these successes the governor has set new goals
16 of zero AIDS mortality and zero HIV transmission through
17 injection drug use by the end of 2020. Among the proposals to
18 achieve these goals are requiring all types of service providers
19 and care coordinators to track the viral suppression rates of
20 the HIV-positive persons and serve and ensuring that teens can
21 get life-saving HIV treatment and preventive services
22 confidentially. This would expand access to HIV preventative
23 services to use a high-risk specifically post exposure
24 prophylaxis as well as preexposure prophylaxis or PREP. PREP is
25 for those of you for not familiar with it PREP is a once daily

1 pill that protects individuals from HIV infection and it's an
2 important prevention tool that is not currently available to
3 them without parental consent. Governor Cuomo also announced
4 that the state is requesting approval from CMS for an amendment
5 to his partnership plan waiver. The amendment would authorize
6 federal Medicaid matching funds to advance the initiative of
7 ending AIDS is an epidemic in New York State, a move that could
8 bring \$45 million in federal funds to help us and the epidemic.
9 And we will continue to fight to bring an end to the epidemic
10 has been devastating to New York. We are making great progress.

11

12 The next issue is on antimicrobial resistance. We have a
13 antimicrobial resistance task force. Last month the task force
14 held its first summit. As you may know the United Nations
15 recently called our world leaders to focus on developing a broad
16 coordinated approach to addressing the problem of antimicrobial
17 resistance. Not just in human health but in animal health is
18 well as in agriculture. So that clearly shows the seriousness of
19 this issue. Bringing health issues up in the United Nations,
20 just telling you, having worked in the UN, that is a major step
21 forward when health issues get on to the forefront of some of
22 these areas. New York also has had a task force in place. The
23 summit in November brought together stakeholders from various
24 agencies and levels of government including the CDC. The good
25 news is that there is growing awareness of antibiotic resistance

1 of both the patient and the health professional. But awareness
2 clearly is not enough. We need to move forward, we need to take
3 present action to stem the tide of this growing epidemic. This
4 is an issue that's very important. The task force will look at
5 how to develop new initiatives to combat antimicrobial
6 resistance. And working with our external partners we will shape
7 New York's future. The response to the problem we will leave the
8 state, we will lead as our state will lead the nation in this
9 fight against antimicrobial resistance just as New York has
10 always lead on so many other areas.

11

12 And finally, the issues of health, where were going with
13 healthcare, in the wake of elections people have had questions
14 about the future of healthcare. We know there will be changes
15 under the new administration. Although we will need to adjust
16 and respond, we can't predict what those changes will be. New
17 York state of health, our health exchange marketplace will
18 review the details of the incoming good ministrations policies
19 regarding health insurance. Since its start three years ago the
20 New York state of health has had tremendous success and rolling
21 more than 3 million New Yorkers and affordable health coverage.
22 Additionally New York has significantly reduce the number of
23 uninsured to the marketplace opened in 2013. A number of
24 uninsured New Yorkers has declined by nearly 850,000. So between
25 2013 and 2015 the rate of uninsured from the percentage

1 perspective has dropped from 10percent to 5percent. And in the
2 interim we will continue to focus on ensuring that all New
3 Yorkers have the best possible healthcare and insurance options.
4 The department will review the details of the incoming get
5 ministrations policies regarding Medicaid. However the change of
6 the ministration will not affect our federal DSRIP waiver,
7 because as you know DSRIP has helped New Yorkers begin the
8 process of fundamentally restructuring the states healthcare
9 delivery system by reinvesting the Medicaid program, reducing
10 avoidable hospital use, and helping us to significantly reduce
11 New York's Medicaid spending per person. So we've made great
12 progress there as well.

13 What all this means to New York State budget, we don't
14 know. It's still premature for such speculation. Of course the
15 state does receive significant funding for Medicaid and health
16 services related to the ACA. But it's not possible this time to
17 assess the potential fiscal impact of the policies that may be
18 adopted in Washington. So we'll have to wait when we have more
19 information. Will provide that to you as well.

20 So lastly one reminder it is flu season. If you haven't
21 gotten a flu shot yet I strongly encourage you to. It's not too
22 late. I got mine last week. So I wish you all a happy and
23 healthy holiday season. Enjoy. Spend it with family, spend it
24 with friends, watch a movie, and just take some time to
25 yourself. So thank you very much.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ANGEL GUTIERREZ: Thank you Commissioner. Questions about the medical marijuana situation. I did hear your numbers for physicians that have applied for licensing. And then you mentioned nurse practitioners and PAs. Are the PAs getting licenses only if their supervising physician has a license?

HOWARD ZUCKER: Correct. That's correct. So the supervising physician.

ANGEL GUTIERREZ: No PA will get a license if the supervising physician...

HOWARD ZUCKER: ...doesn't have a license.

ANGEL GUTIERREZ: Thank you.

HOWARD BERLINER: Commissioner, word on the street is that the Medicaid waiver agreement has been reached between New York and the federal government. Is that correct?

HOWARD ZUCKER: Yeah.

DAN SHEPPARD: I have heard it on the street but it's in Crain's this morning. So therefore it's on the street.

1 HOWARD ZUCKER: I didn't know how much it was out there. We
2 heard about it yesterday.

3

4 LAWRENCE BROWN: Lawrence Brown, council member. I also
5 would like to ask a question which respect to medical marijuana
6 issue. As you know, I'm involved in addiction medicine, and
7 pain and addiction have an interesting relationship and
8 sometimes can harm the public health of counties, cities,
9 states. So I was interested in two things; I'm assuming that a
10 patient's enrollment in the medical marijuana means that they
11 will be listed in ISTOP?

12

13 HOWARD ZUCKER: Well, their information - I have to check
14 and see whether they're in istop.

15

16 LAWRENCE BROWN: Because for addiction providers that
17 would be particularly important. Because when they get a test
18 that is positive for THC in the clinical program they want to
19 make sure there is a medical explanation for that.

20

21 HOWARD ZUCKER: I get it. That's a good point.

22

23 LAWRENCE BROWN: And the second is that to, I've heard
24 you talk about the successes about, by the number of persons
25 that are enrolled. Was wondering, is there any metrics that

1 pertain to avoiding the negative consequences, that is, that
2 we've heard decades ago about the importance of treating pain by
3 providers that got us into some of the opiate epidemic that
4 we're in. So I'm wondering whether we're having some, the
5 Department has any metrics to assess for any potential negative
6 consequences.

7

8 HOWARD ZUCKER: So, we're looking at this very closely.
9 Even adding the issue of chronic pain. We looked at the signs,
10 try to figure out what's the data out there. We keep - we
11 monitor the whole program very closely, and I recognize what
12 your concern is. Is there a slippery slope where you end up
13 going down, we end up going down, and we will - and that's why
14 that definition is as specific and crafted the way it is. But
15 we will keep an eye on that.

16

17 DR. WATKINS: Commissioner, I want to applaud the
18 Department for it's efforts to make medical marijuana available
19 to all those in New York State and allowing nurse practitioners
20 and physician assistants to be able to prescribe for this. You
21 did mention earlier about the rural community, however, the
22 rural community is having a hard time with affordability for
23 medical marijuana, and if it's the Departments - if it's part of
24 the Department's regulation to control the cost of medical
25 marijuana, will the Department consider reducing the current

1 costs that rural communities have to pay out for a monthly
2 prescription for medical marijuana?

3

4 HOWARD ZUCKER: So, we look at the registered organizations,
5 we work with them, we recognize that there is a price and not
6 just for issues of medical marijuana. In general the costs of
7 things are high. So we will continue to try to monitor that and
8 try to figure out how we make sure things are affordable for
9 those who will benefit from that therapy, and it's not just
10 this, but for all areas. But we will tackle that.

11

12 GLENN MARTIN: So, I apologize because I'm not sure I
13 understood completely. So in your review of HIV and some of the
14 changes that might be coming, you did mention on the research
15 perspective I assume that just means
16 would be likely to give informed consent and be allowed to look
17 at identifiable information in a proper -

18

19 HOWARD ZUCKER: Data in the proper way.

20

21 GLENN MARTIN: Which right now we can't do and it's a real
22 nuisance. Is that a change in regulation or a change in law?

23 (inaudible)

24

25 HOWARD ZUCKER: We'll check which one.

1 Maybe we have an answer for you. Albany?

2

3 JOANNE MORNE: Hi, I apologize. This is Joanne Moore with
4 the AIDS institute so as it relates to the statute regarding
5 research, we're currently in the process now of working with our
6 division of legal services. One, yes, to look at the statute
7 but also too, to look at regulation as well as development of
8 guidance as we move forward with implementation.

9

10 SCOTT LA RUE: Good morning Commissioner. On the medical
11 marijuana you mention the self administration and acute care
12 facilities that also going to include post-acute facilities or
13 only acute? And secondly, what is CMS's position on the
14 administration of, self-administration of medical marijuana in a
15 healthcare facility?

16

17 HOWARD ZUCKER: So it involves all facilities, wherever you
18 have - so would benefit from that kind of therapy. And I'm not
19 sure about the CMS answer on that one.

20

21 SCOTT LA RUE: The reason I ask if you take the
22 Huntington's Disease as an example we just created the centers
23 of excellence for neurodegenerative disease and those patients
24 are individuals that could benefit from this, but it would -

1 curious as to what would happen on a survey if you had a
2 resident who was self-administering medical marijuana.

3

4 JO BOUFFORD: Any other questions from members of the
5 council? Dr. Yang.

6

7 PATSY YANG: ...for federal fiscal participation prior to
8 release from jail? That approved?

9

10 JO BOUFFORD: Any other questions? Alright, well, thank
11 you very much. We'll move on to looking at the certificate of
12 public advantage, and we have recusals from Dr. Kalkut, Mr.
13 Lawrence, Dr. Ruge, Mr. Kraut is not here, so I think probably
14 would be timely for them -

15

16 PETER ROBINSON: And added to that Dr. Strange, Dr.
17 Bennett.

18

19 JO BOUFFORD: Ok, Dr. Strange and Dr. Bennett. So if you
20 all would leave the room then we will proceed with this, Mr.
21 Robinson.

22

23 PETER ROBINSON: Thank you Madam Chair.

24 JO BOUFFORD: I think everyone left the room that needed
25 to.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PETER ROBINSON: So this is an application of the Staten Island Performing Provider for a certificate of public advantage. A COPA application, and the number is COPA-SIPP3. And Dr. Boufford has already noted the conflicts and recusals. The Department has recommended approval. The committee heard this recommended approval as well with one member in opposition, and I so move.

Second.

JO BOUFFORD: Any comments from the Department?

LISA ULMAN: Hi, it's Lisa Ulman. We can certainly walk through this. I mean the committee was aware. We did submit a report just explaining the background of COPA and the connection with this particular application with the DSRIP program. All the benefits that we think are going to come out of the application and why any potential anti-competitive effects were outweighed by the positive procompetitive benefits. So I can certainly answer any specific questions if anyone is interested.

JO BOUFFORD: Any questions from any members of the council? No. Do we have a motion to approve and seconded? Dr. Gutierrez. All in favor?

1 [Aye]

2 Any opposed? Any neutral? Fine. Thank you very much.

3

4 PETER ROBINSON: OK. Back to you.

5

6 JO BOUFFORD: Let's see here. Now we're moving on. We'll
7 go back to our reports, from Mr. Sheppard on the Office of
8 Primary Care and Health Systems Management.

9 DAN SHEPPARD: I thought I was going to go the way of Brad
10 and donate my time back. I don't have that option. But I will
11 hold that chip for a future meeting.

12 So thank you. Happy to be reporting on our activities since
13 last time we sat down here the last PHHPC meeting. I think I'd
14 like to focus on just I guess what I characterize as a series of
15 road trips that myself and some of my colleagues from the
16 department took the past month. Probably 2000 miles worth to
17 every corner of the state, and in various forms it was kind of
18 deemed a listening tour. And what is involved in speaking with
19 healthcare providers about a whole range of topics. Everything
20 from transactional issues, process transactional issues to
21 broader healthcare transformation, and I think there are a lot
22 of themes and I'll hit some of them and they're going to sound
23 familiar to many of you, particularly Dr. Boufford and Dr. Rugee
24 and I think it's a credit to the foresight of this council back
25 in 2012 and a lot of the efforts that we put forward in terms of

1 reform. But also I think a credit, the importance of what both
2 of your committees are taking up now and what you'll be
3 reporting on later.

4 So most of that mileage was spent with a series of meetings
5 that we worked, we collaborated with HANYS to set up and then
6 they came out of some -- I was giving some remarks to HANYS last
7 June and I was getting both sort of on the side in the halls as
8 well as at the meetings a lot of anxiety, a lot of things,
9 anxiety about transactions, anxiety about the CON process in
10 alignment with what healthcare is going. And so I come and some
11 say foolishly, say wisely said look, I will come in the fall to
12 each of your, to conveniently regional sites and we can all talk
13 for a couple hours in a informal back-and-forth format. And so
14 since I'd say around November 1 we did seven of them and they
15 were in western New York, the Finger Lakes, Central New York,
16 Albany, and that was the Albany one was both North Country and
17 the Mohawk Valley providers hands down in Long Island and New
18 York City. And again the major themes are beginning to sound
19 familiar, modernizing the CON process to better align with the
20 way providers are currently trying to organize themselves to
21 achieve not just financial sustainability, but adapt to the new
22 models of healthcare, and then also how do you align CON with
23 new medical technologies and particularly a focus on looking at
24 clinical outcomes and how these technologies have changed
25 clinical outcomes both with respect to the level of procedural

1 risk and the time that recovery takes. Within this sort of
2 aligned CON alignment modernization framework we talked about a
3 lot of discussion about a system oriented CEO and focus rather
4 than a facility specific focus. And that really two areas one
5 movement of services within a system. Not talking necessarily
6 about a single license because that's a single provider, but
7 what happens as we see emerging particularly in upstate where
8 there aren't a lot of large academic medical centers that they
9 will simply merge with the smaller hospitals, but rather where
10 they're developing a whole range of affiliation agreements. Some
11 flavors of that, some active parents but then some clinical
12 affiliations and other types of arrangements that you know, my
13 observation is that we have a CON process that's focused on
14 licenses. And again, as it should be in many ways. But when we
15 start to get looking at these new models of care this system
16 this notion comes into play will actually we had I think a great
17 real-time example of that is the Southampton and Peconic cardiac
18 services CON that was subject of great discussion last month and
19 will be coming to the full council today. Another theme was the
20 role of financial feasibility review as part of the CON process
21 and of managed-care value based payment environment. The role of
22 need as a needs assessment, and I think one way to look at this
23 even if you kind of stick out a continuum between regulations
24 designed around market protection and then regulations designed
25 around competition and allowing competition. And again allowing

1 those anchoring spectrums neither being the optimal stage. And
2 you start to say, okay, well where in that spectrum should we be
3 today? And for the future and I think arguably right now where
4 many of our CEO and need methodologies look at market geography
5 and limits of utilization and market geography. And so if we go
6 to competition again, just give your flavor from some of the
7 discussions, because providers will save you want total
8 flexibility but then you say oh, you want competition. Well, not
9 really. So good substantive discussions about, well okay in a
10 more competitive... if you're more on the competitive end of the
11 spectrum you know, should the department be applying clear
12 outcome metrics and standards to determine whether
13 licensure should continue? So okay, so there's competition
14 which means there's going to be winners and losers, but then
15 with that how do you deal with providers where because of
16 competitive issues they might, the quality might be suffering?
17 And again, these are very difficult questions, and they start to
18 flow into safety net, how do you protect safety net providers?
19 And so but again, another really rich area of discussion.

20 Another area: technology. The extent to which we allow what
21 traditionally have been viewed as high-risk procedures to be in
22 lower-cost ambulatory settings. We are seeing a lot of
23 catheterization. Not just cardiac types of CON or inquiries, and
24 this is another again, I think rich area where we need to look
25 at aligning our standards and perhaps where medical technology

1 is going. Very, very importantly, and I think this is the real
2 bull's-eye into the work that Dr. Rugge and Dr. Boufford are
3 doing, which is how do we make it easy for people to access
4 primary care and outpatient behavioral health services? And I
5 think the most significant piece of this is how do we make it
6 easier for providers to integrate primary and behavioral
7 healthcare? I think it seems like there's absolute consensus
8 around that being a state to get to, but how do we do it? What
9 we've done so far as many of you know, we've done a lot of
10 integrated work with outpatient service regulations, we have our
11 DSRIP waivers. We have a series of efforts that have definitely
12 moved the needle, but we're still knitting together multiple
13 agencies, regulations, and in a way that isn't as seamless for
14 providers to implement as we'd like and certainly has providers
15 would like. And so I think that's some very high priority for
16 commissioner and we're ready to begin taking the next steps and
17 what we've been calling, how do you start with a clean sheet of
18 paper and design what integrated setting should look like, even
19 if it's a new licensure category separate from 28, 31, and
20 article 32.

21 Separate but related to that in the article 28 clinic small
22 clinic standards, setting up standards that have less physical
23 environment requirements if the scope of services provided in
24 those settings is, has much lower procedural risk and infection
25 risks and how do we, how do we skinny down the physical

1 environment standards in a way that still protects basin patient
2 safety but allows those services to penetrate deeper into
3 communities. So another subject, how to better integrate
4 telehealth, psychiatry, and telemedicine. Very important. Very
5 particularly important in rural areas but even in urban areas.
6 And then how do you align the reimbursement models to support
7 better penetration and integration of a different way that
8 healthcare is being delivered through the various tele-names.
9 Homecare services, and this is included, telehealth crept into
10 that conversation, the opportunities and homecare and how do we
11 align our rags to further incentivize homecare in a way that
12 continues to preserve access and safety. With all of these, one
13 of the themes that kept coming up was, hey, can the department
14 to multi-year pilots, five-year pilots, so we could allow
15 testing of some of the innovative models to solve some of these
16 problems? And again some of them probably don't need a pilot for
17 because the solutions have been analyzed to death and it's
18 really just about marshaling ourselves to make it happen. But
19 some of these challenges I think probably lend themselves better
20 to pilots for solutions. And so we're exploring both the scope
21 of the commissioners existing statutory authority to do pilots,
22 and see if that goes far enough. And if not, consider even some
23 budget slate of solutions to provide even broader pilot
24 authority. Also, again, I talked about both sort of
25 transformational discussions but also more I call in air quotes

1 transactional discussions and there is some discussion about
2 surveillance and how do we better standardize our interpretation
3 of deficiencies, particularly where potential harm or greater
4 involved across regions and then how do we increase training
5 opportunities for both our surveillance staff, hospital
6 compliance, and clinical staff, and then even joint training
7 opportunities where it's appropriate for both the regulator and
8 the regulated get together and understand the rules of the road
9 that were all operating under. Again, a scene that came out of
10 these discussions was that everybody has the same goal, both the
11 department and the providers to provide the highest quality care
12 and I think, you know, we like to say is that the expectations
13 should be clearly mutually understood. It should be an open book
14 test in terms of compliance.

15

16 So what are the next steps with respect to these? We are, again,
17 we just came off capturing an awful lot of information. We're
18 inventorying the issues, convert that into a series of action
19 items, develop work plans. Most importantly integrate that with
20 the efforts that are happening both the efforts of this
21 committee, DSRIP, SHIP, and our intent and goal in the next
22 month or two is to have a roadmap, and we're certainly working
23 across the department to make sure that again, this syncs up
24 with a lot of the great efforts and work that's already been
25 done.

1 Just want to also touch on one more stop on this month of
2 getting out of the 14th floor of Corning Tower and really kind
3 of investing sometime in finding out what's going on. Late last
4 month I was able to attend the listening session on rural health
5 that was conducted by the CMS alliance to modernize healthcare.
6 It was held in Pittsfield, Mass, and the hospitals and
7 community-based organizations that were there were from new
8 England and the Northeast New York. Some of the things were
9 echoed in the New York specific tour, but there is some real
10 significant focus on the challenges that rural health providers
11 are facing as healthcare shifts to performance-based
12 reimbursement models and how do you develop, how do small
13 providers develop process and outcome measures that recognize
14 the challenges that world providers have and then how do you
15 develop tools to address those challenges? As I was listening to
16 the rural providers into the CMS facilitators talk about this, a
17 lot of the challenges are the same that we see in urban areas,
18 in the Bronx, in Brooklyn, in cities, in upstate New York. But
19 the main distinguishing factor in the thread that ran through
20 some of the challenges that were unique to them was really what
21 associated with being geographically spread out, having a poor
22 population that doesn't have access to public transportation and
23 obviously low, very sparse population. Not a lot of people. And
24 that plays its way through the challenges. And so what are some
25 of the themes that were talked about there? Telehealth, we spoke

1 about that. Also access to integrated and primary, integrated
2 primary behavioral health care. Really looking for reimbursement
3 flexibility for new models of care. How do we recognize
4 geographic... Geographic distance particularly in the homecare
5 environment and in terms of impacting the business models for
6 home care providers. Workforce challenges and desire for
7 regulatory models that permit lower-level licensed or certified
8 healthcare practitioners to practice up to the full extent of
9 their training and skills. How do we make use of the
10 infrastructure the people infrastructure that's there.
11 Massachusetts had been doing a pilot with emergency, their
12 emergency medical services folks and connected with homecare in
13 ways that where in our model they're not licensed home care
14 providers, but yet they were working with homecare agencies to
15 provide some levels of monitoring for folks. I mean, generally
16 what these world providers struggled with and struggle with is a
17 lack of scale and because they don't have a lot of scale from a
18 band with perspective, so the fact that there isn't
19 standardization across payers, public and private, is a
20 challenge for them. Really impacts the cost and efficiency of
21 their operations. One of the interesting comments that Dr.
22 Bennett probably very familiar with this sort of talked about
23 their really being a lack of free-market and rural areas when it
24 comes to negotiating with plans. And this came from
25 Massachusetts and Connecticut providers, not any New York

1 providers that were there. So it may be different. So the notion
2 that they're really negotiating with one, you have a small
3 provider negotiating with only one pair. And then finally, you
4 know, real difficulty maintaining the menu of essential
5 healthcare services that we all recognize; maternity, mental
6 health and substance abuse services, specialty services,
7 repeated theme on call. I can't attract specialists because I
8 can only get one or two of them and they don't want to do the
9 call schedules that requires. Delivery of home-based long-term
10 support services, nonemergent ambulance services which I think
11 is part of the issue, general transportation issues in isolated,
12 rural isolated areas, and dental services. So a lot of problems,
13 but there are solutions to these issues were all, we've been
14 working on them, we continue to work on them. It's not easy.
15 It's doable. We've talked before hear about some of the work
16 we're doing with small clinics with procedural diagnostic and
17 treatment centers. So we're certainly are making progress and I
18 think we want to identify and address from what we're absorbing
19 identify quick and medium-term wins, identify with the long-term
20 goals are, establish realistic time frames to achieve them, but
21 then hold ourselves accountable for progress on those time
22 frames, and look forward to reporting to all you over the next
23 months and hopefully years to on the progress we're making
24 addressing these issues.

25

1 JO BOUFFORD: Thank you very much. Dr. Bennett had a
2 question, and then Dr. Brown and Dr. Kalkut.

3
4 DR. BENNETT: Just a comment, you mentioned my name. I
5 think you had a mis-speak there. In upstate, because you and I
6 have talked about this, but just for others, the clarification
7 in upstate New York it's often multiple payers and one provider.
8 So you have, not the opposite.

9
10 DAN SHEPPARD: No, and that is why I was mentioning it, and
11 I also said it was Massachusetts, Connecticut phenomenon - I
12 don't know if it was a phenomenon or not but they mentioned it,
13 but they, the comment of some of the rural providers was that
14 they felt that they were, that their markets, they were
15 disadvantaged in their markets.

16
17 JOHN BENNETT: Oh, I see. So in Massachusetts and
18 Connecticut.

19
20 DAN SHEPPARD: And just one or two providers, and one of
21 them was a homecare provider.

22
23 JOHN BENNETT: But clearly in upstate New York it is very
24 common that you have five or six payers and one hospital system
25 in town.

1

2 LAWRENCE BROWN: Again, a wonderful presentation, and
3 please forgive me commissioner for not acknowledging the same
4 when you presided, your presentation. Sometimes when you're in
5 these meetings and you have a particular focus for the sake of
6 efficiency you hone in on the thing that you're most interested
7 in. And I was particularly intrigued by the telehealth,
8 telepractice, whatever terminology we're going to use, and to me
9 that's part of the challenge to the public, because we are
10 different, even within New York State, myself, Dr. Martin
11 serving on the Behavioral Health Service Advisory Council,
12 there's a different term that is used for something at the same
13 time, and it would be useful, even within New York State that we
14 can get a line to use the same terminology for meaning to
15 provide access between a patient and a provider. And that
16 respect, be useful to hear from the Department on how we're
17 going to assess the impact of cost in terms of quality, things
18 that we find of importance in healthcare. So, I ask for your
19 leadership, your continued leadership in helping to collaborate
20 across different health agencies within the state and getting to
21 that issue about how we're assessing the impact.

22

23 JO BOUFFORD: Was that - any response Dan?

24

1 DAN SHEPPARD:... yes. No, I think this is an area, and I'm
2 just starting to appreciate the complexity. Now, I should say
3 I'm always sensitive to the fact that sometimes you sound like
4 you're discovering fire and there are people around the table
5 who have been working on this stuff for years, and they either
6 say, "well, gee, glad someone's talking about it.." or the say,
7 "hey, idiot, we've been doing this." So, but that's - but I
8 think telehealth might be one, there are enough federal/state
9 reimbursement provider type issues that might be lend itself to
10 a pilot and I think a pilot, again, don't want to draw any
11 conclusions, something we should discuss, but one way I think of
12 getting to the kind of analytical take that you're looking for
13 and I think is warranted is to design a pilot, and it's
14 certainly something we'd be happy to talk about.

15

16 LAWRENCE BROWN: Can I suggest that we include and
17 development of the pilot, diversity among the different types of
18 providers in New York State to make sure that is equal...

19

20 DAN SHEPPARD: Actually, part in parcel to this is I don't
21 think we would do any of this without working in concert and
22 together having, with OMH and OASAS. And I think that really
23 goes for a lot of the issues that I covered in my report, is
24 that it's not helpful to providers if each agency sort of

1 perfects it's own approach and it doesn't solve the problem of
2 dealing with multiple different rule sets.

3

4 JO BOUFFORD: Dr. Kalkut.

5

6 GARY KALKUT: Thanks. I also want to applaud you for going
7 out there and listening to people from all parts of the state
8 talk about a broad array of things, and I think the challenge of
9 categorizing them and prioritizing is a big one. You mentioned
10 a couple of the levers to evolve the healthcare system to better
11 serve people. I think reimbursement change may be the biggest.
12 Technology is another one. And one that I may have missed that I
13 think is important is how we share information, and I think
14 there are some restrictions on sharing that make it more
15 difficult to do, and even if we were, the quality of the
16 information that can be shared is not optimal a lot of the time,
17 and as we move to having providers manage populations, knowing
18 what's going on outside of their system will be key to managing
19 single patients and groups of patients. So consent issues,
20 quality of information, claims data, it's one of the levers that
21 I think will push the system forward.

22

23 JO BOUFFORD: Dr. Ruge.

24

1 JOHN RUGGE: This is tantalizing discussion, and I keep
2 to going back to how most of the work of this council, it is the
3 CON work is based on an earlier model of cost-based
4 reimbursement and we've moved into something else, something
5 sort of like competition, but the competition is enormously
6 complex because we have competition between or among providers
7 but also competition among payers, and there's plenty of
8 evidence to suggest the competition healthcare only increases
9 cost because it's competition for the best paying patients
10 rather than competition for best value as defined by quality and
11 cost. And then there's another level of complexity and that is
12 through the consolidation of providers, does seem more and more
13 defining what kind of competition there is in some areas. At
14 least Craine's would have it, there are six systems, six
15 healthcare systems emerging in New York City in the metropolitan
16 area, and Albany we know there are two. In rural areas we're
17 lucky to have one. And so raises the question do we really need
18 at least two regulatory models, one for areas and communities
19 that have competition among providers and others which don't,
20 which really depend on the utility model. And in the face of all
21 this how do we assure coverage for everyone, especially what's
22 happening on the federal side with the abandonment of ObamaCare
23 and the expected withdrawal of insurers from multiple markets
24 both geographically and by payer group. We have a hopelessly
25 confused situation, and I'm not sure who needs to do the kind of

1 thinking to clarify how to make sense of all this, and then how
2 to fit in CON review and public health and health planning
3 council activities and thinking. But (see if we need it)

4

5 JO BOUFFORD: Sorry, Dr. Bennett.

6

7 JOHN BENNETT: John, thank you for bringing up the issue of
8 cost, because I think we have trouble talking about cost, but
9 cost is the major problem with American healthcare. And that
10 certainly is true in New York State. And whether we have a
11 model of regulated competition because I don't think that you
12 can have unregulated competition. We know that doesn't work. Or
13 whether we have a regulated monopoly which in many communities
14 we do have monopoly providers, which, and ultimately adopt a
15 utility model in those regions, I think we need to talk about
16 cost because when we talk about need I think we have to be
17 clear, need for whom? Is it the need for the provider system?
18 Or is it the need for the consumer? And I would think, I would
19 hope that this council would talk more for the need of the
20 consumer and what the consumer needs now is a lower cost. That
21 is the number one fundamental thing that individuals and
22 businesses talk to me about as a health plan CEO every day. So,
23 we really need to address the cost problem.

24

1 JO BOUFFORD: Add one question or observation, I think,
2 and you touched on it Dan as well as John, and I think with the
3 we don't know, as the Commissioner said, potential threats of at
4 least capping federal contributions to Medicaid and perhaps
5 disassembling other mechanisms that have allowed access to
6 private sector and it looks like states will have more
7 authority, but when the money is limited it is what it is.
8 There's a concern I think, and perhaps this council should
9 concern itself with is this sort of future of safety net
10 providers in a proactive way, because I think the kind of
11 Darwinian system that's out there is not going to work for them
12 under any circumstances. It's not working now and it's going to
13 get worse, and to the degree there's more flexibility of putting
14 more of a burden on those providers around issues like mental
15 health, substance abuse, OBGYN, things that aren't profitable in
16 the market and also the sort of consolidations that would be,
17 are happening in some ways, I think there's a piece of work that
18 needs to be done there and I just like you to maybe observe. You
19 mention that there had been some concerns expressed about safety
20 net providers in your conversations. I think that's important
21 but it seems to me the leadership is going to need to come more
22 from the state in a more proactive way than from the sort of
23 various systems that are trying to cope because there's
24 obviously a problem if you take one on in a serious way.

25

1 DAN SHEPPARD: I can only agree with what you're saying.
2 The worst what we're seeing with safety net providers and that I
3 would include for those, call them essential providers, I think
4 there's a lot of people, safety net has a very specific
5 connotation, but public or private, essential providers, we're
6 seeing the ones that are struggling. They're not just seeing
7 their inpatient volume decline but they're seeing their case mix
8 decline which, double whammy. They don't have the capacity to
9 change their - we insist, I don't want to go off on a whole
10 conversation, but this is, right now, our interim solution for
11 that is the very significant amounts of funds that we're
12 spending to support them both in Brooklyn and all over the
13 state, and it's not, nor should it be a sustained model. So
14 absolutely. That starts to get into the competitive realm in
15 need and why this is so complex, and I think will take so much
16 deliberation and public discussion, but we need to do it at a
17 good pace.

18

19 JO BOUFFORD: Any questions for Dan? Thank you very much.
20 Really terrific presentation. Very, very important information.
21 I think I'm going to move on to the public health committee and
22 I do have some slides I think. It's going to go into the
23 commissioner's eyes. Yeah. I do want to report on the November
24 meeting of the public health committee and the ad-hoc leadership
25 committee to support the prevention agenda. And Sylvia Pirrani

1 is in Albany and will chime in towards the end. Just very
2 briefly reminding you of what the ad hoc leadership group is.
3 This group meets about three or four times a year and it
4 consists of about 40 members of state-level organizations
5 ranging from professional associations to regional business
6 groups and everything in between. You can see some of the
7 banners there at the hospital associations as well as CHCNYS
8 health plans and others and members of the public health
9 committee. It has served for about five years now to advise the
10 major goals and any revisions of the prevention agenda plan and
11 also served as the public advisory group for the state
12 application to be accredited by national bodies for its public-
13 health accreditation. In the meeting we were delighted to have
14 Paul Francis, Commissioner Zucker, and a really nice
15 presentation by the prevention agenda team from Schenectady.
16 Ellis Hospital health department and other stakeholders. In this
17 case, the Cornell food systems group was the speaker with them.
18 And then sort of a final look at next steps in the prevention
19 agenda. And just to give you a little bit of background, a lot
20 of discussion during the meeting and I think we're beginning to
21 think about obviously having the inclusion of population health,
22 the concept of population health and all of the elements of the
23 reform is well-established and still has slightly different
24 meanings in different parts of the reform ranging from
25 populations of patients to populations of served by providers

1 and including them into the larger group is the geographic
2 population. So all of those populations and the management of
3 those populations needs to be aligned to create improved health.
4 And then similarly the term determinants of health social
5 determinants is beginning to enter into the conversation more
6 broadly. And one of the things we also talked about there is
7 that social determinants or broader social determinants or one
8 set of determinants of health the way CMS has been discussing
9 them, they tend to be more focused on the individual patient and
10 the social services and supports needed for the care of that
11 individual and they also have also broader definitions if one
12 moves into definitions like economic development and housing and
13 transportation and others. So again on that continuum with our
14 language, but I think the state and the reforms are well-
15 positioned to acknowledge the differences and build on them.

16 We did talk about a couple of important frameworks that
17 kind of try to bring together the clinical system. This is the
18 three buckets that John Auerbach has been at CDC, was
19 commissioner of health during the reforms in Massachusetts
20 developed really looking at traditional community-based,
21 increasing the use of evidence-based services in the traditional
22 clinical model such as prevention with patients with asthma.
23 Second bucket tends to be more of what we may call innovative
24 clinical services which is done in the out reach section maybe
25 looking at the conditions in which to some degree getting

1 services to people in their homes, looking at more broader
2 counseling and linking up with some of the social services that
3 individual patients may need to achieve clinical goals.

4

5 And finally on the right bucket three is this area of sort of
6 geographic population related interventions such as available
7 healthy foods, parks and trails for exercise, indoor and outdoor
8 pollutants, reduction and smoking. So these are kind of areas
9 and obviously we want to bring activities. There's a lot going
10 on in all of the buckets. We know that some of it is evidence-
11 based and some of it is kind of traditional habitual engagement
12 in investment, and we want to try to move with the prevention
13 agenda especially in DSRIP and others into as much of an
14 evidence-base as possible. There was a really good discussion, I
15 think, by the commissioner as well as by Paul Francis about
16 support for beginning to look more explicitly to the so-called
17 health and all governance mechanisms where we really begin to
18 watch what other sectors are doing in areas like housing,
19 transportation, air pollution, water quality, and explicitly
20 calling out and coordinate it if possible with the broader
21 health care reforms. So just some areas. Dr. Zucker addressed
22 himself specifically to the prevention agenda and I think
23 especially it's important and emphasizing local collaborative
24 planning and local work across the elements of reform such as
25 the DSR IP, traditional investments by providers in their

1 communities, but increasingly looking explicitly at the IRS
 2 community benefit investments especially in the categories of
 3 community health improvement and community building which are
 4 very explicitly aligned. Their definitions are pretty well
 5 aligned with what we would hope to see hospital investments in
 6 the prevention agenda, and beginning to track and report those.
 7 There will be a report out shortly for hospitals and hospital
 8 systems around the state looking at the degree to which there is
 9 current alignment in their community benefit investments in
 10 those two categories with their DSRIP domains and other
 11 activities by those systems and the idea would be to try to,
 12 that is about \$260 million, those two categories a year in New
 13 York State. And for public health that's a lot of money. So if
 14 we could begin to align more of it into evidence-based
 15 interventions developed through these prevention agenda
 16 coalitions of which hospitals are numbers it would be really,
 17 really important. We also identified in the prevention agenda of
 18 the next phase of the work need to have a much greater focus on
 19 health disparities. Many communities are still identifying
 20 challenges in that area and hoping to certainly we're going to
 21 have better data as a result of the commission on minority
 22 health's recent report, but also thinking about interventions
 23 and learning, sharing learnings in that area.

24 The Schenectady coalition, this is a list of the coalition
 25 members. Ellis medicine, the local health department and Cornell

1 Cooperative extension talked about their partnership and what
2 they presented was really important because the idea, the
3 elephants trunk and foot are not an accident. They use it as a
4 model for saying each of the three partners has a slightly
5 different hand on the elephant and if you start at the top high-
6 cost, high readmission challenging patients for Ellis Hospital
7 coming from their data system are people in end-stage renal
8 disease. The public health data shows that they problems that
9 the causes of end-stage renal disease in the Schenectady area
10 are strongly related to obesity and diabetes in the community
11 health survey conducted by the Cornell extension service shows
12 that in this area is very high correlation between obesity and
13 food insecurity interestingly. And 40% of survey respondents
14 this is a really important statistic in the city of Schenectady,
15 ran out of food at least once in 12 months. This rose to 50% and
16 three of these neighborhoods and the data that was presented
17 showed quite a direct correlation with BMI and the times, the
18 extent of time which households were food insecure. Obviously
19 this leads to more starches, cheaper food, more junkfood, etc.
20 So the partnership they described was actually really quite
21 exciting and in what way the hospital and the local health
22 department could work together to deal with sort of fundamental
23 issues around food insecurity for the patients that are the most
24 expensive and most difficult for them, and also hopefully

1 promoting prevention using that sort of buckets model to prevent
2 these patients from getting to that stage of their illness.

3 And then finally we talked about the sort of background on
4 the stages of the prevention agenda and the planning that's
5 ongoing now for the next five year. And Sylvia, let me ask you
6 to just hit the highlights of that so people can get a preview
7 of coming attractions.

8

9 SYLVIA PIRANI: Certainly. Good morning everyone. We're
10 going to be collecting this month at the end of this month the
11 local health improvement plan from every hospital and county
12 health department, and in some counties we've been excited that
13 they are going to be a combined plan which has been Argolla
14 long. We'll be reviewing those and providing feedback and using
15 that to start planning for the next state health assessment
16 which will describe the public health challenges throughout the
17 state as well as how the planning has resulted in some
18 improvements and where our challenges still remain, especially
19 in the areas of disparities, and then will use that, will do
20 that next year in 2017. And then in 2018 get stakeholders
21 together, subject matter experts from the communities and from
22 healthcare systems and from the ad hoc committee to start
23 identifying a priorities and developing updated action plan so
24 we can address them. So we look forward to working with you with
25 the ad hoc committee on this process.

1

2 (inaudible)

3 JO BOUFFORD: ... March-April time we'll have results of
4 progress so far and the initial plans submitted and hopefully
5 some specific action items on the disparities agenda and in
6 talking with Paul Francis we're also hoping to expand the
7 membership of the ad hoc leadership group to include some other
8 departments in addition to OMH and OASAS, perhaps agriculture
9 and transportation to deal with some of the broader issues in
10 the sort of health in all approach. So, any questions or
11 comments? Ellen, Dr. Rautenberg.

12

13 ELLEN RAUTENBERG: Just the comment that I made at that
14 meeting last... I think we should give enormous credit to Jo
15 Boufford and Sylvia Pirani for getting on the public health
16 agenda absolutely every credit of (inaudible)

17

18 JO BOUFFORD: comments? Questions? OK, to my partner in
19 crime, Dr. Rugge. Since you're hearing quite enough from me
20 this morning he'll present on the joint public health and health
21 planning committee meeting so far.

22

23 JOHN RUGGE: I think everybody knows we've had joint
24 meetings of public health and health planning. I feel like we
25 finally come into our own. In fact we have a 19 Page,

1 PowerPoint presentation by my calculation at 10 minutes per page
2 will be finished about 4 o'clock. But in lieu of that, or
3 choosing to regard this PowerPoint which I don't think has been
4 distributed, is that true? It's more the outline of a venture
5 report weathered and something to present to you Word for Word
6 this morning. We all know that we get what we pay for and in
7 healthcare with him paying for a lot of stuff, and we're getting
8 a lot of stuff by way of procedures and visits and clicks, but
9 not necessarily the outcomes we would choose to have, certainly
10 is measured against other national healthcare systems. And
11 through accommodation of initiatives which are really coming
12 together around value-based payment we are trying to make
13 progress in the two big, two of the big opportunities pertain to
14 the integration of behavioral health with the rest of
15 healthcare, especially primary care and expanding healthcare
16 resources to address the broader social determinants of health.
17 And with that if we went to slide five is that possible? There
18 we go. What we have done is through the joint committee is
19 recognized how behavioral health is being integrated. For
20 example in the state innovation model Newark's version for
21 primary care clearly accommodating and recognizing the need for
22 behavioral health services to be an integral part of those
23 services. In addition, the prevention agenda as you just heard
24 by Dr. Boufford, highlights this need and the DSRIP program
25 accommodates, more than accommodates, more like propels

1 behavioral health integration for all of us were doing care. In
2 addition, the committees have heard from the other agencies,
3 OASAS, OMH, about initiatives they've been doing in their
4 sectors which we are now trying to, pardon the expression, bleed
5 over into a more holistic model for healthcare. And perhaps most
6 importantly we've had the opportunity to hear from a number of
7 the organizations across the state, provider organizations and
8 community organizations that are doing it. And what we're
9 looking to do is not only highlight the work that they've been
10 doing and accomplishments so far, but trying to identify
11 barriers that still exist either in reimbursement or data
12 collection or in regulation. We should be trying to address
13 through this council and its recommendations.

14 So on page 6 there are essentially four big areas that were
15 trying to address and develop recommendations for. One is
16 guidance on billing and reimbursement and how to achieve
17 integration in a sense is one tiny example and where in certain
18 settings it is possible to bill for primary care visit and
19 behavioral health visit in the same day but not both which is
20 highly defeating if a patient has to drive 30 miles to get the
21 care. And so we're looking at pretty granular recommendations
22 that we can make this mate hopefully turn out to be a rather
23 long list. Support for information sharing and relying on data
24 and there have been significant legal and other barriers to
25 sharing information about the behavioral health needs of

1 patients who may be indeed maybe driving all the other medical
2 needs and all the other medical costs. Somehow we have to pull
3 the data and information together to make it available.

4 Shared space is another issue. Integration means cool
5 location and at the least but it means really more than that. It
6 means of sharing many times the very same room and the key
7 characteristic of the very same week and there has been
8 significant progress made in terms of coordinating both state
9 and federal regulations, but this is still a work in progress
10 and there are some internal contradictions between what it means
11 to have shared space versus co-location in ways that remain.
12 Hopefully we can work through.

13

14 And finally all this obviously depends on workforce that is
15 cross-trained, that is sensitive to one another on behavioral
16 health and then the primary care side, and there is a separate
17 group working on exactly this determinants. When it comes to
18 social determinants, the real experts at the head of the table
19 rather than here at this microphone. But likewise we are
20 recognizing that this is not only about clinical care that we
21 depend upon the prevention agenda as outlining the initiatives
22 we need to undertake. This should lead to the building and
23 maintaining of community partnerships that go beyond healthcare
24 to include many other kinds of organizations and community
25 coalitions. That we are now defining social determinants even

1 broader than social to say it's all kinds of determinants
2 including economic that we need to do and all this will be
3 reflected and is already being reflected in the value-based
4 movement that we're having that is represented by DSRIP and the
5 community-based organizations being a required element for
6 emerging organizations as they are, they're working to improve
7 value.

8 Starting on page 13 with a series of very preliminary and
9 very open recommendations and this represents work significant
10 work yet to be done. And if anything this is an appeal to this
11 council and its membership not to pick on anybody, but
12 especially looking at Dr. Brown and Dr. Martin to sit on the
13 Behavioral Health Services Advisory Council who seem to be in an
14 ideal position to help us to understand the very specific
15 barriers that we should be recommending point by point in the
16 eventual report which is probably a cycle to away. I also
17 anticipate there will be reaching back out to the presenters we
18 had in the past with this document and asking them for more
19 detailed suggestions and more detailed recitations of their
20 experience so that we can make progress in this area.

21 Lisa, you may choose to go through some of these
22 recommendations or we can open for discussion.

23

24 LISA ULMAN: You want me to go through just, because I
25 think each slide sort of captures sort of a general set of

1 recommendations, and again, we're not necessarily bound to only
 2 these, but these are the ones I think we additionally - we
 3 initially isolated as emerging from the past discussions. So
 4 this first slide again, it captures much of what you'd already
 5 pointed out, Dr. Rugge. And so much of this where we're going
 6 here does draw on the other work being done by Dr. Boufford's
 7 other joint project regarding the social determinants and a lot
 8 of it captures what Dan was talking about, what he's hearing
 9 from some of the provider communities. So I think this is
 10 reflective of other issues identified in other settings. So this
 11 first set of slides is really just recognizing again the
 12 collaboration that's already been happening and we intend to
 13 continue and expand upon. Again, it's interagency collaboration
 14 which has been very strong but it's also noting that when we
 15 heard in particular from some of the organizations that came to
 16 tell us about their experiences in working on determinants of
 17 health and on integration of services, we really heard a strong
 18 emphasis on working together, forming community partnerships and
 19 really working at maintaining those partnerships. So I think we
 20 really wanted to recognize that this was something that seemed
 21 to be critical to the success moving forward and we just want to
 22 make sure that we continue focusing on that.

23 I don't know who ended up with the clicker but if we could
 24 go to the next one. Thanks. And again, Dr. Rugge talked about
 25 this. The importance of sharing space. There was a reference

1 to the guidance issued by the three agencies. We do continue as
2 Dr. Rugge noted, to try to work on obtaining some additional
3 flexibility when it comes to the federally designated providers
4 so this is work that will be ongoing but we anticipate that
5 there will be more to come, and so that is an area we will focus
6 on moving forward. Next slide please Dan.

7 Again, Dr. Rugge mentioned how important it is to have
8 access to data. Certainly there is work that's been ongoing. We
9 heard a presentation during the community organizations that
10 presented about how critical it was to get real-time data and
11 how it really gives you a picture of what was happening in the
12 community and really told you where you needed to go to address
13 the problems. So I think that presentation really brought home
14 how important this is, so we want to just keep continue
15 exploring how else we can do that in other venues. And again
16 that idea of focusing on real-time data to make it possible is
17 something that seems pretty critical. So we want to focus on
18 this as we move forward. Next slide please.

19

20 Workforce again, Dr. Rugge alluded to the fact that the SHIP,
21 DSRIP workforce workgroup which reports to the health innovation
22 council have been putting in a lot of work on workforce issues.
23 In particular thinking about one really critical part of all
24 this which is care coordination and what those functions look
25 like as we undergo all the transformative changes that we've

1 been undergoing. And so that work there is really important and
2 it ties into and supplements all of the other issues that we're
3 focusing on here. So I anticipate we will be going back and
4 looking at the work that that body and making sure we reflected
5 it in the initiatives that we carry out as a result of this
6 work. Next slide please.

7

8 Telehealth, that's been talked about to some extent. Again, as
9 Dr. Brown indicated the three agencies sort of use different
10 words and we are working together to try to align those
11 standards and see where else we can go on telehealth recognizing
12 that it's something that needs attention as Dan had noted.

13

14

15 And again reimbursement. The idea of seeing what we can do to
16 use reimbursement to incentivize the changes that we want to see
17 to address the issues we need to address. So we just thought
18 that that was something we should specifically flag as an area
19 for further exploration. So those again are the general areas
20 that we had identified as a result of our work to date. We are
21 certainly interested in pursuing that coming up with the more
22 granular suggestions as Dr. Rugge noted. And seeing where we can
23 go from there. So I think that's the last slide. So that's all
24 thank you.

25

1 JO BOUFFORD: Questions? Comments from the Council? Yes,
2 Dr. Brown. Dr. Martin who was the other person who was
3 fingered. Yes.

4

5 LAWRENCE BROWN: That's true. We often find ourselves
6 to be interchangeable.

7

8 JO BOUFFORD: That's why you're sitting on opposite sides
9 of the room. I got it.

10

11 LAWRENCE BROWN: Stereo. I also want to also commend
12 you Dr. Boufford and Dr. Ruge for in fact, this outstanding
13 collaboration and leadership because as you appreciate probably
14 more than anyone, that collaboration between general medical
15 health and behavioral health has been long overdue for decades,
16 and you two are making this a reality moreso than we've ever
17 seen or ever witnessed. It would be useful, and in fact I heard
18 you ask the question about the presentation to be useful to
19 council members so that we can share it amongst our networks
20 because particularly showing the integration, folks in
21 behavioral health will look at that and salivate that finally
22 they are being asked to come to the table to be able to have the
23 conversation, the discussion. And I think you covered the main
24 areas, you Department of Health that are
25 important for greater integration of these particularly

1 important components of our healthcare system. So, I, we are
2 committed to continue to do our part in behavioral health
3 council to facilitate the collaboration, coordination that you
4 two are clearly leading.

5

6 JO BOUFFORD: Dr. Martin.

7

8 JOHN RUGGE: Just in addition to this report, is we all
9 remember there is a five year DSRIP waiver period for some of
10 the regulatory barriers and I think additional role for the
11 council in addition to identifying these barriers is to monitor
12 what kind of waivers have been extended, which ones prove
13 useful, and therefor back to the codes committee how we should
14 in permanent statute or regulation accommodate those
15 adjustments.

16

17 GLENN MARTIN: Somewhat unrelated point, but I certainly
18 agree with everything Larry had said, and our commitment to try
19 to be useful in that process. At least, on page 16 and we
20 mentioned it earlier about increasing granular level information
21 being available and collated, etc., it's difficult for me to sit
22 here today recognizing that a few blocks away in City Hall we
23 have a Mayor who wants to destroy records people because he is
24 frightened in the upcoming political environment we may be
25 living in that it would be used for improper purposes. And I

1 don't think that's a completely insane - and I'll say that as a
2 psychiatrist - point of view. So the idea of us continuing to
3 put together large centralized databases which we recognize are
4 huge targets for hacking ransomware and various other approaches
5 and in a situation where I think people are rightfully
6 frightened certain numbers, about it being used for purposes
7 that they weren't intended, possibly even under the guise of
8 legality is, I think it's important to keep those in mind and to
9 make sure that New York State does not inadvertently do
10 something that will lead to more difficulty of a very
11 significant nature in our efforts to try to use the data for the
12 public good.

13

14 JOHN RUGGE: The best argument yet for going back to
15 handwritten notes. They're illegible and unreadable.

16

17 GLENN MARTIN: Well, no, anecdotally at the SHINNY, I'm at
18 the policy committee for the SHINNY, so we had mentioned the
19 fact that there's no way of opting out and that your data
20 basically goes, whether you like it or not. So I had just made
21 the usual crack about the governor and whether his information
22 would be easy for me to find. Because right now the whole
23 system is based on the honesty of the people who are logging in.
24 you just have to assert the persons or patient, you can go see
25 them and they looked at me as if I was nuts - not the first time

1 - and basically said but he would use an alias. No one knew
2 that for a fact. But certainly it's not unusual in inpatient
3 units that if a VIP person of certain fame comes in, you give
4 them a different name because you don't trust your own staff and
5 the like to do things appropriately, and there's reason to
6 believe that since every time somebody comes into the hospital
7 it seems somebody ends up getting fired because they violated
8 HIPPA. I just think it's something that we don't necessarily
9 recognize as much as we need to. So I agree that our council
10 should be pushing for that and that it's absolutely necessary
11 for planning and the like, but I still think we're in a
12 situation where that aspect of it is not being taken with a
13 degree of care and seriousness it requires, and I just thought
14 it was important to put that on the record and continue to focus
15 on it.

16

17 JO BOUFFORD: Other comments? Dr. Bennett.

18

19 JOHN BENNETT: As a member of the New York E-Health
20 Collaborative Board for several years, I don't think you could
21 get the governor's information unless you were his treating
22 physician and he had given consent specifically. I believe the
23 New York State consent model for the SHIN NY is provider
24 specific, and I don't think you could get it unless you needed
25 to do a break the glass thing which is heavily monitored and

1 audited. So you just can't go in and get any patient's records.
2 That patient has to list you as a consented provider.

3

4 GLENN MARTIN: No, I'm aware of the rules. And that's
5 correct. Those are the rules and that's what we are able to
6 sleep at night. But as you point out with break the glass and
7 the like is that is done on totally a faith-based initiative,
8 that the person breaking the glass has the ability to do so and
9 is following the rules. It is audited, but not necessarily on a
10 case by case level that's left to the qualifying entities as I
11 recall to see how well they drill down. Most look at it. But
12 the fact is, once something is revealed, it's revealed. You
13 can't put it back in the toothpaste. You can't put it back in
14 the tube. That once a secret is out, it's out.

15

16 PETER ROBINSON: Well, I think the other point to
17 clarify is that the provider that's consenting is very
18 frequently a large institution with multiple individuals, not a
19 single person.

20

21 GLENN MARTIN: You provide at the level of the institution,
22 so if you list Northwell, you have now listed god knows how many
23 or NYU or Mt. Sinai or anyone else. So you're not actually
24 consenting to the individual provider.

25

1 JOHN BENNETT: No, but it's also traceable. I mean,
2 when you go in to access records, it's traceable, and patients
3 can ask for a list of what specific providers. I just need to
4 make that clear. We have people in the public here and I just
5 need to make that clear. I think it's very important that we
6 don't create confusion and panic. Patients can ask for records
7 of who, for listing of who has reviewed their records, I might
8 just add that practicing medicine 20 years ago, people used to
9 look at charts and there never was a record of it. Now,
10 electronically when a physician or nay healthcare practitioner
11 looks at a record, there is a record of he or she looking at
12 that record, and so in some ways I think consumers are more
13 protected.

14

15 GLENN MARTIN: Just one clarification is that my
16 understanding is that very specifically the entities who are
17 providing the information, what used to be RHIOs and the like,
18 they're under no obligation to give people a direct provider by
19 provider listing because HIPPA doesn't even require it,
20 therefore they're not required to do so. They can tell that
21 Northwell did it and Northwell can look and then give them the
22 information or not. So, that's not actually a requirement to
23 get down to the granular level that we're speaking of, but this
24 is getting very esoteric.

25

1 JOHN BENNETT: I believe that's wrong. I believe
2 individuals have unique sign ons.

3

4 JO BOUFFORD: I believe we have a small working group on
5 IT as a joint committee and getting more granular issue.
6 Obviously really important issues. Any other comments,
7 questions for Dr. Ruggie? Alright. Dr. Gutierrez. Codes,
8 Regulations, and Legislation.

9

10 ANGEL GUTIERREZ: Alright. Report of the committee on
11 codes, regulation, and legislation chair that committee and this
12 is the report.

13 Good afternoon. At today's meeting on the committee on
14 codes, regulation, and legislation the committee reviewed two
15 proposals for information. Expansion of minor consent for HIV
16 treatment access and prevention was the first one. This proposal
17 would amend section 23.1 and 23.2 of title 10 to add HIV to the
18 current list of sexually transmitted diseases and provides
19 minors the ability to consent to HIV prevention treatment and
20 services. Since the proposal was for information, there was no
21 vote from the committee and JoAnne Morne from the Department is
22 available to answer any questions from council members. Any
23 questions for Ms. Morne?

24

1 There was no vote. And Ms. Leslie from the Department is
2 available to answer any questions from the council members. Any
3 questions for Ms. Leslie? If not, that concludes my report.

4

5 JO BOUFFORD: thank you very much. One, just before I
6 turn it over to Peter, I neglected to read out the section of
7 the instructions to the chair to remind everyone about the
8 process of reorganizing, to batch certificate of need
9 applications. So I should have given you a moment or two to
10 identify any particular applications you like to have pulled
11 from the batch and considered independently. So, take a moment.
12 And are there any ones that anyone would like to pull from the
13 groupings? In that case, let me hand it over to Peter Robinson.

14

15 PETER ROBINSON: Well, thank you Madam Chair. I am going
16 to actually pull some applications out of order because of
17 recusals just to ensure that we address them while we have
18 adequate attendance for a quorum. And with that in mind I am
19 going to call application 162117E, the One Brooklyn Health
20 System for which Dr. Boufford is recusing herself and noting Dr.
21 Strange's interest in this application. And the committee has
22 just reviewed this and all of you have heard that conversation
23 before so I won't repeat it. Dr. Gutierrez is going to function
24 as the chair for this particular item, and I move the

1 recommendation of the committee for approval as I do the
2 Department's recommendation.

3

4 ANGEL GUTIERREZ: Do I hear a second? Several seconds.
5 Any further discussion or comments or questions on this? If
6 not, I call for the vote. All in favor?

7

8 [Aye]

9 Anybody opposed? Any abstentions? Motion carries.
10 I'm done as chair.

11

12 PETER ROBINSON: Thank you Dr. Gutierrez. Great job.

13 And Dr. Brown, I'm going to call the application that you
14 recused yourself on now. So I'm calling application 162095C,
15 Weill Cornell Imaging at New York Presbyterian in New York
16 County. To certify a new extension clinic to be located at 156
17 William's Street in New York. The Department has recommended
18 approval with conditions and contingencies. The committee to
19 voted approval with conditions and contingencies noting that one
20 member of the committee opposed the application. I'm making a
21 motion to approve. To you madam chair.

22

23 JO BOUFFORD: Second? Motion and seconded. Any
24 discussion? Questions about this? All in favor?

25

1 [Aye]

2 Opposed? Any, one demurring.

3

4 PETER ROBINSON: OK. So now we are going to move into
5 batch mode. These first applications are for hospice services
6 and construction. Application 162096C, Good Shephard Hospice in
7 Suffolk County. To certify a 12 bed inpatient hospice unit on
8 the campus of Mercy Medical Center. Located at 1000 North
9 Village Avenue in Rockville. The Department has recommended
10 approval with conditions and contingencies as did the committee.
11 And application 162134C United Hospice of Rockland, in Rockland
12 County. This is to change the designation of two dedicated
13 inpatient beds to two residential beds for a total of 10
14 residential beds. In both instances the Department has
15 recommended approval with conditions and contingencies, or just
16 a condition, and the committee actions mimic those and I make
17 the motion to approve both.

18

19 JO BOUFFORD: Second. Dr. Gutierrez. Any discussion? All
20 in favor?

21

22 [Aye]

23

24 Opposed? Thank you.

25

1 PETER ROBINSON: The second batch is for application for
2 acute services starting with 161345C, Jamaica Hospital Medical
3 Center in Queens County. An interest declared by Dr. Martin.
4 To convert six pediatric beds to psychiatric beds and perform
5 requisite renovations. The Department recommends approval with
6 conditions and contingencies. As did the committee. I'm also
7 going to go to application 161325C. University Hospital in
8 Suffolk County. To certify eastern Long Island Hospital as a
9 division of Stony Brook University Hospital. The Department has
10 recommended approval with conditions and contingencies. In this
11 instance the committee recommended approval as well with
12 conditions and contingencies with one member opposing. I make
13 those... make a motion to approve both of those applications.

14

15 JO BOUFFORD: Dr. Gutierrez second. Any discussion by
16 members of the council? All in favor?

17

18 [Aye]

19 Opposed? Any... abstain. Thank you. I was losing the word.
20 Thank you. Dr. Martin abstains. Back to you.

21

22 PETER ROBINSON: Thank you. Now ... these are items I
23 need to take individually because of oh... this is the batch. So
24 we are going to batch these two applications. I note here Dr.
25 Kalkut has a conflict and recused. Mr. Kraut does as well,

1 although he's recused himself in another country. And an
2 interest in both of these has been declared by Dr. Martin. This
3 is - Oh, and you. And Dr. Strange also declares a conflict and
4 has recused himself. These two applications resulted in a
5 significant amount of conversation at the establishment and
6 project review committee, and want to commend the Department
7 actually, on doing a very tough job in trying to understand and
8 weight these two competing applications in the context of
9 recommendations that have come from the cardiac advisory
10 committee and elsewhere. The Department's recommendation was to
11 approve application 152381C, which is Peconic Bay and to
12 disapprove application 161168C, Southampton Hospital. The
13 committee deliberated a significant amount of discussion both
14 from the application and from others that were interested making
15 testimony, and then the committee ultimately recommended
16 approval of both. I'm going to turn to Mr. Abel to give us a
17 little bit more background before I call the question on these
18 two applications again.

19

20 CHARLIE ABEL: Thank you. So I trust all of the members
21 have had an opportunity to review my November 9 memo on how we
22 conducted the competitive review and that everyone has taken
23 advantage of viewing the archived webcast from the Establishment
24 and Project Review Committee so you all have the benefit of
25 hearing from both applicants about the benefits of their

1 proposals. And to summarize the Department's position, either
2 application would be an acceptable application if not for the
3 fact that we have two competing applications with significantly
4 overlapping service areas. And not only our need methodology
5 but our analysis indicates that only one should be approved. And
6 that's presuming that we with cardiac catheterization services
7 the volume, increased volume, increases quality. And the
8 regulations set a 300 procedure minimum as what is expected to
9 maintain adequate quality and as we see our analysis shows in
10 eastern Long Island, just as it does across the state and across
11 the country the utilization for cardiac catheterization is
12 actually decreasing. And over time it has been decreasing in
13 this area. Most recent referrals for cardiac catheterization
14 PCI, out of this service area is 312 procedures. So, the
15 Department stands by it's recommendation for approval of the
16 Peconic Bay application over, and disapproval for Southampton
17 primarily because of location. The Peconic site is more
18 centrally located for the target population and that's the
19 Department's recommendation. I will note that as you batch them
20 I believe we have to take votes.

21

22 PETER ROBINSON: We will take individual votes on these.

23 Ms. Carvey-Cheney.

24

1 KATHERINE CARVER-CHENEY: Charlie, would it be possible for
2 each of these settings to have one unit instead of two? Because
3 as was discussed at the committee meeting, they have a lot of
4 experience in other sites like Downstate or Stony Brook, or
5 whatever.

6
7 CHARLIE ABEL: The regulations really - for this initial
8 approval of whether it's one cath lab or two cath labs, it
9 really is site-specific with respect to being able to achieve
10 the minimums, and that goes along the presumption that you're
11 going to have a cath lab team working at the site, whether it's
12 one lab or two labs, the same cath lab team and to be able to
13 have adequate quality resulting from that cath lab team's
14 experience. That's really the premise and the why we have that
15 300 procedure minimum.

16
17 PETER ROBINSON: I would like to do the following and
18 then allow the conversation to continue. Thank you for the
19 reminder. I needed to sort of make the motion prior to. So
20 what I'm going to do is make motions that mimic the
21 recommendations of the committee. So first let me make a motion
22 to approve the Peconic Bay Medical Center site, application
23 152391C. And this comes with the Department's recommendation as
24 well as with the committee with conditions and contingencies,
25 and I so move.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JO BOUFFORD: And we'll ask again, reminder, we'll ask people -

PETER ROBINSON: We're not going to call the question yet. We're going to allow some discussion? Right?

JO BOUFFORD: Yeah. And you're going to move to the second one right now?

PETER ROBINSON: Let me now put the second motion on the table.

JO BOUFFORD: Then we'll move, open the discussion.

PETER ROBINSON: Then we'll move forward with the conversation. So the second motion is application 161168C, Southampton Hospital in Suffolk County. Both of these are certifying adult diagnostic electro-physiology and PCI services. And in this instance the Department has recommended disapproval on the basis of public need. The committee recommendation to disapprove failed, and then upon a second motion the committee recommended approval of this application as well. I move the committee's recommendation.

1 JO BOUFFORD: Dr. Gutierrez second. Alright. Now we're
2 open again for business on the discussion.

3

4 PETER ROBINSON: Both applications on the table.

5

6 JO BOUFFORD: Dr. Ruge.

7

8 JOHN RUGGE: I just think that given the complexities of
9 the discussions including those in recusal, the implications and
10 approving both motions and how it would go to the commissioner
11 for ultimate decision would be important to lay out at the
12 beginning of this.

13

14 PETER ROBINSON: I think that's correct. Thank you. I
15 was going to bring that up but I appreciate your saying it.
16 Which is these particular recommendations on the CON, the
17 council's role is advisory to the commissioner, and the
18 commissioner is going to be making the final decision on this.
19 One of the things that did come out of the discussion, I think
20 it's very important that at least be considered and perhaps the
21 commissioner will consider referring these applications back to
22 the cardiac advisory committee. The comment that was raised by
23 Ms. Carver-Cheney and that Mr. Abel responded to really relates
24 to the fact that in both cases these organizations are
25 presenting applications in which the teams that would be

1 providing those services actually could potentially achieve the
2 minimum threshold volumes even though site-specific volumes may
3 not be attainable. And so one question to put before the cardiac
4 advisory committee could conceivably be do we look at some
5 modification of the criteria for approval that looks at team
6 volumes versus site-specific volumes. I turn to Mr. Sheppard
7 who seems pregnant with comment.

8

9 DAN SHEPPARD: Certainly not pregnant and I look always to
10 tag team with Tracy and Charlie on this. So procedurally you're
11 correct that this is - it's a construction application so these
12 are advisory to the commissioner and if both were to be approved
13 they would both go to the commissioner. It sounded like you also
14 might want to in some form request or recommend that the
15 commissioner further consult with the cardiac advisory committee
16 and that's - procedurally what we anticipate is presenting not
17 just the substance of the discussion that's happened here but
18 also the data and the law and the regs to the commissioner and
19 he would render a decision. And if I think probably on our own
20 we would suggest that he consult with the cardiac advisory
21 committee, but I think that's important that the council, the
22 legacy of that will certainly do that as well.

23

24 JO BOUFFORD: We could hold off on amendments I guess.
25 Let's have Dr. Brown then Dr. Bennett.

1

2 LAWRENCE BROWN: I have a just point of information. So
3 we have on the table the motion for both applications at the
4 same time?

5

6 JO BOUFFORD: They will be taken up separately but they're
7 being discussed together. So we will vote individually...

8

9 PETER ROBINSON: If you recall the last, the issue that
10 was raised by the committee was that we took the applications up
11 individually in sequence and there was a concern that we didn't
12 really have the kind of integrated conversation that we needed
13 before we voted. In other words, we voted on the first one,
14 then we discussed the second one. And so in an effort to avoid
15 that, we made these, we brought these motions up together so we
16 could have an integrated conversation.

17

18 JO BOUFFORD: Dr. Bennet and then Mr. Larue.

19

20 JOHN BENNETT: This is just a question for the Department.
21 We received some supplemental communications from the various
22 protagonists, and there was talk about cost. And so, can we have
23 a little discussion or some comment as to, it's my understanding
24 that the Southampton project is considerably less expensive than
25 the Peconic Bay. And since I remain very concern about the cost

1 and the consumer and know that someone will have to bear the
2 cost, when I see a project that can be more shovel-ready and be
3 completed in a more rapid timeframe, to really serve the need of
4 acute myocardial infarction which I think is the real need we're
5 trying to serve here from a public health perspective, not for
6 elective angioplasties, so when I see that project is also at a
7 fraction of the cost of the other, that's very important to me.
8 So can you comment on the cost differential between the two
9 projects?

10

11 CHARLIE ABEL: First of all, in general, the Department as
12 part of a CON application does a cost analysis with respect to
13 the reasonableness of the projected cost given the scope of the
14 project. So there's a clear cost differential between the two
15 projects and that's attributed to the fact that there's a clear
16 difference in the scope of work that is being proposed in one
17 application versus the second application. When you look
18 straight at the proposals for - and often it's not uncommon in
19 the scope of a particular application where an applicant may be
20 requesting a specific service that the construction costs go
21 beyond the specific confines of where that service is presented
22 or is proposed to be presented. So, and I think that's part of
23 the reason why there's such a big differential. Now, beyond
24 that, the, our biggest concern, the department's biggest concern
25 and primary concern is access. And so if something just because

1 one application costs more or less than another application, the
2 primary concern is is that applicant better positioned in a
3 competing environment? Better positioned to serve the target
4 area than the other applicant? And when I say positioned I
5 don't mean just location. There are a whole host of factors.
6 And in this case location clearly is a determining factor. We
7 would work with the applicant. Now the applicant's proposed,
8 the scope of work as is indicated here. We've reviewed that for
9 reasonableness of cost for the given scope of work and it was
10 found to be reasonable. We expect to work with the, regardless
11 which applicant gets approved, or even both applicants get
12 approved, we would be working with each applicant through the
13 construction period to ensure that the costs are reasonable
14 given the scope of work that is being done. So - probably said
15 enough on that. But that's really our position relative to
16 these applications and costs.

17

18 JO BOUFFORD: Mr. Larue and then Dr. Rugge.

19

20 SCOTT LA RUE: Thank you. Dan, I think this application
21 goes to the conversation that your report, because as a new
22 member to the council I found this difficult to maneuver our way
23 through. Because I understand the department made the
24 recommendation based on the rules for which they have to make
25 this recommendations. The questions I asked at the committee

1 meeting in those parameters, like why would the PPS in that area
2 of Long Island be against one application when the Department
3 was recommending the Peconic Bay. It seemed like the PPS was
4 recommending the Southampton, unless I read that wrong in there.
5 And the second thing that concerned me about the application is
6 it doesn't - how does this effect the remaining independent
7 hospitals on that end of the service area that people rely on?
8 And by approving this application for one hospital, does it have
9 a longer term implication for the ability for others to sustain
10 themselves? Now, whether that's appropriate for the Department
11 to take into consideration or us. As a new member I'm a little
12 confused. But those were the questions that I was curious about
13 at the committee meeting.

14

15 DAN SHEPPARD: I think it's important for purposes of
16 what's before the council now. We have the luxury in a report
17 to talk about policy issues in a future state. But I think it's
18 important now that the council stay focused on what the current
19 regulations say. And I think the challenge and the burden I
20 think that is on Tracy and Charlie and their staffs is they're
21 doing so in the context of the regulations which have very
22 clearly articulated criteria with respect to volume. And I
23 don't know, it doesn't appear that the data is in dispute here.
24 Doesn't seem where that - whether or not there are 312 or
25 whatever the number is, probably too precise, capacity to do

1 that, and then the other aspect of the regs is the regs are also
2 focused on volume and existing providers and what happens when
3 those fall below a minimum threshold. So that is I think why,
4 because we've said a couple of the times it was a very difficult
5 choice, two quality providers that with two high quality
6 partners and the decision was made within, a very close
7 decision, within the confines of the regs. With respect to what
8 this could do to volume for the other providers, you know, I
9 mean, the math would indicate it would impact them. But I
10 believe one provider submitted, Tracy - I believe one of the
11 providers did submit a letter to the council, not one of the
12 existing providers, not the applicants, did submit a letter
13 expressing concern over one of the applications. But this is a
14 difficult decision. And we've made our recommendation. There
15 were other criteria that have been focused on as maybe a little
16 bit more where there's a disagreement, but the one criteria that
17 our recommendation is built around is the geographic location of
18 this and again, it just, we say this again and again because
19 this isn't a slam dunk, but no. I mean, that's the hard decision
20 before us.

21

22 SCOTT LA RUE: Right. And I appreciate obviously the
23 tremendous amount of work the Department put into this
24 complicated application. I just think it goes exactly to your
25 report this morning about how the changing dynamics of

1 healthcare here in New York State and what it means to the CON
2 process. And under whatever the 2B set of cardiac regs, and
3 you'll all be deeply engaged in that in, we hope, once we do our
4 work plan there's not going to be too long a time frame, and
5 these are the kind of things the commissioner is going to have
6 to weigh if the council supports - if the council takes up the
7 committee recommendation, the commissioner is going to have to
8 weigh the very things that you're talking about, like impact on
9 other providers and things like that.

10

11 JOHN RUGGE: if I may, I have two areas of question I
12 guess. The major one is follow up to Mr. Larue's comment and
13 this morning's conversation but maybe as a preliminary,
14 something that Dan just brought up, the question of access and
15 it seems like there's a question about whether using the map or
16 the Google map that is provided by Southampton Hospital is by
17 way of travel times it looks different than you simply look at
18 mileage. And we heard from the ambulance core from one of the
19 forks at the last time, indeed the traffic is a bigger concern
20 than the number of miles. We just asked that. But I hope to
21 reserve place to talk about Mr. Larue's question and financial
22 feasibility.

23

24 JO BOUFFORD: Did you have a second point?

25

1 JOHN RUGGE: Yeah, the second point goes back to this
2 morning's regulated competition and that is I think one of the
3 concerns or aspects we need to consider as a responsible council
4 is the narrow question about financial costs of one versus the
5 other as Dr. Bennett raised, but the larger issue is we do need
6 to consider the impact on the two systems. And my concern or my
7 question is, it would appear from what I know clearly if the
8 Peconic application is denied there's no financial impingement
9 on the viability of Northwell. What I'm not clear about is to
10 whether the Southampton application is rejected could that have
11 a deleterious on the financial viability of that hospital system
12 and there put the broader care of the population they're serving
13 which is not served by Northwell, in jeopardy. And I think
14 that's an important question for us to answer. I'm not sure we
15 have the data.

16

17 DAN SHEPPARD: So I say, just as only as a point of
18 information that, I mean, that's not, I mean, question for the
19 council that's not within, that's not part of the regulatory
20 review that Department does. And I can, only as a point of
21 information because I think your question would bear analysis
22 that Southampton is evident in the discussions about this, is
23 affiliated, is a division of Stony Brook. So, and just on the
24 geography, and I just, Tracy, just want to keep things... I just
25 want to make sure, the Google comment, so we don't use Google

1 Maps when we do our regional, whether it's regional, what the
2 optimal regional location is. That determination. And I don't
3 want to take anything away from the folks who discussed from
4 South Fork who make up about 1/3 of the need. Not a small
5 amount, but not the majority, and again, anybody myself who's
6 traveled [Rt.] 27 knows that the map, again, what it says on a
7 map is not the travel distance necessarily certain times of
8 year. But when you look at the utilization and where the
9 originating zip codes are for the utilization of these services,
10 the location at the joining of the two forks in Riverhead is
11 more centrally located for the majority of the population that
12 would be accessing these providers. So not to take anything
13 away from the people accessing those services on the South Fork,
14 but it's not, our analysis is not a Google Maps analysis. It's
15 an analysis based on the origination of those seeking care and
16 their proximity of the greatest number of those to the proposed
17 locations.

18

19 JOHN RUGGE: Just as a technical, I understand that the
20 Departmental review does not entail the financial impact on
21 competitors, but the council's responsibility includes "other"
22 in addition to financial feasibility nearly looked at, in
23 addition to public need, addition to character and competence,
24 we need to consider the impact of an approval or disapproval on
25 the health of that population of that community. And therefore

1 our review is necessarily broader than that provided by the
2 Department. And therefore we do have the responsibility and the
3 prerogative of coming to a difference conclusion. Not because
4 we're disagreeing with the technical analysis.

5

6 JO BOUFFORD: If I could say one of the issues I think
7 this raises again is looking forward, the ability to have data,
8 have more of an evidence-driven set of decisions around the
9 scope of what we might be able to do. I mean, I think your
10 statement, Dan, as I understood it is completely appropriately
11 is within - is a question of how defined, not talking about this
12 project specifically but just project by project by project
13 we're entering into a world of systems and a world of sort of
14 geographically defined population areas, etc., which I think we
15 all agree we're not perhaps ready. We need to do things to
16 allow this council to meet it's full obligations in that regard.
17 Just final John, and then Peter.

18

19 JOHN RUGGE: Not to go on and on but we have heard now
20 from Brookhaven on the potential impact from their perspective
21 on that institution. We've not heard about the impact on
22 Southampton and Stony Brook, and I have no basis for
23 understanding what that might be.

24

1 CHARLIE ABEL: Just to clarify a bit. The regulations for
2 cardiac catheterization does require the Department to take a
3 look at the impact on other providers that are providing that
4 service. We don't want to, by introducing a new provider, we do
5 not want to have existing provider drop below critical
6 utilization levels and then create problems of quality. So that
7 is embedded in the regulations. But I think, Dr. Rugge where
8 you're going - keep in mind neither Peconic Bay nor Southampton
9 have PCI catheterization programs now. So in my mind by
10 awarding a catheterization license to one is not in and of
11 itself negatively impacting the other. Now you can make all
12 kinds of assumptions from that, but I'll let everyone... such
13 other matters is important to the application, that is right.
14 That is a power of PHHPC. Now, you broaden that even further to
15 the systems, within which neither of these subject facilities
16 are part, clearly we took a look at the impact on potential
17 volume reduction at Stony Brook because that is the closest of
18 the two partner systems, and we did not - we deemed that any
19 reduction at Stony Brook would be insignificant in terms of it's
20 ability to operate a high question PCI lab. Expanding that to
21 beyond, to impacts beyond that, I think become very speculative.
22 And if we could, objectively define those impacts we would be
23 able to disclose that here and be able to draw some conclusions,
24 but I don't believe we can.

25

1 PETER ROBINSON: So, I'd just like to put some
2 modification to my two motions that are on the floor and add to
3 them a recommendation that the commissioner consult with the
4 cardiac advisory committee, both in terms of current standards
5 but the potential for reviewing cardiac cath volumes and quality
6 standards on the basis of teams as well as geographic locations
7 so that consideration can be at least part of the deliberation
8 for this. And Dr. Gutierrez, would you accept that as a
9 modification of the motions?

10

11 [Yes]

12 For both applications. So I think—

13

14 JO BOUFFORD: So that would then be the motion that's on
15 the floor. Alright. Shall I call the question? I don't want
16 to suppress any other comments. Alright. I think we have to
17 get approval for the question. Sorry. Less experience. Alright.
18 We'll take the first one then. Alright so Peconic Bay Medical
19 Center.

20

21 PETER ROBINSON: Application - excuse me - this is the
22 motion on application 152391C as amended.

23

24 JO BOUFFORD: All in favor?

25 [Aye]

1 All opposed? One. Just a second. Two opposed. Anyone
2 abstaining? OK. Fine.

3

4 PETER ROBINSON: Application 161168C, This is the
5 application for Southampton Hospital with the motion as
6 modified.

7

8 JO BOUFFORD: All in favor?

9

10 [Aye]

11 Opposed? Two opposed? And abstentions? OK. Thank you
12 very much. Important discussion. Back to you Mr. Robinson.

13

14 PETER ROBINSON: Continuing with our batching, these
15 are now applications for establishment and construction. Just
16 as a reminder to the council, when it's for establishment the
17 council's decisions are the final stop as opposed to just
18 construction when the commissioner is the final stop. So, we
19 will begin by batching first application 161464E, Massena
20 Memorial Hospital in St. Lawrence County. To establish Massena
21 Memorial Hospital Inc., as the new operator of the 50 bed
22 hospital at One Hospital Drive, Massena which is currently
23 operated by the Town of Massena. So this is a conversion from a
24 public institution to a not-for-profit.

1 Application 162011B, Queens Surgical Center in Queens
2 County. To establish and construct a new multispecialty
3 ambulatory surgery center to be located at 36-36 Main Street in
4 Flushing. This is an approval. This is an application with a
5 five year limited life. So approval with an expiration of the
6 operating certificate five years from the date of it's issuance
7 with conditions and contingencies.

8 Continuing on. Application 161631E, Hudson Valley Regional
9 Community Health Centers Inc., in Putnam County. To establish
10 Hudson Valley Regional Community Health Centers Inc., as the new
11 operator of the D&TC located at 15 Mount Ebo Road in South in
12 Brewster and add an extension clinic at 301 Manchester Road in
13 Poughkeepsie.

14 Application 162209E, Bedford Medical Family Health Center
15 inc., in Kings County. This is transferring 49 percent
16 shareholder interest to a new shareholder of the existing
17 diagnostic and treatment center located at 100 Roth Street in
18 Brooklyn.

19 Application 161356B, USRC Forest Hills, d/b/a US Renal Care
20 Forest Hills Dialysis in Queens County. And this is to establish
21 and construct an new 24 station chronic renal dialysis center to
22 be located at 6854 Austin Street in Forest Hills.

23 And application 161097E, Village Care Rehabilitation and
24 Nursing Center in New York county. To establish Village Care of
25 New York as the new active parent of Village Center for Care

1 d/b/a Village Care Rehabilitation and Nursing. In varying
2 degrees the Department is recommended approval with various
3 conditions and contingencies for these applications, as does the
4 committee and I so move.

5 [second.]

6

7 JO BOUFFORD: Dr. Gutierrez second. Any discussion?
8 Question? Comments by the council members? Alright, all in
9 favor?

10

11 [Aye]

12 Any opposed? Any abstentions? Motion passes.

13

14 PETER ROBINSON: Two LHHCSA applications. 16145E, Cobbs
15 Hill Manor Inc. and 162015E, Argyle Center, LHCSA, LLC, d/b/a
16 Centers Homecare Northeast. These are again, new LHHCSAs to be
17 affiliated with assisting living programs. And I make a motion
18 to approve those.

19

20 JO BOUFFORD: Dr. Gutierrez second. Any discussion?
21 Questions from the council members? All in favor?

22

23 [Aye]

24 Opposed? Abstentions? Motion passes.

25

1 PETER ROBINSON: Various changes in ownership for home
2 health agencies. 152285E, Helping You Home Care Inc., 161111E
3 Crown of Life Care New York, LLC. 161146C, All Metro Aides Inc.,
4 d/b/a All Metro Healthcare. 161147E, All Metro Healthcare
5 Services of New York Inc., d/b/a All Metro Healthcare. Right.
6 161392E, Paramount Homecare Agency Inc. 161424E, Robinwood
7 Homecare LLC, d/b/a Robinwood Homecare. 162038E, Extended
8 Holding Company LLC, d/b/a Extended Homecare. 162061E, Best
9 Help Homecare corp. 162067E, DOJLHSCA Operations Associates,
10 LLC, d/b/a Clermont LHCSA. 162119E, AV Pro Services Inc., d/b/a
11 Assisted Homecare Services. 162137E, All Health Homecare LLC,
12 The Department in each instance has recommended approval with a
13 contingency as does the committee and I so move.

14

15 JO BOUFFORD: Second by Dr. Gutierrez. Any questions?
16 Comments from the Council? All in favor?

17

18 [Aye]

19 Opposed? Abstentions? Motion passes.

20

21 PETER ROBINSON: These are certificates of amendment to
22 the certificate of incorporation. Southampton Hospital
23 Association with a purposes change; Daughters of Jacob Nursing
24 Home Company inc., with a purpose change and name change.

1 Department recommends approval as does the committee and I so
2 move.

3

4 JO BOUFFORD: Any comments by the council? Questions? All
5 in favor?

6

7 [aye]

8 Opposed? Abstentions? Motion passes.

9

10 PETER ROBINSON: Ok, so now there are individual
11 recusals and interests that I need to clear, so we're going to
12 take these one at a time. This is application 161338E, Ms.
13 Carver-Cheney I think we have a series of these that you need to
14 recuse yourself. No, did I do that? Oh, this first one is Mr.
15 Larue with an interest by Mr. Carver-Cheney. Thank you for the
16 clarification. This is application 161338E Riverdale SNF LLC,
17 Shirvier - Riverdale is a little upscale so we'll use the
18 Shirvier pronunciation.

19 [Wait a minute, there's nobody from Montreal here.]

20 That's true. At any rate, we now have to declare an
21 interest by, a conflict by Mr. Larue, an interest by Ms. Carver-
22 Cheney. This is to establish Riverdale SNFLLC as the new
23 operator of Francis Shirvier Home and Hospital, d/b/a Shirvier
24 Nursing Care Center. Which is a 364 Bed not-for-profit article

1 28 RHCF. The Department is recommending approval with
2 contingencies as does the committee, and I so move.

3

4 JO BOUFFORD: Any comments, questions from the council?

5 All in favor?

6

7 [Aye]

8 Opposed? Abstentions? Motion passes.

9

10 PETER ROBINSON: Now, Ms. Carver-Cheney and we can get

11 Mr. Larue back in.

12 Excellent. I'm going to batch these next three
13 applications, all of which have a conflict and therefore a
14 recusal by Ms. Carver Cheney. Applications 161413E, Beach
15 Terrace Care Center in Nassau County. This is to transfer 40
16 percent ownership interest from two withdrawing members to one
17 new member. Application 161450E, Grandale Rehabilitation and
18 Nursing Center in Nassau County. Transferring 50 percent
19 ownership interest to one new member from own withdrawing
20 member. And 161452 Oceanside Care Center Inc., in Nassau
21 County. Transferring 100 percent ownership interest to two new
22 members from the two withdrawing members. The department has
23 recommended approval with a condition and contingencies for
24 these three transactions and the committee does likewise, and I
25 so move.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JO BOUFFORD: any comments, questions from the council?
All in favor?

[Aye]
Opposed? Abstentions? Motion passes.

PETER ROBINSON: We can have Ms. Carver Cheney return to
the room.

Application 162092E CNH Operating LLC d/b/a the Chateau at
Brooklyn Rehabilitation and Nursing Center in Kings County. An
interest by Mr. Larue. To establish CNH Operating LLC as the
new operator of the 189 bed residential healthcare facility
located at 3457 Nostron Avenue in Brooklyn currently operated as
Crown Nursing and Rehabilitation Center. Department recommends
approval with conditions and contingencies as does the
committee, and I so move.

JO BOUFFORD: Any comments or questions from the council?
All in favor?

[Aye]
Opposed? Abstentions? Mr. La Rue you're on the record as
abstaining. OK. Motion passes.

1 PETER ROBINSON: Application 162120E, 170 West Avenue
2 Operating Company LLC, d/b/a Elderwood at Lakeside at Brockport
3 in Monroe County. An interest declared by Mr. Robinson, me.
4 Establish 170 West Avenue Operating Company as the new operator
5 of the 120 bed residential healthcare facility located at 170
6 West Avenue in Brockport currently operated as Lakeside Beikurch
7 Care Center. The Department is recommending approval with
8 conditions and contingencies as does the committee and I so
9 move.

10

11 JO BOUFFORD: Any comments, questions from the council?
12 All in favor?

13

14 [Aye]

15 Opposed? Abstentions? Motion passes.

16

17 PETER ROBINSON: Next application has Dr. Ruge
18 declaring a conflict and recusing himself. I'm calling
19 application 162229E, That is at 1019 Wicker Street Operating
20 Company LLC, d/b/a Elderwood at Ticonderoga in Essex County.
21 This is to establish 1019 Wicker Street Operating Company LLC as
22 the new operator of the 84 bed residential healthcare facility
23 located at 1019 Wicker Street, Ticonderoga, currently operated
24 as Heritage Commons Residential Healthcare. The Department

1 recommends approval with conditions and contingencies as does
2 the committee, and I so move.

3

4 JO BOUFFORD: Any comments or questions from the council?
5 ? All in favor?

6

7 [Aye]

8 Opposed? Abstentions? Motion passes

9

10 PETER ROBINSON: Thank you. Dr. Rugge comes back. Dr.
11 Torres you are excused. It's like a relay race. Really quite
12 fascinating to watch. Anyway 161477E, Premier Home Healthcare
13 Services Inc., in New York County. Noted a conflict and recusal
14 by Dr. Torres. To acquire and merge HHH Certified Home Health
15 Agency and add Bronx and Westchester County and add homemaker,
16 housekeeper, nutritional, personal care, and therapy respiratory
17 services to the existing operating certificate. The department
18 is recommending approval with condition and contingencies as
19 does the committee and I so move.

20

21 JO BOUFFORD: Doctor it's a contest. Moved and seconded.
22 Any questions comments from the council members? ? All in
23 favor?

24

25 [Aye]

1 Opposed? Abstentions? Motion passes.

2

3 PETER ROBINSON: Excellent. OK, we're continuing on
4 here with home health agency licensures. Application 162016E,
5 Bath Center LHCSA, LLC d/b/a Centers Homecare West. An interest
6 has been declared by Ms. Baumgartner and the Department has
7 recommended approval with a condition, with a contingency as
8 does the committee and I so move.

9

10 JO BOUFFORD: Dr. Kalkut seconds. Any comments, questions
11 from the council? ? All in favor?

12

13 [Aye]

14 Opposed? Abstentions? Motion passes.

15

16 PETER ROBINSON: Thank you. The next two applications,
17 Mr. Carver-Cheney has declared a conflict and has recused
18 herself? That true? She left already. I like it when people
19 anticipate the next move. Application 161180E, Nesconset ZJ1
20 LLC, d/b/a Nesconset Center for Nursing and Rehabilitation in
21 Suffolk County. As noted a conflict and recusal by Ms. Carver
22 Cheney. To establish Nesconset ZJ1 LLC as the new operator of
23 the 240 bed facility located at 100 Southern Blvd., in
24 Nesconset. Currently operated by Nesconset Acquisition LLC and
25 also concurrently to decertify 12 RHCF beds. Note that this

1 amends and supersedes project number 142278. The Department is
2 recommending approval with conditions and contingencies. The
3 committee recommends approval with conditions and contingencies,
4 but with two members opposing. I so move.

5

6 JO BOUFFORD: Second Dr. Strange. Any comments?
7 Questions? ? All in favor?

8

9 [Aye]

10 Opposed?

11 [aye]

12 Mr. La Rue. Any Abstentions? Motion passes

13

14 PETER ROBINSON: Thank you. Application 161181E,
15 Huntington Acquisition One LLC d/b/a Hillaire Rehab and Nursing
16 in Suffolk County. Again, a conflict and recusal by Ms. Carver
17 Cheney. To establish Huntington Acquisition One LLC as the new
18 operator of the 76 bed facility located at 9 Hillaire Drive in
19 Huntington. Currently operated by Hillaire Farm Skilled Living
20 and Rehabilitation Center, LLC. This amends and supersedes
21 project number 142279 and as you can tell these two sequential
22 applications are linked. The Department has recommended
23 approval with conditions and contingencies. The committee does
24 as well with two members opposing and I so move.

25

1 JO BOUFFORD: Second Dr. Strange. Any comments or
2 questions from the council? ? All in favor?

3

4 [Aye]

5 Opposed?

6 Mr. La Rue. Any Abstentions? Motion passes.

7

8 PETER ROBINSON: Unless corrected by... we're done. So
9 that concludes the report of the Establishment and Project
10 Review Committee, Madam Chair.

11

12 JO BOUFFORD: Well done. Before adjournment are there any
13 other business? Dr. Berliner.

14

15 HOWARD BERLINER: Love this Colleen. You know what the
16 question is.

17 Do we have any potential dates for the proposed retreat?

18 [waiting on the chair to get back to us.]

19

20 JO BOUFFORD: Any other issues? Any one of the council
21 members want to bring up? Happy Holidays to everyone indeed.
22 And let me just remind you that the next committee day is
23 January 26 here in New York City and the Full Council will
24 convene on February 9 in New York City so Happy New Year, and
25 the best to everyone. Thank you very much. We stand adjourned.

NYSDOH20161208-FullCouncil
3hr 6min.

1

2

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.

SUMMARY OF EXPRESS TERMS

These amendments are necessary for the Department to maintain full primacy for delivery, oversight and management of New York's public drinking water supply supervision program and to ensure consistency with federally enacted drinking water regulations promulgated by the United States Environmental Protection Agency (EPA), including: amendments to the Lead and Copper Rule (LCR), including the LCR Minor Revisions (LCRMR) and LCR Short-Term Revisions (LCRSTR); the Long Term 2 Enhanced Surface Water Treatment Rule (LT2); the Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); and the Variances and Exemptions (V&E) Rule. Several revisions incorporate requirements related to recent amendments to the New York State Public Health Law (PHL), while other amendments update and clarify references to approved analytical methods, update tables for consistency with federal and State law, update outdated references, and correct typographical errors.

The amendments that conform to the revised federal regulations include:

- Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR)
 - The EPA promulgated the LCRMR to eliminate unnecessary requirements in the LCR, reduce the reporting burden, and promote consistent national implementation of the LCR. In addition, language was added to clarify requirements and correct oversights in the original rule. The revisions are called “minor” because they do not affect the lead and copper maximum contaminant level goals, action levels, or other basic regulatory requirements to monitor for lead and copper at the tap and to optimize corrosion control. The lead action level remains at 0.015 milligrams per liter (mg/L) and the copper action level remains at 1.3 mg/L.

- The LCRSTR enhances the implementation of the LCR in the areas of monitoring, treatment, customer awareness, lead service line replacement, and public education requirements, to ensure that drinking water consumers receive meaningful, timely, and useful information needed to help them limit their exposure to lead in drinking water.
- Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR)
 - The EPA promulgated the Stage 2 DBPR to increase public health protection by reducing the potential risk of adverse health effects associated with disinfection byproducts (DBPs) in drinking water distribution systems. The Stage 2 DBPR builds on the Stage 1 Disinfectant and Disinfection Byproducts Rule (Stage 1 DBPR) by focusing on monitoring for and reducing concentrations of two classes of DBPs: Total Trihalomethanes (TTHM) and Haloacetic Acids (HAA5) in drinking water.
 - The Stage 2 DBPR required some public water systems to complete an Initial Distribution System Evaluation (IDSE) to characterize DBP levels in their distribution systems and identify locations to monitor DBPs for Stage 2 DBPR compliance. The Stage 2 DBPR bases TTHM and HAA5 compliance on locational running annual average (LRAA) calculated at each monitoring location.

- All Community Water Systems (CWSs) and Non-Transient Non-Community Water Systems (NTNCWSs) that either add a primary or residual disinfectant, other than ultraviolet light, or deliver water that has been treated with a primary or residual disinfectant, other than ultraviolet light, must meet the requirements of this rule.

- Long Term 2 Enhanced Surface Water Treatment Rule (LT2)
 - The EPA promulgated the Long Term 2 Enhanced Surface Water Treatment Rule (LT2) to reduce disease incidence associated with *Cryptosporidium* and other disease-causing microorganisms in drinking water. LT2 builds upon earlier drinking water regulations to address public water systems (PWS) at a higher risk for *Cryptosporidium*, which is very resistant to treatment by chlorine and other common disinfectants.

 - The rule bolsters existing federal regulations to provide a higher level of drinking water protection by targeting treatment requirements to higher risk systems, reducing risks associated with uncovered finished water storage facilities, ensuring that systems maintain microbial protection as they reduce the formation of disinfection byproducts; and requiring unfiltered water systems to provide at least 99 or 99.9 percent (2- or 3-log) inactivation of *Cryptosporidium*.

- Variations and Exemptions (V&E) Rule

- The EPA promulgated the V&E Rule to provide eligible systems with options for achieving compliance with regulations. Variances allow eligible systems to provide drinking water that does not comply with a National Primary Drinking Water Regulation (NPDWR), premised on the condition that the PWS installs appropriate treatment technology to achieve regulatory compliance and the quality of the drinking water delivered is still protective of public health. Exemptions allow eligible systems additional time to build capacity in order to achieve and maintain regulatory compliance with newly promulgated NPDWRs, while continuing to provide acceptable levels of public health protection.

- The amendments allow for two types of variances: a general variance for PWSs that are not able to comply with a drinking water standard due to their source water quality; and variances for small PWSs serving populations of 3,300 or fewer that cannot afford to comply with a drinking water standard (these variances may be allowed for systems serving up to 10,000 persons).

Two categories of revisions are required to make regulations consistent with Public Health Law, those pertaining to cross-connection control and to water supply emergency plans:

Cross-Connection Control

Pursuant to amendments to section 225 of the PHL, the Department discontinued the issuance of backflow tester certifications. In order to make the regulation consistent with the amended PHL, the following changes to the cross-connection control regulations are being proposed:

- A Department-approved entity will issue backflow tester certifications.
- Backflow testers will be required to take initial training courses if certification has lapsed for more than one year.
- Enforcement provisions are clarified.

Water Supply Emergency Plans

Pursuant to amendments to section 1125 of the PHL, the Department is proposing the following amendments:

- Base the requirement for submittal of a water supply emergency plan on the population served rather than a minimum operational revenue. All PWSs serving a population of more than 3,300 will be required to submit a water supply emergency plan.
- Specify the statutory penalty for disclosing confidential information about a water system emergency plan.
- Clarify that resistance to cyber-attack must be included in the vulnerability analysis of the water supply emergency plan.

The final category of changes addresses updates to portions of Subpart 5-1. The listing of approved laboratory analytical methods for drinking water have been removed from Appendix 5-C and replaced with a statement that requires the use of analytical methods approved by the EPA or the New York State Environmental Laboratory Approval Program (ELAP). Additional revisions to Appendix 5-C include incorporating provisions to allow for the limited use of test strips to test for chlorine residual in drinking water, correction of typographical errors, and minor

editorial revisions for consistency throughout the regulation. The tables in Subpart 5-1 have also been updated for consistency with federal and State law.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225 of the Public Health Law, Subpart 5-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

Subdivision (a) of section 5-1.1 is amended as follows:

(a) [*Log*] *-log treatment* means the reduction of a specified proportion of viruses, bacteria, protozoa or other organisms present in drinking water expressed as factors of ten, through disinfection (inactivation) and/or removal. For example, 3-log treatment removes or inactivates 999 out of 1000 organisms or 99.9 percent.

Existing section 5-1.1, Definitions, is being relettered and amended to be in alphabetical and sequential order, as noted below.

Existing subdivision (c) of section 5-1.1 is relettered to be subdivision (d). A new subdivision (c) is added to section 5-1.1 to read as follows:

(c) *Approved method* means an analytical method, including sample preparation, of proven reliability which has been approved, or given similar recognition by the United States Environmental Protection Agency (EPA) or a New York State regulatory program in environmental or public health protection, for the specific purpose for which the method is to be

used. Methods approved by the department pursuant to section 10 NYCRR 55-2.5 shall be deemed approved methods.

Existing subdivision (d) of section 5-1.1 is relettered to be subdivision (j). New subdivisions (e)-(i) are added to section 5-1.1 to read as follows:

(e) *Backflow* means a flow condition, induced by a pressure differential, which causes the reversal of flow of water or other liquids, solids, and/or gases into the distribution pipes of a potable water supply from any source other than the intended potable water source.

(f) *Backflow prevention device tester (or “tester”)* means a person who has met the certification requirements and been issued a certification as specified in section 5-1.31.

(g) *Bag filter* means a pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media.

(h) *Bank filtration* means a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

(i) *Cartridge filter* means a pressure-driven separation device that removes particulate matter larger than one micrometer using an engineered porous filtration media.

Existing subdivision (e) of section 5-1.1 is relettered to be subdivision (l). A new subdivision (k) is added to section 5-1.1 to read as follows:

(k) *Combined distribution system* means the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

Existing subdivisions (f)-(l) of section 5-1.1 are relettered to be subdivisions (m)-(s), and existing subdivision (m) of section 5-1.1 is relettered to be subdivision (u). Existing subdivisions (n)-(p) of section 5-1.1 are relettered to be subdivisions (x)-(z). Subdivision (q) of section 5-1.1 is relettered to be subdivision (w). New subdivisions (t) and (v) are added to section 5-1.1 to read as follows:

(t) *Cross-connection* means an actual or potential connection between a potable water system and any other source or system through which a water supply could be contaminated.

(v) *Cyber attack* means deliberate actions to target computer information systems, infrastructures, computer networks, computer controlled mechanical devices and/or personal computers by various means of malicious acts that either steal, alter, disrupt or damage a target by gaining access into a susceptible electronic or electromechanical device.

Existing subdivisions (r)-(t) of section 5-1.1 are relettered to be subdivisions (aa)-(ac). A new subdivision (ad) is added to section 5-1.1 to read as follows:

(ad) *Dual sample set* means a set of two samples collected at the same time and same location, with one sample analyzed for total trihalomethanes (TTHM) and the other sample analyzed for haloacetic acids (five) (HAA5).

Existing subdivisions (u)-(ab) of section 5-1.1 are relettered to be subdivisions (ae)-(al). A new subdivision (am) is added to section 5-1.1 to read as follows:

(am) *Finished water* means water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

Existing subdivisions (ac)-(ae) of section 5-1.1 are relettered to be subdivisions (an)-(ap).

Relettered subdivision (ap) of section 5-1.1 is amended to read as follows:

[(ae)](ap) *GAC10* means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation or replacement frequency of every 180 days, [and is the] except that the reactivation frequency for GAC10 used as a best available technology for compliance with total trihalomethanes (TTHM) and haloacetic acids (five) (HAA5) maximum contaminant levels (MCLs) shall be 120 days.

A new subdivision (aq) is added to section 5-1.1 to read as follows:

(aq) *GAC20* means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

Existing subdivisions (af)-(ak) of section 5-1.1 are relettered to be subdivisions (ar)-(aw). A new subdivision (ax) is added to section 5-1.1 to read as follows:

(ax) *Internal protection* means isolation of a fixture, area or zone which requires backflow prevention at the source of the cross-connection or potential hazard, in accordance with the New York State Uniform Fire Prevention and Building Code and/or the local plumbing and building codes.

Existing subdivisions (al)-(an) of section 5-1.1 are relettered to be subdivisions (ay)-(ba). A new subdivision (bb) is added to section 5-1.1 to read as follows:

(bb) *Locational running annual average (LRAA)* means the average of sample analytical results during the previous four calendar quarters for samples taken at a particular monitoring location.

Existing subdivisions (ao)-(as) of section 5-1.1 are relettered to be subdivisions (bc)-(bg). New subdivisions (bh) and (bi) are added to section 5-1.1 to read as follows:

(bh) *Membrane filtration* means a pressure- or vacuum-driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

(bi) *Method Detection Limit (MDL)* means the minimum concentration of a substance that can be measured and reported with 99 per cent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

Existing subdivisions (at)-(ax) of section 5-1.1 are relettered to be subdivisions (bj)-(bn). A new subdivision (bo) is added to section 5-1.1 to read as follows:

(bo) *Plant intake* means the works or structures at the head of a conduit through which water is diverted from a source, such as a river or lake, into the treatment plant.

Existing subdivisions (ay) and (az) of section 5-1.1 are relettered to be subdivisions (bp) and (bq). New subdivisions (br) and (bs) are added to section 5-1.1 to read as follows:

(br) *Practical Quantitation Limit (PQL)* means the practical and routinely achievable method-specific measurable concentration limit achieved by a laboratory with a high degree of certainty (>99.9 per cent confidence) in the results.

(bs) *Presedimentation* means a preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

Existing subdivisions (ba) and (bb) of section 5-1.1 are relettered to be subdivisions (bt) and (bu). A new subdivision (bv) is added to section 5-1.1 to read as follows:

(bv) *Protective device* means an approved double check valve assembly, reduced pressure zone assembly, air gap or other type or method of backflow protection accepted by the department.

Existing subdivisions (bc)-(bm) of section 5-1.1 are relettered to be subdivisions (bw)-(cg). A new subdivision (ch) is added to section 5-1.1 to read as follows:

(ch) *Service protection* means the installation of a protective device or method of backflow protection at the service connection, commensurate with the degree of hazard of the consumer's potable water system. Service protection is also known as containment.

Existing subdivisions (bn)-(cd) of section 5-1.1 are relettered to be subdivisions (ci)-(cy). New subdivisions (cz) and (da) are added to section 5-1.1 to read as follows:

(cz) *Two-stage lime softening* means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

(da) *Uncovered finished water storage facility* means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere.

Existing subdivisions (ce)-(cl) of section 5-1.1 are relettered to be subdivisions (db)-(di).

Section 5-1.13 is amended to read as follows:

5-1.13 Sampling and analytical requirements.

The supplier of water shall collect raw water samples at a frequency prescribed by the State and analyze such samples for contaminants [in accordance with requirements set forth in "Acceptable Methods for the Analyses of Contaminants in Water"¹ and] using an approved method, with method exceptions as listed in the Tables in section 5-1.52 of this subpart, and by an approved laboratory as described in section 5-1.74 of this Subpart.

[_____]

¹See Appendix 5-C, *infra*.]

The opening paragraph of section 5-1.30 is amended to read as follows:

5-1.30 Providing treatment for public water systems.

The supplier of water shall provide such treatment as necessary to deliver to the consumer a water conforming to the requirements of this section and determined [in accordance with the

analytical methods contained in Appendix 5-C and] using an approved method, with method modifications as listed in the Tables in section 5-1.52 of this Subpart, and by an approved laboratory as described in section 5-1.74 of this Subpart.

* * *

Subdivision (b) of Section 5-1.30 is amended to read as follows:

(b) Minimum treatment for surface water sources or [groundwater] ground water sources directly influenced by surface water shall be filtration and disinfection techniques, approved by the State in accordance with section 5-1.22 of this Subpart, capable of at least 99 percent removal of *Cryptosporidium* oocysts, 99.9 percent removal and/or inactivation of Giardia lamblia cysts, and 99.99 percent removal and/or inactivation of viruses, between a point where the raw water is no longer subject to recontamination by surface water runoff and a point downstream before or at the first consumer. Compliance with this treatment technique [requirement shall be no later than June 29, 1993] is required for surface water sources or within 18 months [for groundwater] after ground water sources are determined to be directly influenced by surface water [sources], unless the department determines that the supplier of water can meet specific avoidance criteria as defined in subdivision (c) of this section. Required performance monitoring shall be conducted in accordance with section 5-1.52 table 10A of this Subpart. Compliance with these treatment technique requirements shall also include:

* * *

Paragraph (3) of subdivision (c) of section 5-1.30 is amended to read as follows:

(3) Disinfection must be sufficient to ensure at least 99.9 percent inactivation of *Giardia lamblia* cysts [and], 99.99 percent inactivation of viruses, and 99 or 99.9 percent inactivation of *Cryptosporidium* (per section 5-1.83(c)(2) of this Subpart), between a point where the raw water is no longer subject to recontamination by surface water runoff and a point downstream before or at the first consumer. Actual CT values must be equal to or greater than the required values found in section 5-1.52 tables 14A through [14G] 14I of this Subpart, except for one day in each month that the system served water to the public, or except where the State determines that an additional failure in one month in the previous 12 months was caused by circumstances that were unusual and unpredictable. The supplier of water must calculate the CT values of the system for each day the system is in operation to document satisfactory disinfection. The necessary parameters and related monitoring frequencies to conduct this evaluation include:

Paragraph (9) of subdivision (c) of section 5-1.30 is amended to read as follows:

(9) The public water system [must] shall comply with the trihalomethane, haloacetic acid, bromate, and chlorite maximum contaminant levels and the maximum residual disinfectant levels in accordance with section 5-1.52 of this Subpart.

Subdivision (d) of section 5-1.30 is revised to read as follows:

(d) Notwithstanding anything to the contrary in sections 5-1.12, 5-1.23, 5-1.51 or 5-1.77 of this Subpart, if the public water system fails to comply with the treatment technique and/or the monitoring requirements of subdivision (a), (b), (c) or (g) of this section, fails to install the filtration and/or disinfection treatment required by this section or fails to comply with the avoidance criteria requirements contained in subdivision (c) of this section, the system violates this Subpart and shall make State and public notification, including mandatory health effects language. Pursuant to subdivision (c) of this section, if at any time the raw water turbidity exceeds five nephelometric turbidity units, the system shall consult with the State within 24 hours of learning of the exceedance. Based on this consultation, the State may determine that the exceedance constitutes a public health hazard, as found in section [5-1.1(bc)(4)] 5-1.11(bw)(4) of this Subpart, which requires a Tier 1 notification.

* * *

Section 5-1.31 is repealed and new section 5-1.31 is added to read as follows:

5-1.31 Cross-Connection Control.

(a) The supplier of water shall implement a service protection program (also known as containment) which includes the following:

- (1) requiring a protective device commensurate with the degree of hazard posed by any service connection;
- (2) requiring the user of such connections to submit plans for the installation of protective devices to the supplier of water and/or the State for approval; and

(3) assuring all protective devices are inspected and tested by a certified backflow prevention device tester, as prescribed in subdivision (b) of this section, at the time of initial installation, after each repair, and annually thereafter. Records of such tests shall be made available to, reviewed by, and maintained by the supplier of water. All protective device tests and inspections shall be conducted by a certified backflow prevention device tester (“tester”).

(b) A certified backflow prevention device tester shall meet the following requirements:

(1) Initial certification and renewal requirements. Initial and/or renewal certifications for a certified backflow prevention device tester will be issued by a department-approved entity, when the applicant provides proof of satisfactory completion of a department-approved certified backflow prevention training course. The certification shall be valid for a period of three years.

(2) Conditions of certification.

(i) Upon issuance of a certification by a department-approved entity, the tester shall inform the department and the department-approved entity, within 30 days, of any changes in address or employment.

(ii) The department has the authority to require any individual applying for certification or renewal certification as a certified backflow prevention device tester or any certified backflow prevention device tester to take a written, oral and/or practical skills validated examination, if the department deems such examination to be reasonably necessary to determine the applicant’s qualifications or to determine the certified tester’s knowledge, skills, ability and judgment. The results of the examination may be the sole basis for approval, disapproval or suspension of such

certification or the basis for additional requirements, deemed appropriate by the department, before certification will be issued or reinstated.

(3) Recertification requirements.

(i) An individual that allows his or her certification renewal to lapse after the expiration date is no longer certified to test applicable protective devices as outlined in this Subpart. If the individual meets the requirements outlined in section 5-1.31(b) of this Subpart, within one year of the expiration date, the certification will be reinstated with a renewal period starting upon the date of expiration of the original certification and ending three years later.

(ii) An individual that allows his or her certification renewal to lapse for more than one year after the expiration date will be required to repeat the initial certification requirements set forth in section 5-1.31(b)(1) of this Subpart.

(c) Enforcement

Upon notice and opportunity for a hearing, a tester's certification may be suspended or revoked. Revocation or suspension may be based on, but not limited to, fraud or misrepresentation by the certified tester; gross incompetence or gross negligence on a particular occasion; or negligence or incompetence on more than one occasion. Examples of such conduct include, but are not limited to:

(1) making false statements or notations on legal or official records required by the department;

or

(2) providing misleading statements to government officials or agents of the government regarding protective device testing/certification.

(d) The supplier of water may not allow a user to establish a separate source of water. However, if a user justifies the need for a separate source of water, the supplier of water shall protect the public water system from such separate source of water by ensuring that such source does not pose a hazard in the following manner:

- (1) by requiring the user to regularly examine the quality of the separate water source;
- (2) by approving the use of only those separate water sources which are properly developed, constructed, protected and found to meet the requirements of sections 5-1.51 and 5-1.52 of this Subpart; and
- (3) by filing such approvals with the State annually.

(e) All users of a public water system shall prevent cross-connections between the potable water piping system and any other piping system within the premises by installing internal protection in accordance with the New York State Uniform Fire Prevention and Building Code and/or the local plumbing and building codes.

(f) Any installation, service, maintenance, testing, repair or modification of a protective device shall be performed in accordance with the provisions of any relevant county, city, town or village plumbing code. All individuals who perform testing of protective devices shall be certified in accordance with subdivision (b) of this section.

Section 5-1.32 is amended to read as follows:

5-1.32: Protection of [equalizing and distribution reservoirs] finished water storage facilities.

[Equalizing and distribution reservoirs] Finished water storage facilities which deliver water to the user without later treatment shall be covered, or the water from an uncovered [reservoir must] finished water storage facility shall be continuously [disinfected] treated to achieve inactivation or removal of at least 99.99 percent virus, 99.9 percent *Giardia lamblia*, and 99 percent *Cryptosporidium* in a manner approved by the State, in accordance with [subdivision] section 5-1.22(b) of this Subpart, before being discharged to the distribution system.

Section 5-1.33 is repealed and a new section 5-1.33 is added to read as follows:

5-1.33 Water supply emergency plans.

(a) All community water systems that supply drinking water to more than 3,300 people shall submit a water supply emergency plan to the State. The plan shall identify and outline the steps necessary to ensure that potable water is available during all phases of a water supply emergency.

(b) The water supply emergency plan shall include:

(1) Procedures to notify consumers during all phases of a water supply emergency.

(2) Criteria and procedures for determining, and the subsequent reporting of, critical water levels or safe yield of the source or sources of water.

(3) The identification of existing and future sources of water available during normal non-emergency and water supply emergency conditions.

(4) The identification of all available water storage. Available water storage includes source, transmission and distribution system storage.

(5) The identification, capacity and location of existing inter-connections. Identification of additional inter-connections needed to provide potable water during a water supply emergency.

(6) A specific action plan outlining all the steps to be carried out, taken or followed during a water supply emergency. The plan shall include a process for State notification, emergency notification rosters of key water supply personnel with current telephone numbers both business and home, and details of the follow-up corrective action process to minimize the reoccurrence of an emergency.

(7) The identification and implementation of procedures for water conservation and water use restrictions to be put in place during a water supply emergency.

(8) The identification of and the procedures for prioritization of potable water users during a water supply emergency.

(9) The identification and availability of emergency equipment needed during a water supply emergency.

(10) The system's capacity and ability to meet peak water demands and fire-flow conditions concurrently during a water supply emergency.

(c) An all-hazard vulnerability analysis, including an analysis of vulnerability to terrorist attack and cyber attack, shall be performed on all components of the water system. System components include but are not limited to: the source or sources of water supply; water treatment plants; disinfection stations; pipes and valves; storage tanks; and system operations and management. The system shall take whatever steps are necessary to ensure that potable water can be and is available during a water supply emergency.

(d) Before the final submission of the water supply emergency plan to the State, the system shall publish a notice in a newspaper of general circulation in the area served by the community water system stating that the proposed water supply emergency plan is available for review and comment. The notice shall be printed at least once in each of two successive weeks. Public comment shall be accepted for at least fourteen days following the date of first publication. All public comment shall be submitted with the water supply emergency plan to the State.

(e) The water supply emergency plan shall be submitted to the State for review at least once every five years and within thirty days after major water facility infrastructure changes have been

made. The system shall keep the emergency plan up to date, and shall provide updated communication and notification information to the State by December thirty-first of each year.

(f) Community water systems that supply drinking water to 3,300 or fewer people, non-transient noncommunity water systems, and noncommunity water systems may be required to prepare, update and submit to the State, a written water supply emergency plan for providing potable water during a water supply emergency.

(g) If more than one system is responsible for providing potable water to a community water system, the water supply emergency plan shall be prepared and submitted jointly by the systems.

(h) Information shall be exempt from public disclosure for public review and comment if it is determined by the water supplier that the information will pose a security risk to the operation of the water system. Upon the Commissioner's request, the system shall provide a copy of the exempt information and justification for why said information should not be subject to public review and comment. A person who, without authorization, discloses any such assessment or information to another person who has not been authorized to receive such assessment or information shall be subject to criminal penalties pursuant to section 1125 of the Public Health Law.

Sections 5-1.40 through 5-1.49 are repealed and new sections 5-1.40 through 5-1.48 are added to read as follows:

Control of Copper and Lead in Drinking Water

5-1.40 General Requirements and Action Levels.

(a) Applicability. The requirements of sections 5-1.40 through 5-1.48 of this Subpart shall apply to all community water systems and nontransient, noncommunity water systems serving 15 or more service connections or serving 25 or more persons.

(b) Lead and copper action levels.

(1)Analyte	Action Level ^{1,2}
Lead	0.015 mg/L
Copper	1.3 mg/L

Notes:

¹ Analysis of lead and copper samples must be done by an approved laboratory as prescribed in section 5-1.74(a), that demonstrates the ability to achieve a Practical Quantitation Level (PQL) for lead equal to 0.0005 milligrams/Liter (mg/L) and a PQL for copper equal to 0.050 mg/L.

² All lead and copper levels measured between the PQL and Method Detection Level (MDL) must be either reported as measured or one-half the PQL specified in note 1. All levels below the lead and copper MDLs must be reported as zero.

(2) The lead action level is exceeded if the concentration of lead in more than ten percent (90th percentile) of the tap water samples collected in accordance with section 5-1.42 during any monitoring period exceeds 0.015 mg/L.

(3) The copper action level is exceeded if the concentration of copper in more than ten percent (90th percentile) of the tap water samples collected in accordance with section 5-1.42 during any monitoring period exceeds 1.3 mg/L.

(4) The 90th percentile lead and copper levels shall be calculated pursuant to methods prescribed by the State.

5-1.41 Corrosion Control Treatment Steps and Requirements.

(a) Each system shall complete the applicable corrosion control treatment requirements found in subdivision (c) of this section unless it is deemed to have optimized corrosion control as provided under subdivision (b) of this section.

(b) Optimized corrosion control. A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the water system satisfies the criteria specified in one of the paragraphs (1) through (3) of this subdivision. Any such system deemed to have optimized corrosion control under this subdivision, and which has treatment in place, shall continue to operate and maintain optimal

corrosion control treatment and meet any requirements that the State determines appropriate to ensure optimal corrosion control treatment is maintained.

(1) Any water system that serves 50,000 or fewer people is considered to have optimal corrosion control treatment if the water system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with section 5-1.42.

(2) Any water system may be deemed by the State to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the State that it has conducted activities equivalent to applicable corrosion control steps. Water systems deemed to have optimized corrosion control under this paragraph shall operate in compliance with State-designated optimal water quality parameters and continue to conduct lead and copper tap and water quality parameter sampling in accordance with sections 5-1.42(b)(3) and 5-1.43(b)(3). A system shall provide information to the State to support a determination under this subdivision which includes, but is not limited to:

(i) the results of all samples collected for each of the water quality parameters in section 5-1.43;

(ii) a report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in section 5-1.41(c)(4)(ii), the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(iii) a report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(iv) the results of first draw lead and copper tap water samples collected in accordance with section 5-1.42 for two consecutive six-month monitoring periods after corrosion control has been installed.

(3) A water system is deemed to have optimized corrosion control if it meets the copper action level and can demonstrate:

(i) the difference between the results of the 90th percentile tap water lead level and the highest source water lead level is less than 0.005 mg/L for two consecutive six month monitoring periods. The 90th percentile tap water lead level shall be sampled in accordance with section 5-1.42 and source water lead level shall be sampled in accordance with section 5-1.44; or

(ii) a system's highest source water lead level is below the Method Detection Limit, and the 90th percentile tap water lead level is less than or equal to 0.005 mg/L for two consecutive 6-month monitoring periods.

(4) Any water system deemed to have optimized corrosion control in accordance with this section shall continue monitoring for lead and copper in tap water no less frequently than once every three calendar years using the reduced number of sites specified in section 5-1.42(a)(3) and

collecting the samples at times and locations specified in section 5-1.42(c), unless it meets the requirements for a nine year waiver as specified in section 1.42(c)(6)(f).

(5) Any system triggered into corrosion control because it is no longer deemed to have optimized corrosion control under this paragraph shall implement corrosion control treatment in accordance with the deadlines in subdivision (c)(2) of this section. Any such system serving more than 50,000 persons shall adhere to the schedule specified in subdivision (c)(2) of this section for systems serving 50,000 or fewer persons, with the time periods for completing each step being triggered by the date the system is no longer deemed to have optimized corrosion control under this paragraph.

(6) Any water system deemed to have optimized corrosion control shall notify the State in writing, pursuant of section 5-1.48(i), of any upcoming long-term change in treatment or addition of a new source. The water system shall obtain approval from the State before implementing the addition of a new source or long-term change in water treatment. The State may require any such system to conduct additional monitoring or to take other action the State deems appropriate to ensure that such systems maintain minimal levels of corrosion in the distribution system.

(c) Corrosion control treatment steps and deadlines.

(1) A system serving more than 50,000 persons shall complete the following corrosion control treatment steps, unless it is deemed to have optimized corrosion control as provided in subdivisions (b)(2) and (b)(3) of this section:

(i) Step 1: The water system shall conduct initial first draw lead and copper tap sampling and water quality parameter sampling in accordance with sections 5-1.42 and 5-1.43. If the lead or copper action level exceeds the 90th percentile, the water system shall conduct source water sampling in accordance with section 5-1.44 within a schedule specified by the State.

(ii) Step 2: The water system shall complete corrosion control studies as specified by the State within 18 months after the end of the monitoring period during which the system exceeds one of the action levels.

(iii) Step 3: The water system shall install optimal corrosion control treatment within 24 months after the State designates such treatment.

(iv) Step 4: After installation of optimal corrosion control treatment, the water system shall complete first draw lead and copper tap sampling and water quality parameter follow-up sampling in accordance with sections 5-1.42(b)(2) and 5-1.43(b)(2) during the two consecutive six-month monitoring periods immediately following installation of treatment.

(v) Step 5: After State designation of water quality parameters for optimal corrosion control treatment, the water system shall operate in compliance with State-designated optimal water quality parameter values in accordance with subdivision (g) of this section; and continue to conduct first draw lead and copper tap sampling and water quality parameter sampling in accordance with sections 5-1.42(b)(3) and 5-1.43(b)(3).

(2) Systems serving 50,000 or fewer persons. Except as provided in subdivision (b) of this section, a system that serves 50,000 or fewer persons shall complete the following corrosion control treatment steps:

(i) Step 1: The water system shall conduct initial first draw lead and copper tap sampling in accordance with section 5-1.42 within a schedule specified by the State. If the lead or copper action level is exceeded at the 90th percentile the water system shall conduct water quality parameter sampling and source water sampling in accordance with sections 5-1.43 and 5-1.44.

(ii) Step 2: The water system shall recommend optimal corrosion control treatment within six months after the end of the monitoring period during which the system exceeds one of the action levels. The State may designate optimal corrosion control treatment or require the system to perform corrosion control studies. If the State requires corrosion control studies to be conducted, the water system shall complete corrosion control studies as specified in section 5-1.42(c)(3).

(a) Systems serving populations greater than 3,300 but less than 50,000 shall perform such studies within 18 months after the end of the monitoring period during which the system exceeds the lead or copper action level.

(b) Systems serving 3,300 or fewer persons shall perform such studies within 24 months after the end of the monitoring period during which the system exceeds the lead or copper action level.

(iii) Step 3: The water system shall install optimal corrosion control treatment within 24 months after the State designates such treatment.

(iv) Step 4: After installation of optimal corrosion control treatment, the water system shall complete first draw lead and copper tap sampling and water quality parameter follow-up sampling in accordance with sections 5-1.42(b)(2) and 5-1.43(b)(2) during the two consecutive six-month monitoring periods immediately following installation of treatment.

(v) Step 5: After State designation of water quality parameters for optimal corrosion control treatment, the water system shall operate in compliance with State-designated optimal water quality parameter values in accordance with subdivision (g) of this section; and continue to conduct first draw lead and copper tap sampling and water quality parameter sampling in accordance with sections 5-1.42(b)(3) and 5-1.43(b)(3).

(3) Content of corrosion control studies. Corrosion control studies shall follow methods that include but are not limited to the following:

(i) an evaluation of the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments using standard engineering tests on other systems of similar size, water chemistry and distribution system configuration:

(a) alkalinity and pH adjustment;

(b) calcium hardness adjustment; and

(c) the addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples;

(ii) measurements of appropriate water quality parameters to assess performance of corrosion control including: lead; copper; pH; alkalinity; calcium; conductivity; temperature; silica or orthophosphate;

(iii) an assessment of effectiveness of treatment including the potential for adverse effects on other water quality treatment processes; and

(iv) identification of the optimal corrosion control treatment(s) for the system, including a rationale of the treatment steps for consideration by the State.

(4) Conditions for ceasing treatment steps. Any water system that serves 50,000 or fewer people, and that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level, may cease completing the treatment steps whenever the water system meets both action levels during each of two consecutive six-month monitoring periods. The lead and copper results from both monitoring periods shall be submitted to the State for approval for ceasing treatment steps. If an action level is exceeded in a later monitoring period the water system shall complete the remaining applicable treatment steps.

(d) Designation of optimal corrosion control treatment. Based upon consideration of available information including, where applicable, corrosion control studies performed under subdivision

(c) of this section and a system's proposed treatment alternative, the State will either:

(1) approve the corrosion control treatment option recommended by the system; or

(2) require alternative corrosion control treatment(s) as specified by the State. The State may also ask for additional information or modifications.

(e) Installation of optimal corrosion control. Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment(s) approved by the State under subdivision (d) of this section.

(f) State review of treatment and designation of optimal water quality control parameters. Based upon a review of the results of lead and copper tap water samples and water quality parameter samples submitted to the State by the water system from both before and after the installation of optimal corrosion control treatment, the State shall determine whether the system has properly installed and operated the optimal corrosion control treatment, and designate water quality parameter values, or a range of values, within which the system must operate. Such water parameters shall include:

(1) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(2) A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the State determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(4) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples; and

(5) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the State determines to reflect optimal corrosion control treatment for the system. The State may designate values for additional water quality control parameters determined by the State to reflect optimal corrosion control for the system. The State shall notify the system in writing of these determinations and explain the basis for its decisions.

(g) Continued operation and maintenance.

(1) All systems optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the State under subdivision (f) of this section for

all samples collected in accordance with section 5-1.43(b)(3) and section 5-1.43(c). A water system is out of compliance with the requirements of this paragraph if it has excursions for any State-designated parameter on more than nine (9) days during any six month period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the State. Daily values are calculated as follows:

(i) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling, or a combination of both.

(ii) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(iii) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site.

(2) Modification of State treatment decisions. A water system may request a modification of its State designated optimal corrosion control treatment. The request shall be submitted in writing and include the reason for the modification along with supporting data.

5-1.42 Monitoring Requirements for Lead and Copper in Tap Water.

(a) Sample Requirements.

(1) Sample site location.

(i) Each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in subdivision (a)(3) of this section. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(ii) The water system shall review sources of information as prescribed by the State to identify a sufficient number of sampling sites, as well as seek to collect such information, where possible, in the course of its normal operations.

(iii) The pool of targeted sampling sites for community water systems shall consist of:

(a) Structures containing lead pipes, copper pipes with lead solder installed after 1982; and/or served by a lead service line. Sampling sites shall be selected from the following building types, in this order, until each building type is exhausted before moving to the next building type:

(1) residential single family (Tier 1 sample sites);

(2) multiple-family residence where at least 20 percent of the structures served by the water system are multiple-family residences (Tier 1 sample sites);

(3) any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with “tier 2 sampling sites”, consisting of buildings, including multiple-family residences that contain copper pipes with lead solder installed after 1982 or lead pipes; and/or served by a lead service line: (Tier 2 sample sites).

(b) Where insufficient sites are available meeting the criteria of clause *(a)*, the sampling pool shall be completed using single family residences that contain copper pipes with lead solder installed before 1983 (Tier 3 samples sites).

(c) Where insufficient sampling sites are available meeting the criteria of clauses *(a)* and *(b)*, the sampling pool shall be completed using representative sites that contain plumbing materials commonly found throughout the water system’s distribution system.

(d) Any water system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of the samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead

service line shall collect first-draw samples from all of the sites identified as being served by such lines.

(iv) The pool of targeted sampling sites for a nontransient noncommunity water system shall consist of structures that:

(a) contain copper pipes and leaded solder joints installed after 1982 or contain lead pipes; and/or

(b) are served by a lead service line.

(v) A nontransient noncommunity water system with insufficient Tier 1 sampling sites shall complete its sampling pool with sampling sites having copper pipes with lead solder joints installed before 1983. If additional sites are needed to complete the sampling pool, the non-transient non-community water system shall use representative sites throughout the distribution system.

(2) Sample collection methods. Samples shall be collected in a manner that will reasonably reflect potential lead levels delivered to user taps, as prescribed by the State. All samples for lead and copper shall be collected from user taps and shall be first draw samples with the following exceptions: lead service line samples collected under section 5-1.45(b)(2); or, if a system meets the criteria in section 5-1.47(g) (e.g., prisons and hospitals).

(3) Number of samples. A water system conducting standard monitoring shall collect at least one lead and copper tap sample during each monitoring period specified in subdivision (b) of this section from the number of sampling sites listed in the table below under “Standard Monitoring.”

A water system conducting reduced monitoring shall collect at least one lead and copper tap sample during each monitoring period specified in subdivision (c) of this section from the number of sampling sites listed in the table below under “Reduced Monitoring.” Such reduced monitoring sites shall be representative of the sites required for standard monitoring.

If a public water system has fewer than five drinking water taps that can be used for human consumption and that meet the sample site criteria of subdivision (a)(1)(iii) of this section to reach the required number of sample sites listed in the following table, the system may collect at least one sample from each tap and then collect additional samples from those taps on different days during the monitoring period to meet the required number of sites; or, with written State approval, collect fewer samples provided that all taps that can be used for human consumption are sampled.

Population Served	Standard Monitoring Number of Sites	Reduced Monitoring Number of Sites
>100,000	100	50
10,001 to 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
≤100	5	5

(b) Standard Monitoring. Required samples shall be collected during six-month monitoring periods, beginning January 1 or July 1 of each calendar year.

(1) All systems shall monitor during each six-month monitoring period until:

(i) the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under section 5-1.41, in which case the system shall continue standard monitoring; or

(ii) the system is deemed to have optimized corrosion control in accordance with section 5-1.41(b) in which case the system may reduce monitoring in accordance with subdivision (c) of this section.

(2) Monitoring after installation of corrosion control and/or source water treatment. Any system which installs corrosion control treatment or source water treatment shall monitor during each six-month monitoring period following the installation of treatment with the first monitoring period to begin either January 1 or July 1, whichever comes first.

(i) Any system which installs source water treatment pursuant to section 5-1.45(a)(2)(i) shall monitor during two consecutive six-month monitoring periods by the date specified in section 5-1.45(a)(2)(ii).

(3) Monitoring after State designates water quality parameter values for optimal corrosion control. After the State designates the values for water quality parameters under section 5-1.41(f), the system shall monitor during each six-month monitoring period following designation

of water quality parameter values with the first monitoring period to begin either January 1 or July 1, whichever comes first.

(c) Reduced monitoring.

(1) A system serving 50,000 or fewer persons that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with subdivision (a)(3) of this section, and reduce the frequency of sampling to once per year. A system serving 50,000 or fewer persons that meets the lead and copper action levels during three consecutive years under reduced monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Samples collected during the initial two six-month monitoring periods may be accepted as monitoring for the first year of a three year reduced monitoring frequency. A system serving 50,000 or fewer persons collecting fewer than five samples as specified in subdivision (a)(3) of this section that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the frequency of sampling to once per year. The system may not reduce the number of samples required to below the minimum of one sample per available tap. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

(2) Any water system that has optimal corrosion control treatment installed that meets the lead action level and maintains the range of values for optimal corrosion control treatment during each of two consecutive six-month monitoring periods may reduce the frequency of monitoring

to once per year and reduce the number of lead and copper samples in accordance with subdivision (a)(3) of this section if it receives written approval from the State. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. Samples collected during the initial two six-month monitoring periods can be applied to the first year of a three year reduced monitoring frequency.

Upon written approval from the State, any water system that has optimal corrosion control treatment installed that meets the lead action level and maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Samples collected once every three years shall be collected no later than every third calendar year.

(3) A water system on a reduced monitoring schedule shall collect these samples from representative sites included in the pool of targeted sampling sites identified in subdivision (a) of this section. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August, or September unless the State has approved a different sampling period in accordance with subdivision (c)(3)(i) of this section.

(i) The State, upon request by a water system, may approve a different period for conducting the lead and copper tap sampling for systems on a reduced monitoring schedule. Such a period shall be no longer than four consecutive months and shall represent a time of normal operation where the highest levels of lead are most likely to occur. This sampling shall begin during the calendar

year immediately following the end of the second consecutive six-month monitoring period for systems initiating annual monitoring and during the three-year period following the end of the third consecutive calendar year of annual monitoring for systems initiating triennial monitoring.

(ii) Systems monitoring annually, that have been collecting samples during the months of June through September and that receive State approval to alter their sample monitoring period under subdivision (c)(3)(i) of this section, shall collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling. Systems monitoring triennially that have been collecting samples during the months of June through September, and receive State approval to alter the sampling collection period as per subdivision (c)(3)(i) of this section, shall collect their next round of samples during a time period that ends no later than 45 months after the previous round of sampling. Subsequent rounds of sampling shall be collected annually or triennially, as required by this section. Water systems with waivers that serve 50,000 or fewer persons that have been collecting samples during the months of June through September and choose to alter their sample collection period under section 5-1.42(c)(3)(i) of this section shall collect their next round of samples before the end of the 9 year period.

(4) Any water system that demonstrates for two consecutive 6-month monitoring periods that the tap water lead level is less than or equal to 0.005 mg/L and the tap water copper level is less than or equal to 0.65 mg/L, at the 90th percentile calculated in accordance with section 5-1.41(c), may reduce the number of samples in accordance with subdivision (a)(3) of this section and reduce the frequency of sampling to once every three calendar years.

(5) Conditions requiring a return to standard monitoring.

(i) A system serving 50,000 or fewer persons subject to reduced monitoring that does not have corrosion control treatment installed that exceeds the lead or copper action level shall resume standard monitoring at the standard number of sampling sites every six months in accordance with subdivision (b) of this section. Such a system shall also conduct water quality parameter monitoring in accordance with section 5-1.43(b). This monitoring shall begin during the six-month monitoring period immediately following the lead or copper action level exceedance with the first monitoring period to begin either January 1 or July 1, whichever comes first. Any such system may resume reduced monitoring if it meets the reduced monitoring criteria as specified in subdivision (c) of this section.

(ii) Any water system that has optimal corrosion control treatment installed that fails to meet the lead action level during any four month monitoring period, or that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the State under section 5-1.41(f) for more than nine days in any six-month monitoring period specified in section 5-1.43(b)(3) shall resume standard monitoring at the standard number of sampling sites every six months in accordance with subdivision (b) of this section, and resume standard monitoring for water quality parameters in accordance with section 5-1.43(b). This standard monitoring shall begin during the six-month monitoring period immediately following the water quality parameter excursion or lead action level exceedance with the first monitoring period to begin either January 1 or July 1, whichever comes first. Any such system may resume

reduced monitoring if it meets the reduced monitoring criteria as specified in subdivision (c) of this section.

(6) Any water system subject to reduced monitoring that either adds a new source of water or changes any water treatment shall notify the State in writing within 60 days of any changes. The State may require any system that makes treatment or source changes to resume standard monitoring in accordance with subdivision (b) of this section or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations.

(d) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any determinations (i.e., calculating the 90th percentile lead or copper level) under sections 5-1.40 through 5-1.48.

(e) Invalidation of lead or copper tap water samples. A sample invalidated by the State does not count towards determining 90th percentile levels or towards minimum monitoring requirements. The State may invalidate lead and copper samples if the State determines improper sample handling or improper site selection occurred. The system shall submit to the State, for invalidation determination, the results it believes should be invalidated along with supporting documentation and the rationale for supporting invalidation of the samples. If after invalidation of sample results, the system has too few samples to meet minimum sampling requirements, replacement samples shall be taken as soon as possible, but no later than 20 days after

invalidation or by the end of the applicable monitoring period, whichever is later. Replacement samples apply only to the monitoring period associated with the original sample, and shall be taken from the same location. If resampling from the same location is not possible or the sample site was invalidated, the resample may be taken from other sites in the sampling pool not already used for sampling during that monitoring period.

(f) Monitoring waivers for systems serving 3,300 or fewer persons. Any water system that serves 3,300 or fewer persons and meets the criteria in this subdivision may be eligible for a waiver to reduce monitoring of lead and copper to once every nine years (“full waiver”), or only for lead, or only for copper (“partial waiver”) if it meets all of the materials and monitoring criteria specified by the State. State specifications include but are not limited to the following elements:

(1) The system shall provide certification and documentation that the system, including plumbing conveying drinking water within all residences and buildings connected to the system are free of lead-containing materials and does not contain copper pipes or copper service lines;

(2) The system shall conduct at least one round of standard tap water monitoring in accordance with subdivision (b) of this section and the results shall demonstrate that the 90th percentile lead level does not exceed 0.005 mg/l and the 90th percentile copper level does not exceed 0.65 mg/l when calculated in accordance with section 5-1.40(c);

(3) If a full or partial a waiver is granted by the State, the system shall sample at a reduced number of sites and provide a renewed materials certification at least once every nine years;

(4) Systems may continue to be eligible for a waiver, and such waiver will renew automatically, provided the original criteria are met. If these criteria are not met, the system shall meet the requirements for action level exceedances or for the three year reduced monitoring cycle, as appropriate.

(5) If a system with a full or partial waiver becomes aware that it is no longer free of lead-containing or copper-containing materials, as appropriate (e.g., as a result of new construction or repairs), the system shall notify the State in writing no later than 60 days after becoming aware of such a change.

5-1.43 Monitoring requirements for water quality parameters.

Systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in tap water in accordance with this section.

(a) Sample requirements.

(1) Sample collection method.

(i) Distribution system (tap) samples shall be representative of water quality throughout the distribution system, taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability.

Distribution system sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under section 5-1.42(a).

(ii) Entry point samples to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system shall sample at entry point(s) representative of normal operating conditions.

(2) Number of samples.

(i) A water system conducting standard monitoring shall collect two samples for applicable water quality parameters during each monitoring period specified in subdivision (b) of this section from the number of distribution system sampling sites listed in the table below under “Standard Monitoring.” A water system conducting reduced monitoring shall collect two samples for applicable water quality parameters during each monitoring period specified in subdivision (c) of this section from the number of distribution system sampling sites listed in the table below under “Reduced Monitoring.” Such reduced monitoring sites shall be representative of the sites required for standard monitoring.

Population Served	Standard Monitoring	Reduced Monitoring
	(Sample Sites)	(Sample Sites)
>100,000	25	10
10,001 to 100,000	10	7
3,301 to 10,000	3	3
501 to 3,300	2	2
101 to 500	1	1
<101	1	1

(ii) A water system conducting monitoring in accordance with subdivision (b)(1) of this section shall collect two entry point samples for each applicable water quality parameter at each entry point to the distribution system during each six month monitoring period. A water system conducting monitoring in accordance with subdivisions (b)(2), (b)(3), and (c) of this section shall collect one entry point sample for each applicable water quality parameter at each entry point to the distribution system, or each applicable entry point in accordance with subdivision (b)(2)(iii), at the frequency specified in subdivision (b)(2)(ii).

(b) Standard Monitoring. Required samples shall be collected during six-month monitoring periods, beginning January 1 or July 1 of each calendar year.

(1) Initial sampling. All systems serving more than 50,000 persons shall measure the applicable water quality parameters during each six-month monitoring period specified in section 5-1.42(b)(1). All systems serving 50,000 or fewer persons shall measure the applicable water

quality parameters during each six-month monitoring period during which the system exceeds the lead or copper action level. Applicable water quality parameters at taps and entry points include: pH; alkalinity; conductivity; water temperature; calcium; and orthophosphate or silica, as appropriate to the corrosion control treatment used.

(2) Monitoring after installation of corrosion control. Any system which installs optimal corrosion control treatment shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in section 5-1.42(b)(2).

(i) two samples shall be collected at taps in the distribution system for the following parameters: pH; alkalinity; calcium; and orthophosphate or silica, as appropriate to the corrosion control treatment used.

(ii) one sample shall be collected at each entry point. Except as provided in subdivision (b)(2)(iii) of this section, at least one sample no less frequently than every two weeks (biweekly) for pH; alkalinity (and a reading of the dosage rate of the chemical used to adjust alkalinity, when alkalinity is adjusted); calcium; orthophosphate or silica, as appropriate to the corrosion control treatment used; and a reading of the dosage rate of the corrosion control treatment chemical used.

(iii) A ground water system may limit entry point sampling described in subdivision (b)(2)(ii) of this section to those entry points that are representative of water quality and treatment conditions

throughout the system. If water from untreated ground water sources mixes with water from treated ground water sources, the system shall monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Prior to the start of any monitoring under this paragraph, the system shall provide to the State written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(3) Monitoring after State specifies water quality parameter values for optimal corrosion control. After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment, all systems serving more than 50,000 persons and any system serving 50,000 or fewer persons that has optimal corrosion control treatment installed shall measure the applicable water quality parameters during each six-month monitoring period specified in section 5-1.42(b)(3), in accordance with subdivisions (b)(2)(i)-(iii) of this section, and determine compliance with the requirements of section 5-1.41(g) during each six month monitoring period specified in section 5-1.42(b)(3).

(c) Reduced monitoring.

(1) Reducing the number of sampling sites. Any water system that maintains the range of State-specified values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under subdivision (b)(3) of this section shall continue monitoring at the entry point(s) to the distribution system as specified in

subdivision (b)(2)(ii)-(iii) of this section. Such system may collect two distribution system samples for applicable water quality parameters from the reduced number of sites in accordance with subdivision (a)(2)(i) of this section during each six-month monitoring period.

(2) Reducing sampling frequency.

(i) Any water system that maintains the range of State-specified values for the water quality parameters reflecting optimal corrosion control treatment during three consecutive years of monitoring in accordance with subdivision (c)(1) of this section may reduce the frequency with which it collects the number of distribution system samples for applicable water quality parameters specified in subdivision (c)(1) of this section from every six months to annually. This sampling shall begin during the calendar year immediately following the end of the monitoring period in which the third consecutive year of six-month monitoring occurs. Any water system that maintains the range of State-specified values for the water quality parameters reflecting optimal corrosion control treatment during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of distribution system samples for applicable water quality parameters specified in subdivision (c)(1) of this section from annually to every three years.

(ii) A water system may reduce the frequency with which it collects the number of distribution system samples for applicable water quality parameters specified in subdivision (c)(1) of this section to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead specified in

section 5-1.40(b)(1), that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L for copper, and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under section 5-1.41(f).

(iii) Monitoring conducted every three years shall be done no later than every third calendar year.

(3) A water system that conducts reduced sampling frequency shall collect these samples evenly throughout monitoring period in which samples are taken so as to reflect seasonal variability.

(4) Any water system subject to the reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the State under section 5-1.41(f) for more than nine days in any six-month period shall resume distribution system tap water sampling in accordance with the number and frequency requirements in subdivision (b)(3) of this section. The water system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in subdivision (a)(2)(i) of this section after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria of that subdivision and/or may resume triennial monitoring for water quality parameters at taps in the distribution system at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria of either subdivision (c)(2)(i) or (c)(2)(ii) of this section.

(d) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any compliance determinations (i.e., determining concentrations of water quality parameters).

5-1.44 Monitoring Requirements for Lead and Copper in Source Water.

A water system that exceeds the lead or copper action level based on first draw tap water samples collected in accordance with section 5-1.42 shall collect lead and copper source water samples in accordance with the following requirements:

(a) Sample Requirements.

(1) Water systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each source after treatment. The system shall collect each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. If a system draws water from more than one source and the sources are combined before distribution, the system shall sample at entry point(s) to be representative of normal operating conditions, when water is representative of all sources being used.

(2) The State may reduce the total number of samples which shall be analyzed by allowing the use of compositing. Compositing of samples shall be done by certified laboratory personnel. Composite samples from a maximum of five samples are allowed, provided that the method

detection limit (MDL) for lead of 0.001 mg/L is achieved. If the lead concentration in the composite sample is greater than or equal to 0.001 mg/L, or the copper concentration is greater than or equal to 0.160 mg/L, then either:

(i) A follow-up sample shall be taken and analyzed within 14 days at each sampling point included in the composite; or

(ii) If duplicates of or sufficient quantities from the original samples from each sampling point used in the composite are available, the system may use these instead of resampling.

(3) Where the results of sampling indicate an exceedance of State-specified maximum permissible source water levels established under section 5-1.45(a)(4), the State may require that one follow-up sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a State-required follow-up sample is taken for lead or copper, then the results of the initial and follow-up samples shall be averaged to determine compliance with the State-specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the practical quantitation limit (PQL) shall either be considered as the measured value or be considered one-half the PQL.

(b) Standard Monitoring.

(1) Monitoring frequency after system exceeds tap water action level. Any system which exceeds the lead or copper action level shall collect one source water sample from each entry point to the distribution system no later than six months after the end of the monitoring period during which the lead or copper action level was exceeded. For monitoring periods that are annual or less frequent, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the State has established an alternate monitoring period, the last day of that period.

(2) Monitoring frequency after installation of source water treatment. Any system which installs source water treatment pursuant to section 5-1.45 shall collect an additional source water sample from each entry point to the distribution system during the two consecutive six-month monitoring periods immediately following the installation of treatment with the first monitoring period to begin either January 1 or July 1, whichever comes first.

(3) Monitoring frequency after State specifies maximum permissible source water levels or determines that source water treatment is not needed.

(i) A system shall monitor at the frequency specified below in cases where the State specifies maximum permissible source water levels or determines that the system is not required to install source water treatment under section 5-1.45.

(a) A water system using only ground water shall collect samples once every three years with the first three year monitoring period to begin January 1 of the year in which the State determination

is made under subdivision (b)(3)(i) of this section. Such systems shall collect samples once during each subsequent compliance period. Triennial samples shall be collected in the third calendar year.

(b) A water system using surface water (or a combination of surface and ground water) shall collect samples once during each calendar year with the first annual monitoring period to begin January 1 of the year in which the applicable State determination is made under subdivision (b)(3)(i) of this section.

(ii) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under subdivision (b)(3)(i)(a) or (b) of this section.

(c) Reduced monitoring.

(1) A water system may reduce the monitoring frequency for lead and copper in source water to once every nine-years provided that the samples are collected no later than every ninth calendar year and the system meets one of the following criteria:

(i) The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by

the State under section 5-1.45(a) during at least three consecutive applicable monitoring periods in which sampling was conducted under subdivision (b)(3)(i) of this section; or

(ii) The State has determined that source water treatment is not needed and the system demonstrates that the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L during at least three consecutive applicable monitoring periods in which sampling was conducted under subdivision (b)(3)(i) of this section.

(2) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods in accordance with subdivision (b)(2) or (3) of this section are below the maximum permissible lead and copper concentrations specified by the State.

5-1.45 Source Water Treatment Requirements

A water system that exceeds the lead or copper action level based on first draw tap water samples collected in accordance with section 5-1.42 shall complete the applicable source water monitoring and treatment requirements and operate appropriate treatment to maintain lead and copper below levels specified by the State in accordance with the following requirements.

(a) Source water treatment requirements.

(1) A water system exceeding the lead or copper action level shall complete required lead and copper source water monitoring in accordance with section 5-1.44(b)(1) and make an appropriate treatment recommendation to the State no later than 180 days after the end of the monitoring period during which the system exceeds the lead or copper action level. A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(2) Based on an evaluation of the results of all required source water sampling, the State shall make a determination if source water treatment is necessary and may require:

(i) source water treatment as recommended by the system; or

(ii) alternative source water treatment that would minimize lead and copper levels at user's taps. Completion of proper installation and operation of the State specified source water treatment shall occur within 24 months of State determination and notification of the specified treatment to the water system.

(3) The water system shall complete standard monitoring for tap water in accordance with section 5-1.42(b) and source water in accordance with section 5-1.45(b)(2) following installation of source water treatment.

(4) Based on a review of the source water samples taken by the water system both before and after the system installs source water treatment, the State shall:

(i) determine whether the system has properly installed and operated the source water treatment designated by the State; and

(ii) specify maximum permissible source water concentrations for water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment when properly operated and maintained.

(b) Operation and maintenance requirements.

(1) Each water system shall operate in a manner that minimizes lead and copper levels at user's taps by maintaining lead and copper levels below State-specified maximum permissible concentrations at each of the required source water sampling locations in accordance with section 5-1.44. The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the State-specified maximum permissible concentration.

(2) The State may modify its determination of the source water treatment under subdivision (a)(2) of this section, or maximum permissible lead and copper concentrations for finished water entering the distribution system under subdivision (a)(4) of this section where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water.

5-1.46 Lead Service Line Replacement.

(a) Water systems that fail to meet the lead action level in tap samples collected after installing corrosion control treatment and/or source water treatment (whichever occurs later) shall replace lead service lines in accordance with the requirements of this section. Water systems that fail to install optimal corrosion control treatment in accordance with section 5-1.41(c) or source water treatment in accordance with section 5-1.45(a)(2) by the date(s) specified by the State may be required to begin replacement of lead service lines.

(b) Determining number of lead service lines for replacement.

(1) A water system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system, including an identification of the portion(s) owned by the system, based on materials evaluation, including the evaluation required under section 5-1.42(a) and relevant legal authorities (e.g. contracts, local ordinances) regarding the portion owned by the system. The first year of lead service line replacement shall begin on the first day following the end of the monitoring period in which the action level was exceeded in tap sampling referenced in subdivision (a) of this section. If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the

sampling occurs. If an alternate monitoring period applies, then the end of the monitoring period will be the last day of that period.

(2) A water system is not required to replace an individual lead service line if the results of any samples representative of water in the lead service line, collected in accordance with methods prescribed by the State, are less than or equal to 0.015 mg/L.

(3) The total number of lines replaced, either entirely or partially per section 5-1.46(c), shall equal at least 7 percent of the initial number of lead lines identified under subdivision (b)(1) of this section or the percentage specified by the State as per section 5-1.46(d).

(4) Any water system resuming a lead service line replacement program after the cessation of its lead service line replacement program as allowed by subdivision (f) of this section shall update its inventory of lead service lines to include those sites that were previously determined not to require replacement through the sampling provision under subdivision (c) of this section. The system will then divide the updated number of remaining lead service lines by the number of remaining years in the program to determine the number of lines that shall be replaced per year (7-percent lead service line replacement is based on a 15-year replacement program). For those systems that have completed a 15-year lead service line replacement program, the State will determine a schedule for replacing or re-testing lines that were previously tested under the replacement program if the system re-exceeds the action level.

(c) A water system shall replace the portion of the lead service line that it owns. In cases where the system does not own the entire lead service line, the system shall notify the owner of the line, or the owner's authorized agent, that the system will replace the portion of the service line that it owns and shall offer to replace the owner's portion of the line. A system is not required to bear the cost of replacing the privately-owned portion of the line, where the owner chooses not to pay the cost of replacing the privately-owned portion of the line, or where replacing the privately-owned portion would be precluded by State, local or common law. A water system that does not replace the entire length of the service line also shall complete the following tasks:

(1) At least 45 days prior to commencing with partial replacement of a lead service line, the water system shall provide notice to the resident(s) of all buildings served by the line explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers can take to minimize their exposure to lead. The State may allow the water system to provide notice of less than 45 days prior to commencing partial lead service line replacement, if such replacement is done in conjunction with emergency repairs. In addition, the water system shall inform the resident(s) served by the line that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed by the State, within 72 hours after the completion of the partial replacement of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three business days of receiving the results. Mailed notices post-marked within three business days of receiving the results shall be considered "on time."

(2) The water system shall provide the information required by subdivision (c)(1) of this section to the residents of individual dwellings by mail or by other methods approved by the State. In instances where multi-family dwellings are served by the service line, the water system shall have the option to post the information at a conspicuous location.

(d) The State may require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where a shorter replacement schedule is feasible. The State shall make this determination in writing and notify the system of its finding within 6 months after the system is triggered into lead service line replacement based on monitoring results referenced in subdivision (a) of this section.

(e) Any water system may cease replacing lead service lines whenever first draw tap water samples meet the lead action level during each of two consecutive six-month monitoring periods. If subsequent rounds of first draw tap water sampling exceed the lead action level the water system shall recommence replacing lead service lines in accordance with subdivision (b) of this section.

5-1.47 Notification and Public Education Requirements.

(a) Notification of results to consumers. All water systems shall provide notice of the individual tap results from lead tap water monitoring carried out under the requirements of section 5-1.42 to the persons served by the water system at the specific sampling site from which the sample was taken (i.e., the occupants of the residence where the tap was tested). Water systems that exceed

the lead action level shall sample the tap water of any customer who requests it in accordance with subdivision (i) of this section.

(1) Notice shall be provided as soon as practical, but no later than 30 days after the system learns of the tap monitoring results.

(2) Notice shall be provided either by mail or by another method approved by the State.

(3) Notice shall include the lead levels for the tap that was tested, an explanation of the health effects of lead, a list steps consumers can take to reduce exposure to lead in drinking water, and contact information for the water utility. The notice shall also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms from section 5-1.72(f).

(b) Public education material content and delivery. A water system that exceeds the lead action level based on tap water samples collected in accordance with section 5-1.42 shall deliver public education materials in accordance with paragraphs (1) and (2) of this subdivision.

(1) Content of public education materials.

(i) Community water systems and nontransient noncommunity water systems. Water systems shall include the following elements in printed materials (e.g., brochures and pamphlets) in the

same order as listed below. In addition, language in subdivision (b)(1)(i)(a) through (b) and (b)(1)(i)(d) of this section shall be included in the materials, exactly as written, except for the text in brackets in these clauses for which the water system shall include system-specific information.

Any additional information presented by a water system shall be consistent with the information below and be in plain language that can be understood by the general public. Water systems shall submit all written public education materials to the State for approval prior to delivery.

(a) IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER. [Insert Name of Water System] found elevated levels of lead in drinking water in some homes/buildings. Lead can cause serious health problems, especially for pregnant women and young children. Please read this information closely to see what you can do to reduce lead in your drinking water.

(b) Health effects of lead. Lead can cause serious health problems if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of your body. The greatest risk of lead exposure is to infants, young children, and pregnant women. Scientists have linked the effects of lead on the brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the bones, and it can be released later in life. During pregnancy, the child receives lead from the mother's bones, which may affect brain development.

(c) Provide information on sources of lead.

(1) Explain what lead is.

(2) Explain possible sources of lead in drinking water and how lead enters drinking water.

Include information on home/building plumbing materials and service lines that may contain lead.

(3) Discuss other important sources of lead exposure in addition to drinking water (e.g., lead-based paint).

(d) Discuss the steps the consumer can take to reduce their exposure to lead in drinking water.

(1) Encourage running the water to flush out lead.

(2) Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

(3) Explain that boiling water does not reduce lead levels.

(4) Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or treatment of water.

(5) Suggest that parents have their child's blood tested for lead.

(e) Explain why there are elevated levels of lead in the system's drinking water (if known) and what the water system is doing to reduce the lead levels in homes/buildings in this area.

(f) For more information call us at [Insert Your Number] [(If Applicable), or visit our Web site at [Insert Your Web Site Here]]. For more information on reducing lead exposure around your home/building and the health effects of lead, visit EPA's Web site at <http://www.epa.gov/lead> or contact your health care provider.

(ii) Community water systems. In addition to including the elements specified in subdivision

(b)(1) of this section, community water systems shall:

(a) Tell consumers how to get their water tested.

(b) Discuss lead in plumbing components, the difference between low lead and lead free, the requirement to use lead-free materials, and the standards that materials shall meet in order to be considered lead free.

(iii) Each water system required to deliver public education materials through additional means specified in subdivision (b)(2)(i) through (ii) of this section shall include additional content as determined in consultation with the State.

(2) Delivery of public education materials.

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the State, the public education materials shall contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the public education materials or to request assistance in the appropriate language.

(ii) A community water system that exceeds the lead action level and that is not already conducting public education tasks under this section, shall conduct the following public education tasks within 60 days after the end of the monitoring period in which the exceedance occurred. For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the State has established an alternate monitoring period, the last day of that period:

(a) Deliver printed materials meeting the content requirements of subdivision (a) of this section to all bill paying customers.

(b) Contact consumers who are most at risk by delivering education materials that meet the content requirements of subdivision (a) of this section as follows:

(1) Contact the State for information regarding community based organizations serving target populations and deliver education materials to all appropriate organizations along with an

informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users as determined in consultation with the State.

(2) Contact customers who are most at risk by delivering materials to the following organizations that are located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users:

(i) Public and private schools or school boards.

(ii) Women, Infants and Children (WIC) and Head Start programs.

(iii) Public and private hospitals and medical clinics.

(iv) Pediatricians.

(v) Family planning clinics.

(vi) Local welfare agencies.

(3) Make a good faith effort to locate the following organizations within the service area and deliver materials, along with an informational notice that encourages distribution to all

potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of these organizations from the State:

(i) Licensed childcare centers.

(ii) Public and private preschools.

(iii) Obstetricians-Gynecologists and Midwives.

(c) No less often than quarterly, provide information on or in each water bill as long as the system exceeds the action level for lead. The message on the water bill shall include the following statement exactly as written except for the text in brackets for which the water system shall include system-specific information: [Insert Name of Water System] found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call [Insert Name of Water System] [or visit (Insert Your Web Site Here)]. The message or delivery mechanism can be modified in consultation with the State; specifically, the State may allow a separate mailing of public education materials to customers if the water system cannot place the information on water bills.

(d) Post material meeting the content requirements of subdivision (a) of this section on the water system's Web site if the system serves a population greater than 100,000 or if the water system maintains a publicly accessible Web site.

(e) Submit a press release to newspaper, television and radio stations.

(f) In addition to the other requirements of this section, systems shall implement at least three activities from one or more categories listed below:

(1) Public service announcements.

(2) Paid advertisements.

(3) Public area informational displays.

(4) E-mails to customers.

(5) Public meetings.

(6) Household deliveries.

(7) Targeted individual customer contact.

(8) Direct material distribution to all multi-family homes and institutions.

(9) Other methods approved by the State.

(c) As long as a community water system exceeds the action level, it shall repeat the activities pursuant to subdivision (c)(1) through (4) of this section.

(1) A community water system shall repeat the tasks contained in subdivisions (a), (b) and (f) of this section every 12 months.

(2) A community water system shall repeat tasks contained in subdivision (c) of this section with each billing cycle.

(3) A community water system serving a population greater than 100,000 shall post and retain material on a publicly accessible web site pursuant to subdivision (d) of this section.

(4) The community water system shall repeat the task in subdivision (e) of this section twice every 12 months on a schedule agreed upon with the State. The State may allow activities in subdivision (b)(2)(ii)(b) of this section to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis; however, this extension must be approved in writing by the State in advance of the 60-day deadline.

(d) A nontransient noncommunity water system that exceeds the lead action level and that is not already conducting public education tasks under this section shall conduct the following public education tasks within 60 days after the end of the monitoring period in which the exceedance occurred. For systems that are required to conduct monitoring annually or less frequently, the

end of the monitoring period is September 30 of the calendar year in which the sampling occurs or, if the State has established an alternate monitoring period, the last day of that period:

(1) post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(2) distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the nontransient noncommunity water system. The State may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(e) A nontransient noncommunity water system shall repeat the tasks contained in subdivision (d) of this section at least once during each calendar year in which the system exceeds the lead action level. The State may allow activities in this section to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis; however, this extension must be approved in writing by the State in advance of the 60-day deadline.

(f) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period. Such a system shall recommence public education in accordance with this section if it exceeds the lead action level during any subsequent monitoring period.

(g) A community water system may use only the text specified in subdivisions (b)(1)(i) and (b)(1)(ii) of this section in lieu of the text in subdivisions (b)(1)(i) through (b)(1)(iii) of this section, and to perform the tasks listed in subdivisions (d) and (e) of this section in lieu of the tasks in subdivisions (b)(2)(ii) and (b)(3) of this section if:

(1) the system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices;

(2) the system provides water as part of the cost of services provided and does not separately charge for water consumption; and

(3) the State has not directed the water system to conduct broader distribution of education material as needed if in its judgment education materials are not reaching the system's consumers.

(h) A community water system serving 3,300 or fewer people may limit certain aspects of their public education programs as follows:

(1) With respect to the requirements of subdivision (b)(2)(ii)(f) of this section, a system serving 3,300 or fewer shall implement at least one of the activities listed in that clause.

(2) With respect to the requirements of subdivision (b)(2)(ii)(b) of this section, a system serving 3,300 or fewer people may limit the distribution of the public education materials required under that clause to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

(3) With respect to the requirements of subdivision (b)(2)(ii)(e) of this section, the State may waive this requirement for systems serving 3,300 or fewer persons as long as system distributes notices to every household served by the system.

(i) Consumer requests for lead sampling. A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with section 5-1.42 shall provide assistance in determining lead levels at the tap of any customer who requests it. Systems may collect and analyze the samples, but are not obligated to incur expenses. Systems are also not obligated to collect and analyze samples itself, but shall provide information about laboratories providing this service.

5-1.48 Reporting and Record Keeping Requirements.

(a) Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.

(1) Unless the State has specified a more frequent reporting requirement, a water system shall report the following information for all tap water samples specified in section 5-1.42 and for all

water quality parameter samples specified in section 5-1.43 to the State within the first ten days following the end of each applicable monitoring period; for monitoring periods with a duration of less than six months, the end of the monitoring period is the last date samples can be collected during that period as specified in sections 5-1.42 and 5-1.43:

(i) results of all first draw lead and copper tap samples collected in accordance with section 5-1.42, including site locations and the criteria used in selecting the site in accordance with section 5-1.42(a)(1);

(ii) documentation for each tap water lead or copper sample for which the water system requests invalidation in accordance with section 5-1.42(e);

(iii) the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period and calculated in accordance with section 5-1.40(c), unless the State calculates the system's 90th percentile under subdivision (h) of this section;

(iv) with the exception of initial tap sampling conducted pursuant to section 5-1.42(b)(1)-(3), the system shall identify any site which was not sampled during previous monitoring periods, and include an explanation of changes in sampling sites if any; and

(v) the results of all tap samples for applicable water quality parameters collected in accordance with section 5-1.43(b)-(d).

(vi) The results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under section 5-1.43(b)-(d).

(2) For a nontransient noncommunity water system, or a community water system meeting the criteria of section 5-1.47(b)(2)(g) that does not have enough taps that can provide first-draw samples, the system shall provide written documentation to the State identifying standing times and locations for enough first-draw samples to make up its sampling pool by the start of the first applicable monitoring period in accordance with section 5-1.42(a)(3) or, identify in writing, each site that did not meet the six-hour minimum standing time and the length of time for that particular substitute sample collected, and include this information with the lead and copper tap sample results that are required to be submitted pursuant to subdivision (a)(1)(i) of this section. A water system shall obtain approval from the State before implementing the addition of a new source or long-term change in water treatment. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants (e.g., alum to ferric chloride), and switching corrosion inhibitor products (e.g., orthophosphate to blended phosphate). Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(3) Any system serving 3,300 or fewer persons applying for a monitoring waiver pursuant to section 5-1.42(f), shall provide the following information to the State in writing by the specified deadline:

(i) By the start of the first applicable monitoring period, any system serving 3,300 or fewer persons applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the requirements of section 5-1.42(f).

(ii) No later than nine years after the monitoring previously conducted pursuant to section 5-1.42(b) or (c), each system serving 3,300 or fewer persons desiring to maintain its monitoring waiver shall provide the information required by section 5-1.42(f)(1)-(3).

(iii) No later than 60 days after it becomes aware that it is no longer free of lead-containing and/or copper containing material, as appropriate, each system serving 3,300 or fewer persons with a monitoring waiver shall provide written notification to the State, stating the circumstances resulting in the lead-containing and/or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to remove these materials.

(4) Each ground water system that limits water quality parameter monitoring to a subset of entry points under section 5-1.43(b)(2)(iii) shall provide by the commencement of such monitoring, written correspondence to the State that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(b) Source water monitoring reporting requirements.

(1) A water system shall report the sampling results for all source water samples collected in accordance with section 5-1.44 within the first 10 days following the end of each source water monitoring period.

(2) With the exception of the first round of source water sampling conducted, the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(c) Corrosion control treatment reporting requirements. By the applicable dates under section 5-1.41(c) or a date specified by the State, systems shall report the following:

(1) For systems demonstrating that they have already optimized corrosion control, information required in section 5-1.41(b).

(2) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment in accordance with section 5-1.41(c)(3).

(3) For systems required to evaluate the effectiveness of corrosion control treatments, the information required for corrosion control studies in accordance with section 5-1.41(c)(3) and methods prescribed by the State.

(4) For systems required to install optimal corrosion control designated by the State, a letter certifying that the system has completed installing that treatment in accordance with section 5-1.41(e).

(d) Source water treatment reporting requirements. In accordance with section 5-1.45, systems shall report the following:

(1) For systems required to make a source water treatment recommendation in accordance with section 5-1.45(a)(1), the information required by that section.

(2) For systems required to install source water treatment in accordance with section 5-1.45(a)(2), a letter certifying that the system has completed installing the treatment designated by the State within 24 months after the State designated the treatment.

(e) Lead service line replacement reporting requirements. Water systems subject to the requirements of section 5-1.46 shall report the following to demonstrate compliance with that section:

(1) No later than 12 months after the end of a monitoring period in which a system exceeds the lead action level in sampling referred to in section 5-1.46(a), the system shall submit written documentation to the State of the material evaluation conducted as required in section 5-1.42(a), identify the initial number of lead service lines in its distribution system at the time the system

exceeds the lead action level, and provide the system's schedule for annually replacing at least 7 percent of the initial number of lead service lines in its distribution system.

(2) No later than 12 months after the end of a monitoring period in which a system exceeds the lead action level in sampling referred to in section 5-1.46(a), and every 12 months thereafter, the system shall demonstrate to the State in writing that the system has either:

(i) replaced in the previous 12 months at least 7 percent of the initial lead service lines in its distribution system; or

(ii) conducted sampling which meets the requirements of section 5-1.46(b)(2).

(3) The annual letter submitted to the State under subdivision (e)(2) of this section shall contain the following information:

(i) the number of lead service lines replaced during the previous year of the system's replacement schedule;

(ii) the number and location of each lead service line replaced during the previous year of the system's replacement schedule; and

(iii) if measured, the lead concentration in the water and the location of each lead service line sampled, the sampling method, and the date of sampling.

(4) Any system which collects lead service line samples following partial lead service line replacement in accordance with section 5-1.46(c)(1) shall report the results to the State within the first ten days of the month following the month in which the system receives the laboratory results, or as specified by the State. Systems shall also report any additional information as specified by the State, and in a time and manner prescribed by the State, to verify that all partial lead service line replacement activities have taken place.

(f) Public education reporting requirements. Water systems shall report the following to demonstrate compliance with requirements of section 5-1.47:

(1) Each system shall mail a sample copy of the consumer notification of tap results to the State along with a certification that the notification has been provided no later than 3 months following the end of the monitoring period.

(2) Any water system that is subject to the public education requirements under section 5-1.47 shall, within ten days after the end of each period in which the system is required to perform public education, send written documentation to the State that contains:

(i) a demonstration that the system has delivered the public education materials that meet the content requirements in section 5-1.47(b)(1) and the delivery requirements in section 5-1.47(b)(2); and

(ii) a list of all newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(3) Unless required by the State, a system that previously has submitted the information required by subdivision (f)(1)(ii) of this section need not resubmit the information required, as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(g) Reporting of additional monitoring data. Any system which collects sampling data in addition to that required by this sections 5-1.40 through 5-1.48, including data collected in accordance with section 5-1.41(b)(6), and sections 5-1.42(d), and 5-1.43(d), shall report the results to the State within the first ten days following the end of the applicable monitoring period during which the samples were collected.

(h) Reporting the 90th percentile lead and copper concentration where the State calculates a system's 90th percentile concentrations. A water system is not required to report the 90th percentile lead and copper concentration measured from among all lead and copper tap water samples collected during each monitoring period, as required by subdivision (a)(1)(iii) of this section if:

(1) The State has previously notified the water system that it will calculate the water system's 90th percentile lead and copper concentrations, based on the lead and copper tap results

submitted pursuant to subdivision (h)(2)(i) of this section, and has specified a date before the end of the applicable monitoring period by which the system shall provide the results of lead and copper tap water samples;

(2) The system has provided the following information to the State by the date specified in subdivision (h)(1) of this section:

(i) the results of all tap samples for lead and copper including the location of each site and the criteria under section 5-1.42(a)(1)(iii)-(iv) under which the site was selected for the system's sampling pool, pursuant to subdivision (a)(1)(i) of this section; and

(ii) an identification of sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods, and an explanation why sampling sites have changed; and

(3) the State has provided the results of the 90th percentile lead and copper calculations, in writing, to the water system before the end of the monitoring period.

(i) Prior to the addition of a new source or any long-term change in water treatment, a water system deemed to have optimized corrosion control under section 5-1.41(b), a water system subject to reduced monitoring under section 5-1.42(c), or a water system subject to a monitoring waiver under section 5-1.42(f) shall submit written documentation to the State describing the

proposed change or addition within a timeframe specified by the State, or if no specific time is designated by the State, then as early as possible.

(j) Recordkeeping requirements. Any system subject to the requirements of sections 5-1.40 through 5-1.48 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State approvals and determinations, and any other information required by section 5-1.41 through 5-1.48. Each water system shall retain the records required by this section for no fewer than 12 years.

Subdivision (c) of section 5-1.51 of this section is amended to read as follows:

(c) Each system [must] shall develop and implement a monitoring plan that includes all monitoring requirements specified in this Subpart. [This plan must be completed by January 31, 2012.] The system [must] shall maintain the plan and make it available for inspection by the State and the general public. After review, the State may require changes in any plan elements. Failure to monitor in accordance with the monitoring plan is a monitoring violation. Systems may only use data collected in accordance with the monitoring plan to qualify for reduced monitoring. The monitoring plan [must] shall include at least the following elements, as applicable:

Paragraph (1) of subdivision (c) of section 5-1.51 is amended to read as follows:

(1) specific locations and schedules for collecting samples for all applicable parameters listed in section 5-1.42, section 5-1.43, [5-1.52] tables 8A-12, [and] 15 and 15A of section 5-1.52, section 5-1.61, and section 5-1.81 of this Subpart;

A new paragraph (5) of subdivision (c) of section 5-1.51 is added to read as follows:

(5) Disinfection Byproduct Monitoring. (i) The following requirements of this subdivision apply to community and nontransient noncommunity water systems that use or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light, provided they serve 15 or more service connections or serve 25 or more persons:

(a) if a new community or nontransient noncommunity water system begins operation, or an existing community or nontransient noncommunity water system begins using a disinfectant other than ultraviolet light, the system shall consult with the State to identify compliance monitoring locations for disinfection byproducts to include in the system's monitoring plan; and

(b) if a community or nontransient noncommunity water system adds or removes compliance monitoring locations, the system shall identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified, as specified in section 5-1.52 table 9A. Systems shall also provide the rationale for identifying the locations as having high levels of TTHM or HAA5.

(ii) Systems shall revise monitoring plans to reflect changes in treatment, distribution system operations and layout (including new service areas), other factors that may affect TTHM or HAA5 formation or upon consultation with the State.

(a) If a system changes monitoring locations, it shall replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels.

(b) The State may require modifications in the monitoring plan.

(c) Surface water or GWUDI systems serving more than 3,300 people shall submit a copy of their modified monitoring plan to the State prior to the date they are required to comply with the revised monitoring plan.

(iii) A system is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating a LRAA if the system fails to monitor.

Subdivision (e) of section 5-1.51 is amended to read as follows:

(e) The CT values for inactivation of *Giardia lamblia* cysts by free chlorine at various pH and temperature levels are listed in section 5-1.52 tables 14A through 14F of this Subpart. The CT values for inactivation of *Giardia lamblia* cysts by chlorine dioxide and ozone at various temperature levels are listed in section 5-1.52 table 14G of this Subpart. The CT values for inactivation of *Giardia lamblia* cysts by chloramines at various temperature levels are listed in section 5-1.52 table 14H of this Subpart. The CT values for inactivation of *Cryptosporidium* by

chlorine dioxide at various temperature levels are listed in section 5-1.52 table 14I. The CT values for inactivation of *Cryptosporidium* by ozone at various temperature levels are listed in section 5-1.52 table 14J. The UV doses for *Cryptosporidium*, *Giardia lamblia*, and virus inactivation credit are listed in section 5-1.52 table 14K.

New subdivision (o) is added to section 5-1.51 to read as follows:

(o) Disinfection Byproduct Monitoring. The requirements of this subdivision apply to community and nontransient noncommunity water systems that use a primary or residual disinfectant other than ultraviolet light, or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light in accordance with monitoring requirements in table 9A of section 5-1.52.

(1) Systems required to conduct quarterly monitoring shall calculate compliance at the end of each quarter or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters in accordance with table 3 of section 5-1.52.

(2) Systems required to conduct monitoring at a frequency that is less than quarterly shall monitor in the calendar month identified in the monitoring plan developed under subdivision (c) of this section. Compliance calculations shall be made beginning with the first compliance sample taken after the compliance date.

Tables 1, 2, 3, 3A, 4, 4A, 6, 7, 8B, 9A, 9B, 9C, 10 and 13 of section 5-1.52 are repealed. Footnote 6 for Table 8C of section 5-1.52 is amended and new Tables 1, 2, 3, 3A, 4, 4A, 6, 7, 8B, 9A, 9B, 9C, 10, 13, 14H, 14I, 14J, and 14K are added to section 5-1.52 to read as follows:

5-1.52 Tables.

Table 1. Inorganic Chemicals and Physical Characteristics Maximum Contaminant Level Determination

Contaminants^{1,2}	MCL (mg/l) ³	Determination of MCL violations
Asbestos	7.0 million fibers/liter (MFL) (longer than 10 microns)	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one more sample from the same sampling point within 2 weeks or as soon as practical.
Antimony	0.006	
Arsenic	0.010	An MCL violation for all contaminants listed in this table, except for Arsenic, occurs when the average ⁴ of the initial sample and any confirmation sample exceeds the MCL.
Barium	2.00	
Beryllium	0.004	MCL violations for Arsenic will be determined as follows:
Cadmium	0.005	
Chromium	0.10	Compliance with the Arsenic MCL shall be determined based on the analytical result(s) obtained at each sampling point.
Cyanide(as free cyanide) ^{5,6}	0.2	
Mercury	0.002	For systems which are conducting monitoring at a frequency greater than annual, an Arsenic MCL violation occurs when the running annual average ^{8,9,10} at any sampling point is greater than the MCL. If any one sample would cause the annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.
Selenium	0.05	
Silver	0.1	
Thallium	0.002	
Fluoride	2.2	Systems monitoring annually or less frequently whose sample result exceeds the Arsenic MCL ⁸ must begin quarterly sampling ¹¹ . The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling and the running annual average ^{8,9,10} at that sampling point is greater than the Arsenic MCL. If any one sample would cause the annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.
Chloride	250.0	
Iron	0.3 ⁵	
Manganese	0.3 ⁵	
Sodium	No designated limits ⁷	
Sulfate	250.0	
Zinc	5.0	
Color	15 Units	
Odor	3 Units	
Bromate ⁸	0.010	
Chlorite ⁹	1.0	Compliance is based on an average of each three-sample set taken in the distribution system in accordance with Table 8B. If the average exceeds the MCL, the system is in violation of the MCL and must notify the public.

¹ If EPA Methods 200.7 or 200.9 are used, the MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher, because they were determined using a 2x preconcentration step during sample digestion. Consider the need to preconcentrate, or the use of multiple in-furnace depositions to achieve required MDLs. For direct analysis of cadmium by Method 200.7, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits.

Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Standard Methods 3113 B; and lead by ASTM Method D3559-90D, unless multiple in-furnace depositions are made.

²When metals or nitrate samples are collected, they may be acidified with a concentrated acid or a dilute (50% by volume) solution of the applicable concentrated acid. This acidification may be done at the laboratory rather than at the time of sampling, provided the shipping time and other instructions in Section 8.3 of EPA Methods 200.7, 200.8, or 200.9 are followed.

³mg/L = milligrams per liter

⁴If iron and manganese are present, the total concentration of both should not exceed 0.5 mg/L. Higher levels may be allowed by the State when justified by the supplier of water.

⁵If Ligand Exchange and Amperometry is used for cyanide analysis; either ASTM Method D6888-04 or Method OIA-1677, DW, "Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry," January 2004 are approved. EPA-821-R-04-001, is available from ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842-9010; sulfide levels below those detected using lead acetate paper may produce positive method interferences. Samples should be tested using a more sensitive sulfide method to determine if a sulfide interference is present, and samples shall be treated accordingly.

⁵Cyanide samples must be adjusted with sodium hydroxide to pH 12 at the time of collection. The sample must be shipped and stored at 4 °C or less.

⁶Rounded to the same number of significant figures as the MCL for the contaminant in question.

⁷Water containing more than 20 mg/L of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 mg/L of sodium should not be used for drinking by people on moderately restricted sodium diets.

⁸Community and nontransient noncommunity water systems using ozone for disinfection or oxidation must comply with the bromate standard.

⁹Community and nontransient noncommunity water systems using chlorine dioxide as a disinfectant or oxidant must comply with the chlorite standard.

¹⁰Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

¹¹Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

¹²If confirmation samples are collected, the average of the initial sample and any confirmation samples will be used for the determination of compliance and future monitoring requirements.

¹³Systems are only required to conduct the increased monitoring frequency at the sampling point where the MCL was exceeded and for only the specific contaminant(s) that triggered the system into the increased monitoring frequency.

Table 2 - Nitrate, Nitrite, Total Nitrate/Nitrite Maximum Contaminant Level Determination

Contaminants	MCL (mg/L)	Determination of MCL violation
Nitrate ¹	10 (as Nitrogen) ²	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect another sample from the same sampling point, within 24 hours of the receipt of results or as soon as practical. ³ An MCL violation occurs when the average of the two results exceeds the MCL.
Nitrite	1 (as Nitrogen)	
Total Nitrate and Nitrite	10 (as Nitrogen)	

¹Nitrate samples are to be shipped and stored at 4 °C or less and analyzed within 48 hours of collection. If the sample is chlorinated, the holding time for an unacidified sample kept at 4 °C is extended to 14 days.

²An MCL of 20 mg/L may be permitted at a noncommunity water system if the supplier of water demonstrates that:
 (a) the water will not be available to children under six months of age;
 (b) a notice that nitrate levels exceed 10 mg/L and the potential health effects of exposure will be continuously posted according to the requirements of a Tier 1 notification;
 (c) the State will be notified annually of nitrate levels that exceed 10 mg/L; and
 (d) no adverse health effects shall result.

³Systems unable to collect an additional sample within 24 hours must issue a Tier 1 notification and must collect the additional sample within two weeks of receiving the initial sample results.

Table 3. Organic Chemicals Maximum Contaminant Level Determination

Contaminants	MCL (mg/L)	Type of water system	Determination of MCL violation
General organic chemicals		Community, NTNC and Noncommunity	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one to three more samples from the same sampling point, as soon as practical, but within 30 days. An MCL violation occurs when at least one of the confirming samples is positive ¹ and the average of the initial sample and all confirming samples exceeds the MCL.
Principal organic contaminant (POC)	0.005		
Unspecified organic contaminant (UOC)	0.05		
Total POCs and UOCs	0.1		
Disinfection byproducts ^{2,3}		Community and NTNC	For systems required to monitor quarterly, the results of all analyses at each monitoring location per quarter shall be arithmetically averaged and shall be reported to the State within 30 days of the public water system's receipt of the analyses. A violation occurs if the average of the four most recent sets of quarterly samples at a particular monitoring location (12-month locational running annual average (LRAA)) exceeds the MCL. If a system collects more than one sample per quarter at a monitoring location, the system shall average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation. If a system fails to complete four consecutive quarters of monitoring, compliance with the MCL will be based on an average of the available data from the most recent four quarters. An MCL violation for systems on annual or less frequent monitoring that have been increased to quarterly monitoring as outlined in Table 9A, is determined after four quarterly samples are taken.
Total trihalomethanes	0.080		
Haloacetic acids	0.060		
		Transient noncommunity	Not applicable.

Table 3. Organic Chemicals Maximum Contaminant Level Determination (continued)

Contaminants	MCL (mg/L)	Type of Water System	Determination of MCL violation
Specific Organic Chemicals		Community, NTNC and Noncommunity	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one to three more samples from the same sampling point, as soon as practical, but within 30 days. An MCL violation occurs when at least one of the confirming samples is positive ¹ and the average of the initial sample and all confirming samples exceeds the MCL.
Alachlor	0.002		
Aldicarb	0.003		
Aldicarb sulfone	0.002		
Aldicarb sulfoxide	0.004		
Atrazine ⁴	0.003		
Benzo(a)pyrene	0.0002		
Carbofuran	0.04		
Chlordane	0.002		
Di(2-ethylhexyl)phthalate	0.006		
Dibromochloropropane(DBCP)	0.0002		
2,4-D	0.05		
Dinoseb	0.007		
Diquat	0.02		
Endrin	0.002		
Ethylene dibromide(EDB)	0.00005		
Heptachlor	0.0004		
Heptachlor epoxide	0.0002		
Hexachlorobenzene	0.001		
Lindane	0.0002		
Methoxychlor	0.04		
Methyl-tertiary-butyl-ether(MTBE)	0.010		
Pentachlorophenol	0.001		
Polychlorinated biphenyls(PCBs) ⁵	0.0005		
Propylene glycol	1.0		
Simazine	0.004		
Toxaphene	0.003		
2,4,5-TP (Silvex)	0.01		
2,3,7,8-TCDD (dioxin)	0.00000003		
Vinyl chloride	0.002		

¹ A sample is considered positive when the quantity reported by the State approved laboratory is greater than or equal to the method detection limit.

² For systems monitoring yearly or less frequently, the sample results for each monitoring location is considered the LRAA for that monitoring location. Systems required to conduct monitoring at a frequency that is less than quarterly shall monitor in the calendar month identified in the monitoring plan developed under section 5-1.51(c). Compliance calculations shall be made beginning with the first compliance sample taken after the compliance date.

³ Systems that are demonstrating compliance with the avoidance criteria in section 5-1.30(c), shall comply with the TTHM and HAA5 LRAA MCLs; however the LRAA MCLs are not considered for avoidance purposes. For avoidance purposes, TTHMs and HAA5s are based on a running annual average of analyses from all monitoring locations.

⁴ Syngenta Method AG-625, "Atrazine in Drinking Water by Immunoassay," February 2001, available from Syngenta Crop Protection, Inc., 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419. Telephone: 336-632-6000, may not be used for the analysis of atrazine in any system where chlorine dioxide is used for drinking water treatment. In samples from all other systems, any result for atrazine generated by Method AG-625 that is greater than one-half the maximum contaminant level (MCL) (in other words, greater than 0.0015mg/L or 1.5 µg/L) must be confirmed using another approved method for this contaminant and should use additional volume of the original sample collected for compliance monitoring. In instances where a result from Method AG-625 triggers such confirmatory testing, the confirmatory result is to be used to determine compliance.

⁵ If PCBs (as one of seven Aroclors) are detected in any sample analyzed using EPA Method 505 or 508, the system shall reanalyze the sample using EPA Method 508A to quantitate PCBs (as decachlorobiphenyl). Compliance with the PCB MCL shall be determined based upon the quantitative results of analyses using Method 508A.

Table 3A. Maximum Residual Disinfectant Level (MRDL) Determination

Disinfectant	MRDL (mg/L)	Type of water system ¹	Determination of MRDL violation
Chlorine	4.0 (as Cl ₂)	Community and NTNC using chlorine or chloramines as disinfectant or oxidant	Compliance is based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system. If the running annual average exceeds the MRDL, the system is in violation and must notify the public.
Chloramines ²	4.0 (as Cl ₂)		
Chlorine Dioxide	0.8 (as ClO ₂)	Community, NTNC, and Transient Noncommunity using chlorine dioxide as disinfectant or oxidant	Public Health Hazard (Acute Violation) Compliance is based on daily samples collected by the system. If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceeds the MRDL, the system is in violation.
			Nonacute Violation Compliance is based on daily samples collected by the system. If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL, and all distribution system samples taken are below the MRDL, the system is in violation.
¹ The monitoring and MRDL requirements for chlorine and chloramines in this column apply to community or nontransient noncommunity water systems that are consecutive systems that do not add a disinfectant, but deliver water that has been treated with primary or residual disinfection other than ultraviolet light.			
² In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all Cl ₂ monitoring results of both chlorine and chloramines.			

Table 4. Entry Point Turbidity Maximum Contaminant Level Determination for Unfiltered Systems^{1, 2}

Contaminant	MCL	Determination of MCL violation
Entry point turbidity (surface water and ground water directly influenced by surface water)	1 NTU ^{3,5} (Monthly Average)	A violation occurs when the average of all daily entry point analyses for the month exceeds the MCL rounded off to the nearest whole number.
	5 NTU ^{4,5}	A violation occurs when the average of two consecutive daily entry point analyses exceeds the MCL rounded off to the nearest whole number.

¹The requirements of this table apply to unfiltered systems that the State had determined, in writing pursuant to section 5-1.30 of this Subpart, must install filtration, until filtration is installed.

²If formazin is used for turbidity testing, styrene divinyl benzene beads (e.g., AMCO-AEPA-1 or equivalent) and stabilized formazin (e.g., Hach StablCalTM or equivalent) may be substituted for formazin.

³If the daily entry point analysis exceeds one NTU, a repeat sample must be taken as soon as practicable and preferably within one hour. If the repeat sample exceeds one NTU, the supplier of water must make State notification. The repeat sample must be used for the monthly average and the two consecutive day average.

⁴If the two consecutive day average exceeds the MCL, the supplier of water shall analyze for microbiological contamination at a point downstream of the first consumer, but as close to the first consumer as is feasible. The additional microbiological sample should be taken within one hour as soon as feasible after determining the two consecutive day average. The supplier of water shall report the result of this microbiological analysis to the State within 48 hours of obtaining the result. The result of this analysis shall not be used for monitoring purposes.

⁵NTU = Nephelometric Turbidity Units

Table 4A. Surface Water Turbidity Performance Standards ¹

Contaminant	Filtration type	Performance standard¹	Determination of treatment technique violation	
Filtered water turbidity ²	Conventional filtration and Direct filtration	0.3 NTU ^{3,5}	A treatment technique violation occurs if more than five percent of the composite filter effluent measurements taken each month exceed the performance standard values.	The turbidity level of representative samples of the filtered water must at no time exceed 1 NTU. ^{4,5}
	Slow sand filtration	1.0 NTU ³	A treatment technique violation occurs if more than five percent of the composite filter effluent measurements taken each month exceed the performance standard values.	The turbidity level of representative samples of the filtered water must at no time exceed 5 NTU.
	Diatomaceous earth filtration	1.0 NTU ³		
	Alternative filtration	1.0 NTU ^{3, 4}		

¹The standards apply to systems with surface water sources or ground water sources directly influenced by surface water.

²If formazin is used for turbidity testing, styrene divinyl benzene beads (e.g., AMCO-AEPA-1 or equivalent) and stabilized formazin (e.g., Hach StablCalTM or equivalent) may be substituted for formazin.

³NTU= Nephelometric Turbidity Unit

⁴The performance standard applies to alternative filtration technologies capable of complying with requirement of section 5-1.30(b) of this Subpart as demonstrated to the department by pilot studies, unless the department sets a turbidity performance standard for a specific system.

⁵If the combined filter effluent turbidity exceeds 1 NTU, the system must consult with the State in accordance with section 5-1.78(d)(3) of this Subpart.

Table 6. Microbiological Contaminants Maximum Contaminant Level (MCL)/Treatment Technique (TT) Violation Determination

Contaminant	Sample Location	MCL or TT	Performance Standard ^{1,2}	Determination of MCL/TT violation ³
Total coliform ⁴	Distribution Sample Sites	MCL	No positive sample ⁵	An MCL violation occurs at systems collecting 40 or more samples per month when more than 5.0 percent of the total coliform samples are positive.
		MCL		An MCL violation occurs at systems collecting less than 40 samples per month when two or more samples are total coliform positive.
<i>Escherichia coli</i> (<i>E. coli</i>)	Distribution Sample Sites	MCL	No positive sample ⁵	An MCL violation occurs when a total coliform positive sample is positive for <i>E. coli</i> and a repeat total coliform sample is positive or when a total coliform positive sample is negative for <i>E. coli</i> but a repeat total coliform sample is positive and the sample is also positive for <i>E. coli</i> . ⁶
Fecal indicator: <i>E. coli</i> , and/or enterococci, and/or coliphage ⁷		Untreated Water from a Ground Water Source	TT	No fecal indicator in samples collected from raw source water from a ground water source. ⁸

¹A public water system must comply with the MCL for total coliform each month the system is required to monitor for total coliform.

²All samples collected in accordance with Table 11 footnotes 1, and 2 and Table 11B of this section, and samples collected in accordance with section 5-1.51(g) of this Subpart shall be included in determining compliance with the MCL unless any of the samples have been invalidated by the State.

³For notification purpose, an *E. coli* MCL violation in the distribution system is a public health hazard requiring Tier 1 notification.

⁴Total coliform method additions or modifications to approved methods:

- For total coliform (TC) samples collected from untreated surface water or GWUDI sources, the time from sample collection to initiation of analysis may not exceed 8 hours and the samples must be held below 10 degrees C during transit to the laboratory. For other TC samples, the time from collection to initiation of analysis may not exceed 30 hours. Systems are encouraged, but not required, to hold TC samples below 10 degrees C during transit.
- If the Total Coliform Fermentation Technique using standard methods 9221A or B is used, and if inverted tubes are used to detect gas production, the media should cover these tubes at least one half to two-thirds after the sample is added. Also, no requirement exists to run the completed phase on 10 percent of all TC-positive confirmed tubes. Additionally, lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for TC, using lactose broth, is less than 10 percent.

- If Membrane Filter Technique Standard Methods 9222A, B, and optionally C are used, MI agar also may be used. Verification of colonies is not required.
- If the Standard Methods Presence-Absence (P-A) Coliform Test, 9221D is used, six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.
- If the Total Coliform Membrane Filter Technique, Standard Methods 9222 A, B, C is used, MI agar also may be used. Verification of colonies is not required.
- For any TC testing it is strongly recommended that laboratories evaluate the false-positive and negative rates for the method(s) they use for monitoring TC. Laboratories are also encouraged to establish false-positive and false-negative rates within their own laboratory and sample matrix (drinking water or source water) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. It is suggested that laboratories perform these studies on a minimum of 5% of all TC-positive samples, except for those methods where verification/ confirmation is already required. Methods for establishing false-positive and negative-rates may be based on lactose fermentation, the rapid test for β -galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies and/or from the manufacturer(s).

⁵See Table 13 for public notification requirements.

⁶If any total coliform or *E. Coli* sample is positive, repeat samples must be collected in accordance with Table 11B of this section.

⁷For any fecal indicator sample collected as described in 5-1.52, Table 6, the time from sample collection to initiation of analysis may not exceed 30 hours. The system is encouraged but is not required to hold samples below 10 °C during transit.

⁸If raw water source sample is fecal indicator positive, the water system, in consultation with the State, may collect an additional 5 samples within 24 hours at each source that tested fecal indicator positive. If none of the additional samples are fecal indicator positive, then there is no TT violation. Note that Tier 1 notification must be made after the initial raw water fecal indicator positive sample, even if it is not confirmed.

Table 7. Radiological Maximum Contaminant Level Determination¹

Contaminant	MCL	Type of water system	Determination of MCL violation²
Combined radium-226 and radium-228	5 picocuries per liter	Community	A violation occurs when a sample or the annual average of samples at any sampling point exceeds the MCL ^{3,4,5,6,7}
Gross alpha activity (including radium-226 but excluding radon and uranium)	15 picocuries per liter	Community	
Uranium ⁸	30 micrograms per liter	Community	
Beta particle and photon radioactivity from manmade radionuclides	Four millirems (mrem) per year as the annual dose equivalent to the total body or any internal organ ⁹ .	Community Water Systems designated by the State as vulnerable	A violation occurs when a sample or the annual average of samples at any sampling point exceeds the MCL ^{3,4,5,7,10,11}
		Community systems designated by the State as utilizing waters contaminated by effluents from nuclear facilities	A violation occurs when a sample or the annual average of samples at any sampling point exceeds the MCL ^{3,4,5,7,10,11}

¹The Radionuclides Rule including the MCLs and minimum monitoring requirements applies to only community water systems.

²To judge compliance with the maximum contaminant levels, averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

³For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

⁴For systems monitoring more than once a year, if any sample result will cause the running average to exceed the MCL at any sample point, e.g., a single sample result is greater than four times of the MCL, the system is out of compliance with the MCL immediately.

⁵If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

⁶If a sample result is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than detection and is substituted for radium-226 and/or uranium, ½ the detection limit will be used to calculate the annual average.

⁷If the MCL for radionuclides in this Table is exceeded, the community water system must give notice to the State.

⁸If uranium (U) is determined by mass-type methods (i.e., fluorometric or laser phosphorimetry), a 0.67 pCi/μg of uranium conversion factor must be used.

⁹A system must determine compliance with the MCL for beta particle and photon radioactivity by using the calculation described below:

$$[\text{pCi/L found in sample (from laboratory results)} / \text{pCi/L equivalent of 4 mrem of exposure}] = \text{fraction of the maximum 4 mrem/year exposure limit}$$

¹⁰To determine compliance with the MCL, a system must monitor at a frequency as described in Table 12.

¹¹If the results show an MCL violation for any of the constituents, the system must conduct monthly monitoring for all species at any sampling point that exceeds the MCL. Monitoring must be conducted in accordance with Table 12 in this section. A system can resume quarterly monitoring if the rolling average of three months of samples is at or below the MCL.

Table 8B. Inorganic Chemicals and Physical Characteristics Minimum Monitoring Requirements

Contaminant	Type of water system	Initial frequency by source type ¹		Accelerated sampling ²
		Ground water only	Surface only or surface and ground water	
Antimony Arsenic Barium Beryllium Cadmium Chromium Cyanide Mercury Nickel Selenium Thallium Fluoride	Community and NTNC ^{3,4,5}	One sample per entry point every 3 years	One sample per entry point per year	If GT MCL, one sample quarterly. ^{6,7} If LT MCL, maintain initial frequency.
	Transient noncommunity	State discretion ⁸	State discretion ⁸	State discretion ⁸
Bromate ⁹	Community and NTNC using ozone for disinfection or oxidation	One sample per month at each entry point ^{10,11}	One sample per month at each entry point ^{10,11}	State discretion ⁸
Chlorite ¹²	Community and NTNC using chlorine dioxide for disinfection or oxidation	Daily samples at each entry point. Additional three-sample set monthly in the distribution system ^{11,13,14,15}	Daily samples at each entry point. Additional three-sample set monthly in the distribution system ^{11,13,14,15}	State discretion ⁸

GT = Greater Than; LT = Less Than

¹For all types of water sources the system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources, or separately at the individual sources. The State may allow systems to composite samples in accordance with the conditions in Appendix 5-C. All samples taken and analyzed in accordance with the monitoring plan must be included in determining compliance, even if the number is greater than the minimum required.

²The average of the initial and confirmation sample contaminant concentration at each sampling point shall be used to determine compliance with the MCL.

³A waiver from the required initial monitoring frequencies may be granted by the State, based upon the following conditions:

- a. A minimum of one sample shall be collected while the waiver is effective;
- b. Surface water systems must have monitored annually for at least three years and ground water systems must have conducted a minimum of three rounds of monitoring with at least one sample taken since January 1, 1990;
- c. All results must be less than the MCL;
- d. New sources are not eligible for a waiver until completion of three rounds of sampling; and
- e. Waivers issued by the State shall be made in writing, shall cite the basis for determination and shall not exceed a maximum of nine years.

⁴To determine the appropriate reduced monitoring frequency, the State shall consider:

- a. Reported concentrations from all previous monitoring;
- b. Variations in reported concentrations; and

c. Other factors which may affect contaminant concentrations such as changes in ground water pumping rates, changes in the system's configuration, operating procedures, stream flows or other characteristics.

⁵The State may require or the water system may request more frequent monitoring frequencies than is minimally required. The State, at its discretion, may require confirmation samples.

⁶The State may decrease the quarterly monitoring requirement to the initial sampling requirement provided that it is determined that the system is reliably and consistently below the MCL on the basis of a minimum of two quarterly ground water samples and a minimum of four quarterly samples for surface water.

⁷If concentrations of a listed contaminant exceed the MCL, the department requires the collection of an additional sample as soon as possible but not to exceed two weeks.

⁸State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

⁹Community and nontransient noncommunity water systems using ozone for disinfection or oxidation must comply with the bromate monitoring requirement.

¹⁰Systems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system's running annual average bromate concentration is ≤ 0.0025 mg/l based on monthly bromate measurements for the most recent four quarters. A system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.025 mg/L. If the average bromide concentration is equal to or greater than 0.025 mg/L, the system must resume routine monthly bromate monitoring.

¹¹Failure to monitor will be treated as a monitoring violation for the entire period covered by an annual average where compliance is based on an annual average of monthly or quarterly samples or averages and a system's failure to monitor makes it impossible to determine MCL compliance.

¹²Community and nontransient noncommunity water systems using chlorine dioxide as a disinfectant or oxidant must comply with the chlorite monitoring requirement.

¹³On each day following a sample result that exceeds the chlorite MCL at the entrance to the distribution system, the system must take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and in a location representative of maximum residence time. The samples comprising the three-sample set required for routine monitoring must be collected at the same three locations in the distribution system that are used when following up on a daily MCL exceedance at the entry point. The system may use results of additional monitoring, conducted as the result of an entry point MCL exceedance, to meet the requirement for routine monthly monitoring.

¹⁴Daily chlorite monitoring at the entrance to the distribution system may not be reduced. Monthly chlorite monitoring in the distribution system may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system has exceeded the chlorite MCL. If the system has had to conduct distribution system monitoring as a result of an MCL exceedance at the entry point, the system cannot reduce monitoring. The system may remain on a reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system exceeds the chlorite MCL or the system is required to conduct distribution system monitoring because of an entry point chlorite MCL exceedance.

¹⁵A system must monitor according to its monitoring plan as described in section 5-1.51(c) of this Subpart. Failure to monitor in accordance with the monitoring plan is a monitoring violation.

Footnote 6 of Table 8C of section 5-1.52 is amended as follows:

⁶For both types of water sources the system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. If a system draws water from more than one source and the sources are combined before distribution the system must sample at an entry point to the distribution systems during periods of normal operating conditions when water is representative of all sources. The average of the initial and confirmation sample contaminant concentration at each sampling point shall be used to determine compliance with the MCL.

Table 9A. Organic Chemicals – Disinfection Byproducts Minimum Monitoring Requirements¹

	Source Water Type	Population Size	Routine Monitoring		Reduced Monitoring ²	
			Distribution System monitoring location per monitoring period ³	Frequency ⁴	Distribution System monitoring locations per monitoring period	Frequency
Total Trihalomethanes (TTHM) Haloacetic Acids (HAA5)	Surface water and GWUDI	<500	2 ⁵	per year ⁶	not allowed	not allowed
		500 – 3,300	2 ⁵	per quarter	2 ⁵	per year ⁶
		3,301 – 9,999	2	per quarter	2 ⁷	per year ⁶
		10,000 – 49,999	4	per quarter	2 ⁸	per quarter
		50,000 – 249,999	8	per quarter	4 ⁹	per quarter
		250,000 – 999,999	12	per quarter	6 ¹⁰	per quarter
		1,000,000 – 4,999,999	16	per quarter	8 ¹¹	per quarter
		≥5,000,000	20	per quarter	10 ¹²	per quarter
	Ground water	<500	2 ⁵	per year ⁶	2 ⁵	every third year ⁶
		500 – 9,999	2	per year ⁶	2 ⁵	per year ⁶
		10,000 – 99,999	4	per quarter	2 ⁷	per year ⁶
		100,000 – 499,999	6	per quarter	2 ⁸	per quarter
		≥500,000	8	per quarter	4 ⁹	per quarter

Table 9A (continued)

¹To comply with monitoring requirements, certain conditions must be applied to test methods. The following apply to any samples collected for compliance with section 5-1.50(o) of this Subpart:

- Total Organic Carbon (TOC) samples. Inorganic carbon must be removed from TOC samples prior to analysis. TOC samples may not be filtered prior to analysis. TOC samples must be acidified at the time of sample collection to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified TOC samples must be analyzed within 28 days.
- SUVA Samples:
For Specific Ultraviolet Absorbance (SUVA) samples, SUVA must be determined on water prior to the addition of disinfectants/oxidants by the system. Dissolved Organic Carbon (DOC) and Ultraviolet Absorption at 254 nm (UV254) samples used to determine a SUVA value must be taken at the same time and at the same location.

DOC samples must be filtered through the 0.45 µm pore-diameter filter as soon as practical after sampling, not to exceed 48 hours. After filtration, DOC samples must be acidified to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified DOC samples must be analyzed within 28 days of sample collection. Inorganic carbon must be removed from the samples prior to analysis. Water passed through the filter prior to filtration of the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet the following criteria: DOC < 0.5 mg/L.

For UV254 samples, UV absorption must be measured at 253.7 nm (may be rounded off to 254 nm). Prior to analysis, UV254 samples must be filtered through a 0.45 µm pore-diameter filter. The pH of UV254 samples may not be adjusted. Samples must be analyzed as soon as practical after sampling, not to exceed 48 hours.

² Systems may reduce monitoring if, at all monitoring locations, the TTHM LRAA is ≤ 0.040 mg/L and the HAA5 LRAA is ≤ 0.030 mg/L. In addition, the source water annual average TOC level, before any treatment, shall be ≤ 4.0 mg/L at each treatment plant treating surface water or GWUDI. A system with quarterly reduced monitoring may remain on reduced monitoring as long as the TTHM LRAA is ≤ 0.040 mg/L and the HAA5 LRAA is ≤ 0.030 mg/L at each monitoring location. For systems with annual or less frequent monitoring, each TTHM sample shall be ≤ 0.060 mg/L and each HAA5 sample shall be ≤ 0.045 mg/L. In addition, the source water annual average TOC level, before any treatment, shall be ≤ 4.0 mg/L at each treatment plant treating surface water or GWUDI. If these conditions are not met, or at the State's discretion, the system shall resume routine monitoring in the quarter immediately following the exceedance (for quarterly systems) or in the year immediately following the exceedance (for systems that monitor annually or less frequently).

³A system shall monitor according to its monitoring plan as described in section 5-1.51(c) of this subpart. Failure to monitor in accordance with the monitoring plan is a monitoring violation. All systems shall monitor during the month of highest Disinfection Byproducts concentrations. Monitoring shall be increased to quarterly at all locations if a TTHM sample is > 0.080 mg/L or a HAA5 sample is > 0.060 mg/L.

⁴Systems on quarterly monitoring shall take dual sample sets every 90 days at each monitoring location, except for surface water and GWUDI systems serving a population of 500 -3,300. Ground water systems serving a population of 500 – 9,999 on annual monitoring shall take dual sample sets at each monitoring location. All other systems on annual monitoring and surface water and GWUDI systems serving a population of 500 – 3,300 are required to take individual TTHM and HAA5 samples (instead of dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is needed if the highest TTHM and HAA5 concentrations occur at the same location and month.

Table 9A (continued)

⁵Collect one TTHM sample at the location and during the quarter with the highest TTHM single measurement, and one HAA5 sample at the location and during the quarter with the highest HAA5 single measurement; alternatively, collect one dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

⁶If a system is required to monitor a particular location annually or less frequently, and a TTHM sample is >0.080 mg/L or a HAA5 sample is >0.060 mg/L at any location, the system shall increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations. The system may return to routine monitoring if at least four consecutive quarters of increased monitoring have been conducted and for every monitoring location the TTHM LRAA ≤ 0.060 mg/L and the HAA5 LRAA is ≤ 0.045 mg/L.

⁷Collect one dual sample set at the location and during the quarter of the highest TTHM single measurement, and one dual sample set at the location and during the quarter of the highest HAA5 single measurement.

⁸Collect dual sample sets at the locations with the highest TTHM and HAA5 LRAAs.

⁹Collect dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs.

¹⁰Collect dual sample sets at the locations with the three highest TTHM and three highest HAA5 LRAAs.

¹¹ Collect dual sample sets at the locations with the four highest TTHM and four highest HAA5 LRAAs.

¹² Collect dual sample sets at the locations with the five highest TTHM and five highest HAA5 LRAAs.

Table 9B. Organic Chemicals - POCs, Vinyl Chloride, Methyl-tertiary-butyl-ether (MTBE), UOCs, Propylene Glycol Minimum Monitoring Requirements

Contaminant	Type of water system	Initial requirement¹	Continuing requirement where detected¹	Continuing requirement where not detected and vulnerable to contamination¹	Continuing requirement where not detected and invulnerable to contamination¹
Principal Organic Contaminants listed on Table 9D and Vinyl chloride and Methyl-tertiary-butyl-ether (MTBE) ²	Community and Nontransient Noncommunity serving 3,300 or more persons	Quarterly sample per source for one year. ³	Quarterly ⁴	Annually ⁵	Once every six years ⁶ for ground water sources. State discretion ⁷ for surface water sources.
	Community and Nontransient Noncommunity serving fewer than 3,300 persons	Quarterly sample per source for one year. ³	Quarterly ⁴	Annually ⁵	Once every six years ⁶ for ground water sources. State discretion ⁷ for surface water sources.
	Noncommunity excluding NTNC	State discretion ⁷	State discretion ⁷	State discretion ⁷	State discretion ⁷
Unspecified Organic Contaminants and other POCs not listed on Table 9C or 9D and Propylene glycol	Community and Noncommunity	State discretion ⁷	State discretion ⁷	State discretion ⁷	State discretion ⁷

¹The location for sampling of each ground water source of supply shall be between the individual well and at or before the first service connection and before mixing with other sources, unless otherwise specified by the State to be at the entry point representative of the individual well. Public water systems which rely on a surface water shall sample at points in the distribution system representative of each source or at an entry point or points to the distribution system after any water treatment plant.

²The initial requirement does not apply to MTBE monitoring

³The State may reduce the initial monitoring requirement to one sample if the State determines that the system is invulnerable in accordance with footnote 4.

⁴The State may decrease the quarterly monitoring requirement to annually provided that the system is reliably and consistently below the MCL based on a minimum of two quarterly samples from a ground water source and four quarterly samples from a surface water source. Systems which monitor annually must monitor during the quarter which previously yielded the highest analytical result.

⁵The State may reduce the frequency of monitoring of a ground water source to once every three years for a public water system which has three consecutive annual samples with no detection of a contaminant.

⁶The State may determine that a public water system is invulnerable to a contaminant or contaminants after evaluating every three years the following factors:

- a. Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the State reveals no previous use of the contaminant within the watershed or zone of influence, a waiver can be granted.
- b. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver can be granted.
 1. Previous analytical results.
 2. The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.
 3. The environmental persistence and transport of the contaminants.
 4. The number of persons served by the public water system and the proximity of a smaller system to a larger system.
 5. How well the water source is protected against contamination, such as whether it is a surface or ground water system. Ground water systems must consider factors such as depth of the well, the type of soil, and wellhead protection. Surface water systems must consider watershed protection.

⁷State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

Table 9C. Organic Chemicals - Pesticides, Dioxin, PCBs Minimum Monitoring Requirements

Contaminant		Type of water system	Initial requirement ¹	Continuing requirement where detected ^{1,2,3,4}	Continuing requirement where not detected ¹
Group 1 Chemicals	Group 2 Chemicals	Community and Nontransient Noncommunity serving 3,300 or more persons ³	Quarterly sample per source, for one year ⁵	Quarterly	One sample every eighteen months per source ^{6,7,8}
Alachlor	Aldrin	Community and Nontransient Noncommunity serving fewer than 3,300 persons and more than 149 service connections	Quarterly samples per entry point, for one year ^{6,7,8}	Quarterly	Once per entry point every three years ^{6,7,8}
Aldicarb	Benzo(a)pyrene				
Aldicarb sulfoxide	Butachlor				
Aldicarb sulfone	Carbaryl				
Atrazine	Dalapon				
Carbofuran	Di(2-ethylhexyl)adipate				
Chlordane	Di(2-ethylhexyl)phthalate				
Dibromochloropropane	Dicamba				
2,4-D	Dieldrin				
Endrin	Dinoseb				
Ethylene Dibromide	Diquat				
Heptachlor	Endothall				
Heptachlor epoxide	Glyphosate				
Lindane	Hexachlorobenzene				
Methoxychlor	Hexachlorocyclopentadiene	Community and Nontransient Noncommunity serving fewer than 3,300 persons and fewer than 150 service connections	Quarterly samples per entry point for one year ^{6,7,8}	Quarterly	Once per entry point every three years ^{6,7,8}
Polychlorinated biphenyls	3-Hydroxycarbofuran	Noncommunity excluding NTNC	State discretion ⁹	State discretion ⁹	State discretion ⁹
Pentachlorophenol	Methomyl				
Toxaphene	Metolachlor				
2,4,5-TP (Silvex)	Metribuzin				
	Oxamyl (vydate)				
	Picloram				
	Propachlor				
	Simazine				
	2,3,7,8-TCDD (Dioxin)				

Table 9C (continued)

¹The location for sampling of each ground water source of supply shall be between the individual well and at or before the first service connection and before mixing with other sources, unless otherwise specified by the State to be at the entry point representative of the individual well. Public water systems which take water from a surface water body or watercourse shall sample at points in the distribution system representative of each source or at entry point or points to the distribution system after any water treatment plant.

²The State may decrease the quarterly monitoring requirement to annually provided that system is reliably and consistently below the MCL based on a minimum of two quarterly samples from a ground water source and four quarterly samples from a surface water source. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result. Systems serving fewer than 3,300 persons and which have three consecutive annual samples without detection may apply to the State for a waiver in accordance with footnote 6.

³If a contaminant is detected, repeat analysis must include all analytes contained in the approved analytical method for the detected contaminant.

⁴Detected as used in the table shall be defined as reported by the State approved laboratory to be greater than or equal to the method detection levels.

⁵The State may allow a system to postpone monitoring for a maximum of two years, if an approved laboratory is not reasonably available to do a required analysis within the scheduled monitoring period.

⁶The State may waive the monitoring requirement for a public water system that submits information every three years to demonstrate that a contaminant or contaminants was not used, transported, stored or disposed within the watershed or zone of influence of the system.

⁷The State may reduce the monitoring requirement for a public water system that submits information every three years to demonstrate that the public water system is invulnerable to contamination. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted.

- a. Previous analytical results.
- b. The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Nonpoint sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses.
- c. The environmental persistence and transport of the pesticide or PCBs.
- d. How well the water source is protected against contamination due to such factors as depth of the well and the type of soil and the integrity of the well casing.
- e. Elevated nitrate levels at the water supply source.
- f. Use of PCBs in equipment used in production, storage or distribution of water.

⁸The State may allow systems to composite samples in accordance with the conditions in Appendix 5-C of this Title.

⁹State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

Table 10. Turbidity Minimum Monitoring Requirements for Unfiltered Systems Pending Filtration¹

Contaminant	Type of water system	Source Type	
		Ground water only	Surface only, surface and ground water, or ground water directly influenced by surface water
Entry point turbidity	Community	State discretion ²	Collect and analyze one sample per day from each entry point. All results must be recorded to two significant figures.
	Noncommunity	State discretion ²	Collect and analyze one sample annually. Monitoring requirement may be increased at State discretion. ²
Distribution point turbidity	Community	State discretion ²	Five distribution samples each week unless otherwise determined by the State. No two samples may be obtained on the same day and no two samples are to be collected from the same distribution point during the week.
	Noncommunity	State discretion ²	State discretion ²

¹The requirements of this table apply to unfiltered systems that the State has determined, in writing pursuant to section 5-1.30 of this Subpart, must install filtration. These requirements only apply until filtration is installed.

²State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

Table 13 - REQUIRED NOTIFICATIONS

Contaminant/Situation (Subpart 5-1 citations)	Single sample exceeds MCL/MRDL¹	MCL/MRDL/TT¹ violation	Failure to meet monitoring requirements and/or failure to use applicable testing procedure
Public Health Hazard (section 5-1.1(bw)) ²	Not applicable	State Tier 1	State Tier 1
<i>Escherichia coli</i> (<i>E. coli</i>) in distribution system (section 5-1.52, tables 6, 11 and 11B)	³ State Not applicable, or ⁴ Tier 1	State Tier 1	State ⁵ Tier 3, or Tier 1
<i>E. coli</i> or other fecal indicator detected in ground water source at system not providing both 4-log virus treatment and process compliance monitoring (section 5-1.52, tables 6, 11 and 11B)	^{2,3,5,6} Tier 1	⁶ Tier 1	State ^{2,5,7} Tier 3, or Tier 1
Total coliform in distribution system (section 5-1.52, tables 6, 11 and 11B)	Not applicable	⁸ State ⁹ Tier 2, or Tier 1	State Tier 3, or Tier 2 as directed by State
Entry Point Turbidity monthly average (section 5-1.52, tables 4 and 10)	¹⁰ State	State Tier 2	State Tier 3
Entry Point Turbidity two day average (section 5-1.52, tables 4 and 10)	State	State ¹¹ Tier 2, or Tier 1	State Tier 3
Raw Water Turbidity (section 5-1.30(d) and section 5-1.52, table 10A)	State	State ¹¹ Tier 2, or Tier 1	State Tier 3
Filtered Water Turbidity Single exceedance of the maximum allowable Turbidity level (section 5-1.52, tables 4A and 10A)	State	State ¹¹ Tier 2, or Tier 1	State Tier 3
Filtered Water Turbidity Treatment Technique violation (section 5-1.52, tables 4A and 10A)	Not applicable	State Tier 2	State Tier 3

Table 13 (cont.)

Contaminant/Situation (Subpart 5-1 citations)	Single sample exceeds MCL/MRDL¹	MCL/MRDL/TT¹ violation	Failure to meet monitoring requirements and/or failure to use applicable testing procedure
Distribution Point Turbidity (section 5-1.52, tables 5, 10 and 10A)	Not applicable	State Tier 2	State Tier 3
^{12, 13} Treatment Technique violations other than turbidity (sections 5-1.12, 5-1.30, 5-1.32, 5- 1.81, and 5-1.83 and section 5-1.71(d))	Not applicable	State ^{2, 13} Tier 2, or Tier 1	State ¹³ Tier 3, or ¹² Tier 2
¹⁴ Free chlorine residual less than 0.2 mg/L at the entry point (section 5-1.30(d))	Not applicable	State	Not applicable
¹⁵ Free chlorine residual less than required minimum for a ground water system or ground water source required to provide 4-log virus treatment (section 5-1.30(a))	Not applicable	State ⁹ Tier 2, or Tier 1	Tier 2
Inorganic chemicals and physical characteristics listed in Tables 8A and 8B (section 5-1.52, tables 1, 8A, and 8B)	State	State Tier 2	State Tier 3
Chloride, iron, manganese, silver, sulfate, and zinc (section 5-1.52, tables 1 and 8D)	Not applicable	State Tier 3	State Tier 3
Sodium (section 5-1.52, tables 1 and 8D)	State if the level exceeds 20 mg/L	Tier 2 if the level exceeds 270 mg/L	Tier 3
Nitrate, Nitrite, Total Nitrate and Nitrite (section 5-1.52, tables 2 and 8C)	State	State Tier 1	State ¹⁶ Tier 1, or Tier 3
Lead and Copper (sections 5-1.40 to 1.48)	Not applicable	State Tier 2	State Tier 3
Organic Chemicals Group 1 and 2 (section 5-1.52, table 9C)	State	State Tier 2	State Tier 3

Table 13 (cont.)

Contaminant/Situation (Subpart 5-1 citations)	Single sample exceeds MCL/MRDL1	MCL/MRDL/TT¹ violation	Failure to meet monitoring requirements and/or failure to use applicable testing procedure
Principal Organic Contaminants Unspecified Organic Contaminants Total POCs and UOCs (section 5-1.52, tables 3, 9B and 9D)	State	State Tier 2	State Tier 3
Radiological Contaminants (section 5-1.52, tables 7 and 12)	State	State Tier 2	State Tier 3
Monitoring and Control of Disinfection Byproduct Precursors (sections 5-1.60 to 5-1.64)	Not applicable	State Tier 2	State Tier 3
Disinfectant residuals Chlorine and Chloramine (section 5-1.52, tables 3A and 15A)	State	State Tier 2	State Tier 3
Disinfectant residual Chlorine dioxide at entry point (section 5-1.52, tables 3A, 15 and 15A)	State	State Tier 2	State ¹⁷ Tier 3, or Tier 2
Disinfectant residual Chlorine dioxide in distribution system (section 5-1.52, tables 3A, 15 and 15A)	State	State ¹⁸ Tier 1	State ¹⁸ Tier 1
Disinfection byproducts Trihalomethanes Haloacetic acids (section 5-1.52, tables 3 and 9A) and Bromate and Chlorite (section 5-1.52, tables 1 and 8B)	Not applicable	State Tier 2	State Tier 3

Table 13 (cont.)

Contaminant/Situation (Subpart 5-1 citations)	Single sample exceeds MCL/MRDL¹	MCL/MRDL/TT¹ violation	Failure to meet monitoring requirements and/or failure to use applicable testing procedure
Acrylamide and Epichlorohydrin (section 5-1.51(m))	Not applicable	State Tier 2	Not applicable
Operation under a variance or exemption (sections 5-1.90 to 5-1.96)	Not applicable	Tier 3	Not applicable
Violation of conditions of a variance or exemption (sections 5-1.90 to 5-1.96)	Not applicable	State Tier 2	Not applicable
Disruption of water service of four hours or more (section 5-1.23(b))	Not applicable	¹⁹ State	Not applicable

¹MCL-maximum contaminant level, MRDL-maximum residual disinfectant level, TT-treatment technique

²Community systems must describe in their annual water supply statement (section 5-1.72(e)), prepared in accordance with section 5-1.72(f), any Public Health Hazard that is determined to be a violation, or any uncorrected significant deficiency, and indicate whether corrective action is completed. This notice must be repeated every year until the annual report documents that corrective action is completed in accordance with section 5-1.22 of this Subpart.

³State notification must be made by the supplier of water within 24 hours of learning of an *E. coli* positive sample.

⁴Public notification normally does not have to be issued for an *E. coli* positive sample prior to the results of the repeat samples. However, there may be situations where the State determines that a Tier 1 notification is necessary to protect the public health. The supplier of water must provide the Tier 1 notification no later than 24 hours after learning of the State's determination.

⁵Failure to test for *E. coli* requires a Tier 1 notification if testing is not done after any repeat sample tests positive for coliform. All other *E. coli* monitoring and testing procedure violations require Tier 3 notification.

⁶At a ground water system, Tier 1 notification is required after initial detection of *E. coli* or other fecal indicator in raw source water, if system does not provide 4-log virus treatment and process compliance monitoring. Confirmation of *E. coli* or other fecal indicator in the source water requires Tier 1 notification. Failure to take confirmatory samples may be a public health hazard requiring Tier 1 notification.

⁷Notice of the fecal indicator positive raw water sample must be made in the annual water supply statement (section 5-1.72(e)), until the annual report documents that corrective action is completed.

⁸State notification must be made by the supplier of water within 24 hours of learning of the violation.

Table 13 (cont.)

⁹Tier 2 notification is normally required, however, there may be situations where the State determines that a Tier 1 notification is necessary to protect the public health. The supplier of water must provide the Tier 1 notification no later than 24 hours after learning of the State's determination.

¹⁰If the daily entry point analysis exceeds one NTU, a repeat sample must be taken as soon as practicable and preferably within one hour. If the repeat sample exceeds one NTU, the supplier of water must make state notification.

¹¹Systems must consult with the State within 24 hours after learning of the violation. Based on this consultation, the State may subsequently decide to elevate the violation from a Tier 2 to a Tier 1 notification. If consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notification no later than 48 hours after the system learns of the violation.

¹²These violations include the following: failure to comply with the treatment technique or monitoring requirements in section 5-1.30(a), (b), (c), and (g) of this Subpart; failure to comply with the avoidance criteria in section 5-1.30(c) of this Subpart; failure to cover a finished water storage facility or treat its discharge required in section 5-1.32 of this Subpart; failure to report to the state information required in section 5-1.72(c)(3) of this Subpart; failure to maintain records required in section 5-1.72(c)(7) of this Subpart; and failure to meet the treatment and bin classification requirements associated with *Cryptosporidium* in section 5-1.83 of this Subpart. Failure to collect three or more samples for *Cryptosporidium* analysis as required in section 5-1.81 of this Subpart is a Tier 2 violation requiring public notification; failure to perform all other monitoring and testing procedures as required in section 5-1.81 of this Subpart are Tier 3 violations.

¹³Any significant deficiency that is not corrected or where correction has not begun according to a State-approved corrective action plan within 120 days, or as directed by the State, is a treatment technique violation and must be addressed in accordance with the requirements in section 5-1.12. If the deficiency is a public health hazard, the deficiency must be addressed as directed by the State and Tier 1 notification is required.

¹⁴Applies to systems that have surface water or ground water directly influenced by surface water as a source and use chlorine. The system must make State notification whether the residual was restored to at least 0.2 mg/L within four hours.

¹⁵Required minimum chlorine residual at point that demonstrates adequate CT for disinfected water from ground water sources at first customer.

¹⁶Failure to take a confirmation sample within 24 hours for nitrate or nitrite after an initial sample exceeds the MCL requires a Tier 1 notification. Other monitoring violations for nitrate or nitrite require a Tier 3 notification.

¹⁷Failure to monitor for chlorine dioxide at the entrance to the distribution system the day after exceeding the MRDL at the entrance to the distribution system requires a Tier 2 notification. Other monitoring violations for chlorine dioxide at the entrance to the distribution system require a Tier 3 notification.

¹⁸If any daily sample taken at the entrance to the distribution system exceeds the MRDL for chlorine dioxide and one or more samples taken in the distribution system the next day exceed the MRDL, Tier 1 notification is required. Failure to take the required samples in the distribution system the day after the MRDL is exceeded at the entry point also triggers Tier 1 notification.

¹⁹Tier 1 notification is required if the situation meets the definition of a public health hazard.

Table 14H. CT Values (CT_{99.9}) for 99.9 Percent Inactivation of *Giardia Lamblia* Cysts by Chloramines¹

Water Temperature, in Degrees Celsius					
<1	5	10	15	20	25
3,800	2,200	1,850	1,500	1,100	750

¹These values are for pH values of 6 to 9. These CT values may be assumed to achieve greater than 99.99 percent inactivation of viruses only if chlorine is added and mixed in the water prior to the addition of ammonia. If this condition is not met, the system must demonstrate, based on on-site studies or other information, as approved by the State, that the system is achieving at least 99.99 percent inactivation of viruses. CT values between the indicated temperatures may be determined by linear interpolation. If no interpolation is used, use the CT_{99.9} value at the lower temperature for determining CT_{99.9} values between indicated temperatures.

Table 14I. CT Values (mg·min/L) for *Cryptosporidium* Inactivation by Chlorine Dioxide¹

Log Credit	Water Temperature, in Degrees Celsius										
	<=0.5	1	2	3	5	7	10	15	20	25	30
0.25	159	153	140	128	107	90	69	45	29	19	12
0.5	319	305	279	256	214	180	138	89	58	38	24
1.0	637	610	558	511	429	360	277	179	116	75	49
1.5	956	915	838	767	643	539	415	268	174	113	73
2.0	1275	1220	1117	1023	858	719	553	357	232	150	98
2.5	1594	1525	1396	1278	1072	899	691	447	289	188	122
3.0	1912	1830	1675	1534	1286	1079	830	536	347	226	147

¹ Systems may use this equation to determine log credit between the indicated values:

$$\text{Log credit} = (0.001506 \times (1.09116)^{\text{Temp}}) \times \text{CT}.$$

Table 14J. CT Values (mg·min/L) for *Cryptosporidium* Inactivation by Ozone¹

Log Credit	Water Temperature, in Degrees Celsius										
	<=0.5	1	2	3	5	7	10	15	20	25	30
0.25	6.0	5.8	5.2	4.8	4.0	3.3	2.5	1.6	1.0	0.6	0.39
0.5	12	12	10	9.5	7.9	6.5	4.9	3.1	2.0	1.2	0.78
1.0	24	23	21	19	16	13	9.9	6.2	3.9	2.5	1.6
1.5	36	35	31	29	24	20	15	9.3	5.9	3.7	2.4
2.0	48	46	42	38	32	26	20	12	7.8	4.9	3.1
2.5	60	58	52	48	40	33	25	16	9.8	6.2	3.9
3.0	72	69	63	57	47	39	30	19	12	7.4	4.7

¹ Systems may use this equation to determine log credit between the indicated values:

$$\text{Log credit} = (0.0397 \times (1.09757)^{\text{Temp}}) \times \text{CT}.$$

Table 14K. UV Dose Table for *Cryptosporidium*, *Giardia lamblia*, and Virus Inactivation Credit^{1,2,3,4}

Log Credit	<i>Cryptosporidium</i> UV dose (mJ/cm ²)	<i>Giardia lamblia</i> UV dose (mJ/cm ²)	Virus UV dose (mJ/cm ²)
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	15	15	163
4.0	22	22	186

¹Ultraviolet light. Systems receive *Cryptosporidium*, *Giardia lamblia*, and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in this table. Systems must use validated UV reactors and monitor UV reactors as described in footnotes 3 and 4 of this table to demonstrate that they are achieving a particular UV dose value for treatment credit.

²UV dose table. The treatment credits listed in this table are for UV light at a wavelength of 254 nm as produced by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation testing, as described in footnote 3 of this table. The UV dose values in this table are applicable only to unfiltered systems (either by filtration waiver or those that do not require filtration) and to post-filter applications of UV in filtered systems.

³Reactor validation testing. Systems must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the UV dose required in footnote 2 of this table (*i.e.*, validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

- When determining validated operating conditions, systems must account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.
- Validation testing must include full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp. The State may approve an alternative approach to validation testing.

⁴Reactor monitoring.

- To receive treatment credit for UV light, systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as described in footnotes 2 and 3 of this table. Systems must demonstrate compliance with this condition by the monitoring required under footnote 4 of this table.

The title for sections 5-1.60 through 5-1.65 is amended to read as follows:

Monitoring and Control of Disinfection Byproducts and Disinfection Byproduct Precursors

Section 5-1.60 is amended to read as follows:

5-1.60 Applicability.

Surface water systems or systems using [groundwater] ground water under the direct influence of surface water that are community or nontransient noncommunity water systems, serve 15 or more service connections or serve 25 or more persons, and use conventional filtration treatment [must] shall operate with enhanced coagulation to achieve the total organic carbon (TOC) percent removal levels specified in section 5-1.63 of this Subpart, unless the system meets the alternative compliance criteria described in section 5-1.62 of this Subpart. [Systems serving 10,000 or more people must comply with this requirement beginning January 1, 2002. Systems serving fewer than 10,000 people must comply with this requirement beginning January 1, 2004.]

Section 5-1.61 is repealed and a new section is adopted to read as follows:

5-1.61 Monitoring requirements for disinfection byproduct precursors.

Monitoring for Disinfection byproduct precursors shall be in accordance with the following table.

Monitoring Requirements for Disinfection Byproduct Precursors							
Source Type	System Type	Filtration Type	Sampling location at each plant	Routine		Reduced ¹	
				Monitoring requirements	Frequency ²	Running annual average TOC results	Frequency
Surface water and GWUDI	Community and NTNC	Conventional	Combined Filter effluent ³	TOC ⁴	Monthly	<2.0 mg/L for two consecutive years or <1.0 mg/L for one year	1 TOC (paired) per plant/quarter
			Raw	TOC ⁴	Monthly		
		Raw		Alkalinity	Monthly		
		All other types	Raw	TOC	Monthly	≤4.0 mg/L	1 TOC quarterly

¹ Routine monitoring shall begin in the month following the quarter when the running annual average TOC is ≥ 2.0 mg/L for systems using conventional filtration and > 4.0 mg/L for systems using all other types of filtration.

² TOC monitoring for disinfection precursors for both treated and source water shall be collected at the same time. These samples (source water and treated water) are referred to as paired samples.

³ Samples collected for TOC shall be collected no further downstream than point of combined filter effluent turbidity monitoring and representative of treated water.

⁴ Systems shall take one paired TOC sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality. The alkalinity sample shall be collected at the same time as the source water TOC sample.

Section 5-1.62 is repealed and a new section is adopted to read as follows:

5-1.62 Alternative compliance criteria for enhanced coagulation.

Systems may use one of the following alternative compliance criteria instead of enhanced coagulation. Systems using the alternative compliance criteria shall still comply with the monitoring requirements stated in section 5-1.61 of this Subpart.

Water Type	Parameter	Concentration	Calculation Frequency
Source water	TOC	≤2.0 mg/L	Quarterly RAA
Treated water	TOC	≤2.0 mg/L	Quarterly RAA
Source water ^{1,2}	SUVA	≤2.0 L/mg-m	Quarterly RAA
Treated water ²	SUVA	≤2.0 L/mg-m	Quarterly RAA
Source water	TOC	<4.0 mg/L	Quarterly RAA
	Alkalinity (as CaCO ₃)	>60 mg/L	Quarterly RAA
	TTHM	≤0.040 mg/L	LRAA of all sites
	HAA5	≤0.030 mg/L	LRAA of all sites
Treated water in the distribution system ³	TTHM	≤0.040 mg/L	LRAA of all sites
	HAA5	≤0.030 mg/L	LRAA of all sites

¹ Prior to any treatment

² Measured monthly

³ System uses only chlorine for primary disinfection and maintains a residual in the distribution system.

A new section 5-1.64 is added to read as follows:

5-1.64 Operational Evaluation Levels.

(a) If a system exceeds the operational evaluation level at any monitoring location when the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by 4 to determine the average, exceeds 0.080 mg/L, or when the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by 4 to determine the average, exceeds 0.060 mg/L.

(b) If a system exceeds the operational evaluation level, it shall conduct an operational evaluation and submit a written report of the evaluation to the State no later than 90 days after being notified of the analytical result that caused the exceedance of the operational evaluation level. The written report shall be made available to the public upon request.

(c) The operational evaluation shall include an examination of the operational practices for system treatment(s) and the distribution system, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedances.

(1) A system may request, and the State may allow, limiting the scope of the evaluation if the system is able to identify the cause of the operational evaluation level exceedance.

(2) The request to limit the scope of the evaluation does not extend the schedule in subdivision (b) of this section for submitting the written report. The State shall approve

this limited scope of evaluation in writing, and the system shall keep that approval with the completed report.

A new section 5-1.65 is added to read as follows:

5-1.65 Best Available Technologies (BATs) for Disinfection Byproduct Control

The following is a table of the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for Bromate, Chlorite, TTHM and HAA5, for public water systems that disinfect their source water.

Water system type	Source type	Disinfection byproduct	Best available technology
All systems that disinfect their source water	GW; SW; GWUDI	Bromate	Control of ozone treatment process to reduce production of bromate
		Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels
All systems that disinfect their source water	GW; SW; GWUDI	Total trihalomethanes (TTHM); Haloacetic acids (five) (HAA5)	Enhanced coagulation or enhanced softening, plus GAC10; or nanofiltration with a molecular weight cutoff ≤ 1000 Daltons; or GAC20
Consecutive systems: applies only to the disinfected water that consecutive systems buy or otherwise receive	GW; SW; GWUDI	Total trihalomethanes (TTHM); Haloacetic acids (five) (HAA5)	Systems serving $\geq 10,000$: Improved distribution system and storage tank management to reduce residence time, plus the use of chloramines for disinfectant residual maintenance
			Systems serving $< 10,000$: Improved distribution system and storage tank management to reduce residence time

A new paragraph (5) is added to subdivision (c) of section 5-1.72 to read as follows:

(5) Surface water systems and ground water systems under the direct influence of surface water that are required to provide enhanced filtration and disinfection for *Cryptosporidium*, shall report to the State in accordance with the treatment and/or management options used to comply with the treatment requirements under section 5-1.83(b) or (c) of this Subpart, as applicable. Alternatively, the State may approve a system to certify operation within required parameters for treatment credit, rather than reporting monthly operational data. The applicable treatment compliance dates are found in section 5-1.83(d) of this Subpart.

(i) For systems using the watershed control program option, notice of intention to develop a new or continue an existing watershed control program shall be submitted no later than two years before the treatment compliance date. The watershed control plan shall be submitted no later than one year before the treatment compliance date. The annual watershed control program status report shall be submitted every 12 months. For community water systems, the watershed sanitary survey report shall be submitted every three years. For noncommunity water systems, the watershed sanitary survey report shall be submitted every five years.

(ii) For systems using the alternative source/intake management option, verification that the system has relocated the intake or adopted the intake withdrawal procedure, reflected in monitoring results, shall be submitted.

(iii) For systems using the presedimentation option, monthly verification of the following shall be submitted within 10 days after the month in which the monitoring was conducted: continuous basin operation; treatment of 100 percent of the flow; continuous addition of coagulant; and at least 0.5-log mean reduction of influent turbidity or compliance with alternative State-approved compliance criteria.

(iv) For systems using the two-stage lime softening option, monthly verification of the following shall be submitted within 10 days after the month in which the monitoring was conducted: chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration; and both stages treated 100 percent of the plant flow.

(v) For systems using the bank filtration option, initial demonstration of the following shall be submitted no later than treatment compliance date: aquifer shall be unconsolidated sand containing at least 10 percent fines; and setback distance of at least 25 feet (0.5-log credit) or 50 feet (1.0-log credit). If the monthly average of daily maximum turbidity is greater than 1 NTU, then the system shall report the result and submit an assessment of the cause within 30 days after the month in which the monitoring was conducted, beginning on the applicable treatment compliance date.

(vi) For systems using the combined filter performance option, monthly verification of the following shall be submitted within 10 days following the month in which the

monitoring was conducted: combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the four-hour CFE measurements taken each month.

(vii) For systems using the individual filter performance option, monthly verification of the following shall be submitted within 10 days following the month in which the monitoring was conducted: individual filter effluent (IFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of sample each month in each filter; and no individual filter greater than 0.3 NTU in two consecutive readings 15 minutes apart.

(viii) For systems using the demonstration of performance option, the results from testing following a State-approved protocol shall be submitted no later than the treatment compliance date. Monthly verification of operation within the conditions of State approval for demonstration of performance credit, may be required to be submitted within 10 days after the month in which the monitoring was conducted, beginning on the applicable treatment compliance date.

(ix) For systems using the bag filter and cartridge filter option, demonstration that the following criteria are met shall be submitted no later than the treatment compliance date: the process meets the definition of bag or cartridge filtration; and the removal efficiency established through challenge testing that meets criteria approved by the State. Monthly verification that 100 percent of the plant flow was filtered shall be submitted within 10

days after the month in which monitoring was conducted, beginning on the applicable treatment compliance date.

(x) For systems using the membrane filtration option, results of verification testing demonstrating the following shall be submitted no later than the treatment compliance date: removal efficiency established through challenge testing that meets criteria approved by the State; and integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline. A monthly report summarizing the following shall be submitted within 10 days after the month in which monitoring was conducted: all direct integrity tests above the control limit; and, if applicable, any turbidity or alternative State-approved indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken.

(xi) For systems using the second stage filtration option, monthly verification that 100 percent of flow was filtered through both stages, and that the first stage was preceded by a coagulation step, shall be submitted within 10 days after the month in which monitoring was conducted.

(xii) For systems using the slow sand filtration (as secondary filter) option, monthly verification that both a slow sand filter and a preceding separate stage of filtration treated 100 percent of surface water flow shall be submitted within 10 days after the month in which monitoring was conducted.

(xiii) For systems using the chlorine dioxide option, a summary of CT values for each day shall be submitted within 10 days after the month in which monitoring was conducted.

(xiv) For systems using the ozone option, a summary of CT values for each day shall be submitted within 10 days after the month in which monitoring was conducted.

(xv) For systems using the UV option, validation test results demonstrating operating conditions that achieve the required UV dose shall be submitted no later than the treatment compliance date. A monthly report, summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose shall be submitted within 10 days after the month in which monitoring was conducted.

A new paragraph (8) of subdivision (d) of section 5-1.72 is added to read as follows:

(8) For surface water systems and ground water systems under the direct influence of surface water, the following records shall be maintained:

(i) Systems shall keep results from the initial round of source water monitoring under section 5-1.81(a)(1) of this Subpart and the second round of source water monitoring under section 5-1.81(a)(2) of this Subpart until three years after bin classification under section 5-1.83(a) of this Subpart for filtered systems, or determination of the mean

Cryptosporidium level under section 5-1.83(c) of this Subpart for unfiltered systems for the particular round of monitoring.

(ii) Systems shall keep any notification to the State that they will not conduct source water monitoring due to meeting the criteria of section 5-1.81(a)(4) of this Subpart for three years.

(iii) Systems shall keep the results of treatment monitoring associated with *Cryptosporidium* and with uncovered finished water storage facilities under section 5-1.32 of this Subpart for three years.

Paragraph (5) of subdivision (f) of section 5-1.72 is revised to read as follows:

(5) Information on detected contaminants from sampling used to determine compliance. For the purpose of this subdivision (except *Cryptosporidium*, *Giardia*, and radon monitoring), *detected* means: at or above the contaminant's [minimum] method detection limit (MDL), [as specified in Appendix 5-C of this Subpart] as defined in section 5-1.1(bi), or as prescribed by the State. Any contaminants specified in sections 5-1.41 (lead and copper) and 5-1.51 of this Subpart and section 5-1.52 tables 8A, 8B, 8C, 8D, 9A, 9B, 9C, 9D, 10, 10A, 11, 11A, 11B, 12, 16 and 17 of this Subpart that are detected during compliance monitoring [must] shall be displayed in one table or in several adjacent tables. Additionally, the report shall include detected monitoring results for samples collected and analyzed by the State and/or detected monitoring results of additional samples required by the State. If a system is allowed to monitor for specific contaminants

less than once a year, the table [must] shall include the date and results of the most recent sampling and the report [must] shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included. For the contaminants listed in section 5-1.52 tables 8A, 8B, 8C, 8D, 9A, 9B, 9C, 9D, 10, 10A, 11, 11B, 12, 16 and 17 of this Subpart the table(s) [must] shall contain:

* * *

Clause (c) of subparagraph (iv) of paragraph (5) of subdivision (f) of section 5-1.72 is amended to read as follows:

(c) when compliance with the MCL is determined by calculating a running annual average of all samples taken at a [sampling point] monitoring location: the highest average of any of the [sampling points] monitoring locations used to determine compliance and the range of all sampling points expressed in the same units as the MCL[; and]. For the MCLs for TTHM and HAA5, systems shall include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system shall include the locational running annual averages for all locations that exceed the MCL; and

* * *

Subparagraph (iii) of paragraph (9) of subdivision (f) of section 5-1.72 is amended to read as follows:

(iii) lead and copper control requirements. The report [must] shall include health effects language prescribed by the State for lead, copper, or both for systems which fail to take one or more actions prescribed by sections 5-1.40[-5-1.49] through 5-1.48 of this Subpart;

Section 5-1.73 is amended to read as follows:

5-1.73 Water treatment plant laboratory.

Every supplier of water shall provide or have available environmental laboratory facilities approved by [ELAP] the New York State Environmental Laboratory Approval Program (ELAP). Tests for the control of the operation of such public water system shall be made daily or more frequently as required by the State. The results of such tests shall be recorded on forms pursuant to section 5-1.72(d) of this Subpart.

Section 5-1.74 is repealed and new section 5-1.74 is added to read as follows:

5-1.74 Approved laboratories.

(a) For determining compliance with this Subpart, results of analyses, except for parameters listed in section 5-1.74(b), may be considered only if they have been

performed by an environmental laboratory approved in accordance with Subpart 55-2 of this Title (10 NYCRR Part 55, Subpart 55-2).

(b) Measurements for pH, temperature, conductivity, turbidity, disinfectant residual, alkalinity, calcium, orthophosphate, bromide, chlorite, total organic carbon (TOC) concentration, dissolved organic carbon concentration, ultraviolet (UV) absorption, and silica may be performed by any person with a demonstrated ability to perform these analyses. These analyses shall be conducted in accordance with 40 CFR Part 141. All necessary documentation required by the approved methods shall be retained by the water system conducting the analyses for a period of ten years.

(c) The owner of a water system shall require the approved environmental laboratory performing the analyses to send laboratory results directly to the department and in a manner prescribed by the department.

New subparagraphs (iv) and (v) are added to paragraph (4) of subdivision (b) of section 5-1.78 to read as follows:

(iv) Standard language for repeated failure to conduct *Cryptosporidium* monitoring: We are required to monitor the source of your drinking water for *Cryptosporidium*. Results of the monitoring are to be used to determine whether water treatment at the (treatment plant

name) is sufficient to adequately remove *Cryptosporidium* from your drinking water. We are required to complete this monitoring and make this determination by (required bin determination date). We “did not monitor or test” or “did not complete all monitoring or testing” on schedule, and therefore, we may not be able to determine by the required date what treatment modifications, if any, shall be made to ensure adequate *Cryptosporidium* removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

(v) Standard language for failure to determine bin classification or mean *Cryptosporidium* level: We are required to monitor the source of your drinking water for *Cryptosporidium* in order to determine by (date) whether water treatment at the (treatment plant name) is sufficient to adequately remove *Cryptosporidium* from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

Subdivision (c) of section 5-1.78 is amended to read as follows:

(c) Tier 1 notification requirements (public health hazards, as defined in section 5-1.1 [(bc)] (bw) of this Subpart, require Tier 1 notification). The supplier of water [must] shall:

* * *

Paragraphs (3), (4), and (5) of subdivision (d) of section 5-1.78 are renumbered to be paragraphs (4), (5), and (3) and a new paragraph (6) is added to read as follows:

(6) For repeated failure to conduct *Cryptosporidium* monitoring, failure to determine bin classification, or failure to calculate mean *Cryptosporidium*, each notification shall also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

A new section 5-1.80 is added to read as follows:

ENHANCED TREATMENT FOR *CRYPTOSPORIDIUM*

5-1.80: Applicability.

The provisions of this section, and sections 5-1.81 through 5-1.83 apply to all public water systems supplied by a surface water source(s) or ground water source(s) directly influenced by surface water, provided the system serves 15 or more service connections or serves 25 or more persons. The requirements in this section for filtered systems apply to any system with a surface water or GWUDI source that is required to provide filtration, regardless of whether the system is currently operating a filtration system. Any unfiltered systems that are in compliance with the filtration avoidance criteria in section 5-1.30(c) of this Subpart, are subject to the requirements in sections 5-1.80 through 5-1.83 pertaining to unfiltered systems. Wholesale system compliance with sections 5-1.81 through 5-1.83 is based on the population of the largest system in the combined distribution system. The above systems shall comply with the following requirements:

(a) Systems shall conduct an initial and a second round of source water monitoring for each plant that treats water from a surface water source or ground water source directly influenced by surface water. This monitoring may include *Cryptosporidium*, *E. coli*, and turbidity, as described in section 5-1.81(a) through (d) of this Subpart, to determine what level, if any, of additional *Cryptosporidium* treatment shall be provided.

(b) Systems that plan to make a significant change to their disinfection practice shall develop disinfection profiles and calculate disinfection benchmarks, as described in section 5-1.82 of this Subpart.

(c) Filtered systems shall determine their *Cryptosporidium* treatment bin classification, as described in section 5-1.83(a) of this Subpart, and provide additional treatment for *Cryptosporidium*, if required, as described in section 5-1.83(b) of this Subpart. All unfiltered systems shall determine their mean *Cryptosporidium* level and provide treatment for *Cryptosporidium* as described in section 5-1.83(c) of this Subpart. Systems shall implement *Cryptosporidium* treatment according to the schedule in section 5-1.83(d) of this Subpart.

A new section 5-1.81 is added to read as follows:

5-1.81: Source Water Monitoring Requirements at Systems using Surface Water and Ground Water under the Direct Influence of Surface Water (GWUDI) Sources.

(a) Source Water Monitoring.

(1) Initial round of source water monitoring. Systems shall conduct the following monitoring, based on the monitoring schedule prescribed in paragraph (3) of this subdivision, unless they meet the monitoring exemption criteria in paragraph (4) of this subdivision:

(i) Filtered systems serving at least 10,000 people shall sample their source water for *Cryptosporidium*, *E. coli*, and turbidity at least monthly for 24 months.

(ii) Unfiltered systems serving at least 10,000 people shall sample their source water for *Cryptosporidium* at least monthly for 24 months.

(iii) Filtered systems serving fewer than 10,000 people:

(a) shall sample their source water for *E. coli* at least once every two weeks for 12 months;

(b) may avoid *E. coli* monitoring if the system notifies the State that it will monitor for *Cryptosporidium* as described in subparagraph (iv) of this paragraph. The system shall notify the state no later than three months prior to the date the system is otherwise required to start *E. coli* monitoring under paragraph (3) of this subdivision; and

(c) shall sample their source water for *Cryptosporidium* at least twice per month for 12 months, or at least monthly for 24 months, if, based on monitoring conducted under subparagraph (iii) of this paragraph, they meet one of the following criteria:

(1) the annual mean *E. coli* concentration is greater than 10 *E. coli*/ 100 mL; or

(2) the system does not conduct *E. coli* monitoring at least once every two weeks for 12 months.

(iv) Unfiltered systems serving fewer than 10,000 people shall sample their source water for *Cryptosporidium* at least twice per month for 12 months or at least monthly for 24 months.

(v) Systems may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(2) Second round of source water monitoring. Systems shall conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in paragraph (1) of this subdivision, unless they meet the monitoring exemption criteria in paragraph (4) of this subdivision. Systems shall conduct this monitoring on the schedule in paragraph (3) of this subdivision.

(3) Monitoring schedule. Systems shall comply with the monitoring schedule prescribed in 40 CFR 141.701(c).

(4) Monitoring avoidance.

(i) Filtered systems are not required to conduct source water monitoring under this section if the system will provide a total of at least 5.5-log of treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 in section 5-1.83(b) of this Subpart.

(ii) Unfiltered systems are not required to conduct source water monitoring under this section if the system will provide a total of at least 3-log *Cryptosporidium* inactivation, equivalent to meeting the treatment requirements for unfiltered systems with a mean *Cryptosporidium* concentration of greater than 0.01 oocysts/L in section 5-1.83(c) of this Subpart.

(iii) If a system chooses to provide the level of treatment in subparagraph (i) or (ii) of this paragraph, as applicable, rather than start source water monitoring, the system shall notify the State in writing no later than the date the system is otherwise required to submit a sampling schedule for monitoring under subdivision (b) of this section.

Alternatively, a system may choose to stop sampling at any point after it has initiated monitoring if it notifies the State in writing that it will provide this level of treatment. Systems shall install and operate technologies to provide this level of treatment by the applicable treatment compliance date in section 5-1.83(d) of this Subpart.

(5) Plants operating only part of the year. Systems with surface water sources or ground water sources directly influenced by surface water and with plants that operate for only

part of the year shall conduct source water monitoring in accordance with this section and section 5-1.80 of this Subpart, but with the following modifications:

(i) Systems shall sample their source water only during the months that the plant operates unless the State specifies another monitoring period based on plant operating practices.

(ii) Systems with plants that operate less than six months per year and that monitor for *Cryptosporidium* shall collect at least six *Cryptosporidium* samples per year during each of two years of monitoring. Samples shall be evenly spaced throughout the period the plant operates.

(6) New sources.

(i) A system that begins using a new source of surface water or ground water directly influenced by surface water after the system is required to begin monitoring under paragraph (3) of this subdivision shall monitor the new source on a schedule approved by the State. Source water monitoring shall meet the requirements of this section. The system also shall meet the bin classification of section 5-1.83(a) and *Cryptosporidium* treatment requirements of section 5-1.83(b) or 5-1.83(c) of this Subpart, as applicable, for the new source on a schedule approved by the State.

(ii) The requirements of this paragraph also apply to new systems that use surface water or ground water directly influenced by surface water, that begin operation after the monitoring start date applicable to the system's size under paragraph (3) of this subdivision.

(iii) The system shall begin a second round of source water monitoring no later than six years following initial bin classification or determination of the mean *Cryptosporidium* level, as applicable.

(b) Sampling Schedules.

(1) Systems required to conduct source water monitoring under this section shall submit a sampling schedule that specifies the calendar dates when the system will collect each required sample. Systems shall submit sampling schedules to the State no later than three months prior to any applicable date referenced in section 5-1.81(a)(3). If the State does not respond to a system regarding its sampling schedule, the system shall sample at the reported schedule.

(2) Systems shall collect samples within two days before or two days after the dates indicated in their sampling schedule, unless one of the following conditions applies:

(i) If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided and causes the system to be unable to sample in the scheduled five-day period, the system shall sample as close to the scheduled date as is feasible, unless the State approves an alternate sampling date. The system shall submit an explanation for the delayed sampling date to the State concurrent with the shipment of the sample to the laboratory.

(ii) If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements in subdivision (d) of this section, or the failure of an approved laboratory to analyze the sample, then the system shall collect a replacement sample. The replacement sample shall be collected no later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date, unless the system demonstrates that collecting a replacement sample within this time frame is not feasible, or the State approves an alternative resampling date. The system shall submit an explanation for the delayed sampling date to the State concurrent with the shipment of the replacement sample to the laboratory.

(3) Systems that fail to meet the criteria of paragraph (2) of this subdivision for any source water sample required under subdivision (a) of this section shall revise their sampling schedules to add dates for collecting all missed samples. Systems shall submit the revised schedule to the State for approval prior to when the system begins collecting the missed samples.

(c) Sampling Locations.

(1) Systems required to conduct source water monitoring under subdivision (a) of this section shall collect samples for each plant that treats a surface water or GWUDI source. Where multiple plants draw water from the same influent, such as the same pipe or

intake, the State may approve one set of monitoring results to be used to satisfy the requirements for all plants.

(2) Systems shall collect source water samples prior to chemical treatment, such as coagulants, oxidants, and disinfectants, unless the State determines that collecting a sample prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(3) Systems that recycle filter backwash water shall collect source water samples prior to the point of filter backwash water addition.

(4) Bank filtration.

(i) Systems that receive *Cryptosporidium* treatment credit for bank filtration, as applicable, shall collect source water samples in the surface water prior to bank filtration.

(ii) Systems that use bank filtration as pretreatment to a filtration plant shall collect source water samples from the well (i.e., after bank filtration). Use of bank filtration during monitoring shall be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration.

(5) Multiple sources. Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and ground water sources, shall collect samples as specified in subparagraph (i) or (ii) of this paragraph. The use of multiple sources during monitoring shall be consistent with routine operational practice.

(i) If a sampling tap is available where the sources are combined prior to treatment, systems shall collect samples from that tap.

(ii) If a sampling tap where the sources are combined prior to treatment is not available, systems shall collect samples at each source near the intake on the same day and select one of the following options for sample analysis;

(a) Systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source shall be weighted according to the proportion of the source in the total plant flow at the time the sample is collected; or

(b) Systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average shall be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(6) Additional Requirements. Systems shall submit a description of their sampling location(s) to the State at the same time as the sampling schedule. This description shall address the position of the sampling location in relation to the system's water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter backwash recycle. If the State does not respond to a system regarding sampling location(s), the system shall sample at the reported location(s).

(d) Reporting source water monitoring results.

(1) Systems shall report results from the source water monitoring no later than 10 days after the end of the first month following the month when the sample is collected.

(2) Systems shall report the following information, as applicable, for the source water monitoring samples required under subdivision (a) of this section.

(i) Systems shall report the following data elements for each *Cryptosporidium* analysis: PWS ID; facility ID sample collection date sample type (field or matrix spike); sample volume filtered (in liters, to the nearest 0.25 liter); confirmation that 100 percent of filtered volume was examined; and the number of oocysts counted.

(a) For matrix spike samples, systems shall also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(b) For samples in which less than 10 liters are filtered or less than 100 percent of the sample volume is examined, systems shall also report the number of filters used and the packed pellet volume.

(c) For samples in which less than 100 percent of sample volume is examined, systems shall also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(ii) Systems shall report the following data elements for each *E. coli* analysis: PWS ID; facility ID; sample collection date; analytical method number; method type; source type; *E. coli*/100 mL; and turbidity. Systems serving fewer than 10,000 people that are not required to monitor for turbidity are not required to report turbidity with their *E. coli* results.

A new section 5-1.82 is added to read as follows:

5-1.82: Requirements when making a significant change in disinfection practice.

(a) Following the completion of initial source water monitoring under section 5-1.81(a)(1) of this Subpart, a system that plans to make a significant change to its disinfection practice, as defined in subdivision (b) of this section, shall develop disinfection profiles and calculate disinfection benchmarks for *Giardia lamblia* and

viruses, as prescribed by the Department. Prior to changing the disinfection practice, the system shall notify the State and shall include in this notice the following information:

(1) A completed disinfection profile and disinfection benchmark for *Giardia lamblia* and viruses prepared as directed by the State.

(2) A description of the proposed change in disinfection practice.

(3) An analysis of how the proposed change will affect the current level of disinfection.

(b) Significant changes to disinfection practice are defined as follows:

(1) Changes to the point of disinfection;

(2) Changes to the disinfectant(s) used in the treatment;

(3) Changes to the disinfection process; or

(4) Any other modification identified by the State as a significant change to disinfection practice.

A new section 5-1.83 is added to read as follows:

5-1.83: Treatment Technique Requirements

(a) Bin classification for filtered systems.

(1) Following completion of the initial round of source water monitoring under section 5-1.81(a)(1) of this Subpart, filtered systems shall calculate an initial *Cryptosporidium* bin concentration for each plant for which monitoring was required, as prescribed by the State. Calculation of the bin concentration shall use the *Cryptosporidium* results reported under section 5-1.81 of this Subpart.

(2) Filtered systems shall determine their initial bin classification from the following table and using the *Cryptosporidium* bin concentration calculated under paragraph (1) of this subdivision:

BIN CLASSIFICATION TABLE FOR FILTERED SYSTEMS

System Characteristic	<i>Cryptosporidium</i> Concentration ¹	Bin Classification
Required to monitor for <i>Cryptosporidium</i>	<i>Cryptosporidium</i> <0.075 oocyst/L	Bin 1
	0.075 oocysts/L ≤ <i>Cryptosporidium</i> <1.0 oocyst/L	Bin 2
	1.0 oocyst/L ≤ <i>Cryptosporidium</i> <3.0 oocysts/L	Bin 3
	<i>Cryptosporidium</i> ≥3.0 oocysts/L	Bin 4
Serving fewer than 10,000 people and NOT required to monitor for <i>Cryptosporidium</i>	Not Applicable	Bin 1

¹ Based on calculations in paragraph (1) or (4) of this subdivision, as applicable.

(3) Following completion of the second round of source water monitoring required under section 5-1.81(a)(2) of this Subpart, filtered systems shall recalculate their *Cryptosporidium* bin concentration using the *Cryptosporidium* results reported under section 5-1.81(a)(2) of this Subpart, as prescribed by the State. Systems shall then reevaluate their bin classification using the bin concentration from the second round of monitoring and the table in paragraph (2) of this subdivision.

(4) (i) Filtered systems shall report their initial bin classification under paragraph (2) of this subdivision to the State for approval no later than six months after the system is required to complete initial source water monitoring based on the schedule referenced in section 5-1.81(a)(3) of this Subpart.

(ii) Systems shall report their bin classification under paragraph (3) of this subdivision to the State for approval no later than six months after the system is required to complete the second round of source water monitoring based on the schedule referenced in section 5-1.81(a)(3) of this Subpart.

(iii) The bin classification report to the State shall include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(b) Filtered system additional *Cryptosporidium* treatment requirements.

(1) Filtered systems shall provide the level of additional treatment for *Cryptosporidium* specified in this paragraph based on their bin classification as determined under subdivision (a) of this section and according to the schedule in subdivision (d) of this section.

System Classification	If the system uses the following filtration treatment in full compliance with section 5-1.30(b) of this Subpart (as applicable), then the additional <i>Cryptosporidium</i> treatment requirements are:			
	Conventional Filtration Treatment (including softening)	Direct Filtration	Slow Sand or Diatomaceous Earth Filtration	Alternative Filtration Technologies
Bin 1	No additional	No additional	No additional	No additional
Bin 2	1-log	1.5-log	1-log	(¹)
Bin 3	2-log	2.5-log	2-log	(²)
Bin 4	2.5-log	3-log	2.5-log	(³)

¹ As determined by the State such that the total *Cryptosporidium* removal and inactivation is at least 4.0-log.
² As determined by the State such that the total *Cryptosporidium* removal and inactivation is at least 5.0-log.
³ As determined by the State such that the total *Cryptosporidium* removal and inactivation is at least 5.5-log.

(2) (i) Filtered systems shall use one or more of the treatment and management options, as approved by the State, to comply with the additional *Cryptosporidium* treatment required in paragraph (1) of this subdivision.

(ii) Systems classified in Bin 3 and Bin 4 shall achieve at least 1-log of the additional *Cryptosporidium* treatment required under paragraph (1) of this subdivision using either one or a combination of the following, as approved by the State: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV.

(3) Failure by a system in any month to achieve treatment credit at least equal to the level of treatment required in paragraph (1) of this subdivision is a violation of the treatment technique requirement.

(4) If the State determines during a sanitary survey or an equivalent source water assessment that, after a system completed the monitoring conducted under section 5-1.81(a)(1) or (2) of this Subpart, significant changes occurred in the system's watershed that could lead to increased contamination of the source water by *Cryptosporidium*, the system shall take actions specified by the State to address the contamination.

(c) Unfiltered system *Cryptosporidium* treatment requirements.

(1) Determination of mean *Cryptosporidium* level.

(i) Following completion of the initial source water monitoring required under section 5-1.81(a)(1) of this Subpart, unfiltered systems shall calculate the arithmetic mean of all *Cryptosporidium* sample concentrations reported such monitoring. Systems shall report this value to the State for approval no later than six months after the month the system is required to complete initial source water monitoring based on the schedule referenced in section 5-1.81(a)(3) of this Subpart.

(ii) Following completion of the second round of source water monitoring required under section 5-1.81(a)(2) of this Subpart, unfiltered systems shall calculate the arithmetic mean of all *Cryptosporidium* sample concentrations reported under that monitoring.

Systems shall report this value to the State for approval no later than six months after the month the system is required to complete the second round of source water monitoring based on the schedule referenced in section 5-1.81(a)(3) of this Subpart.

(iii) If the monthly *Cryptosporidium* sampling frequency varies, systems shall first calculate a monthly average for each month of monitoring. Systems shall then use these monthly average concentrations, rather than individual sample concentrations, in the calculation of the mean *Cryptosporidium* level in subparagraphs (i) or (ii) of this paragraph.

(iv) The report to the State of the mean *Cryptosporidium* levels calculated under subparagraphs (i) and (ii) of this paragraph shall include a summary of the source water monitoring data used for the calculation.

(2) *Cryptosporidium* inactivation requirements. Unfiltered systems shall provide the level of inactivation for *Cryptosporidium* specified in this paragraph, based on their mean *Cryptosporidium* levels as determined under paragraph (1) of this subdivision and according to the schedule in subdivision (d) of this section.

(i) Unfiltered systems with a mean *Cryptosporidium* level of 0.01 oocysts/L or less shall provide at least 2-log *Cryptosporidium* inactivation.

(ii) Unfiltered systems with a mean *Cryptosporidium* level of greater than 0.01 oocysts/L shall provide at least 3-log *Cryptosporidium* inactivation.

(3) Inactivation treatment technology requirements. Unfiltered systems shall use chlorine dioxide, ozone UV or a method approved by the State to meet the *Cryptosporidium* inactivation requirements of this section.

(4) Use of two disinfectants. Unfiltered systems shall meet the combined *Cryptosporidium* inactivation requirements of this section and *Giardia lamblia* and virus inactivation requirements of section 5-1.30(c)(3) of this Subpart using a minimum of two disinfectants, and each of two disinfectants must separately achieve the total inactivation required for either *Cryptosporidium*, *Giardia lamblia*, or viruses. Systems that fail to install a second disinfectant to treat for *Cryptosporidium* are in violation of the treatment technique requirement.

(d) Schedule for compliance with *Cryptosporidium* treatment requirements.

(1) Following initial bin classification under subdivision (a) of this section, filtered systems shall provide the level of treatment for *Cryptosporidium* required under subdivision (b) of this section, on a schedule approved by the State.

(2) Following initial determination of the mean *Cryptosporidium* level under subdivision (c)(1)(i) of this section, unfiltered systems shall provide the level of treatment for

Cryptosporidium required under subdivision (c). The State may allow an additional two years for complying with the treatment requirement for systems making capital improvements.

(3) If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under subdivision (a)(3) of this section, the system shall provide the level of treatment for *Cryptosporidium* required under subdivision (b) of this section on a schedule approved by the State.

(4) If the mean *Cryptosporidium* level for an unfiltered system changes following the second round of monitoring, as determined under subdivision (c)(1)(ii) of this section, and if the system shall provide a different level of *Cryptosporidium* treatment under subdivision (c) of this section due to this change, the system shall meet this treatment requirement on a schedule approved by the State.

Subdivision 5-1.91 (b) is amended to read as follows:

(b) As a condition to the [grant] granting of a variance under subdivision (a) of this section, the supplier of water shall perform monitoring and other requirements as prescribed by the [department] Department.

The table Best Available Technologies (BATs) in subdivision (d) of section 5-1.91 is amended to read as follows:

BEST AVAILABLE TECHNOLOGIES (BATs)

Contaminant	Best Available Technologies		
	PTA ¹	GAC ²	OX ³
Benzene	X	X	
Carbon tetrachloride	X	X	
1,2-Dichloroethane	X	X	
Trichloroethylene	X	X	
para-Dichlorobenzene	X	X	
1,1-Dichloroethylene	X	X	
1,1,1-Trichloroethane	X	X	
Vinyl chloride	X		
cis-1,2-Dichloroethylene	X	X	
1,2-Dichloropropane	X	X	
Ethylbenzene	X	X	
Monochlorobenzene	X	X	
o-Dichlorobenzene	X	X	
Styrene	X	X	
Tetrachloroethylene	X	X	
Toluene	X	X	
trans-1,2-Dichloroethylene	X	X	
Xylenes (total)	X	X	
Alachlor		X	
Aldicarb		X	
Aldicarb sulfoxide		X	
Aldicarb sulfone		X	
Atrazine		X	
Carbofuran		X	
Chlordane		X	
Dibromochloropropane	X	X	
2,4-D		X	
Ethylene dibromide	X	X	
Heptachlor		X	
Heptachlor epoxide		X	
Lindane		X	
Methoxychlor		X	
PCBs		X	
Pentachlorophenol		X	
Toxaphene		X	
2,4,5-TPBenzo(a)pyrene		X	
Dalapon		X	
Dichloromethane	X		
Di(2-ethylhexyl)adipate	X	X	
Di(2-ethylhexyl)phthalate		X	
Dinsoeb		X	

Endothal		X	
Endrin		X	
Glyphosate			X
Hexachlorobenzene		X	
Hexachlorocyclopentadiene	X	X	
Oxamyl (Vydate)		X	
Picloram		X	
Simazine		X	
1,2,4-Trichlorobenzene	X	X	
1,1,2-Trichloroethane	X	X	
2,3,7,8-TCDD (Dioxin)		X	
[TTHMs]		[X ⁴]	
[HAA5s]		[X ⁴]	
<u>TTHM, HAA5, Bromate, Chlorite⁴</u>			

¹ Packed Tower Aeration

² Granular Activated Carbon

³ Oxidation (Chlorination or Ozonation)

⁴ [GAC10, as defined in section 5-1.1 of this Subpart. The other best available technology for TTHM and HAA MCL compliance is enhanced coagulation for TTHM and HAA precursor removal, as described in section 5-1.60 of this Subpart.] For surface water systems or ground water systems influenced by surface water, GAC10, as defined in section 5-1.1 of this Subpart, is the BAT for compliance with the TTHM and HAA5 MCL as a Running Annual Average (RAA). The other BAT for RAA compliance is enhanced coagulation for TTHM and HAA5 precursor removal, as described in section 5-1.60 of this Subpart. For compliance with the MCLs for TTHM and HAA5 as LRAAs, the following are the BATs: enhanced coagulation or enhanced softening, plus GAC10; GAC20, as defined in section 5-1.1 of this Subpart; or nanofiltration with a molecular weight cutoff less than or equal to 100 Daltons. Refer to section 5-1.65 of this Subpart for BATs for TTHM, HAA5, Bromate, and Chlorite.

Subdivisions 5-1.91 (e) and (f) are repealed and replaced with the new Subdivisions 5-1.91 (e) and (f) to read as follows:

(e) The following are the best technologies, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the inorganic chemicals and radionuclides listed in section 5-1.52, Tables 1 and 7 of this Subpart:

Technologies for Achieving MCL Compliance	
Chemical Name	Best Available Technologies
Antimony	2,7
Arsenic ⁵	1,2,5,6,7,9,13 ⁶
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6 ² ,7
Cyanide	5,7,10
Fluoride	1,7
Mercury (Hg)	2 ¹ ,4,6 ¹ ,7 ¹
Nickel	5,6,7
Nitrite	5,6,9
Nitrate	5,7
Selenium	1,2 ³ ,6,7,9
Thallium	1,5
Gross alpha	7
Combined radium (226 and 228)	5,6,7
Uranium	5,6,7,12 ⁴
Beta particle and photon activity	5,7

¹BAT only if influent Hg concentrations ≤ 10 $\mu\text{g/L}$.

²BAT for Chromium III only.

³BAT for Selenium IV only.

⁴Assumes that the system already has coagulation/filtration in place.

⁵BATs for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.

⁶To obtain high removals, iron to arsenic ratio must be at least 20:1.

Key to Best Available Technologies (BATs) in Table

1 = Activated Alumina

2 = Coagulation/Filtration (not BAT for systems < 500 service connections)

3 = Direct and Diatomite Filtration

4 = Granular Activated Carbon

- 5 = Ion Exchange
- 6 = Lime Softening (not BAT for systems < 500 service connections)
- 7 = Reverse Osmosis
- 8 = Corrosion Control
- 9 = Electrodialysis
- 10 = Chlorine
- 11 = Ultraviolet
- 12 = Enhanced coagulation/filtration
- 13 = Oxidation/Filtration

(f) The following are the affordable technologies, treatment techniques, or other means available to systems serving 10,000 persons or fewer for achieving compliance with the MCL for arsenic as listed in section 5-1.52 Table 1 of this Subpart:

Technology for Arsenic MCL Compliance at Systems Serving $\leq 10,000$	
Small system compliance technology¹	Affordable for listed small system categories
Activated Alumina (centralized)	All Systems Serving 25-10,000
Activated Alumina (Point-of-Use) ²	All Systems Serving 25-10,000
Coagulation/Filtration ³	Systems Serving 501-10,000
Coagulation-assisted Microfiltration	Systems Serving 501-10,000
Electrodialysis reversal ⁴	Systems Serving 501-10,000
Enhanced coagulation/filtration	All Systems Serving 25-10,000
Enhanced lime softening (pH > 10.5)	All Systems Serving 25-10,000
Ion Exchange	All Systems Serving 25-10,000
Lime Softening ³	Systems Serving 501-10,000
Oxidation/Filtration ⁵	All Systems Serving 25-10,000
Reverse Osmosis (centralized) ⁴	Systems Serving 501-10,000
Reverse Osmosis (Point-of-Use) ²	All Systems Serving 25-10,000

¹Small System Compliance Technologies for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.

²When point-of-use or point-of-entry devices are used for compliance, programs to ensure proper long-term operation, maintenance, and monitoring must be provided by the water system to ensure adequate performance.

³Unlikely to be installed solely for arsenic removal. May require pH adjustment to optimal range if high removals are needed.

⁴May not be appropriate for areas where water quantity may be an issue.

⁵To obtain high removals, iron to arsenic ratio must be at least 20:1.

Subdivision (e) of section 5-1.92 is amended to read as follows:

(e) In the case of a system which [does not serve] serves a population of no more than [500 service connections] 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under [paragraph] subdivision (a)(1) or (2) of this section may be renewed for one or more additional two-year periods, not to exceed six years, if the system establishes that it is taking all practical steps to meet the requirements of subdivision (a) of this section.

Subdivision (c) of section 5-1.94 is amended to read as follows:

(c) Public notice of an opportunity for hearing pursuant to subdivision (a) or (b) of this section shall be circulated in a manner designated to inform potentially interested persons

of the proposed action. Requests for hearing [must] shall be submitted to the [department]
Department within [15] 30 days after issuance of such public notice.

Appendix 5-A is repealed and a new Appendix 5-A is added to read as follows:

APPENDIX 5-A

RECOMMENDED STANDARDS FOR WATER WORKS, 2012 EDITION

“Recommended Standards for Water Works, 2012 edition” reported by the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. Available online at <http://10statesstandards.com/> and is available for viewing at the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 and the Bureau of Water Supply Protection, Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237.

Appendix 5-C of Subpart 5-1 is repealed and replaced with the new Appendix 5-C to read as follows:

APPENDIX 5-C

ACCEPTABLE METHODS FOR THE ANALYSIS OF CONTAMINANTS IN DRINKING WATER

Table of Contents

- I. Approved methods for analysis of water samples to determine compliance with this Subpart**
- II. Sample Compositing Requirements**
 - A. Inorganic Chemical Compositing Requirements**
 - B. Water Sample Compositing Requirements for Pesticides, Dioxin, and PCBs**

I. Approved methods for analysis of water samples to determine compliance with this

Subpart

All samples shall be analyzed using approved methods as recognized by the United States Environmental Protection Agency (EPA) and/or the New York State Environmental Laboratory Approval Program (ELAP). A list of approved methods is available from ELAP at http://www.wadsworth.org/sites/default/files/WebDoc/I180_1_38_0.pdf or by request from the Records Access Officer, Department of Health, Corning Tower, Room 2364, Albany, New York 12237-0044.

Test strips for free chlorine, Method D99–003, may be used for compliance monitoring only when approval of the State has been provided in writing. Method D99–003, Revision 3.0, “Free Chlorine Species (HOCl– and OCl–) by Test Strip,” November 21, 2003, is available from Industrial Test Systems, Inc., 1875 Langston St., Rock Hill, SC 29730 or from the Records Access Officer, Department of Health, Corning Tower, Room 2364, Albany, New York 12237-0044.

II. Sample Compositing Requirements

A. Inorganic Chemical Sample Compositing Requirements

The State may reduce the total number of samples which must be analyzed in accordance with Tables 8A-8D of section 5-1.52 by allowing the use of compositing. Composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples shall be done in an ELAP certified laboratory.

If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any inorganic chemical, then a follow-up sample shall be taken within 14 days at each sampling point included in the composite. Each of the follow-up samples shall be analyzed for the contaminant(s) that exceeded one-fifth of the MCL in the composite sample.

B. Water Sample Compositing Requirements for Pesticides, Dioxin and PCBs

The State may reduce the total number of samples collected and analyzed in accordance with Table 9C of section 5-1.52 by allowing the use of compositing. Composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for

analysis is less than one-fifth of the MCL. Compositing of samples shall be done in an ELAP certified laboratory.

- (a) If the concentration in the composite sample is greater than or equal to the detection limit of any organic chemicals listed in section 5-1.52 Table 9C, then a separate follow-up sample shall be taken within 14 days at each sampling point included in the composite. Each of the follow-up samples shall be analyzed for the contaminant(s) which were detected in the composite sample.

- (b) If duplicates or residual portions of the original sample taken from each sampling point used in the composites are available, the system may use such samples if additional sampling is necessary. Additional samples shall be analyzed and the results reported to the State within 14 days of collection.

- (c) In systems serving fewer than 3,300 persons, the State may permit compositing among different systems provided the five-sample limit is maintained. In systems serving 3,300 or more persons, the State may permit compositing of samples from up to five sampling locations within the system, provided the reporting limit is maintained.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the proposed revisions is set forth in Public Health Law (PHL) sections 201 and 225. Section 201(1)(l) of the PHL establishes the powers and duties of the Department of Health (Department), which include the supervision and regulation of the sanitary aspects of public water supplies. Section 225 of the PHL sets forth the powers and duties of the Public Health and Health Planning Council (PHHPC), which include the authority to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Further, section 225(5)(a) of the PHL allows the SSC to deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in New York State.

The revisions are in accord with the requirements of the United States Environmental Protection Agency (EPA) for: the Lead and Copper Rule (LCR), 56 FR 26460 - 26564, June 7, 1991, as amended 56 FR 32112, July 15, 1991; 57 FR 28785, June 29, 1992; and 59 FR 33860, June 30, 1994; the LCR Minor Revisions (LCRMR), 65 FR 1950, January 12, 2000; the LCR Short-Term Revisions (LCRSTR), 72 FR 57782, October 10, 2007; the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR), 71 FR 654, January 5, 2006, Vol. 71, No. 3, as corrected on January 30, 2006, Vol. 71, No. 19, and February 6, 2006, Vol. 71, No. 24; the Stage 2 Disinfection and Disinfection Byproducts Rule (Stage 2 DBPR), 71 FR 388, January 4, 2006, with corrections on January 27, 2006, Vol. 71, No. 18; June 29, 2006, Vol. 71, No. 125; and November 14, 2006, Vol. 73, No.221 and an amendment on June 29, 2009, Vol. 74 No. 123; and the Variances and Exceptions Rule (V & E), 63 FR 43834, August 14, 1998, Vol. 74, No. 123.

Legislative Objectives:

The legislative objective of sections 201 and 225 of the PHL is to ensure that PHHPC, in conjunction with the Commissioner of Health, protect the public health by adopting drinking water sanitary standards. In accordance with that objective, this regulation amends the SSC by revising Part 5 to enhance current protections governing public water systems (PWSs). Further, this amendment will update the SSC to ensure consistency among State and federal requirements.

Needs and Benefits:

The Department recognizes that there is no higher public health priority than ensuring the delivery of clean drinking water. To this end, the Department has obtained primacy for the implementation and enforcement of the majority of federal drinking water regulations. These revisions to Subpart 5-1, incorporate the following additional federal regulations to ensure the Department is eligible for primacy over such requirements: Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR, respectively); Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR); and the Variances and Exemptions (V&E) Rule. The Department is already implementing these federal regulations through a partnership agreement with EPA. Accordingly, the adoption of these regulations merely formalizes the existing regulatory arrangement and is expected to have no impact on PWSs.

Additionally, the proposed amendments reflect changes in the PHL regarding cross-connection control and water supply emergency plans. The proposed amendments also include revisions to

Appendix 5-C of Subpart 5-1. Minor edits to correct typographical errors and to update references are also proposed.

The minor revisions (LCRMR) eliminate unnecessary requirements in the Lead and Copper Rule (LCR), reduce the reporting burden, and promote consistent national implementation of the LCR. In addition, language was added to clarify requirements and correct oversights in the original rule. The revisions are called “minor” because they do not affect the lead and copper maximum contaminant level goals, action levels, or other basic regulatory requirements to monitor for lead and copper at the tap and to optimize corrosion control.

The Short-Term revisions (LCRSTR) enhance the implementation of the LCR in the areas of monitoring, treatment, customer awareness, lead service line replacement, and public education. The amendments ensure that drinking water consumers receive meaningful, timely, and useful information needed to help limit exposure to lead in drinking water.

The EPA promulgated the Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR) to reduce potential adverse health risks associated with the use disinfection byproducts (DBPs) in drinking water. Chlorination is the most popular disinfectant used and, within the State, an estimated 2,687 community (CWS) and nontransient noncommunity (NTNCWS) PWSs in the State, serving over 18 million people, use chlorination as a means of disinfecting drinking water to kill or inactivate microbial contaminants.

The Stage 2 DBPR strengthens public health protection for customers of systems that deliver disinfected water, by requiring such systems to meet maximum contaminant levels as an average

at each compliance monitoring location (instead of as a system-wide average as in previous rules) for two groups of DBPs: trihalomethanes (TTHM) and five haloacetic acids (HAA5). This amendment reduces DBP exposure, along with related potential health risks, and provides more equitable public health protection.

Additionally, the amendments include the federal Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR). EPA promulgated the LT2 ESWTR to provide further protection of public health against *Cryptosporidium* and other microbial pathogens in drinking water from surface water sources. *Cryptosporidium* is a protozoan parasite that is common in surface water. Approximately 1,039 PWSs in the State, serving 14 million people, use surface water or ground water under the direct influence of surface water as a raw water source.

When ingested, *Cryptosporidium* can cause acute and severe gastrointestinal illness, which is especially dangerous for immunocompromised individuals. The proposed amendment builds on current regulations, which require PWSs using surface water sources to filter the water, unless a filtration avoidance waiver is granted, to remove at least 99 percent (2-log) of *Cryptosporidium*. This rule extends the public health benefit of *Cryptosporidium* removal or inactivation to consumers served by all PWSs that use water sources from surface water or ground water that is under the direct influence of surface water.

Further, the proposed LT2 ESWTR regulations address the risk posed by uncovered finished water storage facilities. These facilities are subject to contamination through runoff, bird and animal wastes, human activity, algal growth, insects, and airborne deposition. Under this proposed rule, PWSs must limit these risks by either covering the facility or treating the outflow.

The proposed amendments also reflect the federal Variances and Exemptions (V&E) Rule, which allows states to grant variances to small PWSs that cannot afford to comply with primary drinking water standards. These variances and exemptions allow a system to install and maintain technology that can remove a contaminant to the maximum extent that is affordable while still being protective of public health.

Further, requirements regarding cross-connection control are being revised for consistency with section 225 of the PHL. The revisions reduce the burden on the State by allowing a Department-approved entity to certify backflow prevention testers.

The proposed rule also reflects an amendment to PHL section 1125. This change requires systems which service a population of more than 3,300 to submit water supply emergency plans, rather than only those with a minimum operational revenue. In addition, the proposed regulation requires a PWS to include cyber-attacks in its vulnerability assessment and to incorporate the penalty established in PHL for disclosing confidential information about a water system emergency plan. This rule change simply makes Subpart 5-1 consistent with PHL.

Appendix 5-C to Subpart 5-1, Acceptable Methods for the Analysis of Contaminants in Water, is also amended. The Department is removing the approved methods from the Appendix and requiring all samples to be analyzed using a method approved by the EPA or the New York State Environmental Laboratory Approval Program (ELAP). This approach will eliminate the redundancy of listing this information in multiple locations and ensure that PWSs are using the

most current method. In addition, the revisions will also allow limited use of test strips to test for chlorine residual in drinking water.

Costs:

Costs to Public Water Systems:

The proposed regulatory amendments incorporate revisions to federal rules regarding Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR); Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR); the Variances and Exemptions (V&E) Rule. These proposed amendments will not impose an additional cost to PWSs when adopted because PWSs are already complying with these federal requirements.

In general, the proposed revision concerning cross-connection control will not impose costs because this amendment merely conforms to revisions to the PHL. The only new cost is that of having cross-connection control tester courses approved by a third-party, which may cost up to \$1500 per trainer each year. However, this cost may be passed on to testers who are renewing their certifications. Spread over approximately 1,100 testers, it should cost each less than \$15 for renewal, or about \$5 extra per tester per year.

The requirement for systems that serve a population of more than 3,300 to submit water supply emergency plans will not incur additional costs, because PWSs are already complying with this statutory requirement.

The revisions to Appendix 5-C will not change the methods that PWSs use for monitoring water quality. Accordingly, this revision will result in no financial impact to PWSs.

Finally, the proposed amendments to the tables simply make the tables consistent with the other amendments and, therefore, will not impose any additional costs.

Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:

State and local government agencies are affected in different ways by these rule revisions. Some PWSs are operated by local, State or federal government agencies. All PWSs are subject to State or local health department (LHD) oversight. To the extent these amendments incorporate existing federal requirements, there is no additional cost imposed.

The cost to State and local government agencies that operate PWSs will be minimal for the proposed cross-connection control revisions. As discussed, above, the proposed revisions will incur costs to training providers for the third party certification of their courses.

The requirement for systems that serve a population of more than 3,300 to submit water supply emergency plans will not incur additional costs because PWSs are already complying with this statutory requirement.

The revisions to Appendix 5-C will not change the methods that PWSs use for monitoring water quality. Accordingly, this revision will result in no financial impact to PWSs.

Finally, the proposed amendments to the tables simply make the tables consistent with the other amendments and, therefore, will not impose any additional costs.

After the Department is granted primacy for the enforcement of these regulations, enforcement costs are expected to be minimal because the State and LHDs already enforce current public water supply regulations, and compliance with the proposed amendments is already widespread. Enforcement of these additional regulations represents a minimal increase in burden over current enforcement efforts.

Local Government Mandates:

LHDs will not be impacted by the proposed regulations because they are already in compliance.

Paperwork:

These revised regulations do not require new forms or other paperwork. Adoption of these regulations will actually reduce paperwork because it will eliminate the need for PWSs to conduct dual reporting to the State and federal government.

Duplication:

Adoption of these revised regulations will reduce duplication efforts for PWS, by eliminating the need for PWSs to conduct dual reporting to the State and federal government.

Alternatives:

Declining to adopt these regulations would make compliance oversight of PWSs primarily the responsibility of the State, with oversight by the federal government remaining for four specific

federal rules. This option would require additional and unnecessary reporting and coordination for PWSs. The proposed rule revisions are the better alternative.

Federal Standards:

The majority of these revisions incorporate changes in federal standards.

Compliance Schedule:

Currently, PWSs must comply with the federal LCRM, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule, pursuant to schedules established by EPA, with the exception of certain deadlines in LT2 ESWTR. The provisions regarding certification of a cross-connection control tester course by a third-party will take effect in 2017. All provisions concerning the Water Supply Emergency Plans are currently in effect, pursuant to statute.

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 Rule:

Revisions to 10 NYCRR Subpart 5-1 of the State Sanitary Code are required to obtain primacy from the United States Environmental Protection Agency (EPA) for implementation of the following federal rules: Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR); Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR); and the Variances and Exemptions (V&E) Rule. Additionally, these amendments address changes the New York State Public Health Law (PHL) regulating cross-connection control and water supply emergency plans.

Local governments and small businesses operate most of the PWSs in New York State. It is estimated that almost 93 per cent of the PWSs impacted by any of the proposed revisions are either small businesses or local governments.

These revisions will benefit local governments and small businesses by consolidating and simplifying reporting requirements.

Compliance Requirements:

Currently, PWSs must comply with the federal LCRMR, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule, pursuant to schedules established by EPA, with the exception of certain

deadlines in LT2 ESWTR. The provisions regarding certification of a cross-connection control tester course by a third-party will take effect in 2017. All provisions concerning the Water Supply Emergency Plans are currently in effect, pursuant to statute.

Professional Service:

The revision of the rules regarding LCRMR, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule will not change the requirements for professional services used by small businesses or local governments, because PWSs are already complying with the requirements.

Additional professional services will be needed to provide required training courses on cross-connection control and for third party certification of training providers.

The addition of cyber security provisions to the water supply emergency plans may have a small impact for those systems that do not prepare their own Emergency Response Plans and Vulnerability Assessments. However, compliance is a statutory requirement.

Compliance costs:

The proposed amendments that incorporate federal regulations will not impose an additional cost to small business or local governments that own or operate a PWS, because PWSs are already complying with these federal requirements.

The cost to State and local government agencies that operate PWSs will be minimal for the proposed cross-connection control revisions. As discussed, above, the proposed revisions will

incur costs to training providers for the third party certification of their courses. The requirement for systems that serve a population of more than 3,300 to submit water supply emergency plans will not incur additional costs because PWSs are already complying with this statutory requirement.

The revisions to Appendix 5-C will not change any methods that PWS use for monitoring water quality. Accordingly, this revision will result in no financial impact to PWSs.

Finally, the proposed amendments to the tables simply make the tables consistent with the other amendments and, therefore, will not impose any additional costs.

After the Department is granted primacy for the enforcement of these regulations, enforcement costs are expected to be minimal because the State and LHDs already enforce current public water supply regulations, and compliance with the proposed amendments is already widespread. Enforcement of these additional regulations represents a minimal increase in burden over current enforcement efforts.

Economic and Technological Feasibility:

Currently available technology is adequate to meet rule requirements. Notably, EPA also determined that compliance with the federal regulations, as incorporated by these regulations, was both economically and technologically feasible for small businesses and local governments.

Minimizing Adverse Impact:

The proposed revisions largely incorporate existing federal rules and revisions to the PHL. With respect to provisions specific to New York State, the Department will provide PWSs with training, guidance documents, and other assistance.

Small Business and Local Government Participation:

The Department presented and discussed the proposed revisions at organizational meetings where small community water systems were represented. These meetings included the New York Rural Water Association, the American Water Works Association, the Conference of Environmental Health Directors, the New York Association of Towns, and the New York Conference of Mayors, among others.

The revisions regarding cross-connection control were discussed with backflow prevention training providers, most of whom operate small businesses or are non-governmental nonprofit organizations. Prior to the implementation of the revised program, the Department provided training providers, certifying agencies, and backflow prevention device testers with an opportunity to comment on the revisions.

For Rules That Either Establish or Modify a Violation or Penalties Associated With a Violation:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement under the proposed regulation. This regulation creates no new penalty or sanction. Hence, no cure period is necessary.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

Many PWSs are located in the 44 counties that are defined as rural and in the towns of the additional nine counties where there are rural towns. Although the revised regulations will impact PWSs in these rural areas, the revisions will have the same effect on a PWS regardless of whether it is in a rural area or an urban area.

Revisions to 10 NYCRR Subpart 5-1 of the State Sanitary Code are required to obtain primacy from the United States Environmental Protection Agency (EPA) for implementation of the following federal rules: Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR); Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR); and the Variances and Exemptions (V&E) Rule. Additionally, these amendments address changes the New York State Public Health Law (PHL) regulating cross-connection control and water supply emergency plans.

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

Currently, PWSs must comply with the federal LCRMR, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule, pursuant to schedules established by EPA, with the exception of certain deadlines in LT2 ESWTR. The provisions regarding certification of a cross-connection control tester course by a third-party will take effect in 2017. All provisions concerning the Water Supply Emergency Plans are currently in effect, pursuant to statute.

The revision of the rules regarding LCRMR, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule will not change the requirements for professional services used by small businesses or local governments in rural areas, because PWSs are already complying with the requirements.

Additional professional services will be needed to provide required training courses on cross-connection control and for third party certification of training providers.

The addition of cyber security provisions to the water supply emergency plans may have a small impact for those systems that do not prepare their own Emergency Response Plans and Vulnerability Assessments. However, compliance is a statutory requirement.

Compliance costs:

The proposed amendments that incorporate federal regulations will not impose an additional cost to small business or local governments in rural areas that own or operate a PWS, because PWSs are already complying with these federal requirements.

The cost to State and local government agencies that operate PWSs will be minimal for the proposed cross-connection control revisions. As discussed, above, the proposed revisions will incur costs to training providers for the third party certification of their courses. The requirement for systems that serve a population of more than 3,300 to submit water supply emergency plans will not incur additional costs because PWSs are already complying with this statutory requirement.

The revisions to Appendix 5-C will not change any methods that PWS use for monitoring water quality. Accordingly, this revision will result in no financial impact to PWSs.

Finally, the proposed amendments to the tables simply make the tables consistent with the other amendments and, therefore, will not impose any additional costs.

After the Department is granted primacy for the enforcement of these regulations, enforcement costs are expected to be minimal because the State and LHDs already enforce current public water supply regulations, and compliance with the proposed amendments is already widespread. Enforcement of these additional regulations represents a minimal increase in burden over current enforcement efforts.

Minimizing Adverse Impact:

The proposed revisions largely incorporate existing federal rules and revisions to the PHL. With respect to provisions specific to New York State, the Department will provide PWSs with training, guidance documents, and other assistance.

Rural Area Participation:

The majority of the proposed revisions incorporate existing federal regulations into 10 NYCRR Subpart 5-1. Representatives of public and private interests in rural areas had an opportunity to participate in the rule making process while the federal regulations were being developed.

Outreach was also conducted by the DOH's Bureau of Water Supply Protection in the form of presentations at various stakeholder meetings, such as the New York Section of the American Water Works Association and the New York Rural Water Association.

JOB IMPACT STATEMENT

The Department of Health has determined that the proposed revisions will not have substantial adverse impact on jobs or employment opportunities. It is possible that new technologies or products developed to comply with the revised rules would bring new employment opportunities to the state.

SUMMARY OF EXPRESS TERMS

These proposed amendments concern those sections of Title 10 that apply to adult day health care services for registrants with acquired immune deficiency syndrome. First, the amendments are intended to expand the population that may be served by adult day health care programs that are approved as providers of specialized services for registrants with AIDS (“AIDS ADHCPs”). Second, the amendments would conform the standards applicable to AIDS ADHCPs operated by residential health care facilities with those operated by diagnostic and treatment centers. Lastly, the amendments would conform the regulations governing AIDS ADHCPs to the regulations governing non-specialized adult day health care programs, thereby similarly allowing for AIDS ADHCPs to more effectively contract with managed care plans.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201(1)(v) and 2803(2) of the Public Health Law, subdivision (g) of section 86-2.9, section 86-4.41, section 425.18 and Part 759 of Title 10 (Health) 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:

Subdivision (g) of section 86-2.9 is amended to read as follows:

(g) Effective April 1, 1994 and thereafter, reimbursement for adult day health care services[,] that are provided to registrants with acquired [immunodeficiency] immune deficiency syndrome (AIDS) and other human immunodeficiency virus (HIV) related illnesses and, effective April 1, 2017, that are provided to registrants who are otherwise considered at the discretion of the commissioner to be part of a high-need population that, regardless of their HIV status, would benefit from receiving these adult day health care services shall be established pursuant to this subdivision. The services to be provided to such registrants shall be the same as those listed in Part [427] 759 of this Title.

Reimbursement to a residential health care facility shall be established as follows:

(1) The rate of payment shall consist of a single price per visit to include the operating component, transportation, and the capital cost component of the rate. Payment shall be based upon a per visit rate of \$160 with not more than one reimbursable visit per 24-hour period per registrant.

(2) To be eligible to receive reimbursement pursuant to this section, a residential health care facility must be certified by the department pursuant to Part 710 of this Title to

provide adult day health care services for AIDS/HIV registrants and, effective April 1, 2017, other high-need registrants.

* * *

Section 86-4.41 is amended to read as follows:

86-4.41 Computation of basic rates for day health care services provided by freestanding ambulatory care facilities to patients with acquired immune deficiency syndrome (AIDS), [and] other human immunodeficiency virus (HIV) related illnesses [by free-standing ambulatory care facilities] and other high-need populations that, regardless of their HIV status and in the discretion of the commissioner, would benefit from receiving adult day health care services.

Effective April 1, 1994 and thereafter, reimbursement for adult day health care services that are provided to registrants with acquired immune deficiency syndrome (AIDS), other human immunodeficiency virus (HIV) related illnesses and, effective April 1, 2017, that are provided to registrants who are otherwise considered at the discretion of the commissioner to be part of a high-need population that, regardless of their HIV status, would benefit from receiving these adult day health care services shall be established pursuant to this section.

(a) For payments made pursuant to this section for day health care services rendered to patients who have AIDS or HIV-related illness and other high-need registrants, reimbursement shall be a single price per visit, with not more than one reimbursable visit per day per patient. For 1993 an initial price shall be determined taking into consideration reasonable projections of necessary costs, and the costs and statistics contained in proposed annual budgets for this service as defined in section 759.1([c]d) of this Title, including, but not limited to, utilization, staffing and salaries. For subsequent rate periods

the price established pursuant to this section shall be adjusted by the trend factor described in subdivision (e) of this section after considering the actual allowable expenditures and statistics for the year which ended 15 months prior to the rate period.

(b) To be eligible to receive reimbursement pursuant to this section, a free-standing ambulatory care facility must be certified to provide general medical services and day health care services for AIDS/HIV patients and, effective April 1, 2017, to other high-need registrants.

(c) The price established pursuant to this section shall be full reimbursement for the following:

(1) physician services, nursing services, and other related professional expenses directly incurred by the licensed facility, including the provision of triage or sick call services;

(2) space occupancy and plant overhead costs;

(3) administrative personnel, business office, data processing, recordkeeping, housekeeping, food services, transportation, and other related facility overhead expenses;

(4) all ancillary services described in section [759.6] 759.8 of this Title and laboratory tests and diagnostic X-ray services appropriate to the level of primary medical care required by the patient;

(5) all medical supplies, immunizations, and drugs directly related to the provision of services [except for those drugs used to treat AIDS patients for which fee-for-service reimbursement is available as determined by the Department of Social Services (see section 7.0 of the Medicaid Ordered Ambulatory Services Fee Schedule as contained in the Medicaid Management Information Systems (MMIS) Clinic Services Provider Manual (revised October, 1992)). Copies of the schedule may be obtained from the

Department of Social Services and are available for inspection and copying at the Department of Health, Records Access Office, 22nd Fl., Corning Tower, Empire State Plaza, Albany, New York 12237-0042)].

(d) Components of the price may be adjusted for service capacity, urban or rural location, and for regional differences in wage levels, space occupancy, and facility overhead costs, by comparing anticipated utilization and costs with actual experiences. The downstate region shall be defined as the counties of Putnam, Rockland, Westchester, Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk and the upstate region shall be defined as all remaining counties in the State.

(e) The commissioner shall establish trend factors to project increases in prices for the effective period of the reimbursement rates. The trend factors shall be developed using available price indices including elements of the United States Department of Labor consumer and producer price indices and special price indices developed by the Commissioner for this purpose. The projected trend factors shall be updated on an annual basis, based upon current and available data.

Section 425.18 is amended to read as follows:

425.18 Services for registrants with acquired immune deficiency syndrome (AIDS) and other high-need populations.

(a) Applicability.

(1) This section applies to an adult day health care program approved by the commissioner pursuant to Part 710 of this Chapter as a provider of specialized services

for registrants with AIDS and other high-need populations that in the discretion of the Commissioner would benefit from receiving adult day health care services.

(2) For purposes of these regulations, AIDS means acquired immune deficiency syndrome and other human immunodeficiency virus (HIV) related illness.

(b) General requirements. The program shall provide comprehensive and coordinated health services in accordance with this Article and requirements set forth in [sections 425.9 through 425.17 of this] Part 759 of this Title and shall receive payment for such services in accordance with section 759.14 of this Title. [In addition, the operator must provide or make arrangements for:

- (1) case management services;
- (2) substance abuse services, if appropriate;
- (3) mental health services;
- (4) HIV prevention and counseling services;
- (5) pastoral counseling;
- (6) TB screening and on-going follow up; and
- (7) specialized medical services including gynecology, as needed.

(c) Staffing requirements. The operator must provide or make arrangements for:

- (1) specialty oversight of the AIDS program by a practitioner who has experience in the care and clinical management of persons with AIDS; and
- (2) nursing services for the AIDS program under the supervision of a registered professional nurse with experience in the care and management of persons with AIDS.]

Part 759 is amended to read as follows:

PART 759

ADULT DAY HEALTH CARE SERVICES FOR REGISTRANTS WITH AIDS AND
OTHER HIGH-NEED POPULATIONS

(Statutory authority: Public Health Law, Sec. 2803)

Sec.

759.1 Definitions

759.2 Applicability

759.3 Changes in existing program

759.[3]4 General requirements

759.[4]5 Admission, continued stay, and [patient] registrant assessment

759.[5]6 Comprehensive care planning

759.7 Registrant continued stay evaluation

759.[6]8 Registrant services

759.[7]9 Medical record system

759.10 General records system

759.11 Confidentiality of records

759.[8]12 [Utilization control and quality assurance] Quality assessment and assurance

759.[9]13 Program [E]evaluation

759.14 Payment

Section 759.1 Definitions. As used in this Part, unless the context otherwise requires:

(a) For purposes of this Part, AIDS shall mean acquired immune deficiency syndrome and other human immunodeficiency virus (HIV) related illnesses.

(b) *Registrant* means a person who either has AIDS or HIV-related illness or is otherwise considered to be part of a high-need population that, regardless of HIV status and in the discretion of the Commissioner, would benefit from receiving adult day health care services and:

(1) who is not a resident of a residential health care facility, is functionally impaired and not homebound, and requires certain preventive, diagnostic, therapeutic, rehabilitative or palliative [items] care or services but does not require the continuous 24-hour-a-day inpatient care and services provided by a general hospital, or residential health care facility; [and]

(2) whose assessed social and health care needs[, in the professional judgment of the physician of record, nursing staff, and social services and other professional personnel of the adult day health care program can be met satisfactorily in whole or in part by delivery of appropriate services in such program] can satisfactorily be met, in whole or in part, by the delivery of appropriate services in the community setting; and

(3) who has been accepted by an adult day health care program based on an authorized practitioner's order or a referral from a managed care organization or care coordination model and a comprehensive assessment conducted by the adult day health care program or by the managed care organization or care coordination model.

(c) *Adult day health care program, or program,* means an approved adult day health care program that is provided in a licensed diagnostic and treatment center, a residential health care facility or an approved extension site of either.

(d) Adult day health care services, or services, means care and services provided to a registrant [in a diagnostic and treatment center or approved extension site] under the medical direction of a physician by personnel of the adult day health care program. Such care and services are required to be in accordance with a comprehensive assessment of care needs and individualized health care plan to maintain or improve a registrant's health status and enable the registrant to remain in the community[, ongoing implementation and coordination of the health care plan, and transportation].

(e) Managed care organization means a managed care plan or a managed long-term care plan.

(f) Operating hours for an adult day health care program means the period of time that the program must be open, operational and providing services to registrants in accordance with the approval granted by the Department. Each approved adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, and must provide, at a minimum, nutritional services in the form of at least one meal and necessary supplemental nourishment and planned activities. In addition, an ongoing assessment must be made of each registrant's health status by the adult day health care program or by the managed care organization or care coordination model that referred the registrant to the adult day health care program in order to provide coordinated care planning, case management and other health care services as determined by the registrant's needs.

(g) Visit means an individual episode of attendance by a registrant at an adult day health care program during which the registrant receives adult day health care services in accordance with his or her comprehensive care plan. Registrants referred by a managed

care organization or care coordination model will receive services as ordered by those entities in conformance with those entities' comprehensive assessment after discussion and consultation with the adult day health care program.

(h) Registrant capacity means the total number of registrants approved by the Department for each session in a 24-hour day.

(i) Operator of an adult day health care program, or operator, means the operator of a diagnostic and treatment center or a residential health care facility that is approved by the Department to be responsible for all aspects of the adult day health care program.

(j) Practitioner means a physician, nurse practitioner, or a physician's assistant with physician oversight.

(k) Department means the New York State Department of Health.

(l) Commissioner means the Commissioner of the New York State Department of Health.

(m) Care coordination model means a program model that meets guidelines specified by the Commissioner that supports coordination and integration of services pursuant to section 4403-f of the Public Health Law.

(n) Comprehensive assessment means an interdisciplinary comprehensive assessment of a registrant completed in accordance with section 759.5 of this Part by the adult day health care program or an interdisciplinary comprehensive assessment, approved by the Department, completed by the managed care organization or care coordination model that referred the registrant to the adult day health care program.

(o) Care plan means the comprehensive care plan developed in accordance with section 759.6 of this Part by the adult day health care program.

(p) Unbundled Services/Payment Option means the ability of an adult day health care program to provide less than the full range of adult day health care services to a functionally impaired individual referred by a managed care organization or care coordination model based on the registrant's comprehensive assessment. The full range of adult day health care services as described in Part 759 shall be available to all registrants enrolled in the adult day health care program.

759.2 Applicability.

(a)(1) The operator of a diagnostic and treatment center or a residential health care facility may provide adult day health care services to registrants when approved pursuant to Part 710 of this Title.

(2) A diagnostic and treatment center or a residential health care facility which has been approved by the [department] Department to operate an adult day health care program at its primary site may provide adult day health care services at an extension site approved by the [department] Department under the provisions of section 710.1 of this [Chapter]Title.

(3) A diagnostic and treatment center or a residential health care facility which does not operate an adult day health care program at its primary site may provide such a program at an extension site approved by the [department] Department in accordance with section 710.1 of this Title if there is not sufficient suitable space within the center or residential health care facility to accommodate a full range of adult day health care program activities and services. The [department] Department may conduct an onsite survey of the [center] extension clinic or offsite location of the residential health care facility to

determine whether the facility space and/or location is suitable for an adult day health care program.

(b) Prior to operation of the facility's adult day health care [services] program, the operator shall apply to the [department] Department for approval in accordance with Part 710 of this Title and shall submit a description of the proposed program, including but not limited to:

- (1) need for the program, including statements on philosophy and objectives of the program;
- (2) range of services provided;
- (3) methods of delivery of services;
- (4) transportation arrangements for registrants;
- (5) physical space and use thereof;
- (6) number and expected characteristics of registrants to be served;
- (7) personnel participating in the program, including qualifications;
- (8) case management services and use of and coordination with existing community resources, including designated AIDS centers, health homes and other licensed health facilities, alcohol and substance abuse programs and rehabilitation facilities as appropriate;
- (9) financial policies and procedures;
- (10) program budget;
- (11) methods for program evaluation; and
- (12) proximity to an identified number of potential registrants.

795.3 Changes in existing program.

(a) Applications for approval of changes in the program, including but not limited to substantial changes in the physical plant, space and utilization thereof, the extent and type of services provided, and the program's registrant capacity, must be submitted to the Department in writing and must conform to the provisions of Part 710 of this Title.

(b) Written requests for additional program sessions must be based on the number and need of registrants and be approved by the Department.

(c) An operator may not discontinue the operation of services to registrants without:

(1) receiving written approval from the Commissioner in accordance with Part 710 of this Title. The application to discontinue services must set forth the specific intended date of discontinuance and the intended plans for alternate services to registrants;

(2) notifying each registrant and coordinating with the registrant's managed care organization, care coordination model, or primary care physician regarding the development of suitable plans for alternate services for each registrant; and

(d) The operator must notify the Department of the program's election of the Unbundled Services/Payment Option in writing thirty days before commencement of this option.

759.[3]4 General requirements.

[The operator shall have and implement written policies and procedures which shall provide for:

(a) a written affiliation agreement with a designated AIDS center or other hospital for the transfer of registrants requiring emergency care, acute inpatient care services and clinical, sub-specialty clinical, and ancillary services;

(b) the appropriate transfer of registrants when applicable, to the care or supervision of other health facilities in accordance with the provisions for transfer and affiliation under section 400.9 of this Title;

(c) staff experienced in the care and management of persons with AIDS or HIV-related illness, equipment and space sufficient to meet the assessed needs of registrants, including sufficient bath and toilet facilities pursuant to Section 713-2.12 of this Title; and

(d) the development and implementation of in-service and continuing educational programs, staff counseling and supportive services, and infection control specific to AIDS and HIV illness.]

(a) An operator must:

(1) provide services to registrants consistent with the requirements of this Title and Part and other applicable statutes and regulations;

(2) provide appropriate staff, equipment, supplies and space as needed for the administration of the adult day health care program in accordance with the requirements of this Part. Such staff are to be experienced in the care and management of persons with AIDS or HIV-related illness as well as in the care and management of other high-need populations that may be registrants of the program. Equipment and space are to be sufficient to meet the assessed needs of registrants, including sufficient bath and toilet facilities, pursuant to Part 714 of this Title;

(3) provide each registrant with a copy of a bill of rights specific to the operation of the adult day health care program. These rights include, but are not limited to:

(i) confidentiality, including confidential treatment of all registrant records;

(ii) freedom to voice grievances about care or treatment without discrimination or reprisal;

(iii) protection from physical and psychological abuse;

(iv) participation in developing the comprehensive care plan;

(v) receiving written notification by the program at admission and following the continued stay evaluation of the services the registrant shall receive while attending the adult day health care program; and

(vi) freedom to decide whether or not to participate in any given activity.

(b) Administration. Without limiting its responsibility for the operation and management of the program, the operator must designate a person responsible for:

(1) coordinating services for registrants with services provided by other community-based agency programs, including but not limited to, certified home health agencies, social service agencies, clinics and hospital outpatient departments and services; provided, however, with respect to registrants referred to the adult day health care program by a managed care organization or care coordination model, the coordination of such services shall be the responsibility of the managed care organization or care coordination model; and

(2) day-to-day direction, management and administration of the adult day health care services; such person must be a practitioner who has experience in the care and clinical management of persons with AIDS or HIV-related illness and other high-need populations that enroll as registrants, including but not limited to:

(i) assigning adequate and appropriately licensed personnel to be on-duty at all times when the program is in operation to ensure safe care of the registrants;

(ii) assigning and supervising activities of all personnel to ensure that registrants receive assistance in accordance with their comprehensive care plans, including nursing services under the supervision of a registered professional nurse with experience in the care and management of persons with AIDS or HIV-related illness and other high-need populations that enroll as registrants;

(iii) ensuring supervision of direct care staff in accordance with state rules and regulation;

(iv) developing and implementing or arranging for in-service orientation, training and staff development, staff counseling and supportive services, and infection control specific to AIDS and HIV-related illness and other high-need populations that enroll as registrants; and

(v) maintaining records in accordance with provisions of sections 400.2, 415.3(d)(1), 425.20 and 751.9(m)–(o) of this Title.

(c) Policies and procedures for service delivery. The operator must:

(1) establish and implement written policies and procedures, consistent with the approved application for operation of the adult day health care program, concerning the rights and responsibilities of registrants, the program of services provided to registrants, use of physical structures and equipment, and the number and qualifications of staff members and their job classifications and descriptions;

(2) ensure that written policies and procedures, consistent with current professional standards of practice, are developed and implemented for each service and are reviewed and revised as necessary;

(3) develop protocols for each involved professional discipline to indicate when the service of such discipline should be included in the registrant assessment;

- (4) ensure that professional personnel are fully informed of and encouraged to refer registrants to other health and social community resources that may be needed to maintain the registrant in the community; provided, however, with respect to registrants referred to the adult day health care program by a managed care organization or care coordination model, such referrals shall be the responsibility of the managed care organization or care coordination model;
- (5) establish and implement written policies for the storage, cleaning and disinfection of medical supplies, equipment and appliances;
- (6) establish and implement written policies and procedures governing medications brought to the program site by registrants;
- (7) establish and implement written policies and procedures concerning refunds and prepayment for basic services in accordance with existing rules and regulations;
- (8) establish and implement written policies and procedures concerning transfer and affiliation agreements covering registrants that are consistent with the standards specified in section 400.9 of this Title;
- (9) provide in such agreement(s) reasonable assurance of assistance to each registrant in transferring to inpatient or resident status in a residential health care facility whenever the registrant is deemed by a practitioner to be medically appropriate for such care; and
- (10) establish and implement a written affiliation agreement with a designated AIDS center or other hospital for the transfer of registrants requiring emergency care, acute inpatient care services and clinical, sub-specialty clinical, and ancillary services.

759.[4]5 Admission, continued stay, and [patient] registrant assessment.

(a) The operator shall:

(1) select and admit to and retain in the adult day health care program only those persons for whom adequate care and needed services can be provided and who, according to the [needs] comprehensive assessment, can benefit from the services [and require a minimum of three hours of health care services] provided on the basis of at least one visit per week to the program;

(2) assess each applicant, unless the assessment was conducted by a managed care organization or care coordination model that referred the applicant to the adult day health care program, utilizing an assessment instrument provided by the [department] Department as part of the admission review process, which assessment shall include at a minimum the following:

(i) medical needs, including the determination that the applicant is expected to need continued service for a period of [60] 30 or more days from the date of the completion of the comprehensive assessment;

(ii) use of medication and required treatment;

(iii) nursing care needs;

(iv) functional status;

(v) mental/behavioral health status;

(vi) sensory impairments;

(vii) rehabilitation therapy needs, including a determination regarding the specific need for physical therapy, occupational therapy, and speech language pathology services;

(viii) family and other informal supports;

(ix) home environment;

- (x) psycho-social needs;
 - (xi) financial status;
 - (xii) nutritional status;
 - (xiii) ability to tolerate the duration and method of transportation to the program;
 - (xiv) evidence of any substance abuse problem; and
 - (xv) need for HIV risk reduction counseling.
- (3) register each applicant only upon recommendation from the applicant's physician and after completion of a personal interview by qualified personnel with the applicant, next of kin and/or sponsor;
- (4) register each applicant only after determining that the applicant is not receiving the same services from any other facility or agency;
- (5) [notify the applicant of the availability of general medical care services at the day health care program and] determine whether the applicant is receiving primary medical care and, if so, where the care is provided;
- (6) admit an applicant to the service only after execution of a written agreement which shall include but not be limited to a requirement that:
- (i) the applicant agrees to a medical examination at a physician's office, the facility or other appropriate site, within six weeks prior to or seven days after admission [and as indicated in the physician's plan of care, HIV comprehensive care protocols or by medical necessity]; and
 - (ii) the operator provides to the applicant, next of kin and/or sponsor a written list of basic services furnished by the facility to registrants and paid for as part of the registrant visit at daily, weekly or monthly rates;

- (7) record all financial arrangements with the applicant or designated representative, with copies executed by and furnished to each party;
- (8) make no arrangement for prepayment for basic services exceeding one month; and
- (9) comply with the provision of financial policies as set forth in the applicable section of this Title[; and
- (10) register applicants in an adult day health care program only if the pre-registration evaluation determines that the program can adequately and appropriately care for the applicants].

(b) An individual may be registered in an adult day health care program only if his or her comprehensive assessment indicates that the program can adequately and appropriately care for the physical and emotional health needs of the individual.

(c) No applicant suffering from [active tuberculosis] a communicable disease that constitutes a danger to other registrants or staff may be registered or retained for services on the premises unless a physician certifies that the registrant presents no significant risk to any person.

(d) The operator may admit, on any given day, up to 10% over the approved capacity for that program. The average annual capacity, however, may not exceed the approved capacity of the operator's program.

759.[5]6 Comprehensive care planning[s].

(a) The operator shall:

(1) develop a comprehensive care plan based on the comprehensive assessment required by this Part and, when applicable, a transfer or discharge plan, for each registrant within

five visits[, not to exceed] or within 30 days[, from] after registration, whichever is earlier. The adult day health care program and the referring managed care organization or care coordination model must be sure to coordinate with each other regarding the development of a registrant's comprehensive care plan;

(2) designate staff members to ensure the completion of the comprehensive care plan with the participation of consultants in the medical, social, paramedical and related fields as appropriate;

(3) ensure that the comprehensive registrant care plan includes for each registrant:

(i) designation of a professional person to be responsible for coordinating the comprehensive care plan;

(ii) the registrant's pertinent diagnoses, including mental health status; types of equipment and services required; case management; frequency of planned visits; prognosis; rehabilitation potential; functional limitations; planned activities; nutritional requirements; medications and treatments; necessary measures to protect against injury; instructions for discharge or referral if applicable; orders for therapy services, including the specific procedures and modalities to be used and the amount, frequency, and duration of such services; and any other appropriate item;

(iii) the medical and nursing goals and limitations anticipated for each registrant and, as appropriate, the nutritional, social, rehabilitative and leisure time goals and limitations;

([ii]iv) the registrant's potential for remaining in the community; [and]

([iii]v) transportation arrangements; and

(vi) a description of all services to be provided to the registrant by the program, informal supports and other community resources pursuant to the comprehensive care plan, and how such services will be coordinated;

(4) ensure that development and modification of the comprehensive care plan is coordinated with other health care providers outside the program who are involved in the registrant's care.

(b) Designated staff members, with the participation of consultants in the medical, social, paramedical and related fields, as appropriate, shall:

(1) record in the clinical record changes in the registrant's status which require alterations in the registrant comprehensive care plan;

(2) modify the comprehensive care plan accordingly; [and]

(3) review the comprehensive care plan at least [quarterly] once every six months and whenever the registrant's condition warrants and document each such review in the clinical record; and

(4) promptly alert the registrant's authorized practitioner of any significant changes in the registrant's condition which indicate a need to revise the comprehensive care plan.

759.7 Registrant continued stay evaluation. The operator, directly or through the managed care organization or care coordination model that referred the registrant to the adult day health care program, must ensure that a written comprehensive assessment and evaluation is completed pursuant to section 759.5 of this Part at least once every six months for each registrant, addressing the appropriateness of the registrant's continued stay in the program. Such assessment and evaluation is to address, at a minimum:

- (a) a reassessment of the registrant's needs, including an interdisciplinary evaluation of the resident's need for continued services;
- (b) the appropriateness of the registrant's continued stay in the program;
- (c) the necessity and suitability of services provided; and
- (d) the potential for transferring responsibility for or the care of the registrant to other more appropriate agencies or service providers.

759.[6]8 Registrant services. The operator must provide or arrange for services appropriate to each registrant in accordance with the comprehensive assessment conducted and comprehensive care plan developed by the adult day health care program or by the managed care organization or care coordination model that referred the registrant to the adult day health care program. The following registrant services shall be provided on-site, as appropriate, to each registrant in accordance with the individual's multidisciplinary assessment of needs and comprehensive care plan[.];

(a) [HIV general medical services including gynecologic services;] medical services provided by the operator, which, without limiting its responsibility for the operation and management of the program, must:

(1) assign to the operator's medical board, medical advisory committee, medical director or consulting practitioner the following responsibilities regarding registrants of the program:

(i) developing and amending clinical policies;

(ii) supervising medical services;

(iii) advising the operator regarding medical and medically related problems;

(iv) establishing procedures for emergency practitioner coverage, records and consultants; and

(v) establishing professional relationships with other institutions and agencies, such as general hospitals, rehabilitation centers, residential health care facilities, home health agencies, hospital outpatient departments, clinics and laboratories;

(2) ensure that medical services, including arranging for necessary consultation services, are provided to registrants of the program in accordance with the registrant's managed care organization or care coordination model;

(3) provide or arrange for the personnel, staff or other designated practitioner to obtain a medical history and a physical examination of each registrant, including diagnostic laboratory and x-ray services, as medically indicated, within six weeks before or seven days after admission to the program;

(4) ensure that the practitioner record, date and authenticate significant findings of the medical history, physical examination, diagnostic services, diagnoses and orders for treatment in the registrant's clinical records;

(5) ensure that orders for treatment include orders for medication, diet, permitted level of physical activity and, when indicated, special orders or recommendations for rehabilitative therapy services and other adult day health care services;

(b) [sick call visits occurring in addition to regularly scheduled visits for registrants presenting with a new problem which either results in a referral to a hospital outpatient department or clinic, or a referral to a sub-specialist off-site or which requires immediate attention of the physician on-site;

(c)] case management services;

[(d)] (c) food and nutrition services provided by the operator, which must:

(1) provide meals and nutritional supplements, including modified diets when medically prescribed, to registrants who are on the premises at scheduled meal times and, where appropriate, to registrants in their homes in accordance with the identified needs included in registrant comprehensive care plans;

(2) ensure that nutrition services are under the direction of a qualified dietitian;

(i) A qualified dietitian is one who is qualified based on:

(a) registration by the Commission on Dietetic Registration of the American Diabetes Association;

(b) education, training, and experience in identification of dietary needs, planning, and implementation of dietary program; or

(c) certification as a certified dietitian or certified nutritionist in accordance with Article 157 of the Education Law;

(3) ensure that dietary service records for the adult day health care service are maintained;

[(e)] (d) social services[;] provided by the operator must:

(1) be under the supervision and direction of a licensed clinical social worker;

(2) be provided through the use of a full or part-time social worker in conformance with the approved application for operation and regular access may be directly with a master's prepared or certified social worker;

(3) either directly or through the managed care organization or care coordination model that referred the registrant to the adult day health care program, ensure that psychosocial

needs are assessed, evaluated and recorded, and that services are provided to meet the identified needs of the registrant as part of the comprehensive care plan; and

(4) ensure that staff members arrange for the use of and/or access to other community resources as needed and coordinate the needs of the registrants with services provided by the adult day health care program and other health care providers, community social agencies and other resources; provided, however, with respect to registrants referred to the adult day health care program by a managed care organization or care coordination model, this shall be the responsibility of the managed care organization or care coordination model.

[(f)] (e) assistance and/or supervision[,] with activities of daily living, such as toileting, feeding, ambulation, bathing including routine skin care, care of hair and nails, and oral hygiene[;], and supervision and monitoring of personal safety, restorative rehabilitative and maintenance therapy services, and instrumental activities of daily living;

[(g)] (f) rehabilitation therapy services provided or arranged by the operator, either directly or through the managed care organization or care coordination model that referred the registrant to the adult day health care program, in conformance with the registrant's needs identified during the comprehensive assessment;

[(h)] (g) an activities program, provided by the operator either directly or through the managed care organization or care coordination model that referred the registrant to the adult day health care program, which must [involving] involve community, interpersonal and self-care functions appropriate and sufficient in scope to the needs and interests of each registrant to sustain physical and psychosocial functioning and must:

- (1) ensure that activities are an integral part of the program and reflect the registrants' individual interests and cultural backgrounds;
- (2) ensure that activities are designed to enhance registrant participation in the program, home life and the community;
- (3) involve appropriate volunteers and volunteer groups in the program, unless prohibited by law;
- (4) provide sufficient equipment and supplies for the operation of the activity program;
- (5) provide or arrange for transportation to and from community events and outings; and
- (6) ensure that activities are included as part of each registrant's comprehensive care plan;
- [(i)] (h) nursing services, provided by the operator, directly or through the managed care organization or care coordination model that referred the registrant to the adult day health care program, must be based on the care needs of the registrant as specified in the comprehensive care plan and be provided by a registered professional nurse. A licensed practical nurse, acting within his or her lawful scope of practice under Title VIII of the Education Law, may provide the on-site services when a registered professional nurse is available at the sponsoring licensed facility to provide immediate direction or consultation;
- (1) in addition to providing nursing services as specified in the registrant comprehensive care plan, the operator must ensure that a registered professional nurse is available to conduct sick call triage assessments to registrants presenting with new problems or symptoms that result in consultation with the registrant's primary care physician or the managed care organization in which the registrant is enrolled or, as necessary, immediate transfer to an emergency department;

- [j)] (i) pastoral counseling, either provided directly or arranged for by the operator;
- [(k)] (j) counseling for HIV risk reduction;
- [(l)] (k) pharmaceutical services;
- [(m)] (l) substance abuse services;
- [(n)] (m) mental health and psychiatric services;
- [(o)] (n) ancillary services commensurate with the level of [medical] care delivered on-site; and
- [(p)] (o) referrals for dental services and sub-specialty care that are in conformance with the needs identified during the comprehensive assessment.

759.[7]9 Medical record system. The operator [shall ensure that] must:

(a) [the facility maintains] maintain a medical record system that contains a record, including a current comprehensive care plan for each registrant, in accordance with accepted professional standards of practice and the medical records system section of this Title. Each registrant's medical record shall contain, as a minimum:

(1) identification and admission information, including:

(i) all details of the referral and registration;

(ii) identification of next of kin, family and sponsor;

(iii) the person or persons to be contacted in the event of emergency;

(iv) accident and incident reports;

(v) non-medical correspondence and papers pertinent to the registrant's participation in the program; and

(vi) a fiscal record including copies of all agreements or contracts;

(2) documentation of medical examinations, progress notes and discharge summaries;
and

(3) all other pertinent information related to the resident's care including record of attendance;

(b) [the facility shall] develop and implement policies and procedures to ensure the confidentiality of all medical records.

759.10 General records system. The operator must:

(a) maintain on the premises of the program or facility the following written records, which must be easily retrievable and must include, but not be limited to, the following:

(1) a chronological admission register consisting of a daily chronological listing of registrants admitted by name with relevant clinical and social information about each, including as a minimum, name, address, next of kin, attending practitioner, principal diagnosis, and the place from which each registrant was admitted;

(2) a chronological discharge register consisting of a daily chronological listing of registrants discharged by name, the reason for discharge and the place to which the registrant was discharged; and

(3) a daily census record consisting of a summary report of the daily registrant census with cumulative figures for each month and each year.

(b) maintain as public information, available for public inspection, records containing copies of all financial and inspection reports pertaining to the adult day health care services that have been filed with or issued by any governmental agency for six years from the date such reports are filed or issued.

759.11 Confidentiality of records. The operator shall keep confidential and make available only to authorized persons all medical, social, personal and financial information relating to each registrant.

[759.8 Utilization control and quality assurance. The operator shall ensure that the utilization control and quality assurance program of the facility conforms to the regulations set forth in Section 751.8 of this Title.]

759.12 Quality assessment and assurance. The facility shall establish and maintain a coordinated quality assessment and assurance program that integrates the review activities of facility services to enhance the quality of life and registrant care and treatment.

(a) Facility-wide quality assurance. Quality assurance shall be the responsibility of all staff, at every level, at all times. Supervisory personnel alone cannot ensure quality of care and services. Such quality must be a part of each individual's approach to his or her daily responsibilities.

(b) Quality assessment and assurance committee. The facility shall maintain a quality assessment and assurance committee consisting of at least the following:

(1) the program director;

(2) the licensed master social worker;

(3) a registered nurse designated by the facility;

(4) at least three other members of facility staff.

(c) Committee functions. The quality assessment and assurance committee shall:

(1) meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary;

(2) have a written plan for the quality assessment and assurance program which describes the program's objectives, organization, responsibilities of all participants, scope of the program, procedures for overseeing the effectiveness of monitoring, assessing and problem-solving activities. Such plan shall also provide for the development and implementation of quality improvement initiatives designed to advance the quality of life, care and services in the facility;

(3) define methods for identification and selection of clinical and administrative problems to be reviewed. The process shall include but not be limited to:

(i) the establishment of review criteria developed in accordance with current standards of professional practice for monitoring and assessing registrant care and clinical performance;

(ii) regularly scheduled reviews of clinical records, resident complaints and suggestions, reported incidents and other documents pertinent to problem identification;

(iii) consultation, on at least a quarterly basis with the Consumer Advisory Board, to seek recommendations on quality improvements;

(iv) documentation of all quality assessment and assurance activities, including but not limited to, the findings, recommendations and actions taken to resolve identified problems; and

(v) the timely implementation of corrective actions and periodic assessments of the results of such actions;

(4) ensure that the outcomes of quality assurance reviews are shared with appropriate

staff to be used for the revision or development of facility policies and practices and in granting or renewing staff privileges, as appropriate; and

(5) facilitate participation in the program by administrative staff and health-care professionals representing each professional service provided; and

(6) report its activities, findings and recommendations to the governing body as often as necessary, but no less than 4 times a year.

759.[9]13 Program [E]evaluation. [The operator shall develop and implement procedures which provide for at least an annual written evaluation of the adult day health care program to include, at a minimum, a profile of the characteristics of the registrants admitted to the program, the services and degree of services most utilized, the length of stay and use rate, registrant need for care and services and disposition upon discharge. The evaluation shall also include such data items as are available to the operator and are identified and set forth on forms provided by the department.]

(a) Quality improvement. The operator must develop and implement a quality improvement process that provides for an annual or more frequent review of the operator's program. Such evaluation must include a profile of the characteristics of the registrants admitted to the program, the services and degree of services most utilized, the length of stay and use rate, registrant need for care and services, and disposition upon discharge. The process must:

(1) include an evaluation of all services in order to enhance the quality of care and to identify actual or potential problems concerning service coordination and clinical performance;

- (2) review accident and incident reports, registrant complaints and grievances and the actions taken to address problems identified by the process;
- (3) develop and implement revised policies and practices to address problems found and the immediate and systematic causes of those problems; and
- (4) assess the impact of the revisions implemented to determine if they were successful in preventing recurrence of past problems.
- (b) The results of the quality improvement process must be reported to the chief executive officer, program director, or governing body.

759.14 Payment

- (a) Payments to adult day health care programs by State government agencies. A program may only bill for one visit per registrant per day.
- (b) Payments to adult day health care programs by managed care organizations or care coordination models:
- (1) Payments shall be made in accordance with the negotiated agreement between the adult day health care program and the managed care organization or care coordination model.
- (2) The full range of adult day health care services shall be available to registrants with a documented need for such services. Based on a registrant's individual needs, as determined in the comprehensive assessment, the managed care organization or care coordination model may order less than the full range of adult day health care services.
- Nothing shall prohibit adult day health care programs and managed care organizations or

care coordination models from agreeing to reimbursement terms that reflect a registrant's receipt of less than the full range of adult day health care services.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803(2)(a)(v) of the Public Health Law authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to medical facilities. Section 201(1)(v) of the Public Health Law and section 363-a of the Social Services Law provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

Under the above authority, the Department of Health as the single state agency responsible for the Medicaid program has the authority to implement programs beneficial to Medicaid recipients, including those with HIV disease. AIDS adult day health care programs (AIDS ADHCPs) were established as part of the continuum of care for persons with HIV disease and are designed to assist those individuals to live more independently in the community and to delay or eliminate the need for residential health care services. With these proposed regulations, the Department seeks to assure the continued viability of these valued programs by permitting them to offer their services to other high-risk populations and to effectively contract with managed care organizations.

Needs and Benefits:

The proposed amendments expand the population that may be served by AIDS ADHCPs in order to provide these programs with an opportunity to serve other high-risk populations. Under managed care, these programs have experienced decreases in utilization per client and the proposed expansion would permit the programs to regain some or all of that lost capacity by serving other populations that may be in need of and can benefit from the services the programs offer.

The proposed amendments also will conform the standards applicable to AIDS ADHCPs operated by residential health care facilities with those operated by diagnostic and treatment centers. Currently, programs in each setting are subject to different regulatory requirements, and these amendments would create consistent requirements regardless of site of service.

Lastly, these proposed regulations conform the regulations governing AIDS ADHCPs to the recently amended regulations governing non-specialized adult day health care programs, thereby allowing for AIDS ADHCPs to more effectively contract with managed care plans.

Costs to the Department, the State, and Local Government:

The rule will not increase costs to State or local governments. The proposal to expand the populations that these programs can serve is a response to the inclusion of the adult day health care service into the managed care benefit package, which the programs anticipated would result in a decline in utilization among its clients. The programs have experienced such a decline, and the anticipated increase in the volume of high-need HIV-negative clients served is expected to offset that decline in utilization. In addition, programs have recently closed, and the remaining programs are operating at an average

of 54% capacity. Lastly, the majority of these programs' clients, who are HIV-infected, are enrolled in HIV Special Needs Plans and we expect it will take some time for ADHC programs to attract high-need HIV-negative clients from other Medicaid ("mainstream") managed care plans. For these reasons, we project the fiscal impact from implementing these proposed amendments to be cost-neutral to the Department, the State, and local governments.

Local Government Mandates:

This rule will not impose any program, service, duty, additional cost or responsibility on any county, city, town, village school district, fire district or other special district.

Paperwork:

This rule will not impose any additional paperwork for these AIDS ADHC programs. The process for admitting a client without HIV disease, evaluating that client and deriving a treatment plan appropriate to meet that client's needs and that client's participation in program activities following the client's treatment plan is no different from what is currently the case for a person with HIV disease.

Duplication:

There are no duplicative or conflicting rules identified.

Alternative:

The only alternative considered was not to propose these amendments to the regulations. However, with the input of the regulated community, we decided to go forward with these proposed amendments in order to allow programs to expand the populations they serve and to achieve the consistency between programs based in

residential health care facilities and diagnostic treatment facilities that will result from implementing these proposed amendments.

Federal Standards:

The regulations do not exceed any minimum federal standards.

Compliance Schedule:

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

Contact Person:

Ms. Katherine Ceroalo
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

STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.



Project # 162251-C
Fox Run at Orchard Park

Program: Residential Health Care Facility
Purpose: Construction

County: Erie
Acknowledged: October 19, 2016

Executive Summary

Description

Orchard Park CCRC, Inc. d/b/a Fox Run at Orchard Park (Fox Run), a not-for-profit organization that operates a Continuing Care Retirement Community (CCRC) located at One Fox Run Lane, Orchard Park (Erie County), requests approval to construct a 14,000 square foot, two-story addition to their Health Center and add ten Residential Health Care Facility (RHCF) beds. The project also includes renovation of existing Health Center space. The certification of ten additional RHCF beds is deemed necessary to respond to current demand. Upon project completion, the expanded facility will offer 60 certified RHCF beds.

Fox Run is set on a 54-acre campus and currently consists of 180 independent living units (150 apartments and 30 patio homes), 50 skilled nursing beds, and 52 assisted living beds, 18 of which are designated for memory care. The new two-story wing, along with renovation of existing wings, will allow for an updated design and improved operational flow by creating a neighborhood concept with four new neighborhoods, each with their own kitchen services and dining areas. One of the neighborhoods will also be designated as a sub-acute rehabilitation area. New nursing substations will be created in each neighborhood to replace the existing centrally located nursing station. The new design includes a new main kitchen designated for the Health Center and a larger more appropriately sized therapy clinic to accommodate needed upgrades to the therapy equipment.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

There will be no Need recommendation of this application as per Public Health Law Section 4604(5).

Program Summary

The expansion of Fox Run will help meet the in-house demand for nursing home placement. The accompanying renovation of the second floor nursing unit will provide a much needed updating, and provide amenities consistent with contemporary standards of nursing home design.

Financial Summary

The total project cost of \$7,163,485 will be met with \$5,288,485 in accumulated funds and the remaining \$1,785,000 will be funded via a 21-year loan at 5.5% interest.

RHCF Budget

	<u>Year One</u>	<u>Year Three</u>
Revenue	\$4,952,569	\$5,254,181
Expenses	<u>6,304,574</u>	<u>6,587,028</u>
Gain (Loss)	(\$1,352,005)	(\$1,332,847)

CCRC Enterprise Budget

	<u>Year One</u>	<u>Year Three</u>
Revenue	\$16,879,868	\$17,907,164
Expenses	<u>17,256,919</u>	<u>17,705,237</u>
Gain (Loss)	(\$377,051)	\$201,927

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
3. Submission and programmatic review and approval of the final floor plans. [LTC]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-04 for Nursing Homes. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before June 1, 2017 and construction must be completed by September 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 operator shall submit a plan to maintain resident services and safety during construction to the Western New York Buffalo Regional Office, and must receive approval for such plan prior to the commencement of construction. [LTC]

Council Action Date

March 9, 2017

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Fox Run at Orchard Park	Same
Address	One Fox Run Lane Orchard Park, NY 14127	Same
RHCF Capacity	50	60
ADHCP Capacity	N/A	N/A
Type Of Operator	Voluntary Not for Profit	Same
Class Of Operator	Corporation	Same
Operator	Orchard Park CCRC, Inc.	Same

Program Review

Fox Run at Orchard Park (Fox Run), a continuing care retirement community which operates a 50 SNF bed unit, proposes to add 10 beds. Fox Run intends to construct a two story addition with the new nursing home beds to be located on the second floor, and the first floor dedicated to assisted living space. The existing second floor nursing unit will also be renovated. Fox Run is situated on a 54 acre campus and includes 160 independent living units and 52 assisted living beds. The additional beds will respond to current high occupancy levels and better meet the needs of the CCRC residents.

Physical Environment

The existing Fox Run campus consists of a series of interconnected buildings flanking a Commons building. The independent living units are located to the west of the Commons area and the assisted living and skilled nursing units are to the east. The assisted living/skilled nursing building is a two story building with three wings jutting out from a central core. The nursing unit occupies the second floor with the 22 bed east wing at a right angle to the 12 bed southeast wing, and the 16 bed northwest wing at a 45 degree angle to the other two wings. Entrance is made through an elevator in the center, with a central nursing station and main dining room adjacent to the entrance lobby. A single tub room is located in the center area, and an additional shower is located on the northwest wing. Physical therapy and the barber/beauty salon are located at the end of northwest wing, with an elevator providing access to the first floor assisted living unit.

The new addition will be located on the southwest end of the SNF/ALP building, and include nine single bedrooms. The addition will include a bathroom with stretcher shower, and a hearth room for socialization and dining. A third elevator will be constructed between the new wing and the northwest wing.

The project also includes a reconfiguration and renovation of the existing nursing home unit to provide needed updates to create a more modern residential environment. The re-design will convert the entire floor into a hub and spoke arrangement, with the public space moved to the center core, and the finger units transformed into "households" with their own dining space, tub or shower room, and satellite nursing station. Each of the three existing households will include a hearth room at the end of the unit, mirroring the new southwest wing. The core area will be reconfigured with the main dining room and pantry converted into an activities area with a new balcony. A portion of the pantry space will be divided into a nourishment center. The central nursing station adjacent to the elevator lobby will be eliminated and a seating area will be created. The current activities room and the clean and soiled utility rooms will be converted into administrative offices. Two sets of clean and soiled work rooms will be created on the northwest and east sides of the core area.

In the east wing the hearth room will displace two doubles and a single bedroom. The five bed loss will be partially mitigated by the conversion of two oversized singles to doubles, with the overall bed complement for the unit reduced to 19 beds. The renovated doubles will include a toe to toe bed arrangement which improves access to light for the inboard bed. On the southeast unit the hearth room

will occupy the existing activities room. Activity space in turn will be relocated to the vacated central dining room.

The northwest unit will undergo the greatest transformation with the addition of three doubles and two singles at the end of the wing in space currently occupied by offices. The hearth room will be located adjacent to the new bedrooms. A new therapy area will be constructed at the interior end of the unit, abutting the new southwest unit, which will displace a double and two single bedrooms. The overall bed complement for the household will increase to 20 beds. The new therapy unit will significantly expand and enhance rehabilitation space, and will include an ADL resident kitchen. The vacated physical therapy area at the opposite end of the unit will be repurposed into a family lounge and library. The adjacent shower room will undergo a cosmetic renovation. The barber and beauty salon will remain unchanged, although residents will have access to a new beauty salon to be located on the new first floor assisted living unit. A nursing lounge will be created in the current office suite at the end of the unit.

Compliance

Fox Run at Orchard Park is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

The expansion of Fox Run will help meet the in-house demand for nursing home placement. The accompanying renovation of the second floor nursing unit will provide a much needed updating, and provide amenities consistent with contemporary standards of nursing home design.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

The total project cost is \$7,163,485, detailed as follows:

New Construction	\$3,146,908
Renovation & Demolition	1,496,399
Site Development	72,100
Temporary Utilities	15,450
Design Contingency	493,685
Construction Contingency	224,460
Fixed Equipment	77,250
Architect/Engineering Fees	479,428
Construction Manager Fees	299,488
Movable Equipment	681,694
Telecommunications	15,450
Financing Costs	50,000
Interim Interest Expense	70,000
Application Fee	2,000
Processing Fee	<u>39,173</u>
Total Project Cost	\$7,163,485

Project costs are based on a construction start date of June 1, 2017, and a 15-month construction period.

The applicant's financing plan appears as follows:

Equity	\$5,288,485
Loan (21-year term, 5.5% interest)	<u>\$1,875,000</u>
Total	\$7,163,485

Ziegler has provided a letter of interest for the financing.

Operating Budget

The applicant has submitted their current year (2015) and projected operating budgets for the first and third years, in 2017 dollars, summarized below:

<u>RHCF Revenues</u>	<u>Current Year</u>		<u>Year One (2019)</u>		<u>Year Three (2021)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Commercial-FFS	\$149.18	\$169,170	\$149.18	\$169,170	\$149.18	\$169,170
Medicare-FFS	\$374.49	73,774	\$374.49	73,774	\$374.49	73,774
Medicaid-FFS	\$193.67	299,225	\$193.67	299,225	\$193.67	299,225
Private Pay	\$231.52	<u>3,336,946</u>	\$249.20	<u>4,410,400</u>	\$266.25	<u>4,712,012</u>
Total RHCF Rev		\$3,879,115		\$4,952,569		\$5,254,181
<u>RHCF Expenses</u>						
Operating	\$267.38	\$4,622,784	\$264.17	\$5,435,028	\$280.26	\$5,766,020
Capital	<u>\$48.57</u>	<u>839,650</u>	<u>\$42.26</u>	<u>869,546</u>	<u>\$39.91</u>	<u>821,008</u>
Total RHCF Exp	\$315.95	\$5,462,434	\$306.43	\$6,304,574	\$320.16	\$6,587,028
RHCF Gain (Loss)		<u>(\$1,583,319)</u>		<u>(\$1,352,005)</u>		<u>(\$1,332,847)</u>
RHCF Pt. Days		17,289		20,574		20,574
<u>CCRC Enterprise</u>						
Total RHCF Rev		\$3,879,115		\$4,952,569		\$5,254,181
Non-RHCF Rev		<u>\$9,526,583</u>		<u>\$11,927,299</u>		<u>\$12,652,983</u>
Total CCRC Rev		\$13,405,698		\$16,879,868		\$17,907,164
Total RHCF Exp		\$5,462,434		\$6,304,574		\$6,587,028
Non-RHCF Exp		<u>\$10,034,532</u>		<u>\$10,952,345</u>		<u>\$11,118,209</u>
Total CCRC Exp		\$15,496,966		\$17,256,919		\$17,705,237
CCRC Gain (Loss)		<u>(\$2,091,268)</u>		<u>(\$377,051)</u>		<u>\$201,927</u>

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

- Revenue, expense and utilization assumptions are based on the historical experience of the nursing home operation.
- The Private Pay increase is primarily due to the increase in patient volume through an increase in patient beds. Also, the construction will include an expansion of their therapy space, which they believe will allow them to take on additional admissions, specifically those who need high levels of therapy care.
- Operating expenses are increasing due to an increase in salaries and wages. The increase in FTE's is required to handle the increase in patient volume. The applicant is also assuming an approximate 3% increase in labor costs each year through to the projected budget for year three in 2021.
- Capital expenses are decreasing in Year Three, as marketing costs that were capitalized will be fully amortized. This removes approximately \$62,000 in RHCF expenses.
- As shown above, the RHCF alone operates at a loss. Revenue from the Independent Living apartments and patio homes subsidize the CCRC's more costly higher levels of care operations, including the RHCF component of the CCRC.
- Utilization broken down by payor source during the first and third years are as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	6.56%	5.51%	5.51%
Medicare - FFS	1.14%	0.96%	0.96%
Medicaid - FFS	8.94%	7.51%	7.51%
Private Pay	83.37%	86.02%	86.02%

Capability and Feasibility

The total project cost of \$7,163,485 will be met with \$5,288,485 in accumulated funds and the remaining \$1,875,000 will be funded via a 21-year loan at 5.5% interest. Zeigler has provided a letter of interest for the financing. BFA Attachment A is Orchard Park CCRC, Inc.'s 2014 - 2015 certified financial statements and their internal financials as of July 31, 2016, which indicates the availability of sufficient funds for the equity contribution to meet the total project cost.

Working capital requirements are estimated at \$2,950,873 based on two months of third year expenses. Working capital will be funded from operations. BFA Attachment A indicates the availability of sufficient funds for the equity to meet working capital needs.

By Year Three, RHCF revenues are estimated to increase by approximately \$1,375,000 over the current year, due to the increase in Private Pay residents related to the additional ten RHCF beds. The CCRC enterprise budget projects an increase of \$3,126,400 in non-RHCF revenue by Year Three and a gain from operations of \$201,927 for the overall operation. Overall expenses are expected to increase by \$2,200,000 primarily due to the increase in RHCF beds and additional depreciation for the project. The budget appears reasonable.

BFA Attachment A shows that the CCRC had an average positive working capital position, an average negative net asset position and an average net loss from 2014 through July 31, 2016. Net assets are negative due to the refundable entrance fees that the CCRC is required to account for as a liability. The refundable entrance fees are due upon departure or expiration of the resident. Based on the structure of Fox Run's resident agreement contract options, the CCRC had approximately \$45 million of refundable entrance fees due the residents in the Independent Living Units as of December 31, 2015. Going forward, Fox Run will continue to have a large liability stated on their balance sheet related to the refundable entrance fees. The facility is currently showing a net income in 2016 and they believe the increase in RHCF beds will allow them to become profitable by year three.

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 Financial Summary 2014-2015 certified financials and internal as of July 31, 2016, Orchard Park CCRC, Inc.



**Project # 162380-C
Rochester General Hospital**

Program: Hospital
Purpose: Construction

County: Monroe
Acknowledged: November 16, 2016

Executive Summary

Description

Rochester General Hospital (RGH), a 528-bed, voluntary not-for-profit, Article 28 tertiary care hospital located at 1425 Portland Avenue in Rochester (Monroe County), requests approval to construct a new seven-story building connected to the northeast side of the existing hospital. The new building, called the Critical Care Building for planning purposes, will encompass 312,457 square feet of space and will contain 108 acuity adaptable private Medical/Surgical and Intensive Care Unit rooms, a 14-bed neonatal unit consisting of five Continuing Care, seven Intermediate Care and two Intensive Care beds, and 20 private post-partum rooms. The new building will also contain 20 replacement operating rooms, a 26-bed PACU, 54 pre-op and post-op patient areas and a new sterile processing area.

The project will allow RGH to create 100% private rooms, accomplished via the new construction and conversion of the current semi-private rooms in the existing hospital to single-occupancy rooms. There will be no change to the number or type of inpatient beds or the number of operating rooms at completion of construction. The total number certified beds will remain at 528 and the number of operating rooms will continue to be 23, with three operating rooms remaining in the existing hospital building.

RGH proposes the expansion and renovation project to provide significant and necessary improvements to address aged and obsolete facilities in both its inpatient and surgical program. The project includes renovation of existing hospital space as follows:

- With no modification required, the current 108 semi-private rooms will be designated as private rooms when the new building opens up.
- The space currently occupied by the Intensive Care/Coronary Care Unit will be utilized by the Medical Observation Unit (MOU) after minor renovations are completed.
- The existing MOU will be assigned to Emergency Services.
- A small area within the existing Operating Room area will be renovated for Gastro Intestinal services. The remainder of the space will be decommissioned as operating rooms and repurposed.

RU System, Inc. (System) is the active parent and co-operator of RGH and the entities within both the Rochester General Health System and Unity Health System, otherwise known as Rochester Regional Health (the System). RGH is the flagship hospital of the System and serves as its hub. The goal of the System is to provide high quality healthcare services in a strategic and cost effective manner to the communities served by the System, by continuing the existing RGH strategies in clinical integration, regional network development and population health.

OPCHSM Recommendation
Contingent Approval

Need Summary

Rochester General Hospital will become a 100% private bed hospital allowing the facility to address assorted patient acuities and improve efficiencies.

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 are \$253,663,869, but due to the inclusion of shell space, total reimbursable cost is limited to \$243,997,457. Project costs of \$253,663,869 will be met with equity of \$102,290,812 and tax-exempt bonds for \$151,373,057 with a maturity of 30 years bearing interest at 4.27% for tax-exempt debt.

Raymond James & Associates, Inc. has provided a letter of interest for underwriting the bond financing. The bonds will be issued by Monroe County Industrial Development Corporation.

Budget:	<u>Year One</u>
Revenues	\$397,880,019
Expenses	<u>435,010,435</u>
Gain/(Loss)	(\$37,260,416)

Enterprise Budget:	<u>Year One</u>
Revenues	\$938,011,006
Expenses	<u>924,692,236</u>
Gain/(Loss)	\$13,318,770

Recommendations

Health Systems Agency

The HSA recommends approval for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution, acceptable to the Department of Health. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 31, 2017 and construction must be completed by August 30, 2022, 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 staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

March 9, 2017

Need Analysis

Background

Certified Beds	
Coronary Care	6
Intensive Care	34
Maternity	26
Medical / Surgical	378
Neonatal Continuing Care	5
Neonatal Intensive Care	2
Neonatal Intermediate Care	7
Pediatric	24
Physical Medicine and Rehabilitation	16
Psychiatric	30
Total	528

Rochester General Hospital will become a 100% private bed hospital allowing the facility to address different patient acuities. Currently, approximately 43.9 percent of beds are in double rooms. The creation of private rooms will improve the throughput of patients by reducing isolation, gender, and patient preference requirements.

Conclusion

Improving patient throughput and efficiency by becoming an all-private, one bed per room hospital will enable Rochester General Hospital to retain its status as a flagship facility.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Staffing is expected to increase by 58.6 FTEs in Year One of the completed project and remain at that level through Year Three. There will be no change to the number of certified beds or operating rooms.

With this expansion project, semi-private rooms will be converted to private rooms. By creating all private rooms, RGH aims to reduce noise and infection, thus enhancing healing. Further, having all private rooms will assist with movement of patients through the system by decreasing the restrictive qualities of a semi-private rooms (such as requirements for isolation, gender, and patient preference).

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost

Total project cost for new construction, renovations and movable equipment is estimated at \$253,663,869, but total reimbursable cost is limited to \$243,997,457, broken down as follows:

	<u>Article 28</u>	<u>Non-Article 28</u>	<u>Total</u>
New Construction	\$129,893,214	\$7,377,132	\$137,270,346
Renovation and Demolition	28,510,232	0	28,510,232
Temporary Utilities	566,819	0	566,819
Design Contingency	9,394,092	377,130	9,771,222
Construction Contingency	9,394,092	377,130	9,771,222
Planning Consultant Fees	424,041	0	424,041
Architect/Engineering Fees	8,166,994	1,124,157	9,291,151
Construction Manager Fees	3,213,989	410,863	3,624,852
Other Fees (Consultant)	5,031,156	0	5,031,156
Movable Equipment	39,222,552	0	39,222,552
Telecommunications	5,843,641	0	5,843,641
Financing Costs	3,000,000	0	3,000,000
CON Fee	2,000	0	2,000
Additional Processing Fee	<u>1,334,635</u>	<u>0</u>	<u>1,334,635</u>
Total Project Cost	<u>\$243,997,457</u>	<u>\$9,666,412</u>	<u>\$253,663,869</u>

Project costs are based on a construction start date of March 31, 2017, with a completion date of August 30, 2022.

The Bureau of Architectural and Engineering Review has determined that this project includes shell space costs of \$9,666,412 for non-Article 28 space. As a result, the total approved project cost for reimbursement purposes shall be limited to \$243,997,457.

The applicant's financing plan appears as follows:

Equity	\$102,290,812
Tax-Exempt fixed rate bonds (4.27% interest, 30-year term)	<u>\$151,373,057</u>
Total	<u>\$253,663,869</u>

BFA Attachment B, the September 30, 2016 financial summary, shows RGH will obtain their equity through Board Designated Funds. A letter from the Secretary of the Board of Directors has been submitted stating that the Board confirms approval of the use of Board Designated Funds for this project. RGH will borrow \$151,373,057 at a true interest cost of 4.27% over the life of the 30-year tax-exempt bond issuance. The par amount of the bonds will be \$135,105,000 and have a coupon rate of 5%, which will yield \$151,373,057 bond proceeds. It is not anticipated that a debt service reserve fund (DSRF) will be required to market the bonds, based on the bond rating of RGH of A- from Moody's and the S&P Global. If capital markets determine a DSRF is necessary, RGH will inform the Department during the contingency resolution phase of the CON process.

Raymond James & Associates, Inc. has provided a letter of interest for underwriting the bond financing. The bonds will be issued by Monroe County Industrial Development Corporation. Raymond James Financial is an American diversified holding company providing financial services to individuals, corporations and municipalities through its subsidiary companies that engage primarily in investment and financial planning, in addition to investment banking and asset management.

Operating Budget

The applicant has submitted inpatient operating budgets, in 2017 dollars, for the Current Year and for Year One of operations, as shown below:

<u>Inpatient Revenues</u>	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Commercial MC	\$15,804	\$102,993,398	\$16,121	\$105,060,979
Medicare FFS	\$15,257	82,781,303	\$15,649	84,914,088
Medicare MC	\$15,050	129,971,353	\$15,436	133,309,774
Medicaid FFS	\$8,738	12,617,471	\$8,932	12,898,205
Medicaid MC	\$8,271	49,993,328	\$8,431	50,964,432
Private Pay	\$3,753	1,313,721	\$3,756	1,314,439
Other*	\$12,655	<u>9,099,245</u>	\$13,099	<u>9,418,102</u>
Total Inpatient Revenue		\$388,769,819		\$397,880,019
<u>Inpatient Expenses</u>				
Operating	\$12,453	\$383,225,587	\$12,686	\$390,398,396
Capital	<u>\$931</u>	<u>28,641,347</u>	<u>\$1,454</u>	<u>44,742,039</u>
Total Inpatient Expenses	\$13,384	\$411,866,934	\$14,140	\$435,140,435
Inpatient Gain/(Loss)		<u>\$(23,097,115)</u>		<u>\$(37,260,416)</u>
Discharges (Inpatient)		30,773		30,773

*Other Revenues are made up of Workers Compensation, No Fault and Elderly Care Facilities.

Utilization by payor source for the current year and first year of operation is anticipated as follows:

<u>Inpatient</u>	<u>Current Year and Year One</u>	
	<u>Discharges</u>	<u>%</u>
Commercial MC	6,517	21.2%
Medicare FFS	5,426	17.6%
Medicare MC	8,636	28.1%
Medicaid FFS	1,444	4.7%
Medicaid MC	6,045	19.6%
Private Pay	350	1.1%
Other	719	2.3%
Charity Care	<u>1,636</u>	<u>5.3%</u>
Total	30,773	100.0%

The following is noted with respect to the submitted budget:

- Inpatient revenues and expenses are based upon RGH's current experience in operating the hospital. An increase in revenues is budget for Year One due to the expected increase in patient acuity.
- Utilization assumptions remain consistent with current performance since the number of beds remain the same.

RGH's enterprise budget, inclusive of outpatient services, is as follows:

Enterprise Budget:		<u>Year One</u>
Revenues	\$938,011,006	
Expenses	<u>924,692,236</u>	
Gain/(Loss)	\$13,318,770	

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

Capability and Feasibility

Project costs of \$253,663,869 will be met with equity of \$102,290,812 and tax-exempt bonds for \$151,373,057 with a maturity of 30 years bearing interest at 4.27% for tax-exempt debt. As shown on BFA Attachment B, RGH has enough liquid assets to cover the project's equity requirement.

Working capital requirements are estimated at \$72,523,406, which is equivalent to two months of year one expenses. The applicant will provide the entire amount of the working capital from operations. As shown on BFA Attachment B, the applicant has enough liquid assets to cover the working capital requirement.

BFA Attachment A is RGH's 2014-2015 certified financial statements, which shows the facility generated an average net income of \$20,518,973 and had average positive net asset and working capital positions for the period shown.

According to the Enterprise Budget, the organization expects to generate a surplus of \$13,318,770 in the first year. The submitted inpatient budget indicates a net loss of \$37,260,416 for Year One. The net loss for Inpatient is partially due to the increase in capital expense and is offset by Outpatient revenues. Revenues are based on the current reimbursement methodologies for hospitals. The submitted budget is reasonable.

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

Recommendation

From a financial perspective, contingent approval 02/09/2017 is recommended.

Attachments

- BFA Attachment A 2014-2015 Certified Financial Statements for Rochester General Hospital
- BFA Attachment B September 30, 2016 Internal Financial Statements for Rochester General Hospital
- BFA Attachment C Rochester Regional Health System, Inc. Organization Chart



**Project # 162324-E
Northern Westchester Hospital**

**Program: Hospital
Purpose: Establishment**

**County: Westchester
Acknowledged: October 24, 2016**

Executive Summary

Description

Northwell Healthcare, Inc., a not-for-profit corporation located in Nassau County, seeks approval to be established as the active parent and co-operator of Northern Westchester Hospital (NWH), a 245-bed, voluntary not-for-profit corporation, Article 28 acute-care hospital located in Mount Kisco (Westchester County). There will be no change in authorized services, the number or type of beds, or staffing as a result of approval of this project. In addition, there are no projected changes in the utilization, revenue or expenses as a result of this project, although NWH is expected to ultimately experience cost benefits related to operational efficiencies resulting from the active parent co-operator designation. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following completion of the project.

As active parent and co-operator, Northwell Healthcare, Inc. will have the power and authority to make decisions for its affiliate as stated in its certificate of incorporation and bylaws, and the active parent powers with regard to NWH as described in 10 NYCRR 405.1(c) as follows:

- Appointment or dismissal of 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 operating and capital budgets;
- Adoption or approval of operating policies and procedures;

- Approval of certificate of need applications filed by or on behalf of NWH;
- Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of contracts for management or for clinical services; and
- Approval of settlements of administrative proceedings or litigation to which NWH 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.

Northwell Healthcare, Inc.'s exercise of powers will allow for NWH providers to:

- 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.

NWH is an all-private room facility serving the residents of Northern Westchester, Putnam and Southern Dutchess Counties in New York and portions of Fairfield County in Connecticut. Northwell Healthcare, Inc., whose sole corporate

member is Northwell Health, Inc., is a comprehensive, integrated health care delivery system that is comprised of 21 hospitals across the New York metropolitan area, as well as physician practices and providers of subacute care including home care, long-term care, and hospice services. The purpose of this transaction is to enable Northwell and NWH to improve the wellness of the communities served; deliver value to patients and payors; increase operational efficiencies; support a long-term financial commitment to NWH; and advance clinical best practices, efficient and effective governance, and stewardship of community assets.

OPCHSM Recommendation
Contingent Approval

Need Summary

This change in ownership will not have an impact on utilization, and no changes to beds or services certified at Northern Westchester Hospital are being proposed.

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, 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 evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of a Certificate of Incorporation of Northwell Health, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
3. Submission of a photocopy of the By-laws of Northwell Health, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the Certificate of Incorporation of Northwell Healthcare, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the By-laws of Northwell Healthcare, Inc., along with any and all amendments thereto, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of Northern Westchester Hospital, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an Amended By-laws of Northern Westchester Hospital, 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

March 9, 2017

Need Analysis

Analysis

This proposal to establish Northwell Healthcare, Inc. as the active parent of Northern Westchester Hospital would have no impact on the hospital's operating certificate, and no impact on services is expected. Integrating NWH into the Northwell Health system will provide opportunities for cost-saving efficiencies and improved planning which, in turn, would benefit both NWH and the communities it serves.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Character and Competence

The sole corporate member of Northwell Healthcare, Inc. is Northwell Health, 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.

Upon review of the Board of Trustees of Northwell Healthcare, Inc., the following disclosures were made:

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.

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.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

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

In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

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

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. In 2016, the investigation was resolved by agreement with the DOJ. and the matter is now closed. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In a S&O dated November 5, 2014, Broadlawn Manor Nursing & Rehab Center was fined \$6,000 based on an inspection completed on December 19, 2011 for issues involving Accidents and Supervision; Administration; and Quality Assurance.

In a subsequent S&O filed on January 5, 2016, Broadlawn received a fine of \$8,000 based on an inspection finding of April 18, 2014 involving the lack of supervision and reassessment of a resident who exhibited wandering and elopement behavior. After several episodes of wandering the resident was found face down in the parking lot. The facility failed to investigate this incident and the circumstances leading up to it.

Again, on July 12, 2016, a S&O was issued to Broadlawn along with a \$10,000 fine for inspection findings of October 12, 2015 involving the care provided to a resident identified as at moderate risk for skin breakdown. This resident developed a stage IV decubitus ulcer which required surgical debridement. It was determined that the physician's orders for this patient were not properly followed.

In June 2012, the OIG and U.S. Attorney's Office for the Eastern District of New York subpoenaed Staten Island University Hospital (SIUH) for documentation relating to services rendered at SIUH's inpatient specialized burn unit dating back to 2005. Requested documentation was provided in 2012 and, in 2013, SIUH responded to follow-up questions. To date, the government has not indicated whether SIUH has any potential liability in this matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare.

In a S&O dated November 21, 2016, Long Island Jewish Medical Center was fined \$4,000 based on complaint investigation findings related to Infection Control Practices. During the investigation, 24 staff were observed not following acceptable of standards of practice for Infection Control practices in Surgical Areas. Specifically, staff demonstrated improper attire and exposure of hair during procedures.

Also on November 21, 2016, the Department issued a S&O and \$10,000 fine to Northern Westchester Hospital. Immediate Jeopardy was identified on April 22, 2016 during an allegation survey. The issues involved the calling of a code team in a timely manner for a newborn baby (who subsequently expired). It was determined that hospital staff were not trained in the code policy and as such, did not initiate the code via the proper procedure.

In a S&O dated December December 8, 2006 Forest Hills Hospital was fined \$12,000 following the investigation of wrong sided hernia surgery.

On January 19, 2017, the Department issued a S&O to Plainview Hospital regarding a pattern of infection control practices which were not consistent with accepted standards and levied a fine of \$4,000.

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 acute care beds or utilization as a result of approval of this project.

There is no purchase price consummating the transfer of ownership interests to Northwell HealthCare, Inc. NWH and Northwell Healthcare, Inc. separately financed the acquisition and each entity agreed to be fully responsible for the respective costs and expenses for effectuating this transaction. No other consideration has been exchanged.

Capability and Feasibility

The applicant has stated that upon approval of this application by the Public Health and Health Planning Council, Northwell Healthcare, Inc. would 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 entity, although each is expected to experience cost benefits from the active parent designation.

BFA Attachment B is Northwell Health, Inc.'s consolidated 2015 financial statements and their internal financial statements as of September 30, 2016, which shows the entity maintained positive working capital, a positive net asset position and had positive net income of \$ 81,564,000 and \$84,084,000, respectively.

BFA Attachments C and D are, respectively, NWH's 2015 financial statements and their internal financial statements as of September 30, 2016. NWH maintained positive working capital, a positive net asset position and net income of \$12,118,000 in 2015. As of September 30, 2016, NWH maintained positive working capital, a positive net asset position and net income of \$12,536,000.

The designation of Northwell Healthcare, Inc. as the active parent and co-operator of NWH is expected to enhance NWH facilities and contribute to a greater marketing presence for the Corporation and its providers.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Northwell Health, Inc. – 2015 and September 30, 2016 financials
BFA Attachment C	Northern Westchester Hospital - 2015 Certified Financials
BFA Attachment D	Northern Westchester Hospital - Internal Financials as of September 30, 2016

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 9th day of March, 2017 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 Northwell Healthcare, Inc. as the active parent and co-operator of Northern Westchester Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162324 E

Northern Westchester Hospital

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of a Certificate of Incorporation of Northwell Health, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
3. Submission of a photocopy of the By-laws of Northwell Health, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the Certificate of Incorporation of Northwell Healthcare, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the By-laws of Northwell Healthcare, Inc., along with any and all amendments thereto, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of Northern Westchester Hospital, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an Amended By-laws of Northern Westchester Hospital, 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 # 162330-E
Phelps Memorial Hospital**

**Program: Hospital
Purpose: Establishment**

**County: Westchester
Acknowledged: October 26, 2016**

Executive Summary

Description

Northwell Healthcare, Inc., a not-for-profit corporation located in Nassau County, seeks approval to be established as the active parent and co-operator of Phelps Memorial Hospital Association d/b/a Phelps Hospital (Phelps), a 238-bed, voluntary not-for-profit, Article 28 acute-care hospital located in Sleepy Hollow (Westchester County). There will be no change in authorized services, the number or type of beds, or staffing as a result of approval of this project. In addition, there are no projected changes in the utilization, revenue or expenses as a result of this project, although Phelps is expected to ultimately experience cost benefits related to operational efficiencies resulting from the active parent co-operator designation. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following completion of the project.

As active parent and co-operator, Northwell Healthcare, Inc. will have the power and authority to make decisions for its affiliate as stated in its certificate of incorporation and bylaws, and the active parent powers with regards to Phelps as described in 10 NYCRR 405.1(c) as follows:

- Appointment or dismissal of 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 operating and capital budgets;
- Adoption or approval of operating policies and procedures;

- Approval of certificate of need applications filed by or on behalf of Phelps;
- Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of contracts for management or for clinical services; and
- Approval of settlements of administrative proceedings or litigation to which Phelps 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.

Northwell Healthcare, Inc.'s exercise of powers will allow Phelps providers to:

- 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.

Phelps is a community hospital that serves the residents of Westchester County and the surrounding communities of Rockland, Putnam and Dutchess Counties in New York and Fairfield County in Connecticut. Phelps controls

certain subsidiaries and affiliates, including Phelps Hospice. Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., is a comprehensive, integrated healthcare delivery system comprised of 21 hospitals across the New York metropolitan area, as well as physician practices and providers of subacute care including home care, long-term care and hospice services. The purpose of this transaction is to enable Northwell and Phelps to improve the wellness of the communities served; deliver value to patients and payors; increase operational efficiencies; support a long-term financial commitment to Phelps; and advance clinical best practices, efficient and effective governance, and stewardship of community assets.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no impact on utilization or changes to beds or services. There are also no planned staffing or revenue and expenditure changes anticipated.

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, 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 evidence of approval by the Office of Alcohol and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a photocopy of a Certificate of Incorporation of Northwell Health, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the By-laws of Northwell Health, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the Certificate of Incorporation of Northwell Healthcare, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an By-laws of Northwell Healthcare, Inc., along with any and all amendments thereto, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of Phelps Memorial Hospital Association, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an Amended By-laws of Phelps Memorial Hospital Association, 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

March 9, 2017

Need Analysis

Analysis

Northwell Healthcare, Inc., along with Phelps Hospital, and their respective affiliates, desire to enter into a transaction for the purpose of having Phelps Hospital join Northwell Healthcare, Inc., in support of their common and unifying vision for value and quality in health care, thereby enabling them to:

- Improve the wellness of all communities served;
- Deliver unprecedented value to patients, payors, and employers;
- Increase operational efficiencies;
- Support a substantial, long-term financial, mission and quality-enhancing commitment to the legacy assets of Phelps Hospital by making a sustained commitment to the existing and future Phelps Hospital assets and operations as part of the combination; and
- Advance clinical best practices, efficient and effective governance, and stewardship of community assets.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Character and Competence

The sole corporate member of Northwell Healthcare, Inc. is Northwell Health, 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.

Upon review of the 32-member Board of Trustees of Northwell Healthcare, Inc., the following disclosures were made:

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.

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.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

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

In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

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

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. In 2016, the investigation was resolved by agreement with the DOJ, and the matter is now closed. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In a S&O dated November 5, 2014, Broadlawn Manor Nursing & Rehab Center was fined \$6,000 based on an inspection completed on December 19, 2011 for issues involving Accidents and Supervision; Administration; and Quality Assurance.

In a subsequent S&O filed on January 5, 2016, Broadlawn received a fine of \$8,000 based on an inspection finding of April 18, 2014 involving the lack of supervision and reassessment of a resident who exhibited wandering and elopement behavior. After several episodes of wandering the resident was found face down in the parking lot. The facility failed to investigate this incident and the circumstances leading up to it.

Again, on July 12, 2016, a S&O was issued along with a \$10,000 fine for inspection findings of October 12, 2015 involving the care provided to a resident identified as at moderate risk for skin breakdown. This resident developed a stage IV decubitus ulcer which required surgical debridement. It was determined that the physician's orders for this patient were not properly followed.

In June 2012, the OIG and U.S. Attorney's Office for the Eastern District of New York subpoenaed Staten Island University Hospital (SIUH) for documentation relating to services rendered at SIUH's inpatient specialized burn unit dating back to 2005. Requested documentation was provided in 2012 and, in 2013, SIUH responded to follow-up questions. To date, the government has not indicated whether SIUH has any potential liability in this matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare.

In a S&O dated November 21, 2016, Long Island Jewish Medical Center was fined \$4,000 based on complaint investigation findings related to Infection Control Practices. During the investigation, 24 staff were observed not following acceptable of standards of practice for Infection Control practices in Surgical Areas. Specifically, staff demonstrated improper attire and exposure of hair during procedures.

Also on November 21, 2016, the Department issued a S&O and \$10,000 fine to Northern Westchester Hospital. Immediate Jeopardy was identified on April 22, 2016 during an allegation survey. The issues involved the calling of a code team in a timely manner for a newborn baby (who subsequently expired). It was determined that hospital staff were not trained in the code policy and as such, did not initiate the code via the proper procedure.

On January 19, 2017, the Department issued a S&O to Plainview Hospital regarding a pattern of infection control practices which were not consistent with accepted standards and levied a fine of \$4,000.

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

Financial Analysis

There will be no change in authorized services, the number or type of acute care beds or utilization as a result of approval of this project.

There is no purchase price consummating the transfer of ownership interests to Northwell HealthCare, Inc. Phelps Hospital and Northwell Healthcare, Inc. separately financed the acquisition and each entity agreed to be fully responsible for the respective costs and expenses for effectuating this transaction. No other consideration has been exchanged.

Capability and Feasibility

The applicant stated that upon approval of this application by the Public Health and Health Planning Council, Northwell Healthcare, Inc. would 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 entity, although each is expected to experience cost benefits from the active parent designation.

BFA Attachment B is Northwell Health, Inc.'s consolidated 2015 financial statements and their internal financial statements as of September 30, 2016, which shows the entity maintained positive working capital, a positive net asset position and had positive net income of \$ 81,564,000 and \$84,084,000, respectively.

BFA Attachments C and D are, respectively, Phelps Hospital's 2015 financial statements and their internal financial statements as of September 30, 2016. Phelps maintained positive working capital, a positive net asset position and net income of \$12,118,000 in 2015. As of September 30, 2016, Phelps maintained positive working capital, a positive net asset position and net income of \$12,536,000.

The designation of Northwell Healthcare, Inc. as the active parent and co-operator of Phelps is expected to enhance Phelps' facilities and contribute to a greater marketing presence for the Corporation and its providers.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Northwell Health, Inc. – 2015 and September 30, 2016 financials
BFA Attachment C	Phelps Memorial Hospital - 2015 Certified Financials
BFA Attachment D	Phelps Memorial Hospital - Internal Financials as of September 30, 2016

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 9th day of March, 2017 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 Northwell Healthcare, Inc. as the active parent and co-operator of Phelps Memorial Hospital Association, 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:

162330 E

Phelps Memorial Hospital

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Alcohol and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of a photocopy of a Certificate of Incorporation of Northwell Health, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the By-laws of Northwell Health, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the Certificate of Incorporation of Northwell Healthcare, Inc. along with any and all amendments thereto, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an By-laws of Northwell Healthcare, Inc., along with any and all amendments thereto, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of Phelps Memorial Hospital Association, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an Amended By-laws of Phelps Memorial Hospital Association, 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 # 162353-E

Northwell Quality and Medical Affairs, Inc.

Program: Hospital
Purpose: Establishment

County: Nassau
Acknowledged: November 2, 2016

Executive Summary

Description

Northwell Healthcare, Inc. (NHCI), a not-for-profit corporation located in Nassau County, seeks approval to establish Northwell Quality and Medical Affairs, Inc. (NQMA) as co-operator and second active parent of seven Northwell Healthcare, Inc. co-operated acute-care hospitals and one co-operated residential health care facility (RHCF). The intent is for NQMA to have specific responsibility for medical, graduate and allied health professional staff appointments and privileging for the hospitals and RHCF. The facilities (all voluntary not-for profit corporations) are as follows:

- North Shore University Hospital (764 beds) located at 300 Community Drive, Manhasset (Nassau County);
- Long Island Jewish Medical Center (1,025 beds) located at 270-05 76th Ave, New Hyde Park (Suffolk County);
- Glen Cove Hospital (247 beds) located at 101 St. Andrews Lane, Glen Cove (Nassau County);
- Plainview Hospital (204 beds) located at 888 Old Country Road, Plainview (Nassau County);
- Southside Hospital (320 beds) located at 301 East Main St., Bay Shore (Suffolk County);
- Staten Island University Hospital - North (508 beds) located at 475 Seaview Avenue and Staten Island University Hospital - South (206 beds) located at 375 Seguine Avenue, both in Staten Island (Richmond County);
- Lenox Hill Hospital (632 beds) located at 100 East 77th St., New York (New York County); and

- Northwell Health Stern Family Center for Rehabilitation (256 beds) located at 300 Community Drive, Manhasset (Nassau County).

Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., is a comprehensive, integrated health care delivery system that is comprised of 21 hospitals across the New York metropolitan area as well as physician practices and providers of subacute care including home care, long-term care, and hospice services. On July 19, 2016, the Board of Trustees of Northwell Healthcare Inc. voted to restructure its governance and to reduce the Board of Trustees to 32 members from 133 members. The vote to restructure was due to the need to ensure that Northwell Health's governance continues to achieve its mission across the entire enterprise, given the increasingly complex and challenging healthcare environment. The rationale for this change is that with a Board of Trustees of 32 members, carrying out its fiduciary responsibilities for privileging and staff appointments would place demands on the Board members' time, which would be unduly burdensome given their other committee responsibilities (i.e., compensation, audit and compliance, quality, finance, due diligence, investment, governance, and community and public health committees).

Operationally, each co-operated facility will delegate to NQMA the activity of staff appointments, reappointments, changes in status, clinical privileges, and Department administrative matters. As co-operated facilities, the hospitals and the skilled nursing facility will

have responsibility for taking final action if there is an appellate review concerning corrective actions or adverse appointment recommendations. The Chairman of NQMA will also be a board member of Northwell Healthcare, Inc. Northwell Healthcare, Inc. and each of the co-operated facilities have "mirror boards", meaning that the board members of Northwell Healthcare, Inc. and the facilities are the same.

There are no capital or operating costs associated with the formation of NQMA or NQMA carrying out its functions, and no construction costs associated with this project.

As active parent and co-operator, the following duties will be transferred from Northwell Healthcare, Inc. to NQMA:

- Approval for appointments or reappointments to the medical staff, graduate staff and allied health professional staff and changes in status with respect to such staffs, such as leave of absence;
- Approval for the granting of clinical privileges with respect to the medical staff, graduate staff and allied health professional staff;
- Approval of departmental administrative matters with respect to the medical staff, graduate staff and allied health professional staff, such as approval for the appointment of department chairs.

Notwithstanding the delegation of the above noted limited duties to NQMA, the governing body of the first parent, Northwell Healthcare, Inc., intends to exercise all authority and

responsibility for carrying out governing body responsibilities with respect to operating the hospitals and RHCF. Also, the governing body expressly reserves the taking of final action concerning corrective actions or adverse appointment recommendations where there has been an appellate review under medical staff bylaws by an appellate review committee of the board of trustees of Northwell Healthcare, Inc. and/or NQMA. The final action concerning such a corrective measure or adverse appointment recommendations is expressly reserved to the board of trustees of Northwell Healthcare, Inc.

OPCHSM Recommendation Contingent Approval

Need Summary

This establishment will not have an impact on utilization, and no changes to certified beds or services are being proposed.

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, 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 evidence of approval by the Office of Alcohol and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of photocopies of executed and completed facility lease agreements of all facilities under control of the applicant, acceptable to the Department. [CSL]
4. Submission of an executed copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]
5. Submission of the by-laws and certificate of incorporation of Northwell Health, Inc., which are 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

March 9, 2017

Need Analysis

Analysis

Northwell Healthcare Inc. is proposing to establish Northwell Quality and Medical Affairs, Inc. (NQMA) as the co-operator of seven hospitals and a skilled nursing facility which are currently co-operated by Northwell Healthcare. This is part of a broader restructuring of the Northwell Health system. The new NQMA entity will be primarily responsible for medical staff appointments and administrative matters.

The facilities which would enter into a co-operator relationship with NQMA are:

- North Shore University Hospital
- Long Island Jewish Medical Center
- Glen Cove Hospital
- Plainview Hospital
- Southside Hospital
- Staten Island University Hospital
- Lenox Hill Hospital
- Northwell Health Stern Family Center for Rehabilitation

This proposal would not have an impact on the certified services offered at the affected facilities.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Character and Competence

The sole corporate member of Northwell Healthcare, Inc. is Northwell Health, 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.

Upon review of the 14-member Board of Trustees of Northwell Quality and Medical Affairs, Inc., the following disclosures were made:

Mr. Granger, Mr. Stuart Levine, Mr. Marsh, Mr. Murcott, Dr. Rosof and Mr. Howard Stave disclosed involvement in the following: a qui tam lawsuit filed in September of 2010. North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations; in December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. In 2016, the investigation was resolved by agreement with the DOJ. and the matter is now closed. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model; in October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures; in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not

indicated whether there is any potential liability in either matter; in October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare; in September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Compliance with Applicable Codes, Rules and Regulations

Mr. Gary Cohen reported ownership interest in Northern Westchester Hospital. 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.

On November 21, 2016, the Department issued a S&O and \$10,000 fine to Northern Westchester Hospital. Immediate Jeopardy was identified on April 22, 2016 during an allegation survey. The issues involved the calling of a code team in a timely manner for a newborn baby (who subsequently expired). It was determined that hospital staff were not trained in the code policy and as such, did not initiate the code via the proper procedure.

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

Financial Analysis

There will be no change in authorized services, the number or type of acute care beds or utilization as a result of approval of this project.

Capability and Feasibility

BFA Attachment B is Northwell Health, Inc.'s 2015 certified and internal financial summaries as of September 30, 2016, which indicates they have maintained positive working capital and net assets positions, and maintained positive net income of \$81,564,000 and \$84,084,000, respectively.

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	Pre and Post-Organizational Charts
BFA Attachment B	Northwell Health, Inc. Financial Summary - 2015 certified and internals as of September 30, 2016.

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 9th day of March, 2017 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 Northwell Quality and Medical Affairs, Inc. as the second active parent of seven (7) hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162353 E

Northwell Quality and Medical Affairs, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Alcohol and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of photocopies of executed and completed facility lease agreements of all facilities under control of the applicant, acceptable to the Department. [CSL]
4. Submission of an executed copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]
5. Submission of the by-laws and certificate of incorporation of Northwell Health, Inc., which are 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 # 162391-E
Winthrop-University Hospital**

**Program: Hospital
Purpose: Establishment**

**County: Nassau
Acknowledged: November 15, 2016**

Executive Summary

Description

NYU Langone Health System, Inc., a not-for-profit corporation whose sole corporate member is New York University, requests approval to be established as the active parent and co-operator of Winthrop-University Hospital, a 591-bed, voluntary not-for-profit, Article 28 acute care hospital located at 259 First Street in Mineola (Nassau County), and Winthrop-University Home Health Agency, an Article 36 certified home health agency (CHHA) serving Queens, Nassau and Suffolk counties. Approval is also sought to change the name of the hospital to NYU Winthrop Hospital and use the assumed name of NYU Winthrop. The hospital is operated by Winthrop-University Hospital Association, which also operates the Article 36 CHHA and a long-term home health care program. The active parent affiliation for the Article 36 CHHA is part of this application request.

- Approving the sale, lease, exchange or other disposition of all, or substantially all, of the assets of the Corporation;
- Reviewing the vision, mission and strategic and financial plans of the Corporation;
- Approving the incurrence of any indebtedness of \$5,000,000 or more in any given fiscal year;
- Approving any transaction undertaken by the Corporation having a value of \$25,000,000 or more;
- Approving the creation, acquisition and or dissolution of an entity in which the Corporation is proposed to be, or is, the controlling member of; and
- Exercising any powers by the Corporation, acting in its capacity as direct or indirect member, shareholder or partner of any affiliate, subsidiary or joint venture.

As the active parent and co-operator, NYU Langone Health System will have the following rights, powers and authorities with respect to the Article 28 and Article 36 Winthrop-University Hospital Association entities:

- Electing the Corporation’s Board of Directors;
- Removing the Corporation’s Board of Directors;
- Filling any vacancies in the Corporation’s Board of Directors;
- Amending, repealing, or adopting new By-laws;
- Approving the Corporation’s merger or consolidation with another entity;

The proposed affiliation is intended to help Winthrop maintain their status as an acute care hospital on Long Island providing tertiary care, research and medical education programs, while making the hospital the hub of a high-quality, high-value, regional healthcare delivery system. There will be no change in either the authorized services or the number or type of beds as a result of approval of this project. Also, there are no projected changes in the utilization, revenues or expenses of the Winthrop University Hospital Association as a direct result of this project. The Hospital will remain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following completion of the project.

OPCHSM Recommendation
Contingent Approval

Need Summary

This change in ownership will not have an impact on utilization, and no changes to beds or services certified at Winthrop-University Hospital are being proposed.

Program Summary

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

Financial Summary

There are no project costs and no projected incremental change in staffing, operating expenses or operating revenues associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's amended by-laws, 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

March 9, 2017

Need Analysis

Analysis

This proposal to establish NYU Langone Health System as the active parent of Winthrop-University Hospital Association will have no impact on the operating certificate of Winthrop University Hospital or affiliated providers, and no impact on services is expected.

Conclusion

Integrating the hospital into the NYU Langone Health System will provide opportunities for improved quality, expanded access and cost reductions, and will improve access to capital for the hospital, enabling future investments in patient services.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

NYU Langone Health System, a not-for-profit corporation whose sole corporate member is New York University, requests approval to become the active parent and co-operator of Winthrop University Hospital Association.

Winthrop University Hospital is a not-for-profit, 591-bed Article 28 acute care hospital located in Nassau County at 259 First Street in Mineola. NYU Langone Health System, a not-for-profit entity of which New York University (NYU) is the sole corporate member, is the parent of an integrated healthcare system that includes four (4) hospitals across the New York metropolitan area as well as 140 ambulatory facilities, a federally qualified health center, physician practices and providers of subacute care including home care and long term care.

Winthrop University Hospital and its respective affiliates seeks to join the NYU Langone Health system in order to have access to capital that will enable improvement and expansion of services, access to the System's operational efficiencies and strategies and the ability to connect to the System's clinically integrated network. There will be no change in either authorized services or the number or type of beds as a result of this proposed change in governance structure.

Character and Competence

NYU Langone Health System has a 58-person Board. The sole corporate member of NYU Langone Health System is New York University.

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.

Upon review of the 58-member Board of Trustees of NYU Langone Health System, the following disclosures were made:

Mr. Berkley disclosed that he was the Chairman of the Board of Directors of a national organization in 2010 that settled allegations pertaining to Connecticut's Uniform Securities Act. Mr. Berkley has also been affiliated with five corporations that filed voluntary petitions seeking reorganization under Chapter 11.

Mr. Bronfman disclosed that he was named in an action involving a company he was affiliated with which involved allegations related to financial disclosures, executive compensation and stock trading. The court determined that the trading allegations were substantiated, but Mr. Bronfman was not liable to the civil claimants and he was ultimately fined 2.5 million euros.

Mr. Leeds disclosed that in 2010, a company he was affiliated with settled an administrative proceeding with the SEC regarding an inquiry into past compliance policies, record-keeping procedures and documentation production. The company agreed to a censure, the entry of a cease and desist order and payment of penalties totaling \$160,000.

Mr. Nickell disclosed that the company with which he is affiliated has been involved in a number of litigation matters. A class action complaint filed in 2014 alleging financial statements is pending, one action regarding fiduciary duties is in mediation and one employee allegation filed in 2007 has been settled. Mr. Nickell also reports involvement in numerous bankruptcy proceedings.

Mr. Ronald Perelman disclosed: a settled claim in 2008 involving a complaint of breaches in fiduciary duty; two settled claims in 2011 involving complaints of breaches in contract; a settled claim in 2012 involving a complaint of a breach of fiduciary duty; a settled claim in 2013 involving shareholder litigation; one settled action in 2013 involving a complaint of a breach of fiduciary duty; one action pending involving a complaint regarding swing profits; and a claim settled in 2016 involving a complaint of fraud and breach of contract. Mr. Perelman also disclosed involvement in three bankruptcy proceedings.

Mr. Douglas Phillips disclosed one pending action involving an employee matter.

Mr. Barry Schwartz disclosed two actions settled in 2013, one involving a claim of breach of fiduciary duty and one involving a claim of legal malpractice involving another individual at the firm where he was employed; an action settled in 2012 involving a claim of breach of fiduciary duty; and that he was an officer of three holding companies that filed bankruptcy petitions.

Mr. Wechsler disclosed one shareholder class action in 2006 that was settled.

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.

In a Stipulation and order (S&O) dated November 16, 2006, NYU Hospitals Center was fined \$16,000 based on the investigation of two occurrences of wrong sided surgery. The first involved a hernia surgery and the second involved the removal of a catheter.

In an S&O dated February 2, 2007, NYU Hospitals Center was fined \$6,000 based on a complaint investigation of the care rendered to a patient who underwent surgery on his jaw. The patient experienced extensive bleeding and arrested. Intubation was hindered by the fixation performed and the patient expired.

In an S&O dated May 29, 2007 NYU Hospitals Center was fined \$6,000 following the investigation of the death of an infant. It was determined that there were significant delays in diagnosis and in recognizing the patient's deteriorating condition.

In an S&O dated May 28, 2008 NYU Hospitals Center was fined \$6,000 following the investigation of a patient admitted for treatment of a seizure disorder. The investigation determined that the monitoring ordered for this patient did not occur, leading to the patient's death.

In an S&O dated March 12, 2012 Lutheran Augustana Center for Extended Care and Rehabilitation was fined \$22,000 (\$12,000 and \$10,000 respectively) following the investigation of a complaint involving an error in prescribing and a finding identified during a recertification survey. The complaint involved a physician who wrote an order for insulin for a non-diabetic patient in error. The patient subsequently became hypoglycemic after receiving the dose of insulin and required transfer to the hospital for respiratory distress.

On survey, a resident was identified who had poor intake and known elevated blood urea nitrogen (BUN). The resident was not monitored nor provided with adequate fluids. The resident subsequently experienced episodes of vomiting and an elevated BUN which required transfer to the hospital for acute renal failure.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no issues of capability or feasibility as there are no project costs or any expected changes to the budgets associated with this application.

BFA Attachment B is the certified financial statements of NYU Hospitals Center for the years ended August 31, 2014 and August 31, 2015. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an average excess of revenues over expenses of \$221,000,000 from September 1, 2014 through August 31, 2015.

BFA Attachment C is the 2014 and 2015 certified financial statements of Winthrop University Hospital Association and Subsidiaries. As shown, the entity had an average positive working capital position and an average positive net asset position from 2014 through 2015. Also, the entity achieved an average excess of revenues over expenses of \$25,414,164 from 2014 through 2015.

BFA Attachment D is the internal financial statements of NYU Hospital Center as of August 31, 2016. As shown, the entity had a positive working capital position and a positive net asset position through August 31, 2016. Also, the entity achieved a gain from operations of \$278,390,000 through August 31, 2016.

BFA Attachment E is the internal financial statements of Winthrop University Hospital as of September 30, 2016. As shown, the entity had a positive working capital position and a positive net asset position through September 30, 2016. Also, the entity achieved a net operating income of \$12,528,514 through September 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 Organizational Chart Pre-Closing and Post-Closing
- BFA Attachment B Financial Summary - August 31, 2014 and August 31, 2015 certified financial statements of NYU Hospitals Center
- BFA Attachment C Financial Summary - 2014 and 2015 certified financial statements of Winthrop University Hospital
- BFA Attachment D Financial Summary - August 31, 2016 internal financial statements of NYU Hospital Center
- BFA Attachment E Financial Summary - September 30, 2016 internal financial statements of Winthrop University Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of March, 2017 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 NYU Langone Health System as the active parent and co-operator of Winthrop-University Hospital and Winthrop-University Hospital Home Health Agency, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162391 E

Winthrop-University Hospital

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's amended by-laws, 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 # 162396-E
WMC Health Network - Ulster, Inc.**

**Program: Hospital
Purpose: Establishment**

**County: Ulster
Acknowledged: November 18, 2016**

Executive Summary

Description

WMC Health Network-Ulster, Inc. (WMC Ulster), an existing New York not-for-profit corporation, requests approval to be established as the active parent and co-operator of HealthAlliance, Inc. d/b/a HealthAlliance of the Hudson Valley (HealthAlliance), a New York not-for-profit corporation, and active parent, of the following voluntary not-for-profit Article 28 hospitals:

- HealthAlliance Hospital Broadway Campus (HA Broadway), a 150-bed acute care hospital located at 396 Broadway, Kingston (Ulster County);
- HealthAlliance Hospital Mary's Avenue Campus (HA Mary's Avenue), a 150-bed acute care hospital located at 105 Mary's Avenue, Kingston (Ulster County); and
- Margaretville Memorial Hospital (MMH), a 15-bed Critical Access Hospital located at 42084 State Highway 28, Margaretville (Delaware County).

It is noted that MMH is the sole corporate member of Margaretville Nursing Home, Inc. d/b/a Mountainside Residential Care Center (Mountainside), an 82-bed, not-for-profit, Article 28 residential health care facility (RHCF) adjoining the hospital. The skilled nursing facility is not part of this application request.

In March 2016, WMC Ulster became the sole member and passive parent of HealthAlliance. Upon approval of this application, WMC Ulster will become the active parent and co-operator of HealthAlliance and the three hospitals. The sole member of WMC Ulster is Westchester County Health Care Corporation (WCHCC) d/b/a

Westchester Medical Center (WMC), an existing New York state public benefit corporation.

As active parent and co-operator, WMC Ulster, will have the following rights, powers and authorities with respect to the Article 28 hospitals, as stated in its certificate of incorporation and bylaws, reserve powers list, and the active parent powers as described in 10 NYCRR 405.1(c):

- Appointment of the members of the Board of Trustees of the hospitals;
- Appointment or dismissal of officers, managers and medical staff;
- Approval of the operating and capital budgets and strategic and operating plans;
- Adoption or approval of operating policies and procedures;
- Approval of certificate need applications filed by or on behalf of the hospitals;
- Approval of any indebtedness of the hospitals;
- Approval of management or clinical services contracts;
- Adoption or approval of an amendment, repeal or other change to the organizational documents of the s including the adoption of any new By-Laws;
- Approval of settlements of administrative or other litigation or proceedings to which the hospitals are a party; and
- Negotiation of payor and managed care contracts on behalf of HealthAlliance and the hospitals.

The stated purpose of the transaction is to establish a coordinated, highly integrated system with the objective of improving quality, increasing access and lowering the costs of health care in the communities served by HealthAlliance. There will be no change in either authorized services or the number or type of beds as a result of approval of this project. In addition, there are no projected changes in the utilization, revenues or expenses of the hospitals as a direct result of this project. The hospitals will remain separate not-for-profit corporations certified under Article 28 of the Public Health Law, maintaining separate operating certificates following completion of the project.

OPCHSM Recommendation
Contingent Approval

Need Summary

There are no requested changes to beds or services through 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 projected incremental change in staffing, operating expense or operating revenues associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval by the Office of Alcohol and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of the Certificate of Amendment of the Certificate of Incorporation of WMC Health Network - Ulster, Inc., which is acceptable to the department. [CSL]
4. Submission of the Amended and Restated By-laws of WMC Health Network - Ulster, Inc., which is acceptable to the department. [CSL]
5. Submission of the Restated Certificate of Incorporation of HealthAlliance, Inc., which is acceptable to the department. [CSL]
6. Submission of the Amended and Restated By-laws of HealthAlliance, Inc., which is acceptable to the department. [CSL]
7. Submission of the Certificate of Amendment of the Certificate of Incorporation of HealthAlliance Hospital Broadway Campus, which is acceptable to the department. [CSL]
8. Submission of the Amended and Restated By-laws of HealthAlliance Hospital Broadway Campus, which is acceptable to the department. [CSL]
9. Submission of the Certificate of Amendment of the Certificate of Incorporation of HealthAlliance Hospital Mary's Avenue Campus, which is acceptable to the department. [CSL]
10. Submission of the Amended and Restated By-laws of HealthAlliance Hospital Mary's Avenue Campus, which is acceptable to the department. [CSL]
11. Submission of the Certificate of Amendment of the Certificate of Incorporation of Margaretville Hospital, which is acceptable to the department. [CSL]
12. Submission of the Amended and Restated By-laws of Margaretville Hospital, 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

March 9, 2017

Need Analysis

Analysis

This proposal to establish WMC Health Network - Ulster, Inc. as the active parent of HealthAlliance, Inc., and as the active parent of the three hospitals within the HealthAlliance network, will have no immediate impact on the operating certificates of the affected hospitals or affiliated providers. The three facilities that are the subject of this application are as follows:

- Margaretville Hospital, a 15-bed Critical Access Hospital located at 42084 State Highway 28, Margaretville, NY 12455, in Delaware County
- HealthAlliance Hospital Mary's Avenue Campus, a 150-bed hospital located at 105 Marys Avenue, Kingston, NY 12401, in Ulster County
- HealthAlliance Hospital Broadway Campus, a 150-bed hospital located at 396 Broadway, Kingston, NY 12401, in Ulster County

Conclusion

This proposal is expected to provide opportunities for cost-saving efficiencies and improved access to capital enabling improved quality, expanded access and cost reductions throughout the HealthAlliance network.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Character and Competence

The sole corporate member of WMC Health Network - Ulster, Inc. is Westchester County Health Care Corporation (WCHCC) d/b/a Westchester Medical Center (WMC), an existing public benefit corporation.

The board of WMC Health Network - Ulster, Inc. is as follows:

Name	Title
Mitchell C. Hochberg	Chair
Michael D. Israel*	President
Mark S. Tulis	Vice-Chair
Zubeen P. Shroff	Treasurer
Julie A. Switzer*	Secretary
Thomas A. Collins*	Director
Kevin M. Ryan*	Director
Marsha J. Casey*	Director

**also existing Director on HealthAlliance's Board*

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. Israel, Ms. Switzer and Ms. Casey disclosed an affiliation with Westchester Medical Center (WMC). At times, WMC has been the subject of investigations, to include the following:

- In November 2011, WMC received a Civil Investigative Demand (CID) from the U.S. Attorney's Office for the Southern District of NY (USAO/SDNY) regarding in- and outpatient mental health services furnished at WMC's Behavioral Health Center. WMC was advised during settlement discussion that the investigation stemmed from a pending qui tam complaint. IN October 2012, WMC resolved the matter in its entirety for \$7 million.
- In March 2015, WMC settled another a qui tam complaint filed related to contractual agreements between WMC and physicians on its staff for \$18.8 million.
- In July 2015, WMC received a CID from the USAO/SDNY related to claims WMC submitted to the Medicaid and Medicare programs in the course of furnishing clinical services as part of clinical trials conducted at WMC. The matter is pending.

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.

- In a Stipulation and Order (S&O) dated February 6, 2007, Westchester Medical Center was fined \$12,000 based on the findings of a complaint investigation involving a patient who entered the hospital for the surgical removal of plaque from his right carotid artery. The facility performed a left side carotid endarterectomy.
- In an S&O dated January 3, 2008, Mountainside Residential Care Center was fined \$2,000 based on findings from a survey completed on March 20, 2007 where the facility was cited for issues involving Quality of Care – Accidents.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

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

BFA Attachment B is Westchester County Health Care Corporation's (WCHCC) 2013-2015 certified and their internal financial statements as of September 30, 2016. As shown, WCHCC had a positive working capital position and a negative net asset position for the period. In addition, WCHCC achieved an average operating income of \$5,894,615 from 2013 through 2015 and an operating loss of \$10,664,000 as of September 30, 2016. The 2016 loss is due to a NYS actuarial pension adjustment in the amount of \$11,250,000 as required under GASB 68. Prior to this, the facility achieved a profit of \$586,000 for the nine-month period. The applicant has determined that this adjustment will cause an overall loss for 2016, but has now factored this pension adjustment into their future budgets.

BFA Attachment C is HealthAlliance, Inc.'s 2014 and 2015 certified financial statements and their internal financial statements as of August 31, 2016. As shown, the entity had a negative working capital position and an average negative net asset position from 2014 through August 31, 2016. In addition, the entity incurred average operating losses of \$14,275,664 from 2014 through 2015 and \$4,146,827 as of August 31, 2016. State support from the Interim Access Assurance Fund (SFY 2014-15), the Vital Access Provider Assistance Program and the Value Based Payment - Quality Improvement Program (SFYs 2015-16 and 2016-17) has been provided to help HealthAlliance mitigate these operating losses. The applicant indicated the reason for the losses and the negative working capital is declining utilization experienced by the HealthAlliance hospitals. Current market trends have shown a significant reduction in Medicare readmissions and the hospitals have been negatively impacted by changes related to population health management and NYS's Delivery System Reform Incentive Payment Program. To improve operations, HealthAlliance developed a strategic plan to consolidate services into a single facility at the Mary's Avenue Campus, reducing beds from 300 down to 201, and create a medical village at the vacated Broadway Campus facility. A Capital Restructuring Financing Program (CRFP) grant award in the amount of \$88.8 million will be used to fund the physical plant restructuring project.

As previously noted, HealthAlliance joined WMC Ulster in a passive parent relationship on March 30, 2016. This application is a further step in a corporate reorganization to enhance HealthAlliance's ability to provide quality care locally, enable access to physicians and services in Westchester Medical Center's Health Network, and help the entity attain financial stability. Anticipated benefits of the affiliation with WCHCC/WMC include the following:

- Increase HealthAlliance's access to the capital markets that will allow the new facility to offer modernized clinical services in as all private room environment;
- Enable a reorganization of clinical services between HealthAlliance and Mid-Hudson Regional Hospital to gain better efficiencies and improve quality of care at both campuses;
- Provide HealthAlliance with telemedicine support to further improve timeliness of consults and performance in the Emergency Department and Outpatient Clinics;
- Allow HealthAlliance to participate in system-wide, value-based, purchasing initiatives by utilizing the network infrastructure and contracting process; and
- Allow full consolidation of various back-office functions to improve service and reduce costs in areas such as IT, finance, revenue cycle, human resources and purchasing.

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

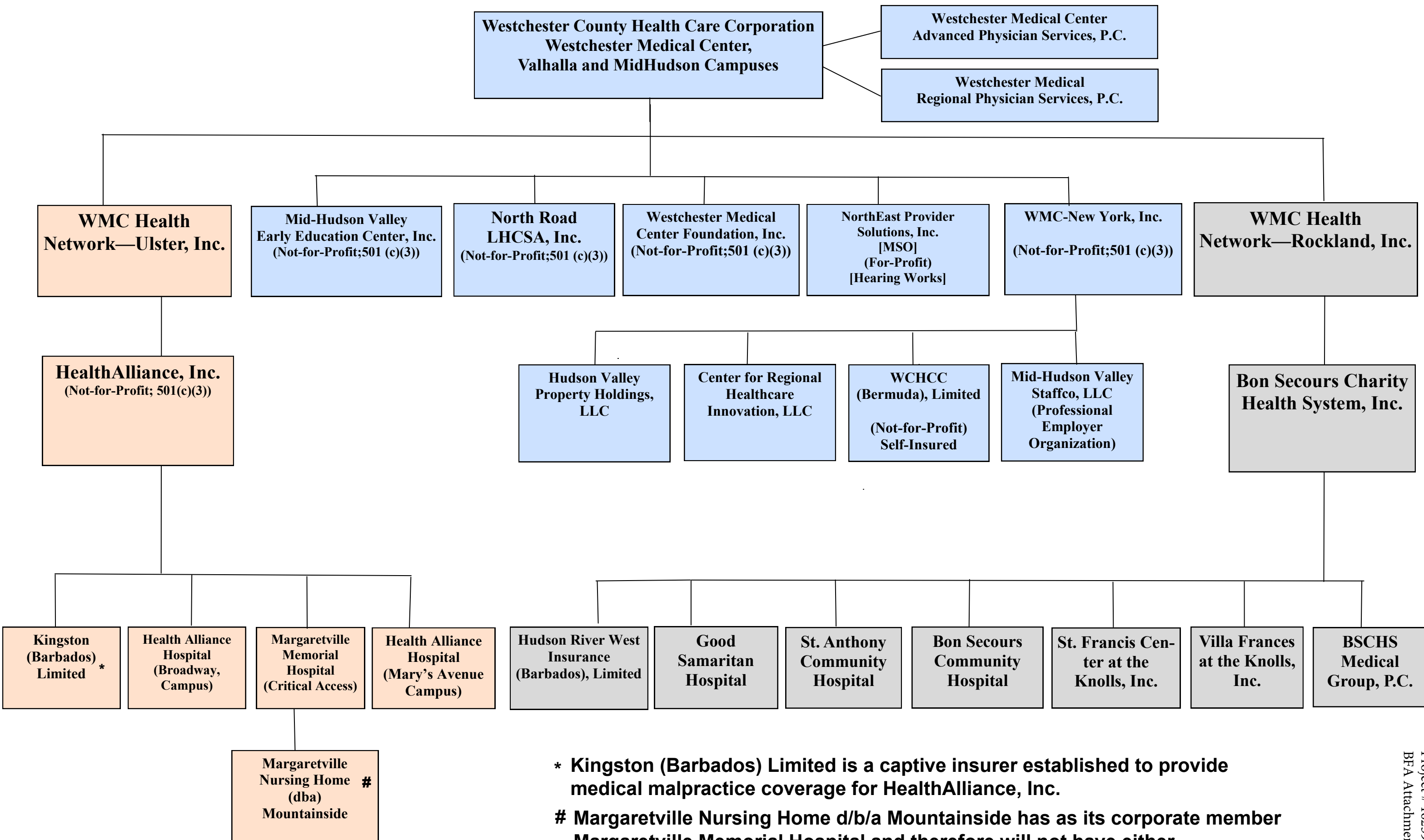
Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary- 2013-2015 certified and the January 1, 2016-September 30, 2016 internal financial statements of Westchester County Health Care Corporation.
BFA Attachment C	Financial Summary- 2014 and 2015 certified and the January 1, 2016-August 31, 2016 financial statements of HealthAlliance, Inc.

Westchester County Health Care Corporation— Table of Organization



* Kingston (Barbados) Limited is a captive insurer established to provide medical malpractice coverage for HealthAlliance, Inc.

Margaretville Nursing Home d/b/a Mountainside has as its corporate member Margaretville Memorial Hospital and therefore will not have either HealthAlliance, Inc or WNC Health Network-Ulster, Inc. as its active parent.

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 9th day of March, 2017 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 WMC Health Network - Ulster, Inc. as the parent of Health Alliance, Inc., and the active parent/co-operator of Health Alliance Hospital Broadway Campus, Health Alliance Hospital Mary's Avenue Campus, and Margaretville Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162396 E

WMC Health Network – Ulster, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Alcohol and Substance Abuse Services, acceptable to the Department. [PMU]
2. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. Submission of the Certificate of Amendment of the Certificate of Incorporation of WMC Health Network - Ulster, Inc., which is acceptable to the department. [CSL]
4. Submission of the Amended and Restated By-laws of WMC Health Network - Ulster, Inc., which is acceptable to the department. [CSL]
5. Submission of the Restated Certificate of Incorporation of HealthAlliance, Inc., which is acceptable to the department. [CSL]
6. Submission of the Amended and Restated By-laws of HealthAlliance, Inc., which is acceptable to the department. [CSL]
7. Submission of the Certificate of Amendment of the Certificate of Incorporation of HealthAlliance Hospital Broadway Campus, which is acceptable to the department. [CSL]
8. Submission of the Amended and Restated By-laws of HealthAlliance Hospital Broadway Campus, which is acceptable to the department. [CSL]
9. Submission of the Certificate of Amendment of the Certificate of Incorporation of HealthAlliance Hospital Mary's Avenue Campus, which is acceptable to the department. [CSL]
10. Submission of the Amended and Restated By-laws of HealthAlliance Hospital Mary's Avenue Campus, which is acceptable to the department. [CSL]
11. Submission of the Certificate of Amendment of the Certificate of Incorporation of Margaretville Hospital, which is acceptable to the department. [CSL]
12. Submission of the Amended and Restated By-laws of Margaretville Hospital, 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 # 162407-E
Upper Allegheny Health System**

**Program: Hospital
Purpose: Establishment**

**County: Cattaraugus
Acknowledged: November 25, 2016**

Executive Summary

Description

Kaleida Health, a voluntary not-for-profit corporation, requests approval to be established as the active parent of Upper Allegheny Health System (UAHS) and the active parent/co-operator of Olean General Hospital (OGH). UAHS is the sole corporate member of OGH, a 186-bed, voluntary not-for-profit, Article 28 hospital located at 515 Main Street, Olean (Cattaraugus County), and Bradford Regional Medical Center (BRMC), a 107-bed acute care hospital located in Pennsylvania. As a result of this transaction, Kaleida Health will become the active parent of UAHS and thus the grandparent to both OGH and BRMC.

As the active parent of UAHS, Kaleida Health will have the following rights, power and authorities with respect to UAHS (including both OGH and BRMC):

- Approval and appointment of the members of the board of UAHS;
- Appointment and removal of the CEO of UAHS;
- Approval of amendments to the articles or certificates of incorporation and bylaws of UAHS, OGH, and BRMC;
- Approval of UAHS's, OGH's and BRMC's annual operating and capital budgets;
- Approval of sale, lease, mortgage or encumbrance of any UAHS, OGH, or BRMC assets in excess of \$250,000;
- Approval of any merger, business consolidation, acquisition or joint venture by UAHS, OGH, or BRMC;

- Approval of any filing at the state or federal level of a bankruptcy petition, or the taking of any action regarding insolvency, by UAHS, OGH, or BRMC;
- Approval of any indebtedness in excess of \$250,000 by UAHS, OGH, or BRMC excluding vendor debt incurred in the Ordinary Course of Business;
- Allocation of costs to UAHS, OGH, or BRMC based upon a cost allocation formula developed jointly by Kaleida Health and UAHS;
- Adoption of strategic plans for UAHS;
- Approval of management agreements in which UAHS, OGH, or BRMC is a party, that have not already been authorized by Kaleida or are not included in a Kaleida-approved budget;
- Approval of changes in clinical services offered by UAHS, OGH, or BRMC;
- Approval of certificate of need applications prepared by UAHS, OGH, or BRMC; and
- Approval of settlements of administrative proceedings or litigation to which UAHS, OGH or BRMC is a party.

The stated purpose of this transaction is to strengthen rural healthcare and allow UAHS to participate in a fully integrated healthcare delivery system. There are no projected changes in the utilization, revenues or expenses of the affiliates as a direct result of this project. There are no costs associated with this project and there are no changes to staffing or services concurrent with the approval of this application. There will be no reduction in either

authorized services or the number or type of beds as a result of approval of this project. UAHS will remain a separate not-for-profit corporation, maintaining separate operating certificates following completion of the project.

OGH is a rural acute care hospital that was established in 1898. The hospital has been providing care to the residents of Olean and the surrounding communities of New York's Southern Tier for over 117 years. The hospital operates six hospital extension clinics and one school-based hospital extension clinic.

Kaleida Health is an Article 28 integrated health care delivery system located in Buffalo (Erie County) that provides acute care hospital, skilled nursing, rehabilitation, outpatient and home healthcare services primarily to the 1.5 million residents of Western New York. Kaleida Health includes the Buffalo General Medical Center/Gates Vascular Institute, DeGraff Memorial Hospital, Millard Fillmore Suburban Hospital and the Women and Children's Hospital of Buffalo. Kaleida Health also operates HighPointe on Michigan and the DeGraff Memorial Hospital skilled nursing facilities, and the Visiting Nursing Association. Additionally, Kaleida Health operates a laboratory division and multiple joint venture ambulatory surgery centers. The system is a major clinical teaching affiliate of the SUNY-Buffalo School of Medicine

and Biomedical Science (UB), providing clinical training to approximately 850 SUNY Buffalo medical students and post-graduate students each year.

BFA Attachment A presents the organizational chart of the Legal Corporate Structure of Kaleida Health pre-closing and post-closing.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no immediate impact on utilization, and no changes to the beds or services certified at Olean General Hospital are being proposed.

Program Summary

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

Financial Summary

There are no project costs and no projected incremental change in staffing, operating expenses or operating revenues associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of the amended Bylaws of Kaleida Health, acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended Bylaws of Upper Allegheny Health System, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

March 9, 2017

Need Analysis

Background

Kaleida Health is proposing to be established as the active parent of UAHS. No changes to the operating certificate of Olean General Hospital or other facilities within the UAHS network are being proposed.

Kaleida Health is an existing not-for-profit corporation located at 100 High Street, Buffalo, NY 14203, in Erie County. Kaleida Health operates an extensive network of hospitals, extension clinics and RCHFs in New York State. Upper Allegheny Health System (UAHS) is a voluntary, not-for-profit corporation located at 515 Main Street, Olean, NY 14760, in Cattaraugus County. Upper Allegheny Health System is the co-operator and active parent of Olean General Hospital, a 186-bed facility co-located with UAHS. UAHS additionally operates Bradford Regional Medical Center in Pennsylvania.

Analysis

This proposal to establish Kaleida Health as the active parent of Upper Allegheny Health System would have no impact on the operating certificates of the affected hospital or affiliated providers, and no immediate impact on services. This affiliation is intended to present opportunities for improved access to care, improved quality and cost savings through efficiencies of scale.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Character and Competence

The board of Kaleida Health is as follows:

Name	Position Held
Frank Curci	Chair
William Maggio	Vice-Chair
David Milling, MD	Secretary
Christopher Ross	Treasurer
Nicholas Aquino	Director
Amy L. Clifton	Director
Evan Evans, MD	Director
Kevin Gibbons, MD	Director
Christopher T. Greene	Director
Jody Lomeo	Director
Darren King	Director
Mary Lou Rusin, RN	Director
Francisco Vasquez, PhD	Director
Brenda McGee*	Director

**proposed new member from UAHS board*

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. Evans disclosed one closed medical malpractice case without judgement.

Dr. Gibbons disclosed two open medical malpractice cases.

Ms. McGee disclosed an affiliation with St. Bonaventure University. On May 3, and November 23, 2010, St. Bonaventure settled claims filed by the EEOC and the NYS Office of Human Rights. Ms. McGee also disclosed that she has been a board member of Bradford (PA) Regional Medical Center since November 2009. In August 2010, BMRC settled a qui tam suit relating to violations of the Stark Act.

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.

The Department has taken enforcement action against the following Kaleida Article 28 entities:

- In a Stipulation and Order dated July 23, 2007, the Department issued a \$24,000 fine to Women's & Children's Hospital based on the findings of a complaint investigation into the care rendered to two teenagers in the facility's Emergency Room. Delayed treatment and/or inappropriate treatment resulted in deaths to both.
- In a Stipulation and Order dated January 13, 2016, the Department issued a \$16,000 fine to Highpointe on Michigan Health Care Facility for multiple deficiencies discovered during a survey that concluded on April 17, 2015. Immediate Jeopardy was called and the facility was cited in the following areas: Treatment and Care for Special Needs; Accidents/Hazards; Governing Body; and Investigating and Reporting Abuse.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no issues of capability or feasibility as there are no project costs or any expected changes to the budgets associated with this application.

BFA Attachment B is the 2014 and 2015 certified financial statements of Kaleida Health. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an average income from operations of \$19,241,000 from 2014 through 2015.

BFA Attachment C is the 2014 and 2015 certified financial statements of Olean General Hospital. As shown, the entity had an average positive working capital position and an average positive net asset position from 2014 through 2015. Also, the entity achieved an average income from operations of \$1,379,251 from 2014 through 2015.

BFA Attachment D is the internal financial statements of Kaleida Health as of June 30, 2016. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2016. Also, the entity achieved an income from operations of \$14,016,000 through June 30, 2016.

BFA Attachment E is the internal financial statements of Olean General Hospital as of June 30, 2016. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2016. Also, the entity incurred a loss from operations of \$74,474 through June 30, 2016. The applicant indicated that the loss was due to the following: lower inpatient volumes in exempt units (Sub-acute Rehab and Psychiatry); negative impact of estimated 2015 needed contractual allowance reserves bleeding into 2016; outpatient revenue was under budget related to lower radiation medicine, chemotherapy, and dental clinic services; and expenses were over budget due to overages in Hospitalist coverage and the need to use more agency nurse staff.

BFA Attachment F is the 2014 and 2015 certified financial statements of Bradford Regional Medical Center. As shown, the entity had an average negative working capital position and an average positive net asset position from 2014 through 2015. The applicant has indicated that the reason for the negative working capital position is prior historical losses (carryover of poor performance from 2010 and prior years). The losses are being mitigated in more recent years. Also, the entity achieved an average income from operations of \$1,080,911 from 2014 through 2015.

BFA Attachment G is the internal financial statements of Bradford Regional Medical Center as of September 31, 2016. As shown, the entity had a negative working capital position and a positive net asset position through September 31, 2016. The applicant has indicated that the reason for the negative working capital position is prior historical losses as noted above. Also, the entity incurred an average income of operations of \$336,294 through September 31, 2016.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart of Kaleida Health pre-closing and post-closing.
BFA Attachment B	Financial Summary - 2014 and 2015 certified financial statements of Kaleida Health.
BFA Attachment C	Financial Summary - 2014 and 2015 certified financial statements of Olean General Hospital
BFA Attachment D	Financial Summary - June 30, 2016 internal financial statements of Kaleida Health.
BFA Attachment E	Financial Summary - June 30, 2016 internal financial statements of Olean General Hospital
BFA Attachment F	Financial Summary - 2014 and 2015 certified financial statements of Bradford Regional Medical Center
BFA Attachment G	Financial Summary- September 31, 2016 internal financial statements of Bradford Regional Medical 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 9th day of March, 2017 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 Kaleida Health as the parent of Upper Allegheny Health System and active parent/co-operator of Olean General Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

162407 E

FACILITY/APPLICANT:

Upper Allegheny Health System

APPROVAL CONTINGENT UPON:

1. Submission of evidence of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of the amended Bylaws of Kaleida Health, acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended Bylaws of Upper Allegheny Health System, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 162290-E
Melville SC, LLC d/b/a Melville Surgery Center

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** November 22, 2016

Executive Summary

Description

Melville SC, LLC d/b/a Melville Surgery Center (the Center), an existing New York limited liability company, requests approval to transfer 51% membership interest in the Article 28 freestanding ambulatory surgery center (FASC) to Northwell Health Melville ASC Ventures, LLC. The Center is located in leased space at 1895 Walt Whitman Road, Melville (Suffolk County), New York. The facility is certified as a multi-specialty FASC and is licensed to provide Lithotripsy O/P service. There are no proposed changes to services or program. The Center performed 6,426 procedures in 2015 and 3,540 procedures in the first six months of 2016.

On September 13, 2016, the members of Melville SC, LLC entered into a Membership Interest Purchase Agreement with Northwell Health Melville ASC Ventures, LLC for approximately \$13,157,767.

Upon approval of this application, there will be three classes of members, defined as follows:

- Class A Member - 15 individual physician members (34.3% total);
- Class B Member - four individual members of Ambulatory Surgical Centers of America (14.7% total); and
- Class C Member - Northwell Health Melville ASC Ventures, LLC (51%)

All members, regardless of class, will have the same economic and voting rights based on their percentage ownership interest in Melville Center.

The sole member of Northwell Health Melville ASC Ventures, LLC is North Shore University

Hospital (NSUH), a voluntary not-for-profit, 804-bed tertiary care hospital located at 300 Community Drive in Manhasset, (Nassau County). NSUH is a member of Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., a comprehensive, integrated healthcare delivery system comprised of numerous hospitals across the New York metropolitan area, as well as physician practices and providers of subacute care including home care, long-term care and hospice services. Also, NSUH is a member of the Northwell Health Obligated Group, which was formed to provide its members with an enhanced credit position and expanded access to capital markets.

**OPCHSM Recommendation
Contingent Approval**

Need Summary
There will be no Need recommendation for 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

Northwell Health Melville ASC Ventures, LLC will acquire 51% interest in the operations of Melville SC, LLC via \$13,157,767 cash equity as provided for in the membership interest purchase agreement. The payment will be made by Northwell Health, Inc. from their current operations. The funds will be distributed to the current members of Melville SC, LLC in proportion to their units sold. There are no

project costs associated with this application. The proposed budget is as follows:

Revenues	\$12,618,525
Expenses	<u>\$8,676,289</u>
Net Income/(Loss)	\$3,942,236

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 first amendment to the administrative services agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Melville SC, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's amended Administrative Service Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Amended and Restated Operating Agreement of Melville SC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended lease agreement between 1895 WWA, LLC and Melville SC, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

March 9, 2017

Program Analysis

Character and Competence

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,

For this project, a Character and Competence Review was conducted on the members of Northwell Health Melville ASC Ventures, LLC, and the following disclosures were made:

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.

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.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

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

In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based on an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

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

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. In 2016, the investigation was resolved by agreement with the DOJ, and the matter is now closed. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In a S&O dated November 5, 2014, Broadlawn Manor Nursing & Rehab Center was fined \$6,000 based on an inspection completed on December 19, 2011 for issues involving Accidents and Supervision; Administration; and Quality Assurance. In a subsequent S&O filed on January 5, 2016, Broadlawn received a fine of \$8,000 based on an inspection finding of April 18, 2014 involving the lack of supervision and reassessment of a resident who exhibited wandering and elopement behavior. After several episodes of wandering the resident was found face down in the parking lot. The facility failed to investigate this incident and the circumstances leading up to it. Again, on July 12, 2016, a S&O was issued along with a \$10,000 fine for inspection findings of October 12, 2015 involving the care provided to a resident identified as at moderate risk for skin breakdown. This resident developed a stage IV decubitus ulcer which required surgical debridement. It was determined that the physician's orders for this patient were not properly followed.

In June 2012, the OIG and U.S. Attorney's Office for the Eastern District of New York subpoenaed Staten Island University Hospital (SIUH) for documentation relating to services rendered at SIUH's inpatient specialized burn unit dating back to 2005. Requested documentation was provided in 2012 and, in 2013, SIUH responded to follow-up questions. To date, the government has not indicated whether SIUH has any potential liability in this matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare.

In a S&O dated November 21, 2016, Long Island Jewish Medical Center was fined \$4,000 based on complaint investigation findings related to Infection Control Practices. During the investigation, 24 staff were observed not following acceptable of standards of practice for Infection Control practices in Surgical Areas. Specifically, staff demonstrated improper attire and exposure of hair during procedures.

Also on November 21, 2016, the Department issued a S&O and \$10,000 fine to Northern Westchester Hospital. Immediate Jeopardy was identified on April 22, 2016 during an allegation survey. The issues involved the calling of a code team in a timely manner for a newborn baby (who subsequently expired). It was determined that hospital staff were not trained in the code policy and as such, did not initiate the code via the proper procedure.

In a S&O dated December December 8, 2006 Forest Hills Hospital was fined \$12,000 following the investigation of wrong sided hernia surgery.

On January 19, 2017, the Department issued a S&O to Plainview Hospital regarding a pattern of infection control practices which were not consistent with accepted standards and levied a fine of \$4,000.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement which will be effectuated upon Public Health and Health Planning Council (PHHCP) approval of this CON. The terms of the agreement are summarized below:

Date:	September 13, 2016
Seller:	Melville SC, LLC
Buyer:	Northwell Health Melville ASC Ventures, LLC
Asset Acquired:	51% membership interest in Melville SC, LLC
Purchase Price:	\$13,157,767 (Net Working capital should not be less than \$956,320; The Purchase Price is subject to 51% net working capital (WC) adjustment on WC below \$956,320 or above \$1,016,090
Payment of Purchase Price:	\$50,000 upon execution \$13,107,767 due at closing

The purchase price for the operations is proposed to be satisfied via equity from Northwell Health, Inc., sole member of Northwell Health Melville ASC Ventures, LLC. A letter of interest has been provided by Northwell Health, Inc.

BFA Attachment D is Northwell Health, Inc.'s 2015 certified financial statement, which indicates the entity has sufficient liquid assets to cover the purchase price associated with this project.

Administrative Services Agreement

The applicant noted that Melville Center has had an Administrative Service Agreement (ASA) since May 15, 2005 with Cataract & Laser Center Partners, LLC (whose owners are Class B members). A draft First Amendment to the ASA has been provided, summarized as follows:

Date:	June 20, 2016
Consultant:	Cataract & Laser Center Partners, LLC d/b/a Ambulatory Surgical Centers of America
Facility:	Melville SC, LLC
Services Provided:	Development & Administrative Services; assist to secure and monitor all relevant permits, licenses and certifications to operate the center; assist in purchasing supplies and capital equipment; secure project financing; develop policies and procedure manuals; assist in billing and collections, account receivable & account payable; advise in joint venture agreements; assist in formation, implementation and ongoing monitoring of utilization management and quality assurance procedures; software management; coordinate contractual relationships with various external organizations; assist in developing a proposed capital budget, monthly financial reports; perform other consulting or administrative duties as may be requested.
Frist Amendment:	Coordinate preparation of documents associated with licensure and continuing operations, any matters requiring outside legal counsel will be handled by outside legal counsel selected by the Surgical Center. Surgical Center has the right to hire an outside consultant to assist with managed care contracting activities, including but not limited to, contract negotiation, contract renewal negotiation and contract termination activities.
Term:	Ten Years, Renew Automatically for successive 3 years terms unless either party gives 90 days prior written notice not to renew.
Fee:	\$240,000 per year (\$20,000 per month)

Melville SC, LLC retains ultimate control in all of the final decisions associated with the services.

Operating Budget

The applicant has submitted operating budgets for the current year of operations (2015) and for Year One (2017 dollars), as shown below:

	Current Year		Year One	
	Per Proc.	Total	Per Proc.	Total
<u>Revenue</u>				
Medicaid-FFS	\$1,248.16	\$610,348		\$0
Medicaid-MC	\$0	\$0	\$1,247.61	\$622,555
Medicare-FFS	\$1,506.08	\$2,784,734	\$1,506.06	\$2,840,428
Commercial-FFS	\$2,430.23	\$6,090,160	\$2,430.35	\$6,211,962
Commercial-MC	\$2,694.04	\$1,619,116	\$2,694.12	\$1,651,498
Private Pay	\$254.41	\$10,431	\$253.33	\$10,640
All other *	\$1,336.50	<u>\$1,256,314</u>	\$1,336.23	<u>\$1,281,442</u>
Total Revenue		\$12,371,103		\$12,618,525
<u>Expenses</u>				
Operating	\$1,249.50	\$8,029,316	\$1,215.29	\$8,129,078
Capital	<u>\$86.42</u>	<u>\$555,305</u>	<u>\$81.81</u>	<u>\$547,211</u>
Total Expenses	\$1,335.92	\$8,584,621	\$1,297.10	\$8,676,289
Net Income		<u>\$3,786,482</u>		<u>\$3,942,236</u>
Utilization (Procedures)		6,426		6,689

* HMO/Workers Comp/No Fault

Utilization by payer source related to the submitted operating budget is as follows:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid-FFS	489	7.61%	0	0.00%
Medicaid-MC	0	0.00%	499	7.46%
Medicare-FFS	1,849	28.77%	1,886	28.20%
Commercial-FFS	2,506	39.00%	2,556	38.21%
Commercial-MC	601	9.35%	613	9.16%
Private Pay	41	0.64%	42	0.63%
Charity	0	0.00%	134	2.00%
All Other	<u>940</u>	<u>14.63%</u>	<u>959</u>	<u>14.34%</u>
Total	6,426	100%	6,689	100%

Medicaid and Charity Care utilization were projected to be 7.46% and 2.00%, respectively, of total procedures in the first year of operation. As documented in the AHCF cost reports filed with the Department, the facility has experienced difficulty meeting a modest charity care level to date. However, Medicaid utilization was 2.1% (2012), 3.0% (2013), and 2.0% (2014) of their total caseload. The applicant indicates that they achieved 7.61% Medicaid utilization in 2015 and this trend continues through to the present.

To improve their efforts to treat underserved populations, Melville Center has implemented an action plan, the main part of which revolves around tapping into Northwell Health's charity care program. To increase charity care referrals, the facility will utilize Northwell Health's call center for ASC charity care and will reach out to Federally Qualified Health Centers located within a designated radius from Melville Center. Additionally, the Melville Center will monitor charity care referrals to determine whether the Center's hours of operation are a barrier to patients receiving care and will adjust hours of operation to accommodate those patients. With these efforts and program changes, the applicant feels they can achieve 9.5% of its annual visits in year one and year three for Charity Care and Medicaid recipients.

Capability and Feasibility

There are no project costs associated with this application. Northwell Health Melville ASC Ventures, LLC will acquire 51% of the operations of Melville SC, LLC for \$13,157,767 which will be funded via cash equity from Northwell Health, Inc. A letter of interest has been provided by Northwell Health, Inc. A review of BFA Attachment D (Northwell Health, Inc.'s 2015 certified financial statements) shows the entity has sufficient liquid assets to cover the purchase price.

The submitted budget indicates an excess of revenues over expenses of \$3,942,236 during year one. Revenues are based on current reimbursement methodologies for FASC services. The budget appears reasonable.

BFA Attachment B is Melville SC, LLC's financial summary for the period 2013 through 2015, which shows the entity had an average positive working capital of \$1,623,755, an average positive equity position of \$ 3,092,255 and an average net income of \$3,642,817 for the period. BFA Attachment C is the (cash basis) internal financial statements for Melville SC, LLC as of July 31, 2016, which shows positive working capital, positive net assets and the operating income of \$3,317,701.

BFA Attachment D is the 2014-2015 certified financial statement of Northwell Health, Inc., which shows that the entity maintained a positive working capital position, positive net assets position and generated positive excess of revenue and gains and losses over expenses of \$190,784,000 and \$347,444,000 respectively. The entity has generated net income of \$286,996,000 as of September 30, 2016.

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 Pre and Post Organizational Chart of Melville SC, LLC
- BFA Attachment B Melville SC, LLC's 2014-2015 and 2016 Internal Financial Summary
- BFA Attachment C Internal Financial Statement, Melville SC, LLC
- BFA Attachment D Northwell Health, Inc.'s 2014-2015 Certified Financial Statement and Internal Financial Statement as of September 30, 2016

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 9th day of March, 2017 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 51% membership interest to Northwell Health Melville ASC Ventures, LLC, 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:

162290 E

FACILITY/APPLICANT:

Melville SC, LLC
d/b/a Melville Surgery Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed first amendment to the administrative services agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Melville SC, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's amended Administrative Service Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Amended and Restated Operating Agreement of Melville SC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended lease agreement between 1895 WWA, LLC and Melville SC, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



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

Program: Residential Health Care Facility
Purpose: Establishment

County: Albany
Acknowledged: September 1, 2015

Executive Summary

Description

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

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

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

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

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

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

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

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

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

OPCHSM Recommendation Contingent Approval

Need Summary

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

Program Summary

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

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a (3).

Financial Summary

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

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
7. Submission of an executed Assignment and Assumption Agreement for the real property interest of the residential health care facility, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicants Authority to do Business in New York, acceptable to the Department. [CSL]
10. Submission of the applicants executed copy of the Purchase and Sales Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants amended and executed Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date
March 9, 2017

Need Analysis

Background

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

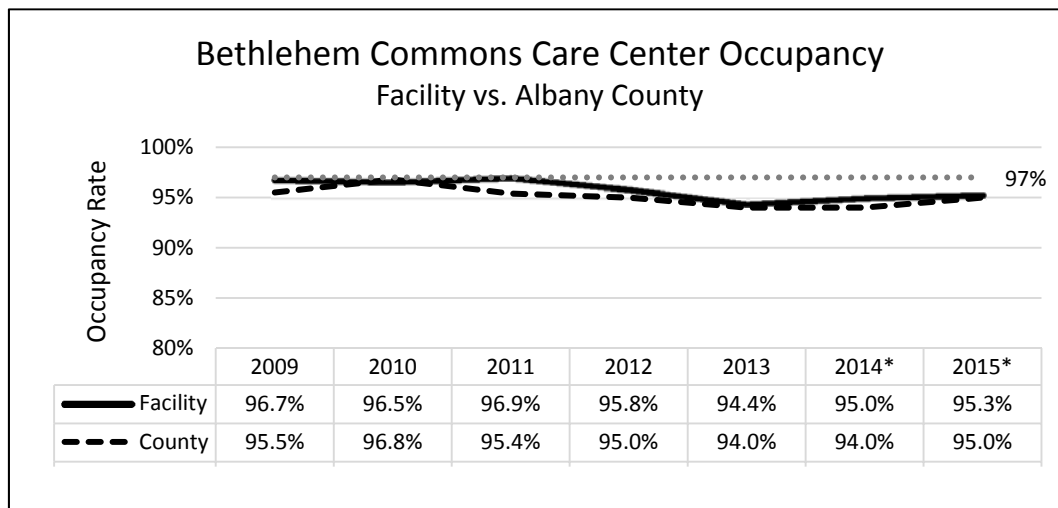
Analysis

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

Albany County

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

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



*unaudited; based on weekly census

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

Access

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

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

Conclusion

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

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

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

Character and Competence - Background

Facilities Reviewed

Nursing Homes

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

Assisted Living Facility

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

LHCSA

Epic HomeCare, LLC (pending) (50%)

Individual Background Review

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

Nursing Homes

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

Assisted Living Facility

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

LHCSA

Epic HomeCare, LLC (pending) (50%)

Zipporah Farkas indicates no employment history. Ms. Farkas has a high school diploma from Bais Yaakov of Spring Valley and discloses no health facility ownership interests.

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

Warren Haven Nursing Home (NJ) (32.5%)	09/15 to present
--	------------------

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

Character and Competence – Analysis

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

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

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

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

Quality Review

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

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

Project Review

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

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

Conclusion

The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

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

The applicant's financing plan is as follows:

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

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

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

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

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

Assignment of Purchase and Sale Agreement

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

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

Lease Agreement

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

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

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

Operating Budget

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

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

The following is noted with respect to the submitted budget:

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

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

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

The projected budget appears reasonable.

Capability and Feasibility

There are no project costs associate with this application.

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

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

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

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

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

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

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

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

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

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

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

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

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

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 9th day of March, 2017 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 Delmar Acquisition I, LLC as the new operator of Bethlehem Commons Care Center, a 120-bed, not-for-profit Article 28 residential health care facility located at 125 Rockefeller Road, Delmar, 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:

152135 E

Delmar Acquisition I LLC
d/b/a Bethlehem Commons Nursing and
Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
7. Submission of an executed Assignment and Assumption Agreement for the real property interest of the residential health care facility, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicants Authority to do Business in New York, acceptable to the Department. [CSL]

10. Submission of the applicants executed copy of the Purchase and Sales Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants amended and executed Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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: The Bristol Home, Inc. d/b/a Bristol Home Care
 Address: Buffalo
 County: Erie
 Structure: Not-For-Profit Corporation
 Application Number: 162276

Description of Project:

The Bristol Home, Inc. d/b/a Bristol Home Care, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by The Bristol Home (ACF). The LHCSA and the ALP will have identical membership.

The Board of Directors of The Bristol Home, Inc. d/b/a/ Bristol Home Care is comprised of the following individuals:

<p>Corine Artis – Board Member Retired</p> <p><u>Affiliations</u> The Bristol Home (2012-present) Bristol Village (2012-present)</p>	<p>James Bender – Board Member Gift Planning Officer, SUNY at Buffalo</p>
<p>Thomas Hanlon – Board Director Chief Operating Officer & Executive Vice President, Courier Capital, LLC</p> <p><u>Affiliations</u> The Bristol Home (2013-present) Bristol Village (2013-present)</p>	<p>John Dezik – Board Member Retired</p> <p><u>Affiliations</u> The Bristol Home (2011 –present) Bristol Village (2011 –present)</p>
<p>Joseph Floss – Board Member President/Owner, Floss Agency, Inc.</p>	<p>Hector Garrido – Board Member Project Architect, Trautman Associates</p>
<p>Cecilia Kohlmeier, RN – Board Member Retired</p>	<p>Daniel Herberger – Board Member Retired</p>
<p>Barbara Cassaro – Vice-President Shipping Coordinator, Reeds Jenss</p> <p><u>Affiliations</u> The Bristol Home 1992-present) Bristol Village (1992-present)</p>	<p>James Magavern, Esq. – Board Member Attorney, Magavern Magavern Grimm, LLP</p> <p><u>Affiliations</u> The Bristol Home (1992-present)</p>
<p>William Prohn – Board Member Managing Director, Dopkins & Company, LLP</p>	<p>Alan Vogt – Board Member Retired</p>
<p>Peter Monczynski – Board Member Service Attendant, AVI Food Systems, Inc.</p> <p><u>Affiliations</u> The Bristol Home (2013-present) Bristol Village (2013-present)</p>	<p>Mary Lou WYROBEK – Chairperson Director of Religious Education, Assumption Church Adjunct Instructor, Canisius College</p> <p><u>Affiliations</u> The Bristol Home (1985-present)</p>

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

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

A Certificate of Good Standing has been received for the attorney associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1500 Main Street, Buffalo, New York 14209:

Allegany	Cattaraugus	Chautauqua	Erie
Genesee	Niagara	Orleans	Wyoming

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
---------	------------------	---------------

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

The Bristol Home (Adult Home)
Bristol Village (Enriched Housing Program)

The Bristol Home was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated March 29, 2015 for inspection findings of September 20, 2014 for violations of 18 NYCRR Section 486.5 – Endangerment.

The Division of Adult Care Facilities and Assisted Living 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: December 29, 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 9th day of March, 2017, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

2296 L

Deer Run at River Ridge LLC
d/b/a The Sentinel at Amsterdam
(Montgomery, Saratoga, Fulton, Schenectady, Otesgo,
and Schoharie Counties)

2604 L

Greater Adult Neighbors, Inc.
d/b/a Arcadia Home Care Agency
(Sullivan County)

162276 The Bristol Home, Inc. d/b/a Bristol Home Care
(Allegany, Genesee, Cattaraugus, Niagara, Chautauqua,
Orleans, Erie and Wyoming Counties)

2643 L Ideal Home Health Inc.
(Bronx, Kings, New York, Queens, and Richmond
Counties)

151296 Crickett Care, Inc.
(Bronx, Westchester, Putnam, and Rockland Counties)

152390 A-Plus Care HHC Inc.
(Kings, Bronx, Queens, Richmond, New York and
Westchester Counties)


162087 CareGuardian, Inc. d/b/a Hometeam
(New York, Kings, Queens, Bronx, and Richmond
Counties)

162411 Blue Parasol, LLC
(Bronx, Queens, Kings, Richmond, New York, and
Westchester Counties)



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel 

Date: January 12, 2017

Subject: Certificate of Amendment of the Certificate of Incorporation of Loretto Management Corporation Relative to Application #132093, an Application which Received PHHPC Establishment Final Approval on February 25, 2014

Application 132093 established Auburn Senior Services as operator of Mercy Health & Rehab Center NH, Inc. (Mercy) and established Loretto Management Corporation as the active parent/co-operator of Mercy.

Part of the legal review of the application involved reviewing the Certificate of Amendment of the Certificate of Incorporation of Loretto Management Corporation. However, the Certificate cannot be filed with the New York State Department of State without having PHHPC's consent to file attached thereto. Therefore, PHHPC is being asked to grant consent to the filing.

The document has been reviewed. There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation of Loretto Management Corporation and it is in legally acceptable form.

Attachments

**CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION
OF
LORETTO MANAGEMENT CORPORATION**

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

The undersigned, being respectively the President and Secretary of Loretto Management Corporation (hereinafter referred to as the "Corporation") for the purpose of amending the Certificate of Incorporation of the Corporation, do hereby certify:

1. The name of the corporation is Loretto Management Corporation.
2. The Certificate of Incorporation of the Corporation was filed by the New York State Department of State on June 4, 1987, pursuant to § 402 of the New York State Not-For-Profit Corporation Law. The Certificate of Incorporation of the Corporation was amended by Certificate of Amendment filed by the New York State Department of State on January 28, 1988, pursuant to § 803 of the Not-For-Profit Corporation Law. The Certificate of the Corporation was again Amended and Restated by a Restated Certificate of Incorporation filed on January 27, 2004, pursuant to § 805 of the Not-For Profit Corporation Law.
3. The law the corporation was formed under was § 402 of the New York State Not-For-Profit Corporation Law.
4. The Corporation is defined in Subparagraph (a)(5) of § 102 of the New York State Not-For-Profit Corporation Law
5. The Corporation is a Type "C" Corporation under § 201 of the New York State Not-For-Profit Corporation Law thereof.

6. The amendments effected by this certificate of amendment are as follows:

Paragraph V of the Restated Certificate of Incorporation relating to the charitable purpose for which the Corporation is formed is hereby amended to read in its entirety as follows:

The charitable purpose for which the Corporation is formed is to relieve the poor and distressed and to advance the health and social well-being of elderly, disabled, underprivileged and otherwise needy persons living in Central New York and its surrounding communities by advising and assisting in the planning and coordination of the activities and functions of (a) Loretto Rest, Inc.; (b) Churchill Manor, Inc.; (c) Bernardine Apartments, Inc.; (d) Loretto Geriatric Community Residences, Inc.; (e) Loretto Properties Corporation; (f) Loretto Adult Community, Inc.; (g)

Loretto Housing Development Fund Co., Inc. (h) Loretto-Malta Manor Housing Development Fund Co., Inc.; (i) Loretto Apartments Housing Development Fund Co., Inc.; (j) Loretto-Sedgwick Heights Corporation; (k) Loretto- Buckley Landing Corporation; (l) Elbridge Adult Community, Inc.; (m) Loretto-Heritage Housing Development Fund Company, Inc.; (n) The Nottingham Residential Health Care Facility; (p) Loretto Rest Realty Corporation; (q) Loretto-Oswego Realty Corporation; and (r) Auburn Senior Services Inc.; (s) Mercy Health & Rehabilitation Center Nursing Home Company, Inc.; (t) Cayuga County Nursing Home; and (u) such other nonprofit organizations recognized under § 501(c)(3) of the Internal Revenue Code of 1986, as amended, as may hereafter be affiliated with the Corporation and/or any of the above not-for-profit corporations.

Paragraph VI of the Restated Certificate of Incorporation relating to the powers of the Corporation is hereby amended to read in its entirety as follows:

The Corporation is empowered to do and perform all acts reasonably necessary to accomplish the above charitable purposes of the Corporation, including:

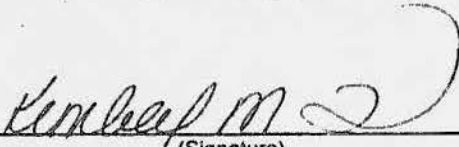
- (a) In keeping with its charitable purposes, the Corporation may sponsor, plan, develop, assist, support, guaranty, secure, purchase, acquire, sell, use, hold, mortgage, encumber, maintain, lease, construct, rehabilitate, alter, enable, provide for and/or otherwise facilitate projects and programs (consisting of both real and personal property) of the organizations described in Article V above, and to do so all on a nonprofit basis;
- (b) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof and not prohibited by law or inconsistent with any provision of this Certificate of Incorporation; and
- (c) To have and exercise all powers available to corporations organized pursuant to the Not-For Profit Corporation Law of New York, or available to not-for profit corporations of any other state in which the Corporation may be authorized to conduct business.

Provided, however, that nothing contained herein shall authorized the Corporation directly or indirectly to undertake any of the activities specified in § 404 of the Not-For-Profit Corporation Law excepting subparagraphs (o) and (t) of § 401 as they may be undertaken for Auburn Senior Services, Inc.

7. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State

shall forward copies of process accepted on behalf of the corporation is 750 East Brighton Avenue, Syracuse, New York 13205.

8. The certificate of amendment was authorized by the Members of the Corporation.



(Signature)

Kimberly M Townsend President
(Typed Name and Title) 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.state.ny.us

February 25, 2014

Mr. John Ognibene
Administrator
Mercy Health and Rehabilitation Center
3 St. Anthony Street
Auburn, New York 13021

Re: Application No. 132093 B Auburn Senior Services, Inc. (Cayuga County)

Dear Mr. Ognibene:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, that the Establishment portion for the application of Auburn Senior Services, Inc. is APPROVED, the Establishment contingencies having now been fulfilled satisfactorily effective February 20, 2014. You are reminded that you must satisfy the outstanding construction contingencies in order for the Construction portion of the CON application to be considered approved.

This Establishment portion 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 October 2, 2013. You are expected to comply with the conditions listed on the October 23, 2013 letter from Karen Westervelt.

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 Central New York Regional Office of the New York State Office of Health Systems Management, 217 South Salina Street, Syracuse, New York 13202 or (315) 477-8555, within 30 days of receipt of this letter.

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.state.ny.us

February 25, 2014

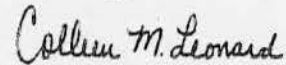
Mr. John Ognibene
Administrator
Mercy Health and Rehabilitation Center
3 St. Anthony Street
Auburn, New York 13021

Re: Certificate of Dissolution of Mercy Health & Rehabilitation Center Nursing Home
Company, Inc.

Dear Mr. Ognibene:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 3rd day of October 2013 I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Dissolution of Mercy Health & Rehabilitation Center Nursing Home Company, Inc., dated February 20, 2014.

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.state.ny.us

***REVISED**

June 5, 2015

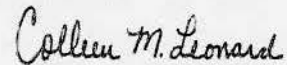
Mr. John Ognibene
Administrator
Mercy Health and Rehabilitation Center
3 St. Anthony Street
Auburn, New York 13021

Re: *Certificate of Dissolution of Mercy Health & Rehabilitation Center Nursing Home
Company, Inc.

Dear Mr. Ognibene:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 3rd day of October 2013 I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Dissolution of Mercy Health & Rehabilitation Center Nursing Home Company, Inc., dated *May 27, 2015.

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of March, 2017, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Loretto Management Corporation, dated as attached.



Project # 161262-E
YGC at Woodycrest, LLC
d/b/a Highbridge Woodycrest Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Bronx
Acknowledged: April 15, 2016

Executive Summary

Description

YGC at Woodycrest, LLC d/b/a Highbridge Woodycrest Center, a New York limited liability company, requests approval to be established as the new operator of The Bronx-Lebanon Highbridge Woodycrest Center (Bronx-Lebanon), an AIDS specialty certified 90-bed, voluntary not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 936 Woodycrest Avenue, Bronx (Bronx County). Bronx-Lebanon is the current operator and owner of the RHCF and the real property. Upon the change in ownership, the facility will transition to a proprietary facility. There will be no change in beds or services provided.

On February 2, 2016, Bronx-Lebanon entered into an Asset Purchase Agreement (APA) with Woodycrest Propco, LLC for the sale and acquisition of the operating and real property interest of the nursing facility, to be effectuated upon approval by the Public Health and Health Planning Council (PHHPC). The purchase price for the RHCF operations and real estate is \$17,000,000. Concurrent with the APA, Woodycrest Propco, LLC entered into an Assignment and Assumption Agreement (AAA) with YGC at Woodycrest, LLC for the assignment of the operating interest of the RHCF. The transactions contemplated by the APA and AAA will close simultaneously. The applicant will lease the premises from Woodycrest Propco, LLC.

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

Table with 1 column: Current Operations/ Real Estate Owner. The Bronx-Lebanon Highbridge Woodycrest Center

Table with 2 columns: Proposed Operations Owner (YGC at Woodycrest, LLC) and Members (Debbie Egert 37.5%, Usher Egert 37.5%, Joel Pashkes 20.0%, Leonardo Vicente 5.0%)

Table with 2 columns: Proposed Real Estate Owner (Woodycrest Propco, LLC) and Member (Moshe Mendlowitz 100%)

The Bronx-Lebanon Highbridge Woodycrest Center is a subsidiary of The Bronx-Lebanon Hospital Center. The Seller indicated that the decision to sell the nursing facility was made in the best interest of the Hospital Center and will allow them to focus on growing core hospital services. They have seen a decline in the need for AIDS beds, expect the trend to continue, and have a growing sentiment that there will be a negative change to reimbursement for AIDS residents in the near future. The decision to sell was made while there was still a market for AIDS beds. They indicated they reached out to potential buyers and selected the highest and best offer consistent with the appraised value of the facility. They know of no restrictions on the

property with regard to its current use. They note that the facility is earmarked as a historical building and that upkeep for the exterior is extremely expensive. The Seller intends to distribute all proceeds from the sale to the Hospital to improve the health of residents in the community and to implement a program of population health management.

OPCHSM Recommendation Contingent Approval

Need Summary

There will be no changes to beds at this facility. Occupancy was 94.4% in 2012, 90.8% in 2013, and 96.0% in 2014. Current occupancy, as of June 20, 2016 is 96.7%, with three vacant beds. Overall occupancy for 2016 at this facility is 97.7%.

Program Summary

The facility will continue to operate under its current name under the new operator. No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs associated with this proposal. The purchase price for the operations and realty is \$17,000,000. Woodycrest Propco, LLC will acquire the RHCF's operations and real property, and through the AAA, will transfer the operating interests to YGC at Woodycrest, LLC no cost. Moshe Mendlowitz will finance the purchase price with \$3,400,000 cash equity and a bank loan for \$13,600,000 at an interest rate of 5% for a ten-year term with a 25-year amortization. Meridian Capital Group, LLC provided a letter of interest for the loan at the stated terms. Mr. Mendolwit has provided an affidavit attesting to fund the balloon payment if acceptable terms are not available at the time of refinancing.

The projected budget is as follows:

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$15,838,364	\$14,975,900
Expenses	<u>\$14,194,885</u>	<u>\$14,354,179</u>
Gain/(Loss)	\$1,643,479	\$621,721

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 permanent mortgage for the project provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed and completed operating agreement, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's executed and completed restated articles of organization, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed and completed asset purchase agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Leonardo Vicente remaining in the operational ownership of Highbridge Woodycrest for a period of three years from the date of closing. [LTC]

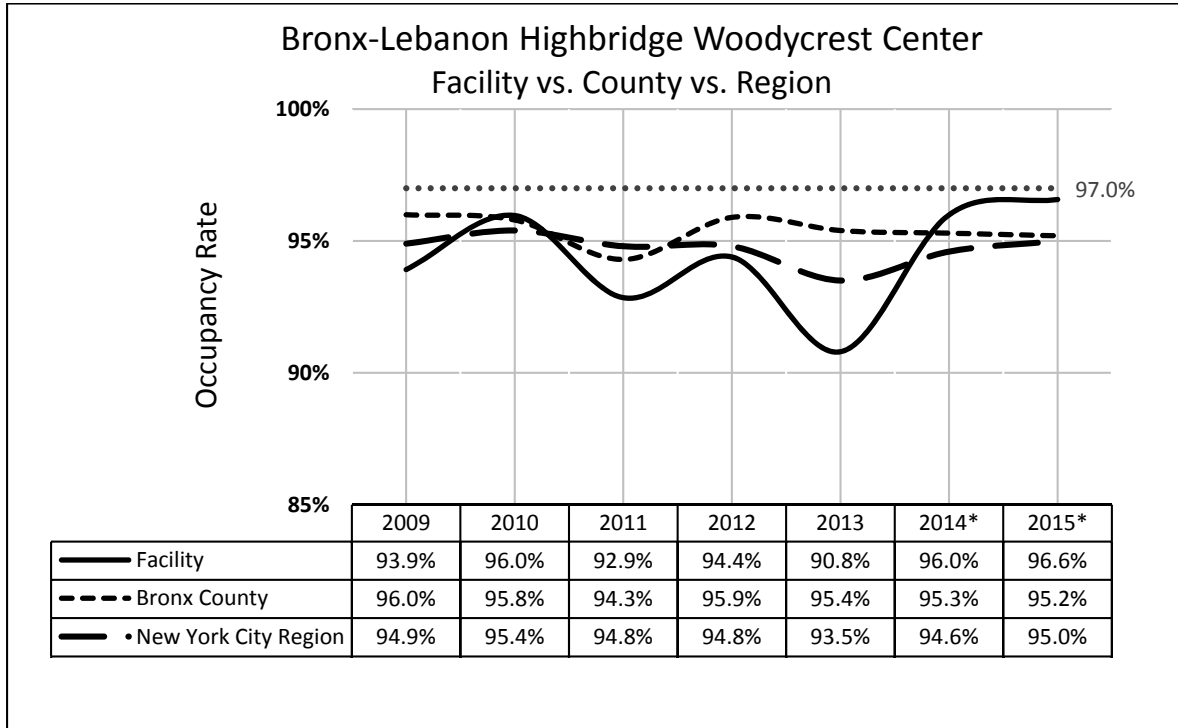
Council Action Date

March 9, 2017

Need Analysis

Analysis

While 10 NYCRR 709.3(d)(13) excludes AIDS beds from estimates of RHCf bed need, the following occupancy numbers are provided to show the continued use of the Highbridge Woodycrest facility. Occupancy was 94.4% in 2012, 90.8% in 2013, 96.0% in 2014, and 96.6% in 2015. Overall occupancy for 2016, at this facility, is 97.7%.



Conclusion

From a need perspective, approval of this application retains a resource for the current AIDS population in Bronx County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Bronx-Lebanon Highbridge Woodycrest Center	Highbridge Woodycrest Center
Address	536 Woodycrest Avenue Bronx, NY 10452	Same
RHCF Capacity	90 (AIDS RHCF)	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Voluntary Not for Profit	Proprietary
Class of Operator	Corporation	Limited Liability Company
Operator	The Bronx-Lebanon Highbridge Woodycrest Center	YGC at Woodycrest, LLC *Debbie Egert 37.5% *Usher Egert 37.5% Joel Pashkes 20.0% Leonardo Vicente 5.0% *Managing Members

Character and Competence – Background

Facilities Reviewed

Nursing Homes

HELP/PSI, Inc.	10/2008 to 1/2014
The Bronx-Lebanon Highbridge Woodycrest Center	01/2015 to present
Cranford Park Rehabilitation and Healthcare (NJ)	01/2014 to present
Homestead Rehabilitation and Healthcare (NJ)	09/2013 to present
Valley View Rehabilitation and Healthcare (NJ)	02/2016 to present

Individual Background Review

Debbie Egert is currently unemployed. Ms. Egert previously worked as a buyer for Baby Street in Brooklyn, and graduated from the Fashion Institute of Technology in Toronto, Canada. Ms. Egert discloses the following ownership health facility ownership interests:

Cranford Park Rehabilitation and Healthcare (NJ)	01/2014 to present
Homestead Rehabilitation and Healthcare (NJ)	09/2013 to present
Valley View Rehabilitation and Healthcare (NJ)	02/2016 to present

Usher Egert is the managing partner for the three nursing homes listed below, and was previously employed by Arista Care, a long term care provider in Cranford, NJ, as a program development manager. Mr. Egert has an Associates degree from Yeshiva Chaim Berlin in Brooklyn. Mr. Egert discloses the following health facility interests:

Cranford Park Rehabilitation and Healthcare (NJ)	01/2014 to present
Homestead Rehabilitation and Healthcare (NJ)	09/2013 to present
Valley View Rehabilitation and Healthcare (NJ)	02/2016 to present

Joel Pashkes is currently employed as the Director of Operations for Competent Nursing Agency, a staffing agency located in Brooklyn. Mr. Pashkes has a Talmudic degree from United Talmudic Academy and discloses the following ownership health facility ownership interest:

Cranford Park Rehabilitation and Healthcare (NJ)	03/2016 to present
--	--------------------

Leonardo Vicente is currently employed as the Executive Director/Administrator of Record of The Bronx-Lebanon Highbridge Woodycrest Center, since 2015. Previously Mr. Vincente was Vice-President/Administrator of Record at HELP/PSI, Inc. in the Bronx from October 2008 to January 2014. Mr. Vicente is a licensed nursing home administrator with license in good standing from the States of New York and New Jersey. Mr. Vicente has a MPH from Columbia University School of Public Health and a MS from Long Island University at CW Post. Mr. Vicente discloses no health facility ownership interests.

Character and Competence - Analysis

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

A review of HELP/PSI, Inc. for the time period identified above reveals that there were no enforcements.

A review of Bronx-Lebanon Highbridge Woodycrest Center for the period identified above reveals there were no enforcements.

- The nursing home incurred a Civil Monetary Penalty of \$54,600 for the period of 5/29/15 through 8/20/15.

A review of Homestead Rehabilitation and Healthcare Center and Valley View Rehabilitation and Healthcare Center reveals there were no enforcements. Information was received from the State of New Jersey attesting that there were no major deficiencies in the past 12 months, and affidavits submitted by the applicant covered the balance of time for the periods of ownership.

A review of Cranford Park Rehabilitation and Healthcare reveals there were no enforcements. An affidavit was submitted by the applicant attesting there were no enforcements during the period of ownership, further corroborated by the State of New Jersey website.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
----------------------	----------------	--------------------------	-------------------------

New Jersey

Cranford Park Rehabilitation & Healthcare Center	*	**	***
Homestead Rehabilitation & Health Care Center	****	****	****
Valley View Rehabilitation And Healthcare Center	*****	****	*****

New York

The Bronx-Lebanon Highbridge Woodycrest Center	*****	****	*****
Hope Center For H I V And Nursing Care**	*****	****	*****

**HELP/PSI is now known as Hope Center for HIV and Nursing Care

Project Review

All health care facilities are in substantial compliance with all rules and regulations. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. Mr. Pashkes has disclosed that he is associated with a staffing agency that does business with nursing homes and health facilities. However he has stated that the staffing agency in question will not do business with Highbridge Woodycrest Center.

In order to ensure sufficient management expertise regarding the operation of an AIDS nursing home, a condition of approval will require Leonardo Vicente to remain an owner for a period of three years.

Conclusion

The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement (Operations and Real Property)

The applicant submitted the executed APA for the RHCf operations and real estate. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	February 2, 2016
Seller:	The Bronx-Lebanon Highbridge Woodycrest Center
Buyer:	Woodycrest Propco, LLC.
Purchased Assets (Operations):	All of the following items associated with the real property and operations of the business including: all tangible assets, telephone, fax numbers, websites domain names, manufactures' and vendors' warranties, business trade names, service/trademarks and logos, seller's rights in any agreements,, seller's book and records, seller's licenses, certificates and approvals to do business, resident funds held in trust in connection with the nursing home, Medicaid and Medicare provider numbers and all goodwill.
Purchased Assets (Real Estate):	All seller's right, title and interest in and to the real property, buildings and improvements located at 936 Woodycrest Avenue, Bronx, NY.
Excluded Assets (Operations):	All seller's cash, cash equivalents, bank deposits or similar cash items, insurance policies accounts receivable generated prior to the closing date, deposits or prepaid charges and expenses, any rights to refunds, settlements and retroactive adjustments for periods ending on or prior to the closing date, and any intellectual property/rights, personal, tangible and intangible property identified by the Seller.
Excluded Assets (Real Estate):	N/A
Liabilities Assumed:	None
Excluded Liabilities (Operations):	Any liability of seller arising from or relating to the operation of the Business at any time prior to the Closing date.
Excluded Liabilities (Real Estate):	None
Purchase Price:	\$17,000,000 to be assigned to the real estate only.
Payment :	\$1,700,000 deposited in escrow upon execution of the agreement \$15,300,000 due at Closing

The purchase price is proposed to be satisfied as follows:

Cash Equity (Paid/Held in Escrow)	\$1,700,000
Cash Equity (Due at Closing)	\$1,700,000
Mortgage loan (10-year term, 25-year amortization, 5% interest)	<u>\$13,600,000</u>
Total	\$17,000,000

BFA Attachment A is the net worth statement for the sole member of Woodycrest Propco, LLC, Moshe Mendlowitz, which indicates sufficient liquid resources to cover the equity requirement for the purchase.

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 currently has no outstanding Medicaid audit liabilities.

Assignment and Assumption Agreement

The applicant submitted an executed AAA for the assignment of the RHCf operations, as shown below:

Date:	June 30, 2016
Assignor:	Woodycrest Propco, LLC
Assignee:	YGC at Woodycrest, LLC d/b/a Highbridge Woodycrest Center
Assets Transferred:	All of the acquired operating assets listed in the asset purchase agreement
Excluded Assets:	All of the excluded operating assets listed in the asset purchase agreement
Liabilities:	N/A

Lease Agreement

The applicant submitted a draft lease agreement; the terms are summarized below:

Date:	TBD
Premises:	A 90-bed, AIDS certified, RHCf located at 936 Woodycrest Avenue, Bronx, NY
Lessor:	Woodycrest Propco, LLC
Lessee:	YGC at Woodycrest, LLC d/b/a Highbridge Woodycrest Center
Term:	30 years
Rental:	\$1,530,000 annually (\$127,500 monthly) for year one with an annual \$85,000 increase for years one-four and a 2.5% annual increase for remainder of term.
Provisions:	Lessee pays for all taxes, utilities, insurance and maintenance fees (Triple Net)

The applicant indicated that the lease arrangement is an arm's length lease.

Operating Budget

The following is a summary of the submitted operating budget, presented in 2016 dollars, for the Current Year and Year One subsequent to the change in ownership:

	<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	\$478.82	\$14,937,340	\$452.74	\$13,848,100
Medicare	\$1,238.45	\$886,728	\$962.95	\$613,400
Commercial/Private Pay	\$0	\$0	\$798.75	\$509,600
Other Revenues		<u>14,296</u>		<u>\$4,800</u>
Total		\$15,838,364		\$14,975,900
<u>Expenses</u>				
Operating	\$415.88	\$13,271,519	\$386.92	\$12,327,900
Capital	<u>\$28.93</u>	<u>\$923,366</u>	<u>\$63.60</u>	<u>\$2,026,279</u>
Total	\$444.81	\$14,194,885	\$450.51	\$14,354,179
Net income/loss		<u>\$1,643,479</u>		<u>\$621,721</u>
Utilization (patient days)		31,912		31,862
Occupancy		97.14%		96.99%

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

- The Medicaid operating rate is based on the current rate for a proprietary facility and the Medicare operating rate is based on the RUG PPS rates effective October 1, 2014 - September 30, 2015.
- The Commercial and Private Pay operating rates are based on industry standard rates for the area.
- With the change from a voluntary to a proprietary facility, the methodology for the capital cost reimbursement rate would change in accordance with Title 10 of the NYCRR, Part 86.2. While the capital reimbursement structure for proprietary NH's does differ from voluntary NHs, we do not believe that there will be a significant change in the per diem capital reimbursement.
- Utilization by payor source for Year One is expected as follows:

Medicaid	96.0%
Medicare	2.0%
Commercial/Private Pay	2.0%
- Breakeven utilization is projected at approximately 94.61% for Year One.

Capability and Feasibility

Woodycrest Propco, LLC will acquire the RHCF's real property and operations for \$17,000,000 at the above stated terms and will assign the operations to YGC at Woodycrest, LLC for \$0. There are no project costs associated with this proposal.

The working capital requirement is estimated at \$2,392,363 based on two months of Year One expenses. The proposed operating members will provide \$1,200,000 in equity. The remaining \$1,192,363 will be provided through a working capital loan at 5% interest for a five-year term. JP Morgan Chase & Co. has provided a letter of interest for the working capital financing. Mr. Joel Pashkes has provided an affidavit confirming willingness to contribute resources disproportionate to his ownership interest to fulfill the working capital equity requirement for the project. BFA Attachment A is the net worth statement for the proposed operating and realty owners, which shows significant resources to cover both the purchase price and the working capital equity requirements for this project.

BFA Attachment B is the pro-forma balance sheets of YGC at Woodycrest, LLC d/b/a Highbridge Woodycrest Center and Woodycrest Propco, LLC, which indicates a positive members' equity of \$1,650,000 as of the first day of operations for the facility, and a member's equity of \$3,401,000 as of the first day of operations for the realty entity.

The submitted budget indicates a net income of \$621,721 for Year One of operations. The submitted 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.

BFA Attachment C is The Bronx-Lebanon Highbridge Woodycrest Center's 2013 -2015 certified and their internal financial statements as of September 30, 2016, which shows the facility generated an average operating income of \$1,175,158 for the period 2013-2015 and \$1,314,581 as of September 30, 2016. The facility also had both positive net asset and working capital positions for the period.

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 of Proposed Members of YGC at Woodycrest, LLC d/b/a Highbridge Woodycrest Center (Operations) and Woodcrest Propco, LLC (Realty)
- BFA Attachment B Pro-forma Balance Sheets for YGC at Woodycrest, LLC d/b/a Highbridge Woodycrest Center and Woodycrest Propco, LLC
- BFA Attachment C 2013-2015 certified and the 1/1/2016-9/30/2016 internal financial statements for The Bronx-Lebanon Highbridge Woodycrest 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 9th day of March, 2017 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 YGC at Woodycrest, LLC as the new operator of the existing 90-bed residential health care facility located at 936 Woodycrest Avenue, Bronx, currently operated as The Bronx-Lebanon Highbridge Woodycrest 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:

161262 E

YGC at Woodycrest, LLC
d/b/a Highbridge Woodycrest Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed permanent mortgage for the project provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed and completed operating agreement, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's executed and completed restated articles of organization, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed and completed asset purchase agreement, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Leonardo Vicente remaining in the operational ownership of Highbridge Woodycrest for a period of three years from the date of closing. [LTC]

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



Project # 162261-E
CLR Glens Falls LLC d/b/a The Stanton Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Warren
Acknowledged: October 7, 2016

Executive Summary

Description

CLR Glens Falls LLC d/b/a The Stanton Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of The Stanton Nursing and Rehabilitation Centre, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 152 Sherman Avenue, Glens Falls (Warren County). As part of this application, the certified bed capacity will be reduced by three beds, bringing the total certified bed count to 117. A separate entity, Glens Falls SNF Realty LLC, will acquire the real property. There will be no change in services provided.

On June 16, 2015, the current operator, Glens Falls Nursing and Rehabilitation Center, LLC, entered into an Asset Purchase Agreement (APA) with CLR Glens Falls LLC for the sale and acquisition of the RHCF operating interests for \$4,434,067. Subsequently, on September 21, 2016, Glens Falls Nursing and Rehabilitation Center, LLC and CLR Glens Falls LLC executed the First Amendment to the Asset Purchase Agreement consenting to the change in the proposed membership of CLR Glens Falls, LLC. Concurrently on June 16, 2015, 152 Sherman Avenue, LLC, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with Glens Falls SNF Realty LLC for the sale and acquisition of the real property for \$7,991,963. 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 the CLR Glen Falls LLC and Glen Falls

SNF Realty LLC in that Hillel Weinberger is a common member in both entities. The applicant will lease the premises from Glen Falls SNF Realty LLC.

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

Table with 2 columns: Member and Percentage. Title: Current Operator Glens Falls Nursing and Rehabilitation Center, LLC. Members include DMN Management Service, LLC (100%), Anthony Durante (15%), Patrick Martone (10%), Jami Rogowski (15%), Jodi Polsinelli (15%), Lisa Marrello (15%), Pamela Nichols (15%), and Mark Nichols (15%).

Table with 2 columns: Members and Percentage. Title: Proposed Operator CLR Glens Falls LLC. Members include Hillel Weinberger (50%) and Amir Abramchik (50%).

Concurrently under review, the applicant members of CLR Glens Falls LLC and the realty members of Glens Falls SNF Realty LLC are seeking approval to acquire the operating and realty interests, respectively, in the following: The Crossings Nursing and Rehabilitation Centre (CON 162257), The Capital Living Nursing and Rehabilitation Centre (CON

162255), The Country Manor Nursing and Rehabilitation Centre (CON 162256), The Mountain View Nursing and Rehabilitation Centre (CON 162258), The Orchard Nursing and Rehabilitation Centre (CON 162259), and The Springs Nursing and Rehabilitation Centre (CON 162261).

OPCHSM Recommendation
Contingent Approval

Need Summary

This proposal will decrease the number of RHCF beds at this facility from 120 to 117. The Stanton Nursing and Rehabilitation Centre's occupancy was 94.5% in 2012, 92.9% in 2013, 90.7% in 2014 and 88.4% in 2015. Current occupancy, as of December 21, 2016 is 90.0%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

There are no project costs associated with this application. CLR Glens Falls LLC will acquire the RHCF's operations for \$4,434,067 funded by \$1,152,017 in members' equity and a ten-year loan for \$3,282,050 at 5% interest, amortized over 25 years. Glens Falls SNF Realty LLC will acquire the real property for \$7,991,963, funded by \$58,000 in members' equity and a ten-year loan for \$7,933,963 at 5% interest, amortized over 25 years. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$10,593,486	\$10,817,144
Expenses	<u>9,941,270</u>	<u>9,906,120</u>
Gain/(Loss)	\$652,216	\$911,024

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. 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 floor plan showing the three beds to be decertified and the surrounding nursing unit(s), which is acceptable to the Department of Health. [LTC]
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's amended Operating 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

March 9, 2017

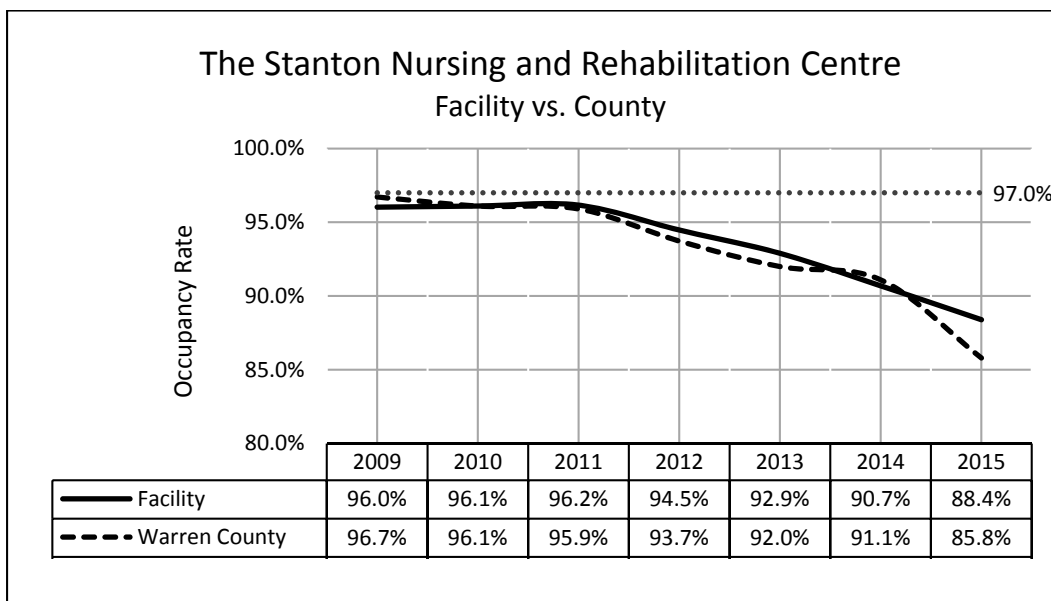
Need Analysis

Analysis

According to the current need methodology, there is unmet need of 15 beds in Warren County.

RHCF Need – Warren County

2016 Projected Need	417
Current Beds	402
Beds Under Construction	0
Total Resources	402
Unmet Need	15



The overall occupancy for Warren County is 85.8% for 2015. The Stanton Nursing and Rehabilitation Centre's occupancy was 94.5% in 2012, 92.9% in 2013, 90.7% in 2014 and 88.4% in 2015. The applicant acknowledges that the facility is experiencing utilization challenges, and attributes the utilization shortcomings to inadequate staffing and high staff turnover, and the inconsistent ability of the facility to accept new admissions.

According to the applicant, plans to increase occupancy to meet or exceed the Department's planning optimum include:

- **Plan to Accept More Clinically Complex Residents:** the Stanton has had difficulty recruiting and retaining staff who are capable of caring for high-acuity residents, and therefore has been unable to accept new high-acuity cases. The applicant intends to improve recruiting and training of staff to enable the admission of high-acuity residents;
- **Marketing and Community Outreach:** implement a marketing team, including a full-time marketer working in the field and a designated employee working within the facility;
- **Plan and Provider Outreach:** develop and implement a program for improved collaboration with local health plans, hospital discharge planners, local assisted living facilities, home care providers, and other local health care providers and agencies to enhance provider relationships and familiarity with the facility and its staff;

- Staff Training, Development, and Support: implement new management and staff training and leadership programs that will encourage interaction and collaboration of staff across all commonly-owned nursing homes;
- Contracts with Managed Long-Term Care Plans: The Stanton has contracts with VNA Home Care Options, VNSNY Choice, HAMASPIK, and WEllcare and Fidelis;
- Landmark Program: a new association with Landmark Health will result in increased direct admissions;
- Food Service Improvements: institute a fine-dining program and hire an executive chef; and
- Environmental Improvements: implement various cosmetic improvements to make the facility more updated and attractive.

Access

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

The Stanton Nursing and Rehabilitation’s Medicaid admissions of 9.0% in 2014 did not exceed the Warren County 75% rate of 10.4% in 2014. The Stanton Nursing and Rehabilitation’s Medicaid admissions of 8.4% in 2015 did not exceed the Warren County 75% rate of 17.7%. The applicant will have to submit a plan to improve Medicaid admission, per the relevant contingency and condition below.

Conclusion

Contingent Approval of this application will result in maintaining a necessary resource in Warren County, while addressing the facility’s suboptimal utilization.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Stanton Nursing and Rehabilitation Centre	The Stanton Nursing and Rehabilitation Centre
Address	152 Sherman Avenue Glens Falls, NY	Same
	120	117
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Proprietary
Operator	Glens Falls Nursing & Rehabilitation Center, LLC	CLR Glens Falls, LLC Amir Abramchik 50% Hillel Weinberger 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Chittenango Center for Rehabilitation and Health Care	05/2011 to 7/16
Rome Center for Rehabilitation and Health Care	05/2011 to 8/16
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present

Individual Background Review

Amir Abramchik is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers for Specialty Care as the director of special projects since 2007. Previously he was employed as administrator of Queens Center for Rehabilitation and Health Care and Dutchess Center for Rehabilitation and Health Care. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

Fulton Center for Rehabilitation and Health Care	(10%)	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	(2%)	04/2012 to present
Corning Center for Rehabilitation and Health Care	(11%)	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	(95%)	11/2014 to present

Hillel Weinberger has been retired since 2012. He was formerly employed as the co-founder of Hillmark Capital, a financial planning business. He also has been serving as the the President of Ptach (a special needs school) for the last ten years. Mr Weinberger discloses no health facility ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. For the June 11, 2012 survey deficiencies were found under 10 NYCRR 451.3(e)(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) and Quality of Care: Medication Errors. For the May 5, 2013 survey deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential; 415.12(c)(2) Quality of Care Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.(m)(2) Quality of Care: Medication Errors; 415.26 Administration; and 415.27(a-c) Quality Assurance. For the November 21, 2013 survey deficiencies were found 10NYCRR 415.4(b)(1)(2)(3) Investigative/Report Allegations, 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(1)(2) Quality of Care Accidents/Supervision; 415.12(m)(2) Quality of Care Medication Errors; 415.26 Administration and 415.25(a-c) Quality Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.

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. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$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.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of operations of Ontario Center for Rehabilitation and Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 12, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(2)(iii)-Notice of Rights and Services-Right to Refuse Treatment, Refuse to Participate in Research and the Right to Be Able to Formulate an Advance Directive; and 415.12(m)(2)- Quality of Care No Significant Medication Errors.

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 operations for Chittenango Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, and Corning Center for Rehabilitation and Health Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
The Grand Rehabilitation & Nursing at Chittenango	**	**	****
The Grand Rehabilitation and Nursing at Rome	*	*	***
Fulton Center for Rehabilitation and Healthcare	**	*	**
Richmond Center for Rehab and Specialty HC	****	***	**
Ontario Center for Rehabilitation and Healthcare	**	*	**

Corning Center for Rehabilitation and Healthcare	*	*	**
--	---	---	----

Project Review

This application proposes a reduction of three RHCF beds. The applicant has not provided plans showing the specific rooms to be decertified and the effected nursing units, which results in the addition of a contingency to this project. No other changes in the program or physical environment are proposed in this application.

The proposed operator intends to enter into a Consulting Services Agreement with Centers Health Care for consulting and advisory services related to administrative and operational functions.

The proposed operator was asked to explain the low star ratings. The operator has stated they have implemented initiatives to recruit and retain employees providing direct care services. They also plan on employing a combination of measures to correct deficiency issues, including in-service education, changes to policies and procedures when necessary, implementation of weekly observation and auditing of staff practices, and monthly review of the findings by the quality assurance committee.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 16, 2015
Seller:	Glens Falls Nursing and Rehabilitation Center, LLC
Purchaser:	CLR Glens Falls LLC
Assets Transferred:	The business and operation of the Facility; leasehold improvements, furniture, fixtures and equipment owned or leased by Seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases and undertakings; Resident funds held in trust; The name " The Stanton Nursing and Rehabilitation Centre"; security deposits and prepayments; manuals and 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:	Real Estate which is the subject of the Real Estate Contract; insurance policies; union agreement and pension plans; rate increases and/or lump sum payments; tax refunds including real estate tax refunds relating to a period or periods prior to the Closing Date; amounts due from parties related to Seller; Seller's cash and cash equivalents; Prepaid expenses; claims, causes of action and legal rights for periods prior to the Closing Date; receivables from any affiliate of Seller; and payments made in connection with "Universal Appeal Settlement"
Assumed Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date; trade accounts payable for items purchased by the Seller prior to Closing (estimated at \$1,050,000)
Purchase Price:	\$4,434,067
Payment of the Purchase Price:	\$58,000 upon execution; \$4,376,067 due at Closing

The purchase price of the operations is proposed to be satisfied as follows:

Equity from Members	\$1,152,017
Loan (10-year, 25-year amortization, 5% interest)	<u>3,282,050</u>
Total	\$4,434,067

Greystone Funding Corporation has provided a letter of interest at the stated terms.

First Amendment to Asset Purchase Agreement

The applicant has submitted an executed First Amendment to the APA for acquisition of the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	September 21, 2016
Seller:	Glens Falls Nursing and Rehabilitation Center, LLC
Purchaser:	CLR Glens Falls LLC
Change:	To implement the removal of Joseph Zupnik and Elisa Zupnik from ownership in the purchaser and the addition of Hillel Weinberger and Amir Abramchik as the sole owners of the purchaser.

The APA establishes a Total Purchase Price of \$86,500,000 as total consideration for the assets transferred (as defined above), the Real Property (as defined below), and the assets of the sellers under all the other APAs and REPAs related to the following entities: 1940 Hamburg Street, LLC (Realty, vacant property); MacDonald Road Corporation (Realty, Home Office); DMN Management Services, LLC (Home Office Assets); and the operational assets and real property associated with the following CONs concurrently under review:

- CON 162257 - The Crossings Nursing and Rehabilitation Centre, 80 beds, Onondaga County;
- CON 162255 - The Capital Living Nursing and Rehabilitation Centre, 240 beds, Schenectady County;
- CON 162256 - The Country Manor Nursing and Rehabilitation Centre. 90 beds, Jefferson County;
- CON 162258 - The Mountain View Nursing and Rehabilitation Centre, 77 beds, Ulster County;
- CON 162259 - The Orchard Nursing and Rehabilitation Centre, 88 beds, Washington County; and
- CON 162260 - The Springs Nursing and Rehabilitation Centre, 78 beds, Rensselaer County.

Please note the above bed counts for CON 162257, CON 162258 and CON 162260 reflect bed reductions anticipated upon establishment.

North Broadway Office Operations, LLC will acquire the operating interests of DMN Management Services (DMN), referenced above, for \$258,000. The staff of DMN currently provide services including: QA/QI, billing, IT management, payroll, audit, accounts receivable, and human resources. After the change in ownership, DMN Management Services will no longer exist.

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. As of December 20, 2016, the facility had outstanding Medicaid liabilities of \$8,767.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA to acquire the real property. The terms of the agreement are summarized below:

Date:	June 16, 2015
Seller:	152 Sherman Avenue, LLC
Purchaser:	Glens Falls SNF Realty LLC
Asset Transferred Realty:	Real Property located at 152 Sherman Ave, Glens Falls, NY 12801
Purchase Price:	\$7,991,963
Payment of the Purchase Price:	\$58,000 upon execution; \$7,933,963 at Closing

The purchase price of the real property is proposed to be satisfied as follows:

Equity from Members	\$58,000
Loan (10-year, 25-year amortization, 5% interest)	<u>7,933,963</u>
Total	\$7,991,963

Capital Funding, LLC has provided a letter of interest at the stated terms.

BFA Attachments A and B are the net worth summaries for the proposed members of CLR Glens Falls LLC (operator) and Glens Falls SNF Realty LLC (real property owner), respectively. Review of the net worth statements reveals sufficient resources overall to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCFs (this application and the six listed above). Hillel Weinberger, a member of CLR Glens Falls LLC and Glens Falls SNF Realty LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities to make up any member's equity shortfall in contributing to the purchase price and/or working capital needs.

Hillel Weinberger has provided affidavits, disproportionate to his membership interests, to fund the operating and real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	October 31, 2016
Premises:	120-bed RHCF located at 152 Sherman Ave., Glens Falls, NY 12801
Owner/Landlord:	Glens Falls SNF Realty, LLC
Lessee:	CLR Glens Falls, LLC
Term:	40 years from Commencement Date
Rent:*	\$676,574 (\$56,381 per month).
Provisions:	Triple Net, plus

*Rent is estimated at \$556,574 in fix rent (Net Rent), based on the 25-year amortization of the mortgage, plus \$120,000 in Over Rent. In addition to the \$676,576 rental amount, the lessee will be billed for other expenses related to the premises incurred by the landlord.

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.

Consulting Services Agreement

The applicant has provided a draft consulting services agreement, summarized below:

Contractor:	Centers for Care LLC d/b/a Centers Health Care
Facility:	CLR Glens Falls LLC d/b/a The Stanton Nursing and Rehabilitation Center
Affiliation:	The Facility will refer to itself as "Affiliated with Centers Health Care" or "Member of Centers Health Care, limited to marketing efforts and the identification of professionals, consultants, vendors and healthcare providers and other resources that can assist the Facility in the provision of care.
Consulting and Advisory Services:	The contractor will be responsible for the operation, supervision and oversight of all functions related to A/R and A/P, including assistance and supervision of staff in interacting with families, collection of NAMI and private funds, submission of award letters, and preparation of applications for payee, maintenance of billing files, monitoring payments to the facility by all payer sources, pursuing payments for delinquent accounts and assisting the facility, at the facility's expense. The contractor will provide assistance to and supervision of staff performing and providing the following services: all billing functions for all payer sources and maintenance of all billing and posting records and establishment of payroll budgets and schedule coordination with nursing and other departments. Responsible for the preparation of health facility assessment; assist the Facility with the preparation of RHCFC 4 and Medicare cost reports; and reconciliation of billing records, Maintenance of electronic resident/patient billing files, fund records and accounts, and monthly operating cash flow projections. Assist the Facility in reviewing of rate sheets and filing of necessary appeals and audit facility's monthly pharmacy bills and the implementing of formulary management.
Clinical Consulting Services:	The contractor will provide advice and assistance to the Facility with respect to the administrative functioning of the Therapy, Social Services and Nursing departments. Develop operating policies and procedures, rules and methods of operation appropriate to such departments and the training and orientation of staff. Recommend procedures to ensure the consistency and quality of all the Services. Assist the Facility with respect to its CMI, Medicare, and case-mix reimbursement.
Other Duties:	Develop and implement a marketing plan; furnish sufficient part-time temporary licensed skilled professional staff for the health care activities described herein
Term:	One Year with automatic one year renewals, unless terminated through mutual consent, default or by one party with 60-day written notice.
Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the Services to the Facility.

CLR Glen Falls LLC retains ultimate control in all of the final decisions associated with the services.

Centers for Care LLC will also provide consulting services to the other RHCFCs transferred under the terms of the APA referenced above. Amir Abramchik is the Chief Operating Officer of the consulting services provider, Centers for Care LLC, and a member of the applicant. The Centers for Care LLC is equally owned by Kenneth Rozenberg and Beth Rozenberg.

The fees are estimated at \$3,000,000 for the subject facility and the six facilities being acquired concurrently, and divided amongst the facilities as follows, based on the total licensed beds:

- The Capital Living Nursing and Rehabilitation Center, 240 beds: \$935,066
- The Country Manor Nursing and Rehabilitation Centre, 90 beds: \$350,649
- The Crossings Nursing and Rehabilitation Centre, 80 beds: \$311,688
- The Mountain View Nursing and Rehabilitation Centre, 77 beds: \$300,000
- The Orchard Nursing and Rehabilitation Centre, 88 beds, \$342,857
- The Springs Nursing and Rehabilitation Centre, 78 beds, \$303,896

- The Stanton Nursing and Rehabilitation Centre, 117 beds, \$455,844

Operating Budget

The applicant has provided the current year (2015) results and the first and third year operating budgets subsequent to the change in ownership, in 2017 dollars, summarized as follows:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Per Diem</u>	<u>120 Beds</u>	<u>Per Diem</u>	<u>117 Beds</u>	<u>Per Diem</u>	<u>117 Beds</u>
<u>Revenues</u>						
Medicaid FFS	\$190.33	\$4,554,797	\$169.33	\$4,256,448	\$169.33	\$4,346,193
Medicaid MC	\$191.00	17,381	\$169.33	16,256	\$169.33	16,594
Medicare FFS	\$461.95	1,853,345	\$468.88	\$1,975,860	\$468.88	2,017,591
Medicare MC	\$494.08	1,797,955	\$494.08	1,888,374	\$494.08	1,928,394
Commercial	\$350.00	119,000	\$350.00	124,950	\$350.00	127,750
Private Pay	\$321.59	2,154,986	\$331.24	2,331,598	\$331.24	2,380,622
Other Operating		<u>23,014</u>		<u>0</u>		<u>0</u>
Total		\$10,520,478		\$10,593,486		\$10,817,144
<u>Expenses</u>						
Operating	\$245.24	\$9,494,104	\$215.20	\$8,968,871	\$210.75	\$8,968,871
Capital	<u>15.95</u>	<u>617,550</u>	<u>23.32</u>	<u>972,399</u>	<u>22.01</u>	<u>937,249</u>
Total Expenses	\$261.19	\$10,111,654	\$238.52	\$9,941,270	\$232.76	\$9,906,120
Net Income (Loss)		<u>\$408,824</u>		<u>\$652,216</u>		<u>\$911,024</u>
RHCF Patient Days		38,714		40,655		41,523
Utilization %		88.39%		95.2%		97.2%

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

- The Current Year reflects the facility's 2015 revenues and expenses.
- Medicaid revenue is based on the facility's current 2015 Medicaid Regional Pricing rate. The Current Year Medicare rate is the actual daily rate experienced by the facility during 2015 and the forecasted Year One and Year Three Medicare rate is the actual daily rate experienced during 2016. The Private Pay rate is based on the current operator's average rates for 2016.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 5.5% through various initiatives including renegotiating contracts.
- Projected utilization by payor source for the first and third year after the change in ownership is:

	<u>Current Year</u>	<u>Years One and Three</u>
Medicaid	62.05%	62.05%
Medicare	19.76%	19.76%
Commercial	.88%	.88%
Private Pay	17.31%	17.31%

- The breakeven utilization is projected at 89.4% for the first year.

Capability and Feasibility

CLR Glens Falls LLC will acquire the RHCF's operations for \$4,434,067, which will be funded via \$1,152,017 in members' equity and a ten-year loan for \$3,282,050 at the above stated terms. Glens Falls SNF Realty LLC will acquire the real property for \$7,991,963 funded by \$58,000 in members' equity and a ten-year loan for \$7,933,963 at above stated terms. Greystone Funding Corporation and Capital Funding, LLC has provided letters of interest for the operating and realty loans, respectively. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,656,878 based on two months of first year expenses.

Funding will be as follows: \$828,439 from the members' equity with the remaining \$828,439 satisfied through a five-year loan at 5% interest rate. Harborview Capital Funding has provided a letter of interest. Review of BFA Attachments A and B, proposed members net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCs (this application and the six listed above). Hillel Weinberger, a member of CLR Glens Falls LLC and Glens Falls SNF Realty LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities (covering the purchase price and working capital equity). Additionally, Hillel Weinberger has provided affidavits stating he is willing to contribute resources, disproportionate to his membership interests, for the operating and realty entity balloon payments should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects \$652,216 and \$911,024 of net income in the first and third years, respectively. Revenues are estimated to increase by approximately \$73,008. Overall expenses are expected to decline by \$170,384, coming from a \$525,233 reduction in operating expense, partially offset by a \$354,849 increase capital items (consisting of a \$169,629 increase in interest expense and a \$185,220 increase in rent and depreciation expense). The decline in operating expenses comes primarily from the following: a \$206,402 decrease in fringe benefits cost, bringing the percentage from 33.03% to 30.75% of salary and wages, and a \$291,673 decrease in salaries and wages coming from 1.6 FTE reduction and a change in staffing model. The budget was created taking into consideration the proposed new owners' experience in operating similar sized facilities.

BFA Attachment D is CLR Glens Falls LLC's pro forma balance sheet, which shows the entity will start with \$1,980,457 in equity. Equity includes \$3,072,377 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, the total net assets are a negative \$1,091,321. 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 E is a Financial Summary of Glens Falls Nursing and Rehabilitation Center, LLC d/b/a The Stanton Nursing and Rehabilitation Centre for 2013 through December 31, 2015. For the 2013 through 2015 period, the RHCF had positive working capital and positive net assets. For 2013 through 2015, the facility had net income that averaged \$619,941 and experienced an average occupancy of 90.66%. The applicant intends to reduce expenses by renegotiating vendor contracts, analyzing staffing expenses along with reworking staff schedules to keep overtime expenses down, and reduce bad debt expenses through an accounts receivable collection plan. Also included as part of Attachment E is DMN Management Services and Subsidiaries 2014 and 2015 certified statement, which shows working capital and net assets to be positive with operations showing a \$449,584 profit in 2015 before non-recurring expenses of \$360,000.

BFA Attachment F is the Internal Financial Summary through September 30, 2016, which shows the facility had positive working capital, positive net assets and had loss after allocation of home office overhead. On a consolidated basis, the organization had a positive working capital, positive net assets and generated a loss.

BFA Attachment G is the Financial Summary of the proposed member's affiliated RHCs, which shows the facilities maintained positive working capital, positive net assets, and generated positive net income

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	CLR Glens Falls LLC, Proposed Members Net Worth
BFA Attachment B	Glens Falls SNF Realty LLC, Proposed Members Net Worth
BFA Attachment C	Current and Proposed Owners of the Real Property
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary, Glens Falls Nursing and Rehabilitation Center, LLC and DMN Management Services LLC, 2014 and 2015 certified financial statement
BFA Attachment F	Internal Financial Summary, Glens Falls Nursing and Rehabilitation Center, LLC and DMN Management Services LLC
BFA Attachment G	Proposed members ownership interest in Affiliated RHCs and their Financial Summary

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 9th day of March, 2017 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 CLR Glens Falls LLC as the new operator of The Stanton Nursing and Rehabilitation Centre, a 120-bed Residential Health Care Facility currently operated by Glens Falls Nursing & Rehabilitation Center, LLC, and decertify three (3) RHCf beds, 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:

162261 E

FACILITY/APPLICANT:

CLR Glens Falls LLC
d/b/a The Stanton Nursing and Rehabilitation
Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. 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 floor plan showing the three beds to be decertified and the surrounding nursing unit(s), which is acceptable to the Department of Health. [LTC]
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]

11. Submission of the applicant's amended Operating 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*.



Project # 162255-E
CLR Schenectady LLC d/b/a The Capital Living Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Schenectady
Acknowledged: October 7, 2016

Executive Summary

Description

CLR Schenectady LLC d/b/a The Capital Living Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of The Capital Living Nursing and Rehabilitation Centre, a 240-bed, proprietary, Article 28 residential health care facility (RHCF) located at 526 Altamont Avenue, Schenectady (Schenectady County). A separate entity, Schenectady SNF Realty LLC, will acquire the real property. There will be no change in beds or services provided.

On June 16, 2015, the current RHCF operator, Schenectady Nursing and Rehabilitation Center, LLC, entered into an Asset Purchase Agreement (APA) with CLR Schenectady LLC for the sale and acquisition of the operating interests of the RHCF for \$6,675,000. Subsequently, on September 21, 2016, Schenectady Nursing and Rehabilitation Center, LLC and CLR Schenectady LLC executed the First Amendment to the Asset Purchase Agreement consenting to the change in the proposed membership of CLR Schenectady LLC. Concurrently on June 16, 2015, DMN Realty Associates, LLC, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with Schenectady SNF Realty LLC for the sale and acquisition of the real property for \$35,275,000 (including the assumption of the current U.S. Department of Housing and Urban Development (HUD) mortgage). 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 CLR

Schenectady LLC and Schenectady SNF Realty LLC in that Hillel Weinberger is a common member in both entities. The applicant will lease the premises from Schenectady SNF Realty LLC.

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

Table with 2 columns: Member, Percentage. Title: Current Operator Schenectady Nursing and Rehabilitation Center, LLC. Members include DMN Management Services, LLC (100%), Anthony Durante (15%), Patrick Martone (10%), Jami Rogowski (15%), Jodi Polsinelli (15%), Lisa Marrello (15%), Pamela Nichols (15%), Mark Nichols (15%).

Table with 2 columns: Members, Percentage. Title: Proposed Operator CLR Schenectady LLC d/b/a The Capital Living Nursing and Rehabilitation Center. Members include Hillel Weinberger (50%), Amir Abramchik (50%).

Concurrently under review, the applicant members of CLR Schenectady LLC and the realty members of Schenectady SNF Realty LLC are seeking approval to acquire the operating and realty interests, respectively, in the following entities: The Crossings Nursing and Rehabilitation Centre (CON 162257), The

Country Manor Nursing and Rehabilitation Centre (CON 162256), The Mountain View Nursing and Rehabilitation Centre (CON 162258), The Orchard Nursing and Rehabilitation Centre (CON 162259), The Springs Nursing and Rehabilitation Centre (CON 162260), and The Stanton Nursing and Rehabilitation Centre (CON 162261).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Occupancy was 90.4% in 2012, 89.3% in 2013, and 95.3% in 2014. Current occupancy, as of October 26, 2016 was 98.1%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

There are no project costs associated with this application. CLR Schenectady LLC will acquire the RHCF's operations for \$6,675,000 funded by \$1,712,250 in members' equity and a ten-year

loan for \$4,962,750 at 5% interest, amortized over 25 years. Schenectady SNF Realty LLC will acquire the real property for \$35,275,000, funded by \$58,000 in members' equity, a ten-year loan for \$3,816,545 at 5% interest, amortized over 25 years, and the assumption of the current HUD mortgage with an outstanding principal balance estimated at \$31,400,455. Greystone Funding Corporation has provided a letter of interest to finance the acquisition of the operations and Capital Funding, LLC has provided a letter of interest to finance the acquisition of the real property. The projected budget is:

	<u>Year One</u>
Revenues	\$26,346,275
Expenses	<u>25,191,981</u>
Gain/(Loss)	\$1,154,294

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
5. Submission of documentation of approval by HUD and Century Health Capital, Inc. for the change in operator of the nursing home, acceptable to the Department of Health. [BFA]
6. 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)
7. 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)
8. 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)
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's amended Operating 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

March 9, 2017

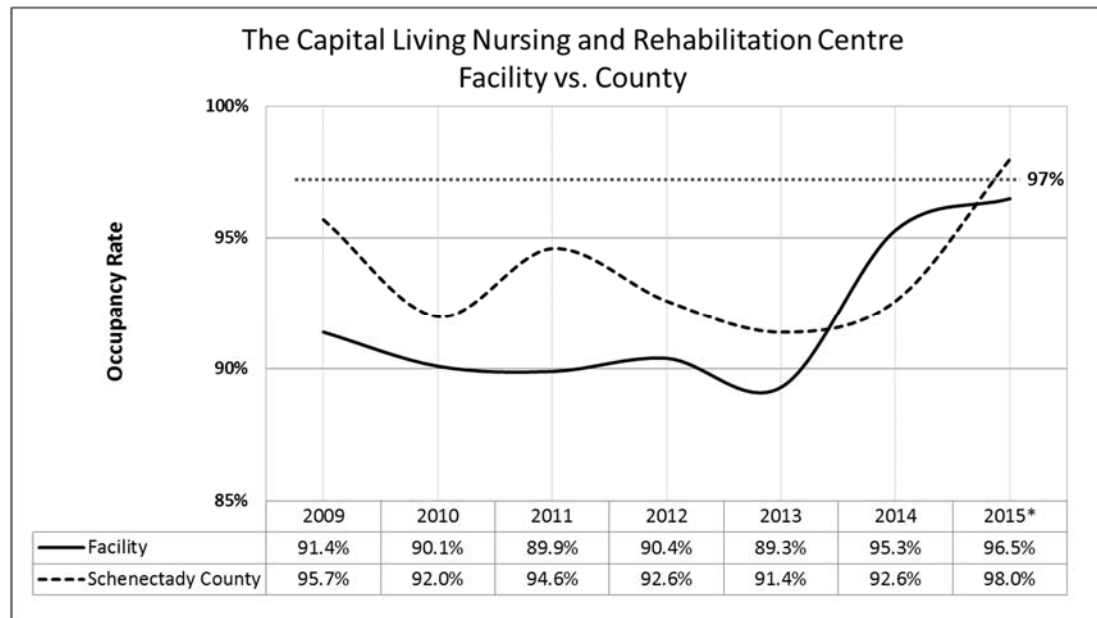
Need Analysis

Analysis

According to the current need methodology, there is a surplus of 44 beds in Schenectady County.

RHCF Need – Schenectady County

2016 Projected Need	889
Current Beds	976
Beds Under Construction	-43
Total Resources	933
Unmet Need	-44



*unaudited, facility reported data

The overall occupancy for Schenectady County is 92.4% for 2014. The Capital Living Nursing and Rehabilitation Centre's occupancy was 89.9% in 2011, 90.4% in 2012, and 89.3% in 2013. The replacement facility opened in 2013. The new, state-of-the-art facility was constructed to accommodate the downsized capacity of its previous facility, known as The Avenue Nursing and Rehabilitation Centre (The Avenue), formerly 224 beds, as well as the affiliated Dutch Manor Nursing and Rehabilitation Centre (Dutch Manor), formerly 86 beds, which closed. The merging of these two facilities resulted from the implementation of recommendations made by the Berger Commission and represented a downsizing of 70 beds. Once opened, residents from The Avenue and Dutch Manor were relocated to Capital Living.

Since its opening, the facility has experienced a significant increase in occupancy rates, compared to prior years as The Avenue. According to the facility's weekly census reports, occupancy has been near the Department's planning optimum and this is expected to continue with the new operator.

Access

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

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

The Capital Living Nursing and Rehabilitation Centre's Medicaid admissions of 8.5% in 2013 exceeded the Schenectady County 75% rate of 4.6% in 2013. The Capital Living Nursing and Rehabilitation Centre's Medicaid admissions of 9.4% in 2014 did not exceed the Schenectady County 75% rate of 12.2% in 2014.

Conclusion

Approval of this application will result in maintaining a necessary resource in Schenectady County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Capital Living Nursing and Rehabilitation Centre	The Capital Living Nursing and Rehabilitation Centre
Address	526 Altamont Avenue Schenectady, NY 12303	Same
	240	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Proprietary
Operator	Schenectady Nursing & Rehabilitation Center, LLC	CLR Schenectady, LLC Amir Abramchik 50% Hillel Weinberger 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Chittenango Center for Rehabilitation and Health Care	05/2011 to 7/16
Rome Center for Rehabilitation and Health Care	05/2011 to 8/16
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present

Individual Background Review

Amir Abramchik is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers for Specialty Care as the director of special projects since 2007. Previously he was employed as administrator of Queens Center for Rehabilitation and Health Care and Dutchess Center for Rehabilitation and Health Care. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

Fulton Center for Rehabilitation and Health Care	(10%)	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	(2%)	04/2012 to present
Corning Center for Rehabilitation and Health Care	(11%)	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	(95%)	11/2014 to present

Hillel Weinberger has been retired since 2012. He was formerly employed as the co-founder of Hillmark Capital, a financial planning business. He also has been serving as the the President of Ptach (a special needs school) for the last ten years. Mr Weinberger discloses no health facility ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. For the June 11, 2012 survey deficiencies were found under 10 NYCRR 451.3(e)(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) and Quality of Care: Medication Errors. For the May 5, 2013 survey deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential; 415.12(c)(2) Quality of Care Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.(m)(2) Quality of Care: Medication Errors; 415.26 Administration; and 415.27(a-c) Quality Assurance. For the November 21, 2013 survey deficiencies were found 10NYCRR 415.4(b)(1)(2)(3) Investigative/Report Allegations, 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(1)(2) Quality of Care Accidents/Supervision; 415.12(m)(2) Quality of Care Medication Errors; 415.26 Administration and 415.25(a-c) Quality Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.

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. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$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.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in

dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of operations of Ontario Center for Rehabilitation and Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 12, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(2)(iii)-Notice of Rights and Services-Right to Refuse Treatment, Refuse to Participate in Research and the Right to Be Able to Formulate an Advance Directive; and 415.12(m)(2)- Quality of Care No Significant Medication Errors.

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 operations for Chittenango Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, and Corning Center for Rehabilitation and Health Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
The Grand Rehabilitation & Nursing at Chittenango	**	**	****
The Grand Rehabilitation and Nursing at Rome	*	*	***
Fulton Center for Rehabilitation and Healthcare	**	*	**
Richmond Center for Rehab and Specialty HC	****	***	**
Ontario Center for Rehabilitation and Healthcare	**	*	**
Corning Center for Rehabilitation and Healthcare	*	*	**

Project Review

No changes in the program or physical environment are proposed in this application.

The proposed operator intends to enter into a Consulting Services Agreement with Centers Health Care for consulting and advisory services related to administrative and operational functions.

The proposed operator was asked to explain the low star ratings. The operator has stated they have implemented initiatives to recruit and retain employees providing direct care services. They also plan on employing a combination of measures to correct deficiency issues, including in-service education, changes to policies and procedures when necessary, implementation of weekly observation and auditing of staff practices, and monthly review of the findings by the quality assurance committee.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 16, 2015
Seller:	Schenectady Nursing and Rehabilitation Center, LLC
Purchaser:	CLR Schenectady LLC
Assets Transferred:	The business and operation of the Facility; leasehold improvements, furniture, fixtures and equipment owned or leased by Seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases and undertakings; Resident funds held in trust; The name "The Capital Living Nursing and Rehabilitation Centre"; security deposits and prepayments; manuals and 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:	Real Estate which is the subject of the Real Estate Contract; insurance policies; union agreement and pension plans; rate increases and/or lump sum payments; tax refunds including real estate tax refunds relating to a period or periods prior to the Closing Date; amounts due from parties related to Seller; Seller's cash and cash equivalents; Prepaid expenses; claims, causes of action and legal rights for periods prior to the Closing Date; receivables from any affiliate of Seller; and payments made in connection with "Universal Appeal Settlement"
Assumed Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date; trade accounts payable for items purchased by the Seller prior to Closing (estimated at \$450,000).
Purchase Price:	\$6,675,000
Payment of the Purchase Price:	\$58,000 upon execution; \$6,617,000 at Closing

The purchase price of the operations is proposed to be satisfied as follows:

Equity from Members	\$1,712,250
Loan (10-year, 25-year amortization, 5% interest)	<u>4,962,750</u>
Total	\$6,675,000

Greystone Funding Corporation has provided a letter of interest at the stated terms

First Amendment to Asset Purchase Agreement

The applicant has submitted an executed First Amendment to the APA for acquisition of the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	September 21, 2016
Seller:	Schenectady Nursing and Rehabilitation Center, LLC
Purchaser:	CLR Schenectady LLC
Change:	To implement the removal of Joseph Zupnik and Elisa Zupnik from ownership in the purchaser and the addition of Hillel Weinberger and Amir Abramchik as the sole owners of the purchaser.

The APA establishes a Total Purchase Price of \$86,500,000 as total consideration for the assets transferred (as defined above), the real property (as defined below), and the assets of the sellers under all other APAs and REPAs related to the following entities: 1940 Hamburg Street, LLC (Realty, vacant

property); MacDonald Road Corporation (Realty, Home Office); DMN Management Services, LLC (Home Office Assets); and the operating assets and real property associated with the following CONs concurrently under review:

- CON 162257 - The Crossings Nursing and Rehabilitation Centre, 80 beds, Onondaga County;
- CON 162256 - The Country Manor Nursing and Rehabilitation Centre, 90 beds, Jefferson County;
- CON 162258 - The Mountain View Nursing and Rehabilitation Centre, 77 beds, Ulster County;
- CON 162259 - The Orchard Nursing and Rehabilitation Centre, 88 beds, Washington County;
- CON 162260 - The Springs Nursing and Rehabilitation Centre, 78 beds, Rensselaer County; and
- CON 162261 - The Stanton Nursing and Rehabilitation Centre, 117 beds, Warren County.

Please note the above bed counts for CON 162257, CON 162258, CON 162260 and CON 162261 reflect bed reductions anticipated upon establishment.

North Broadway Office Operations LLC will acquire the operating interests of DMN Management Services (DMN), referenced above, for \$258,000. The staff of DMN currently provides services including: QA/QI, billing, IT management; payroll; audit; accounts receivable; and human resources. After the change in ownership, DMN Management Services will no longer exist.

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. As of November 8, 2016, the facility had no outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed agreement to acquire the real property. The terms of the agreement are summarized below:

Date:	June 16, 2015
Asset Transferred Realty:	Real Property with an address at 526 Altamont Avenue, Schenectady, New York 12303
Seller:	DMN Realty Associates, LLC
Purchaser:	Schenectady SNF Realty LLC
Purchase Price:	\$35,275,000
Payment of the Purchase Price:	\$58,000 upon execution; \$3,816,545 at Closing; Assumption of mortgage, balance estimated at \$31,400,455

The purchase price of real property is proposed to be satisfied as follows:

Equity from Members	\$58,000
Loan (10-year, 25-year amortization, 5% interest)*	\$3,816,545
Assumed HUD Mortgage **	<u>\$31,400,455</u>
	\$35,275,000

* Capital Funding, LLC has provided a letter of interest at the stated terms.

** According to the certified financial statements, the mortgage payable is to Century Health Capital, Inc., insured by HUD, at 3.79% interest, beginning in March 2014 and due April 2044.

BFA Attachments A and B are the net worth summaries for the proposed members of CLR Schenectady LLC (operator) and Schenectady SNF Realty LLC (real property owner), respectively. Review of the net worth statements reveals sufficient resources overall to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCs (this application and the six listed above). Hillel Weinberger, a member of CLR Schenectady LLC

and Schenectady SNF Realty LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities to make up any member's equity shortfall in contributing to the purchase price and/or working capital needs.

Hillel Weinberger has provided affidavits, disproportionate to his membership interests, to fund the operating and real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	October 31, 2016
Premises:	240-bed RHCf located at 526 Altamont Ave., Schenectady, NY 12303
Owner/Landlord:	Schenectady SNF Realty LLC
Lessee:	CLR Schenectady LLC
Term:	40 years from Commencement Date
Rent:	Estimated at \$3,213,278 per annum (\$267,773.17 per month)
Provisions:	Triple Net

*Rent is estimated at \$2,013,278 in fixed rent (Net Rent), based on the amortization of the assumed mortgage and bank loan for the real estate purchase, plus \$1,200,000 in Over Rent. In addition to the \$3,213,278 rental amount, the lessee will be billed for other expenses related to the premises incurred by the landlord.

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.

Consulting Services Agreement

The applicant has provided a draft consulting services agreement, summarized below:

Contractor:	Centers for Care LLC d/b/a Centers Health Care
Facility:	CLR Schenectady LLC, d/b/a The Capital Living Nursing and Rehabilitation Center
Affiliation:	The Facility will refer to itself as "Affiliated with Centers Health Care" or "Member of Centers Health Care, limited to marketing efforts and the identification of professionals, consultants, vendors and healthcare providers and other resources that can assist the Facility in the provision of care.
Consulting and Advisory Services:	The contractor will be responsible for the operation, supervision and oversight of all functions related to A/R and A/P, including assistance and supervision of staff in interacting with families, collection of NAMI and private funds, submission of award letters, and preparation of applications for payee, maintenance of billing files, monitoring payments to the facility by all payor sources, pursuing payments for delinquent accounts and assisting the facility, at the facility's expense. The contractor will provide assistance to and supervision of staff performing and providing the following services: all billing functions for all payor sources and maintenance of all billing and posting records and establishment of payroll budgets and schedule coordination with nursing and other departments. Responsible for the preparation of health facility assessment; assist the Facility with the preparation of RHCf 4 and Medicare cost reports; and reconciliation of billing records, Maintenance of electronic resident/patient billing files, fund records and accounts, and monthly operating cash flow projections. Assist the Facility in reviewing of rate sheets and filing of necessary appeals and audit facility's monthly pharmacy bills and the implementing of formulary management.
Clinical Consulting Services:	The contractor will provide advice and assistance to the Facility with respect to the administrative functioning of the Therapy, Social Services and Nursing departments. Develop operating policies and procedures, rules and methods of operation appropriate to such departments and the training and orientation of staff.

	Recommend procedures to ensure the consistency and quality of all the Services. Assist the Facility with respect to its CMI, Medicare, and case-mix reimbursement.
Other Duties:	Develop and implement a marketing plan; furnish sufficient part-time temporary licensed skilled professional staff for the health care activities described herein
Term:	One Year with automatic one year renewals, unless terminated through mutual consent, default or by one party with 60-day written notice.
Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the Services to the Facility.

CLR Schenectady LLC retains ultimate control in all of the final decisions associated with the services.

Centers for Care LLC will also provide consulting services to the other RHCs transferred under the terms of the APA referenced above. Amir Abramchik is the Chief Operating Officer of the consulting services provider, Centers for Care LLC, and a member of the applicant. The Centers for Care LLC is equally owned by Kenneth Rozenberg and Beth Rozenberg.

The fees are estimated at \$3,000,000 for the subject facility and the six facilities being acquired concurrently, and divided amongst the facilities as follows, based on the total licensed beds.

- The Capital Living Nursing and Rehabilitation Center, 240 beds: \$935,066
- The Country Manor Nursing and Rehabilitation Centre, 90 beds: \$350,649
- The Crossings Nursing and Rehabilitation Centre, 80 beds: \$311,688
- The Mountain View Nursing and Rehabilitation Centre, 77 beds: \$300,000
- The Orchard Nursing and Rehabilitation Centre, 88 beds, \$342,857
- The Springs Nursing and Rehabilitation Centre, 78 beds, \$303,896
- The Stanton Nursing and Rehabilitation Centre, 117 beds, \$455,844

Operating Budget

The applicant has provided the current year (2015) results and the first year operating budget subsequent to the change in ownership, in 2017 dollars, summarized as follows:

<u>Revenues</u>	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
Commercial FFS	\$350.00	\$430,500	\$350.00	\$436,800
Medicare FFS	\$519.04	\$3,650,937	\$526.83	\$3,760,513
Medicare MC	\$586.98	\$3,348,123	\$586.98	\$3,397,440
Medicaid FFS	\$249.20	\$14,359,320	\$226.73	\$13,256,676
Medicaid MC	\$250.00	\$80,750	\$226.73	\$74,367
Private Pay	\$401.85	\$5,099,929	\$420.91	\$5,420,479
All Other		<u>\$60,084</u>		<u>\$0</u>
Total		\$27,029,643		\$26,346,275
 <u>Expenses</u>				
Operating	\$253.03	\$21,407,380	\$250.01	\$21,463,389
Capital	<u>\$38.82</u>	<u>\$3,284,442</u>	<u>\$43.43</u>	<u>\$3,728,592</u>
Total Expenses	\$291.86	\$24,691,822	\$293.45	\$25,191,981
Net Income		<u>\$2,337,821</u>		<u>\$1,154,294</u>
Patient Days		84,603		85,849
Utilization %		96.58%		98.00%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2015 revenues and expenses.
- The applicant projected their Medicaid revenue based on the facility's current 2016 Medicaid Regional Pricing rate. The projected Medicare revenue is based its facility's current Medicare rate. The Private Pay rate were based on the current operator's average rate for 2016.

- Expense and staffing assumptions were based on the current operator’s model then adjusted based on the applicant’s experience.
- The applicant anticipates reductions in salaries and employee benefits will be achieved based on changes in the staffing model and will not require reductions for positions not impacted by the changes to the staffing model.
 - The applicant anticipates reductions in supplies (5.76%) based on contract negotiations and/or use of vendors in place at other facilities and a 6.27% reduction in Other Direct Expenses.
 - It is noted that the rent is estimated by the applicant as follows: \$3,213,278 net rent, based on debt service (interest and principal) on the outstanding mortgage assumed upon acquisition and \$1,200,000 over rent. It is noted that additional rent (escrow) to address taxes, insurance and replacement accounts is not included in the budget as the applicant states that “Additional Rent” is not included in this Rent Schedule as there are no additional rent expenses (expenses incurred by the landlord billable to the tenant) at this time.
- The fees associated with the above referenced Consulting Services Agreement have been included in the budget.
- Utilization by payor source for the first year after the change in ownership is summarized below:

	<u>Current Year</u>	<u>Year One</u>
Commercial FFS	1.45%	1.45%
Medicare FFS	8.32%	8.32%
Medicare MC	6.74%	6.74%
Medicaid FFS	68.11%	68.11%
Medicaid MC	0.38%	0.38%
Private Pay	15.00%	15.00%
- Breakeven utilization is at 93.71% in year one.

Capability and Feasibility

CLR Schenectady LLC will acquire the RHCf’s operations for \$6,675,000, which will be funded via \$1,712,250 in members’ equity and a ten-year loan for \$4,962,750 at the above state terms. Greystone Funding Corporation has provided a letter of interest. Schenectady SNF Realty LLC will acquire the real property for \$35,275,000, which will be funded as follows: \$58,000 in members’ equity; a loan for \$3,816,545 (letter of interest from Capital Funding, LLC provided); and the assumption of a HUD mortgage with an estimated principal balance of \$31,400,455, at 3.79% interest, payable in monthly installments through April 2044 (mortgage payable to Century Health Capital, Inc.). There are no project costs associated with this application.

The working capital requirement is estimated at \$4,198,664 based on two months of first year expenses. Funding will be as follows: \$2,099,332 from member’s equity with the remaining \$2,099,332 satisfied through a self-amortizing 5-year loan at 5% interest rate. Harborview Capital Funding has provided a letter of interest. BFA Attachments A and B, proposed members net worth summaries for the operator and real property owner, respectively, reveal sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCf’s (this application and the six listed above). Hillel Weinberger, a member of CLR Schenectady LLC and Schenectady SNF Realty LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities (covering the purchase price and working capital equity). Additionally, Hillel Weinberger has provided affidavits stating he is willing to contribute resources, disproportionate to his membership interest, for the operating and realty entity balloon payments should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects net income of \$1,154,294 in Year One. The applicant projects a reduction in revenue based on a decrease in the Medicaid reimbursement rates, which is partially offset by a small (approximately 1.5%) increase in utilization for each payor source. The applicant anticipates expense reductions in the following categories: \$654,475 in Salaries and Employee Benefits; \$124,357 in Supplies; \$19,264 in Purchased Services; and \$114,409 in Other Direct Expenses. These reductions are partially offset by an increases in professional fees (\$968,514), depreciation and rent (\$146,421), and interest expense (\$297,729).

BFA Attachment D is CLR Schenectady, LLC's pro forma balance sheet, which shows the entity will start with \$3,811,582 in equity. Equity includes \$4,772,500 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, total net assets are a negative \$960,918. 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 E is the Financial Summary of The Capital Living Nursing and Rehabilitation Centre for the period 2013 through 2015, which shows the facility had positive working capital and positive net assets for the period. Also, the facility had an average net income of \$1,377,000 and an average occupancy of 93.75%. Also included as part of Attachment E is DMN Management Services and Subsidiaries 2014 and 2015 certified statement, which shows working capital and net assets to be positive with operations showing a \$449,584 profit in 2015 before non-recurring expenses of \$360,000.

BFA Attachment F is the Internal Financial Summary through September 30, 2016, which shows the facility had positive working capital, positive net assets and net income equaling \$1,130,915. On a consolidated basis, the organization had a positive working capital, positive net assets and generated a loss.

BFA Attachment G is the Financial Summary of the proposed member's affiliated RHCfs, which shows the facilities maintained positive working capital, positive net assets, and generated positive net income.

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	CLR Schenectady LLC, Proposed Members Net Worth
BFA Attachment B	Schenectady SNF Realty LLC, Proposed Members Net Worth
BFA Attachment C	Current and Proposed Owners of the Real Property
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary, The Capital Living Nursing and Rehabilitation Center, LLC and DMN Management Services LLC, 2015 certified financial statement
BFA Attachment F	Internal Financial Summary, The Capital Living Nursing and Rehabilitation Center, LLC and DMN Management Services LLC
BFA Attachment G	Financial Summary, the proposed member's affiliated RHCfs

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 9th day of March, 2017 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 CLR Schenectady LLC as the new operator of The Capital Living Nursing and Rehabilitation Centre, a 240-bed Residential Health Care Facility currently operated by Schenectady Nursing & Rehabilitation Center, LLC, 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:

162255 E

CLR Schenectady LLC
d/b/a The Capital Living Nursing and
Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
5. Submission of documentation of approval by HUD and Century Health Capital, Inc. for the change in operator of the nursing home, acceptable to the Department of Health. [BFA]
6. 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)
7. 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)
8. 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)
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]

11. Submission of the applicant's amended Operating 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*.



Project # 162256-E
**CLR Carthage LLC d/b/a The Country Manor Nursing and
 Rehabilitation Center**

Program: Residential Health Care Facility
Purpose: Establishment

County: Jefferson
Acknowledged: October 11, 2016

Executive Summary

Description

CLR Carthage LLC d/b/a The Country Manor Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of The Country Manor Nursing and Rehabilitation Centre, a 90-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1045 West Street, Carthage (Jefferson County). A separate entity, Carthage SNF Realty LLC, will acquire the real property. There will be no change in services provided.

On June 16, 2015, the current operator, Carthage Nursing and Rehabilitation Center, LLC, entered into an Asset Purchase Agreement (APA) with CLR Carthage LLC for the sale and acquisition of the RHCF operating interests for \$3,063,050. Subsequently, on September 21, 2016, Carthage Nursing and Rehabilitation Center, LLC and CLR Carthage LLC executed the First Amendment to the Asset Purchase Agreement consenting to the change in the proposed membership of CLR Carthage LLC. Concurrently on June 16, 2015, West Street Carthage, LLC, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with Carthage SNF Realty LLC for the sale and acquisition of the real property for \$2,424,727. 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 the CLR Carthage LLC and Carthage SNF Realty LLC in that Hillel Weinberger is a common member in both entities. The applicant

will lease the premises from Carthage SNF Realty LLC.

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

<u>Current Operator</u>		
Carthage Nursing and Rehabilitation Center, LLC		
<u>Member</u>		
DMN Management Service, LLC		100%
Anthony Durante	15%	
Patrick Martone	10%	
Jami Rogowski	15%	
Jodi Polsinelli	15%	
Lisa Marrello	15%	
Pamela Nichols	15%	
Mark Nichols	15%	

<u>Proposed Operator</u>		
CLR Carthage LLC		
<u>Members</u>		
Hillel Weinberger		50%
Amir Abramchik		50%

Concurrently under review, the applicant members of CLR Carthage LLC and the realty members of Carthage SNF Realty LLC are seeking approval to acquire the operating and realty interests, respectively, in the following: The Crossings Nursing and Rehabilitation Centre (CON 162257), The Capital Living Nursing and Rehabilitation Centre (CON 162255), The Mountain View Nursing and Rehabilitation Centre (CON 162258), The

Orchard Nursing and Rehabilitation Centre (CON 162259), The Springs Nursing and Rehabilitation Centre (CON 162260), and The Stanton Nursing and Rehabilitation Centre (CON 162261).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. The Country Manor Nursing and Rehabilitation Centre's occupancy was 94.9% in 2012, 94.0% in 2013, and 96.5% in 2014. Current occupancy, as of October 26, 2016 is 98.9%.

Program Summary

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

Financial Summary

CLR Carthage LLC will acquire the RHCF's operations for \$3,063,050 funded by \$809,262 in members' equity and a ten-year loan for \$2,253,788 at 5% interest, amortized over 25 years. Carthage SNF Realty LLC will acquire the real property for \$2,424,727, funded by \$58,000 in members' equity and a ten-year loan for \$2,366,727 at 5% interest, amortized over 25 years. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively. There are no project costs associated with this application.

The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,447,836	\$6,583,347
Expenses	<u>6,472,452</u>	<u>6,453,571</u>
Gain/(Loss)	(\$24,616)	\$129,776

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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]
10. Submission of the applicant's amended Operating 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
March 9, 2017

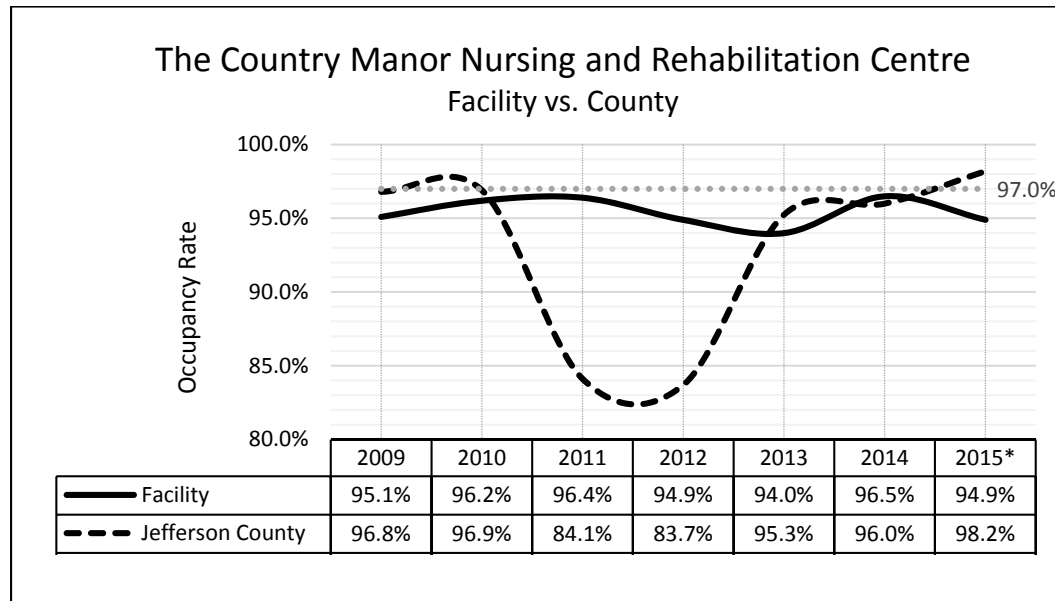
Need Analysis

Analysis

There current need methodology shows a need for 133 beds in Jefferson County.

RHCF Need – Jefferson County

2016 Projected Need	692
Current Beds	559
Beds Under Construction	0
Total Resources	559
Unmet Need	133



The overall occupancy for Jefferson County was 96.0% in 2014. The Country Manor Nursing and Rehabilitation Centre's occupancy was 94.9% in 2012, 94.0% in 2013, and 96.5% in 2014. As of August, 2016, CMI was 1.0186 for the overall facility and 1.0239 for the Medicaid population specifically. The new operator intends to implement initiatives to accept more clinically complex and difficult-to-place residents in the local health care market.

Access

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

The Country Manor Nursing and Rehabilitation Centre's Medicaid admissions of 40.4% in 2013 and 22.0% in 2014 exceeded the Jefferson County 75% rates of 29.0% in 2013 and 12.3% in 2014.

Conclusion

Approval of this application will result in maintaining a necessary resource in Jefferson County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Country Manor Nursing and Rehabilitation Centre	Same
Address	1045 West Street Carthage, NY 13619	Same
	90	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Proprietary
Operator	Carthage Nursing and Rehabilitation Center, LLC	CLR Carthage LLC Amir Abramchik 50% Hillel Weinberger 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Chittenango Center for Rehabilitation and Health Care	05/2011 to 7/16
Rome Center for Rehabilitation and Health Care	05/2011 to 8/16
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present

Individual Background Review

Amir Abramchik is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers for Specialty Care as the director of special projects since 2007. Previously he was employed as administrator of Queens Center for Rehabilitation and Health Care and Dutchess Center for Rehabilitation and Health Care. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

Fulton Center for Rehabilitation and Health Care	(10%)	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	(2%)	04/2012 to present
Corning Center for Rehabilitation and Health Care	(11%)	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	(95%)	11/2014 to present

Hillel Weinberger has been retired since 2012. He was formerly employed as the co-founder of Hillmark Capital, a financial planning business. He also has been serving as the the President of Ptach (a special needs school) for the last ten years. Mr Weinberger discloses no health facility ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. For the June 11, 2012 survey deficiencies were found under 10 NYCRR 451.3(e)(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) and Quality of Care: Medication Errors. For the May 5, 2013 survey deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential; 415.12(c)(2) Quality of Care Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.(m)(2) Quality of Care: Medication Errors; 415.26 Administration; and 415.27(a-c) Quality Assurance. For the November 21, 2013 survey deficiencies were found 10NYCRR 415.4(b)(1)(2)(3) Investigative/Report Allegations, 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(1)(2) Quality of Care Accidents/Supervision; 415.12(m)(2) Quality of Care Medication Errors; 415.26 Administration and 415.25(a-c) Quality Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.

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. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$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.
 - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of operations of Ontario Center for Rehabilitation and Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 12, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(2)(iii)- Notice of Rights and Services-Right to Refuse Treatment, Refuse to Participate in Research and the Right to Be Able to Formulate an Advance Directive; and 415.12(m)(2)- Quality of Care No Significant Medication Errors.

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 operations for Chittenango Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, and Corning Center for Rehabilitation and Health Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
The Grand Rehabilitation & Nursing At Chittenango	**	**	****
The Grand Rehabilitation And Nursing At Rome	*	*	***
Fulton Center For Rehabilitation And Healthcare	**	*	**
Richmond Center For Rehab And Specialty HC	****	***	**
Ontario Center For Rehabilitation And Healthcare	**	*	**
Corning Center For Rehabilitation And Healthcare	*	*	**

Project Review

No changes in the program or physical environment are proposed in this application.

The proposed operator intends to enter into a Consulting Services Agreement with Centers Health Care for consulting and advisory services related to administrative and operational functions.

The proposed operator was asked to address the low star ratings. The operator has stated they have implemented initiatives to recruit and retain employees providing direct care services. They also plan on implement a combination of measures to correct deficiency issues, including in-service education, changes to policies and procedures when necessary, implementation of weekly observation and auditing of staff practices, and monthly review of the findings by the quality assurance committee.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 16, 2015
Seller:	Carthage Nursing and Rehabilitation Center, LLC
Purchaser:	CLR Carthage LLC
Assets Transferred:	The business and operation of the Facility; leasehold improvements, furniture, fixtures and equipment owned or leased by Seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases and undertakings; Resident funds held in trust; The name " The County Manor Nursing and Rehabilitation Centre"; security deposits and prepayments; manuals and 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:	Real Estate which is the subject of the Real Estate Contract; insurance policies; union agreement and pension plans; rate increases and/or lump sum payments; tax refunds including real estate tax refunds relating to a period or periods prior to the Closing Date; amounts due from parties related to Seller; Seller's cash and cash equivalents; Prepaid expenses; claims, causes of action and legal rights for periods prior to the Closing Date; receivables from any affiliate of Seller; and payments made in connection with "Universal Appeal Settlement"
Assumed Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date; trade accounts payable for items purchased by the Seller prior to Closing (estimated at \$525,000)
Purchase Price:	\$3,063,050
Payment of the Purchase Price:	\$58,000 upon execution; \$3,005,050 due at Closing

The purchase price of the operations is proposed to be satisfied as follows:

Equity from Members	\$809,262
Loan (10-year, 25-year amortization, 5% interest)	<u>2,253,788</u>
Total	\$3,063,050

Greystone Funding Corporation has provided a letter of interest at the stated terms.

First Amendment to Asset Purchase Agreement

The applicant has submitted an executed First Amendment to the APA for acquisition of the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	September 21, 2016
Seller:	Carthage Nursing and Rehabilitation Center, LLC
Purchaser:	CLR Carthage LLC
Change:	To implement the removal of Joseph Zupnik and Elisa Zupnik from ownership in the purchaser and the addition of Hillel Weinberger and Amir Abramchik as the sole owners of the purchaser.

The APA establishes a Total Purchase Price of \$86,500,000 as total consideration for the assets transferred (as defined above), the real property (as defined below), and the assets of the sellers under all other APAs and REPAs related to the following entities: 1940 Hamburg Street, LLC (Realty, vacant property); MacDonald Road Corporation (Realty, Home Office); DMN Management Services, LLC (Home Office Assets); and the operating assets and real property associated with the following CONs concurrently under review:

- CON 162257 - The Crossings Nursing and Rehabilitation Centre, 80 beds, Onondaga County;
- CON 162255 - The Capital Living Nursing and Rehabilitation Centre, 240 beds, Schenectady County;
- CON 162258 - The Mountain View Nursing and Rehabilitation Centre, 77 beds, Ulster County;
- CON 162259 - The Orchard Nursing and Rehabilitation Centre, 88 beds, Washington County;
- CON 162260 - The Springs Nursing and Rehabilitation Centre, 78 beds, Rensselaer County; and
- CON 162261 - The Stanton Nursing and Rehabilitation Centre, 117 beds, Warren County.

Please note the above bed counts for CON 162257, CON 162258, CON 162260 and CON 162261 reflect bed reductions anticipated upon establishment.

North Broadway Office Operations, LLC will acquire the operating interests of DMN Management Services (DMN), referenced above, for \$258,000. The staff of DMN currently provide services including QA/QI, billing, IT management, payroll, audit, accounts receivable and human resources. After the change in ownership, DMN Management Services will no longer exist.

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. As of December 20, 2016 the facility had no outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA to acquire the real property. The terms of the agreement are summarized below:

Date:	June 16, 2015
Seller:	West Street Carthage, LLC
Purchaser:	Carthage SNF Realty LLC
Asset Transferred Realty:	Real Property located at 1045 West Street, Carthage, NY 13619
Purchase Price:	\$2,424,727
Payment of Purchase Price:	\$58,000 upon execution; \$2,366,727 at Closing

The purchase price of the real property is proposed to be satisfied as follows:

Equity from Members	\$58,000
Loan (10-year, 25-year amortization, 5% interest)	<u>2,366,727</u>
Total	\$2,424,727

Capital Funding, LLC has provided a letter of interest at the stated terms.

BFA Attachments A and B are the net worth summaries for the proposed members of CLR Carthage, LLC (operator) and Carthage SNF Realty LLC (real property owner), respectively. Review of the net worth statements reveals sufficient resources overall to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCs (this application and the six listed above). Hillel Weinberger, a member of CLR Carthage LLC and Carthage SNF Realty LLC, has provided affidavits stating he is willing to contribute resources

disproportionate to his membership interest in the operating and realty entities to make up any member's equity shortfall in contributing to the purchase price and/or working capital needs.

Hillel Weinberger has provided affidavits, disproportionate to his membership interests, to fund the operating and real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	October 31, 2016
Premises:	90-bed RHC located at 1045 West Street, Carthage, NY 13619
Owner/Landlord:	Carthage SNF Realty LLC
Lessee:	CLR Carthage LLC
Term:	40 years from Commencement Date
Rent:*	\$256,028 (\$21,336 per month).
Provisions:	Triple Net, plus

*Rent is estimated at \$166,028 in fixed rent (Net Rent), based on the 25-year amortization of the mortgage, plus \$90,000 in Over Rent. In addition to the \$256,028 rental amount, the lessee will be billed for other expenses related to the premises incurred by the landlord.

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.

Consulting Services Agreement

The applicant has provided a draft consulting services agreement, summarized below:

Contractor:	Centers for Care LLC d/b/a Centers Health Care
Facility:	CLR Carthage LLC d/b/a The Country Manor Nursing and Rehabilitation Center
Affiliation:	The Facility will refer to itself as "Affiliated with Centers Health Care" or "Member of Centers Health Care" limited to marketing efforts and the identification of professionals, consultants, vendors and healthcare providers and other resources that can assist the Facility in the provision of care.
Consulting and Advisory Services:	The contractor will be responsible for the operation, supervision and oversight of all functions related to A/R and A/P, including assistance and supervision of staff in interacting with families, collection of NAMI and private funds, submission of award letters, and preparation of applications for payee, maintenance of billing files, monitoring payments to the facility by all payer sources, pursuing payments for delinquent accounts and assisting the facility, at the facility's expense. The contractor will provide assistance to and supervision of staff performing and providing the following services: all billing functions for all payer sources and maintenance of all billing and posting records and establishment of payroll budgets and schedule coordination with nursing and other departments. Responsible for the preparation of health facility assessment; assist the Facility with the preparation of RHC 4 and Medicare cost reports; and reconciliation of billing records, Maintenance of electronic resident/patient billing files, fund records and accounts, and monthly operating cash flow projections. Assist the Facility in reviewing of rate sheets and filing of necessary appeals and audit facility's monthly pharmacy bills and the implementing of formulary management.
Clinical Consulting Services:	The contractor will provide advice and assistance to the Facility with respect to the administrative functioning of the Therapy, Social Services and Nursing departments. Develop operating policies and procedures, rules and methods of operation appropriate to such departments and the training and orientation of staff. Recommend procedures to ensure the consistency and quality of all the Services. Assist the Facility with respect to its CMI, Medicare, and case-mix reimbursement.

Other Duties:	Develop and implement a marketing plan; furnish sufficient part-time temporary licensed skilled professional staff for the health care activities described herein.
Term:	One-Year with automatic one-year renewals, unless terminated through mutual consent, default or by one party with 60-day written notice.
Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the Services to the Facility.

CLR Carthage LLC retains ultimate control in all of the final decisions associated with the services.

Centers for Care LLC will also provide consulting services to the other RHCFS transferred under the terms of the APA referenced above. Amir Abramchik is the Chief Operating Officer of the consulting services provider, Centers for Care LLC, and a member of the applicant. The Centers for Care LLC is equally owned by Kenneth Rozenberg and Beth Rozenberg.

The fees are estimated at \$3,000,000 for the subject facility and the six facilities being acquired concurrently, and divided amongst the facilities as follows, based on the total licensed beds:

- The Capital Living Nursing and Rehabilitation Center, 240 beds: \$935,066
- The Country Manor Nursing and Rehabilitation Centre, 90 beds: \$350,649
- The Crossings Nursing and Rehabilitation Centre, 80 beds: \$311,688
- The Mountain View Nursing and Rehabilitation Centre, 77 beds: \$300,000
- The Orchard Nursing and Rehabilitation Centre, 88 beds, \$342,857
- The Springs Nursing and Rehabilitation Centre, 78 beds, \$303,896
- The Stanton Nursing and Rehabilitation Centre, 117 beds, \$455,844

Operating Budget

The applicant has provided the current year (2015) results and the first and third year operating budgets subsequent to the change in ownership, in 2017 dollars, summarized as follows:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>First Year</u>	<u>Per Diem</u>	<u>Third Year</u>
<u>Revenues</u>						
Medicaid - FFS	\$165.33	\$3,934,394	\$157.55	\$3,810,662	\$157.55	\$3,890,855
Medicaid - MC	\$165.33	35,546	\$157.55	34,503	\$157.55	35,134
Medicare - FFS	\$496.89	768,197	\$504.35	\$792,334	\$504.35	808,977
Medicare - MC	\$274.98	123,465	\$274.98	125,391	\$274.98	128,141
Commercial	\$350.00	31,850	\$350.00	32,200	\$350.00	32,900
Private Pay	341.16	1,571,373	353.00	1,652,746	353.00	1,687,340
Other Operating		<u>22,488</u>		<u>0</u>		<u>0</u>
Total		\$6,487,313		\$6,447,836		\$6,583,347
<u>Expenses</u>						
Operating	\$205.89	\$6,321,769	\$192.63	\$6,011,471	\$188.67	\$6,011,471
Capital	<u>20.68</u>	<u>634,958</u>	<u>14.77</u>	<u>460,981</u>	<u>13.88</u>	<u>442,100</u>
Total Expenses	\$226.57	\$6,956,727	\$207.40	\$6,472,452	\$202.55	\$6,453,571
Net Income (Loss)		<u>(\$469,414)</u>		<u>(\$24,616)</u>		<u>\$129,776</u>
RHCF Patient Days		30,704		31,207		31,863
Utilization %		93.47%		95%		97%

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

- The current year reflects the facility's 2015 revenues and expenses.
- Medicaid revenue is based on the facility's current 2015 Medicaid Regional Pricing rate. The Current Year Medicare rate is the actual daily rate experienced by the facility during 2015 and the forecasted Year One and Year Three Medicare rate is the actual daily rate experienced during 2016. The Private Pay rates were based on the current operator's average rates for 2016.

- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 5% through various initiatives including renegotiating contracts.
- Projected utilization by payor source for the first and third year after the change in ownership is:

	<u>Current Year</u>	<u>Years One and Three</u>
Medicaid	78.20%	78.20%
Medicare	6.50%	6.50%
Private Pay & Commercial	15.30%	15.30%

- The breakeven utilization is projected at 95.5% for Year Three.

Capability and Feasibility

There are no project costs associated with this application. CLR Carthage LLC will acquire the RHCf's operations for \$3,063,050, which will be funded via \$809,262 in members' equity and a ten-year loan for \$2,253,788 at the above stated terms. Carthage SNF Realty LLC will acquire the real property for \$2,424,727 funded by \$58,000 in members' equity and a ten-year loan for \$2,366,727 at above stated terms. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively.

The working capital requirement is estimated at \$1,078,742 based on two months of first year expenses. Funding will be as follows: \$539,371 from the members' equity with the remaining \$539,371 satisfied through a five-year loan at 5% interest rate. Harborview Capital Funding has provided a letter of interest. Review of BFA Attachments A and B, proposed members net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCf's (this application and the six listed above). Hillel Weinberger, a member of CLR Carthage LLC and Carthage SNF Realty LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities (covering the purchase price and working capital equity). Additionally, Hillel Weinberger has provided affidavits stating he is willing to contribute resources, disproportionate to his membership interests, for the operating and realty entity balloon payments should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects a \$24,616 loss in the first year and a \$129,776 profit by the third year. Revenues are estimated to decline by approximately \$39,477. Overall expenses are expected to decline by \$484,275 coming from a \$310,298 reduction in operating expense and a \$173,977 reduction in capital expenses (\$287,137 reduction in leases & rent expenses, partially offset by an \$113,160 increase in interest expense). The decline in operating expenses comes primarily from a \$303,324 decrease in salary and wages coming mainly from a six FTE reduction (a change in the staffing model). The budget was created taking into consideration the proposed new owners' experience in operating a similar sized facilities.

BFA Attachment D is CLR Carthage LLC's pro forma balance sheet, which shows the entity will start with \$1,373,249 in equity (which includes first year's loss). Equity includes \$2,304,283 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, total net assets are a negative \$931,034. 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 E is a Financial Summary of Carthage Nursing and Rehabilitation Center, LLC d/b/a The Country Manor Nursing and Rehabilitation Centre for 2013 through December 31, 2015. For the 2013

through 2015 period, the RHCF had negative working capital, negative net assets and had losses that averaged \$404,471 and experienced an average occupancy of 94.67%. The applicant stated that the operating losses were the results of a combination of facility's small size and expenditures exceeding reimbursement rates and revenue projections by payor. The losses accumulated over time resulting in negative positions. To reverse the trend, the applicant intends to reduce expenses by renegotiating vendor contracts, analyzing staffing expenses along with reworking staff schedules to keep overtime expenses down, and reduce bad debt expenses through an accounts receivable collection plan. Also included as part of Attachment E is DMN Management Services and Subsidiaries 2014 and 2015 certified statement, which shows working capital and net assets to be positive with operations showing a \$449,584 profit in 2015 before non-recurring expenses of \$360,000.

BFA Attachment F is the Internal Financial Summary through September 30, 2016, which shows the facility had positive working capital, positive net assets and had a loss after allocation of home office overhead. On a consolidated basis, the organization had a positive working capital, positive net assets and generated a loss.

BFA Attachment G is the Financial Summary of the proposed member's affiliated RHCFs, which shows the facilities maintained positive working capital, positive net assets, and generated positive net income.

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	CLR Carthage LLC, Proposed Members Net Worth
BFA Attachment B	Carthage SNF Realty LLC, Proposed Members Net Worth
BFA Attachment C	Current and Proposed Owners of the Real Property
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary, Carthage Nursing and Rehabilitation Center, LLC and DMN Management Services LLC, 2014 & 2015 certified financial statements
BFA Attachment F	Internal Financial Summary, Carthage Nursing and Rehabilitation Center, LLC and DMN Management Services LLC,
BFA Attachment G	Proposed members ownership interest in Affiliated RHCFs and their Financial Summary

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 9th day of March, 2017 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 CLR Carthage LLC as the new operator of The Country Manor Nursing and Rehabilitation Centre, a 90-bed Residential Health Care Facility currently operated by Carthage Nursing and Rehabilitation Center, LLC, 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:

162256 E

CLR Carthage LLC
d/b/a The Country Manor Nursing and
Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]

10. Submission of the applicant's amended Operating 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*.



Project # 162257-E
CLR Minoa LLC d/b/a The Crossings Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Onondaga
Acknowledged: October 11, 2016

Executive Summary

Description

CLR Minoa LLC d/b/a The Crossings Nursing and Rehabilitation Center (The Crossings), a New York limited liability company, requests approval to be established as the new operator of The Crossings Nursing and Rehabilitation Centre, an 82-bed, proprietary, Article 28 residential health care facility (RHCF) located at 217 East Avenue, Minoa (Onondaga County). As a part of this application, the certified bed capacity will be reduced by two beds, bringing the total certified bed count to 80. A separate entity, Minoa SNF Realty LLC, will acquire the real property. There will be no change in services provided.

On June 16, 2015, the current operator, Minoa Nursing and Rehabilitation Center, LLC, entered into an Asset Purchase Agreement (APA) with CLR Minoa LLC for the sale and acquisition of the RHCF operating interests for \$3,062,446. Subsequently, on September 21, 2016, Minoa Nursing and Rehabilitation Center, LLC and CLR Minoa, LLC executed the First Amendment to the Asset Purchase Agreement consenting to the change in the proposed membership of CLR Minoa LLC. Concurrently, on June 16, 2015, 217 East Avenue, LLC, the current realty owner, entered into a Real Estate Purchase Agreement (REPA) with Minoa SNF Realty LLC for the sale and acquisition of the real property for \$3,054,015. 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 CLR Minoa LLC and Minoa SNF Realty LLC in that Hillel Weinberger is a common

member in both entities. The applicant will lease the premises from Minoa SNF Realty LLC.

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

Table with 2 columns: Member and Percentage. Title: Current Operator. Content: Minoa Nursing and Rehabilitation Center, LLC; DMN Management Services, LLC (100%); Anthony Durante (15%); Patrick Martone (10%); Jami Rogowski (15%); Jodi Polsinelli (15%); Lisa Marrello (15%); Pamela Nichols (15%); Mark Nichols (15%).

Table with 2 columns: Members and Percentage. Title: Proposed Operator. Content: CLR Minoa LLC d/b/a The Crossings Nursing and Rehabilitation Center; Amir Abramchik (50%); Hillel Weinberger (50%).

Concurrently under review, the applicant members of CLR Minoa, LLC and the realty members of Minoa SNF Realty LLC are seeking approval to acquire the operating and realty interests, respectively, in the following: The Capital Living Nursing and Rehabilitation Centre (CON 162255), The Country Manor Nursing and Rehabilitation Centre (CON 162256), The Mountain View Nursing and Rehabilitation Centre (CON 162258), The Orchard Nursing

and Rehabilitation Centre (CON 162259), The Springs Nursing and Rehabilitation Centre (CON 162260), and The Stanton Nursing and Rehabilitation Centre (CON 162261).

OPCHSM Recommendation
Contingent Approval

Need Summary

The Crossings Nursing and Rehabilitation Centre will decertify two, bringing the total to 80 RHCf beds. This will help reduce excess bed resources in Onondaga County. The Crossings Nursing and Rehabilitation occupancy was 88.2% in 2012, 89.9% in 2013, 88.2% in 2014, and 82.8% in 2015. Current occupancy, as of December 07, 2016 is 80.5%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

There are no project costs associated with this application. CLR Minoa LLC will acquire the RHCf operations for \$ 3,062,446 funded by \$809,111 in members' equity and a ten-year loan for \$2,253,335 at a 5% interest, amortized over 25 years. Minoa SNF Realty LLC will purchase the real property for \$3,054,015 funded by \$58,000 in members' equity and a ten-year loan for \$2,996,015 at 5% interest, amortized over 25 years. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$8,113,531
Expenses	<u>7,020,990</u>
Net Income	\$1,092,541

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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
8. Submission of a floor plan showing the two (2) beds to be decertified and the surrounding nursing unit(s), which is acceptable to the Department of Health. [LTC]
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's amended Operating 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
March 9, 2017

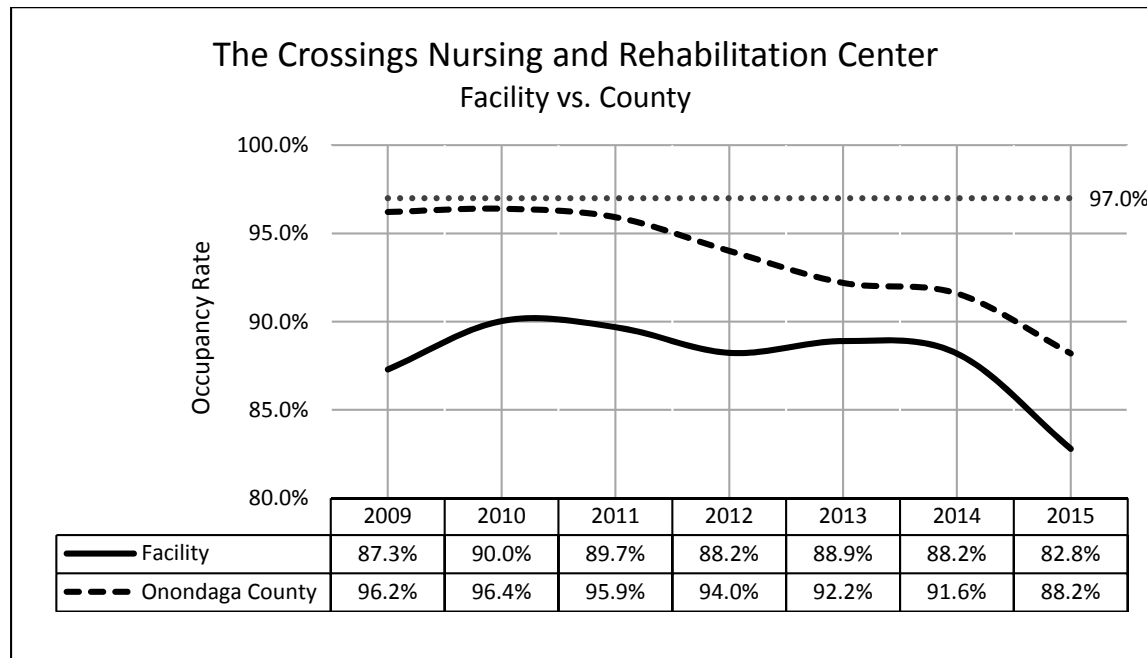
Need Analysis

Analysis

According to the current need methodology, there is a surplus of 484 beds in Onondaga County.

RHCF Need – Onondaga County

2016 Need	2,416
Current Beds	2,900
Beds Under Construction	0
Total Resources	2,900
Unmet Need	-484



The overall occupancy for Onondaga County is 88.5% for 2015. The applicant recognizes that The Crossings is experiencing challenges with utilization. However, it is the applicant's position that the lower occupancy rates are not indicative of an absence of need, but rather, are attributable to correctable, operational deficiencies within the facility, primarily the restriction on admissions which has been in effect for an extended period of time as well as difficulty in retaining and recruiting staff. The current operator's decision to limit admissions to lower acuity patients has directly resulted in the sustained decline in occupancy. However, the applicant contends this trend can be readily reversed, resulting in significant improvement in a relatively short period of time, by the recruitment of staff capable of providing care for higher acuity residents.

The staffing challenges have largely been attributable to the impending change of ownership. The interim period prior to transition, which has been quite protracted, has been fraught with uncertainty, causing instability among staff as they attempt to assess the impact of the transition and seek alternative employment opportunities. Additionally, recruitment efforts have been impeded by the facility's inability to provide clear direction regarding the timing of the transition in ownership and the impact it will have on facility operations.

Going forward, the applicant has provided the following plan for increasing and sustaining optimal occupancy rates:

- **Plan to Accept More Clinically Complex Residents:** The Crossings has had difficulty recruiting and retaining staff with the clinical expertise necessary to care for high acuity patients. As a result of this challenge, the Administration of The Crossings has consciously restricted admissions to low acuity patients. While the facility consistently receives referrals for high acuity patients, many of these patients are not accepted because the Administration does not want to jeopardize the safety and welfare of its patients. While accepting high acuity patients would significantly improve the facility's occupancy, the administration is unwilling to place its patients at risk. The applicant intends to address the facility's current clinical staff deficiencies by: (i) provide clinical expertise and training to existing staff; and (ii) implement staff recruiting measures. Additionally, the new operator will build on its existing strong relationships with local hospitals, including Crouse and SUNY Upstate hospitals and implement a specific initiative to accept more clinically complex and difficult to place residents in the local and Syracuse health care market. With a current CMI of 1.0280, the new operator sees this as an opportunity to better serve the skilled care needs of the surrounding community.
- **Marketing and Community Outreach:** The new operator will implement a marketing team, including a full-time marketer working in the field, and designated employee working within the facility that is focused on marketing efforts and community outreach. This dedication of resources will ensure availability of facility staff to meet with potential residents and families and answer questions at any time. In addition, the new operator will engage in targeted community outreach such as monthly open houses and town-hall style meetings allowing staff, local healthcare providers, residents and potential residents to visit the facility, and meet and discuss the needs and desires of the community. The local long term care ombudsman will also be invited to participate in these meetings.
- **Plan and Provider Outreach:** The new operator will develop and implement a program for improved collaboration with local health plans, including managed long term care plans, hospital discharge planners, local assisted living facilities, home care providers and other local health care providers and agencies, including the Onondaga County Department of Social Services and Onondaga County Office for Aging. Enhanced provider relationships and familiarity with the facility and its staff will result in better care for residents upon transfer to the facility as well as increased demand for the facility's services. In addition, the new operator will seek to partner with the local DSRIP Performing Provider System, Central New York Care Collaborative.
- **Staff Training, Development and Support:** The new operator will seek to retain all existing staff, and implement new management and staff training and leadership programs that will encourage interaction and collaboration of staff across the seven (7) commonly owned nursing homes. In order to encourage staff retention and development, staff will also be provided with career-pathing opportunities among all facilities. The new operator will seek to employ as many full time employees as possible, offering a competitive wage and compensation package. In addition, the new owner has also recently contracted with a staffing company to facilitate locating and hiring qualified staff, when needed, at all of its facilities.
- **Contracts with MLTCPs:** The Crossings has contracts with the following MLTCPs: VNA Home Care Options, VNSNY Choice, HAMASPIK, Wellcare and Fidelis.
- **Optuum Evercare Program:** The Crossing has signed a contract and expects to implement this program by the end of 2016. The Optuum Evercare Program manages long term dual eligible patients with increased monitoring and services to avoid hospitalizations through a waiver with CMS.
- **Landmark Program:** This program will result in an increase in direct admissions and hospital diversions as Landmark physicians will be managing patients in the community with the goal of avoiding unnecessary hospitalizations. Landmark has contracted only with the Capital Living facilities. As noted in the attached letter, "Landmark Health chose Capital Living as a clinical community partner due to Capital Living's reputation for high quality of care that closely aligns with Landmark's standards for superior clinical care."
- **Food Service Improvements:** The new operator will hire an executive chef and institute a fine dining program which will result in significant improvement in quality of resident daily life as well as the reputation of the facility.

The cumulative effect of the foregoing factors will allow the facility to significantly improve occupancy rates, meeting and sustaining occupancy rates at or above the Department's planning optimum.

Access

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

The Crossings Nursing and Rehabilitation's Medicaid admissions of 6.6% in 2014 did not exceed the Onondaga County 75% rate of 12.7% in 2014. The Crossings Nursing and Rehabilitation's Medicaid admissions of 3.5% in 2015 did not exceed the Onondaga County 75% rate of 15.6%.

Conclusion

Approval of this application will result in maintaining a necessary resource in Onondaga County, while addressing the facility's suboptimal utilization.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Crossings Nursing and Rehabilitation Centre	Same
Address	217 East Avenue Minoa, NY 13116	Same
	82	80
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Proprietary
Operator	Minoa Nursing and Rehabilitation Center, LLC	CLR Minoa, LLC Amir Abramchik 50% Hillel Weinberger 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Chittenango Center for Rehabilitation and Health Care	05/2011 to 7/16
Rome Center for Rehabilitation and Health Care	05/2011 to 8/16
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present

Individual Background Review

Amir Abramchik is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers for Specialty Care as the director of special projects since 2007. Previously he was employed as administrator of Queens Center for Rehabilitation and Health Care and Dutchess Center for Rehabilitation and Health Care. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

Fulton Center for Rehabilitation and Health Care	(10%)	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	(2%)	04/2012 to present
Corning Center for Rehabilitation and Health Care	(11%)	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	(95%)	11/2014 to present

Hillel Weinberger has been retired since 2012. He was formerly employed as the co-founder of Hillmark Capital, a financial planning business. He also has been serving as the the President of Ptach (a special needs school) for the last ten years. Mr Weinberger discloses no health facility ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. For the June 11, 2012 survey deficiencies were found under 10 NYCRR 451.3(e)(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) and Quality of Care: Medication Errors. For the May 5, 2013 survey deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential; 415.12(c)(2) Quality of Care Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.(m)(2) Quality of Care: Medication Errors; 415.26 Administration; and 415.27(a-c) Quality Assurance. For the November 21, 2013 survey deficiencies were found 10NYCRR 415.4(b)(1)(2)(3) Investigative/Report Allegations, 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(1)(2) Quality of Care Accidents/Supervision; 415.12(m)(2) Quality of Care Medication Errors; 415.26 Administration and 415.25(a-c) Quality Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.

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. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$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.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of operations of Ontario Center for Rehabilitation and Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 12, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(2)(iii)- Notice of Rights and Services-Right to Refuse Treatment, Refuse to Participate in Research and the Right to Be Able to Formulate an Advance Directive; and 415.12(m)(2)- Quality of Care No Significant Medication Errors.

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 operations for Chittenango Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, and Corning Center for Rehabilitation and Health Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
The Grand Rehabilitation & Nursing At Chittenango	**	**	****
The Grand Rehabilitation And Nursing At Rome	*	*	***
Fulton Center For Rehabilitation And Healthcare	**	*	**
Richmond Center For Rehab And Specialty HC	****	***	**
Ontario Center For Rehabilitation And Healthcare	**	*	**
Corning Center For Rehabilitation And Healthcare	*	*	**

Project Review

This application proposes a reduction of two RHCF beds. The applicant has not provided plans showing the specific rooms and to be decertified and affected nursing units, which results in the addition of a contingency to this project. No other changes in the program or physical environment are proposed in this application.

The proposed operator intends to enter into a Consulting Services Agreement with Centers Health Care for consulting and advisory services related to administrative and operational functions.

The proposed operator was asked to explain the low star ratings. The operator has stated they have implemented initiatives to recruit and retain employees providing direct care services. They also plan on employing a combination of measures to correct deficiency issues, including in-service education, changes to policies and procedures when necessary, implementation of weekly observation and auditing of staff practices, and monthly review of the findings by the quality assurance committee.

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 16, 2015
Seller:	Minoa Nursing and Rehabilitation Center, LLC
Buyer:	CLR Minoa LLC
Asset Acquired:	The business and operation of the facility; leasehold improvements, furniture, fixtures and equipment owned or leases by seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases and undertakings; resident funds in trust; the name "The Crossings Nursing and Rehabilitation Center"; security deposits and prepayments; manuals and 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:	Real Estate which is the subject of the real estate contract; insurance policies; union agreement and pension plans; rate increases and/or lump sum payments; tax refunds including real estate tax refunds relating to a period or periods prior to the closing date; amounts due from parties related to seller; seller's cash and cash equivalents; prepaid expenses; claims, causes of action and legal rights for periods prior to the closing date; receivables from any affiliated of seller; and payments made in connections with "Universal Appeal Settlement".
Assumed Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date; trade accounts payable for items purchased by the Seller prior to Closing (estimated at \$525,000)
Purchase Price:	\$3,062,446
Payment of Purchase Price:	\$58,000 upon execution \$3,004,446 due at closing.

The purchase price of the operations is proposed to be satisfied as follows:

Equity - CLR Minoa LLC Members	\$809,111
Loan (10-year, 25-year amortization, 5% interest)	<u>2,253,335</u>
Total	\$3,062,446

Greystone Funding Corporation has provided a letter of interest at the stated terms.

First Amendment to Asset Purchase Agreement

The applicant has submitted an executed First Amendment to the APA for the acquisition of the RHCF's operating interest, which will become effective upon the PHHPC approval. The terms are summarized below

Date: September 21, 2016
Seller: Minoa Nursing and Rehabilitation Center, LLC
Purchaser: CLR Minoa LLC
Change: To implement the removal of Joseph Zupnik and Elisa Zupnik from ownership in the purchaser and the addition of Hillel Weinberger and Amir Abramchik as the sole owners of the purchaser.

The APA establishes a Total Purchase Price of \$86,500,000 as total consideration for the assets transferred (as defined above), the real property (as defined below), and the assets of the sellers under all other APAs and REPAs related to the following entities: 1940 Hamburg Street, LLC (Realty, vacant property); MacDonald Road Corporation (Realty, Home Office); DMN Management Services, LLC (Home Office Assets); and the operating assets and real property associated with the following CONs concurrently under review:

CON 162256 - The Country Manor Nursing and Rehabilitation Centre, 90 beds, Jefferson County;
CON 162255 - The Capital Living Nursing and Rehabilitation Centre, 240 beds, Schenectady County;
CON 162258 - The Mountain View Nursing and Rehabilitation Centre, 77 beds, Ulster County;
CON 162259 - The Orchard Nursing and Rehabilitation Centre, 88 beds, Washington County;
CON 162260 - The Springs Nursing and Rehabilitation Centre, 78 beds, Rensselaer County; and
CON 162261 - The Stanton Nursing and Rehabilitation Centre, 117 beds, Warren County.

Please note the above bed counts for CON 162258, CON 162260 and CON 162261 reflect bed reductions anticipated upon establishment.

North Broadway Office Operations, LLC will acquire the operating interests of DMN Management Services (DMN), referenced above, for \$258,000. The staff of DMN currently provide services including QA/QI, billing, IT management, payroll, audit, accounts receivable and human resources. After the change in ownership, DMN Management Services will no longer exist.

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 November 14, 2016, the facility had outstanding Medicaid liabilities of \$11,087.40.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA to acquire the real property. The terms of the agreement are summarized below:

Date:	June 16, 2015
Seller:	217 East Avenue, LLC
Buyer:	Minoa SNF Realty LLC
Asset Transferred:	Real Property located at 217 East Avenue, Minoa, NY
Purchase Price:	\$3,054,015
Payment of Purchase Price	\$58,000 upon execution: \$2,996,015 at closing

The purchase price of the real property is proposed to be satisfied as follows:

Equity - Minoa SNF Realty LLC Members	\$58,000
Loan (10-year, 25-year amortization, 5% interest)	<u>2,996,015</u>
Total	\$3,054,015

Capital Funding, LLC has provided a letter of interest at the stated terms.

BFA Attachments A and B are the net worth summaries for the proposed members of CLR Minoa LLC (operator) and Minoa SNF Realty LLC (real property owner), respectively. Review of the net worth statements reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCFs (this application and the six listed above). Hillel Weinberger, a member of CLR Minoa LLC and Minoa SNF Realty LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities to make up any members' equity shortfall in contributing to the purchase price and/or working capital needs.

Hillel Weinberger has provided affidavits, disproportionate to his membership interests, to fund the operating and real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	October 31, 2016
Premises:	82-bed RHCF located at 217 East Avenue, Minoa, NY 13116
Landlord:	Minoa SNF Realty LLC
Lessee:	CLR Minoa LLC
Term:	40 years from Commencement Date
Rent:*	\$292,173 (\$24,348 per month).
Provisions:	Triple Net, plus

*Rent is estimated at \$210,173 in fixed rent (Net Rent) based on the 25-year amortization of the mortgage, plus \$ 82,000 in Over Rent. In addition to the total \$292,173 rental amount, the lessee will be billed for other expenses related to the premises incurred by the landlord.

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.

Consulting Services Agreement

The applicant has provided a draft consulting services agreement, summarized below:

Contractor:	Centers for Care LLC d/b/a Centers Health Care
Facility:	CLR Minoa LLC, d/b/a The Crossings Nursing and Rehabilitation Center
Affiliation:	The Facility will refer to itself as "Affiliated with Centers Health Care" or "Member of Centers Health Care, limited to marketing efforts and the identification of professionals, consultants, vendors and healthcare providers and other resources that can assist the Facility in the provision of care.
Consulting and Advisory Services:	The contractor will be responsible for the operation, supervision and oversight of all functions related to A/R and A/P, including assistance and supervision of staff in interacting with families, collection of NAMI and private funds, submission of award letters, and preparation of applications for payee, maintenance of billing files, monitoring payments to the facility by all payer sources, pursuing payments for delinquent accounts and assisting the facility, at the facility's expense. The contractor will provide assistance to and supervision of staff performing and providing the following services: all billing functions for all payer sources and

	maintenance of all billing and posting records and establishment of payroll budgets and schedule coordination with nursing and other departments. Responsible for the preparation of health facility assessment; assist the Facility with the preparation of RHCF 4 and Medicare cost reports; and reconciliation of billing records, Maintenance of electronic resident/patient billing files, fund records and accounts, and monthly operating cash flow projections. Assist the Facility in reviewing of rate sheets and filing of necessary appeals and audit facility's monthly pharmacy bills and the implementing of formulary management.
Clinical Consulting Services:	The contractor will provide advice and assistance to the Facility with respect to the administrative functioning of the Therapy, Social Services and Nursing departments. Develop operating policies and procedures, rules and methods of operation appropriate to such departments and the training and orientation of staff. Recommend procedures to ensure the consistency and quality of all the Services. Assist the Facility with respect to its CMI, Medicare, and case-mix reimbursement.
Other Duties:	Develop and implement a marketing plan; furnish sufficient part-time temporary licensed skilled professional staff for the health care activities described herein
Term:	One Year with automatic one year renewals, unless terminated through mutual consent, default or by one party with 60-day written notice.
Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the Services to the Facility.

CLR Minoa LLC retains ultimate control in all of the final decisions associated with the services.

Centers for Care LLC will also provide consulting services to the other RHCs transferred under the terms of the APA referenced above. Amir Abramchik is the Chief Operating Officer of the consulting services provider, Centers for Care LLC, and a member of the applicant. The Centers for Care LLC is equally owned by Kenneth Rozenberg and Beth Rozenberg.

The fees are estimated at \$3,000,000 for the subject facility and the six facilities being acquired concurrently, and divided amongst the facilities as follows, based on the total licensed beds:

- The Capital Living Nursing and Rehabilitation Center, 240 beds: \$935,066
- The Country Manor Nursing and Rehabilitation Centre, 90 beds: \$350,649
- The Crossings Nursing and Rehabilitation Centre, 80 beds: \$311,688
- The Mountain View Nursing and Rehabilitation Centre, 77 beds: \$300,000
- The Orchard Nursing and Rehabilitation Centre, 88 beds, \$342,857
- The Springs Nursing and Rehabilitation Centre, 78 beds, \$303,896
- The Stanton Nursing and Rehabilitation Centre, 117 beds, \$455,844

Operating Budget

The applicant has provided the current year (2015) results and the first year operating budget subsequent to the change in ownership, in 2017 dollars, summarized as follows:

	Current Year		Year One	
	Per Diem	82 Beds	Per Diem	80 Beds
<u>Revenue</u>				
Medicaid-FFS	\$209.63	\$3,291,221	\$211.07	\$3,709,766
Medicaid-MC	\$209.63	\$21,802	\$211.07	\$24,484
Medicare-FFS	\$489.49	\$1,314,766	\$496.83	\$1,493,968
Medicare-MC	\$466.72	\$511,994	\$466.72	\$573,132
Commercial-FFS	\$350.00	\$239,750	\$350.00	\$268,450
Private Pay	\$393.23	\$1,772,269	\$405.02	\$2,043,731
Other Income		<u>9552</u>		<u>0</u>
Total Revenue		\$7,161,354		\$8,113,531
<u>Expenses</u>				
Operating	\$269.26	\$7,167,484	\$217.76	\$6,512,532
Capital	\$17.81	<u>\$473,994</u>	\$17.00	<u>\$508,458</u>

Total Expenses	\$7,641,478	\$7,020,990
Net Income	<u>(\$480,012)</u>	<u>\$1,092,541</u>
RHCF Patient Days	24,779	27,740
Utilization %	83%	95%

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

- The Current Year reflects the facility's 2015 revenues and expenses based on 82 beds.
- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate. The Current Year Medicare rate is the actual daily rate experienced by the facility during 2015 and the forecasted Year One and Year Three Medicare rate is the actual daily rate experienced during 2016. The Private Pay rate is based upon the current average rates during 2016.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 9.1% through various initiatives including renegotiating contracts.
- Utilization by payer source for the first year after the change in ownership is summarized below:

	<u>Current Year</u>	<u>Year One</u>
	<u>82 Beds</u>	<u>80 Beds</u>
Medicaid-FFS	63.36%	63.36%
Medicaid-MC	0.42%	0.42%
Medicare-FFS	10.84%	10.84%
Medicare-MC	4.43%	4.43%
Commercial-FFS	2.76%	2.76%
Private Pay	<u>18.19%</u>	<u>18.19%</u>
Total	100%	100%

- The breakeven utilization is projected at 82.21% for the first year.

Capability and Feasibility

There are no project costs associated with this application. CLR Minoa LLC will acquire the RHCF's operations for \$3,062,446, which will be funded via \$809,111 in members' equity and a ten-year loan for \$2,253,335 at the above stated terms. Minoa SNF Realty LLC will acquire the real property for \$3,054,015 funded by \$58,000 in members' equity and a ten-year loan for \$2,996,015 at above stated terms. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively.

The working capital requirement is estimated at \$1,170,166 based on two months of first year expenses. Funding will be as follows: \$585,083 from the members' equity with the remaining \$585,083 satisfied through a five-year loan at 5% interest rate. Harborview Capital Funding has provided a letter of interest. Review of BFA Attachments A and B, proposed members net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCFs (this application and the six listed above). Hillel Weinberger, a member of CLR Minoa LLC and Minoa SNF Realty, LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities (covering the purchase price and working capital equity). Additionally, Hillel Weinberger has provided affidavits stating he is willing to contribute resources, disproportionate to his membership interests, for the operating and realty entity balloon payments should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects \$1,092,541 of net income in Year One after the change in ownership. Revenues are estimated to increase by approximately \$952,177 or approximately 13% based on an increase in occupancy (going from 83% to 95%). Overall expenses are expected to decline by \$620,488, coming from a \$654,952 reduction in operating expense, partially offset by a \$34,464 increase in capital items. The decline in operating expenses comes primarily from the following: a \$326,394 decrease in fringe benefits cost, a \$138,716 decrease in salary and wages due to a change in the staffing model. The

balance or \$189,842 in expense reduction comes from various other items. The budget was created taking into consideration the proposed new owners' experience in operating similar sized facilities.

BFA Attachment D is CLR Minoa, LLC's pro forma balance sheet, which shows the entity will start with \$1,394,195 in member's equity. Equity includes \$2,099,458 in goodwill, which is not a liquid resource nor is it recognized for Medicaid Reimbursement. If goodwill is eliminated, total net assets are a negative \$705,263.

DOH staff note that, through August 31, 2016, utilization was approximately 89% (adjusted for 80 beds), which is less than the first year's projections by approximately 6%. BFA Attachment H is a budget sensitivity analysis that incorporates actual patient days as of August 31, 2016, and then annualized for 80 beds while using the applicant's projected payer mix and expenses for the first year. Based upon this scenario, net profits would decline by \$536,171 to \$556,370. For comparison, the internal financial summary for the eight months ending September 30, 2016, showed a surplus of \$422,871 before allocation of Home Office Overhead (HO) and net income of \$90,185 after HO. 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.

BFA Attachment E is the Financial Summary of Minoa Nursing and Rehabilitation Center, LLC d/b/a The Crossings Nursing and Rehabilitation Centre for 2013 through 2015. As shown, the RHC had an average positive working capital position of \$2,040,062, average positive net assets of \$2,246,325, and an average positive income of \$17,097 for the period. Also included as part of Attachment E is DMN Management Services and Subsidiaries' 2015 certified financial statement, which shows working capital and net assets to be positive with operations showing a \$449,584 profit in 2015 before non-recurring expenses of \$360,000.

BFA Attachment F is the internal financial statements for The Crossings Nursing & Rehabilitation Center as of September 30, 2016, which shows positive working capital, positive net assets and the net income of \$90,185 after allocation of Home Office overhead. On a consolidated basis, the organization had a positive working capital, positive net assets and generated a loss.

BFA Attachment G is a Financial Summary of the proposed member's affiliated nursing homes. The affiliated RHCs show positive working capital, positive net assets and average positive net income.

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 CLR Minoa LLC
BFA Attachment B	Net Worth of Proposed Realty Members of Minoa SNF Realty, LLC
BFA Attachment C	Current and Proposed Owners of the Real Property
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary of The Crossings Nursing and Rehabilitation Centre LLC and DMN Management Services LLC, 2015 certified financial statement
BFA Attachment F	Internal Financial Statement of The Crossings Nursing & Rehab Centre and Capital Living & Rehab Centre and DMN Management Services LLC
BFA Attachment G	Financial Summary of Proposed Member's Affiliated RHCs
BFA Attachment H	Budget Sensitivity Analysis

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of March, 2017 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 CLR Minoa LLC as the new operator of The Crossings Nursing and Rehabilitation Centre, an 82-bed Residential Health Care Facility currently operated by Minoa Nursing and Rehabilitation Center, LLC, and decertify two (2) RHCF beds, 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:

162257 E

CLR Minoa LLC d/b/a The Crossings Nursing
and Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
8. Submission of a floor plan showing the two (2) beds to be decertified and the surrounding nursing unit(s), which is acceptable to the Department of Health. [LTC]
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]

11. Submission of the applicant's amended Operating 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*.



Project # 162258-E
CLR New Paltz LLC d/b/a The Mountain View Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Ulster
Acknowledged: October 7, 2016

Executive Summary

Description

CLR New Paltz LLC d/b/a The Mountain View Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of The Mountain View Nursing and Rehabilitation Centre, a 79-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1 Jansen Road, New Paltz (Ulster County). As a part of this application, the certified bed capacity will be reduced by two beds, bringing the total certified bed count to 77. A separate entity, New Paltz SNF Realty LLC will acquire the real property. There will be no change in services provided.

On June 16, 2015, the current operator, Jansen Road Nursing and Rehabilitation Center, LLC, entered into an Asset Purchase Agreement (APA) with CLR New Paltz LLC for the sale and acquisition of the RHCF operating interests for \$2,802,844. Subsequently, on September 21, 2016, Jansen Road Nursing and Rehabilitation Center, LLC and CLR New Paltz, LLC executed the First Amendment to the Asset Purchase Agreement consenting to the change in the proposed membership of CLR New Paltz LLC. Concurrently on June 16, 2015, MacDonald Road Corporation, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with New Paltz SNF Realty LLC for the sale and acquisition of the real property for \$3,354,904. 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 CLR New Paltz LLC and

New Paltz SNF Realty LLC in that Hillel Weinberger is a common member in both entities. The applicant will lease the premises from New Paltz SNF Realty LLC.

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

Table with 2 columns: Member and Percentage. Title: Current Operator. Content: Jansen Road Nursing and Rehabilitation Center, LLC; DMN Management Service, LLC (100%); Anthony Durante (15%); Patrick Martone (10%); Jami Rogowski (15%); Jodi Polsinelli (15%); Lisa Marrello (15%); Pamela Nichols (15%); Mark Nichols (15%).

Table with 2 columns: Members and Percentage. Title: Proposed Operator. Content: CLR New Paltz, LLC d/b/a The Mountain View Nursing and Rehab Center; Amir Abramchik (Manager) (50%); Hillel Weinberger (50%).

Concurrently under review, the applicant members of CLR New Paltz LLC and the realty members of New Paltz SNF Realty LLC are seeking approval to acquire the operating and realty interests, respectively, in the following: The Crossings Nursing and Rehabilitation Centre (CON 162257), The Capital Living Nursing and Rehabilitation Centre (CON

162255), The Country Manor Nursing and Rehabilitation Centre (CON 162256), The Orchard Nursing and Rehabilitation Centre (CON 162259), The Springs Nursing and Rehabilitation Centre (CON 162260), and The Stanton Nursing and Rehabilitation Centre (CON 162261).

OPCHSM Recommendation
Contingent Approval

Need Summary

This proposal will decrease the number of RHCF beds at the facility from 79 to 77. The Mountain View Nursing and Rehabilitation Centre's occupancy was 87.2% in 2013, 87.0% in 2014, and 84.0% in 2015. Current occupancy, as of December 7, 2016, is 83.5%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

There are no project costs associated with this application. CLR New Paltz LLC will acquire the RHCF's operations for \$2,802,844 funded by \$744,211 in members' equity and a ten-year loan for \$2,058,633 at 5% interest, amortized over 25 years. New Paltz SNF Realty LLC will acquire the real property for \$3,354,904, funded by \$58,000 in members' equity and a ten-year loan for \$3,296,904 at 5% interest, amortized over 25 years. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$7,496,385
Expenses	<u>\$6,955,491</u>
Net Income	\$540,894

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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the RHCF's real property, acceptable to the Department of Health. [BFA]
8. Submission of a floor plan showing the two (2) beds to be decertified and the surrounding nursing unit(s), which is acceptable to the Department of Health. [LTC]
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's amended Operating 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

March 9, 2017

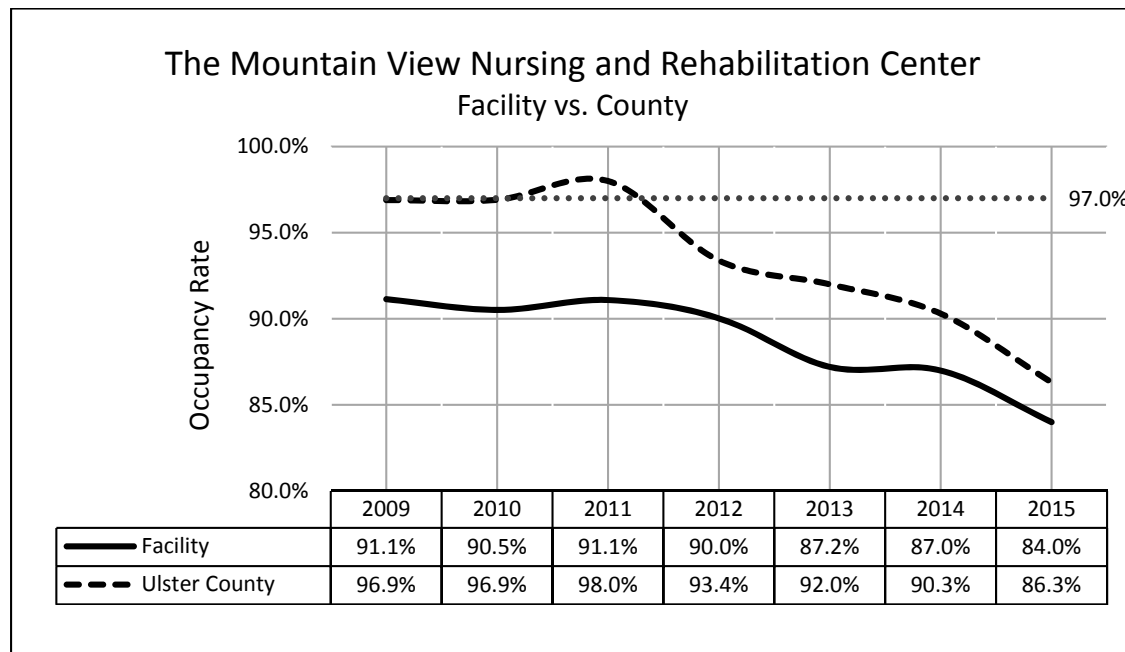
Need Analysis

Analysis

The current need methodology shows a need for 89 beds in Ulster County.

RHCF Need - Ulster County

2016 Projected Need	1,078
Current Beds	989
Beds Under Construction	0
Total Resources	989
Unmet Need	89



The overall occupancy for Ulster County was 92.0% for 2013 but decreased to 86.3% in 2015. The Mountain View Nursing and Rehabilitation Centre's occupancy was 87.2% in 2013, 87.0% in 2014, and 84.0% in 2015. Current occupancy, as of December 7, 2016 is 83.5%.

According to the applicant, the low occupancy rates are likely the result of underutilized short-term rehab services as well as the lack of properly marketing the facility. Current CMI at this facility is 1.05. The applicant noted the following plans to increase occupancy to the Department's planning optimum:

- **Development of a Short-Term Rehabilitation Program:** while these services currently exist at the facility, they are not well marketed or utilized. The applicant will implement a program aimed at attracting residents in need of short-term rehabilitation;
- **Marketing and Community Outreach:** implement a marketing team, including a full-time marketer working in the field and a designated employee working within the facility;
- **Plan and Provider Outreach:** develop and implement a program for improved collaboration with local health plans, hospital discharge planners, local assisted living facilities, home care providers, and other local health care providers and agencies to enhance provider relationships and familiarity with the facility and its staff;
- **Staff Training, Development, and Support:** implement new management and staff training and leadership programs that will encourage interaction and collaboration of staff across all commonly-owned nursing homes;
- **Food Service Improvements:** institute a fine-dining program and hire an executive chef; and

- Environmental Improvements: implement various cosmetic improvements to make the facility more updated and attractive.

Access

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

The Mountain View Nursing and Rehabilitation Centre's Medicaid admissions of 17.9% did not exceed the Ulster County 75% rate of 22.4% in 2014. The Mountain View Nursing and Rehabilitation Centre's Medicaid admissions of 16.5% did not exceed the Ulster County 75% rate of 19.1% in 2015.

Conclusion

Approval of this application will result in maintaining a necessary resource in Ulster County, while addressing the facility's suboptimal utilization.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Mountain View Nursing and Rehabilitation Centre	Same
Address	1 Jansen Road PO Box 909 New Paltz, NY 12561	Same
	79	77
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Proprietary
Operator	Jansen Road Nursing and Rehabilitation Center, LLC	CLR New Paltz, LLC Amir Abramchik 50% Hillel Weinberger 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Chittenango Center for Rehabilitation and Health Care	05/2011 to 7/16
Rome Center for Rehabilitation and Health Care	05/2011 to 8/16
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present

Individual Background Review

Amir Abramchik is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers for Specialty Care as the director of special projects since 2007. Previously he was employed as administrator of Queens Center for Rehabilitation and Health Care and Dutchess Center for Rehabilitation and Health Care. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

Fulton Center for Rehabilitation and Health Care	(10%)	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	(2%)	04/2012 to present
Corning Center for Rehabilitation and Health Care	(11%)	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	(95%)	11/2014 to present

Hillel Weinberger has been retired since 2012. He was formerly employed as the co-founder of Hillmark Capital, a financial planning business. He also has been serving as the the President of Ptach (a special needs school) for the last ten years. Mr Weinberger discloses no health facility ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. For the June 11, 2012 survey deficiencies were found under 10 NYCRR 451.3(e)(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) and Quality of Care: Medication Errors. For the May 5, 2013 survey deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential; 415.12(c)(2) Quality of Care Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.(m)(2) Quality of Care: Medication Errors; 415.26 Administration; and 415.27(a-c) Quality Assurance. For the November 21, 2013 survey deficiencies were found 10NYCRR 415.4(b)(1)(2)(3) Investigative/Report Allegations, 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(1)(2) Quality of Care Accidents/Supervision; 415.12(m)(2) Quality of Care Medication Errors; 415.26 Administration and 415.25(a-c) Quality Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.

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. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$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.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of operations of Ontario Center for Rehabilitation and Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 12, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(2)(iii)-Notice of Rights and Services-Right to Refuse Treatment, Refuse to Participate in Research and the Right to Be Able to Formulate an Advance Directive; and 415.12(m)(2)- Quality of Care No Significant Medication Errors.

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 operations for Chittenango Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, and Corning Center for Rehabilitation and Health Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
The Grand Rehabilitation & Nursing At Chittenango	**	**	****
The Grand Rehabilitation And Nursing At Rome	*	*	***
Fulton Center For Rehabilitation And Healthcare	**	*	**
Richmond Center For Rehab And Specialty H C	****	***	**
Ontario Center For Rehabilitation And Healthcare	**	*	**
Corning Center For Rehabilitation And Healthcare	*	*	**

Project Review

This application proposes a reduction of two RHCf beds. The applicant has not provided plans showing the specific rooms and to be decertified and affected nursing units, which results in the addition of a contingency to this project. No other changes in the program or physical environment are proposed in this application.

The proposed operator intends to enter into a Consulting Services Agreement with Centers Health Care for consulting and advisory services related to administrative and operational functions.

The proposed operator was asked to explain the low star ratings. The operator has stated they have implemented initiatives to recruit and retain employees providing direct care services. They also plan on employing a combination of measures to correct deficiency issues, including in-service education, changes to policies and procedures when necessary, implementation of weekly observation and auditing of staff practices, and monthly review of the findings by the quality assurance committee.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 16, 2015
Seller:	Jansen Road Nursing & Rehabilitation Center, LLC
Buyer:	CLR New Paltz LLC
Asset Acquired:	The business and operation of the facility; leasehold improvements, furniture, fixtures and equipment owned or leases by seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases and undertakings; resident funds in trust; the name " The Mountain View Nursing and Rehabilitation Center"; security deposits and prepayments; manuals and 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:	Real Estate which is the subject of the real estate contract; insurance policies; union agreement and pension plans; rate increases and/or lump sum payments; tax refunds including real estate tax refunds relating to a period or periods prior to the closing date; amounts due from parties related to seller; seller's cash and cash equivalents; prepaid expenses; claims, causes of action and legal rights for periods prior to the closing date; receivables from any affiliated of seller; and payments made in connections with "Universal Appeal Settlement".
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the facility and the basic assets on and after the Closing Date; trade accounts payable for items purchased by the Seller prior to Closing (estimated at \$575,000)
Purchase Price:	\$2,802,844
Payment of Purchase Price:	\$58,000 upon execution; \$2,744,844 due at closing.

The purchase price of the operations is proposed to be satisfied as follows:

Equity – CLR New Paltz, LLC Members	\$744,211
Loan (10-year, 25-year amortization, 5% interest)	<u>2,058,633</u>
Total	\$2,802,844

Greystone Funding Corporation has provided a letter of interest at the stated terms.

First Amendment to Asset Purchase Agreement

The applicant has submitted an executed First Amendment to the APA for acquisition of the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized as follows:

Date: September 21, 2016
 Seller: Jansen Rd Nursing and Rehabilitation Center, LLC
 Purchaser: CLR New Paltz LLC
 Change: To implement the removal of Joseph Zupnik and Elisa Zupnik from ownership in the purchaser and the addition of Hillel Weinberger and Amir Abramchik as the sole owners of the purchaser.

The APA establishes a Total Purchase Price of \$86,500,000 as total consideration for the assets transferred (as defined above), the real property (as defined below), and the assets of the sellers under all other APAs and REPAs related to the following entities: 1940 Hamburg Street, LLC (Realty, vacant property); MacDonald Road Corporation (Realty, Home Office); DMN Management Services, LLC (Home Office Assets); and the operating assets and real property associated with the following CONS concurrently under review:

- CON 162256 - The Country Manor Nursing and Rehabilitation Centre, 90 beds, Jefferson County;
- CON 162255 - The Capital Living Nursing and Rehabilitation Centre, 240 beds, Schenectady County;
- CON 162257 - The Crossings Nursing and Rehabilitation Centre, 80 beds, Onondaga County;
- CON 162259 - The Orchard Nursing and Rehabilitation Centre, 88 beds, Washington County;
- CON 162260 - The Springs Nursing and Rehabilitation Centre, 78 beds, Rensselaer County; and
- CON 162261 - The Stanton Nursing and Rehabilitation Centre, 117 beds, Warren County.

Please note the above bed counts for CON 162257, CON 162260 and CON 162261 reflect bed reductions anticipated upon establishment

North Broadway Office Operations, LLC will acquire the operating interests of DMN Management Services (DMN), referenced above, for \$258,000. The staff of DMN currently provide services including QA/QI, billing, IT management, payroll, audit, accounts receivable and human resources. After the change in ownership, DMN Management Services will no longer exist.

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.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA to acquire the real property. The agreement close concurrent with the APA upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	June 16, 2015
Seller:	MacDonald Road Corporation
Buyer:	New Paltz SNF Realty LLC
Assets Transferred:	Real Property located at 1 Jansen Rd, New Paltz, NY
Purchase Price:	\$3,354,904
Payment of Purchase Price:	\$58,000 upon execution; \$3,296,904 due at Closing.

The purchase price of real property is proposed to be satisfied as follows:

Equity - New Paltz SNF Realty LLC Members	\$58,000
Loan (10-year, 25-year amortization, 5% interest)	<u>3,296,904</u>
Total	\$3,354,904

Capital Funding, LLC has provided a letter of interest at the stated terms.

BFA Attachments A and B are the net worth summaries for the proposed members of CLR New Paltz LLC (operator) and New Paltz SNF Realty LLC (real property owner), respectively. Review of the net worth statements reveals sufficient resources overall to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interests for the seven RHCs (this application and the six listed above). Hillel Weinberger, a member of CLR New Paltz LLC and New Paltz SNF Realty LLC, has provided affidavits stating that he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities to make up any members' equity shortfall in contributing to the purchase price and/or working capital needs.

Hillel Weinberger has provided affidavits, disproportionate to his membership interests, to fund the operating and real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

The applicant has submitted an executed lease agreement, the terms of which are summarized below:

Date	October 31, 2016
Premises:	79-bed RHC located at 1 Jansen Road, New Paltz, NY 12561
Landlord:	New Paltz SNF Realty LLC
Lessee:	CLR New Paltz LLC
Term:	40 years from Commencement Date
Rent:*	\$310,280 (\$25,857 per month)
Provisions:	Triple Net, plus

*Rent is estimated at \$231,280 in fixed rent (Net Rent), based on the 25-year amortization of the mortgage, plus \$79,000 in Over Rent. In addition to the \$310,280 rental amount, the lessee will be billed for other expenses related to the premises incurred by the landlord.

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.

Consulting Services Agreement

The applicant has provided a draft consulting services agreement, with terms summarized below:

Contractor:	Centers for Care LLC d/b/a Centers Health Care
Facility:	CLR New Paltz, LLC, d/b/a The Mountain View Nursing and Rehabilitation Center
Affiliation:	The Facility will refer to itself as "Affiliated with Centers Health Care" or "Member of Centers Health Care, limited to marketing efforts and the identification of professionals, consultants, vendors and healthcare providers and other resources that can assist the Facility in the provision of care.
Consulting and Advisory Services:	The contractor will be responsible for the operation, supervision and oversight of all functions related to A/R and A/P, including assistance and supervision of staff in interacting with families, collection of NAMI and private funds, submission of award letters, and preparation of applications for payee, maintenance of billing files, monitoring payments to the facility by all payor sources, pursuing payments for delinquent accounts and assisting the facility, at the facility's expense. The contractor will provide assistance to and supervision of staff performing and providing the following services: all billing functions for all payor sources and maintenance of all billing and posting records and establishment of payroll budgets

	and schedule coordination with nursing and other departments. Responsible for the preparation of health facility assessment; assist the Facility with the preparation of RHC 4 and Medicare cost reports; and reconciliation of billing records, Maintenance of electronic resident/patient billing files, fund records and accounts, and monthly operating cash flow projections. Assist the Facility in reviewing of rate sheets and filing of necessary appeals and audit facility's monthly pharmacy bills and the implementing of formulary management.
Clinical Consulting Services:	The contractor will provide advice and assistance to the Facility with respect to the administrative functioning of the Therapy, Social Services and Nursing departments. Develop operating policies and procedures, rules and methods of operation appropriate to such departments and the training and orientation of staff. Recommend procedures to ensure the consistency and quality of all the Services. Assist the Facility with respect to its CMI, Medicare, and case-mix reimbursement.
Other Duties:	Develop and implement a marketing plan; furnish sufficient part-time temporary licensed skilled professional staff for the health care activities described herein
Term:	One Year with automatic one year renewals, unless terminated through mutual consent, default or by one party with 60-day written notice.
Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the Services to the Facility.

CLR New Paltz LLC retains ultimate control in all of the final decisions associated with the services. Center for Care LLC will also provide consulting services to the other RHCs transferred under the terms of the APA referenced above. Amir Abramchik is the Chief Operating Officer of the Consulting services provider, Center for Care LLC, and a member of the applicant. The Centers for Care LLC is equally owned by Kenneth Rozenberg and Beth Rozenberg.

The fees are estimated at \$3,000,000 for the subject facility and the six facilities being acquired concurrently, and divided amongst the facilities as follows, based on the total licensed beds:

- The Capital Living Nursing and Rehabilitation Center, 240 beds: \$935,066
- The Country Manor Nursing and Rehabilitation Centre, 90 beds: \$350,649
- The Crossings Nursing and Rehabilitation Centre, 80 beds: \$311,688
- The Mountain View Nursing and Rehabilitation Centre, 77 beds: \$300,000
- The Orchard Nursing and Rehabilitation Centre, 88 beds, \$342,857
- The Springs Nursing and Rehabilitation Centre, 78 beds, \$303,896
- The Stanton Nursing and Rehabilitation Centre, 117 beds, \$455,844

Operating Budget

The applicant has provided the current year (2015) results and the first year operating budget subsequent to the change in ownership, in 2017 dollars, summarized as follows:

	Current year		Year One	
	Per Diem	79 Beds	Per Diem	77 Beds
<u>Revenue</u>				
Medicaid-FFS	\$217.05	\$3,406,333	\$211.75	\$3,664,334
Medicaid-MC	\$217.00	\$173,166	\$211.75	\$186,340
Medicare-FFS	\$448.12	\$1,566,185	\$454.84	\$1,752,953
Medicare-MC	\$520.78	\$604,110	\$520.78	\$666,078
Commercial-FFS	\$350.00	\$99,050	\$350.00	\$109,200
Private Pay	\$425.88	\$1,185,651	\$364.00	\$1,117,480
Other Income		<u>11,155</u>		<u>0</u>
Total Revenue		\$7,045,650		\$7,496,385
<u>Expenses</u>				
Operating	\$300.95	\$7,287,104	\$242.17	\$6,466,030
Capital	\$22.59	<u>\$546,956</u>	\$18.33	<u>\$489,461</u>
Total Expenses		\$7,834,060		\$6,955,491
Net Income		<u>(\$788,410)</u>		<u>\$540,894</u>

Utilization (Patient Days)	24,214	26,700
Occupancy	84%	95%

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

- The Current Year reflects the facility's 2015 revenues and expenses based on 79 beds.
- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate. The Current Year Medicare rate is the actual daily rate experienced by the facility during 2015 and the forecasted Year One and Year Three Medicare rate is the actual daily rate experienced during 2016. The Private Pay rate reflects the current average rate experienced during 2016.
- Expense and staffing assumptions are based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 11.2% through various initiatives including renegotiating contracts
- Projected utilization by payer source for the first year after the change in ownership is:

	<u>Current Year</u>	<u>Year One</u>
	<u>79 Beds</u>	<u>77 Beds</u>
Medicaid-FFS	64.8%	64.8%
Medicaid-MC	3.3%	3.3%
Medicare-FFS	14.4%	14.4%
Medicare-MC	4.8%	4.8%
Commercial-FFS	1.2%	1.2%
Private Pay	<u>11.5%</u>	<u>11.5%</u>
Total	100.0%	100.0%

- The breakeven utilization is projected at 88.14% for the first year.

Capability and Feasibility

There are no project costs associated with this application. CLR New Paltz LLC will acquire the RHCF's operations for \$2,802,844, which will be funded via \$744,211 in members' equity, and a ten-year loan for \$2,058,633 at the above stated terms. New Paltz SNF Realty LLC will purchase the real property for \$3,354,904 funded by \$58,000 in members' equity and a ten-year loan for \$3,296,904 at the above stated term. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively.

The working capital requirement is estimated at \$1,159,250 based on two months of year one expenses. Funding will be as follows: \$579,625 from the members' equity with the remaining \$579,625 satisfied through a five-year term loan at 5% interest rate. Harborview Capital Funding has provided a letter of interest. Review of BFA Attachments A and B, proposed members net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interests for the seven RHCFs (this application and the six listed above). Hillel Weinberger, a member of CLR New Paltz, LLC and New Paltz SNF Realty, LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities (covering the purchase price and working capital equity). Additionally, Hillel Weinberger has provided affidavits stating he is willing to contribute resources, disproportionate to his membership interests, for the operating and realty entity balloon payments should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects \$540,894 of net income in Year One after the change in ownership. Revenues are estimated to increase by approximately \$450,735 or 6.4% based on the increase in occupancy (going from 84% to 95%). Overall expenses are expected to decline by \$878,569, coming from an \$821,074 reduction in operating expenses and \$57,495 reduction in capital expenses. The decline in operating expenses comes primarily from the following: a \$253,348 decrease in the salaries and wages, a \$257,863 decrease in employee benefits, and a \$200,103 decrease in professional fees. The balance of \$109,760 in expense reduction comes from various items. The budget was created taking into consideration the proposed new owners' experience in operating similar sized facilities.

BFA Attachment D is CLR New Paltz LLC's pro forma balance sheet, which shows the entity will start with \$1,323,836 in member's equity. Equity includes \$2,022,648 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, total net assets are a negative \$698,812.

DOH staff note that, through August 31, 2016, utilization was approximately 92.25% (adjusted for 77 beds), which is less than the first year's projections for proposed 77 beds by approximately 3%. BFA Attachment H is a budget sensitivity analysis that incorporates actual patient days as of August 31, 2016, and then adjusted and annualized for 77 beds while using the applicant's projected payer mix and expenses for the first year. Based upon this scenario, net profits would decline by \$115,343 to \$425,551. For comparison, the internal financial summary for the eight months ending September 30, 2016, showed a net loss of \$210,060 before allocation of Home Office Overhead (HO) and a \$530,574 loss after HO. 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.

BFA Attachment E is a Financial Summary of The Mountain View Nursing & Rehabilitation Centre for 2013 through 2015. As shown, the RHC had an average negative working capital position of \$5,054,316, average negative net assets of \$4,866,218, and an average negative income of \$968,191 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 86.07%. The applicant plans to increase occupancy by accepting more clinically complex residents and implementing the above stated measures. Additionally, the applicant intends to reduce expenses by renegotiating vendor contracts. Also included as part of Attachment E is DMN Management Services and Subsidiaries' 2015 certified financial statement, which shows working capital and net assets to be positive with operations showing a \$449,584 profit in 2015 before non-recurring expenses of \$360,000.

BFA Attachment F is the internal financial statements for The Mountain View Nursing & Rehabilitation Centre as of September 30, 2016, which shows negative working capital, negative net assets and the operating loss \$530,574 after allocation of Home Office overhead. On a consolidated basis, the organization had a positive working capital, positive net assets and generated a loss.

BFA Attachment G is a Financial Summary of the proposed member's affiliated nursing homes. The affiliated RHCs show positive working capital, positive net assets and average positive net income.

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, CLR New Paltz LLC
BFA Attachment B	Net Worth of Proposed Realty Members, New Paltz SNF Realty LLC.
BFA Attachment C	Current and proposed Realty Members, New Paltz SNF Realty LLC
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary of The Mountain View Nursing & Rehabilitation Centre and DMN Management Services LLC, 2015 Certified Financial Statement
BFA Attachment F	Internal Financial Statement of The Mountain View Nursing & Rehab Centre and Capital Living & Rehab Centre and DMN Management Services LLC
BFA Attachment G	Financial Summary of Proposed Member's Affiliated RHCs
BFA Attachment H	Budget Sensitivity Analysis

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of March, 2017 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 CLR New Paltz LLC as the new operator of The Mountain View Nursing and Rehabilitation Center, a 79-bed residential health care facility currently operated by Jansen Road Nursing and Rehabilitation Center, LLC, and decertify two (2) RHCF beds, 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:

162258 E

FACILITY/APPLICANT:

CLR New Paltz LLC
d/b/a The Mountain View Nursing and
Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the RHCF's real property, acceptable to the Department of Health. [BFA]
8. Submission of a floor plan showing the two (2) beds to be decertified and the surrounding nursing unit(s), which is acceptable to the Department of Health. [LTC]
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]

11. Submission of the applicant's amended Operating 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*.



Project # 162259-E
**CLR Granville LLC d/b/a The Orchard Nursing and
 Rehabilitation Center**

Program: Residential Health Care Facility
Purpose: Establishment

County: Washington
Acknowledged: October 11, 2016

Executive Summary

Description

CLR Granville LLC d/b/a The Orchard Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of The Orchard Nursing and Rehabilitation Centre, an 88-bed Article 28 residential health care facility (RHCF) located at 10421 State Route 40, Granville (Washington County). A separate entity, Granville SNF Realty LLC, will acquire the real property. There will be no change in beds or services provided.

On June 16, 2015, the current RHCF operator, Granville Nursing and Rehabilitation Center, LLC, entered into an Asset Purchase Agreement (APA) with CLR Granville LLC for the sale and acquisition of the RHCF operating interests for \$3,306,649. Subsequently, on September 21, 2016, Granville Nursing and Rehabilitation Center, LLC and CLR Granville LLC executed the First Amendment to the Asset Purchase Agreement consenting to the change in the proposed membership of CLR Granville, LLC. Concurrently on June 16, 2015, RD #1 Granville, LLC, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with Granville SNF Realty LLC for the sale and acquisition of the facility's real property for \$3,321,463. 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 CLR Granville LLC and Granville SNF Realty LLC in that Hillel Weinberger is a common member in both entities. The applicant

will lease the premises from Granville SNF Realty LLC.

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

<u>Current Operator</u>		
Granville Nursing and Rehabilitation Center, LLC		
<u>Member</u>		
DMN Management Services, LLC		100%
Anthony Durante	15%	
Patrick Martone	10%	
Jami Rogowski	15%	
Jodi Polsinelli	15%	
Lisa Marrello	15%	
Pamela Nichols	15%	
Mark Nichols	15%	

<u>Proposed Operator</u>		
CLR Granville LLC		
<u>Members</u>		
Hillel Weinberger		50%
Amir Abramchik (manager)		50%

Concurrently under review, the applicant members of CLR Granville LLC and the realty members of Granville SNF Realty LLC are seeking approval to acquire the operating and realty interests, respectively, in the following: The Crossings Nursing and Rehabilitation Centre (CON 162257), The Capital Living Nursing and Rehabilitation Centre (CON 162255), The Country Manor Nursing and Rehabilitation Centre (CON 162256), The

Mountain View Nursing and Rehabilitation Centre (CON 162258), The Springs Nursing and Rehabilitation Centre (CON 162260), and The Stanton Nursing and Rehabilitation Centre (CON 162261).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. The Orchard Nursing and Rehabilitation Centre's occupancy was 93.8% in 2012, 94.4% in 2013, 90.6% in 2014 and 93.0% in 2015. Current occupancy, as of December 7, 2016 is 93.2%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

There are no project costs associated with this application. CLR Granville LLC will acquire the RHC's operations for \$3,306,649 funded by \$870,162 in members' equity and a ten-year loan for \$2,436,487 at 5% interest, amortized over 25 years. Granville SNF Realty LLC will acquire the real property for \$3,321,463, funded by \$58,000 in members' equity and a ten-year loan for \$3,263,463 at 5% interest, amortized over 25 years. Greystone Funding Corporation has provided a letter of interest to finance the acquisition of the operations and Capital Funding, LLC has provided a letter of interest for the realty loan at the stated terms.

The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,241,987	\$7,470,647
Expenses	<u>7,177,869</u>	<u>7,130,535</u>
Gain/(Loss)	\$64,118	\$340,112

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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]
10. Submission of the applicant's amended Operating 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

March 9, 2017

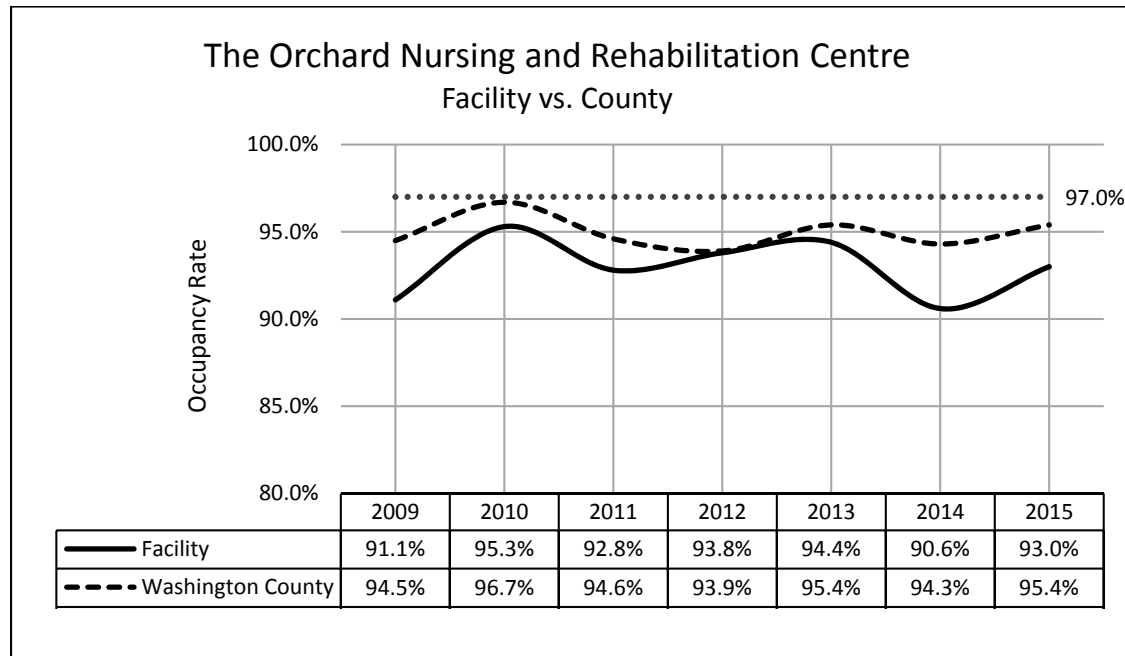
Need Analysis

Analysis

According to the current need methodology there is unmet need of 24 beds in Washington County.

RHCF Need - Washington County

2016 Projected Need	552
Current Beds	528
Beds Under Construction	0
Total Resources	528
Unmet Need	24



The overall occupancy for Washington County is 95.4% for 2015. The Orchard Nursing and Rehabilitation Centre's occupancy was 93.8% in 2012, 94.4% in 2013, 90.6% in 2014 and 93.0% in 2015. According to the applicant, decline in occupancy is attributable to staff turn-over, survey issues, and a high demand for short-term rehabilitation services which negatively impacts utilization due to high turn-over.

The applicant's plans to increase occupancy to the Department's planning optimum include:

- Accept more clinically complex residents: with the hiring of a new Administrator, occupancy rates are expected to rebound from the recent dip;
- Marketing and Community Outreach: implement a marketing team, including a full-time marketer working in the field and a designated employee working within the facility.
- Plan and Provider Outreach: develop and implement a program for improved collaboration with local health plans, hospital discharge planners, local assisted living facilities, home care providers, and other local health care providers and agencies to enhance provider relationships and familiarity with the facility and its staff;
- Staff Training, Development, and Support: implement new management and staff training and leadership programs that will encourage interaction and collaboration of staff across all commonly-owned nursing homes;
- Food Service Improvements: institute a fine-dining program and hire an executive chef; and
- Environmental Improvements: implement various cosmetic improvements to make the facility more updated and attractive.

Access

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

The Orchard Nursing and Rehabilitation Centre's Medicaid admissions of 36.4% in 2014 exceeded the Washington County 75% rate of 10.4%; however, the Centre's 2015 Medicaid admissions rate of 9.8% did not exceed the Washington County 75% rate of 17.8%, and the facility will need to follow the contingency plan as noted below.

Conclusion

Contingent Approval of this application will result in maintaining a necessary resource in Washington County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Orchard Nursing and Rehabilitation Centre	Same
Address	10421 State Route 40 Granville, NY 12832	Same
	88	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Proprietary
Operator	Granville Nursing and Rehabilitation Center, LLC	CLR Granville, LLC Amir Abramchik Hillel Weinberger

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Chittenango Center for Rehabilitation and Health Care	05/2011 to 7/16
Rome Center for Rehabilitation and Health Care	05/2011 to 8/16
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present

Individual Background Review

Amir Abramchik is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers for Specialty Care as the director of special projects since 2007. Previously he was employed as administrator of Queens Center for Rehabilitation and Health Care and Dutchess Center for Rehabilitation and Health Care. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

Fulton Center for Rehabilitation and Health Care	(10%)	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	(2%)	04/2012 to present
Corning Center for Rehabilitation and Health Care	(11%)	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	(95%)	11/2014 to present

Hillel Weinberger has been retired since 2012. He was formerly employed as the co-founder of Hillmark Capital, a financial planning business. He also has been serving as the the President of Ptach (a special needs school) for the last ten years. Mr Weinberger discloses no health facility ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. For the June 11, 2012 survey deficiencies were found under 10 NYCRR 451.3(e)(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) and Quality of Care: Medication Errors. For the May 5, 2013 survey deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential; 415.12(c)(2) Quality of Care Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.(m)(2) Quality of Care: Medication Errors; 415.26 Administration; and 415.27(a-c) Quality Assurance. For the November 21, 2013 survey deficiencies were found 10NYCRR 415.4(b)(1)(2)(3) Investigative/Report Allegations, 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(1)(2) Quality of Care Accidents/Supervision; 415.12(m)(2) Quality of Care Medication Errors; 415.26 Administration and 415.25(a-c) Quality Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.

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. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$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.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of operations of Ontario Center for Rehabilitation and Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 12, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(2)(iii)-Notice of Rights and Services-Right to Refuse Treatment, Refuse to Participate in Research and the Right to Be Able to Formulate an Advance Directive; and 415.12(m)(2)- Quality of Care No Significant Medication Errors.

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 operations for Chittenango Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, and Corning Center for Rehabilitation and Health Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
The Grand Rehabilitation & Nursing At Chittenango	**	**	****
The Grand Rehabilitation And Nursing At Rome	*	*	***
Fulton Center For Rehabilitation And Healthcare	**	*	**
Richmond Center For Rehab And Specialty H C	****	***	**
Ontario Center For Rehabilitation And Healthcare	**	*	**
Corning Center For Rehabilitation And Healthcare	*	*	**

Project Review

No changes in the program or physical environment are proposed in this application. The proposed operator intends to enter into a Consulting Services Agreement with Centers Health Care for consulting and advisory services related to administrative and operational functions.

The proposed operator was asked to explain the low star ratings. The operator has stated they have implemented initiatives to recruit and retain employees providing direct care services. They also plan on employing a combination of measures to correct deficiency issues, including in-service education, changes to policies and procedures when necessary, implementation of weekly observation and auditing of staff practices, and monthly review of the findings by the quality assurance committee.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 16, 2015
Seller:	Granville Nursing and Rehabilitation Center, LLC
Purchaser:	CLR Granville LLC
Asset Transferred:	The business and operation of the Facility; leasehold improvements, furniture, fixtures and equipment owned or leased by Seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases and undertakings; Resident funds held in trust; The name "The Orchard Nursing and Rehabilitation Centre"; security deposits and prepayments; manuals and 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:	Real Estate which is the subject of the Real Estate Contract; insurance policies; union agreement and pension plans; rate increases and/or lump sum payments; tax refunds including real estate tax refunds relating to a period or periods prior to the Closing Date; amounts due from parties related to Seller; Seller's cash and cash equivalents; Prepaid expenses; claims, causes of action and legal rights for periods prior to the Closing Date; receivables from any affiliate of Seller; and payments made in connection with "Universal Appeal Settlement"
Assumed Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date; trade accounts payable for items purchased by the Seller prior to Closing (estimated at \$825,000)
Purchase Price:	\$3,306,649
Payment of the Purchase Price:	\$58,000 upon execution; \$3,248,649 at Closing.

The purchase price for the operations is proposed to be satisfied as follows:

Equity from Members	\$870,162
Loan (10 years, 25-year amortization, 5% interest)	<u>2,436,487</u>
Total	\$3,306,649

Greystone Funding Corporation has provided a letter of interest at the stated terms.

First Amendment to Asset Purchase Agreement

The applicant has submitted an executed First Amendment to the APA for acquisition of the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	September 21, 2016
Seller:	Granville Nursing and Rehabilitation Center, LLC
Purchaser:	CLR Granville LLC
Change:	To implement the removal of Joseph Zupnik and Elisa Zupnik from ownership in the purchaser and the addition of Hillel Weinberger and Amir Abramchik as the sole owners of the purchaser.

The APA establishes a Total Purchase Price of \$86,500,000 as total consideration for the assets transferred (as defined above), the real property (as defined below), and the assets of the sellers under all other APAs and REPAs related to the following entities: 1940 Hamburg Street, LLC (Realty, vacant property); MacDonald Road Corporation (Realty, Home Office); DMN Management Services, LLC (Home Office Assets); and the operating assets and real property associated with the following CONs concurrently under review:

- CON 162257 - The Crossings Nursing and Rehabilitation Centre, 80 beds, Onondaga County;
- CON 162255 - The Capital Living Nursing and Rehabilitation Centre, 240 beds, Schenectady County;
- CON 162256 - The Country Manor Nursing and Rehabilitation Center, 90 beds, Jefferson County;
- CON 162258 - The Mountain View Nursing and Rehabilitation Centre, 77 beds, Ulster County;
- CON 162260 - The Springs Nursing and Rehabilitation Centre, 78 beds, Rensselaer County; and
- CON 162261 - The Stanton Nursing and Rehabilitation Centre, 117 beds, Warren County.

Please note the above bed counts for CON 162257, CON 162258, CON 162260 and CON 162261 reflect bed reductions anticipated upon establishment.

North Broadway Office Operations, LLC will acquire the operating interests of DMN Management Services (DMN), referenced above, for \$258,000. The staff of DMN currently provide services including QA/QI, billing, IT management, payroll, audit, accounts receivable and human resources. After the change in ownership, DMN Management Services will no longer exist.

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. As of November 9, 2016, the applicant had no Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA to acquire the real property. The terms of the agreement are summarized below:

Date:	June 16, 2015
Seller:	RD #1 Granville, LLC
Purchaser:	Granville SNF Realty LLC
Asset Transferred Realty:	Real Property located at 10421 State Route 40, Granville, NY 12832
Purchase Price:	\$3,321,463
Payment of the Purchase Price:	\$58,000 upon execution; \$3,263,463 at Closing.

The purchase price of real property is proposed to be satisfied as follows:

Equity from Members	\$58,000
Loan (10-year, 25-year amortization, 5% interest)	<u>3,263,463</u>
Total	\$3,321,463

Capital Funding, LLC has provided a letter of interest at the stated terms.

BFA Attachments A and B are the net worth summaries for the proposed members of CLR Granville LLC (operator) and Granville SNF Realty LLC (real property owner), respectively. Review of the net worth statements reveals sufficient resources overall to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCfs (this application and the six listed above). Hillel Weinberger, a member of CLR Granville LLC and Granville SNF Realty, LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities to make up any member's equity shortfall in contributing to the purchase price and/or working capital needs.

Hillel Weinberger has provided affidavits, disproportionate to his membership interests, to fund the operating and real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

The applicant submitted an executed lease agreement, the terms of which are summarized below:

Date:	October 31, 2016
Premises:	88-bed RHCF located at 10421 State Route 40, Granville, NY 12832
Owner/Landlord:	Granville SNF Realty LLC
Lessee:	CLR Granville LLC
Term:	40 years from Commencement Date
Rent:	\$316,935 (\$26,411 per month)
Provisions:	Triple Net, plus

*Rent is estimated at \$228,935 in fixed rent (Net Rent), based on the 25-year amortization of the mortgage, plus \$88,000 in Over Rent. In addition to the \$316,935 rental amount, the lessee will be billed for other expenses related to the premises incurred by the landlord.

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.

Consulting Services Agreement

The applicant has provided a draft consulting services agreement, summarized below:

Contractor:	Centers for Care LLC d/b/a Centers Health Care
Facility:	CLR Granville LLC d/b/a The Orchard Nursing and Rehabilitation Center
Affiliation:	The Facility will refer to itself as "Affiliated with Centers Health Care" or "Member of Centers Health Care, limited to marketing efforts and the identification of professionals, consultants, vendors and healthcare providers and other resources that can assist the Facility in the provision of care.
Consulting and Advisory Services:	The contractor will be responsible for the operation, supervision and oversight of all functions related to A/R and A/P, including assistance and supervision of staff assisting and supervising the staff in interacting with families, collection of NAMI and private funds, submission of award letters, and preparation of applications for payee, maintenance of billing files, monitoring payments to the facility by all payor sources, pursuing payments for delinquent accounts and assisting the facility, at the facility's expense. The contractor will provide assistance to and supervision of staff performing and providing the following services: all billing functions for all payor sources and maintenance of all billing and posting records and establishment of payroll budgets and schedule coordination with nursing and other departments. Responsible for the preparation of health facility assessment; assist the Facility with the preparation of RHCF 4 and Medicare cost reports; and reconciliation of billing records, Maintenance of electronic resident/patient billing files, fund records and accounts, and monthly operating cash flow projections. Assist the Facility in reviewing of rate sheets and filing of necessary appeals and audit facility's monthly pharmacy bills and the implementing of formulary management.
Clinical Consulting Services:	The contractor will provide advice and assistance to the Facility with respect to the administrative functioning of the Therapy, Social Services and Nursing departments. Develop operating policies and procedures, rules and methods of operation appropriate to such departments and the training and orientation of staff. Recommend procedures to ensure the consistency and quality of all the Services. Assist the Facility with respect to its CMI, Medicare, and case-mix reimbursement.

Other Duties:	Develop and implement a marketing plan; furnish sufficient part-time temporary licensed skilled professional staff for the health care activities described herein
Term:	One Year with automatic one year renewals, unless terminated through mutual consent, default or by one party with 60-day written notice.
Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the Services to the Facility.

Centers for Care LLC will also provide consulting services to the other RHCs transferred under the terms of the APA referenced above. Amir Abramchik is the Chief Operating Officer of the consulting services provider, Centers for Care LLC, and a member of the applicant. The Centers for Care LLC is equally owned by Kenneth Rozenberg and Beth Rozenberg.

The fees are estimated at \$3,000,000 for the subject facility and the six facilities being acquired concurrently, and divided amongst the facilities as follows, based on the total licensed beds:

- The Capital Living Nursing and Rehabilitation Center, 240 beds: \$935,066
- The Country Manor Nursing and Rehabilitation Centre, 90 beds: \$350,649
- The Crossings Nursing and Rehabilitation Centre, 80 beds: \$311,688
- The Mountain View Nursing and Rehabilitation Centre, 77 beds: \$300,000
- The Orchard Nursing and Rehabilitation Centre, 88 beds, \$342,857
- The Springs Nursing and Rehabilitation Centre, 78 beds, \$303,896
- The Stanton Nursing and Rehabilitation Centre, 117 beds, \$455,844

Operating Budget

The applicant has provided the current year (2015) results and the first and third year operating budgets subsequent to the change in ownership, in 2017 dollars, summarized as follows:

Revenues	Per Diem	Current Year	Per Diem	First Year	Per Diem	Third Year
Commercial FFS	\$350.00	\$19,250	\$350.00	\$19,600	\$350.00	\$20,300
Medicare FFS	\$457.73	\$977,706	\$464.59	\$1,013,735	\$464.59	\$1,045,792
Medicare MC	\$408.95	\$518,548	\$408.95	\$529,181	\$408.95	\$545,948
Medicaid FFS	\$185.51	\$3,954,696	\$182.45	\$3,972,301	\$182.45	\$4,097,645
Medicaid MC	\$185.50	\$2,226	\$182.43	\$2,554	\$182.43	\$2,554
Private Pay	\$342.37	\$1,742,000	\$328.00	\$1,704,616	\$328.00	\$1,758,408
All Other		<u>\$9,809</u>		<u>\$0</u>		<u>\$0</u>
Total		\$7,224,235		\$7,241,987		\$7,470,647
Expenses	Per Diem	Current Year	Per Diem	First Year	Per Diem	Third Year
Operating	\$239.50	\$7,155,622	\$216.23	\$6,598,367	\$209.62	\$6,598,367
Capital	<u>\$21.51</u>	<u>\$642,631</u>	<u>\$18.99</u>	<u>\$579,502</u>	<u>\$16.91</u>	<u>\$532,168</u>
Total Expenses	\$261.01	\$7,798,253	\$235.22	\$7,177,869	\$226.52	\$7,130,535
Net Income		<u>(\$574,018)</u>		<u>\$64,118</u>		<u>\$340,112</u>
Patient Days		29,877		30,515		31,478
Utilization %		93.02%		95.00%		98.00%

The following is noted with respect to the submitted budget:

- The Current Year reflects the facility's 2015 revenues and expenses.
- Medicaid revenue is based on the facility's current 2015 Medicaid Regional Pricing rate. The Current Year Medicare rate is the actual daily rate experienced by the facility during 2015 and the forecasted Year One and Year Three Medicare rate is based on the daily rate experienced during 2016. The Private Pay rate reflects increases implemented by the facility during 2016.
- Staffing assumptions were based on the current operator's staffing model and then adjusted based on the applicant's experience. The applicant expects to reduce expenses by 7.96% in the first year through implementation of their staffing model and the renegotiation of various contracts.

- It is noted that in the first three years the operator will have the option of deferring up to \$88,000 per year in rent, equal to the Over Rent. It is further noted that additional rent (escrow) to address taxes, insurance and replacement accounts is not included in the budget as the applicant states that there are no additional rent expenses (expenses incurred by the landlord billable to the tenant) at this time.
- The fees associated with the above referenced Consulting Services Agreement have been included in the budget.
- Utilization by payor source for the first year after the change in ownership is summarized below

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	0.18%	0.18%	0.18%
Medicare FFS	7.15%	7.15%	7.15%
Medicare MC	4.24%	4.24%	4.24%
Medicaid FFS	71.35%	71.35%	71.35%
Medicaid MC	0.05%	0.05%	0.05%
Private Pay	17.03%	17.03%	17.03%

- Breakeven utilization is 94.16% in year one.

Capability and Feasibility

CLR Granville LLC has agreed to acquire the RHCFS operations for \$3,306,649, which will be funded via \$870,162 in member equity and a ten-year loan for \$2,436,487 at the above stated terms. Granville SNF Realty, LLC, the applicant's landlord, is purchasing the real property for \$3,321,463 funded by \$58,000 members' equity and a ten-year loan for \$3,263,463 at the above stated terms. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,196,312 based on two months of first year expenses. Funding will be follows: \$598,156 from members' equity with the remaining \$598,156 satisfied through a five-year, self-amortizing loan at 5% interest rate. Harborview Capital Funding has provided a letter of interest for the working capital loan. Review of BFA Attachments A and B, proposed members net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest for the seven RHCFS (this application and the six listed above). Hillel Weinberger, a member of CLR Granville LLC and Granville SNF Realty, LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities (covering the purchase price and working capital equity). Additionally, Hillel Weinberger has provided affidavits stating he is willing to contribute resources, disproportionate to his membership interests, for the operating and realty entity balloon payments should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects a net income of \$64,118 in the first year and \$340,112 in the third year. The budgeted revenues are expected to increase by \$17,752 and \$246,412 in the first and third years, respectively. The increased revenue is due to an increase of 638 patient days and 1,601 patient days in the first and third year, respectively, offset by projected reductions in Medicaid and Private Pay reimbursement. The applicant projects a \$620,384 reduction in expenses (\$557,255 from operations and \$63,129 from capital expenses). The reduction in operating expenses is primarily derived from a \$306,681 reduction in wages and employee benefits to be achieved through changes in the staffing mix. The balance of the operating expense reductions come primarily from supplies and other direct costs. The applicant intends to achieved saving through vendor negotiations or the use of vendors currently utilized at their other facilities.

BFA Attachment D is CLR Granville, LLC's pro forma balance sheet, which shows the entity will start with \$1,468,318 in equity. Equity includes \$2,253,076 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, the total net assets are a negative \$784,758. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A Department policy, as described in the "Transition of Nursing

Home Benefit and Population into Managed Care Policy Paper,” provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment E is a Financial Summary of The Orchard Nursing and Rehabilitation Centre for 2013 through 2015. For the 2014 and 2015, the RHC had negative working capital and negative net assets. For the period shown, the facility had losses that averaged \$398,838 and experienced an average occupancy of 92.67%. The applicant stated that the operating losses were the result of a combination of the facility’s small size and expenditures exceeding reimbursement rates and revenue projections by payor. The losses accumulated over time resulting in negative positions. To reverse the trend, the applicant intends to reduce expenses by renegotiating vendor contracts, analyzing staffing expenses along with reworking staff schedules to keep overtime expenses down, and reduce bad debt expenses through an accounts receivable collection plan. Also included as part of Attachment E is DMN Management Services and Subsidiaries 2014 and 2015 certified statement, which shows working capital and net assets to be positive with operations showing a \$449,584 profit in 2015 before non-recurring expenses of \$360,000.

BFA Attachment F is the Internal Financial Summary through September 30, 2016, which shows the facility had positive working capital, positive net assets and had a loss after allocation of home office overhead. On a consolidated basis, the organization had a positive working capital, positive net assets and generated a loss.

BFA Attachment G is the Financial Summary of the proposed member’s affiliated RHCs, which shows the facilities maintained positive working capital, positive net assets, and generated positive net income.

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.

<h2>Attachments</h2>

BFA Attachment A	CLR Granville LLC, Proposed Members Net Worth
BFA Attachment B	Granville SNF Realty LLC, Proposed Members Net Worth
BFA Attachment C	Current and Proposed Owners of the Real Property
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary, The Orchard Nursing and Rehabilitation Centre and DMN Management Services LLC, 2015 certified financial statement
BFA Attachment F	Internal Financial Summary, The Orchard Nursing and Rehabilitation Centre and DMN Management Services LLC
BFA Attachment G	Financial Summary, the proposed members affiliated RHCs

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 9th day of March, 2017 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 CLR Granville LLC as the new operator of The Orchard Nursing and Rehabilitation Center, an 88-bed residential health care facility currently operated by Granville Nursing and Rehabilitation Center, LLC, 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:

162259 E

CLR Granville LLC
d/b/a The Orchard Nursing and Rehabilitation
Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]
10. Submission of the applicant's amended Operating 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*.



Project # 162260-E
**CLR Troy LLC d/b/a The Springs Nursing and Rehabilitation
Center**

Program: Residential Health Care Facility
Purpose: Establishment

County: Rensselaer
Acknowledged: October 7, 2016

Executive Summary

Description

CLR Troy LLC d/b/a The Springs Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of The Springs Nursing and Rehabilitation Centre, an 80-bed, proprietary, Article 28 residential health care facility (RHCF) located at 49 Marvin Avenue, Troy (Rensselaer County). As a part of this application, the certified bed capacity will be reduced by two beds, bringing the total certified bed count to 78. A separate entity, Troy SNF Realty LLC, will acquire the real property. There will be no change in services provided.

On June 16, 2015, the current operator, Troy Nursing and Rehabilitation Center, LLC, entered into an Asset Purchase Agreement (APA) with CLR Troy LLC for the sale and acquisition of the RHCF operating interests for \$3,081,045. Subsequently, on September 21, 2016 Troy Nursing and Rehabilitation Center, LLC and CLR Troy, LLC executed the First Amendment to the Asset Purchase Agreement consenting to the change in the proposed membership of CLR Troy, LLC. Concurrently on June 16, 2015, 49 Marvin Avenue, LLC, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with Troy SNF Realty LLC for the sale and acquisition of the facility's real property for \$2,873,095. 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 CLR Troy LLC and Troy SNF Realty LLC in that Hillel Weinberger is a common member in both entities. The applicant

will lease the premises from Troy SNF Realty LLC.

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

<u>Current Operator</u>		
Troy Nursing and Rehabilitation Center, LLC		
<u>Member</u>		
DMN Management Service, LLC		100%
Anthony Durante	15%	
Patrick Martone	10%	
Jami Rogowski	15%	
Jodi Polsinelli	15%	
Lisa Marrello	15%	
Pamela Nichols	15%	
Mark Nichols	15%	

<u>Proposed Owner</u>		
CLR Troy, LLC d/b/a The Springs Nursing and Rehabilitation Center		
<u>Members</u>		
Amir Abramchik (Manager)		50%
Hillel Weinberger		50%

Concurrently under review, the applicant members of CLR Troy LLC and the realty members of Troy SNF Realty LLC are seeking approval to acquire the operating and realty interests, respectively, in the following: The Crossings Nursing and Rehabilitation Centre (CON 162257), The Capital Living Nursing and Rehabilitation Centre (CON 162255), The Country Manor Nursing and Rehabilitation Centre (CON 162256), The Mountain View

Nursing and Rehabilitation Centre (CON 162258), The Orchard Nursing and Rehabilitation Centre (CON 162259), and The Stanton Nursing and Rehabilitation Centre (CON 162261).

OPCHSM Recommendation
Contingent Approval

Need Summary

This proposal will decrease the number of RHCF beds at this facility from 80 to 78. The Springs Nursing and Rehabilitation Centre's occupancy was 85.4% in 2012, 85.0% in 2013, 85.1% in 2014 and 86.4% in 2015. Current occupancy, as of December 21, 2016 is 87.5%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

There are no project costs associated with this application. CLR Troy LLC will acquire the RHCF's operating assets for \$3,081,045 funded by \$813,761 in members' equity and a ten-year loan for \$2,267,284 at 5% interest, amortized over 25 years. Troy SNF Realty LLC will purchase the real property for \$2,873,095, funded by \$58,000 in members' equity and a ten-year loan for \$2,815,095 at 5% interest, amortized over 25 years. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively.

The projected budget is as follows:

	<u>Year One</u>
Revenues	\$7,659,829
Expenses	<u>7,180,455</u>
Net Income	\$479,374

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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the RHCF's real property, acceptable to the Department of Health. [BFA]
8. Submission of a floor plan showing the two (2) beds to be decertified and the surrounding nursing unit(s), which is acceptable to the Department of Health. [LTC]
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]
11. Submission of the applicant's amended Operating 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
March 9, 2017

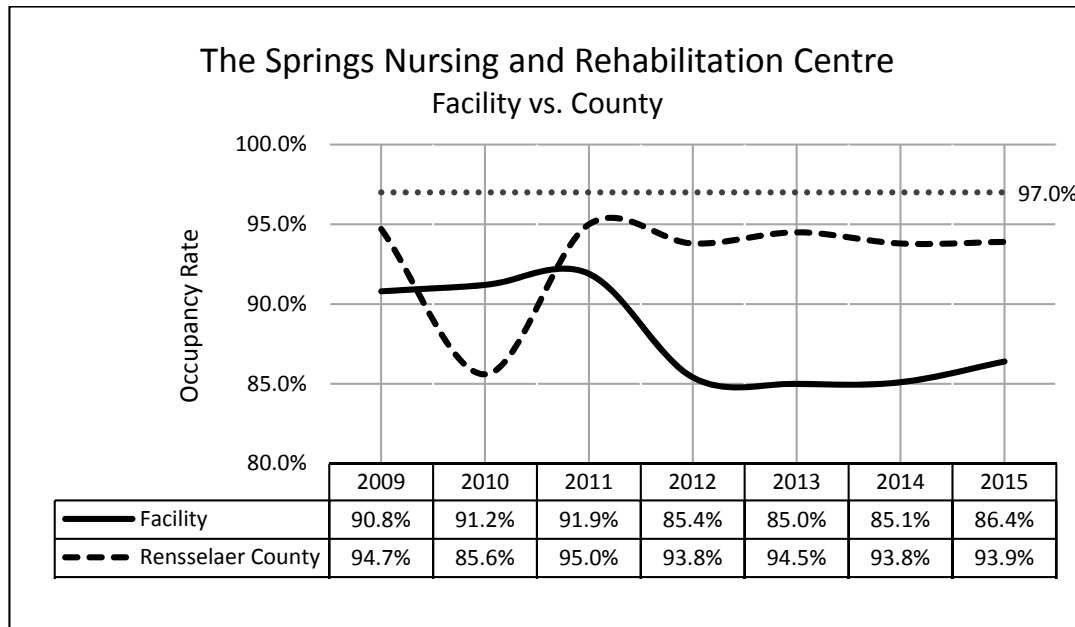
Need Analysis

Analysis

According to the current need methodology, there is no unmet need for beds in Rensselaer County.

RHCF Need – Rensselaer County

2016 Projected Need	1,025
Current Beds	1,244
Beds Under Construction	0
Total Resources	1,244
Unmet Need	0



The overall occupancy for Rensselaer County was 93.9% for 2015. The Springs Nursing and Rehabilitation Centre's occupancy was 85.4% in 2012, 85.0% in 2013, 85.1% in 2014 and 86.4% in 2015. The applicant acknowledges that the facility is experiencing utilization challenges, and attributes the utilization shortcomings to low staffing, high staff turnover, and the inconsistent ability of the facility to accept new admissions. The applicant has a plan to improve utilization, most notably by entering into a Consulting Agreement with Centers Health Care. According to the applicant, further plans to increase occupancy to the Department's planning optimum include:

- Development of Short-Term Rehabilitation Program: the new operator will implement a program to attract residents in need of short-term rehabilitation;
- Marketing and Community Outreach: implement a marketing team, including a full-time marketer working in the field and a designated employee working within the facility;
- Plan and Provider Outreach: develop and implement a program for improved collaboration with local health plans, hospital discharge planners, local assisted living facilities, home care providers, and other local health care providers and agencies to enhance provider relationships and familiarity with the facility and its staff;
- Staff Training, Development, and Support: implement new management and staff training and leadership programs that will encourage interaction and collaboration of staff across all commonly-owned nursing homes;
- Contracts with Managed Long-Term Care Plans: The Springs has contracts with VNA Home Care Options, VNSNY Choice, HAMASPIK, and Wellcare and Fidelis;
- Optum Evercare Program: the Springs has signed a contract and hopes to implement this program as soon as possible;

- Food Service Improvements: institute a fine-dining program and hire an executive chef; and
- Environmental Improvements: implement various cosmetic improvements to make the facility more updated and attractive.

Access

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

The Springs Nursing and Rehabilitation Centre's Medicaid admissions of 25.8% and 23.0% in 2014 and 2015, respectively, exceeded the Rensselaer County 75% rates of 13.3% and 19.4% in 2014 and 2015. The applicant will be required to maintain these Medicaid admissions rates above the County 75% threshold, as detailed in the related contingency and condition of approval.

Conclusion

Contingent Approval of this application will result in maintaining a necessary resource in Rensselaer County, while addressing the facility's sub-optimal utilization.

Recommendation

From a need perspective, contingent approval is recommended.

<h2 style="margin: 0;">Program Analysis</h2>
--

Facility Information

	Existing	Proposed
Facility Name	The Springs View Nursing and Rehabilitation Centre	Same
Address	49 Marvin Avenue Troy, NY 12180	Same
	80	78
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Proprietary
Operator	Troy Nursing and Rehabilitation Center, LLC	CLR Troy, LLC Amir Abramchik 50% Hillel Weinberger 50%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Chittenango Center for Rehabilitation and Health Care	05/2011 to 7/16
Rome Center for Rehabilitation and Health Care	05/2011 to 8/16
Fulton Center for Rehabilitation and Health Care	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	04/2012 to present
Corning Center for Rehabilitation and Health Care	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	11/2014 to present

Individual Background Review

Amir Abramchik is a licensed nursing home administrator in good standing in New York, New Jersey and Rhode Island. Mr. Abramchik has been employed by Centers for Specialty Care as the director of special projects since 2007. Previously he was employed as administrator of Queens Center for Rehabilitation and Health Care and Dutchess Center for Rehabilitation and Health Care. Mr. Abramchik discloses the following health facility interests with associated ownership percentages:

Fulton Center for Rehabilitation and Health Care	(10%)	04/2012 to present
Richmond Center for Rehab and Specialty Health Care	(2%)	04/2012 to present
Corning Center for Rehabilitation and Health Care	(11%)	06/2013 to present
Ontario Center for Rehabilitation and Healthcare	(95%)	11/2014 to present

Hillel Weinberger has been retired since 2012. He was formerly employed as the co-founder of Hillmark Capital, a financial planning business. He also has been serving as the the President of Ptach (a special needs school) for the last ten years. Mr Weinberger discloses no health facility ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued January 5, 2016 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. For the June 11, 2012 survey deficiencies were found under 10 NYCRR 451.3(e)(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) and Quality of Care: Medication Errors. For the May 5, 2013 survey deficiencies were found under 10NYCRR 415.12 Quality of Care Highest Practicable Potential; 415.12(c)(2) Quality of Care Pressure Sores; 415.12(i)(1) Quality of Care: Nutrition; 415.(m)(2) Quality of Care: Medication Errors; 415.26 Administration; and 415.27(a-c) Quality Assurance. For the November 21, 2013 survey deficiencies were found 10NYCRR 415.4(b)(1)(2)(3) Investigative/Report Allegations, 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(1)(2) Quality of Care Accidents/Supervision; 415.12(m)(2) Quality of Care Medication Errors; 415.26 Administration and 415.25(a-c) Quality Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.

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. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$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.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of operations of Ontario Center for Rehabilitation and Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 12, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(2)(iii)- Notice of Rights and Services-Right to Refuse Treatment, Refuse to Participate in Research and the Right to Be Able to Formulate an Advance Directive; and 415.12(m)(2)- Quality of Care No Significant Medication Errors.

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 operations for Chittenango Center for Rehabilitation and Health Care, Rome Center for Rehabilitation and Health Care, and Corning Center for Rehabilitation and Health Care for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
The Grand Rehabilitation & Nursing At Chittenango	**	**	****
The Grand Rehabilitation And Nursing At Rome	*	*	***
Fulton Center For Rehabilitation And Healthcare	**	*	**
Richmond Center For Rehab And Specialty H C	****	***	**
Ontario Center For Rehabilitation And Healthcare	**	*	**

Corning Center For Rehabilitation And Healthcare	*	*	**
--	---	---	----

Project Review

This application proposes a reduction of two RHCF beds. The applicant has not provided plans showing the specific rooms and to be decertified and affected nursing units, which results in the addition of a contingency to this project. No other changes in the program or physical environment are proposed in this application.

The proposed operator intends to enter into a Consulting Services Agreement with Centers Health Care for consulting and advisory services related to administrative and operational functions.

The proposed operator was asked to explain the low star ratings. The operator has stated they have implemented initiatives to recruit and retain employees providing direct care services. They also plan on employing a combination of measures to correct deficiency issues, including in-service education, changes to policies and procedures when necessary, implementation of weekly observation and auditing of staff practices, and monthly review of the findings by the quality assurance committee.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interest, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	June 16, 2015
Seller:	Troy Nursing and Rehabilitation Center, LLC
Buyer:	CLR Troy LLC
Asset Acquired:	The business and operation of the facility; leasehold improvements, furniture, fixtures and equipment owned or leases by seller; inventory, supplies, and other articles of personal property; transferable contracts, agreements, leases and undertakings; resident funds in trust; the name "The Springs Nursing and Rehabilitation Center"; security deposits and prepayments; manuals and 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:	Real Estate which is the subject of the real estate contract; insurance policies; union agreement and pension plans; rate increases and/or lump sum payments; tax refunds including real estate tax refunds relating to a period or periods prior to the closing date; amounts due from parties related to seller; seller's cash and cash equivalents; prepaid expenses; claims, causes of action and legal rights for periods prior to the closing date; receivables from any affiliated of seller; and payments made in connections with "Universal Appeal Settlement"
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the facility and the basic assets on and after the Closing Date; trade accounts payable for items purchased by the Seller prior to Closing (estimated at \$825,000)
Purchase Price:	\$3,081,045
Payment of Purchase Price:	\$58,000 upon execution; \$3,023,045 due at Closing

The purchase price of the operation is proposed to be satisfied as follows:

Equity – CLR Troy LLC Members	\$813,761
Loan (10-year, 25-year amortization, 5% interest)	<u>2,267,284</u>
Total	\$3,081,045

Greystone Funding Corporation has provided a letter of interest at the stated terms.

First Amendment to Asset Purchase Agreement

The applicant has submitted an executed First Amendment to the APA for the acquisition of the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date: September 21, 2016
Seller: Troy Nursing and Rehabilitation Center, LLC
Purchaser: CLR Troy, LLC
Change: To implement the removal of Joseph Zupnik and Elisa Zupnik from ownership in the purchaser and the addition of Hillel Weinberger and Amir Abramchik as the sole owners of the purchaser.

The APA establishes a Total Purchase Price of \$86,500,000 as total consideration for the assets transferred (as defined above), the real property (as defined below), and the assets of the sellers under all other APAs and REPAs related to the following entities: 1940 Hamburg Street, LLC (Realty, vacant property); MacDonald Road Corporation (Realty, Home Office); DMN Management Services, LLC (Home Office Assets); and the operating assets and real property associated with the following CONs concurrently under review:

CON 162256 - The Country Manor Nursing and Rehabilitation Centre, 90 beds, Jefferson County;
CON 162255 - The Capital Living Nursing and Rehabilitation Centre, 240 beds, Schenectady County;
CON 162258 - The Mountain View Nursing and Rehabilitation Centre, 77 beds, Ulster County;
CON 162259 - The Orchard Nursing and Rehabilitation Centre, 88 beds, Washington County;
CON 162257 - The Crossings Nursing and Rehabilitation Centre, 80 beds, Onondaga County; and
CON 162261 - The Stanton Nursing and Rehabilitation Centre, 117 beds, Warren County.

Please note the above bed counts for CON 162258, CON 162257 and CON 162261 reflect bed reductions anticipated upon establishment

North Broadway Office Operations, LLC will acquire the operating interests of DMN Management Services (DMN), referenced above, for \$258,000. The staff of DMN currently provide services including QA/QI, billing, IT management, payroll, audit, accounts receivable and human resources. After the change in ownership, DMN Management Services will no longer exist.

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 November 14, 2016, the facility has outstanding Medicaid liabilities of \$33,708.89.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA to acquire the real property. The agreement close, concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	June 16, 2015
Seller:	49 Marvin Avenue, LLC
Buyer:	Troy SNF Realty LLC
Purchase Price:	\$2,873,095
Asset Transferred:	Real Property located at 49 Marvin Avenue, Troy, NY
Payment of Purchase Price:	\$58,000 upon execution; \$2,815,095 due at Closing.

The purchase price of the real property is proposed to be satisfied as follows:

Equity – Troy SNF Realty LLC Members	\$58,000
Loan (10-year, 25-year amortization, 5% interest)	<u>2,815,095</u>
Total	\$2,873,095

Capital Funding, LLC has provided a letter of interest at the stated terms.

BFA Attachments A and B are the net worth summaries of the proposed members of CLR Troy LLC (operator) and Troy SNF Realty LLC (real property owner), respectively. Review of the net worth statements reveals sufficient resources overall to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interests for the seven RHCs (this application and the six listed above). Hillel Weinberger, a member of CLR Troy LLC and Troy SNF Realty LLC, has provided affidavits stating that he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities to make up any members' equity shortfall in contributing to the purchase price and/or working capital needs.

Hillel Weinberger has provided affidavits, disproportionate to his membership interests, to fund the operating and real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

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

Date:	October 31, 2016
Premises:	80-bed RHC located at 49 Marvin Avenue, Troy, NY
Landlord:	Troy SNF Realty LLC
Lessee:	CLR Troy LLC
Term:	40 years from Commencement Date
Rent*:	\$277,481 (\$23,123 per month).
Provisions:	Triple Net, plus

* Rent is estimated at \$197,481 in fixed rent (Net Rent), based on the 25-year amortization of the mortgage, plus \$80,000 in Over Rent. In addition to the \$277,481 rental amount, the lessee will be billed for other expenses related to the premises incurred by the landlord.

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.

Consulting Services Agreement

The applicant has provided a draft consulting services agreement, with terms summarized below:

Contractor:	Centers for Care LLC d/b/a Centers Health Care
Facility:	CLR Troy, LLC, d/b/a The Springs Nursing and Rehabilitation Center
Affiliation:	The Facility will refer to itself as "Affiliated with Centers Health Care" or "Member of Centers Health Care, limited to marketing efforts and the identification of professionals, consultants, vendors and healthcare providers and other resources that can assist the Facility in the provision of care.
Consulting and Advisory Services:	The contractor will be responsible for the operation, supervision and oversight of all functions related to A/R and A/P, including assistance and supervision of staff in interacting with families, collection of NAMI and private funds, submission of award letters, and preparation of applications for payee, maintenance of billing files, monitoring payments to the facility by all payer sources, pursuing payments for delinquent accounts and assisting the facility, at the facility's expense. The contractor will provide assistance to and supervision of staff performing and providing the following services: all billing functions for all payer sources and maintenance of all billing and posting records and establishment of payroll budgets and schedule coordination with nursing and other departments. Responsible for the preparation of health facility assessment; assist the Facility with the preparation of RHCF 4 and Medicare cost reports; and reconciliation of billing records, Maintenance of electronic resident/patient billing files, fund records and accounts, and monthly operating cash flow projections. Assist the Facility in reviewing of rate sheets and filing of necessary appeals and audit facility's monthly pharmacy bills and the implementing of formulary management.
Clinical Consulting Services:	The contractor will provide advice and assistance to the Facility with respect to the administrative functioning of the Therapy, Social Services and Nursing departments. Develop operating policies and procedures, rules and methods of operation appropriate to such departments and the training and orientation of staff. Recommend procedures to ensure the consistency and quality of all the Services. Assist the Facility with respect to its CMI, Medicare, and case-mix reimbursement.
Other Duties:	Develop and implement a marketing plan; furnish sufficient part-time temporary licensed skilled professional staff for the health care activities described herein
Term:	One Year with automatic one year renewals, unless terminated through mutual consent, default or by one party with 60-day written notice.
Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the Services to the Facility.

CLR Troy LLC retains ultimate control in all of the final decisions associated with the services.

Centers for Care LLC will also provide consulting services to the other RHCFS transferred under the terms of the APA referenced above. Amir Abramchik is the Chief Operating Officer of the Consulting services provider, Center for Care LLC, and a member of the applicant. The Centers for Care LLC is equally owned by Kenneth Rozenberg and Beth Rozenberg.

The fees are estimated at \$3,000,000 for the subject facility and the six facilities being acquired concurrently, and divided amongst the facilities as follows, based on the total licensed beds:

- The Capital Living Nursing and Rehabilitation Center, 240 beds: \$935,066
- The Country Manor Nursing and Rehabilitation Centre, 90 beds: \$350,649
- The Crossings Nursing and Rehabilitation Centre, 80 beds: \$311,688
- The Mountain View Nursing and Rehabilitation Centre, 77 beds: \$300,000
- The Orchard Nursing and Rehabilitation Centre, 88 beds, \$342,857
- The Springs Nursing and Rehabilitation Centre, 78 beds, \$303,896

- The Stanton Nursing and Rehabilitation Centre, 117 beds, \$455,844

Operating Budget

The applicant has provided the current year (2015) results and the first year operating budget subsequent to the change in ownership in 2017 dollars, summarized as follows:

Revenue	Current Year		Year One	
	Per Diem	80 Beds	Per Diem	78 Beds
Medicaid-FFS	\$211.07	\$3,755,754	\$217.76	\$4,151,594
Medicaid-MC	\$211.00	\$158,672	\$217.76	\$175,515
Medicare-FFS	\$482.04	\$1,056,624	\$489.27	\$1,149,295
Medicare-MC	\$545.13	\$847,138	\$545.13	\$907,641
Commercial-FFS	\$350.00	\$202,300	\$350.00	\$216,650
Private Pay	\$345.21	\$819,177	\$416.49	\$1,059,134
Other Income		<u>11,084</u>		<u>0</u>
Total Revenue		\$6,850,749		\$7,659,829
Expenses				
Operating	\$272.43	\$6,876,961	\$247.58	\$6,696,402
Capital	\$12.53	<u>\$316,280</u>	\$17.90	<u>\$484,053</u>
Total Expenses		\$7,193,241		\$7,180,455
Net Income		<u>(\$342,492)</u>		<u>\$479,374</u>
Utilization (Patient Days)		25,243		27,047
Occupancy		86.45%		95%

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

- The Current Year reflects the facility's 2015 revenues and expenses based on 80 beds.
- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate. The Current Year Medicare rate is the actual daily rate experienced by the facility during 2015 and the forecasted Year One and Year Three Medicare rate is the actual daily rate experienced during 2016. The Private Pay rate reflects current average rate experienced during 2016.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. The applicant expects to reduce operating expenses by approximately 2.6% through various initiatives including renegotiating contracts.
- Utilization by payer source for the first year after the change in ownership is summarized below:

	Current Year	Year One
Medicaid-FFS	70.49%	70.49%
Medicaid-MC	2.98%	2.98%
Medicare-FFS	8.68%	8.68%
Medicare-MC	6.16%	6.16%
Commercial-FFS	2.29%	2.29%
Private Pay	9.40%	<u>9.40%</u>
Total	100.0%	100.0%

- The breakeven utilization is projected at 89.06% for the first year.

Capability and Feasibility

There are no project costs associated with this application. CLR Troy LLC will acquire the RHCF's operations for \$3,081,045, which will be funded via \$813,761 in members' equity and a ten-year loan for \$2,267,284 at the above stated terms. Troy SNF Realty LLC will purchase the real property for \$2,873,095 funded by \$58,000 in members' equity and a ten-year loan for \$2,815,095 at the above stated term. Greystone Funding Corporation and Capital Funding, LLC have provided letters of interest for the operating and realty loans, respectively.

The working capital requirement is estimated at \$1,197,742 based on two months of Year One expenses. Funding will be as follows: \$598,371 from the members' equity with the remaining \$598,371 satisfied through a five-year loan at 5% interest rate. Harborview Capital Funding has provided a letter of interest. Review of BFA Attachments A and B, proposed members net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interests for the seven RHCs (this application and the six listed above). Hillel Weinberger, a member of CLR Troy LLC and Troy SNF Realty, LLC, has provided affidavits stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities (covering the purchase price and working capital equity). Additionally, Hillel Weinberger has provided affidavits stating he is willing to contribute resources, disproportionate to his membership interests, for the operating and realty entity balloon payments should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects \$479,374 of net income in Year One after the change in ownership. Revenues are estimated to increase by approximately \$809,080 or 11.8% based on the increase in occupancy (going from 86.45% to 95%). Overall expenses are expected to decrease by \$12,786, coming from a \$180,559 reduction in operating expenses, partially offset by a \$167,773 increase in capital expenses. The change in operating expenses comes primarily from the following: a \$105,670 increase in the salaries and wages; a \$131,339 increase in employee benefits; a \$226,502 decrease in professional fees; with the remaining reduction of \$191,066 reduction coming from various items. The budget was created taking into consideration the proposed new owners' experience in operating similar sized facilities.

BFA Attachment D is CLR Troy LLC's pro forma balance sheet, which shows the entity will start with \$1,412,132 in members' equity. Equity includes \$2,048,251 in goodwill, which is not a liquid resource nor is it recognized for Medicaid Reimbursement. If goodwill is eliminated, total net assets are a negative \$636,119.

DOH staff note that, through August 31, 2016, utilization was approximately 89.66% (adjusted for 78 beds), which is less than the first year's projections for the proposed 78 beds by approximately 5%. BFA Attachment H is a budget sensitivity analysis that incorporates actual patient days as of August 31, 2016, and then adjusted and annualized for 78 beds while using the applicant's projected payer mix and expenses for the first year. Based upon this scenario, net profits would decline by \$413,762 to \$65,612. For comparison, the internal financial summary for the eight months ending September 30, 2016, showed a net loss of \$160,692 before allocation of Home Office Overhead (HO) and a \$485,263 loss after HO. 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.

BFA Attachment E is the Financial Summary of The Springs Nursing and Rehabilitation Centre for 2013 through 2015. As shown, the RHC had an average negative working capital position of \$4,246,827, average negative net assets of \$4,062,035, and an average net loss of \$192,928 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 85.53%. The applicant plans to increase occupancy by accepting more clinically complex residents and implementing the above stated measures. Additionally, the applicant intends to reduce expenses by renegotiating vendor contracts. Also included as part of Attachment E is DMN Management Services and Subsidiaries' 2015 certified financial statement, which shows working capital and net assets to be positive with operations showing a \$449,584 profit in 2015 before non-recurring expenses of \$360,000.

BFA Attachment F is the internal financial statements for The Springs Nursing & Rehabilitation Centre as of September 30, 2016, which shows negative working capital, negative net assets and the operating loss \$485,263 after allocation of Home Office overhead. On a consolidated basis, the organization had a positive working capital, positive net assets and generated a loss

BFA Attachment G is a Financial Summary of the proposed member's affiliated nursing homes. The affiliated RHCs show positive working capital, positive net assets and average positive net income.

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, CLR Troy, LLC.
BFA Attachment B	Net Worth of Proposed Realty Members, Troy SNF Realty, LLC.
BFA Attachment C	Current and proposed Realty Members, Troy SNF Realty, LLC
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary of The Springs Nursing & Rehabilitation Centre and DMN Management Services, LLC, 2015 Certified Financial Statement
BFA Attachment F	Internal Financial Statement of The Springs Nursing & Rehab Centre and Capital Living & Rehab Centre and DMN Management Services LLC
BFA Attachment G	Financial Summary of Proposed Member's Affiliated RHCs.
BFA Attachment H	Budget Sensitivity Analysis

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of March, 2017 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 CLR Troy LLC as the new operator of The Springs Nursing and Rehabilitation Center, an 80-bed residential health care facility currently operated by Troy Nursing and Rehabilitation Center, LLC, and decertify two (2) RHCF beds, 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:

162260 E

CLR Troy LLC
d/b/a The Springs Nursing and Rehabilitation
Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the purchase of the RHCF's real property, acceptable to the Department of Health. [BFA]
8. Submission of a floor plan showing the two (2) beds to be decertified and the surrounding nursing unit(s), which is acceptable to the Department of Health. [LTC]
9. Submission of a photocopy of the applicant's amended lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed and amended Consulting Services Agreement, acceptable to the Department. [CSL]

11. Submission of the applicant's amended Operating 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*.



Project # 162026-B
**Manhattan RSC, LLC d/b/a Manhattan Reproductive
Surgery Center**

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** July 15, 2016

Executive Summary

Description

Manhattan RSC, LLC d/b/a Manhattan Reproductive Surgery Center (MRSC), a New York limited liability company, requests approval to establish and construct a single-specialty Article 28 freestanding ambulatory surgery center (FASC) specializing in gynecological services. The facility will be housed in approximately 10,467 square feet of leased space on the 21st floor of a building located at 65 Broadway, New York (New York County). The proposed FASC will include one Class "B" procedure room, two Class "C" operating rooms, pre-op and recovery areas with three pre-op bays and eight recovery bays, and the requisite support areas.

George D. Kofinas, M.D. is the sole member of MRSC and will serve as the facility's Medical Director. Dr. Kofinas is board-certified in Obstetrics and Gynecology (OB/GYN) and in Reproductive Endocrinology and Infertility. The Center will offer traditional gynecological services and reproductive endocrinology-infertility services, including in-vitro fertilization.

OPCHSM Recommendation

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

Need Summary

The applicant projects 838 procedures in Year One with Medicaid at 2% and charity care at 2%. The applicant indicated that, upon approval of this application, the physicians will bring the OBS practices into the regulatory environment of an Article 28 FASC, providing a measure of compliance with the latest standards of safe health care delivery.

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 \$4,131,814 will be met through member's equity of \$651,459; \$680,355 in Landlord Allowances; and a bank loan for \$2,800,000 at 5.75% interest rate for a five-year term. JP Morgan Chase Bank, N.A has provided a letter of interest. The projected budget is as follows.

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,808,952	\$4,954,303
Expenses	<u>\$3,357,201</u>	<u>\$3,378,560</u>
Net Income/(Loss)	\$1,451,751	\$1,575,743

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 loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's amended Administrative Services Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Development Services Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended Billing Services Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Anti-Kickback Statement signed by the applicant's attorney, 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 lease agreement, acceptable to the Department. [CSL]
13. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [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 May 1, 2017 and construction must be completed by January 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. 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]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

March 9, 2017

Need Analysis

Analysis

The service area consists of New York County. New York County has a total of 15 freestanding ambulatory surgery centers: eight multi-specialty ASCs and seven single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2014 and 2015.

ASC Type	Facility Name	Total Patient Visits	
		2014	2015
Single	Carnegie Hill Endo, LLC	11,426	11,898
Multi	Center for Specialty Care Inc.	3,885	3,759
Multi	East Side Endoscopy	9,284	9,302
Multi	Fifth Avenue Surgery Center	1,544	751
Multi	Gramercy Park Digestive Disease Center	9,343	12,613
Multi	Gramercy Surgery Center, Inc.	2,667	3,030
Single	Kips Bay Endoscopy Center, LLC	9,084	9,561
Single	Manhattan Endoscopy Center, LLC	12,656	12,293
Multi	Manhattan Surgery Center	2,502	5,087
Single	Mid-Manhattan Surgi-Center	3,900	3,360
Multi	Midtown Surgery Center	3,161	2,598
Single	Retinal Ambulatory Surgery Center of New York Inc.	1,984	2,963
Multi	SurgiCare of Manhattan, LLC	3,734	4,439
Single	West Side GI	12,549	14,608
Single	Yorkville Endoscopy Center	10,685	8,596
Total		98,404	104,858

Source: SPARCS-2016

Patient visits to ASCs in New York County showed a 6.6% year-to-year increase from 2014 to 2015. The population of New York County in 2010 was 1,585,873 with 167,763 (10.6%) females between the ages of 35 and 49. This is the primary population group seeking treatment for infertility. Per Cornell Program on Applied Demographics (PAD) projection data, this population group is estimated to grow to 183,707 by 2025 and represent 11.4% of the projected population of 1,615,772.

The number of projected procedures is 838 in Year One and 863 in Year Three. 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-162026	Year One		Year Three	
	Volume	%	Volume	%
Commercial Ins - MC	662	79.0%	682	79.0%
Medicare - MC	17	2.0%	17	2.0%
Medicaid - MC	17	2.0%	17	2.0%
Private pay	125	15.0%	130	15.0%
Charity Care	17	2.0%	17	2.0%
Total	838	100.00%	863	100.00%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis and Healthfirst. The applicant states that there are nine Federally Qualified Health Centers (FQHC) located within one mile of the proposed site. The center plans to reach out to the neighboring FQHCs to provide service to underinsured patients desiring in-vitro fertilization (IVF) services.

Conclusion

Approval of this project will bring gynecological and infertility surgery services into an Article 28 setting for the communities of New York County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

Proposed Operator	Manhattan RSC, LLC
Doing Business As	Manhattan Reproductive Surgery Center
Site Address	65 Broadway New York, NY (New York County)
Surgical Specialties	Single Specialty: Gynecological Services
Operating Rooms	2 (Class C)
Procedure Rooms	0
Hours of Operation	7 days a week, 6:00 am to 8:00 pm,
Staffing (1st / 3rd Year)	12.0 FTEs / 12.0 FTEs
Medical Director	George D. Kofinas, M.D., FACOG
Emergency, In-Patient & Backup Support Services Agreement and Distance	Will be provided by Mt Sinai Hospital West 5.6 miles / 29 minutes
On-call service	An answering service with access to the surgeon (or on-call physician) will be provided

Character and Competence

The sole member of Manhattan RSC, LLC is George D. Kofinas, M.D.

Dr. Kofinas is Board-certified in Obstetrics and Gynecology and holds sub-certification in Reproductive Endocrinology and Infertility. He has operated a private practice with a focus on reproductive medicine, surgery and in-vitro fertilization (IVF) for over 20 years and has over 30 years of experience in the field of Reproductive Endocrinology and Infertility. From 1987 to 2000, while at the Brooklyn Hospital Center, Dr. Kofinas served in several positions, to include: Chief of Reproductive Endocrinology and Infertility; Chairman of the Department of Obstetrics and Gynecology; and Director of the Residency Program. Since November 2000, he has served as New York Methodist Hospital's Chief of Reproductive Endocrinology and Infertility. Dr. Kofinas plans to perform procedures at the proposed Center as well as serve as the Center's Medical Director.

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

Dr. Kofinas disclosed three open malpractices cases.

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

Integration with Community Resources

The Center will have a referral relationship with a local FQHC which, along with other neighboring diagnostic and treatment centers and outpatient clinics, will serve as primary care alternatives for those patients who do not have access to primary care services. The facility will also establish and maintain a list of nearby primary care physicians who are accepting new patients. The Center will serve all patients without regard to personal characteristics or source of payment. A sliding fee scale and charity care will be available for those patients who are uninsured or underinsured and desire general gynecological surgical and reproductive endocrinology/infertility ambulatory surgical services.

The Center intends on utilizing a state-of-the-art electronic medical record and will consider integrating into a Health Information Exchange. The Center also plans on exploring possible participation in an Accountable Care Organization.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant submitted an executed lease for the proposed site, summarized below:

Date:	September 22, 2016
Premises:	10,467 square feet on the 21 st floor of 65 Broadway New York
Landlord:	65 Broadway Owner LLC
Lessee:	Manhattan RSC, LLC
Term:	16 years with one five-year renewal option
Rental:	\$512,883 annually (\$42,740.25/month or \$49 per sq. ft.) with a 2.25% annual rate increase
Provisions:	Triple Net, lessee pays all fees associated with the leased asset

The applicant provided an affidavit stating that the lease is an arm's length arrangement. The applicant submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

Administrative Services Agreement

The applicant submitted an executed Administrative Services Agreement (ASA), as summarized below:

Date:	January 5, 2017
Facility/Operator:	Manhattan RSC, LLC
Administrator:	Frontier Healthcare Management Services, LLC
Service Provided:	Administrative services including: staffing/scheduling; accounting; purchasing; compliance with policies and procedures, and medical staff By-laws/rules; medical staff application and credentialing; accreditation; physical plant and materials management; nursing and administration.
Term:	Five years with two additional automatic two-year renewals
Fee/Compensation:	\$250,000 base fee per year, with a 1.5% cost of living increase per year; \$350,000 bonus compensation for every \$4 million operating profit the facility generates during any year of the contract.

While Frontier Healthcare Management Services, LLC will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

Billing Services Agreement

The applicant submitted an executed Billing Services Agreement (BSA), as summarized below:

Date:	January 5, 2017
Facility/Operator:	Manhattan RSC, LLC
Contractor:	Frontier Healthcare Billing Services, LLC
Service Provided:	All Billing services including obtaining/entering pre-authorization patient information into the scheduling system, verifying patients eligibility and benefits, answering inquiries on claims on behalf of the facility, submitting bills, referring uncollectible bills to a collection agent and providing billing reports.
Term:	Five-years with two additional automatic two-year renewals
Billing Fee:	\$30 per technical and professional claim and a \$4,170 monthly fee per FTE required for benefit verification/authorization. A 3% per year cost of living increase shall be applied to the preceding years' fees at the beginning of each calendar year.

While Frontier Healthcare Billing Services, LLC. Will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

Total Project Cost and Financing

Total project costs, estimated at \$4,131,814, are broken down as follows:

Renovation & Demolition	\$2,512,080
Design Contingency	\$251,208
Construction Contingency	\$251,208
Movable Equipment	\$986,328
Interim Interest Expense	106,400
CON Application Fee	\$2,000
CON Processing Fee	<u>22,590</u>
Total Project Cost	\$4,131,814

Project costs are based on a start date of May 1, 2017, with an eight-month construction period.

The applicant's financing plan appears as follows:

Cash	\$651,459
Landlord Improvement Allowance	\$680,355
Bank Loan (5.75% interest, 5-year term)	<u>\$2,800,000</u>
Total	\$4,131,814

JP Morgan Chase Bank, N.A. 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, in 2016 dollars, as summarized below:

	Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total
<u>Revenues</u>				
Medicaid	\$903.88	\$15,366	\$931.24	\$15,831
Medicare	\$1,346.88	\$22,897	\$1,387.59	\$23,589
Commercial	\$6,056.51	\$4,009,409	\$6,056.59	\$4,130,593
Private Pay	\$6,090.24	<u>\$761,280</u>	\$6,033.00	<u>\$784,290</u>
Total Revenues		\$4,808,952		\$4,954,303
<u>Expenses</u>				
Operating	\$2,964.98	\$2,484,656	\$2,941.91	\$2,538,869
Capital	<u>\$1,041.22</u>	<u>\$872,545</u>	<u>\$972.99</u>	<u>\$839,691</u>
Total Expenses	\$4,006.21	\$3,357,201	\$3,914.90	\$3,378,560

Net Income or (Loss)	<u>\$1,451,751</u>	<u>\$1,575,743</u>
Utilization (procedures)	838	863

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

Medicaid	2.0%
Medicare	2.0%
Commercial	79.0%
Charity	2.0%
Private Pay	<u>15.0%</u>
Total	100.0%

The following is noted with respect to the submitted budget:

- Revenues are based on current and projected Federal and State government reimbursement rates, with commercial payor rates reflecting adjustments based on experience in the region.
- Expense assumptions are based upon staffing, operating and capital costs as determined based on the experience of the participating physicians, as well as the experience of other FASCs in New York State in providing similar service patient care.
- Utilization projections are based on the current caseloads of participating physicians. The doctors have submitted letters in support of their utilization projections
- Breakeven is approximately 83.65% of projected utilization or 701 procedures in Year One, and 81.46% of projected utilization or 703 procedures in Year Three.

The budgets are reasonable.

Capability and Feasibility

The total project cost of \$4,131,814 will be satisfied with \$651,459 equity from the proposed member; a \$680,355 landlord improvement allowance; and a bank loan for \$2,800,000 at the above stated terms. JP Morgan Chase Bank, N.A. has provided a letter of interest.

The working capital requirement is estimated at \$565,613 based on two months of third year expenses. The applicant will provide \$315,613 from personal resources and will finance \$250,000 for a five-year term at approximately 6% interest. JP Morgan Chase Bank, N.A. has provided a letter of interest. BFA Attachment A is the net worth statements of the applicant member, which indicates sufficient liquid resources to meet the equity and working capital requirements. BFA Attachment B is the pro-forma balance sheet that shows operations will start with \$1,370,328 in equity.

MSRC projects net income of \$1,451,751 and \$1,575,743 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected Federal and State government reimbursement rates, with commercial payor rates reflecting adjustments based on experience in the region. The budgets are reasonable.

The applicant recognizes the need to address the eventual change over to Managed Care Organizations (MCOs). They are not yet in a position to execute and negotiate contracts or letters of intent with MCOs at this time, but plan on establishing contracts upon approval of this application.

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

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center in their service areas.

New York-Presbyterian/Lower Manhattan -- No Response

170 Williams Street
New York, New York 10038

Mount Sinai Beth Israel -- No Response

Fist Avenue at 16th Street
New York, New York 10003

NY Eye & Ear Infirmary of Mount Sinai -- No Response

310 East 14th Street
New York, New York 10003

NYU Hospital for Joint Diseases -- No Response

301 East 17th Street
New York, New York 10003

New York Methodist Hospital -- No Response

506 Sixth Street
Brooklyn, New York 11215

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.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Member of Manhattan RSC, LLC d/b/a Manhattan Reproductive Surgery Center
BFA Attachment B	Pro Forma Balance Sheet of Manhattan RSC, LLC d/b/a Manhattan Reproductive Surgery Center
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 9th day of March, 2017 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 freestanding single specialty ambulatory surgery center providing gynecological services to be located at 65 Broadway, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

162026 B

FACILITY/APPLICANT:

Manhattan RSC, LLC
d/b/a Manhattan Reproductive Surgery Center

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
 - a. Actual utilization including procedures;
 - b. Breakdown of visits by payor source;
 - c. Percentage of charity care provided by visits;
 - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - e. Number of emergency transfers to a hospital;
 - f. Number of nosocomial infections recorded;
 - g. A brief list of all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
5. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's amended Administrative Services Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Development Services Agreement, acceptable to the Department. [CSL]

9. Submission of a photocopy of the applicant's amended Billing Services Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Anti-Kickback Statement signed by the applicant's attorney, 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 lease agreement, acceptable to the Department. [CSL]
13. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [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 May 1, 2017 and construction must be completed by January 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. 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]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

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



**Project # 162212-E
Griffiss Surgery Center**

Program: Diagnostic and Treatment Center **County:** Oneida
Purpose: Establishment **Acknowledged:** September 21, 2016

Executive Summary

Description

Griffiss EC, LLC d/b/a Griffiss Surgery Center, a proprietary Article 28 diagnostic and treatment center (D&TC) located at 105 Dart Circle, Rome (Oneida County), requests approval for a two-year extension to its five-year limited life. The D&TC was approved by the Public Health Council (PHC) under CON 092062 as a single-specialty freestanding ambulatory surgery center (FASC) specializing in ophthalmology services. PHC's approval was for a conditional five-year limited life and the Center began operation effective January 3, 2012. The facility was subsequently approved as a multi-specialty FASC, adding plastic surgery services effective September 22, 2014 (CON 122206). The applicant notified the Department before the limited life expiration date to request the extension. There will be no change in services provided.

OPCHSM Recommendation

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

Need Summary

Data submission by the applicant, as a contingency of CON 092062, is complete. Charity Care did not meet projections and the Center has outlined a plan to improve Charity Care utilization. Approval of an extension to the limited life should afford them time to implement the plan.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The projected budget is as follows

Revenues	\$3,150,000
Expenses	<u>2,863,436</u>
Net Income	\$286,564

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a signed affidavit stating the applicant will publicize its charity care policy by including it in a patient information package provided to all patients upon their initial visit to the center. [RNR]
2. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide quarterly reports to DOH. Reports will be due within 60 days of the conclusion of each quarter of operation as identified by the Effective Date on the Operating Certificate issued at project completion. 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;
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans; and
 - i. The number of patient referrals received from the following clinics: Utica Health Center, Upstate Cerebral Palsy, Mary Rose Clinic, and the Sister Rose Vincent Family Medicine Center. [RNR]

Approval conditional upon:

1. The submission of quarterly reports to the Department as prescribed by the related contingency, each quarter, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

March 9, 2017

Need Analysis

Analysis

The primary service area is Oneida County. The table below provides Year Three utilization for CON 092062 (projections and actual, by payor), actual data for 2015, and projections for Year One following approval of this CON.

Payor	CON 092062 Projected Year 3 (2014)	Actual Year 3 (2014)	Actual 2015	CON 162212 Projections Year 1
Commercial FFS	10%	25.8%	26.4%	26.9%
Commercial MC		0.0%	1.0%	0.7%
Medicare FFS	77%	42.2%	42.0%	39.9%
Medicare MC		21.2%	23.6%	23.9%
Medicaid FFS	10%	1.6%	0.6%	1.0%
Medicaid MC		6.3%	5.2%	6.0%
Private Pay	1%	0.0%	1.1%	0.5%
Charity Care	2%	0.0%	0.1%	1.1%
Other ¹		2.7%		
Total	100%	100%	100%	100%

¹ 2014 data is from the AHCF cost report, "Other" refers to Worker's Comp & Government payors

The table below compares projected procedures under CON 092062 with actual experience.

CON 092062 - Procedures	Year One		Year Three	
	Projections	Actual	Projections	Actual
Griffis Surgery Center				
Total	2,643	2,199	2,914	3,465

The Center provided the following information regarding their efforts to provide services to the under-insured and insured.

- The center has contracts with the following Medicaid managed care plans: Fidelis, Blue Cross Medicaid and United Healthcare.
- Since its opening, the Center has been accepting referrals from the Mary Rose Clinic.
- The Center instituted a Financial Assistance Policy, which established guidelines under which the center will provide care for free or at a reduced cost to patients who are unable to pay.

In recognition of the need for the center to improve its percentage of charity care, the center has developed an action plan going forward.

- Develop or maintain referral programs with the following providers:
 - Utica Community Health Center, an FQHC.
 - Upstate Cerebral Palsy, an FQHC Look-alike program (new).
 - Mary Rose Clinic in Oneida, NY.
 - Sister Rose Vincent Family Medicine Center in Utica, NY (new).
- Publicizing its Financial Assistance Policy, designating a Financial Assistance Coordinator and coordinating with the medical practices of its staff members, the center will make a stronger effort to identify those patients needing financial assistance in advance of procedures.

It should be noted that there are fewer uninsured individuals in Oneida County now compared to when Griffiss' original CON was submitted. According to the American Community Survey (ACS) information provided through the US Census website, in 2012 the number of uninsured in Oneida County was estimated to be 19,561, or 8.7 percent of the county population. In 2014, the estimated number of uninsured decreased to 12,350, or 5.5 percent of the county's population. This represents an almost 37% decrease in the estimated number of uninsured individuals in Oneida County. Additionally, a significant

portion of the ophthalmologic patient base is over 65 and eligible for Medicare. Ophthalmology services has accounted for more than 95% of the patient visits since 2014 at this facility.

Conclusion

Griffiss Surgery Center's charity care level has been negligible. As the facility strives to reach the proposed 1.1% level of charity care going forward, the action plan outlined by the applicant, if effectuated, would represent a good faith effort to provide service to the uninsured and underinsured. United Cerebral Palsy and the Sister Rose Vincent Family Medicine represent two new avenues for obtaining charity care cases. The request for an extension to the limited life should allow the Center time to adequately implement its plan for charity care and meet or exceed its Medicaid projection of 7%.

Recommendation

From a need perspective, contingent approval of a two-year extension of the operating certificate is recommended.

Program Analysis

Program Proposal

Griffiss Surgery Center, an existing Article 28 Diagnostic and Treatment Center certified as a multi-specialty freestanding ambulatory surgical center (ASC), located at 105 Dart Circle in Rome (Oneida County), requests a two year extension of temporary life following a five year conditional, limited life approval.

The Center, a joint venture among Rome Memorial Hospital and four ophthalmologists, was originally established in Project No. 092062 as a single-specialty ASC specializing in ophthalmology. In 2014, it became a multi-specialty surgical center after receiving Council approval under Project No. 122206.

There are no anticipated changes in services and staffing is expected to increase slightly from 13.4 FTEs to 13.8 FTEs by the third year post-approval.

Compliance with Applicable Codes, Rules and Regulations

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2017 dollars, for the current year (2015) and year one of operation subsequent to receiving the limited-life extension, summarized below:

	<u>Current Year</u>		<u>Year One</u>	
<u>Revenues</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Commercial FFS	\$1,148.50	\$1,094,519	\$1,095.32	\$1,129,275
Commercial MC	\$928.34	35,277	\$1,171.80	29,295
Medicare FFS	\$700.11	1,061,370	\$733.15	1,121,715
Medicare MC	\$718.63	613,710	\$692.11	635,355
Medicaid FFS	\$658.92	15,814	\$226.15	8,820
Medicaid MC	\$1,118.96	205,888	\$964.09	222,705
Private Pay	\$384.16	<u>14,598</u>	\$1,095.32	<u>2,835</u>
Total Revenues		\$3,041,177		\$3,150,000
<u>Expenses</u>				
Operating	\$661.50	\$2,388,680	\$647.30	\$2,481,756
Capital	<u>\$107.04</u>	<u>386,515</u>	<u>\$99.55</u>	<u>381,680</u>
Total Expenses	\$768.54	\$2,775,195	\$746.85	\$2,863,436
Net Income		<u>\$265,982</u>		<u>\$286,564</u>
Utilization (procedures)		3,611		3,834

Expense and utilization are based on the historical experience of Griffiss Surgery Center and potential additions to medical staff.

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates a net income of \$286,564 during the first year of operation subsequent to receiving an extension to their limited-life. Revenues and expenses are based on current reimbursement methodologies for the surgery center and historical experience of the operating facility. The budget appears reasonable.

BFA Attachments A and B are, respectively, the certified and latest internal financial summaries of Griffiss Surgery Center, which indicates the facility has maintained positive working capital and members' equity position. Also, the facility generated an average net income of \$579,569 during 2014-2015 and \$636,114 as of October 31, 2016, respectively.

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 Financial Summary 2014-2015, Griffiss Surgery Center
 BFA Attachment B Internal Financial Summary as of October 31, 2016, Griffiss Surgery 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 9th day of March, 2017 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a two-year extension for temporary life under CON #092062, 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:

162212 E

Griffis Surgery Center

APPROVAL CONTINGENT UPON:

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

1. Submission of a signed affidavit stating the applicant will publicize its charity care policy by including it in a patient information package provided to all patients upon their initial visit to the center. [RNR]
2. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide quarterly reports to DOH. Reports will be due within 60 days of the conclusion of each quarter of operation as identified by the Effective Date on the Operating Certificate issued at project completion. 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;
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans; and
 - i. The number of patient referrals received from the following clinics: Utica Health Center, Upstate Cerebral Palsy, Mary Rose Clinic, and the Sister Rose Vincent Family Medicine Center. [RNR]

APPROVAL CONDITIONAL UPON:

1. The submission of quarterly reports to the Department as prescribed by the related contingency, each quarter, for the duration of the limited life approval of the facility. [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 # 162300-E
Plattsburgh ASC, LLC d/b/a Cataract Center for the
Adirondacks

Program: Diagnostic and Treatment Center **County:** Clinton
Purpose: Establishment **Acknowledged:** October 27, 2016

Executive Summary

Description

Plattsburgh ASC, LLC d/b/a Cataract Center for the Adirondacks (Cataract Center), an existing New York limited liability company, requests approval to transfer 100% membership interest in the proprietary, Article 28 diagnostic and treatment center (D&TC) from two withdrawing members to two new members. Cataract Center is certified as a single-specialty freestanding ambulatory surgery center (FASC) specializing in ophthalmology services. The FASC includes two operating rooms and is located in 3,335 square feet of leased space at 450 Margaret Street, Plattsburgh (Clinton County). There will be no change or disruption in services.

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

<u>Current Operator</u>		
Plattsburgh ASC, LLC		
<u>Members</u>		
Kjell Dahlen, M.D.		50%
Benjamin Franklin Vilbert, M.D.		50%

<u>Proposed Operator</u>		
Plattsburgh ASC, LLC		
<u>Members</u>		
Roy Arogyasami, M.D.		50%
Joseph Rini, M.D.		50%

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation of this application.

Program Summary

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

Financial Summary

There is no construction or renovation associated with this project. The purchase price for the operations is \$1,599,973 to be funded through personal loans. Glens Falls National Bank and Trust Company provided a letter of interest for each proposed member to fund their portion (\$799,987) of the purchase price. Each loan carries a 7-year term at 4.5% fix rate of interest. The projected budget is as follows

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,742,506	\$1,742,506
Expenses	<u>\$1,258,522</u>	<u>\$1,258,522</u>
Net Income	\$483,984	\$483,984

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 personal loan commitment for Roy Arogyasami, M.D., acceptable to the Department of Health. [BFA]
2. Submission of an executed personal loan commitment for Joseph Rini, M.D., acceptable to the Department of Health. [BFA]
3. Submission of an executed Attestation for Service Agreements, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the new Operating Agreement of Plattsburgh ASC, LLC D/B/A Cataract Center for the Adirondacks, LLC, which is acceptable to the department. [CSL]

Approval conditional upon:

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

Council Action Date

March 9, 2017

Program Analysis

Character and Competence

Member Name	Current Membership Interest	Proposed Membership Interest
Kjell Dahlen, M.D.	50%	-----
Benjamin Franklin Vilbert, M.D.	50%	-----
Joseph A. Rini, M.D., <i>Medical Director</i>	-----	50%
Roy Arogyasami, M.D.	-----	50%

Drs. Joseph Rini and Roy Arogyasami are practicing ophthalmic surgeons. Dr. Rini earned his medical degree at Drexel University College of Medicine and completed an ophthalmology residency at Albert Einstein College of Medicine. Dr. Roy earned his medical degree from Columbia University, completed an ophthalmology residency at St. Luke's Roosevelt in Manhattan and a two-year surgery fellowship at Retina Associates of New Orleans. He is a board-certified ophthalmic surgeon specializing in vitreo-retinal surgery.

Dr. Arogyasami disclosed one open (pre-trial) malpractice case.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement which will become effective upon Public Health and Health Planning Council approval of this CON. The terms of the agreement are summarized below:

Date:	August 18, 2016
Seller:	Kjell Dahlen, M.D. and Benjamin Franklin Vilbert, M.D.
Purchaser:	Roy Arogyasami, M.D. and Joseph Rini, M.D.
Acquired Assets:	Beneficial owners free and clear of liens and encumbrances of the membership interest purchased hereunder. The interest shall constitute one hundred (100%) percent of the membership interest.
Purchase Price:	\$1,599,973 paid at closing

The purchase price for the operations is proposed to be satisfied as follows:

Equity from Members through personal loans	\$1,599,973
--	-------------

The applicant members provided their respective letter of interest from Glens Falls National Bank and Trust Company to fund their portion (\$799,987) of the purchase price. Each personal loan carries a 7-year term at 4.5% fix rate of interest. BFA Attachment A presents the net worth summaries for Roy Arogyasami, M.D. and Joseph Rini, M.D which reveals resources are available if ever needed.

Administrative Services and Billing Agreement

The applicant has submitted an executed Administrative Services and Billing Agreement (ASBA) with Eye Care for the Adirondacks, P.C. (ECA), which is summarized as follows:

Date:	September 1, 2016
Provider:	Eye Care for the Adirondacks, P.C.
Licensed Operator:	Plattsburgh ASC, LLC d/b/a Cataract Center for the Adirondacks
Administrative Services Provided:	Provide certain administrative personnel as required, assist with purchasing, human resource management, and computer support. Assist with financial management services including budgeting, accounting, controlling and reporting, financial and variance analysis. Assist with negotiating payer contracts, insurance credentialing, and data reporting.
Billing Services Provided:	On behalf of the operator prepare patient billing including prepare payers claims forms and other required material, perform follow-up services, maintain systems and administer controls for recording and reporting collections.
Term:	1-year terms with 1-year automatic renewals
Fees:	Administrative Service: 2016 average \$4,469.32 per month (based on 20% of Controller's W-2 wages and 15% of Administrator & Ex. Dir. Assistant W-2 wages.) Billing Services: \$4,300 per month

Eye Care for the Adirondacks, P.C. will provide all of the above services. The Licensed Operator will retain ultimate authority, responsibility, and control for the operations. Effective October 4, 2016, the members of ECA and their membership interest are identical to the proposed new operator/members of the Cataract Center.

Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the site, the terms of which are summarized below:

Date:	January 1, 2015
Premises:	3,335 sq. ft. located at 450 Margaret Street, Plattsburgh, NY (Article 28 space)
Owner/Landlord:	450 Margaret Street Properties, Inc.
Lessee/Tenant:	Plattsburgh ASC LLC.
Term:	Ten years Plus (1) 10-year renewal term
Payment:	\$64,630 (\$19.38 per sq. ft.) with 3% yearly increases.
Provisions:	Taxes, insurance, utilities and maintenance

On October 4, 2016, Drs. Arogyasami and Rini purchased 100% ownership interest (50% each) in 450 Margaret Street Properties, Inc. from Drs. Dahlen and Vilbert, the current operators and realty owners of the FASC. The applicant has provided an affidavit attesting to the relationship between the landlord and the tenant in that the members and their membership interest are identical. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

Operating Budget

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

<u>Revenues</u>	<u>Current (2015)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Medicaid	\$596.29	\$104,351	\$596.29	\$104,351	\$596.29	\$104,351
Medicare	\$601.54	322,424	\$601.54	322,424	\$601.54	322,424
Commercial	\$703.80	1,304,839	\$703.80	1,304,839	\$703.80	1,304,839
Self-Pay	\$465.70	9,314	\$465.70	9,314	\$465.70	9,314
Other	\$789.00	<u>1,578</u>	\$789.00	<u>1,578</u>	\$789.00	<u>1,578</u>
Total Revenues		\$1,742,506		\$1,742,506		\$1,742,506
<u>Expenses</u>						
Operating	\$436.81	\$1,130,028	\$436.81	\$1,130,028	\$436.81	\$1,130,028
Capital	<u>\$49.67</u>	<u>128,494</u>	<u>\$49.67</u>	<u>128,494</u>	<u>\$49.67</u>	<u>128,494</u>
Total Expenses	\$486.48	\$1,258,522	\$486.48	\$1,258,522	\$486.48	\$1,258,522
Net Income (Loss)		<u>\$483,984</u>		<u>\$483,984</u>		<u>\$483,984</u>
Utilization		2,587		2,587		2,587
Cost Per Procedure		\$486.48		\$486.48		\$486.48

Utilization by payor source for the Current Year, and Years One and Three subsequent to the ownership change, are summarized below:

<u>Payer</u>	<u>Current Year</u>		<u>Year One & Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid	175	6.77%	175	6.77%
Medicare	536	20.72%	536	20.72%
Commercial	1,854	71.66%	1,854	71.66%
Self-Pay	20	.77%	20	.77%
Other	<u>2</u>	<u>.08%</u>	<u>2</u>	<u>.08%</u>
Total	2,587	100%	2,587	100%

- The Ambulatory Patient Group reimbursement rates reflect current and projected Federal and State government rates, with commercial and private payers reflecting adjustments based on experience in the region.
- Revenue and Expense assumptions are based upon the experience of the proposed members (who are currently employed by the FASC and performing procedures at the facility).
- Breakeven is approximately 1,870 visits or 72.3% of project visits.
- Utilization assumptions are based on the facility's historical experience.

Capability and Feasibility

There is no construction or renovation associated with this project. The purchase price for Plattsburgh ASC, LLC d/b/a Cataract Center for the Adirondacks is \$1,599,973, which will be funded via personal loans. Glens Falls National Bank and Trust Company provided a letter of interest for each proposed member to fund their portion of the purchase price (\$799,987) at the above stated terms.

The working capital requirement is estimated at \$209,754 based on two months of first year expenses. Funding will come from ongoing operations. BFA Attachments D and E are Plattsburgh ASC LLC 2014-2015 certified financials and internal financials as of October 31, 2016, respectively, which show average positive working capital of \$248,164 and average net assets of \$659,198. Net Income for 2014 and 2015 averaged \$440,737 and net income for the ten months in 2016 was \$339,546. Review of BFA Attachment E shows the operations will start with \$546,240 in equity.

Plattsburgh ASC, LLC projects a net income of \$483,984 in both the first and third years of operation. 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.

Attachments

BFA Attachment A	Plattsburgh ASC, LLC members net worth summary
BFA Attachment B	450 Margaret Street Properties, Inc. members net worth summary
BFA Attachment C	Real Property Members
BFA Attachment D	2014 - 2015 Certified Financial Statement, Plattsburgh ASC, LLC
BFA Attachment E	Internal Financial Statement as of October 31, 2016, Plattsburgh ASC, 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 9th day of March, 2017 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 100% ownership from two withdrawing members to two new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

162300 E

FACILITY/APPLICANT:

Plattsburgh ASC, LLC
d/b/a Cataract Center for the Adirondacks

APPROVAL CONTINGENT UPON:

1. Submission of an executed personal loan commitment for Roy Arogyasami, M.D., acceptable to the Department of Health. [BFA]
2. Submission of an executed personal loan commitment for Joseph Rini, M.D., acceptable to the Department of Health. [BFA]
3. Submission of an executed Attestation for Service Agreements, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the new Operating Agreement of Plattsburgh ASC, LLC D/B/A Cataract Center for the Adirondacks, LLC, which is acceptable to the department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 # 162358-B
North Fork SC, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Suffolk
Acknowledged: November 3, 2016

Executive Summary

Description

North Fork SC, LLC (NFSC), an existing New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a dual single-specialty, freestanding ambulatory surgery center (FASC) specializing in gastroenterology and pain management procedures. The applicant will lease 5,564 square feet of an existing building located at 700 Boisseau Avenue, Southold (Suffolk County), New York. The FASC will include one procedure room, two operating rooms, three pre-operating bays and six post-operative bays, along with the requisite support areas.

The proposed members of North Fork SC, LLC and their ownership percentages are as follows:

Table with 2 columns: Member Name and Ownership Percentage. Includes Frank Adiperto, M.D. (45%), Dhiren Mehta, M.D. (35%), and Eastern Long Island Hospital Association (20%).

The applicant indicated that all of the projected procedures for the FASC are currently being performed at Eastern Long Island Hospital and that no other Article 28 entity will be impacted by the project.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 3,450 procedures in Year One with Medicaid at 31% 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 \$3,496,465 will be met through members' equity of \$534,630, a capital lease for \$340,774, and other assets of \$121,061 to be provided by Dr. Adiperto via a personal loan with a 30-year term and 4.5% interest rate. The remaining balance of \$2,500,000 will be financed via a bank loan for a 7-year term with a 15-year amortization and interest estimated at 5.04% based on the Federal Home Loan Bank (FHLB) rate (2.79% as of December 27, 2016) plus 225 basis points. The projected budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows include Revenues, Expenses, and Gain/(Loss).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed capital lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed personal loan for Dr. Adiperto, acceptable to the Department of Health. [BFA]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of an assumed name, acceptable to the Department. [HSP]
9. Submission of a photocopy of an Amended Operating Agreement of North Fork SC, LLC, which is acceptable to the department. [CSL]
10. Submission of a photocopy of the lease agreement between North Fork SC, LLC and 700 Boisseau Avenue Realty, LLC, which is acceptable to the department. [CSL]
11. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of North Fork SC, LLC, which is acceptable to the department. [CSL]
12. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before July 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 staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

March 9, 2017

Need Analysis

Analysis

The service area consists of Suffolk County which has a total of 12 freestanding ambulatory surgery centers: six multi-specialty ASCs, five single-specialty ASCs and one dual single-specialty ASC. The table below shows the number of patient visits at ambulatory surgery centers in Suffolk County for 2014 and 2015.

ASC Type	Facility Name	Total Patient Visits	
		2014	2015
Dual	Advanced Surgery Center of Long Island (opened 6/5/14)	970	6,627
Single	Digestive Health Center of Huntington, Inc.	3,103	3,458
Single	Great South Bay Endoscopy Center, LLC (opened 8/5/14)	1,542	4,565
Single	Island Digestive Health Center (opened 5/22/14)	2,732	5,044
Single	Island Endoscopy Center, LLC	9,887	8,983
Multi	Long Island Ambulatory Surgery Center	9,775	11,942
Single	Long Island Hand & Orthopedic Surgery Center, LLC	673	638
Multi	Melville Surgery Center	5,763	5,994
Multi	North Shore Surgi-Center	7,583	7,178
Multi	Progressive Surgery Center	1,356	1,112
Multi	South Shore Surgery Center	3,232	4,089
Multi	Suffolk Surgery Center	6,601	6,305
Total		53,217	65,935

Source: SPARCS-2016

The Suffolk County ASCs showed a 23.9% year-to-year increase in patient visits from 2014 to 2015.

The population of Suffolk County in 2010 was 1,493,350 with 625,791 individuals (41.9%) age 45 and over. This is the primary population group utilizing ambulatory surgery services. Per Cornell Program on Applied Demographics (PAD) projection data, this population group is estimated to grow to 674,710 by 2025 and represent 43.7% of the projected population of 1,543,715.

The number of projected procedures is 3,450 in Year One and 4,600 in Year Three. These projections are based on the current practices of participating surgeons. All of the projected procedures at the proposed center are currently being performed at Eastern Long Island Hospital, a 20% member of the applicant. The table below shows the projected payor source Years One and Three.

	Year One Volume	Year 1%	Year Three Volume	Year 3%
Projections-162358				
Commercial Ins	1,932	56%	2,576	56%
Medicare	1,277	37%	1,702	37%
Medicaid	104	3 %	138	3 %
Charity Care	69	2 %	92	2%
Other	68	2%	92	2%
Total	3,450	100.00%	4,600	100.00%

To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: AmeriChoice and Fidelis Medicaid. The center plans to meet with Hudson River Healthcare, an FQHC, to establish a patient referral relationship. The center will also reach out to local family shelters and homeless shelters in an effort to provide service to the underinsured residents in the service area.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Conclusion

Approval of this project will allow for additional access to ambulatory surgery services outside of the hospital setting for the communities of Suffolk County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Eastern Long Island Hospital Association (ELIH) is a member of the applicant. In this proposal, ELIH is partnering with local physicians to create an ASC in the community. The development of this center will enhance access to services, more effectively utilize health care resources, and provide a convenient option by reducing the need to travel to Eastern Long Island Hospital for services.

Proposed Operator	North Fork SC, LLC
Site Address	700 Boisseau Avenue Southold, NY 11971 (Suffolk County)
Surgical Specialties	Single Specialty: Pain Management Single Specialty: Gastroenterology
Operating Rooms	2 (Class B)
Procedure Rooms	1 (Class A)
Hours of Operation	Monday through Friday from 8:00 a.m. to 4:00 p.m. Providing pain management services 4 days/week and gastroenterological services 1 day/week. (As the center matures, hours will be expanded as needed to accommodate patients and physicians.)
Staffing (1st Year / 3rd Year)	12.7 FTEs / 12.7 FTEs
Medical Director(s)	Frank Adipietro, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Eastern Long Island Hospital 5.0 miles/ 8 minutes
On-call service	All patients will be provided with the number of a 24/7 on-call service which will immediately refer the patient to the center's on-call physician (a member of the center's credentialed medical staff).

Character and Competence

The members of North Fork SC, LLC and their membership interest are detailed in the chart below:

<u>Name</u>	<u>Membership Interest</u>
Frank Adipietro, M.D., <i>Medical Director</i>	45%
Dhiren Mehta, M.D.	35%
Eastern Long Island Hospital Association	20%
Frank Adipietro, MD	
Scott Bennett	
Daniel Brisotti	
Janice Claudio	
Paul Connor	
Vickie DeFriest	
Carole Donlin	
Helene Fall	
Margaret Flanagan	
David Fujita	
Robert Goldman	
Douglas Mathie	
Maureen Mills	
Thomas Murray	
James Preston	
Joseph Pufahl	
Jay Quartararo	
Edward Schott	

Frank Adipietro, M.D. will serve as the center's Medical Director. Dr. Adipietro is a board-certified anesthesiologist who is currently an attending physician at ELIH.

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

Ms. Fall disclosed that, in a former role as a Municipal Manager for a New Jersey Township, any lawsuit filed against the township named her, either by name or title.

Dr. Mehta disclosed two settled malpractice cases.

Mr. Quartararo disclosed an open legal malpractice claim that was filed in 2008 against him and his legal firm related to the filing of a gift tax return and deed.

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

Integration with Community Resources

The center will look to establish an outreach plan to the underserved which will include the development of referral arrangements with federally qualified health centers (FQHCs) and other community-based providers. The center is committed to serving all persons in need without discrimination due to any personal characteristics. Patients will not be excluded based on ability to pay and a sliding scale and charity care will be provided.

The center intends on implementing an electronic medical record (EMR) system, within 18 months of opening, which allows the patient's health information and plan of care to be accessible to the health care providers of the center and other health care providers outside of the center involved in providing medical care to the patient. Additionally, the center will consider joining a regional health information exchange (RHIO) or qualified health information exchange (HIE).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs, estimated at \$3,496,465, are as follows:

Renovation & Demolition	\$1,738,152
Design Contingency	173,815
Construction Contingency	173,815
Architect/Engineering Fees	173,815
Construction Manager Fees	43,454
Other Fees	20,000
Movable Equipment	1,060,399
Financing Costs	62,500
Interim Interest Expense	29,401
CON Application Fee	2,000
CON Processing Fee	<u>19,114</u>
Total Project Cost	\$3,496,465

Project costs are based on a start date of July 1, 2017, with an eight-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$534,630
Capital Lease	\$340,774
Other (Dr. Adipierto's personal loan, 4.5% Interest, 30-year term)	\$121,061
Bank Loan (5.04% interest, 7-year term, 15-year payout)	<u>\$2,500,000</u>
Total	\$3,496,465

Bridgehampton National Bank has provided a letters of interest at the stated terms for the bank loan and the personal loan to Dr. Adipierto (for up to \$600,000).

Lease Rental Agreement

The applicant submitted a draft lease for the proposed site. The terms are summarized below:

Premises:	Approximately 5,564 rentable square feet in an existing building located at 700 Boisseau Avenue, Southold (Suffolk County), NY
Landlord:	700 Boisseau Avenue Realty, LLC
Lessee:	North Fork SC, LLC
Term:	10 years with one (5) year renewal term
Rent:	\$150,000 annually (\$12,500 monthly or \$26.96 per square foot.) with a 3% annual increase from year 3 going forward.
Provisions:	Triple Net lease

The applicant provided an affidavit stating that the lease is an arm's length arrangement. The applicant submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

Capital Lease Rental Agreement

The applicant submitted a draft capital lease for two Cios Fusion mobile imaging machines. The terms are summarized below:

Equipment:	2 Cios Fusion Machines 1-I348HO
Lessor:	Siemens Financial Services, Inc.
Lessee:	North Fork SC, LLC
Term:	5 years
Rental:	\$82,120.20 annually (\$6,843.35 monthly)
Provisions:	End of term option to purchase equipment for \$1

Operating Budget

The applicant submitted their first and third year operating budgets, in 2017 dollars, summarized below:

	Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total
<u>Revenues</u>				
Medicaid	\$731.19	\$76,044	\$734.72	\$101,392
Medicare	\$612.81	\$782,557	\$613.05	\$1,043,409
Commercial	\$919.57	\$1,776,615	\$919.57	\$2,368,820
Other	\$1,102.09	\$76,044	\$1,102.09	\$101,392
Total Revenues		\$2,711,260		\$3,615,013
<u>Expenses</u>				
Operating	\$625.19	\$2,156,916	\$488.00	\$2,244,764
Capital	\$138.86	\$479,053	\$98.96	\$455,212
Total Expenses	\$764.05	\$2,635,969	\$586.96	\$2,699,976
Net Income or (Loss)		<u>\$75,291</u>		<u>\$915,037</u>
Utilization (procedures)		3,450		4,600

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current and projected Federal and State government reimbursement rates, with private pay payor rates reflecting adjustments based on estimated rates to be negotiated based on industry norms and ELIH's experience.
- Utilization projections are based on the current caseloads of Drs. Adiperto and Mehta. The applicant indicated that all of the projected procedures will come from Eastern Long Island Hospital, and that they are more appropriately performed at a FASC. Each physician has submitted letters in support of their utilization projections.
- Expense assumptions are based upon staffing, operating and capital costs as determined based on the experience of the participating physicians and ELIH, as well as the experience of other FASCs in New York State in providing similar service patient care.
- The breakeven based on the projected utilization is approximately 97.25% or 3,355 procedures in Year One, and 74.67% or 3,435 procedures in Year Three.

The budgets are reasonable.

Capability and Feasibility

The total project cost of \$3,496,465 will be satisfied by the proposed members' equity contribution of \$534,630, a capital lease for \$340,774, other assets of \$121,061 from Dr. Adiperto (via proceeds of a personal loan at the above stated terms), and a \$2,500,000 bank loan at the above stated terms.

Working capital requirements are estimated at \$449,996 based on two months of third year expenses. The applicant has submitted a letter of interest from Bridgehampton National Bank to finance \$224,998 of the working capital for a one-year term at Prime plus 1% interest, currently estimated 4.5% (Prime rate

was 3.5% as of December 16, 2016). The remaining \$224,998 will be provided from the members. Dr. Metha and ELIH will provide their portion of the working capital through their financial resources. Dr. Adipuerto does not have sufficient liquid resources to meet the equity and working capital requirement. Bridgehampton National Bank has provided a letter of interest for a personal loan to Dr. Adipuerto of up to \$600,000 to cover his portion of the equity and working capital requirements. BFA Attachment A is the net worth statement of the proposed physician members and the financial statements of ELIH, which indicates that both ELIH and Dr. Metha have sufficient liquid resources to meet the equity and working capital requirements.

BFA Attachment B is the pro-forma balance sheet of that shows operations will start with \$1,225,417 in equity.

North Fork SC, LLC projects a net income of \$75,291 and \$915,037 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected reimbursement rates for the respective payors. The payment rates for commercial payors were determined by the applicant based on contacts made with various similar service providers to obtain their current rate schedules. The budgets are reasonable.

The applicant 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 and certified financial statements of members of North Fork SC, LLC

BFA Attachment B

Pro Forma Balance Sheet of North Fork SC, LLC

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 9th day of March, 2017 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 dual Single-Specialty Freestanding Ambulatory Surgical Center for gastroenterology and pain management, to be located at 700 Boisseau Avenue, Southold, 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:

162358 B

North Fork SC, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed capital lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed personal loan for Dr. Adipuerto, acceptable to the Department of Health. [BFA]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of an assumed name, acceptable to the Department. [HSP]
9. Submission of a photocopy of an Amended Operating Agreement of North Fork SC, LLC, which is acceptable to the department. [CSL]
10. Submission of a photocopy of the lease agreement between North Fork SC, LLC and 700 Boisseau Avenue Realty, LLC, which is acceptable to the department. [CSL]
11. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of North Fork SC, LLC, which is acceptable to the department. [CSL]
12. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before July 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 staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]

5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

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 # 161303-E
Smile New York Outreach, LLC**

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment **Acknowledged:** April 29, 2016

Executive Summary

Description

Smile New York Outreach, LLC (Smile), a proprietary Article 28 diagnostic and treatment center (D&TC) with its administrative office located at 37-30 Review Avenue, Long Island City (Queens County), requests approval to extend their limited life for three years and to transfer 100% ownership interest in the D&TC to one new member. The current sole member, Matthew C. Harrison, Jr., proposes to transfer his membership interest to a new member as he plans to retire. Smile provides preventive dental care services (exams, cleanings and sealants) to underprivileged children in approved schools using transportable equipment. They are currently authorized through the School-Based Health Center Dental Program to serve children in Bronx, Kings, New York, Queens, Richmond and Westchester Counties. Smile was granted a five-year limited life as a demonstration project under CON 101116, and operations began effective July 29, 2011. The applicant notified the Department before their limited life expiration requesting a three-year extension.

Smile was originally approved to provide restorative care via referrals to proximate dentists or in their mobile van. A fixed site is required for Article 28 certification, but in this instance, the mobile van was deemed to satisfy that requirement as part of that demonstration project. Subsequent to approval, Smile stopped using the mobile van and has limited provision of restorative care to their patients, only through referrals to local private dental practices. As part of this application, Smile will add restorative dental care to their school-based program in the current school year.

Additionally, Smile has committed to developing a fixed site for the delivery of follow-up care for patients identified in school visits as needing restorative care that cannot be provided at the school sites and where referral to Smile's community dentist network is not a preferred option. The site will be at a to-be-determined location in New York City. Smile will submit a separate Certificate of Need application for this project to construct and certify the fixed site within six months of this project's review by the Public Health and Health Planning Council. It is expected that the entire process to bring the fixed site online will take approximately 12-18 months. As a result of this commitment, the Department will no longer require Smile to maintain or use a mobile van.

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

<u>Current</u>	
Smile New York Outreach, LLC	
<u>Member</u>	<u>%</u>
Matthew C. Harrison, Jr.	100%

<u>Proposed</u>	
Smile New York Outreach, LLC	
<u>Member</u>	<u>%</u>
Stephen Marshall, D.D.S	100%

Smile New York Outreach, LLC employs one FTE, an administrator. All other staff, including all clinical staff, clinical operations, and most administrative functions are provided through contracted entities.

Smile is currently approved by the Department of Health School Based Health Center Dental (SBHC-D) program to operate at 262 school sites, and approval of this application relates only to these school sites. Requests to operate at any additional school sites will be handled separately through the SBHC-D program.

OPCHSM Recommendation

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

Need Summary

The service area includes Bronx, Kings, Queens, Richmond, New York and Westchester counties. The schools served by Smile New York are mostly located in areas with high levels of poverty. The service area includes a significant number of census tracts that are designated as Health Professional Shortage areas for Dental Health Services or as Medically Underserved Area/Population.

Program Summary

Smile will be required to abide by programmatic reporting requirements and has committed to adding restorative care at the schools this school year and building a fixed site within eighteen months of approval. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

There are no project costs associated with this proposal. The projected budget is as follows:

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$1,241,147	\$4,261,186
Expenses	<u>\$1,228,299</u>	<u>\$4,249,998</u>
Gain/(Loss)	\$12,848	\$11,188

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of signed agreement, acceptable to the Department, to participate in the Department of Health School Based Health Center Dental (SBHC-D) program's reporting requirements for all providers as outlined here. Quarterly reports and annual performance measures, as defined and outlined by the Department, must be completed and submitted within 30 days of due date. Quarterly reports/submissions will include but are not limited to:
 - a. Dates each school was visited and types of services provided SBHC-D enrollment and school enrollment;
 - b. Changes related to SBHC-D site name, address, and/or closure;
 - c. For children in NYC, number and percent of children requiring follow up care and the number of children in receipt of follow up care using case management from a) Smile or b) NYC DOHMH/NYC DOE case manager, reported separately;
 - d. For children seen outside of NYC school district, number and percent of children requiring follow up care and the number and percent of children in receipt of follow up care using case management from Smile. [BDH]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed Clinical Services Agreement, acceptable to the Department. [BFA]
4. Submission of a real property lease, which is acceptable to the department. (CSL)
5. Submission of a photocopy of the Operating Agreement of Smile New York Outreach, LLC, which is acceptable to the department. (CSL)
6. Submission of a Membership Interest Purchase Agreement, acceptable to the Department. (CSL)
7. Submission of an executed Software License and Services Agreement, acceptable to the Department. [CSL]
8. Submission of an executed affidavit from the applicant agreeing to the Department's Division of Family Health's requirements for operation, acceptable to the Department. (CSL)
9. Submission of the applicant's executed Clinical Services Agreement, acceptable to the Department. (CSL)
10. Submission of the applicant's executed Business Associates 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. Submission of a Certificate of Need application, acceptable to the Department, for a fixed dental treatment clinic site by August 8, 2017, and commencement of clinic operations at the site, approved by the Department, by August 8, 2018. [PMU]

Council Action Date

March 9, 2017

Need Analysis

Background

The Smile New York Outreach service area includes Bronx, Kings, Queens, Richmond, New York and Westchester Counties. The schools served are mostly in areas with high levels of poverty. The service area includes a significant number of census tracts that are designated as Health Professional Shortage areas for Dental Health Services or as Medically Underserved Area/Population.

Smile New York Outreach offers preventative services such as exams, cleanings and sealant for students who have not received these routine dental services outside the school setting. Smile New York has been approved to provide school-based health care dental services to 262 schools throughout the New York City region. Services are provided utilizing portable equipment. The applicant will be adding restorative care to their services beginning this school year. The number of projected visits is 41,167 by the third year.

The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

Conclusion

Approval of this project allows for the continued access to dental care services to the underprivileged children within the New York City and Westchester areas.

Recommendation

From a need perspective, contingent approval with a three-year extension of their operating certificate is recommended.

Program Analysis

Project Description

Smile New York Outreach, LLC is an approved School-Based Health Center Dental (SBHC-D) program sponsor currently approved to serve 262 schools within Bronx, Kings, Queens, Richmond, New York and Westchester counties. Preventive dental services are provided using portable equipment.

The original approval was for Smile to operate as a SBHC-D provider using a mobile van to provide restorative care when or if families chose not to visit a community dental provider for such care. However, upon review of this CON it was confirmed by the applicant that Smile is no longer using a mobile dental van to provide services and has not been providing any restorative care directly. Through the review of this project, Smile has committed to provide restorative services at the approved schools beginning in the fall (2016) and has committed to building a fixed site in addition to maintaining the referral network of 122 dental providers. The new fixed-site will be used for the delivery of follow-up care for patients identified in school visits who need restorative care that cannot be performed in the school setting. This facility will also be open to the broader community for dental services. The site will be at a to-be-determined location in New York City. Smile will submit a separate Certificate of Need Application to construct and certify the fixed site. Referrals to Smile's community dentist network for restorative care will also be made available.

Analysis

Programmatic concerns related to Smile operations have been adequately addressed through letters and conference calls with the Department's School-Based Health Center Dental Program. Concerns were related to: approved school list discrepancies, staffing, policies and procedures related to treatment protocol, referral and follow-up/case management protocols, after-hours access to services, infection control, and quality improvement.

Smile has also indicated that sealant retention checks are performed by “routine random sampling of our providers every six months.” In discussion with the Department, Smile indicated that retention checks are performed on every child annually. The Department will monitor performance for sealant checks in quarterly reports.

Smile employs one FTE, an administrator. All of the clinical treatment team and administrative staff is contracted through Big Smiles Dental NY PLLC and ReachOut Healthcare America, Ltd, as documented in the Clinical Services Agreement and the Software License and Services Agreement. Dr. Marshall will serve as Dental Director and oversee quality assurance functions. Smile’s staffing pattern appears to be adequate for providing services to children in the current 262 schools twice a year.

Smile and its contracted providers will continue to utilize its internal protocols for case management. Smile has indicated that it will work with the New York City Office of School Health, who is adding their own case management resources, to assist with families when Smile has been unsuccessful in confirming receipt of care.

Character and Competence

Currently, Mr. Matthew Harrison is the sole member of Smile New York Outreach, LLC. Mr. Harrison plans to retire and proposes the transfer of his membership interest to Stephen Marshall, D.D.S.

Dr. Marshall is a former Associate Professor of Clinical Dentistry and has previously served as the Senior Associate Dean of the Columbia University College of Dental Medicine. Dr. Marshall has also served as the Vice President of Columbia University Healthcare, Inc., an Article 28 dental/primary care facility.

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.

Compliance with Applicable Codes, Rules and Regulations

The dental staff will continue to ensure that procedures performed in the schools and at the facility conform to generally accepted standards of practice and that privileges granted are within the dentist’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 as evidenced by its signed affidavit and execution of an agreement with the Department.

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

Conclusion

Smile will be required to abide by programmatic requirements and has committed to adding restorative care at the schools this current school year and building a fixed site within eighteen months of approval. 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 with a three-year extension of the operating certificate is recommended.

Financial Analysis

Membership Interest Purchase Agreement

The applicant submitted an executed Membership Interest Purchase Agreement for the transfer of ownership, to be effectuated upon PHHPC approval. The terms of the agreement are as follows:

Date:	April 21, 2016
Seller:	Matthew Harrison, Jr.
Buyer:	Stephen Marshall, DDS
Assets Assumed:	100% Membership interest in Smile New York Outreach, LLC
Excluded Assets:	None
Liabilities Assumed:	All liabilities associated with the business
Excluded Liabilities:	N/A
Purchase Price:	\$100
Payment of Purchase Price:	Cash (paid on execution date of agreement)

The applicant 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 December 2, 2016 there was an outstanding audit liability of \$200,640.

Software License and Services Agreement

As disclosed under CON 101116, the applicant entered into a Software License and Services Agreement with ReachOut Healthcare America, Ltd. for computer system, purchasing, and administrative services, summarized as follows:

Date:	November 1, 2010
Provider:	ReachOut Healthcare America, Ltd. (RHA)
Facility:	Smile New York Outreach, LLC
Term:	Agreement shall continue in effect unless terminated by either parties for cause.
Services Provided:	Exclusive software license restricted to the territory of the City of New York; full time access of RHA's computer system for receiving and transmitting dental records and instant retrieval storage system for each dental visit to a school; clerical data entry and statistical reporting. Pursuant to clinic's direction; purchase supplies and equipment and provision of fully equipped dental vans for lease. Financial services includes; accounting, bookkeeping, monitoring and payment of accounts. Assist in the preparation of physical audits of equipment and supplies.
Compensation:	\$400 per day per school visited (paid monthly)

The Software License and Services Agreement provides for the administration of non-clinical aspects of the operation, including providing dental equipment, supplies, information systems, scheduling, customer service and financial planning, reporting and analysis. The agreement was originally restricted to the territory of New York City and amended to include Westchester County under CON 112250. The applicant indicated that the agreement will continue to be in effect upon PHHPC approval of this application.

Clinical Services Agreement

Also under CON 101116, the applicant entered into a Clinical Services Agreement, which provides for all clinical staff of the D&TC and assistance with other administrative services for clinical operations, as described below:

Date:	November 1, 2010
Provider:	Big Smiles Dental New York, PLLC
Facility:	Smile New York Outreach, LLC
Term:	Agreement shall continue in effect unless terminated by either parties for cause.
Services Provided:	Administrative services for clinical aspects of the operation including assisting the Clinic in formulating professional policies, determining staffing requirements, submitting monthly summary reports, assigning a dentist to attend all Clinic Quality Improvement Committee meetings, and participating in survey/evaluations required by state or federal government agencies; PLLC shall engage, either as employees or independent contractors, dentists, dental hygienists and dental support staff to provide services at the Clinic; PLLC shall hire, monitor and supervise its dentists and dental staff providing professional services to the Clinic's patients and ensure that adequate professional staff are available during all hours when and at all locations where the Clinic provides dental services; PLLC shall provide the Dental Director for the Clinic.
Compensation:	\$1,400 per day per school visited (paid monthly)

Big Smiles Dental New York, PLLC has a relationship with ReachOut Healthcare America, Ltd., The fees related to these two agreements (combined, \$1,800 per day per school visited) are included in the financials as salaries, benefits and contract services expenses and general and administrative expenses.

Operating Budget

The following is a summary of the submitted operating budget, presented in 2016 dollars, for the Current Year and Year One subsequent to the change in membership and limited life extension:

Revenues	Current Year		Year One	
	Per Visit	Total	Per Visit	Total
Medicaid	\$154.04	\$1,193,927	\$128.00	\$4,108,767
Commercial	\$72.51	\$15,300	\$72.52	\$49,386
All Other	\$94.44	<u>\$31,920</u>	94.44	<u>\$103,033</u>
Total		\$1,241,147		\$4,261,186
<u>Expenses</u>				
Operating	\$93.48	\$1,192,297	\$100.81	\$4,149,998
Capital	<u>\$2.82</u>	<u>\$36,002</u>	<u>\$2.43</u>	<u>\$100,000</u>
Total	\$96.31	\$1,228,299	\$103.24	\$4,249,998
Net income/loss		\$12,848		\$11,188
Utilization (Visits)		12,754		41,167

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

- Projected Medicaid revenue is based on the facility's current Medicaid rate discounted to reflect the impact of managed care.
- Utilization by payor source for Year One is expected as follows:

Medicaid	77.98%
Charity Care	17.72%
Commercial	1.65%
All Other	2.65%
- Breakeven utilization is projected at 41,059 visits or 99.74% of projected Year One visits.

Capability and Feasibility

There are no project costs associated with this proposal. Stephen Marshall, D.D.S will acquire 100% membership interest in Smile New York Outreach, LLC for \$100 as detailed above.

Working capital requirements are estimated at \$708,333 based on two months of year one expenses. The proposed member will provide \$354,167 in equity. The remaining \$354,166 will be provided through a working capital loan at an interest rate of 7% with a five-year term. ReachOut HealthCare America, Ltd. has provided a letter of interest for the proposed working capital financing. BFA Attachment A is the net worth statement for the proposed new owner, which shows sufficient resources to cover both the purchase price and the working capital equity requirements for this project.

BFA Attachment D is the pro-forma balance sheet of Smile New York Outreach, LLC, which indicates a negative member's equity of \$789,584 as of the change of ownership. The negative member's equity is due to the applicant taking over the long-term debt liability of \$1,523,722 as part of the purchase agreement. The applicant indicated that the long-term debt is associated with a private party loan that was entered into by Smile New York Outreach, LLC in 2014.

The budget indicates a net income of \$11,188 will be achieved during Year One. The budget appears reasonable.

BFA Attachment C is Smile New York Outreach, LLC's 2013-2015 certified financial statements and their internal financial statements as of August 31, 2016, which show that the facility generated an average operating loss of \$179,599 and had an average negative net asset position and an average positive working capital position for the 2013-2015 period shown. The internal financials as of August 31, 2016, show that the entity generated an operating loss of \$15,002 and had a negative net asset position and a positive working capital position for the period shown. The applicant indicated that the 2013-2015 loss was caused by Smile being in a small number of schools during the period 2014 - July 20, 2015. On July 21, 2015, Smile was authorized to add a substantial number of schools to its service list, which allowed the facility to begin the overall operations turnaround. The applicant indicated that the 2016 loss through the end of August was due to Smile operating in both July and August when schools are not in session. Smile anticipated a return to profitable status once school resumed. BFA Attachment C also shows Smile's recently updated statement of operations as of November 30, 2016, which shows that the facility generated a net loss of \$32,000 after one-time only expenses of \$120,000. These expenses are associated with the processing of this CON. Without these expenses the facility would have generated a net income of \$88,000 through November 30, 2016.

Per the auditor's notes to the 2015 certified financial statements, as of December 31, 2015, Smile had a long-term liability of \$2,025,614 payable to a private party that provided funding for the operating cash flow needs of the D&TC. In accordance with the agreement Smile entered into with this private party, "no interest is due on the amounts advanced and the private party will not demand payment earlier than January 2, 2017." The auditor provided a Going Concern disclosure in the 2015 financials, indicating that the advanced amounts are not due until January 2, 2017, and the private party indicated their intent to continue to fund cash flow needs. However, no assurance could be provided that these events would occur. The financial statements did not include any adjustments relating to recoverability of assets or liabilities should the D&TC be unable to continue in existence.

It is noted that per the internal financials as of August 31, 2016, the long-term liability is stated at \$1,523,722. The executed Membership Interest Purchase Agreement provides that the proposed new member will assume all liabilities associated with the business.

Recommendation

From a financial perspective, contingent approval with a three-year extension of the operating certificate is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Member of Smile New York Outreach, LLC
BFA Attachment B	Organization Chart
BFA Attachment C	2013-2015 Certified, 1/1/2016-8/31/2016 Internal Financial Statements and the 11/30/2016 Internal Statement of Operations for Smile New York Outreach, LLC
BFA Attachment D	Pro Forma Balance Sheet for Smile New York Outreach, 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 9th day of March, 2017 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a three (3) year extension of temporary life for CON #101116 and transfer of 100% membership interest 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:

161303 E

Smile New York Outreach, LLC

APPROVAL CONTINGENT UPON:

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

1. Submission of signed agreement, acceptable to the Department, to participate in the Department of Health School Based Health Center Dental (SBHC-D) program's reporting requirements for all providers as outlined here. Quarterly reports and annual performance measures, as defined and outlined by the Department, must be completed and submitted within 30 days of due date. Quarterly reports/submissions will include but are not limited to:
 - a. Dates each school was visited and types of services provided SBHC-D enrollment and school enrollment;
 - b. Changes related to SBHC-D site name, address, and/or closure;
 - c. For children in NYC, number and percent of children requiring follow up care and the number of children in receipt of follow up care using case management from a) Smile or b) NYC DOHMH/NYC DOE case manager, reported separately;
 - d. For children seen outside of NYC school district, number and percent of children requiring follow up care and the number and percent of children in receipt of follow up care using case management from Smile. [BDH]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed Clinical Services Agreement, acceptable to the Department. [BFA]
4. Submission of a real property lease, which is acceptable to the department. (CSL)
5. Submission of a photocopy of the Operating Agreement of Smile New York Outreach, LLC, which is acceptable to the department. (CSL)
6. Submission of a Membership Interest Purchase Agreement, acceptable to the Department. (CSL)
7. Submission of an executed Software License and Services Agreement, acceptable to the Department. [CSL]
8. Submission of an executed affidavit from the applicant agreeing to the Department's Division of Family Health's requirements for operation, acceptable to the Department. (CSL)
9. Submission of the applicant's executed Clinical Services Agreement, acceptable to the Department. (CSL)
10. Submission of the applicant's executed Business Associates 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. Submission of a Certificate of Need application, acceptable to the Department, for a fixed dental treatment clinic site by August 8, 2017, and commencement of clinic operations at the site, approved by the Department, by August 8, 2018. [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 # 161200-E
**Kennedy Pavilion RH LLC d/b/a The Pavilion at Queens for
Rehabilitation & Nursing**

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: March 29, 2016

Executive Summary

Description

Kennedy Pavilion RH, LLC (KPRH), a New York limited liability company, requests approval to be established as the operator of The Pavilion at Queens for Rehabilitation and Nursing, a 302-bed (including 20 ventilator dependent beds), proprietary, residential health care facility (RHCF) located at 36-17 Parsons Boulevard, Flushing (Queens County). Kennedy Pavilion at Queens RH I, LLC is the current operator of the facility. A separate entity, 3617 BEH Parsons Realty LLC, will acquire the real property. There will be no change in beds or services provided.

On March 15, 2016, Kennedy Pavilion at Queens RH I, LLC entered into an Asset Purchase Agreement (APA) with KPRH for the sale and acquisition of the operating interest of the RHCF for a purchase price of \$10,645,500. Concurrently, 3617 BH Parsons Realty, LLC, the current realty owner, entered into a Real Estate Purchase Agreement (REPA) with 3617 BEH Parsons Realty LLC for the sale and acquisition of the realty interest for a purchase price of \$50,921,500. Both the APA and REPA were amended on December 20, 2016, reducing the purchase price for the operations to \$10,116,500 and increasing the purchase price of the realty to \$56,721,197. The price of the operating assets was reduced to reflect the anticipated principal balance of the seller's indebtedness to its landlord at closing. The applicant will pay the purchase price by assuming the principal balance of that note on the closing date. The REPA was amended in like fashion to reflect the principal balance due on the real estate at closing. The APA and REPA will close

simultaneously upon approval of this application by the Public Health and Health Planning Council (PHHPC). The applicant will lease the premises from 3617 BEH Parsons Realty LLC. There is a relationship between KPRH and 3617 BEH in that the entities have common ownership.

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

<u>Current</u>	
Kennedy Pavilion RH I, LLC	
<u>Members</u>	<u>%</u>
Bernard Fuchs	50%
Deena Hersh	25%
Richard Platschek	25%

<u>Proposed</u>	
Kennedy Pavilion RH, LLC	
<u>Members</u>	<u>%</u>
Deena Hersh	20%
Esther Farkovits	20%
Joel Edelstein	10%
Bernard Fuchs	10%
Gerald Fuchs	10%
Tova Fuchs	10%
Israel Freund	10%
Avraham Weits	10%

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Occupancy was 98.3% in 2012, 96.5% in 2013, and 94.9% in 2014. Current occupancy, as of September 7, 2016 was 96.0%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs associated with this proposal. The purchase prices for the operations and realty are \$10,116,500 and \$56,721,197, respectively, for a total of \$66,837,697. The financing is as follows:

- 3617 BEH Parsons Realty LLC will acquire the RHCF's real property with members' equity of \$100 (paid) and the remaining \$56,721,097 to be financed via a bank loan for \$60,471,000 at 5% interest for a 30-year term.

- KPRH will acquire the RHCF operating interests with members' equity of \$100 (paid) and the remaining \$10,116,400 to be financed via the assumption of the promissory note with 3617 BH Parsons Realty LLC for a nine-year term and interest at the IRS annually compounded Applicable Federal Rate.

Greystone Funding Corporation has provided a letter of interest for the loan at the stated terms. The applicant indicated that the \$3,749,903 remaining balance associated with the proposed realty entity financing is to be used for the sole purpose of additional closing costs should any arise. The projected budget is:

RHCF Revenue	\$39,012,604
Vent Revenue	<u>\$4,179,574</u>
Total Revenues	\$43,192,178
Total Expenses	<u>\$37,991,423</u>
Gain/(Loss)	\$5,200,755

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 permanent mortgage for the real estate purchase provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of an executed promissory note for the RHCF operations purchase, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed assignment and assumption agreement for the RHCF's property lease, acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. 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 a signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of a signed amended Operating Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of the signed Real Estate Purchase Agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

March 9, 2017

Need Analysis

Analysis

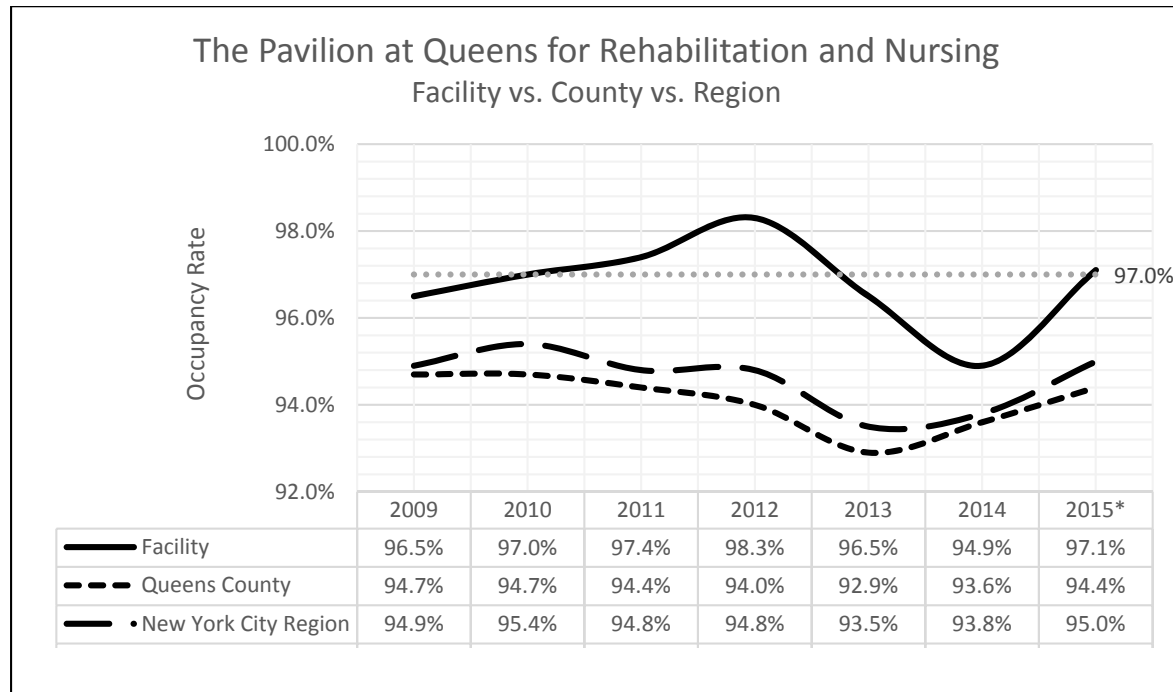
The facility is certified for 282 RHCf and 20 ventilator beds. Per the current Need Methodology, there is a need for 9,715 additional beds in the New York City Region.

RHCf Need – NYC Region

2016 Projected Need	51,071
Current Beds	41,644
Beds Under Construction	-288
Total Resources	41,356
Unmet Need	9,715

The Pavilion at Queens for Rehabilitation and Nursing's RHCf occupancy was 98.3% in 2012, 96.5% in 2013, and 94.9% in 2014. Current overall in 2016 occupancy is 97.7%. This facility includes 20 ventilator-dependent beds. Occupancy for this unit in 2015 was 82.2% (4 vacant beds) and as of September 7, 2016, this unit is 70% occupied, with 6 vacant beds. The facility has a history of maintaining high RHCf occupancy at or near the Department's planning optimum, which is expected to continue going forward.

The overall occupancy for the New York City Region was 93.8% in 2014 and 95% in 2015 (unaudited).



*unaudited; based on facility reported daily census

Access

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

The Pavilion at Queens for Rehabilitation and Nursing's Medicaid admissions of 30.3% in 2013 and 22.9% in 2014 exceeded Queens County's 75% rates in 2013 and 2014 of 26.4% and 24.0%, respectively.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Pavilion at Queens for Rehabilitation and Nursing	Same
Address	36-17 Parsons Boulevard Flushing, NY 11354	Same
RHCF Capacity	302	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Kennedy Pavilion RH III LLC Richard Platschek 35% Deena Hersh 35% Bernard Fuchs 30%	Kennedy Pavilion RH LLC *Deena Hersh 20% Esther Farkovits 20% *Joel Edelstein 10% Bernard Fuchs 10% Gerald Fuchs 10% Tova Fuchs 10% Israel Freund 10% Avraham Weits 10%
		*Managing Member

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present
Chautauqua Nursing and Rehabilitation	12/2014 to present
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Hudson Pointe at Riverdale Center for Nursing and Rehab	01/2006 to 08/2010
Little Neck Care Center	04/2011 to 1/2013
Nassau Extended Care Facility	06/2006 to present
Park Avenue Extended Care Facility	06/2006 to present
Sapphire Center of Central Queens	12/2014 to present
Seagate Rehabilitation and Nursing Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge	08/2015 to present
The Pavilion at Queens Rehabilitation and Nursing	01/2015 to present
The Villages of Orleans	01/2015 to present
Throgs Neck Extended Care Facility	06/2006 to present
Townhouse Extended Care Center	06/2006 to present
White Plains Center for Nursing	06/2006 to present
Friendship Ridge (PA)	03/2014 to present

Licensed Home Care Services Agency (LHCSA)

Pella Care, LLC	06/2006 to present
Parent Care Home Care, LLC	06/2006 to present

Individual Background Review

Deena Hersh indicates she is a retired homemaker and has a Bachelor's Degree from Everglades University. She discloses the following ownership health facility ownership interests:

Chautauqua Nursing and Rehabilitation (25% member)	12/2014 to present
Sapphire Center for Rehab & Nursing of Central Queens (35%)	12/2014 to present
Seagate Rehabilitation and Nursing Center (10% member)	12/2014 to present

Joel Edelstein is employed as the Director of Operations at Platinum Credit Management LP, an investment fund located in New York, NY. Mr. Edelstein has a BS degree from Touro College, and will serve as the co-managing member with Deena Hersh. Mr. Edelstein discloses the following health facility interest:

Friendship Ridge (PA) (5% member)	03/2014 to present
-----------------------------------	--------------------

Esther Farkovits is currently employed as a teacher in Mdreshet Torah V'Chesed in Israel. Ms. Farkovits has a BS degree from Touro College and discloses the following ownership health facility ownership interests:

The Citadel Rehab and Nursing Center at Kingsbridge (25%)	08/2015 to present
Little Neck Care Center (50%)	04/2011 to 1/2013
Nassau Extended Care Facility (7%)	07/2004 to present
Park Avenue Extended Care Facility (7%)	07/2004 to present
Seagate Rehabilitation and Nursing Center (10%)	12/2014 to present
South Shore Rehabilitation and Nursing Center (45%)	04/2014 to present
Throgs Neck Extended Care Facility (7%)	07/2004 to present
Townhouse Extended Care Center (7%)	07/2004 to present
White Plains Center for Nursing (12%)	07/2011 to present

Israel Freund is currently employed as the controller at the Pavilion of Queens Rehabilitation and Nursing. Mr. Freund has a diploma from Yeshivah Mevor Chaim and is a licensed notary public. Mr. Freund discloses the following health facility ownership interests:

Friendship Ridge (PA) (5%)	03/2014 to present
----------------------------	--------------------

Bernard Fuchs is the principal in Platinum Management LLC, an investment fund located in New York, NY, and the Chief Executive Officer of Kennedy Management LLC, a healthcare management company. Mr. Fuchs has a degree from Torah Vodaath Talmudic Seminary, and discloses the following health facility ownership interests:

Bensonhurst Center for Rehabilitation and Healthcare (5%)	01/2012 to present
Hopkins Center for Rehabilitation and Healthcare (3%)	03/2011 to present
Hudson Pointe (50%)	01/2006 to 08/2010
The Pavilion at Queens Rehabilitation and Nursing (50%)	01/2015 to present
The Villages of Orleans Health and Rehabilitation Center (100%)	01/2015 to present

Gerald Fuchs is the Chief Operating Officer of The Pavilion at Queens Rehabilitation and Nursing. Mr. Fuchs is a licensed nursing home administrator with license in good standing, and has a BS degree from Touro College. Mr. Fuchs discloses the following health facility ownership interests:

Bensonhurst Center for Rehabilitation and Healthcare (5%)	01/2012 to present
Hopkins Center for Rehabilitation and Healthcare (3%)	03/2011 to present
Friendship Ridge (PA) (5%)	03/2014 to present

Tova Fuchs indicates she has been retired since 2004, and has a Masters degree from Adelphi University. Ms. Fuchs discloses the following health facility ownership interests:

Bensonhurst Center for Rehabilitation and Healthcare (5%)	01/2012 to present
Hopkins Center for Rehabilitation and Healthcare (3%)	03/2011 to present
Friendship Ridge (PA) (5%)	03/2014 to present

Avraham Weits is the Controller of Hopkins Center for Rehabilitation in Brooklyn and the Controller at Beach Terrace Care Center. Mr. Weits has a BS degree from Rabbinical College in Jerusalem, Israel. Mr. Weits discloses no health facility ownership interests.

Character and Competence - Analysis

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

A review of Hopkins Center for Nursing and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-12-37 issued August 24, 2012 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit Abuse/Neglect/Mistreatment, 10 NYCRR 415.5(a) Dignity and 10 NYCRR 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-15-006 issued July 2, 2015 for surveillance findings on February 29, 2012. Deficiencies were found under 10 NYCRR 415.3(c)(l)(ii) – Right to Refuse; Formulate Advanced Directives.

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 Nassau Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order NH-14-007 issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care Pressure Sores.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-030 issued January 19, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care Accidents and 10 NYCRR 415.26 Administration.

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 Bensonhurst Center for Rehabilitation and Healthcare, Chautauqua Nursing and Rehabilitation, Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, Little Neck Care Center, Park Avenue Extended Care Facility, Sapphire Center of Central Queens, Seagate Rehabilitation and Nursing Center, South Shore Rehabilitation and Nursing Center, The Citadel Rehab and Nursing Center at Kingsbridge, The Pavilion at Queens Rehabilitation and Rehabilitation Center, The Villages of Orleans Health and Rehabilitation Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, White Plains Center for Nursing and Friendship Ridge (PA) for the time period identified above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of the licensed home care services agencies Pella Care, LLC and Parent Care Home Care, LLC for the time periods identified above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Quality Review

Provider Name	Overall	Health Inspection	MDS Quality Measures
The Pavilion At Queens For Rehabilitation & Nrsing	****	****	***
Bensonhurst Center For Rehab And Healthcare	*****	****	*****
Chautauqua Nursing And Rehabilitation	*	**	***
Hopkins Center For Rehabilitation And Healthcare	**	***	***
Nassau Rehabilitation & Nursing Center (Nassau Extended Care)	***	***	*****
Park Avenue Extended Care Facility	****	****	*****
Sapphire Ctr For Rehab & Nursing Of Central Queens	*****	*****	****
Seagate Rehabilitation And Nursing Center	***	****	****
South Shore Rehabilitation And Nursing Center	****	***	*****
The Citadel Rehab & Nursing Ctr At Kingsbridge	**	***	**
The Villages Of Orleans Health And Rehab Ctr	*	*	*
Throgs Neck Rehabilitation & Nursing Center	****	*****	****
Townhouse Center For Rehabilitation & Nrsng (Townhouse Extended Care)	*	**	*
White Plains Center For Nursing Care Llc	**	**	****
Brighton Rehabilitation And Wellness Center (Friendship Ridge)	*	*	**

Project Review

This application proposes to establish Kennedy Pavilion RH LLC as the new operator of The Pavilion at Queens for Rehabilitation and Nursing. The facility will continue to operate under its current name under the new operator.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. All health care facilities are in substantial compliance with all rules and regulations.

Conclusion

The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement (Operations)

The applicant submitted the executed APA and APA Amendment to acquire the RHCF's operating interests. The agreement will become effectuated upon PHHPC approval of this CON.

Date:	March 15, 2016 (amended December 20, 2016)
Seller:	Kennedy Pavilion RH I, LLC
Buyer:	Kennedy Pavilion RH, LLC
Purchased Assets:	All of the following items associated with the operations of the business including: all tangible assets; telephone and fax numbers; websites and domain names; business trade names; service/trademarks and logos; manufactures' and vendors' warranties; seller's rights in any agreements; seller's book and records; seller's licenses, certificates and approvals to do business; resident funds held in trust in connection with the nursing home, Medicaid and Medicare provider numbers and all goodwill.
Excluded Assets:	N/A
Liabilities Assumed:	All associated with basic assets and facility, regardless of when accrued.
Excluded Liabilities:	N/A
Purchase Price:	\$10,116,500 (per Amendment)
Payment :	\$100 deposit with \$10,116,400 due at closing through the assumption of the promissory note with 3617 BH Parsons Realty, LLC.

Purchase and Sale Agreement (Real Property)

The applicant submitted an executed REPA and REPA Amendment for the purchase of the RHCF's real property. This agreement will close concurrent with the APA upon PHHPC approval.

Date:	March 15, 2016 (amended December 20, 2016)
Seller:	3617 BH Parsons Realty, LLC
Buyer:	3617 BEH Parsons Realty LLC
Purchased Assets:	All seller's right, title and interest in and to the real property, buildings and improvements located at 36-17 Parsons Boulevard, Flushing, NY.
Excluded Assets:	None
Liabilities Assumed:	None
Purchase Price:	\$56,721,197 (per Amendment)
Payment:	\$100 deposit and \$56,721,097 due at closing

The operations and real estate purchase prices are proposed to be satisfied as follows:

Operations

Equity (Operations Members- paid)	\$100
Assumption of Promissory Note with 3617 BH Parsons Realty LLC *	<u>\$10,116,400</u>
Total Amount for Operations	\$10,116,500

Realty

Equity (Realty Members - paid)	\$100
Funds provided via Mortgage (30 years, 5% interest)	<u>\$56,721,097</u>
Total Amount for Realty	\$56,721,197

Total Realty Funds Available

Real Estate–Mortgage (30 years, 5% interest)	\$60,471,000
Less Amounts Payable to Seller	<u>(\$56,721,097)</u>
Total Funds Available	<u>\$3,749,903</u>

* Terms: 9 years, interest at IRS annually compounded AFR (2.26% as of December 2016)

Greystone Funding Corporation has provided a letter of interest for the real estate mortgage loan at the stated terms. 3617 BH Parsons Realty LLC has provided a letter of interest for the promissory note related to the operations purchase at the stated terms.

The applicant indicated that the \$3,749,903 remaining balance associated with the proposed realty entity financing is to be used for the sole purpose of additional closing costs should any arise.

The applicant 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, the facility has no outstanding Medicaid liabilities.

Lease Agreement

The applicant submitted an executed lease agreement, summarized below:

Date:	September 11, 2014
Premises:	A 302-bed RHCF with 282 RHCF beds and 20 Vent beds located at 36-17 Parsons Boulevard, Flushing, NY
Lessor:	3617 BH Parsons Realty, LLC
Lessee:	Kennedy Pavilion RH I, LLC
Term:	31 years with one (1) 10-year renewal
Rental:	\$6,586,036 annually (\$548,836.33 monthly)
Provisions:	Lessee pays for all taxes, utilities, insurance and maintenance fees (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 tenant through common ownership between the entities.

Assignment and Assumption Agreement

The applicant submitted a draft Assignment and Assumption Agreement for the assignment of the facility lease, summarized below:

Assignor (Lessor):	3617 BH Parsons Realty, LLC
Assignee(Lessor):	3617 BEH Parsons Realty LLC
Assignor (Lessee):	Kennedy Pavilion RH I, LLC
Assignee (Lessee):	Kennedy Pavilion RH, LLC
Liabilities:	N/A
Lease Assigned:	Lease associated with the premises located at 36-17 Parsons Boulevard, Flushing, NY
Terms/Provisions:	No change

Operating Budget

The following is a summary of the submitted operating budget, presented in 2016 dollars, for the current year and year one subsequent to the change in ownership:

	<u>Current Year (2015)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenue RHCf</u>				
Medicaid	\$312.43	\$19,066,637	\$335.33	\$20,485,995
Medicare	\$459.45	\$7,945,810	\$605.48	\$10,308,862
Private Pay	\$518.56	\$11,319,637	\$360.49	\$7,942,747
Other Revenue		<u>\$268,641</u>		<u>\$275,000</u>
Total RHCf Revenue		\$38,600,725		\$39,012,604
 <u>Revenue Vent</u>				
Medicare	\$709.57	\$1,336,833	\$925.98	\$1,759,362
Medicaid	\$558.91	\$1,439,187	\$611.27	\$1,589,302
Private Pay	\$971.98	<u>\$1,452,138</u>	\$553.94	<u>\$830,910</u>
Total Vent Revenue		\$4,228,158		\$4,179,574
Total Revenue		\$42,828,883		\$43,192,178
 <u>Expenses</u>				
Operating	\$279.51	\$29,656,798	\$287.08	\$30,474,357
Capital	<u>\$63.01</u>	<u>\$6,685,601</u>	<u>\$70.81</u>	<u>\$7,517,066</u>
Total	\$342.52	\$36,342,399	\$357.89	\$37,991,423
Net income/loss		<u>\$6,486,484</u>		<u>\$5,200,755</u>
Utilization (pt. days)		106,103		106,151
Occupancy		96.26%		96.30%

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

- Revenues, expenses and utilization are based on both the facility's current operations and on the applicant's experience operating nursing homes of similar size and census. The projected increase in the RHCf Medicaid rate is due to the increase in the facility's CMI (from 1.23 in 2015 to 1.44 in 2016). The increase in expenses is attributable to small increases in all cost categories with the largest increase related to salary/wages and employee benefits.
- Utilization by payor source for year one is expected as follows:

Medicaid	59.34%
Medicare	18.49%
Private Pay	22.17%
- Utilization was 95.1% in 2013 and 94.9% in 2014. As of September 22, 2016, the facility had a current utilization of 96.7%.
- Breakeven utilization is projected at approximately 87.88% for year one.

Capability and Feasibility

There are no project costs associated with this proposal. KPRH will acquire the operating interest in the RHCF for \$10,116,500 and 3617 BEH Parsons Realty LLC will acquire the real property for \$56,721,197 at the above stated terms.

Working capital requirements are estimated at \$6,331,904 based on two months of year one expenses. The members will provide \$3,294,714 in equity equivalent to their ownership percentages. The remaining \$3,037,190 will be provided through a working capital loan. Israel Discount Bank of New York has provided a letter of interest for a one-year line of credit with variable interest at Prime plus 1.0% (3.5% as of December 7, 2016). The applicant has been advised that line of credit term loans are generally inconsistent with Department policy and that they must provide an executed working capital loan commitment, acceptable to the Department for final PHHPC approval. BFA Attachment A is the net worth statement for the proposed operators, which shows significant resources available overall to cover the working capital equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. Executed disproportionate share affidavits have been provided stating members' willingness to contribute resources disproportionate to their membership interest in the operating entity to make up for any members' equity shortfall in contributing to the working capital needs.

BFA Attachment B is the pro-forma balance sheets of KPRH and 3617 BEH Parsons Realty LLC, which indicates that the operating entity will start with positive members' equity of \$4,028,491 and the realty entity will start with positive members' equity of \$310,000. It is noted that operating assets include \$9,245,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, the net asset position would be a negative members' equity position of \$5,216,509. The proposed owners will cover the negative net asset position.

The submitted budget indicates a net income of \$5,200,755 will be achieved during Year One. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A Department policy paper provides guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment C is The Pavilion at Queens for Rehabilitation and Nursing 2013-2015 certified financial statements and their internal financial statements as of September 30, 2016. As shown, the facility generated an average operating gain of \$1,532,770 and generated an average positive net asset position and an average negative working capital position for the period 2013-2015. The facility had an operating gain of \$5,385,224 and generated both positive working capital and net asset positions as of September 30, 2016. The applicant indicated that the reasons for the negative working capital and net losses for 2013-2014 were as follows: overstaffing, paying non-competitive prices for supplies and other unsound business practices, poor marketing resulting in low census, and failing to renovate the facility. In December 2014, the current members obtained establishment approval as the new operators of the facility and began to turn it around, as shown in the 2015 financial statements.

BFA Attachment E is the 2013-2015 certified and the 2016 internal financial summaries of the members' affiliated nursing homes, which show that the facilities have maintained average positive net asset, working capital and net income positions from operations for the period shown, with the exception of Throgs Neck, which had an average negative working capital position for the period shown. The negative working capital for Throgs Neck is due to outstanding related party loans.

Financial statements for the other six affiliated NYS nursing homes are not available as the facilities were recently acquired.

Conclusion

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.

<h2>Attachments</h2>

- | | |
|------------------|---|
| BFA Attachment A | Net Worth of Proposed Members of Kennedy Pavilion RH, LLC |
| BFA Attachment B | Pro-forma Balance Sheets for Kennedy Pavilion RH, LLC and 3617 BEH Parsons Realty, LLC |
| BFA Attachment C | 2013 - 2015 certified financial statements for The Pavilion at Queens for Rehabilitation and Nursing |
| BFA Attachment D | Ownership interest of the proposed members' of Kennedy Pavilion RH, LLC in other New York State Nursing Homes |
| BFA Attachment E | 2013-2015 Related Companies Financial Summaries of the proposed members' of Kennedy Pavilion RH, LLC |
| BFA Attachment F | Current and Proposed Owners of the Real Property |

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 9th day of March, 2017 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 Kennedy Pavilion RH LLC as the new operator of The Pavilion at Queens for Rehabilitation & Nursing, a 302-bed residential health care facility located at 36-17 Parsons Boulevard, 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:

161200 E

Kennedy Pavilion RH LLC
d/b/a the Pavilion at Queens for Rehabilitation
& Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed permanent mortgage for the real estate purchase provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of an executed promissory note for the RHCF operations purchase, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed assignment and assumption agreement for the RHCF's property lease, acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. 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 a signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of a signed amended Operating Agreement, which is acceptable to the Department. [CSL]

10. Submission of a photocopy of the signed Real Estate Purchase Agreement, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 162274-E
**Rockaway Operations Associates LLC d/b/a Far Rockaway
Center for Rehabilitation and Nursing**

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: October 14, 2016

Executive Summary

Description

Rockaway Operations Associates LLC d/b/a Far Rockaway Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Far Rockaway Nursing Home, a 100-bed, proprietary partnership, Article 28 Residential Health Care Facility (RHCF) located at 13-11 Virginia Street, Far Rockaway (Queens County). There will be no change in the number of beds or licensed services provided.

The RHCF Seller is a debtor under Chapter 7 of the Bankruptcy Code, having filed a Voluntary Petition for relief in the United States Bankruptcy Court for the Eastern Division of New York (Case No. 16-42464) on June 3, 2016. Gregory M. Messer, Esquire, is designated as the Chapter 7 Trustee for the facility. A creditor meeting was held on July 12, 2016, with a Claims Deadline date established by the Court of December 27, 2016. The Asset Purchase Agreement (APA) and Agreement for Sale of Real Property (ASRP) executed by Gregory M. Messer, Esquire, on behalf of the Seller and solely in his capacity as Chapter 7 Trustee, are subject to the approval of the Bankruptcy Court.

On December 12, 2016, the Trustee for the RHCF's Chapter 7 debtor (the current licensed operator of the RHCF) executed an APA with Rockaway Operations Associates, LLC for the sale and acquisition of the operations of Far Rockaway Nursing Home for \$2,500,000. Concurrently, Rockaway Realty Estate Holdings Associates, LLC, whose members are Daryl Hagler (99%) and Jonathan Hagler (1%),

executed an ASRP with the Trustee for the sale and acquisition of the RHCF's real property for \$3,000,000. The Department has been advised that an amendment to the APA clarifying conditions precedent to the obligations of the Buyer to close on the sale is pending review and approval by the Trustee and Buyer. The ASA and ASRP will close simultaneously upon approval by the Public Health and Health Planning Council (PHHPC) and subject to approval by the Bankruptcy Court overseeing the Chapter 7 liquidation. The applicant will lease the premises from Rockaway Realty Estate Holdings Associates, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and tenant have previous business relationships involving real estate transactions of other nursing homes.

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

<u>Current Operator</u>
Far Rockaway Nursing Home
<u>Partners</u>
Estate of L. Szanto
Estate of G. Kirshbaum
Estate of A. Feuereisen
Estate of J. Roth
Estate of L. Reitzer
Estate of A. Mering
et al

<u>Proposed Operator</u>	
Rockaway Operations Associates, LLC	
<u>Members</u>	
Rockaway KR Holding Co., LLC	98%
Kenneth Rozenberg (98.98%)	
Beth Rozenberg	(1.02%)
Beth Rozenberg	2%

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Far Rockaway Nursing Home's occupancy was 90.9% in 2013, 90.4% in 2014 and 94.9% in 2015. Occupancy as of November 3, 2016 is 92.0% and overall 2016 occupancy is 95.7%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Financial Summary

There are no project costs associated with this proposal.

The purchase price for the acquisition of the operating interests is \$2,500,000 and will be met with equity of \$625,000 from the proposed members' personal resources and a loan for \$1,875,000 at 5% for a ten-year term and 25-year amortization period. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment if acceptable refinancing is not available. The purchase price for the real estate interests is \$3,000,000 and will be met with a loan for \$2,700,000 at 5% interest for a ten-year term and 25-year amortization period, and a \$300,000 down payment of equity. Daryl Hagler, managing member of Rockaway Real Estate Holdings Associates, LLC, has submitted an affidavit indicating that he will fund the balloon payment if refinancing is not available after the ten-year period. The projected budget is as follows:

	<u>First Year</u>
Revenues	\$7,306,309
Expenses	<u>7,136,226</u>
Gain	\$170,083

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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
4. Submission of an executed revised Asset Purchase Agreement acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. 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 a Certificate of Amendment of the Articles of Organization of Rockaway KR Holdings, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of a consulting Services Agreement between Rockaway Operations Associates, LLC and Centers for Care! LLC, which is acceptable to the Department. [CSL]
10. Submission of an Attestation for Service Agreements, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

March 9, 2017

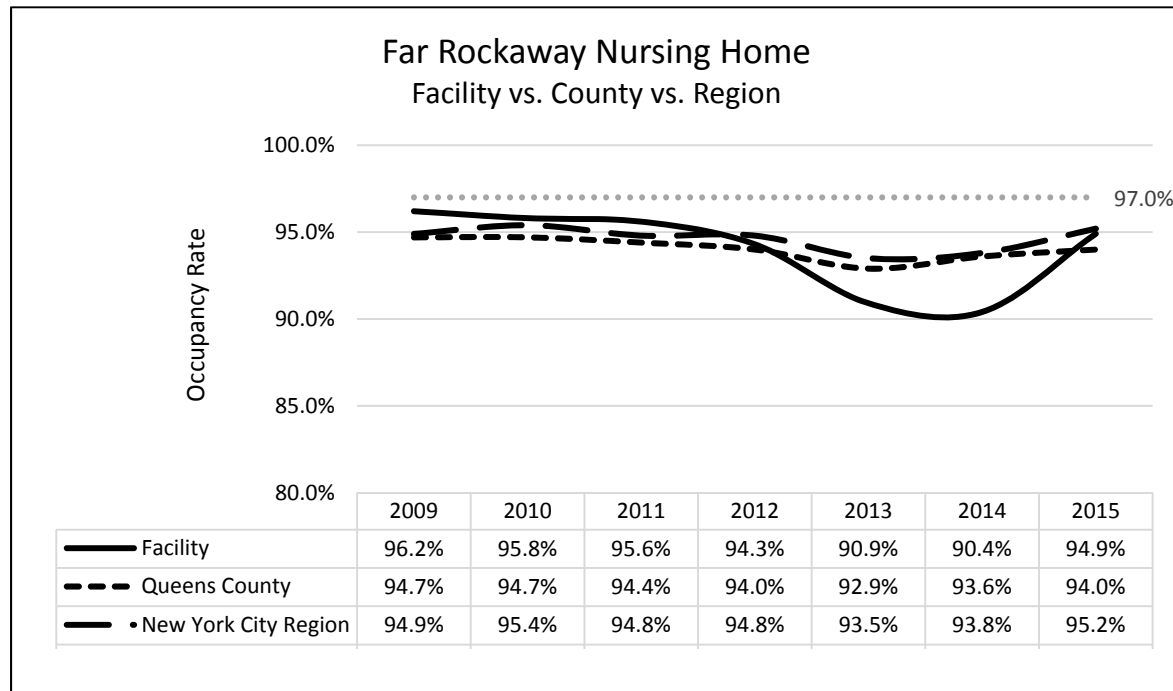
Need Analysis

Analysis

The current bed need methodology shows a need for 9,715 beds in the New York City.

RHCF Need – NYC Region

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 the New York City region was 95.0% for 2015. Far Rockaway Nursing Home's occupancy was 90.9% in 2013, 90.4% in 2014, and 94.9% in 2015. According to the applicant, the low utilization was attributed to the lack of leadership resulting from the death of the owners. The absence of consistent leadership created instability in facility operations which adversely impacted utilization. In order to improve utilization, the facility entered into a consulting services agreement with Centers Health Care in March 2015 to improve operations, stabilize staffing, and enhance the care provided to residents.

While current occupancy is slightly below the desired goal, based on the data submitted, the facility will be near or exceed the Department's planning optimum for calendar year 2016. This high occupancy is expected to continue going forward with the approval of this application.

In order to sustain the improved utilization going forward, the applicant offered to:

- Implement new programs at the facility to provide additional services such as: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy, and complex clinical care. By offering these services, the facility will be able to care for higher acuity residents; and
- Strengthen relationships with hospital discharge planners.

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.

Far Rockaway Nursing Home's Medicaid admissions of 100% in 2014 and 92.5% in 2015 exceeded Queens County's 75% threshold rates in 2014 and 2015 of 24.0% and 22.4%, respectively.

Conclusion

Contingent approval of this application is being recommended to maintain a resource for the Medicaid population in Queens County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Far Rockaway Nursing Home	Far Rockaway Center for Rehabilitation and Nursing
Address	13-11 Virginia Street, Far Rockaway	Same
RHCF Capacity	100	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Partnership	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Partnership (All deceased)	Rockaway Operations Associates, LLC Rockaway KR Holding LLC 98% Beth Rozenberg 2% Rockaway KR Holding LLC Kenneth Rozenberg 98.98% Beth Rozenberg 1.02%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	06/2006 to present
Brooklyn Center for Rehabilitation and Residential Health Care	05/2007 to present
Buffalo Center for Rehabilitation and Nursing	06/2014 to present
Bushwick Center for Rehabilitation and Health Care	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to 9/2016

Triboro Center for Rehabilitation and Nursing (previously Daughters of Jacob)	09/2016 to present
The Grand Rehabilitation and Nursing at Pawling	06/2006 to 3/31/16
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to 03/21/16
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 03/03/16
The Grand Rehabilitation and Nursing at Queens	06/2006 to 03/31/16
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	07/2008 to present
The Grand Rehabilitation and Nursing at Rome	07/2008 to present
University Nursing Home	06/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	06/2006 to present

Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
Park View Center for Rehabilitation & Healthcare	05/20/16 to present
Kingston Center for Rehab	10/2016 to present

Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

Adult Homes

Washington Center Adult Home	02/2014 to present
------------------------------	--------------------

Certified Home Health Agency

Alpine Home Health Care	07/2008 to present
-------------------------	--------------------

Licensed Home Care Services Agency

Amazing Home Care	06/2006 to present
-------------------	--------------------

Ambulance Company

Senior Care Emergency Ambulance Services, Inc.	06/2006 to present
--	--------------------

Managed Long Term Care Company

Centers Plan for Health Living	01/2013 to present
--------------------------------	--------------------

Individual Background Review

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
The Grand Rehabilitation and Nursing at Pawling [30%]	08/2004 to 03/31/16
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present

Holliswood Center for Rehabilitation and Healthcare [85.5%]	11/2010 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to 03/03/16
The Grand Rehabilitation and Nursing at Queens [48%]	10/2004 to 03/31/16
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [92%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [31%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Park View Center for Rehabilitation and Healthcare (RI) [5%]	05/2016 to present
Kingston Center for Rehab (RI) [5%]	10/2016 to present
Stonehedge Health & Rehabilitation Center – Rome (REC)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (REC)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (REC)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (REC)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (REC)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (REC) [100%]	08/2013 to 09/2016
Triboro Center for Rehabilitation and Nursing (previously Daughters of Jacob)	09/2016 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present
Bronx Center for Renal Dialysis [70%]	01/2011 to present
Bushwick Center for Renal Dialysis [70%]	06/2014 to present

On 4/14/2016 Public Health and Health Planning Council gave approval for Mr. Rozenberg to become an operator of the following facilities. These facilities are not included in Mr. Rozenberg's character and competence, because the transactions have not been completed.

- CON # 151260 Nanuet Center for Rehabilitation and Nursing
- CON # 152296 Monsey Center for Rehabilitation and Nursing
- CON # 152295 Haverstraw Center for Rehabilitation and Nursing
- CON # 161109 Allerton Center for Rehabilitation and Nursing
- CON # 161110 Martine Center for Rehabilitation and Nursing

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Boro Park Center [2%]	04/2016 to present
Northwoods Rehab & Nursing Center at Moravia [9%]	03/2016 to present
Park View Center for Rehab (RI) 5%	05/20/16 to present
Kingston Center for Rehab (RI) 5%	10/2016 to present
Bannister Center for Rehab (RI) [5%]	02/2016 to present

On 4/14/2016 Public Health and Health Planning Council gave approval for Ms. Rozenberg to become an operator of the following facilities. These facilities are not included in Ms. Rozenberg's character and competence, because the transactions have not been completed

- CON # 151260 Nanuet Center for Rehabilitation and Nursing
- CON # 152296 Monsey Center for Rehabilitation and Nursing
- CON # 152295 Haverstraw Center for Rehabilitation and Nursing
- CON # 161109 Allerton Center for Rehabilitation and Nursing
- CON # 161110 Martine Center for Rehabilitation and Nursing

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members. An assessment of the underlying causes of the 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 operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued 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.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order NH 16-116 issued 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.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 5, 2013, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 11, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH16-034 issued January 5, 2016 for surveillance findings March 24, 2014. Deficiencies were found under 10 NYCRR 415.12- Quality of Care Highest Practicable Potential

Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.
 - A federal CMP of \$4,842.50 was assessed for the February 6, 2015 survey findings.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH 16-201 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.
 - A federal CMP of \$27,527.50 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-16-118 issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued 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.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued 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 NYCRR 415.12(d)(1) and Quality of Care: Catheters.
 - A federal CMP of \$3,250 was assessed for July 23, 2012 survey findings.

State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-134 issued 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; 415.27(a-c) Administration: Quality Assessment and Assurance.
- A federal CMP of \$5,900 was assessed for September 11, 2015 survey findings.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued 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.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-135 issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation and Order NH-16-147 issued 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 recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- 039 issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nursing, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, The Grand Rehabilitation and Nursing at Pawling, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, The Grand Rehabilitation and Nursing at Queens, Steuben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Banister Center for Rehab and Park View Center for Rehabilitation & Healthcare, Amazing Home Care, Senior Care Emergency Ambulance Services, Inc., and Center Plan for Health Living in Rhode Island for the periods identified above, reveals that there were no enforcements.

A review of operations for Argyle Center for Independent Living (previously Washington Center Adult Home), for the periods identified above, reveals that the following:

- A fine of \$455.00 under Stipulation and Order # ACF 16-149 for 487.8 Food Service issued 11/21/16
- A fine of \$4690.00 under Stipulation and Order # ACF 17-003 for 487.8 Food Service.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHCFF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility has graduated from its Special Focus designation.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures
New York			
Boro Park Center for Nursing and Rehab Center	*****	*****	*****
Bronx Center for Rehab Health	**	***	****
Brooklyn Center for Rehab and Residential Health Care	***	****	****
Buffalo Center for Rehabilitation and Nursing	*	*	****
Bushwick Center for Rehab and Health Care	*****	****	*****
Corning Center for Rehabilitation and Healthcare	*	*	**
Daughters of Jacob Nursing Home Co, Inc	**	**	****
The Grand Rehabilitation & Nursing at Pawling	****	****	***
Essex Center for Rehabilitation and Healthcare	*	*	*
Fulton Center for Rehabilitation and Healthcare	**	*	**
Holliswood Center for Rehabilitation & Healthcare	***	***	****
Hope Center for H I V and Nursing Care	*****	****	*****
Indian River Rehab and Nursing Center	*	*	*
Northwoods Rehab and E C F at Moravia	*	*	**
The Grand Rehabilitation & Nursing at Queens	*****	*****	*****
Richmond Center for Rehab and Specialty H C	****	***	**
Steuben Center for Rehabilitation and Healthcare	**	***	**
The Grand Rehabilitation & Nursing at Chittenango	**	**	****
The Grand Rehabilitation and Nursing at Rome	*	*	***
University Nursing Home	*****	****	*****
Washington Center for Rehabilitation & Healthcare	*	*	*
Waterfront Center for Rehabilitation & Healthcare	*	*	****
Williamsbridge Manor N H	*****	*****	*****
Rhode Island			
Park View Center for Rehabilitation and Health Care	****	**	*****
Bannister Center for Rehabilitation and Health Care	*	*	**

Project Review

This application proposes to establish Rockaway Operations Associates LLC d/b/a Far Rockaway Center for Rehabilitation and Nursing as the new operator of Far Rockaway Nursing Home, a 100-bed Residential Health Care Facility located at 13-11 Virginia Street, Far Rockaway.

No changes in the program or physical environment are proposed in this application.

It is the intent of the new operators to enter into an Administrative and Consulting Services Agreement with Centers Health Care. Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct

ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for the applicant to contract with Centers for the facilities in which they have an ownership interest. Centers is a resource to provide administrative and clinical support to their skilled nursing interests across the State. Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to the facilities with whom they contract.

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.

<h2>Financial Analysis</h2>

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHC. The agreement will become effectuated upon PHHPC approval of this CON, subject to approval by the United States Bankruptcy Court for the Eastern Division of New York. The terms of the agreement are summarized below:

Date:	December 12, 2016
Purchaser:	Rockaway Operations Associates, LLC
Seller:	Far Rockaway Nursing Home Proprietary Partnership
Purchased Assets:	All assets used in the operation of the facility. 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:	\$2,500,000
Payment of Purchase Price:	\$250,000 cash deposit held in escrow \$2,250,000 due at time of Closing (\$1,875,000 loan plus \$375,000 cash)

An amendment to the executed APA clarifying conditions precedent to the obligations of the Buyer to close on the sale is pending review and approval by the parties to the sale. The to-be-finalized amended agreement will become effectuated upon PHHPC approval of this CON, subject to approval by the United States Bankruptcy Court for the Eastern Division of New York.

The applicant's financing plan appears as follows:

Equity via proposed members	\$625,000
Loan (5% interest, 10-year term, 25-year amortization period)	\$1,875,000

BFA Attachment A is the net worth summary for the proposed members of Rockaway Operations Associates, LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement.

Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.

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 December 12, 2016, there is balance of \$1,739,577 in outstanding Medicaid overpayment liabilities.

Agreement for Sale of Real Property

The applicant has submitted an executed land purchase agreement for the site they will occupy. The agreement will close simultaneously with the ASA upon approval by the PHHPC, subject to approval by the Bankruptcy Court as noted above. The terms are summarized below:

Date:	December 12, 2016
Premises:	The parcel of land located at 13-11 Virginia Street, Far Rockaway, New York
Seller:	Far Rockaway Nursing Home
Purchaser:	Rockaway Real Estate Holdings Associates, LLC
Purchase Price:	\$3,000,000
Payment of Purchase Price:	\$300,000 down payment upon execution; \$2,700,000 balance due at Closing.

The financing plan for the balance due on the real estate consist of a bank loan for \$2,700,000 at 5% interest for a ten-year term and 25-year amortization period. A bank of letter of interest at the stated terms has been provided. Daryl Hagler, who is the majority owner and managing member of the real estate entity, has submitted an affidavit stating that he will refinance the loan when the balloon payment becomes due if refinancing is not available. BFA Attachment B, net worth of Daryl Hagler, reveals sufficient resources for stated levels of equity.

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	September 1, 2016
Premises:	A 100-bed RHCf located at 13-11 Virginia Street, Far Rockaway, New York
Landlord:	Rockaway Real Estate Holdings Associates, LLC
Tenant:	Rockaway Operations Associates, LLC
Terms:	10 years
Rental:	\$300,000 annually (\$25,000 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

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 in that the members of each have previous business relationships involving real estate transactions of other RHCf's. Rockaway Real Estate Holdings Associates, LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

Consulting Services Agreement

The applicant has provided a draft consulting services agreement, summarized below:

Contractor:	Centers for Care LLC d/b/a Centers Health Care (CHC)
Licensed Operator/ Facility:	Rockaway Operations Associates LLC, d/b/a Far Rockaway Center for Rehabilitation and Nursing
Affiliation:	The Facility will refer to itself as "Affiliated with Centers Health Care" or "Member of Centers Health Care" limited to marketing efforts and the identification of professionals, consultants, vendors and healthcare providers and other resources that can assist the Facility in the provision of care.
Consulting and Advisory Services:	Contractor will be responsible for the operation, supervision and oversight of all functions related to A/R and A/P, including assistance and supervision of staff in interacting with families, collection of NAMI and private funds, submission of award letters, and preparation of applications for payee, maintenance of billing files, monitoring payments to the facility by all payer sources, pursuing payments for delinquent accounts and assisting the facility, at the facility's expense. Contractor will provide assistance to and supervision of staff performing and providing the following services: all billing functions for all payer sources and maintenance of all billing and posting records and establishment of payroll budgets and schedule coordination with nursing and other departments. Responsible for the preparation of health facility assessment; assist the Facility with the preparation of RHCF 4 and Medicare cost reports; and reconciliation of billing records, Maintenance of electronic resident/patient billing files, fund records and accounts, and monthly operating cash flow projections. Assist the Facility in reviewing of rate sheets and filing of necessary appeals and audit facility's monthly pharmacy bills and the implementing of formulary management.
Clinical Consulting Services:	Contractor will provide advice and assistance to the Facility regarding administrative functioning of Therapy, Social Services and Nursing departments. Develop operating policies and procedures, rules and methods of operation appropriate to such departments and the training and orientation of staff. Recommend procedures to ensure the consistency and quality of all the Services. Assist the Facility with respect to its CMI, Medicare, and case-mix reimbursement.
Other Duties:	Develop and implement a marketing plan; furnish sufficient part-time temporary licensed skilled professional staff for the health care activities described herein.
Term:	Effective until the closing date in which ownership and operation of the facility is transferred to the approved third party unless terminated with mutual written consent.
Fee:	Estimated at \$488,000 for the subject facility. To the maximum extent possible, the fees represent the actual costs incurred by CHC in providing the Services to the Facility and will be allocated to the nursing homes that CHC provides services for based on beds.

The agreement provides that Far Rockaway Nursing Home will retain ultimate control in all of the final decisions associated with the services. The terms acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to insure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes and regulations. In accordance with the Department's policy regarding administrative service agreements and contracts effective December 13, 2016, the applicant must submit an executed attestation acknowledging understanding of reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Centers for Care LLC also provides consulting services to the other RHCFS owned and operated by Kenneth Rozenberg and Beth Rozenberg. Mr. Rozenberg is affiliated with CHC in that he has an ownership interest in the company.

Operating Budget

The applicant has provided an operating budget, in 2017 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<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>				
Medicare	\$635.00	\$1,368,435	\$583.70	\$1,699,743
Medicaid	\$183.11	\$5,935,930	\$171.61	5,563,061
Private Pay	\$536.84	<u>\$40,263</u>	\$565.00	<u>43,505</u>
Total Revenues		\$7,344,628		\$7,306,309
<u>Expenses</u>				
Operating	\$213.69	\$7,403,549	\$187.58	\$6,641,438
Capital	<u>3.33</u>	<u>115,513</u>	<u>13.97</u>	<u>494,788</u>
Total Expenses	\$217.02	\$7,519,062	\$201.55	\$7,136,226
Net Income(Loss)		<u>\$(174,395)</u>		<u>\$170,083</u>
Total Patient Days		34,647		35,406
Occupancy		94.9%		97.0%
Breakeven				94.7%

The following is noted with respect to the submitted budget:

- The Medicare and Private Pay rates are based upon current market rates.
- The current year reflects the facility's 2015 payor and 2015 RHCF-4 cost report information. Historical utilization for base year 2015 was 94.9%.
- For budget year one, Medicaid revenues are projected based on the current operating and capital components of the facility's 2016 Medicaid FFS rate (shown in the BFA Attachment G budget sensitivity analysis. All other revenues assume current payment rates for the respective payors. Private Pay rates are anticipated to increase in year one.
- Expenses are decreasing in Year One due to an anticipated reduction in professional fees, supplies and materials and other direct expenses, and a reduction in purchase services through renegotiation of contracts.
- Increases in capital costs will accrue through additional rent expense, as well as interest due on the working capital and asset acquisition loans.
- Overall utilization is 94.9% and 97.0% for the Current Year and Year One, respectively, while utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicare	6.22%	8.22%
Medicaid	93.56%	91.56%
Private Pay	<u>0.22%</u>	<u>0.22%</u>
Total	100.00%	100.00%

- Breakeven utilization is 94.7% or 34,566 patient days for the first year.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the acquisition of the operating interests is \$2,500,000 and will be met with \$625,000 equity from proposed members and a bank loan for \$1,875,000 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed Rockaway Operations Associates, LLC member Kenneth Rozenberg, has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due. BFA Attachment F is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$1,189,371 based on two months of the first year's expenses. Working capital will be satisfied with \$604,661 equity from proposed members and the remaining \$584,710 will be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of Rockaway Operations Associates, LLC, reveals sufficient resources for stated levels of equity. BFA Attachment E is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,229,661. It is noted that assets include \$2,500,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be a negative \$1,270,339.

The submitted budget indicates that net income of \$170,083 will be generated for the first year. BFA Attachment G is a budget sensitivity analysis based on current utilization of the facility as of September 30, 2016, which shows the budgeted revenues would increase by \$203,934 resulting in a net profit in year one of \$374,017 based on current utilization of 95.6%. 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 C, the internal financials of Far Rockaway Nursing Home as of September 30, 2016, indicate that the facility experienced negative working capital of \$3,612,607, a negative equity position and generated an annual net operating income of \$204,543 for the period. The negative working capital is the result, in part, of a \$5.7 million Medicaid recoupment that is still being collected. As of September 30, 2016, the balance due on the Medicaid recoupment was \$2.1 million, with the remaining \$1.5 million negative working capital related to an inability to pay bills in a timely manner due to accumulated losses. Steps implemented to improve operations have included efforts to increase utilization, as shown on BFA Attachment C.

BFA Attachments D, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown.

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	Rockaway Operations Associates, LLC, Proposed Members Net Worth
BFA Attachment B	Rockaway Real Estate Holdings Associates, LLC, Daryl Hagler Net Worth
BFA Attachment C	Far Rockaway Nursing Home, Financial Summary
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Mortgage Amortization Schedules
BFA Attachment G	Budget Sensitivity

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 9th day of March, 2017 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 Rockaway Operations Associates LLC d/b/a Far Rockaway Center for Rehabilitation and Nursing as the new operator of Far Rockaway Nursing Home, a 100-bed Residential Health Care Facility located at 13-11 Virginia Street, Far Rockaway, 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:

162274 E

FACILITY/APPLICANT:

Rockaway Operations Associates LLC
d/b/a Far Rockaway Center for Rehabilitation
and Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
4. Submission of an executed revised Asset Purchase Agreement acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. 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 a Certificate of Amendment of the Articles of Organization of Rockaway KR Holdings, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of a consulting Services Agreement between Rockaway Operations Associates, LLC and Centers for Care! LLC, which is acceptable to the Department. [CSL]

10. Submission of an Attestation for Service Agreements, which is acceptable to the Department.
[CSL]

APPROVAL CONDITIONAL UPON:

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

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

River Ridge Living Center, Inc. was fined four thousand dollars (\$4,000) pursuant to a stipulation and order dated May 30, 2012 for surveillance findings of April 11, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care Accidents; and 415.26 – Administration.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Eliot at Catskill was fined five thousand seven hundred dollars (\$5,700) pursuant to a stipulation and order dated August 30, 2016 for surveillance findings set forth in the reports of inspection dated July 24, 2015, December 8, 2015 and April 8, 2016. Deficiencies were found under 18 NYCRR 487.7(f)(5) Resident Services and 487.11(f)(8) Environmental Standards.

The Eliot at Catskill was fined two thousand five hundred dollars (\$2,500) pursuant to a stipulation and order dated December 19, 2016 for surveillance findings set forth in the reports of inspection dated June 8, 2016 and July 29, 2016. Deficiencies were found under 18 NYCRR 487.4(f) Admission Standards, 487.8(c) Food Service, 487.8(e)(1) Food Service, 487.11(f)(8) Environmental Standards, 487.11(g) Environmental Standards, 487.11(h)(5) Environmental Standards, 487.11(k)(1-3) Environmental Standards, 487.11(k)(5) Environmental Standards and 487.11(k)(16) Environmental Standards.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the adult 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 Division of Home and Community Based Services has indicated that the home care agencies reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 10 Market Street, Amsterdam, New York 12010.

Montgomery	Fulton	Otsego
Saratoga	Schenectady	Schoharie

The applicant proposes to continue to provide the following health care services:

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

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

Contingency

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

Recommendation: Contingent Approval
Date: January 5, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Greater Adult Neighbors, Inc. d/b/a Arcadia Home Care Agency
Address: Liberty
County: Sullivan
Structure: For-Profit Corporation
Application Number: 2604L

Description of Project:

Greater Adult Neighbors, Inc. d/b/a Arcadia Home Care Agency, 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 the Assisted Living Program to be operated by Arcadia Residence, Inc. The LHCSA and the ALP will have identical ownership.

The applicant has authorized 200 shares of stock, which are owned as follows: George Lebovits owns 180 shares and Naomi Lebovits owns 20 shares.

The Board of Directors of Greater Adult Neighbors, Inc. d/b/a Arcadia Home Care Agency comprises the following individuals:

George Lebovits, President
Owner/Operator, Ahava Medical and Rehabilitation Center, LLC (Diagnostic and Treatment Center)

Affiliation:

Ahava Medical and Rehabilitation Center, LLC (2003 – Present)

Naomi Lebovits, Secretary/Treasurer
Unemployed

Affiliation:

Ahava Medical and Rehabilitation Center, LLC (2013 – 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 Sullivan County from an office located at 25 Carrier Street, Liberty, New York 12754:

The applicant proposes to provide the following health care services:

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

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Ahava Medical and Rehabilitation Center, LLC (Diagnostic and Treatment Center)

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the diagnostic and treatment center has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

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

Recommendation: Contingent Approval

Date: December 15, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Ideal Home Health Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2643L

Description of Project:

Ideal Home Health Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Ideal Home Health Inc. was previously approved as a home care services agency by the Public Health Council at its October 6, 2011 meeting and subsequently licensed 1674L001 effective February 28, 2013. At that time Ideal Home Health Inc. was owned as follows: Anna Krupovlyanskaya – 80 shares, Leonid Krupovlyanskiy – 40 shares, Paul Elberg – 40 shares and Alex Krupoff – 40 shares.

The purpose of this application is to request approval for a stock transfer. The applicant has authorized 200 shares of stock. The proposed shareholders of Ideal Home Health Inc. are the following individuals:

Anna Krupovlyanskaya, RN – 50 Shares
(Previously approved by PHC for this operator)

Alex Krupoff – 50 Shares
(Previously approved by PHC for this operator)

John Litman – 100 Shares
President/Operator, Terryville Associates
President/Operator, 100 Sunrise Highway Corp
President/Operator, AJE Enterprise LTD

The proposed Board of Directors of Ideal Home Health Inc. is comprised of the following members:

Anna Krupovlyanskaya, RN– Chief Executive Officer
(Previously approved by PHHPC for this operator)

Alex Krupoff – Chief Financial Officer
(Previously approved by PHHPC for this operator)

John Litman - Treasurer
(Previously Disclosed)

Anna Krupovlyanskaya and Alex Krupoff 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 individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations of Ideal Home Health Inc. (2/2013-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 14 Cass Place, Brooklyn, New York 11235.

Bronx Kings New York Queens Richmond

The applicant proposes to continue to provide the following health care services:

Nursing Home Health Aide Personal Care Physical Therapy
Occupational Therapy Homemaker Housekeeper

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

Contingency

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

Recommendation: Contingent Approval
Date: December 6, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Crickett Care, Inc.
Address: Ossining
County: Westchester
Structure: For-Profit Corporation
Application Number: 151296

Description of Project:

Crickett Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Crickett Care, Inc. was previously approved as a home care services agency by the Public Health Council at its January 20, 1995 meeting and was subsequently licensed as 9643L001 effective June 1, 1995. At that time Audrey Perlman was the sole owner.

This application was submitted due to the death of Audrey Perlman on June 5, 2012. Ms. Perlman's Last Will and Testament left all of her shares in Cricket Care, Inc. to her daughter, Jodi Patrick.

The applicant has authorized 200 shares of stock. The following individual is the sole stockholder of Crickett Care, Inc:

Jodi Patrick – 200 shares
Coordinator, Manager, Crickett Care, Inc.

The Board of Directors of Crickett Care, Inc. comprises the following individuals:

Jodi Patrick – President/Treasurer (Previously Disclosed)	Cari Altayeb – Secretary (Previously approved by PHC for this operator)
--	--

Cari Altayeb (fka Cari Rund) is exempt from character and competence review due to the fact that she was previously approved by the Public Health Council as a member of the board of directors of this operator.

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

A seven (7) year review of the operations of Crickett Care, Inc., 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 144 S. Highland Avenue, Ossining, New York 10562:

Bronx	Westchester	Putnam	Rockland
-------	-------------	--------	----------

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker
---------	------------------	---------------	-----------

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

Contingency

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

Recommendation: Contingent Approval
Date: December 21, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: A-Plus Care HHC Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 152390

Description of Project:

A-Plus Care HHC Inc., a business corporation, , requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

A-Plus Care HHC Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its February 7, 2013 meeting and subsequently licensed as 2017L001 on November 19, 2014.

At that time A-Plus Care HHC Inc. had authorized 200 shares of stock, which were owned as follows: Karl Bikhman 100 shares and Anna Domashitsky 100 shares. The purpose of this application is to transfer all 200 shares of stock to Sofia Bakalinsky.

The proposed Board of Directors of A-Plus Care HHC Inc. is comprised of the following individual:

Sofia Bakalinsky, HHA
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.

A-Plus Care HHC Inc. has entered into a management agreement with Sofia Bakalinsky which was approved by the Department of Health in December 2016.

The applicant proposes to serve the residents of the following counties from an office located at 1757 Broadway, Brooklyn, New York 11207:

Kings	Queens	New York
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

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

Contingency

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

Recommendation: Contingent Approval
Date: December 28, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: CareGuardian, Inc. d/b/a Hometeam
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 162087

Description of Project:

CareGuardian, Inc. d/b/a Hometeam, a Delaware business corporation, 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 2501L which was contingently approved by the Public Health and Health Planning Council at the October 8, 2015 meeting.

New Universal Home Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 6, 2011 meeting and subsequently licensed 1764L001 with Felix Salinas as the sole shareholder. In March 2016, Felix Salinas suffered a serious medical episode and is now represented by his wife, Joice Salinas. Ms. Salinas has been appointed the legal Guardian of the person and property of Mr. Salinas effective July 28, 2016.

The Metropolitan Area Regional Office surveillance staff conducted a re-licensure survey of New Universal Home Care, Inc. on May 25, 2016 and May 26, 2016 and found that the governing authority had not maintained control of the agency and that CareGuardian, Inc. d/b/a Hometeam was actually operating the agency. A cease and desist letter was issued to CareGuardian, Inc. on October 13, 2016 directing them to immediately cease providing home care services.

A management agreement between New Universal Home Care, Inc. and CareGuardian, Inc. that had been approved on July 25, 2014 was terminated by the Department on October 18, 2016 due to non-compliance with the regulatory requirements that require the governing authority of the currently approved operator (New Universal Home Care, Inc.) to retain full legal authority over the operations of the Licensed Home Care Services Agency.

Negotiations between the parties involved and the Department resulted in New Universal Home Care, Inc. resuming their responsibilities as the approved operator of the agency. The applicants submitted an amended and restated management agreement between New Universal Home Care, Inc. and CareGuardian, Inc. d/b/a Hometeam which was approved by the Department on December 5, 2016.

The applicant has authorized 82,656,719 shares of stock of which 52,200,000 shares are Common Stock and 30,456,719 shares are Preferred Stock which are owned as follows:

Joshua M. Bruno – 12,000,000 Shares Common Stock	Oak HC/FT Partners, L.P. – 10,132,897 Shares Preferred Stock
Lux Capital L.P. – 8,053,662 Shares Preferred Stock	IA Ventures, L.P. – 8,378,052 Shares Preferred Stock

In addition, the applicant has issued 7,287,558 shares to smaller shareholders of which no individual owns 10% or more of the issued shares. The remaining 36,804,550 remain unissued.

The Managing Partner of IA Ventures L.P. is Bradford W. Gillespie

The Principal of Lux Capital L.P. is Adam L. Goulburn, Ph.D.

The Director representing Oak HC/FT Partners, L.P. is Jennifer A. Baldock

The Board of Directors of CareGuardian, Inc. d/b/a Hometeam comprises the following individuals:

Joshua M. Bruno – President, Secretary, Treasurer,
Director
Co-Founder and CEO, CareGuardian, Inc.
Operations Consultant, Home Care Agency
Consultant

Affiliations:
CareGuardian, Inc. d/b/a Hometeam (New Jersey)
(7/10/14 to present)

CareGuardian, Inc. d/b/a Hometeam (Pennsylvania)
(1/20/15 to present)

Bradford W. Gillespie – Director
Managing Partner, IA Ventures, L.P.

Affiliations:
CareGuardian, Inc. d/b/a Hometeam (New Jersey)
(7/10/14 to present)

CareGuardian, Inc. d/b/a Hometeam (Pennsylvania)
(1/20/15 to present)

Adam L. Goulburn, Ph.D. – Director
Principal, Lux Capital L.P.

Affiliations:
CareGuardian, Inc. d/b/a Hometeam (New Jersey)
(7/10/14 to present)

CareGuardian, Inc. d/b/a Hometeam (Pennsylvania)
(1/20/15 to present)

Jennifer A. Baldock, JD (fka Jennifer A. Adams) –
Director
Consultant, Roselon Industries, Inc.

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

The States of New Jersey and Pennsylvania indicated that CareGuardian, Inc. d/b/a Hometeam is currently active and that there haven't been any enforcement actions taken against these agencies.

A Certificate of Good Standing was received for the attorney.

The applicant proposes to serve the residents of the following counties from an office located at 50 West 23rd Street, Floor 9, New York, New York 10010.

New York Kings Queens Bronx Richmond

The applicant proposes to provide the following health care services:

Nursing Home Health Aide

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

Contingency

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

Recommendation: Contingent Approval
Date: January 9, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Blue Parasol, LLC
 Address: Long Island City
 County: Queens
 Structure: Limited Liability Company
 Application Number: 162411

Description of Project:

Blue Parasol, LLC, a to-be-established 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.

P.S.C. Community Support Services, Inc. d/b/a Blue Parasol, a not-for-profit corporation, was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 6, 2012 meeting and subsequently assigned license number 1997L001 effective May 27, 2014. The sole member of P.S.C. Community Support Services, Inc d/b/a Blue Parasol is P.S.C. Community Services, Inc.

The sole member of Blue Parasol, LLC will be P.S.C. Community Services, Inc.

The proposed board members of Blue Parasol, LLC and the current board members of P.S.C. Community Services, Inc. are the following individuals:

<p>Christopher Olechowski – President Chief Executive Officer, PSC Community Services, Inc.</p> <p><u>Affiliation</u> PSC Community Support Services, Inc. d/b/a Blue Parasol</p>	<p>Richard Hermanowski – Vice-President Retired</p> <p><u>Affiliation</u> PSC Community Support Services, Inc. d/b/a Blue Parasol</p>
<p>Dorota Warchol – Chairperson Financial Advisor, Metlife</p> <p><u>Affiliation</u> PSC Community Support Services, Inc. d/b/a Blue Parasol</p>	<p>Artur Rozbicki – Secretary Certified Customs Specialist, Ken Lehat & Associates, Inc.</p> <p><u>Affiliation</u> PSC Community Support Services, Inc. d/b/a Blue Parasol</p>
<p>Renata Warchol – Board Member Chief Operating Officer, PSC Community Services, Inc.</p> <p><u>Affiliation</u> PSC Community Support Services, Inc. d/b/a Blue Parasol</p>	<p>Richard Brzozowski – Treasurer Retired</p> <p><u>Affiliation</u> PSC Community Support Services, Inc. d/b/a Blue Parasol</p>
<p>Henry Lajca – Board Member Finance Officer, Signature Bank</p> <p><u>Affiliation</u> PSC Community Support Services, Inc. d/b/a Blue Parasol</p>	<p>Jolanta Olechowski – Board Member English Teacher, NYC Dept. of Education Queens Adult Learning Center</p>

Anna Monasterski – Board Member Project Manager, JP Morgan Chase <u>Affiliation</u> PSC Community Support Services, Inc. d/b/a Blue Parasol	Monica Arjune, RN – Board Member Staff Nurse, Woodhull Medical Center
---	--

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

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 51-02 21st Street, Long Island City, New York 11101:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

PSC Community Services, Inc.
 PSC Community Support Services, Inc. d/b/a Blue Parasol

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of residents and to prevent recurrent code violations.

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

Contingency

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

Recommendation: Contingent Approval

Date: January 3, 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 9th day of March, 2017, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

2296 L

Deer Run at River Ridge LLC
d/b/a The Sentinel at Amsterdam
(Montgomery, Saratoga, Fulton, Schenectady, Otesgo,
and Schoharie Counties)

2604 L

Greater Adult Neighbors, Inc.
d/b/a Arcadia Home Care Agency
(Sullivan County)

162276 The Bristol Home, Inc. d/b/a Bristol Home Care
(Allegany, Genesee, Cattaraugus, Niagara, Chautauqua,
Orleans, Erie and Wyoming Counties)

2643 L Ideal Home Health Inc.
(Bronx, Kings, New York, Queens, and Richmond
Counties)

151296 Crickett Care, Inc.
(Bronx, Westchester, Putnam, and Rockland Counties)

152390 A-Plus Care HHC Inc.
(Kings, Bronx, Queens, Richmond, New York and
Westchester Counties)

162087 CareGuardian, Inc. d/b/a Hometeam
(New York, Kings, Queens, Bronx, and Richmond
Counties)

162411 Blue Parasol, LLC
(Bronx, Queens, Kings, Richmond, New York, and
Westchester Counties)