

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

March 22, 2017

10:00 a.m.

*Empire State Plaza, Concourse Level
Meeting Room 6, Albany*

I. COMMITTEE ON PUBLIC HEALTH

Jo Ivey Boufford, M.D., Chair

II. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services – Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	162281 C	University Hospital SUNY Health Science Center (Oswego County)
2.	162286 C	University Hospital SUNY Health Science Center (Onondaga County)
3.	171003 C	UPMC Chautauqua at WCA (Chautauqua County)
4.	171054 C	Aurelia Osborn Fox Memorial Hospital (Delaware County)

Ambulatory Surgery Centers - Construction

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	162429 C	Gramercy Park Digestive Disease Center (New York County)

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

Acute Care Services – Establish/Construct

Exhibit # 3

<u>Number</u>	<u>Applicant/Facility</u>
1. 162467 E	Samaritan Medical Center (Jefferson County)

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 162438 E	Saratoga-Schenectady Endoscopy Center, LLC (Saratoga County)
2. 162445 E	Putnam Gastroenterology (Putnam County)
3. 162552 B	HSS West Side ASC (New York County)
4. 171020 E	West Side GI (New York County)
5. 171053 E	Surgical Specialty Center of Westchester (Westchester County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 5

<u>Number</u>	<u>Applicant/Facility</u>
1. 161035 E	Lafayette Medical Approach, LLC (New York County)
2. 162428 E	Heritage One Day Surgery LLC (Onondaga County)

Dialysis Services - Establish/Construct

Exhibit # 6

<u>Number</u>	<u>Applicant/Facility</u>
1. 162543 E	True North II DC, LLC d/ba/ East Islip Dialysis (Suffolk County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 7

	<u>Number</u>	<u>Applicant/Facility</u>
1.	161323 E	Sapphire HC LLC d/b/a Briarcliff Manor Center for Rehabilitation and Nursing Care (Westchester County)
2.	161449 E	GRNC Operating LLC d/b/a Ghent Rehabilitation & Nursing Center (Columbia County)
3.	162187 E	Optima Care Smithtown, LLC d/b/a Brookside Multicare Nursing Center (Suffolk County)
4.	162190 E	Optima Care Little Neck, LLC d/b/a Little Neck Care Center (Queens County)
5.	162192 E	Optima Care White Plains, LLC d/b/a White Plains Center for Nursing Care (Westchester County)
6.	162463 B	Cayuga Ridge, LLC d/b/a Cayuga Nursing and Rehabilitation Center (Tomkins County)
7.	162570 E	The Center for Nursing and Rehabilitation at Hoosick Falls (Rensselaer County)

Certified Home Health Agencies - Establish/Construct

Exhibit # 8

	<u>Number</u>	<u>Applicant/Facility</u>
1.	162528 E	Jamaica Acquisition III, LLC d/b/a Hillside Certified Home Care Agency (Queens County)

C. Home Health Agency Licensures

Home Health Agency Licensures

Exhibit # 9

New LHCSAs

2480 L	Liz's Compassionate Care, Inc. (Chemung, Steuben, and Schuyler Counties)
2482 L	T & L Care, Inc. d/b/a Caring Companions of Buffalo (Erie, Niagara, Orleans, Genesee, Wyoming, Chautauqua, Cattaraugus, and Allegany Counties)

- 2534 L Western New York Homecare, Inc.
(Allegany, Cattaraugus, Chautauqua, Erie, Genesee,
Monroe, Niagara, Orleans and Wyoming Counties)
- 152081 Angels at Heart Senior Care, LLC
(Erie and Niagara Counties)
- 152104 Capital Region Home Care, LLC
d/b/a Right at Home Albany
(Albany, Greene, Columbia, Montgomery, Fulton,
Saratoga, Schenectady and Rensselaer Counties)
- 161260 S.M.R. Cares, Inc. d/b/a Home Helpers/Direct Link of
Buffalo
(Alleghany, Cattaraugus, Erie and Wyoming Counties)
- 161284 New York Regional Home Care, LLC
(Monroe, Genesee, Livingston, Ontario and Wayne
Counties)
- 162441 Independence Home Care of New York, Inc.
(Erie and Niagara Counties)

New LHCSAs – Affiliated with Assisted Living Programs (ALPs)

- 162121 Elegance Home Care LLC d/b/a Elegance at Home
(Nassau, Queens, Rockland, Suffolk and Westchester
Counties)
- 162301 St. Johnland LHCSA, Inc. d/b/a St. Johnland LHCSA
(Suffolk and Nassau Counties)
- 162310 Ateret of Midwood LLC d/b/a Ateret Home Care
(Kings, New York, Bronx, Richmond, and Queens
Counties)
- 162311 St. Joseph’s Adult Care Home, Inc.
d/b/a St. Joseph’s Home Care
(Rockland County)
- 162312 Rosewood of Rochester, LLC
d/b/a Rosewood of Rochester Home Care
(Genesee, Ontario, Livingston, Wayne, and Monroe
Counties)

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>
161046	Advanced Care, Inc. (See exhibit for Counties served)
161186	YALR Operating, LLC (Westchester County)
161455	Brighton Home Care, Inc. (New York, Queens, Kings, Richmond, Bronx, and Nassau Counties)
162070	GALR Operating LLC d/b/a Ghent Assisted Living (Columbia County)
162302	Naidu Associates LLC d/b/a Comfort Keepers #512 (Dutchess, Putnam, Westchester and Bronx Counties)
162476	Better Choice Home Care Inc. (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
162499	MedPro Homecare Agency, Inc. (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)

D. Certificates

Exhibit # 10

Certificate of Amendment of the Certificate of Incorporation

Applicant

Troy Conference Geriatric Foundation, Inc.

Certificate of Amendment to the Certificate of Incorporation

Applicant

Winthrop South Nassau University Health System, Inc.



Project # 162281-C
University Hospital SUNY Health Science Center

Program: Hospital
Purpose: Construction

County: Oswego
Acknowledged: November 9, 2016

Executive Summary

Description

University Hospital SUNY Health Science Center (University Hospital), a 409-bed, voluntary, Article 28 acute care hospital located at 750 East Adams Street, Syracuse (Onondaga County), requests approval to certify a new extension clinic by leasing the operations and real estate of an existing private radiation oncology practice located at 105 County Route 45A, Oswego (Seneca Hill Health Campus) and certifying Radiology-Therapeutic Services. The applicant intends to keep the current existing linear accelerator (LINAC) on site, as it is less than two years old. The practice is currently managed by Upstate University Radiation Oncology, Inc.

Through CON 162286, concurrently under review, University Hospital is requesting to expand an existing extension clinic located at 1000 East Genesee Street, Syracuse, New York, by converting an adjacent private radiation oncology practice and certifying Radiology-Therapeutic Services by employing one LINAC.

OPCHSM Recommendation
Contingent Approval

Need Summary

The proposed extension clinic is in the Central NY region, which currently has 13 approved or existing LINAC machines and has a determined need for 20 LINAC machines. Approval of this project will help meet the remaining need for LINAC machines in the Central NY region. The number of projected visits is 10,101 in Years 1 and 3.

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 because the site is already Article 28 compliant. University Hospital will be leasing the radiation oncology practice; therefore, there is no purchase price for the operations.

<u>Incremental Budget</u>	<u>Year One</u>
Revenues	\$2,476,892
Expenses	<u>\$2,144,942</u>
Net Income	\$331,950

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 lease agreement for the realty interests, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement for the operating interests, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]

Council Action Date

April 6, 2017

Need Analysis

Background and Analysis

The primary service area for the proposed extension clinic is Oswego County. University Hospital is seeking to integrate the existing practice into the Upstate Cancer Center, thereby expanding services offered to cancer patients in Oswego County.

The Central NY health planning region currently has a total of seven facilities - six hospitals and one hospital extension clinic - providing linear accelerator services as follows:

Central NY Region - Current Resources						
County	# Facilities with LINAC Services			# LINAC Machines		
	Hospitals	Hospital Clinics	Total	in Hospitals	in Hospital Clinics	Total
St. Lawrence	2	0	2	3	0	3
Jefferson	1	0	1	2	0	2
Lewis	0	0	0	0	0	0
Herkimer	0	0	0	0	0	0
Oneida	1	1	2	2	1	3
Oswego	0	0	0	0	0	0
Cayuga	0	0	0	0	0	0
Onondaga	1	0	1	4	0	4
Madison	0	0	0	0	0	0
Cortland	0	0	0	0	0	0
Tompkins	1	0	1	1	0	1
Total Central NY Region	6	1	7	12	1	13

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. Department regulations require that at least ninety-five percent of the total population of the Central NY region live within one hour's driving time of a LINAC. Need for LINAC machines is determined by assuming that 60% of the cancer cases in a planning region will be candidates for radiological therapy. Of these, half will require 15 treatments a year and half will require 35. Each LINAC machine can provide 6,500 treatments per year. The table below shows a need for five LINACs in the Central NY health planning region, following approval of this project and CON 162286 being reviewed concurrently:

	LINAC Need in Central NY Region	Total
1	# of Cancer Cases/Year	8,534
2	60% will be Candidates for Radiation Therapy	5,120
3	50% of (2) will be Curative Patients	2,560
4	50% of (2) will be Palliative Patients	2,560
5	Course of Treatment for Curative Patients is 35 Treatments	89,605
6	Course of Treatment for Palliative patients is 15 Treatments	38,402
7	The Total Number of Treatments [(5) + (6)]	128,007
8	Need for LINAC Machines ¹ [(7)/6,500]	20
9	Existing/Approved Resources ²	15
10	Remaining Need for LINAC Machines [(8) - (9)]	5

¹Each LINAC Machine has capacity for 6,500 Treatments

²Upon approval of CONs 162281 and 162286

This project will provide access to radiation therapy services locally for residents of Oswego, thus eliminating the need to travel to Syracuse for services. The proposed clinic is 44 minutes driving time from University Hospital SUNY Health Science Center.

Conclusion

The codified methodology shows a remaining need for linear accelerators in the Central NY planning region.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

University Hospital proposes assuming an existing practice and integrating it into the Upstate Cancer Center in Syracuse. Patients will have the opportunity to be treated for all types of cancers and utilize a full spectrum of services offered through the Upstate Cancer Center and, as a result of this proposed integration, they will have access to cancer treatment locally in Oswego County, thus eliminating the need to travel to Syracuse for services.

Site

Upstate Cancer Center at Seneca Hill
105 County Route 45A, Suite # 200
Oswego, NY 13126

Approved Services

Radiology – Therapeutic

First year staffing will consist of 4.80 FTEs and remain at that level through the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Agreement - Operations

The applicant has submitted a draft lease agreement for the operations of the Radiation Oncology Practice, as summarized below:

Lessor:	Upstate University Radiation Oncology, Inc. (UURO)
Lessee:	State University of New York
Lease Includes:	Operations of Upstate University Radiation Oncology, Inc., which includes Radiation Oncology at the Upstate University Hospital Cancer Center (Hospital-Based Practice), Oswego Radiation Oncology at 105 County Route 45A, Suite 200, Oswego New York 13126 (Provider Based Practice), and Hill Radiation Oncology at 1000 East Genesee Street, Suite 101, Syracuse New York 13210 (Provider Based Practice, subject of CON 162286). This includes leasing the radiation oncology medical staff, furnishings and

	medical equipment. UURO will also bill the patient and/or appropriate third-party payor for all billable professional services performed.
Term:	Commence on May 1, 2017 and expire on April 30, 2022.
Rental:	\$1,297,099 for this CON, which includes \$890,778 in purchased services and \$406,321 in Other Expense. The total lease is for \$7,562,645 annually, which includes all operations being leased.
Provisions:	SUNY shall be responsible for the operation and management of the Practices in accordance with all laws and regulations. SUNY shall ensure that staffing of the practices is consistent with industry staffing and provider productivity standards.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the space, as summarized below.

Premises:	5,745 square feet at 105 County Route 45A, Suite 200, Oswego, New York 13126
Landlord:	Oswego Hospital
Lessee:	State University of New York
Term:	Four (4) years with option to renew for an additional eight (8) years
Rental:	\$183,840 annually (\$32.00 per square foot)
Provisions:	Includes: utilities, taxes and maintenance allocated to the suite and common area

The applicant has submitted letters from two New York licensed realty agents stating that the annual base rent is fair and reasonable for space of this type in this area.

Operating Budget

The applicant has submitted an incremental operating budget, in 2017 dollars, for the first and third years, summarized below.

	<u>Per Visit</u>	<u>Year One and Three</u>
<u>Outpatient Revenues</u>		
Commercial – FFS	\$512.01	\$656,396
Commercial – MC	\$512.01	723,469
Medicare – FFS	\$152.52	573,930
Medicare – MC	\$152.52	301,225
Medicaid – FFS	\$133.02	13,967
Medicaid – MC	\$133.02	127,962
Private Pay/Other	\$133.02	<u>79,943</u>
Total Revenue		\$2,476,892
<u>Expenses</u>		
Operating	\$191.06	\$1,929,847
Capital	\$21.29	<u>215,095</u>
Total		\$2,144,942
Net Income		<u>\$331,950</u>
Visits		10,101

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

	<u>Year One and Three</u>
Commercial - FFS	12.69%
Commercial - MC	13.99%
Medicare - FFS	37.25%
Medicare - MC	19.55%
Medicaid - FFS	1.04%
Medicaid - MC	9.52%
Private Pay/Other	5.95%

The following is noted with respect to the submitted budget:

- Revenues by payor for the transition of the current private practice to a hospital-based outpatient service were based on a rate analysis completed by ECG Management Consultants.
- Utilization assumptions are based upon the current volume from the private practice. There is no projected increase for the third year, as the practice is near capacity now with current equipment.
- Expenses are predominately related to the lease of the private practice operations and the lease of the realty.
- Breakeven utilization is projected at 8,747 visits for Year One and Year Three.

Capability and Feasibility

There is no purchase price for the operations as University Hospital will be leasing the Radiation Oncology Practice. There are no project costs associated with this application.

Working capital requirements are estimated at \$357,490 based on two months of third year expenses. The applicant will provide the full amount from its operations. BFA Attachment A presents University Hospital's 2014 and 2015 certified financial statements and their internal financial as of December 2016. As shown, the hospital has sufficient resources to fund working capital.

The submitted incremental budget indicates an income of \$331,950 during the first and third years. There is no projected increase in income for the third year because the practice is near capacity now with current equipment. Revenues reflect the transition from the current private practice to a hospital-based outpatient service and were based on a rate analysis completed by ECG Management Consultants. The budget appears reasonable.

BFA Attachment B is a financial summary of Upstate University Radiation Oncology, Inc. As shown, the practice maintained positive working capital, positive net asset positions, and net income for the years ending 2015 and 2016.

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

Recommendation

From a financial perspective, Contingent Approval is recommended.

Attachments

BFA Attachment A Financial Summary - University Hospital SUNY Health Science Center
BFA Attachment B Financial Summary - Upstate University Radiation Oncology, Inc.



Project # 162286-C
University Hospital SUNY Health Science Center

Program: Hospital
Purpose: Construction

County: Onondaga
Acknowledged: November 9, 2016

Executive Summary

Description

University Hospital SUNY Health Science Center (University Hospital), a 409-bed, voluntary, Article 28 acute care hospital located at 750 East Adams Street, Syracuse (Onondaga County), requests approval to expand an existing extension clinic by leasing the operations and realty of an adjacent private radiation oncology practice at 1000 East Genesee Street, Syracuse (Hill Medical) and certify Radiology-Therapeutic Services. The private practice is currently managed by Upstate University Radiation Oncology, Inc. and is in adjacent space at the Hill Medical extension clinic. The clinic will operate one linear accelerator (LINAC)

Concurrently under review, University Hospital is requesting to expand its cancer treatment services in Oswego County by adding an extension clinic located at 105 County Route 45A, which is another existing private radiation oncology practice currently managed by Upstate University Radiation Oncology, Inc. (CON 162281). University Hospital will lease the operations and realty of this practice as well.

OPCHSM Recommendation
Contingent Approval

Need Summary

The Central New York region currently has 13 approved or existing LINAC machines and has a determined need for 20 LINAC machines. Approval of this project will help meet the remaining need for LINAC machines in the region. The number of projected visits is 17,400 in Years 1 and 3.

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 also no project costs associated with this application, because the space is already Article 28 compliant. University Hospital will be leasing the radiation oncology practice; therefore, there is no purchase price for the operations.

<u>Incremental Budget</u>	<u>Year One</u>
Revenues	\$5,098,884
Expenses	<u>\$4,094,557</u>
Net Income	\$1,004,327

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 lease agreement for the realty interests, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement for the operating interests, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. All devices producing ionizing radiation must be licensed by the New York State Department of Health -- Bureau of Environmental Radiation Protection. [HSP]

Council Action Date

April 6, 2017

Need Analysis

Background and Analysis

The primary service area for the proposed extension clinic is Onondaga County.

The Central NY health planning region currently has a total of seven facilities - six hospitals and one hospital extension clinics - providing linear accelerator services as follows:

Central NY Region - Current Resources						
County	# Facilities with LINAC Services			# LINAC Machines		
	Hospitals	Hospital Clinics	Total	in Hospitals	in Hospital Clinics	Total
St. Lawrence	2	0	2	3	0	3
Jefferson	1	0	1	2	0	2
Lewis	0	0	0	0	0	0
Herkimer	0	0	0	0	0	0
Oneida	1	1	2	2	1	3
Oswego	0	0	0	0	0	0
Cayuga	0	0	0	0	0	0
Onondaga	1	0	1	4	0	4
Madison	0	0	0	0	0	0
Cortland	0	0	0	0	0	0
Tompkins	1	0	1	1	0	1
Total Central NY Region	6	1	7	12	1	13

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. Department regulations require that at least ninety-five percent of the total population of the Central NY region live within one hour's driving time of a LINAC. Furthermore, need for LINAC machines is determined by assuming that 60% of the cancer cases in a planning region will be candidates for radiological therapy. Of these, half will require 15 treatments a year and half will require 35. Each LINAC machine can provide 6,500 treatments per year. The table below shows a need for five LINACs in the Central NY health planning region following approval of this project and CON 162281 being reviewed concurrently.

	LINAC Need in Central NY Region	Total
1	# of Cancer Cases/Year	8,534
2	60% will be Candidates for Radiation Therapy	5,120
3	50% of (2) will be Curative Patients	2,560
4	50% of (2) will be Palliative Patients	2,560
5	Course of Treatment for Curative Patients is 35 Treatments	89,605
6	Course of Treatment for Palliative patients is 15 Treatments	38,402
7	The Total Number of Treatments [(5) + (6)]	128,007
8	Need for LINAC Machines ¹ [(7)/6,500]	20
9	Existing/Approved Resources ²	15
10	Remaining Need for LINAC Machines [(8) - (9)]	5

¹Each LINAC Machine has capacity for 6,500 Treatments

²Upon approval of CONs 162281 and 162286

This project will provide additional access to radiation therapy services by an Article 28 provider for residents of Onondaga County. By providing therapeutic radiology services at the proposed extension clinic, the Upstate Cancer Center location adjacent to the main hospital on campus can focus on serving the pediatric population and hospital inpatients.

Conclusion

The codified methodology shows a remaining need for linear accelerators in the Central NY planning region.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

University Hospital proposes assuming an existing private practice and integrating it into the Upstate Cancer Center in Syracuse. Patients in the City of Syracuse and greater Onondaga County will have the opportunity to be treated for all types of cancers and utilize a full spectrum of services offered through the Upstate Cancer Center.

Site

Upstate Cancer Center at Hill Medical
1000 East Genesee Street
Syracuse, NY 13210

Approved Services

Radiology – Therapeutic

First year staffing will consist of 7.60 FTEs and remain at that level through the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Agreement - Operations

The applicant has submitted a draft lease agreement for the operations of the radiation oncology practice, as summarized below

Lessor:	Upstate University Radiation Oncology, Inc. (UURO)
Lessee:	State University of New York
Lease Includes:	Operations of Upstate University Radiation Oncology, Inc. which includes Radiation Oncology at the Upstate University Hospital Cancer Center (Hospital Based Practice), Oswego Radiation Oncology at 105 County Route 45A, Suite 200, Oswego New York 13126 (Provider Based Practice, subject of CON 162281) and Hill Radiation Oncology at 1000 East Genesee Street, Suite 101, Syracuse New York 13210 (Provider Based Practice). This includes leasing its radiation oncology medical staff, furnishings and medical equipment. UURO will

	also bill the patient and/or appropriate third-party payor for all billable professional services performed.
Term:	Commence on May 1, 2017 and expire on April 30, 2022.
Rental:	\$3,012,513 for this CON, which includes \$2,153,834 in purchased services and \$858,679 in Other Expense. The total lease is for \$7,562,645 annually which includes all operations being leased.
Provisions:	SUNY shall be responsible for the operation and management of the Practices in accordance with all laws and regulations. SUNY shall ensure that staffing of the practices is consistent with industry staffing and provider productivity standards.

Lease Agreement - Realty

The applicant has submitted a draft lease rental agreement for the space, as summarized below

Premises:	4,708 square feet at 1000 East Genesee Street, Syracuse
Landlord:	Business Venture Associates Limited Partnership
Lessee:	State University of New York
Term:	4-years with option to renew for an additional 6-years
Rental:	\$149,950 annually

The applicant has submitted letters from two New York realty agents stating that the annual base rent is fair and reasonable for space of this type in this area.

Operating Budget

The applicant has submitted an incremental operating budget, in 2017 dollars, for the first and third years, summarized below:

	<u>Per Visit</u>	<u>Year One and Three</u>
<u>Outpatient Revenues</u>		
Commercial – FFS	\$451.29	\$1,171,536
Commercial – MC	\$451.29	1,976,178
Medicare – FFS	\$193.64	816,198
Medicare – MC	\$193.64	405,291
Medicaid – FFS	\$177.24	53,525
Medicaid – MC	\$177.24	334,622
Private Pay/Other	\$177.24	<u>341,534</u>
Total Revenue		\$5,098,884
<u>Expenses</u>		
Operating	\$222.26	\$3,867,298
Capital	\$13.06	<u>227,259</u>
Total		\$4,094,557
Net Income		<u>\$1,004,327</u>
Visits		17,400

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

	<u>Year One and Three</u>
Commercial - FFS	14.92%
Commercial - MC	25.17%
Medicare - FFS	24.22%
Medicare - MC	12.03%
Medicaid - FFS	1.74%
Medicaid - MC	10.85%
Private Pay/Other	11.07%

The following is noted with respect to the submitted budget:

- Revenue by payor for the transition of the current private practice to a hospital-based outpatient service and were based on a rate analysis completed by ECG Management Consultants.
- Utilization assumptions are based upon the current volume from the private practice and there is no projected increase for the third year because the practice is near capacity now with current equipment.
- Expenses are predominately related to the lease of the private practice operations and the lease of the realty.
- Breakeven utilization is projected at 13,973 visits for Year One and Year Three.

Capability and Feasibility

There is no purchase price for the operations as University Hospital will be leasing the Radiation Oncology Practice. There are also no project costs associated with this application.

Working capital requirements are estimated at \$682,426 based on two months of third year expenses. The applicant will provide the full amount from its operations. BFA Attachment A presents University Hospital's 2014 and 2015 certified financial statements and their internal financial as of December 2016. As shown, the hospital has sufficient resources to fund working capital.

The submitted incremental budget indicates an income of \$1,004,327 during the first and third years. Revenues reflect the transition from the current private practice to a hospital-based outpatient service were based on a rate analysis completed by ECG Management Consultants. The budget appears reasonable.

BFA Attachment B is a financial summary of Upstate University Radiation Oncology, Inc. As shown, the practice maintained positive working capital, positive net asset positions, and net income for the years ending 2015 and 2016.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Financial Summary - University Hospital SUNY Health Science Center

BFA Attachment B Financial Summary - Upstate University Radiation Oncology, Inc.



**Project # 171003-C
UPMC Chautauqua at WCA**

**Program: Hospital
Purpose: Construction**

**County: Chautauqua
Acknowledged: January 9, 2017**

Executive Summary

Description

UPMC Chautauqua at WCA (WCA), requests approval to certify two additional Chemical Dependence - Rehabilitation beds. WCA is a voluntary not-for-profit, Article 28 acute care hospital located in Jamestown (Chautauqua County). The hospital operates two divisions, a 277-bed campus (main) located at 207 Foote Avenue and a 40-bed campus (psychiatric-only) located at 61 Glasgow Avenue, for a total of 317 beds. Upon approval of this application, the Foote Avenue campus will be certified for 279 beds, including 15 Chemical Dependency - Rehabilitation beds.

WCA is certified by the New York State Office of Alcoholism and Substance Abuse Services (OASAS) to operate a Part 818 Chemical Dependency Inpatient Rehabilitation Service. WCA notified OASAS of a need for additional beds and was permitted by OASAS to add two temporary Chemical Dependence - Rehabilitation beds at the Foote Avenue location effective August 3, 2016 in response to an increased demand for chemical dependency rehabilitation services due to the increase in substance use by the residents of Chautauqua and surrounding counties. This application is to permanently certify the beds.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant reports utilization has spiked periodically during the year, at times exceeding 100%. Current trends show a rise in substance abuse for Chautauqua County residents. Given this trend and the currently high utilization at WCA, these temporary beds should be certified as permanent beds to continue to address the needs of area residents.

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

The total project costs of \$15,807 will be met via equity from hospital operations. The projected budget is below:

Revenues	\$282,196
Expenses	<u>78,135</u>
Gain/(Loss)	\$204,061

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check uploaded into NYSECON. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]

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. Construction must start on or before August 15, 2017 and construction must be completed by September 30, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 6, 2017

Need Analysis

Background

Upon approval, WCA will be certified to operate a total of 279 beds, including 15 Chemical Dependence - Rehabilitation beds at its 207 Foote Avenue campus.

Bed Type	Current Beds	Bed Change	Upon Project Completion
Chemical Dependence - Rehabilitation	13	2	15
Coronary Care	16		16
Intensive Care	7		7
Maternity	26		26
Medical / Surgical	195		195
Pediatric	10		10
Physical Medicine and Rehabilitation	10		10
Total	277	2	279

Bed Category	Current Beds	2012	2013	2014	2015	2016
Med/Surg	228	30.1%	28.1%	22.5%	24.4%	17.1%
Pediatric	10	8.1%	6.8%	4.9%	5.6%	3.4%
Obstetric	26	18.5%	17.1%	18.4%	19.1%	12.1%
General Psychiatric	0	0.0%	0.0%	0.0%	0.0%	0.0%
Chemical Dependence	13	93.7%	87.8%	81.1%	79.2%	81.3%
High-Risk Neonates	0	0.0%	0.0%	0.0%	0.0%	0.0%
Total	277	39.3%	36.6%	32.6%	34.4%	24.8%

Source: SPARCS 2016

WCA has seen high utilization in their Chemical Dependence beds over the last five years. The facility experiences periodic spikes in utilization, exceeding 100% utilization at times.

Conclusion

Due to the rising substance abuse issues in Chautauqua County, the conversion of the temporary beds to permanent status will benefit area residents and allow the facility to continue to provide needed support to the community.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

The beds are currently operating under a temporary approval by OASAS. There are no proposed changes in authorized services. Staffing is anticipated to increase by 1.07 FTEs in the first year and remain at that level through the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and other fees, is estimated at \$15,807, is broken down as follows:

Renovation and Demolition	\$9,775
Design Contingency	978
Construction Contingency	978
Architect/Engineering Fees	1,000
Other Fees (Consultant)	1,000
CON Fee	2,000
Additional Processing Fee	76
Total Project Cost	\$15,807

Project costs are based on a construction start date of August 15, 2017, with two-month construction renovation period. The hospital will provide equity via operations to meet the total project cost.

Operating Budget

The applicant has submitted an incremental operating budget, in 2017 dollars, during the first and third years, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid MC	\$4,685	\$89,009	\$4,754	\$90,334
Medicaid FFS	\$4,676	\$70,140	\$4,746	\$71,192
Medicare MC	\$4,817	\$4,817	\$4,913	\$4,913
Medicare FFS	\$5,414	\$54,139	\$5,522	\$55,222
Commercial MC	\$10,191	\$20,382	\$10,548	\$21,095
Commercial FFS	\$12,708	<u>\$38,106</u>	\$13,147	<u>\$39,440</u>
Total Revenues		\$276,593		\$282,196

<u>Expenses</u>		
Operating	\$75,229	\$78,135
Capital	<u>0</u>	<u>0</u>
Total Expenses	\$75,229	\$78,135
Gain/(Loss)	<u>\$201,364</u>	<u>\$204,061</u>
Utilization (Discharges)	50	50

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid MC	38%	38%
Medicaid FFS	30%	30%
Medicare MC	2%	2%
Medicare FFS	20%	20%
Commercial MC	4%	4%
Commercial FFS	6%	6%

Revenue, expense and utilization assumptions are based on the hospital's historical experience in operating chemical dependency-rehabilitation service beds.

Capability and Feasibility

The total project cost of \$15,807 will be met via equity from the hospital operations. BFA Attachment A is the 2014 and 2015 certified financial statements of The Woman's Christian Association of Jamestown, NY, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of incremental revenues over expenses of \$201,364 and \$204,061 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position and an average positive net asset position from 2014 through 2015. The entity achieved average income from operations of \$402,152 from 2014 through 2015.

BFA Attachment B is the hospital's internal financial statements as of November 30, 2016. As shown, the entity had a positive working capital position, a positive net asset position and incurred an operating loss of \$2,197,699 as of November 30, 2016. The applicant indicated that the reasons for the loss were as follows:

- Expenses were over budget by about \$750,000 due to a shortage of registered nurses and employed Hospitalists. To cover the staffing shortages, the hospital used per diem contractors, travelers and locum tenens physicians, which were more expensive.
- Net revenues decreased by about \$2 million due to a reduction in overall case mix. Part of this reduction is attributable to a reduction in surgical cases related to physician shortages, especially orthopedic surgeons. Also, the number of medical patients admitted for opioid, cocaine and alcohol abuse and dependence increased four-fold from a year ago, which are paid at a very low service intensity weight.
- Lastly, the transition to ICD-10 coding could also be a factor. The facility has hired an outside consultant to conduct a documentation and coding audit to identify potential revenue enhancement and process improvements.

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 and 2015 certified financial statements of Woman's Christian Association of Jamestown, NY.
- BFA Attachment B Financial Summary - November 30, 2016 internal financial statements of Woman's Christian Association of Jamestown.



Project # 171054-C
Aurelia Osborn Fox Memorial Hospital

Program: Hospital
Purpose: Construction

County: Delaware
Acknowledged: February 6, 2017

Executive Summary

Description

Aurelia Osborn Fox Memorial Hospital Society Inc. d/b/a Aurelia Osborn Fox Memorial Hospital (AO Fox), a 53-bed, voluntary not-for-profit, acute care hospital located at One Norton Avenue, Oneonta (Otsego County), is requesting to certify Tri Town Regional Healthcare (TRH), a four-bed, voluntary not-for-profit, acute care hospital located at 43 Pearl Street West, Sidney (Delaware County), as a an off-campus emergency department (ED) with outpatient services by decertify all four inpatient beds at TRH.

Based on the lack of inpatient activity, TRH is not able to maintain its Hospital designation under the Centers for Medicare & Medicaid Services (CMS) guidelines. The proposed project is to operate TRH's ED and outpatient services under the auspices of AO Fox, which is a community hospital located 26 miles from the TRH facility in Oneonta.

Bassett Healthcare Network is the sole member and active parent/co-operator of AO Fox and TRH, along with five other Article 28 facilities (four hospitals and one residential health care facility) and two Article 36 agencies (one certified home health agency and one licensed home care services agency). The other facilities under Bassett are as follows:

- Mary Imogene Bassett Hospital;
Cobleskill Regional Hospital;
O'Connor Hospital;

- Little Falls Hospital;
Valley Health Services, Inc.;
At Home Care, Inc.; and
At Home Care Partners, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary

The four inpatient beds at this location have not been in use, therefore decertifying these beds and operating the facility as an extension of AO Fox will have no impact on access to care. This proposal is intended to ensure access to the well-utilized and necessary outpatient services there.

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. Following is the combined AO Fox/TRH budget for the first year subsequent to the change in operator:

Table with 2 columns: Category, Amount. Rows: Revenues (\$92,061,494), Expenses (91,090,814), Gain/(Loss) (\$970,680).

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 building lease, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's evidence of site control, acceptable to the Department. [CSL]
3. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation or, alternatively a Certificate of Dissolution, for Tri Town Regional Healthcare, 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

April 6, 2017

Need Analysis

Analysis

The Tri Town facility is currently certified for four Medical/Surgical beds and to provide the following services:

- Emergency Department
- Medical Services - Other Medical Specialties
- Medical Services - Primary Care
- Nuclear Medicine – Diagnostic

The Medical/Surgical beds will be decertified while the other services will continue to be provided under the auspices of AO Fox. This proposal would enable outpatient and emergency services to continue to be provided at the same location.

Utilization data for Tri Town Regional Healthcare are provided below. These indicate a demand for both Emergency services and other outpatient services at the Tri Town location, which would be negatively impacted if this facility closed. With the nearest Emergency Department located more than 30 minutes away at AO Fox, the Tri Town site provides access to this service for the proximate population.

	2013	2014	2015
Outpatient Clinic	2,082	2,916	3,188
Emergency Department	8,629	9,296	9,946

Source: *Institutional Cost Reports*

The four Medical/Surgical inpatient beds at Tri Town Regional Healthcare are not currently utilized, so decertification will have no negative impact on the patient population.

Conclusion

Tri Town Regional Healthcare provides needed outpatient and emergency services to a relatively isolated population. This proposal to convert the hospital into an off-campus emergency department with on-going outpatient services will allow continued access to these services for residents of Delaware County and the surrounding area.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Due to low inpatient utilization, TRH has been unable to maintain its hospital designation under CMS guidelines. AO Fox intends to maintain the ED at TRH (as an off campus ED), primary care and specialty clinics, clinical laboratory services and diagnostic imaging services, which includes CT scanning and MRI.

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 Division of Certification and Surveillance, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Agreement

A draft lease has been submitted to lease the real property, the terms of which are summarized below:

Premises:	Portion of Landlord's former hospital building consisting of 15,006 square feet located at 43 Pearl Street West, Sidney, New York and the related health care facility premises.
Landlord:	Town of Sidney, New York
Lessee:	Tri Town Regional Healthcare d/b/a Tri-Town Regional Hospital
Term:	One year with an option to purchase for \$350,000. The purchase price includes the Clinic building located at 39 Pearl Street West, Sidney, New York
Rent:	\$393,907.50 (\$32,825.63/month)
Provisions:	Insurance

Operating Budget

The applicant has submitted an operating budget for the combined AO Fox/TRH operations, in 2017 dollars, for the first year of operation, as summarized below:

<u>Revenues</u>	<u>Combined Total</u>
Operating Revenues	\$81,239,505
Other Operating Revenues	<u>10,821,989</u>
Total Revenues	\$92,061,494
 <u>Expenses</u>	
Operating	\$84,497,521
Capital	<u>6,593,293</u>
Total Expenses	\$91,090,814
 Excess of Revenues over Expenses	 <u>\$970,680</u>
 <u>Utilization</u>	
Inpatient (Discharges)	2,364
Outpatient (Visits)	174,261

Utilization by payor source for the combined operations is as follows:

	<u>Inpatient</u>	<u>Outpatient</u>
Medicaid FFS	4.15%	4.82%
Medicaid MC	13.66%	15.76%
Medicare FFS	49.28%	25.79%
Medicare MC	13.71%	8.82%
Commercial FFS	2.92%	19.66%
Commercial MC	14.00%	14.95%
Private Pay	0.93%	7.84%
Charity Care	0.00%	0.02%
All Other	1.35%	2.34%

The following is noted with respect to the submitted budget:

- Revenues and expenses are based on the 2016 historical experience of AO Fox and the 2017 budget for TRH, incorporating projected inpatient and outpatient volume increases between the current year and year one.
- Other operating revenue includes: Vital Access Provider (VAP) award, Vital Access Provider Assistance Program (VAPAP) funding, Delivery System Reform Incentive Payment (DSRIP) Program funds, research grants, rental income, pharmacy income and miscellaneous income.

Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates an excess of revenues over expenses of \$970,680 during the first year for the combined AO Fox/TRH operations.

BFA Attachment A is the 2014-2015 certified financial statements of Aurelia Osborn Fox Memorial Hospital, which shows the entity had a net operating loss in 2014 and 2015 of \$10,161,406 and \$6,464,528, respectively. The losses were due to the shift of patient care services from an inpatient focus to an outpatient setting, federal and state reimbursement cuts, the introduction of Medicare and Medicaid managed care, and the high costs of maintaining anesthesiologists, hospitalists, obstetricians and urologists for specialty services. AO Fox did not participate in the DSRIP Interim Access Assurance Fund program, which provided time limited funding to ensure undisrupted safety net provider transitioning to the DSRIP Program. However, the facility began receiving VAPAP support in April 2015, with funding through December 2015 totaling \$3,761,329. In 2016, the hospital received \$20,198,386 in Essential Health Care Provider Support Program grant funding to cover long term debt and vendor payments, \$786,847 in VAPAP funding, and \$2,400,000 in Value Based Payment-Quality Improvement Program (VBP-QIP) funding to help with the transition to VBP. The facility also received a VAP Phase II award for \$7,266,279 to assist with expansion of their primary care network and to modernize and right size acute care services. This award has been paid in total, apportioned over SFYs 2013/14 - 2015/16. More recently, in 2016 the facility was awarded a VAP Phase V - Essential Community Provider (ECP) grant for \$510,000 to expand surgical service capacity, improve patient experience, and provide staff training for Electronic Medical Record migration. The federal share of this ECP grant is still pending, but \$223,125 of the State's share has been paid to date.

BFA Attachment B is the 2014 and 2015 certified financial statements of Tri Town Regional Healthcare, which shows the hospital had a positive working capital position, an average positive net asset position and an average excess of revenues over expenses of \$1,037,466 for the period shown.

BFA Attachment C is the internal financial statements of Aurelia Osborn Fox Memorial Hospital as of December 30, 2016. As shown, the hospital has a positive working capital position, a positive net asset position and an excess of revenues over expenses of \$1,250,751.

BFA Attachment D is the internal financial statements of Tri Town Regional Healthcare as of December 31, 2016. As shown, the entity has a positive working capital position and a positive net asset position and an excess of revenues over expenses of \$221,118.

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 is recommended.

Attachments

- BFA Attachment A Aurelia Osborn Fox Memorial Hospital, Certified Financial Statements 2014-2015
- BFA Attachment B Tri Town Regional Healthcare, Certified Financial Statements 2014-2015
- BFA Attachment C Aurelia Osborn Fox Memorial Hospital, Internal Financial Statement as of December 31, 2016
- BFA Attachment D Tri Town Regional Healthcare, Internal Financial Statement as of December 31, 2016
- BFA Attachment E Organizational Chart – Current and Proposed



**Project # 162429-C
Gramercy Park Digestive Disease Center**

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Construction **Acknowledged:** December 19, 2016

Executive Summary

Description

GPDDCC, LLC d/b/a Gramercy Park Digestive Center, an existing Article 28 freestanding ambulatory surgery center (FASC) located at 250 Park Avenue South, New York (New York County), requests approval to certify an FASC extension clinic to be located in leased space at 2 Bennett Avenue, New York. The Center is certified as a single specialty FASC specializing in the field of gastroenterology. The extension clinic will provide the same single specialty gastroenterology services offered at the Park Avenue location to Northern Manhattan residents in the Washington Heights area.

Gramercy Park Digestive Center was approved by the Public Health Council in 2005 and commenced operations in 2008.

OPCHSM Recommendation
Contingent Approval

Need Summary

The center will have two operating rooms and will operate under the name Gramercy Park DDC- Bennett Avenue. The number of projected procedures is 2,500 in Year 1 with Medicaid at 7.08% and charity care at 2.40%.

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 cost of \$1,939,783 will be met via \$205,318 equity and a \$1,734,465 bank loan @ 5% over six years. Below is the proposed budget.

Revenues	\$2,278,267
Expenses	<u>1,593,393</u>
Net Income	\$684,874

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bank loan commitment acceptable to the Department of Health. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]
4. The submission of engineering drawings (MEP) for review and approval, as described in BAER 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 November 30, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 6, 2017

Need Analysis

Background

The applicant indicated that the existing location is experiencing a heavy demand for services, requiring the Center to open on Saturdays to accommodate the increased demand. In addition, physicians that work at the Center have noted that some patients who live in the area of the proposed extension clinic refuse to go to the facility on Park Avenue because of the location and travel distance. This proposed expansion is consistent with meeting the needs of residents in the Northern Manhattan/Washington Heights area surrounding the proposed site. The applicant's existing site reports in their annual cost 7.5% Medicaid and 0.15% charity care in 2014 and 7.1% Medicaid and 0% charity care in 2015.

Analysis

The service area is New York County. New York County has a total of 15 freestanding ambulatory surgery centers: seven multi-specialty ASCs and eight single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2014 and 2015.

Type	Facility Name	Total Patient Visits	
		2014	2015
Single	Carnegie Hill Endo, LLC	11,426	11,898
Multi	Center for Specialty Care	3,900	3,771
Single	East Side Endoscopy	9,284	9,302
Multi	Fifth Avenue Surgery Center	1,544	751
Multi	Gramercy Park Digestive Disease	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 Ctr., LLC	12,656	12,773
Multi	Manhattan Surgery Center	2,502	5,087
Single	Mid- Manhattan Surgi-Center	3,900	3,360
Multi	Midtown Surgery Center, LLC	3,166	2,608
Single	Retinal Ambulatory Surgery Ctr.	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		98,424	105,360

Source: SPARCS-2016

For all ambulatory surgery centers in New York County, the total number of patient visits was 98,424 in 2014 and 105,360 in 2015; a 7.0% year-to-year increase. For the Gastroenterology ASCs in the county, the number of patient visits was 65,743 in 2014 and 70,049 in 2015; a 6.5% year-to-year increase. The population of New York County in 2010 was 1,585,873, with 595,344 individuals (37.5%) aged 45 and older. This is the primary population group utilizing gastroenterology ambulatory surgery services. Per Cornell Program on Applied Demographics (PAD) projection data, this population group is estimated to grow to 630,729 by 2025 and represent 39.1% of the projected population of 1,615,772.

The number of projected procedures is 2,500 in Year 1 and 3,002 in Year 3. The current volume at the Park Avenue location is straining resources available at this site and approval of this project will help alleviate this situation as well as provide a more convenient location for those patients that live in northern Manhattan. The hours of operation for the center will be Monday through Saturday from 7 am until 6 pm. The hours and days of operation may be modified to accommodate patient demand and convenience.

According to HRSA, the Washington Heights/ Inwood area of New York County is designated as a Medically Underserved Area/population.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Conclusion

Approval of this project will provide increased access to Gastroenterology surgery services in a regulated setting for the population of New York County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Gramercy Park Digestive Disease Center, LLC seeks approval to establish and construct an Article 28 single-specialty ambulatory surgery center (ASC), specializing in gastroenterological procedures, to be located at 2 Bennett Avenue in Manhattan (New York County).

Proposed Operator	Gramercy Park Digestive Disease Center, LLC
Doing Business As	Gramercy Park DDC-Bennett Avenue
Site Address	2 Bennett Avenue New York, NY (New York County)
Surgical Specialties	Single Specialty: Gastroenterological Services
Operating Rooms	2 (Class B)
Procedure Rooms	0
Hours of Operation	6 days a week, 7 a.m. to 6 p.m.
Staffing (1 st / 3 rd Year)	9.3 FTEs / 10.3 FTEs
Medical Director	Mihaela Vladutiu, M.D.
Emergency, In-Patient & Backup Support Services Agreement and Distance	Will be provided by Lenox Health Greenwich Village 10 miles / 30 minutes
On-call service	The patient will be discharged with the telephone numbers for the surgeon and the Center. For contact after hours the patient will be instructed via an answering machine to either contact the surgeon or to call 911.

The applicant is requesting to extend its existing single-specialty ambulatory surgery center due to the heavy demand for its services at its current location. Although the applicant has increased its hours to accommodate this surge, the volume continues to strain the resources of the existing operation. The applicant believes this new location, near the Washington Heights area, will enhance their ability to serve those individuals insured under Medicaid.

Dr. Mihaela Vladutiu is board-certified in Gastroenterology. He plans to perform procedures at the proposed Center as well as serve as the Center’s Medical Director.

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.

Integration with Community Resources

The Center will have a referral relationship with a local FQHC which will serve as primary care alternatives for those patients who do not have access to primary care services. The facility will also provide names of primary care providers if patients ask for assistance in finding primary care services. 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 gastroenterological services.

The Center does not plan to utilize an electronic medical records system at this time.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Agreement

The applicant submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

Date:	November 19, 2015
Premises:	Approximately 4,754 sq. ft. located at 2-8 Bennett Avenue, New York, New York
Lessor:	Regent Associates
Lessee:	GPDDC, LLC
Term:	15 years
Rental:	\$171,000 annually for the first two years (\$35.97 per sq. ft.) then a 3% increase each year thereafter. Plus, an additional \$12,000 annually (\$2.52 per sq. ft.) for common area charges for the first two years and a 3% increase each year thereafter.
Provisions:	The lessee shall be responsible for maintenance and utilities.

The applicant has indicated that this will be an arm's length lease arrangement and has submitted a letter from a real estate broker attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,939,783, further broken down as follows:

Renovation & Demolition	\$ 688,420
Design Contingency	68,842
Construction Contingency	34,421
Architect/Engineering Fees	85,500
Moveable Equipment	1,050,000
CON Fee	2,000
Additional Processing Fee	10,600
Total Project Cost	\$1,939,783

The applicant's financing of the project cost will be met as follows:

Equity	\$205,318
Bank Loan (5% interest, 6-year term)	\$1,734,465

Signature Bank has provided a letter of interest for financing the project at the stated terms.

Incremental Operating Budget

The applicant has submitted an incremental operating budget, in 2017 dollars, during the first and third years for the extension clinic, summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>		
Medicaid Fee-For-Service	\$12,904	\$15,573
Medicaid Managed Care	88,767	106,760
Medicare Fee-For-Service	98,778	118,633
Medicare Managed Care	805,118	966,384
Commercial Fee-For-Service	878,260	1,067,458
Private Pay	2,455	2,963
Other	<u>496</u>	<u>496</u>
Total Revenues	\$1,886,778	\$2,278,267
<u>Expenses</u>		
Operating	\$1,148,899	\$1,274,654
Capital	<u>355,670</u>	<u>318,739</u>
Total Expenses	\$1,504,569	\$1,593,393
Net Income	\$382,209	\$684,874
Utilization (Procedures)	2,500	3,002
Cost Per Procedure	\$601.82	\$530.78

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	1.16	1.17
Medicaid Managed Care	5.92	5.93
Medicare Fee-For-Service	7.96	7.96
Medicare Managed Care	53.32	53.29
Commercial Fee-For-Service	28.04	28.38
Private Pay/Other	1.20	1.20
Charity Care	2.40	2.07

Expense assumptions are based on the participating physician's experience providing gastroenterology services, as well as the experience of the Center's existing members in operating an Article 28 FASC.

Capability and Feasibility

Total project cost of \$1,939,783 will be met via \$205,318 equity and a bank loan for \$1,734,465 at 5% interest for a six-year term. The applicant has submitted a letter of interest from Signature Bank regarding the financing for the project.

Working capital requirements are estimated at \$265,566, which is equivalent to two months of third year expenses. The applicant will provide equity via operations to meet the working capital requirement. BFA Attachment A is the internal financial statements of GPDDC, LLC as of December 31, 2016, which indicates the availability of sufficient funds to meet the total project cost and the working capital requirements.

The submitted budget indicates net incremental income of \$382,209 and \$684,874 during the first and third years after certification of the extension clinic. Revenues are based on current reimbursement rates for gastroenterology services.

BFA Attachment A shows the entity had a positive working capital position and a positive net asset position through December 31, 2015. Also, the entity achieved a net operating income of \$5,774,293 through December 31, 2015.

BFA Attachment B shows the entity had a positive working capital position and a positive net asset position through December 31, 2016. Also, the entity achieved a net operating income of \$8,956,721 through December 31, 2016.

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.

NY Presbyterian Hospital-Allen Hospital -- No Response

5141 Broadway
New York, New York 10034

Bronx-Lebanon Hospital- Concourse Division -- No Response

1650 Grand Concourse
Bronx, New York 10457

NY Presbyterian Hospital-Columbia Presbyterian Center -- No Response

622 West 168th Street
New York, New York 10032

Mount Sinai Hospital -- No Response

One Gustave L Levy Place
New York, New York 10029

Montefiore Medical Center -- No Response

111 East 210th Street
Bronx, New York 10467

Mount Sinai Beth Israel -- No Response

First Avenue at 16th Street
New York, New York 10003

New York-Presbyterian/Lower Manhattan -- No Response

170 Williams Street
New York, New York 10038

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	Certified Financial Statements of GPDDC, LLC as of December 31, 2015
BFA Attachment B	Internal Financial Statements of GPDDC, LLC as of December 31, 2016
BHFP Attachment	Map



Project # 162467-E
Samaritan Medical Center

Program: Hospital
Purpose: Establishment

County: Jefferson
Acknowledged: December 8, 2016

Executive Summary

Description

Samaritan Medical Center (SMC) is a 290-bed, voluntary not-for-profit, Article 28 acute care hospital located at 830 Washington Street, Watertown (Jefferson County). The applicant requests approval to be established as the active parent and co-operator of Samaritan Keep Nursing Home, Inc. (SKH) and Samaritan Senior Village, Inc. (SSV), two voluntary not-for-profit Article 28 residential health care facilities (RHCF) located in Watertown. SKH is a 272-bed RHCF located at 133 Pratt Street that also operates an onsite 35-slot adult day health care program (ADHCP). SSV is a 167-bed RHCF located at 22691 Campus Drive. SSV also operates a 120-bed adult home consisting of 80 assisted living program (ALP) beds, 40 enhanced assisted living residence beds and a licensed home care service agency (LHCSA).

SMC is currently the sole member and passive parent of SKH and SSV. SMC has no corporate member.

As active parent and co-operator, SMC will have the following rights, powers and authorities with respect to SKH and SSV:

- Approval to fix the number of Directors of each Affiliate;
• Appointment and removal Board members;
• Appointment and removal of senior managers and/or administrators of each Affiliate;
• Approval of amendments to the Certificates of Incorporation and the Bylaws of each Affiliate;
• Approval of certain debt including any debt necessary to finance the cost of compliance

- with operational or physical plan standards requiring applicable law;
• Approval of the sale, lease, exchange or disposition of assets of each Affiliate;
• Approval of the capital and operating budgets of each Affiliate;
• Approval of any plan of merger, consolidation, reorganization, dissolution or liquidation of each Affiliate and each Affiliate's participation in, or development or dissolution of, any subsidiary organizations, including affiliates, partnerships or joint ventures of each Affiliate and other entities;
• Approval of compliance related self-disclosures and repayments by each Affiliate in excess of an amount to be fixed from time to time by the Corporation and to approve settlements of litigation except approval of settlements or litigation that exceed insurance coverage or any applicable self-insurance funds;
• Approval of contracts for management and clinical services; and
• Approval of Certificate of Need submissions filed by or on behalf of the Affiliates.

The purpose of the transaction is to establish a coordinated, highly integrated system with the objectives of improving quality and increasing access to health care in the communities served by the facilities. This application is an integral component of the long-term sustainability plan for SKH and SSV.

There are no changes to staffing 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 this project. SKH and SSV will remain separate not-for-profit corporations, maintaining separate operating certificates following completion of the project.

BFA Attachment A presents the organizational chart of Samaritan Medical Center pre-closing and post-closing.

OPCHSM Recommendation
Contingent Approval

Need Summary

There are no projected changes in utilization of the RHCs as a result of this project. There are no changes to staffing, beds or services associated with the approval of this application.

Current occupancy, as of February 15, 2017, is 97.1% for Samaritan Keep Nursing Home and 96.4% for Samaritan Senior Village.

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

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

Combined Third Year Budget: (SKH and SSV):

Revenues	\$44,148,527
Expenses	<u>44,469,060</u>
Gain/(Loss)	(\$320,533)

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission of a photocopy of the amended Bylaws of Samaritan Keep Nursing Home, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended Bylaws of Samaritan Senior Village, Inc., acceptable to the Department. [CSL]
6. Submission of a photocopy of the amended Bylaws of Samaritan Medical Center 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

April 6, 2017

Need Analysis

Background

The purpose of the transaction is to establish a coordinated, highly integrated system with the objectives of improving quality and increasing access to health care in the communities served by the facilities. This application is an integral component of the long-term sustainability plan for SKH and SSV.

County Facilities	Beds	2013	2014	2015
Carthage Area Hospital	30	94.5%	96.7%	93.8%
River Hospital, Inc (closed)	27	94.8%	91.9%	
Samaritan Keep Nursing Home Inc	272	95.8%	98.2%	98.3%
Samaritan Senior Village Inc	167		92.5%	97.7%
The Country Manor Nursing and Rehab	90	94.0%	96.5%	93.5%
Jefferson County Total/Averages	810	95.2%	96.0%	97.1%

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.

If applicable, applicants are 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.

Facilities	2014	2015
Samaritan Keep Nursing Home Inc	12.4%	7.7%
Samaritan Senior Village, Inc.	17.2%	9.9%
Jefferson County Total	12.3%	9.7%

Conclusion

This project will help ensure the continuation of necessary long term care services in the county. No changes will occur with utilization, beds, or services. There are also no planned staffing or revenue and expenditure changes anticipated.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

Samaritan Medical Center (SMC), a voluntary not-for-profit corporation whose sole corporate member is Samaritan Medical Center, requests approval to become the active parent and co-operator of Samaritan Keep Nursing Home, Inc. and Samaritan Senior Village, two residential health care facilities (RHCF) located in Watertown. SMC is currently the sole member and passive parent of these two facilities.

Samaritan Keep Nursing Home is a 272-bed RHCF located in Jefferson County at 133 Pratt Street in Watertown and Samaritan Senior Village is a 167-bed RHCF located at Campus Drive in Watertown.

Both facilities will remain separate, not-for-profit corporations. SMC, also located in Watertown, is a 290-bed acute care hospital who is also the passive parent of two hospitals and a home health agency.

Samaritan Medical Center seeks approval of this application to establish a coordinated, integrated system with the objectives of improving quality and increasing access to health care in the communities served by the residential health care facilities. 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

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 the board of Samaritan Medical Center. The following disclosures were made:

Mr. Calligaris disclosed that in the course of business, his company and its subsidiaries have been fined by the Occupational and Safety Health Administration for construction site safety violations and have been involved in litigation involving various kinds of claims and miscellaneous contract actions.

Dr. Maloney disclosed a 2011 settled malpractice action involving a tied ureter.

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 March 15, 2016, Samaritan Keep Nursing Home, Inc. was fined \$6,000 based on findings during an inspection of a resident who erroneously received a high dose of insulin and subsequently required hospitalization. The facility was also cited for delaying corrective action for an LPN with significant medication errors. The facility was also fined \$4,000 on October 13, 2010 based on survey findings related to nutritional quality of care and physician services.

In a S&O issued on February 3, 2015, Samaritan Home Health, Inc. was fined \$1000 for issues related to records and reports. A S&O was also issued on March 25, 2010 and the organization was fined \$7,000 for findings related to service delivery policies and procedures, admission and discharge practices, personnel requirements and assessment and plan of care.

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

Operating Budget

The applicant submitted an operating budget, in 2017 dollars, for the current year (2015), first and third years, for SKH and SSV after establishment of SMC as active parent, summarized below:

Samaritan Keep Nursing Home, Inc.

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid SNF	\$181.77	\$14,418,355	\$187.40	\$15,303,649	\$202.34	\$16,524,354
Medicare SNF	\$450.41	3,281,692	\$487.07	3,057,337	\$487.07	3,057,337
Private/Comm. SNF	\$268.96	3,001,369	\$328.17	2,892,490	\$328.17	2,892,490
ADHCP		492,702		457,968		457,968
Other Revenues *		842,441		889,679		889,679
Less: Bad Debt		<u>(365,337)</u>		<u>(399,631)</u>		<u>(399,631)</u>
Total Revenues		\$21,671,222		\$22,201,492		\$23,422,197
Expenses						
Operating	\$245.75	\$24,026,156	\$237.60	\$22,989,042	\$238.46	\$23,072,050
Capital	5.37	<u>525,029</u>	5.05	<u>488,170</u>	5.05	<u>488,170</u>
Total Expenses	\$251.12	\$24,551,185	\$242.64	\$23,477,212	\$243.50	\$23,560,220
Gain/(Loss)		<u>(\$2,879,963)</u>		<u>(\$1,275,720)</u>		<u>(\$138,023)</u>
Utilization (Pt. Days)		97,767		96,756		96,756
Occupancy		98.48%		97.46%		97.46%
ADHCP (Visits)		8,393		8,400		8,400

*Other revenues are revenues from services sold to affiliates and cafeteria income.

Utilization broken down by payor source is as follows:

RHCF	Current	Year	Year		Current	Year	Year
Patient Days	Year	One	Three	ADHCP Visits	Year	One	Three
Medicaid	81.13%	84.40%	84.40%	Medicaid	99.6%	100%	100%
Medicare	7.45%	6.49%	6.49%	Commercial	.4%	0%	0%
Self/Other	11.41%	9.11%	9.11%				

Samaritan Senior Village, Inc.

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid SNF	\$198.40	\$9,256,782	\$209.89	\$9,514,594	\$224.98	\$10,198,789
Medicare SNF	\$410.76	2,231,634	\$511.84	2,909,283	\$511.84	2,909,343
Comm./Private	\$372.37	2,973,377	\$328.29	2,895,225	\$328.29	2,895,225
Adult Home Rev.		5,771,934		4,666,515		5,144,049
Less Bad Debt		<u>(603,862)</u>		<u>(421,076)</u>		<u>(421,076)</u>
Total Revenues		\$19,629,865		\$19,564,541		\$20,726,330
Expenses						
Operating	\$311.01	\$18,683,626	\$315.78	\$18,894,118	\$316.22	\$18,920,643
Capital	34.17	<u>2,052,821</u>	32.89	<u>1,968,197</u>	33.23	<u>1,988,197</u>
Total Expenses	\$345.18	\$20,736,447	\$348.67	\$20,862,315	\$348.45	\$20,908,840
Gain/(Loss)		<u>(\$1,106,582)</u>		<u>(\$1,297,774)</u>		<u>(\$182,510)</u>

Utilization (Days)	60,074	59,834	59,834
Occupancy SNF	97.97%	97.58%	97.58%

Utilization broken down by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid	77.66%	75.76%	75.76%
Medicare	9.04%	9.50%	9.50%
Self-Pay/Other	13.30%	14.74%	14.74%

The following is noted with respect to the submitted operating budgets:

- The increase in the Medicaid rate for both facilities is attributable to a \$15 per day incremental rate adjustment related to the RHCs obtaining hospital-based operating cost rates. The Department's Office of Health Insurance Programs has confirmed that the RHCs would be eligible to request hospital-based rates upon approval of SMC as active parent and co-operator of the nursing homes.
- The Medicare rates are projected to increase due to admitting higher intensity patients.
- Salaries and benefits decreased due to a restructuring plan implemented in the fall of 2016 and health insurance claims projected to decrease for the self-insured plan. The restructuring plan eliminated various positions at the long term care facilities, replaced a staff medical director at SKH with a nurse practitioner, and reduced RNs, secretarial staff, maintenance staff and an MDS coordinator.
- Professional fees decreased because SKH and SSV will no longer be utilizing a consulting company.
- Supplies are projected to decrease based on a decrease in usage.
- Purchased services are decreasing, as the homes stopped using a third party collection company and contracted staff.
- Utilization assumptions for the respective RHCs are based on historical performance.

The combined budget is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$41,301,087	\$41,766,033	\$44,148,527
Expenses	\$45,287,632	\$44,339,527	\$44,469,060
Gain/(Loss)	(\$3,986,545)	(\$2,573,494)	(\$320,533)

The applicant indicated that SMC has and will continue to support reasonable operating losses at the nursing homes. It is noted that the Department recently awarded SKH with a Vital Access Provider program award to assist with restructuring efforts aimed at improving the financial sustainability of access to care for residents of the communities served by the facilities.

Capability and Feasibility

There are no issues of capability as there are no project costs associated with this application.

The submitted budget indicates a combined excess of revenues over expenses of (\$2,573,494) and (\$320,533) during the first and third years, respectively. The first and third year losses will be offset via operations of Samaritan Medical Center. Medicaid revenues are based on reimbursement methodologies for hospital-based nursing facilities. All other revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is the 2014 and 2015 certified financial statements of Samaritan Medical Center and Affiliates. 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 incurred an average loss from operations of \$4,554,945 from 2014 through 2015. The applicant indicated that the reason for the losses were the following: prior period adjustments related to Blue Cross contracts in the amounts of \$3,187,532, a decline in admissions and ED visits attributed to health care reform efforts and increased competition in MRI as Fort Drum and a private physician added machines to the market place.

BFA Attachment C is the internal financial statements of Samaritan Medical Center as of October 31, 2016. As shown, the entity had a positive working capital position and a positive net asset through

October 31, 2016. Also, the entity incurred a loss from operations of \$2,116,146 through October 31, 2016.

BFA Attachment D is the 2014 and 2015 certified financial statements for Samaritan Keep Nursing Home, Inc. and Samaritan Senior Village, Inc. As shown, the entities had a negative working capital position and a positive net asset position from 2014 through 2015. The applicant indicated that the reason for the negative working capital positions are prior historical losses. Also, SKH had an average loss from operations of \$2,014,055 from 2014 through 2015. SSV incurred an average loss from operations of \$904,000 from 2014 through 2015. The reason for the losses for both facilities were attributed to a high Medicaid population, for which reimbursement was not sufficient to cover the costs of operating the nursing homes. To improve operations, the nursing homes developed a restructuring plan, which was implemented in 2016. The plan included eliminating Director of Maintenance positions at both long-term care facilities, and merging management services with SMC. In addition, the staff medical director for SKH was replaced with a nurse practitioner and the contract for medical directorship of SSV was extended by SKH.

BFA Attachment E is the internal financial statements of Samaritan Keep Nursing Home as of October 31, 2016. The entity had a negative working capital position and a negative net asset position through October 31, 2016. Also, the entity incurred a loss of \$106,785 through October 31, 2016. The reason for the loss was attributed to the facility's high Medicaid population, for which reimbursement was not sufficient to cover the costs of operating the nursing home.

BFA Attachment F is the internal financial statements of Samaritan Senior Village as of October 31, 2016. As shown, the entity had a negative working capital position and a positive net asset. Also, the entity incurred a loss from operations of \$1,161,575 through October 31, 2016. The reason for the loss was attributed to the facility's high Medicaid population, for which reimbursement was not sufficient to cover the costs of operating the nursing home.

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 Samaritan Medical Center pre closing and post-closing.
BFA Attachment B	Financial Summary - 2014 and 2015 certified financial statements of Samaritan Medical Center and Affiliates
BFA Attachment C	Financial Summary - October 31, 2016 internal financial statements of Samaritan Medical Center
BFA Attachment D	Financial Summary - 2014 and 2015 certified financial statements of Samaritan Keep Nursing Home, Inc. and Samaritan Senior Village, Inc.
BFA Attachment E	Financial Summary - Internal financial statements of Samaritan Keep Home
BFA Attachment F	Financial Summary - Internal financial statements of Samaritan Senior Village



Project # 162438-E
Saratoga-Schenectady Endoscopy Center, LLC

Program: Diagnostic and Treatment Center **County:** Saratoga
Purpose: Establishment **Acknowledged:** January 6, 2017

Executive Summary

Description

Saratoga-Schenectady Endoscopy Center, LLC (SSEC), a proprietary, Article 28 freestanding ambulatory surgery center (FASC) located at 848 Route 50 in Burnt Hills (Saratoga County), requests approval to transfer 30.21% membership interest to four new members. SSEC is a single-specialty FASC providing gastroenterology services.

SSEC currently has ten approved members, each with 10% ownership interest. Due to an oversight by the applicant, proper notice was not given to the Department of Health regarding three physicians who purchased membership interests in August 2016. Therefore, these three physicians, as well as a fourth physician who is requesting approval to purchase a membership interest, are being included as part of this application request.

The currently approved and proposed membership interests in SSEC are as follows:

<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Donald Morere, M.D.	10%	7.14%
George Boyar, M.D.	10%	7.14%
Gerardus Lee Jameson, M.D.	10%	7.14%
Howard Malamood, M.D.	10%	7.14%
Mark G. Adsit, M.D.	10%	7.14%
John DeFrancisco, M.D.	10%	7.14%
William Gusten, M.D.	10%	7.14%
David Goetz, M.D.	10%	7.14%
Natalya Belova, M.D.	10%	7.14%
Mark Metwally	10%	7.14%
Justin Provost, M.D.	0%	7.14%
Chad Cornish, M.D.	0%	7.14%
Shawn Chaudhary, M.D.	0%	7.14%
Vinay Sood, M.D.	0%	7.14%
Total *	100%	99.96%

* Rounding differential. Each member has equal ownership.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation for this project.

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 are no project costs associated with this application and no budgeted incremental operating expenses or revenues.

The purchase price for proposed new member, Dr. Vinay Sood, is \$242,000, to be paid via personal assets at closing. Drs. Justin Provost, Chad Cornish and Shawn Chaudhary already purchased membership interests on August 1, 2016.

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 Membership Interest Purchase Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an amended Operating Agreement of Saratoga Schenectady Endoscopy Center, LLC, which is acceptable to the department. [CSL]
3. Submission of a photocopy of a written statement indicating that the option to renew the facility lease was exercised, which is acceptable to the department. [CSL]
4. Submission of a photocopy of the Written Consent of the Members of Saratoga Schenectady Endoscopy Center, LLC admitting Dr. Sood to the LLC, which is acceptable to the department. [CSL]
5. Submission of a photocopy of a Membership Interest Purchase Agreement between Saratoga Schenectady Endoscopy Center, LLC and Dr. Sood, 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

April 6, 2017

Program Analysis

Project Proposal

Saratoga-Schenectady Endoscopy Center, LLC, an existing single-specialty (gastroenterology) Article 28 Diagnostic and Treatment Center located at 848 Route 50 in Burnt Hills (Saratoga County), requests approval to transfer 30.21% ownership interest from ten individuals to four new members. No anticipated changes in operation result from this change in ownership.

The table below details the proposed change in ownership:

Member Name	Current Membership Interest	Proposed Membership Interest
Donald Morere, M.D.	10.00%	7.14%
George Boyar, M.D., <i>Medical Director</i>	10.00%	7.14%
Gerardus Lee Jameson, M.D.,	10.00%	7.14%
Mark Adsit, M.D.	10.00%	7.14%
Howard Malamood, M.D.	10.00%	7.14%
John DeFrancisco, M.D.	10.00%	7.14%
William Gusten, M.D.	10.00%	7.14%
David Goetz, M.D.	10.00%	7.14%
Natalya Belova, M.D.	10.00%	7.14%
Mark Metwally, M.D.	10.00%	7.14%
Justin Provost, M.D.	----	7.14%
Chad Cornish, M.D.	----	7.14%
Shawn Chaudhary, M.D.	----	7.14%
Vinay Sood, D.O.	----	7.14%

Character and Competence

Drs. Justin Provost, Chad Cornish, Shawn Chaudhary and Vinay Sood are practicing gastroenterologists. Dr. Provost graduated from St. Georges University School of Medicine and completed a fellowship in gastroenterology and hepatology. Dr. Cornish graduated from Upstate Medical University and completed a gastroenterology fellowship at the University of Rochester. Dr. Chaudhary graduated from Virginia Commonwealth University and completed a fellowship in gastroenterology and hepatology at Albany Medical Center. Dr. Sood graduated from the New York College of Osteopathic Medicine and completed a fellowship in gastroenterology at Albany Medical Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the four (4) 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.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Costs and Financing

There are no project costs associated with this application. There are no budgeted incremental operating expenses or revenues associated with this project, as patient care services are not affected.

Membership Interest Purchase Agreements

Drs. Provost, Cornish and Chaudhary each purchased membership interest (equivalent to 7.69% at the time) for \$242,547 with personal assets. The respective executed membership interest purchase agreements have been submitted for approval under this application, summarized as follows:

Date:	August 1, 2016
Description	Purchase 7.69% Membership Interest
Seller:	Saratoga-Schenectady Endoscopy Center, LLC members
Buyer:	Dr. Shawn Chaudhary, Dr. Chad Cornish, Dr. Justin Provost
Purchase Price:	\$242,547 (each member)
Payment of Purchase Price:	Equity paid on August 1, 2016

The physicians have already paid for their membership share, and their stock certificates were issued after payment was received. The proposed fourth new member will purchase membership interest (equivalent to 7.14%) for \$242,000 with personal assets upon approval by the Public Health and Health Planning Council. A draft membership interest purchase agreement has been submitted as follows:

Description	Purchase 7.14% Membership Interest
Seller:	Saratoga-Schenectady Endoscopy Center, LLC members
Buyer:	Dr. Vinay Sood
Purchase Price:	\$242,000
Payment of Purchase Price:	Equity

Capability and Feasibility

There are no project costs associated with this application. BFA Attachment A is the net worth statement of the proposed member, Dr. Sood, which indicates the availability of sufficient funds. BFA Attachment B is the 2014-2015 certified financial statements of Saratoga-Schenectady Endoscopy Center, LLC, which shows positive working capital position, members' equity position and net operating income of \$3,753,635 and \$3,565,783, respectively. BFA Attachment C is the internal financial statements of Saratoga-Schenectady Endoscopy Center, LLC as of December 31, 2016, which shows positive working capital position, members' equity position and net operating income of \$3,820,677.

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 Statement of Proposed New Member, Dr. Vinay Sood
BFA Attachment B	Financial Statement for Saratoga-Schenectady Endoscopy Center, LLC 2015
BFA Attachment C	Financial Statement for Saratoga-Schenectady Endoscopy Center, LLC 2016



**Project # 162445-E
Putnam Gastroenterology**

Program: Diagnostic and Treatment Center **County:** Putnam
Purpose: Establishment **Acknowledged:** December 5, 2016

Executive Summary

Description

Putnam GI, LLC d/b/a Putnam Gastroenterology, a proprietary Article 28 diagnostic and treatment center (D&TC) is requesting indefinite life status. The original application CON 111138 was approved by the Public Health Council with a limited life of five years from commencement of operations on April 2, 2012.

The D&TC located at 667 Stoneleigh Avenue, Carmel, (Putnam County), is certified as a single specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology services. There will be no change in services provided.

OPCHSM Recommendation
Approval

Need Summary

Data submission by the applicant, as a contingency of CON 111138, has been completed. Based on CON 111138, Putnam Gastroenterology projected Medicaid procedures at 5.00 percent and charity care at 2.00 percent. Based on the Annual Reports submitted by the applicant actual charity care in Year 3 (2015) was 2.58 percent and Medicaid was 4.00 percent. The applicant has made a sustained, good-faith effort to reach the un- and under-insured population.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The budget is as follows:

Revenues	\$4,097,769
Expenses	<u>\$1,688,885</u>
Net Income	\$2,408,884

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval

Council Action Date

April 6, 2017

Need Analysis

Analysis

The primary service area of the proposed project is Putnam County. The table below provides information on projections and utilization for Year 1 (2013-1st full year) and Year 3 (2015) based on CON 111138.

CON 111138- Procedures	Projections		Actual	
	Year 1	Year 3	Year 1	Year 3
Total	2,400	2,448	2,687	3,023

The table below provides Year 3 utilization, projections and actual, by payor, for CON 111138, and projections for year one following approval.

Payor	CON 111138 Projected Year 3 (2015)	CON 111138 Actual Year 3 (2015)	CON 162445 Projections Year 1
Medicaid	5%	4.00%	4.77%
Medicare	19%	29.44%	29.76%
Commercial	73%	63.78%	59.87%
Charity Care	2%	2.58%	3.55%
Other	1%	0.20%	2.04%
Total	100%	100%	100%

The center currently has Medicaid Managed Care contracts with the following health plans: Fidelis Medicaid, Emblem Medicaid, UHC Community, and UHC/Oxford Medicaid. The center has become a New York State Cancer Services Provider as a Colonoscopy Screening Center and participates in a number of community outreach activities. During 2016, the center reached out to Putnam Hospital Center, Northern Westchester Hospital, Hudson Valley Hospital Center and New York-Presbyterian center. The center has established a referral agreement with Open Door Family Medical Centers. One of the physician owners participates in a charity care clinic affiliated with Northern Medical Center. The physician sees patients at this clinic every fourth week and sees approximately 6-8 patients at each session.

Putnam Gastroenterology is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion

Approval of the proposed project will provide for the continued access to gastroenterology ambulatory surgery services for the communities of Putnam County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center. Staffing is expected to remain at 8.5 FTEs and Sunil Gupta, M.D. will continue to serve as the Center's Medical Director.

Compliance with Applicable Codes, Rules and Regulations

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

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

In a Stipulation and Order (S&O) dated September 10, 2015, Yorkville Endoscopy, LLC (operated by the applicant) was fined \$16,000 when a complaint investigation into the death of a patient following an upper endoscopy revealed a delay in responding to the patient's deteriorating condition and the lack of informed consent for additional procedures that were performed at the time of the endoscopy.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant submitted their first year operating budget, in 2017 dollars, subsequent to receiving indefinite life operating certification, as summarized below:

	<u>Current Year (2015)</u>		<u>Year One</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid	\$609.75	\$73,780	\$753.32	\$114,504
Medicare	\$479.61	\$426,853	\$502.24	\$476,123
Commercial	\$1,693.50	\$3,265,074	\$1,839.09	\$3,507,143
Total Revenues		\$3,765,707		\$4,097,770
<u>Expenses</u>				
Operating	\$496.01	\$1,499,450	\$476.04	\$1,516,185
Capital	\$57.13	\$172,700	\$54.22	\$172,700
Total Expenses	\$553.14	\$1,672,150	\$530.26	\$1,688,885
Net Income or (Loss)		<u>\$2,093,557</u>		<u>\$2,408,885</u>

Utilization (Procedures)

3,023

3,185

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

Capability and Feasibility

There are no project costs associated with this application.

Putnam GI, LLC d/b/a Putnam Gastroenterology projects an operating excess of \$2,408,885 in the first year following approval. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on experience. The budget appears reasonable.

BFA Attachment A is the 2014 and 2015 certified financial statements for Putnam GI, LLC d/b/a Putnam Gastroenterology and their internal financials as of December 31, 2016. As shown, the facility had an average positive net asset position, an average positive working capital position and generated an average net income of \$2,164,297 for the 2014-2015 period. The facility maintained positive working capital and net asset positions and shows net income (cash basis) of \$2,323,414 as of December 31, 2016.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A 2014 and 2015 certified and 1/1/2016-12/31/2016 internal financial statement for Putnam GI, LLC d/b/a Putnam Gastroenterology



Project # 162552-B
HSS West Side ASC

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** December 29, 2016

Executive Summary

Description

HSS West Side ASC, LLC, a New York limited liability company, requests approval to establish and construct a single-specialty Article 28 freestanding ambulatory surgery center (FASC) specializing in orthopedic surgery. The Center will be located in subleased space in a new mixed-use building located at 600-610 West 58th Street, New York (New York County). The Hospital for Special Surgery (HSS) will lease approximately 49,000 gross square feet of the building from the cellar through third floors. The applicant will sublease 23,098 square feet of this space (primarily on the second floor with first floor central registration plus common area space to serve the FASC). The FASC will initially include two Class C operating rooms (ORs), with sufficient infrastructure to add two ORs in the future, and the requisite support areas.

The proposed ownership of the Center is as follows:

<u>Proposed Owners</u>	
HSS West Side ASC, LLC	
<u>Class A Members</u>	
Hospital for Special Surgery *	16%
Dr. Answorth Allen	9%
Dr. David Altchek	9%
Dr. Joshua Dines	6%
Dr. Riley Williams	9%
<u>Class B Member</u>	
Hospital for Special Surgery	51%

**Note: The 16% Class A membership owned by HSS is intended for future sale to qualified physician investors. Until such time as it is sold, it will be treated as Class B for voting purposes.*

All members, regardless of class, will have the same economic and voting rights based on their percentage ownership interest.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

The applicant indicated that all of the projected procedures are currently being performed at HSS and that no other Article 28 entity will be impacted by the project. The FASC is being created to move the delivery of such services from the hospital to a more efficient and cost-effective setting.

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 \$14,413,813 will be met through \$1,883,813 members' equity with the remaining \$12,530,000 to be financed via a bank loan for ten years at 4.25% interest. Below is the proposed budget.

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$11,126,566	\$14,752,489
Expenses	<u>\$10,477,941</u>	<u>\$11,775,974</u>
Gain/(Loss)	\$648,625	\$2,976,515

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 Development and Administrative Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a photocopy of the Amended Articles of Organization, which is acceptable to the Department. [CSL]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03. In addition please address the following: Avoid using drawing scales less than 1/8 inch per foot. Drawing titles are incorrect or missing - provide consistency. Drawings and Space Program room names should match FGI Guidelines. [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 August 1, 2017 and construction must be completed by May 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]

Council Action Date

April 6, 2017

Need Analysis

Background

HSS West Side ASC, LLC, is seeking approval to establish and construct a freestanding ambulatory surgery center (FASC) to provide orthopedic surgery services at 600-610 West 58th Street, New York, 10019, in New York County.

Analysis

The service area consists of New York County. New York County has a total of 15 freestanding ambulatory surgery centers: seven multi-specialty ASCs and eight single-specialty ASCs. There is another single-specialty ASC (HSS ASC of Manhattan) currently under construction that will offer orthopedic surgery services in New York County. 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	3,900	3,771
Single	East Side Endoscopy	9,284	9,302
Multi	Fifth Avenue Surgery Center	1,544	751
Multi	Gramercy Park Digestive Disease ¹	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 Ctr., LLC	12,656	12,773
Multi	Manhattan Surgery Center	2,502	5,087
Single	Mid- Manhattan Surgi-Center	3,900	3,360
Multi	Midtown Surgery Center, LLC	3,166	2,608
Single	Retinal Ambulatory Surgery Ctr.	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		98,424	105,360

Source: SPARCS-2016

For all ambulatory surgery centers in New York County, the total number of patient visits was 98,424 in 2014 and 105,360 in 2015; a 7.0% year-to-year increase. The population of New York County in 2010 was 1,585,873, with 595,344 individuals (37.5%) aged 45 and older. 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 630,729 by 2025 and represent 39.1% of the projected population of 1,615,772.

The number of projected procedures is 1,686 in Year 1 and 2,250 in Year 3. The table below shows the projected payor source utilization for Years 1 and 3.

Projections-162522	Year 1 Volume	Year 1 %	Year 3 Volume	Year 3 %
Medicaid	34	2.02%	45	2.00%
Medicare	27	1.60%	45	2.00%
Commercial Ins	1,489	88.32%	1,974	87.73%
Private Pay/ Other	102	6.05%	141	6.27%
Charity Care	34	2.02%	45	2.00%
Total	1,686	100.0%	2,250	100.0%

The applicant indicated that all of the projected procedures are currently being performed at HSS and that no other Article 28 entity will be impacted by the project. HSS has determined that the procedures should be performed in an ASC and not in the hospital setting. The FASC is being created to move the delivery of such services from the hospital to a more efficient and cost-effective setting.

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: United Community Plan and Emblem Health. Upon approval of this project, the applicant plans to reach out to Federally Qualified Health Centers (FQHC's) in order to provide services to the underinsured. The center will also reach out to local family shelters and homeless shelters in order to provide services to the underinsured. The center has formalized a Financial Assistance Policy which includes a sliding fee scale for patients.

Conclusion

Approval of this project will provide increased access to orthopedic surgery services in an outpatient setting in New York County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

This application has been developed with the cooperation and support of the Hospital for Special Surgery (HHS) who will own a 67% interest in the Center. In this proposal, HHS is partnering with four (4) individual orthopedic surgeons, each of whom are full time members of the medical staff of HHS. The Center will be managed by a five-member board of Managers, two of whom will be HSS orthopedic surgeons and three of whom will be appointed by HSS.

Proposed Operator	HHS West Side ASC, LLC
Site Address	600-610 West 58 th Street New York, NY 10019 (New York County)
Surgical Specialties	Orthopedic Surgery
Operating Rooms	2 (Class C)
Procedure Rooms	None
Hours of Operation	Monday through Friday from 7:00 a.m. to 7:00 p.m.
Staffing (1 st Year / 3 rd Year)	22.5 FTEs / 22.5 FTEs
Medical Director(s)	Answorth Allen, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by New York Presbyterian 2.8 miles/ 10 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 HSS West Side ASC, LLC and their membership interest are detailed in the chart below:

<u>Class A Members</u>	
Hospital for Special Surgery	16%
Dr. Answorth Allen	9%
Dr. David Altchek	9%
Dr. Joshua Dines	6%
Dr. Riley Williams	9%
<u>Class B Member</u>	
Hospital for Special Surgery	51%

Answorth Allen, M.D. will serve as the center's Medical Director. Dr. Allen is a board-certified orthopedist who is currently an attending physician at HHS.

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. Answorth disclosed one pending malpractice action.

Of the 55 members of HSS and the Center's Board of Managers, the following disclosures were made:

Dr. Dines disclosed one open malpractice action and 2 closed actions.

Steven Rattner disclosed that in 2010 he was involved in a lawsuit filed with the Securities and Exchange Commission (SEC) regarding a public pension fund which resulted in the payment of a civil penalty. In November of 2010 the SEC and the Office of the Attorney General of the State of New York filed lawsuits regarding a public pension fund. In connection with these lawsuits the SEC issued an administrative order against Mr. Rattner barring him from association with any broker, dealer or investment adviser.

Mr. Esposito, Mr. Sobel and Mr. Weill disclosed that they have been involved in various civil litigation in the course of their business dealings.

Compliance with Applicable Codes, Rules and Regulations

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

In 2009 the U.S. Attorney for the Western District of New York and the U.S. Department of Health & Human Services Office of Inspector General (OIG) began investigating HSS' billing related to certain spinal procedures using a particular product. This inquiry remains open.

In 2008 the OIG issued a subpoena duces tecum regarding HSS' hospital cost reporting, their relationship with certain vendors and numerous other issues. This inquiry also remains open.

Integration with Community Resources

HSS has formed two committees to provide oversight and leadership of community benefit activities at the Center. HSS plans to reach out on a regular basis to area hospitals and providers to obtain charity referrals, and plans to reach out to local family shelters and homeless shelters in an effort to reach the underserved. 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 plans to enter into a transfer agreement with New York Presbyterian. Quality Care is an Accountable Care Organization (ACO) jointly established by Presbyterian, Weill Cornell and Columbia University Hospital. The Center will consider how it can become involved with this ACO. The Center intends on implementing an electronic medical record (EMR) system and to fully integrate with an established Regional Health Information Organization.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs, estimated at \$14,413,813, are broken down as follows:

Renovation & Demolition	\$6,360,833
Design Contingency	636,083
Construction Contingency	636,083
Architect/Engineering Fees	680,667
Construction Manager Fees	202,315
Other Fees	70,000
Movable Equipment	5,509,000
Financing Costs	130,000
Interim Interest Expense	108,000
CON Application Fee	2,000
CON Processing Fee	<u>78,832</u>
Total Project Cost	\$14,413,813

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

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$1,883,813
Bank Loan (4.25%(Prime rate plus 50 basis points),10-year term)	<u>\$12,530,000</u>
Total	\$14,413,813

Valley National Bank has provided a letter of interest at the above stated terms.

Lease Rental Agreements

The applicant submitted an executed lease and sublease for the proposed site, the terms of which are summarized below:

Lease:

Date:	December 15, 2016
Premises:	Portions of the leasable area of the lower level and ground floor, and the entire leasable area of the second and third floors in the building known as 600-610 West 58 th Street, New York, NY 10019
Landlord:	58 Corner LLC
Lessee:	HSS Properties Corporation
Term:	21 years ending December 31, 2037
Rental:	\$4,274,706 for year one with an annual 2% increase (\$356,225.50 monthly.)
Provisions:	Triple Net

Sublease:

Date:	December 15, 2016
Premises:	Approximately 23,098 square feet (predominately second floor space) in the building located at 600-610 West 58 th Street, New York, NY 10019
Sublessor:	HSS Properties Corporation
Sublessee:	HSS West Side ASC, LLC
Term:	20 years ending December 31, 2037
Rental:	\$1,578,311 annually (\$131.525.92 monthly or \$68.33 per square foot.)
Provisions:	Triple Net

The applicant provided an affidavit stating that the lease is an arm's length arrangement, as 58 Corner LLC is not affiliated with HSS. However, the sublease is a non-arm's length agreement as HSS Properties Corporation is affiliated with HSS West Side ASC, LLC. The applicant submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

Development and Administrative Services Agreement

The applicant submitted a draft administrative services agreement, the terms are summarized below:

Date:	To Be Determined
Facility:	Hospital for Special Surgery West Side Ambulatory Surgery Center, LLC
Consultant:	New York Society for The Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery
Development Services Provided	Preparing a development budget, serve as a project manager for both development and construction of the center, provide oversight of the procurement of fixed, movable and other equipment for the center, prepare specifications and service agreements for all contracted services, assist in get all required licenses and certifications and credentials for the center and other preopening services.
Administrative Services Provided:	General Administrative, Human resources, Benefits management and Payroll, Accounting and financial operations, Payor contracting, Clinical support, Information systems, Materials management, Vendor relations, Licensing and Regulatory compliance, Operational oversight, Liability insurance management, Electronic medical records, Security oversight, Radiology compliance, Physician credentialing, Interpreter services.
Term:	10-year term with indefinite one-year automatic renewals
Development Services Fee:	\$225,000 payable on opening day.
	Annual Fee of \$543,000 (payable at \$45,250 per month)

The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

The applicant submitted their first and third year operating budgets, in 2017 dollars, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid	\$2,310.38	\$78,553	\$2,302.47	\$103,611
Medicare	\$2,735.52	\$73,859	\$2,665.13	\$119,931
Commercial	\$7,096.84	\$10,567,188	\$7,083.81	\$13,983,436
Private Pay/Other	\$3,989.86	\$406,966	\$3,868.87	\$545,511
Total Revenues		\$11,126,566		\$14,752,489
<u>Expenses</u>				
Operating	\$4,261.33	\$7,184,598	\$3,623.31	\$8,152,456
Capital	<u>\$1,953.35</u>	<u>\$3,293,343</u>	<u>\$1,610.45</u>	<u>\$3,623,518</u>
Total Expenses	\$6,214.67	\$10,477,941	\$5,233.77	\$11,775,974
Net Income or (Loss)		<u>\$648,625</u>		<u>\$2,976,515</u>
Utilization (procedures)		1,686		2,250

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid	2.02%	2.00%
Medicare	1.60%	2.00%
Commercial	88.32%	87.73%
Private Pay/ Other	6.05%	6.27%
Charity	<u>2.02%</u>	<u>2.00%</u>
Total	100.00%	100.00%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current and projected Federal and State government reimbursement rates, with commercial payor rates reflecting adjustments based on experience in the region.
- Utilization projections are based on the current caseload of Drs. Allen, Altchek, Dines and Williams, all are board-certified orthopedic surgeons.
- Expense assumptions are based on the experience of the participating physicians and HSS in providing orthopedic ambulatory surgery services, as well as the experience of other FASCs in New York State in providing similar service patient care.
- The breakeven point is approximately 97.75% of the projected utilization or 1,648 procedures in year one and 79.87% or 1,797 procedures in year three.

Capability and Feasibility

The total project cost of \$14,413,813 will be satisfied by the proposed members' equity contribution of \$1,883,813 with the balance of \$12,530,000 to be financed by Valley National Bank at the above stated terms.

Working capital requirements are estimated at \$1,962,662 based on two months of third year expenses. The applicant has submitted a letter of interest from Valley National Bank to finance \$970,000 of the working capital with a five-year payback period at an estimated 4.25% interest rate. The remaining \$992,662 in working capital will be provided from the proposed owners financial resources, equivalent to their ownership percentage. BFA Attachment A is the net worth statements of the proposed physician owners and the 2014-2015 certified and 2016 internal financial statements of HSS, which indicates the applicant has sufficient liquid resources to meet the equity and working capital requirements. BFA Attachment B is the pro-forma balance sheet of HSS West Side ASC, LLC that shows operations will start with \$2,876,476 in equity.

HSS West Side ASC, LLC projects an operating excess of \$648,625 and \$2,976,515 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 estimated rates to be negotiated based in industry norms and HSS experience, 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 the financial statement of the Proposed Members of HSS West Side ASC, LLC.
BFA Attachment B	Pro Forma Balance Sheet of HSS West Side ASC, LLC
BHFP Attachment	Map



**Project # 171020-E
West Side GI**

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment **Acknowledged:** January 12, 2017

Executive Summary

Description

West Side GI, LLC, a proprietary Article 28 single specialty freestanding ambulatory surgery Center (FASC) diagnostic and treatment center (D&TC) located at 619 West 54th Street, New York (New York County), requests approval for indefinite life status. The original application, CON 101167, was approved by the Public Health Council (PHC) for a conditional five-year limited life from June 15, 2012, the date the operating certificate was issued.

The FASC continues to operate under the original 15-year lease, which expires June 30, 2027. There will be no change in services provided and the Center is not proposing to expand or renovate the facility.

OPCHSM Recommendation
Contingent Approval

Need Summary

Data submission by the applicant, as a contingency of CON 101167, has been completed. Based on CON 101167, West Side GI projected Year 1 and Year 3 Medicaid procedures to be three percent and charity care to be two percent.

Based on the Annual Reports submitted by the applicant, actual charity care in Year 3 (2015) was 0.97 percent and Medicaid was 20.69 percent.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$19,797,376
Expenses	<u>\$8,694,708</u>
Net Income	\$11,102,668

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of Mount Sinai Ambulatory Ventures, Inc.'s amended by-laws, which is acceptable to the Department. [CSL]

Council Action Date

April 6, 2017

Need Analysis

Analysis

The primary service area is New York County. The table below provides information on projections and utilization for Year 1 (2013-1st full year) and Year 3 (2015) based on CON 101167.

CON 101167- Procedures	Projections		Actual	
	Year 1	Year 3	Year 1	Year 3
West Side GI				
Total	13,068	14,408	14,851	17,053

The table below provides Year 3 utilization, projections and actual, by payor, for CON 101167, and projections for Year One following approval.

Payor	CON 101167 Projected Year 3 (2015)	CON 101167 Actual Year 3 (2015)	CON 171020 Projections Year 1
Commercial FFS	9.8%	58.58%	58.02%
Commercial MC	62.2%	0.0%	0.0%
Medicare FFS	18.9%	9.44%	8.96%
Medicare MC	1.1%	9.15%	10.99%
Medicaid FFS	0.4%	0.82%	0.83%
Medicaid MC	2.6%	19.87%	19.89%
Self- Pay	3.0%	0.51%	0.25%
Charity Care	2.0%	0.97%	1.26%
Other	0.0%	0.67%	0.70%
Total	100%	100%	100%

The applicant indicated that Other utilization represents uncompensated care for unpaid procedures (separately tracked) that were not the direct result of the Center's charity care outreach. They expected to be compensated for the services, but received no payment and associated costs were written off.

The center currently has Medicaid Managed Care contracts with the following health plans: Amerigroup, Fidelis, HealthFirst, HealthPlus, Wellcare and Metroplus. The center has become a New York State Cancer Services Provider as a Colonoscopy Screening Center and participates in a number of community outreach activities to area hospitals such as Mount Sinai St. Luke's Hospital and Mount Sinai Roosevelt Hospital. The center has established a referral agreement with Gouverneur Health, William F. Ryan Community Health Network and Renaissance Health Center. The Center appointed a Charity Care Coordinator who maintains the Center's Charity Care Dashboard and provides updates to the Center's Board of Managers. West Side GI is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion

The 2015 report by the Ad Hoc Advisory Committee on Freestanding ASCs and Charity Care indicates that "single specialty freestanding ASCs offering endoscopy are likely to serve an older clientele, a large portion of whom are 65 or over and eligible for Medicare; hence, it may be reasonable to expect a lower volume of Medicaid and charity care cases from these providers than from ASCs offering more general surgical services." Although the center's charity care utilization is less than 2 percent, the center has been making reasonable and sustained efforts to provide service to the uninsured in its service area, and its Medicaid volume is high. Approval of the proposed project will provide for the continued access to gastroenterology ambulatory surgery services for the communities of New York County.

Recommendation

From a programmatic perspective, approval is recommended.

Program Analysis

Program Proposal

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center. Staffing is expected to remain at 27.0 FTEs and Leslie Seecoomar, M.D. will continue to serve as the Center's Medical Director.

Compliance with Applicable Codes, Rules and Regulations

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

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2017 dollars, for the current year (2015) and the first and third years subsequent to receiving indefinite life operating certification, as summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Commercial - FFS	\$15,495,588	\$14,542,456	\$14,542,456
Medicare - FFS	\$940,545	\$756,198	\$756,198
Medicare - MC	\$1,621,189	\$957,196	\$957,196
Medicaid - FFS	\$91,313	\$31,307	\$31,307
Medicaid - MC	\$2,209,773	\$2,065,735	\$2,065,735
Private Pay	\$8,914	\$1,444,484	\$1,444,484
Total	\$20,367,322	\$19,797,376	\$19,797,376
<u>Expenses</u>			
Operating	\$7,283,828	\$7,390,201	\$7,496,575
Capital	\$1,304,507	\$1,304,507	\$1,304,507
Total Expenses	\$8,588,335	\$8,694,708	\$8,801,082
Net Income	<u>\$11,778,987</u>	<u>\$11,102,668</u>	<u>\$10,996,294</u>
Utilization (Procedures)	17,053	17,675	17,675
Cost per Procedure)	\$503.63	\$491.92	\$497.94

Utilization and revenues for the first and third years were projected based on the facility's actual results through October 31, 2016, annualized. The applicant does not anticipate any change in staffing, but projected cost increases of 2% per year for supplies, utilities and other direct expenses due to inflation. Depreciation, rent and interest expense are based on the facility's 2015 AHCF Cost Report with no anticipate any changes going forward to Year Three.

Capability and Feasibility

There are no project costs associated with this application.

West Side GI, LLC projects net income of \$11,102,668 and \$10,996,294 in Year One and Three, respectively. Revenues are based on current reimbursement rates and the historical procedure mix of participating physicians. The budget appears reasonable.

BFA Attachment B is West Side GI's 2014 and 2015 certified financial statements and their internal financial statements as of October 31, 2016, which shows the facility maintained a positive working capital position, positive equity and positive net income for the periods shown.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Membership of the West GI, LLC
BFA Attachment B	2014 and 2015, Certified Financial Statements, West Side GI, LLC and 2016, Internal Financial Statement, West Side GI, LLC



**Project # 171053-E
Surgical Specialty Center of Westchester**

Program: Diagnostic and Treatment Center **County:** Westchester
Purpose: Establishment **Acknowledged:** January 27, 2017

Executive Summary

Description

Surgical Specialty Center of Westchester, LLC (SSCW), a proprietary freestanding ambulatory surgery center (FASC) located at 440 Mamaroneck Avenue, Suite 410, Harrison (Westchester County), requests approval to transfer 20% ownership interest in the facility to Northwell Health Westchester Multispecialty Ventures, LLC.

The Center is certified as a multi-specialty FASC. There will be no change in services provided as a result of this application.

Ownership interest in SSCW after the requested change is as follows:

<u>Members</u>	<u>Proposed</u>
Samuel Beran, M.D.	23.54%
Joshua Greenwald, M.D.	23.54%
Bradley Scharf, M.D.	8.54%
James Gordon, M.D.	8.54%
Seth Potash, M.D.	5.41%
Allen Greenbaum, M.D.	5.41%
Richard Gordon, M.D.	1.60%
Neil Katz, M.D.	3.42%
Northwell Health Westchester Multispecialty Ventures, LLC	20.00%

The sole member of Northwell Health Multispecialty Ventures, LLC is North Shore University Hospital (NSUH), a 764-bed, voluntary not-for-profit, quaternary care and

Level 1 Trauma Center hospital located at 300 Community Drive, Manhasset (Nassau County), New York. NSUH is a member of and co-operated by Northwell Health, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no Need recommendation for this project.

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 are no project costs associated with this application. The total purchase price for the 20% transfer of ownership is \$2,285,000. No budget analysis was necessary as this is a 20% change in ownership with the eight current members remaining in the ownership structure with majority interest, and the center is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of an amended and executed lease agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's Third Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Certificate of Amendment of the Articles of Organization of Surgical Specialty Center of Westchester, 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

April 6, 2017

Program Analysis

Character and Competence

The proposed members and ownership are noted below:

<u>Name</u>	<u>Current Ownership</u>	<u>Proposed Ownership</u>
Samuel Beran, M.D.	29.43%	23.54%
Joshua Greenwald, M.D.	29.43%	23.54%
Bradley H. Scharf, M.D.	10.68%	8.54%
James R. Gordon, M.D.	2.0%	8.54%
Seth D. Potash, M.D.	6.76%	5.41%
Allen S. Greenbaum, M.D.	6.76%	5.41%
Neil R. Katz, M.D.	4.28%	3.42%
Richard Gordon, M.D.	2.00%	1.60%
Northwell Health Westchester Multispecialty Ventures, LLC	--	20%
TOTAL	100%	100%

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 and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

North Shore University Hospital and Northwell Healthcare, Inc. have mirror boards. A recent Character and Competency review was performed of the Board of Trustees of Northwell Healthcare, Inc. for CON application 162324. 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.

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

of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

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

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 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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Interest Purchase Agreement

Executed purchase option agreements between each buyer and seller for the partial transfer of ownership have been submitted, as detailed below:

Execution Date:	November 23, 2016
Sellers:	All of the individual Owners of Surgical Specialty Center of Westchester, LLC.
Buyers:	Northwell Health Westchester Multispecialty Ventures, LLC
Percentage Conveyed to Purchaser from Individual Members:	Dr. S. Beran (5.885%), Dr. J. Gordon (2.135%), Dr. R. Gordon (.40%), Dr. A. Greenbaum (1.352%), Dr. J. Greenwald (5.885%), Dr. N. Katz (.856%), Dr. S. Potash (1.352%) and Dr. B. Scharf (2.135%)
Purchase Price:	Total purchase price is \$2,285,000 for the 20% ownership transfer \$50,000 to be held in escrow and \$2,235,000 to be paid at closing.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the 20% transfer of ownership is \$2,285,000. BFA Attachment B is the certified financial statements for Northwell Health Westchester Multispecialty Ventures, LLC., which shows that the applicant has sufficient funds to purchase the 20% ownership interest in the facility.

No budget analysis was necessary as this is a 20% change in ownership with the four current members remaining in the ownership structure with majority interest, and the FASC is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

BFA Attachment A is Surgical Specialty Center of Westchester, LLC's 2015 certified and their internal financial statements as of October 31, 2016, which shows that the facility maintained positive working capital, equity, and net income positions for the period shown. The facility achieved a positive net income of \$953,933 for 2015 and \$1,360,836 as of October 31, 2016.

BFA Attachment B is Northwell Health, Inc.'s 2014-2015 certified and their internal financial statements as of September 30, 2016, which shows that the facility maintained positive work capital, equity and net income positions for the period shown. The facility achieved an average positive net income of \$269,114,000 for the period 2014-2015 and a positive net income of \$286,996,000 as of 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 2015 Certified and Internal Financial Statements as of October 31, 2016 for Surgical Specialty Center of Westchester, LLC
- BFA Attachment B 2014-2015 Certified and Internal Financial Statements as of September 30, 2016 for Northwell Health, Inc.
- BFA Attachment C Post-closing organization chart for Surgical Specialty Center of Westchester, LLC



**Project # 161035-E
Lafayette Medical Approach, LLC**

Program: Diagnostic and Treatment Center
Purpose: Establishment

County: New York
Acknowledged: January 27, 2016

Executive Summary

Description

Lafayette Medical Approach, LLC is a New York limited liability company that operates an Article 28 diagnostic and treatment center (D&TC) located at 233 Lafayette Street, New York (New York County). The applicant requests approval to transfer 10% ownership interest in the facility as a gift from Massimo Degiarde, M.D., a 90% shareholder in the D&TC, to Robert Degiarde, his adult son and the facility's Executive Director.

Ownership of Lafayette Medical Approach, LLC before and after the proposed transaction is as follows:

<u>Current Ownership</u>	
<u>Shareholders</u>	<u>%</u>
Massimo Degiarde, M.D.	90%
Anthony Degiarde	10%

<u>Proposed Ownership</u>	
<u>Shareholders</u>	<u>%</u>
Massimo Degiarde, M.D.	80%
Anthony Degiarde	10%
Robert Degiarde	10%

The D&TC opened effective January 8, 2013, and is certified to provide methadone maintenance and primary medical care services. The facility is also certified by the Office of Alcoholism and Substance Abuse Services. There will be no change in programs or services

provided as a result of the transfer of 10% ownership interest.

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 are no project costs associated with this application. Lafayette Medical Approach, LLC's majority shareholder, Dr. Massimo Degiarde, is gifting 10% interest to his adult son, Robert Degiarde. No budget analysis was necessary for this 10% change in ownership; the current members are remaining in the ownership structure with majority interest, and the facility is not proposing to change its business model. The facility has no outstanding Medicaid liabilities.

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 copy of the executed stock transfer certificate, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an amended operating 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]

Council Action Date

April 6, 2017

Program Analysis

Program Proposal

Lafayette Medical Approach, LLC, an existing Article 28 Diagnostic and Treatment Center at 233 Lafayette Street in Manhattan (New York County), requests approval to transfer 10% ownership interest from one existing member to one new member. There are no anticipated changes in facility operation as a result of this change in ownership.

Character and Competence

The proposed members and ownership are noted below:

<u>Name</u>	<u>Current Ownership</u>	<u>Proposed Ownership</u>
Massimo Degiarde, MD, CEO*	90%	80%
Anthony Degiarde, Deputy Director*	10%	10%
Robert Degiarde, Executive Director	0%	10%
<i>*not subject to Character & Competence Review</i>		

Mr. Robert Degiarde has served as the Center's Executive Director and as such, he has been involved in all clinic related issues in both a managerial and hands-on capacity. He is responsible for handling daily issues, to include management, facilities maintenance and upgrade, and computer systems.

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 and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

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 project costs and no purchase price associated with this application as Lafayette Medical Approach, LLC's majority shareholder, Dr. Massimo Degiarde, is gifting the 10% ownership interest to his adult son, Robert Degiarde. No budget analysis was necessary as this is a 10% change in ownership, the current members are remaining in the ownership structure with majority interest, and the facility is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

It is noted that the operator submitted their 2015 AHCF cost report and supporting financial statement documentation to the Department as required. However, their 2014 AHCF report (first full year) remains outstanding. The applicant has been in contact with the Department's Office of Health Insurance Programs (OHIP) to address and resolve this compliance issue.

BFA Attachment A is the 2014 and 2015 certified financial statements of Lafayette Medical Approach, LLC. As shown, the facility had a positive working capital position and positive net asset position for the

period. Also, the entity achieved an average net income of \$470,548 for the period overall, but experienced a \$181,933 loss for 2015.

BFA Attachment B is the internal financial statements for Lafayette Medical Approach, LLC as of September 27, 2016. As shown, the entity had a positive working capital position and a positive net asset position for the period shown. Also, the entity experienced a net loss \$389,854 through September 27, 2016.

The applicant attributes the losses to difficulties in transitioning from a private medical practice to an Article 28 D&TC. The transition required adjustments to handle increased regulations and program requirements including adding medical, billing and administration personnel, which increased payroll and health insurance costs, and additional billing, accounting and legal fees. BFA Attachment A is the 2014 and 2015 certified financial statements for Lafayette Medical Approach, LLC, which shows a modest revenue increase of \$410,308 in 2015, but a sharp increase in labor related expenses and accounting/billing services costs. The applicant also indicated the following:

- Software/vendor problems related to an October 2015 transition to an Electronic Health Record system negatively impacted workflow, patient tracking and claims processing that resulted in substantial and unrecoverable losses in 2015 and 2016.
- In February 2016, they switched to a different software vendor, but problems remain. In July 2016, they detected that their Medicare and Medicaid patient visits were not reimbursed. To address this, they entered into a contract with Netsmart to bill retroactive to January 2016, which increased billing costs, but failed to recoup all of the revenue due to the 90-day billing window (affecting \$87,000 in services). The applicant believes another \$70,000 is due from Fidelis due to billing errors. They are pursuing amounts relating to both and are addressing billing issues with three other managed care companies that has caused an interim loss.
- In the transition to managed care, the facility had to contract with ten insurance companies, which took enormous effort and resources for their small business.

The applicant believes that the two dysfunctional software systems and the resources dedicated to the transition created workflow challenges and losses. They expect a turnaround to profitability in 2017.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	2014-2015 Certified Financial Statements - Lafayette Medical Approach, LLC
BFA Attachment B	Internal Financial Statements as of September 27, 2016 - Lafayette Medical Approach, LLC



**Project # 162428-E
Heritage One Day Surgery LLC**

Program: Diagnostic and Treatment Center **County:** Onondaga
Purpose: Establishment **Acknowledged:** November 25, 2016

Executive Summary

Description

Heritage One Day Surgery, LLC, a proprietary Article 28 diagnostic and treatment center (D&TC) located at 5496 East Taft Road, Heritage Commons, North Syracuse (Onondaga County), requests approval for indefinite life status. The D&TC was approved by the Public Health Council (PHC) under CON 111133 as a single specialty freestanding ambulatory surgery center (FASC) specializing in pain management services, for a conditional five-year limited life from the commencement of operations effective March 3, 2012. There will be no change in services provided, and the Center is not proposing to expand or renovate the facility.

OPCHSM Recommendation
Approval

Need Summary

Data submission by the applicant, as a contingency of CON 111133, is completed. Under CON 111133, Medicaid and charity care were projected at two percent each. Based on the AHCF reports submitted by the applicant, actual charity care in Year 3 (2015) was 0.3 percent and Medicaid was 14.3 percent.

Program Summary

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

Financial Summary

There are no project costs associated with this application. Below is the projected budget.

	<u>Year One</u>
Revenues	\$11,557,329
Expenses	<u>\$6,568,941</u>
Net Income	\$4,988,388

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval

Council Action Date

April 6, 2017

Need Analysis

Analysis

The primary service area is Onondaga County. The table below provides information on projections and utilization for Year 1 (2013 - 1st full year) and Year 3 (2015) based on CON 111133.

CON 111133 - Procedures	Projections		Actual	
	Year 1	Year 3	Year 1	Year 3
Total	11,099	15,453	12,261	14,877

The table below provides Year 3 utilization, projections and actual, by payor, for CON 111133, and projections for Year 1 following approval.

Payor	CON 111133 Projected Year 3 (2015)	CON 111133 Actual Year 3 (2015)	CON 162428 Projected Year 1
Commercial FFS	16.2%	28.3%	26.8%
Commercial MC	22.8%	0.0%	0.0%
Medicare FFS	30.0%	21.4%	21.5%
Medicare MC	0.0%	9.9%	10.7%
Medicaid FFS	1.0%	0.7%	0.5%
Medicaid MC	1.0%	13.6%	14.2%
Private Pay	3.0%	0.2%	0.2%
Charity Care	2.0%	0.3%	0.4%
Workers Comp	24.0%	25.6%	25.8%
Total	100%	100%	100%

The center has contracts with the following Medicaid managed care plans: Excellus, Fidelis, Wellcare, Total Care and UHC Medicaid. During 2013, the center realized it was not reaching the proposed charity care levels. The center modified its financial assistance policy, hired a staff person to assist patients with the policy, and re-educated their staff on its willingness to serve the underinsured. These efforts resulted in a significant increase in the Medicaid utilization (from 6.5% in 2013 to 14.0% in 2014). However, there was no commensurate improvement in charity care utilization.

In 2015, the center hired a health care consultant to develop a plan to reach out to organizations to improve charity care. Six organizations were contacted to set up Memoranda of Understanding (MOU's) for referral relationships with Heritage. By January 2016, MOU's were signed with Syracuse Community Health Center, Amaus Medical Services, Northern Oswego County Health services, and Family Health Network of Central NY. Follow-up letters were sent to all four health centers with MOU's as no charity care referrals had yet been received.

There is a mitigating factor to consider as to why this facility hasn't reached the two percent charity care level. There are fewer uninsured individuals in Onondaga County since the facility opened. According to the American Community Survey (ACS) the estimated number of uninsured people in Onondaga County has decreased from 32,236 in 2012 to 25,102 in 2014. This represents an almost 22 percent drop in the estimated number of uninsured individuals in Onondaga County.

Conclusion

Although Heritage One's charity care utilization is less than its original two percent projection, it has made reasonable and sustained efforts to provide service to the under-insured in Onondaga County. The center's Medicaid utilization is significantly higher than its original projections and consistently ranks as one of the highest among all Onondaga County ASC's.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center. Staffing is expected to increase from 34.0 FTEs to 38.0 FTEs in the next year. Robert Tiso, M.D. will continue to serve as the Center's Medical Director.

Compliance with Applicable Codes, Rules and Regulations

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

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2017 dollars, as summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenue</u>			
Commercial - FFS	\$4,676,080	\$4,122,322	\$4,085,423
Medicare - FFS	\$1,652,802	\$1,900,486	\$1,859,307
Medicare - MC	\$720,724	\$857,839	\$840,682
Medicaid - FFS	-\$7,304	\$35,555	\$35,555
Medicaid - MC	\$762,613	\$1,016,919	\$996,581
Private Pay	-\$36,337	\$13,759	\$13,759
All Other	<u>\$3,759,956</u>	<u>\$3,610,449</u>	<u>\$3,610,449</u>
Total Revenues	\$11,528,534	\$11,557,329	\$11,441,756
<u>Expenses</u>			
Operating	\$4,667,643	\$5,937,149	\$6,293,377
Capital	<u>\$657,561</u>	<u>\$631,792</u>	<u>\$669,700</u>
Total Expenses	\$5,325,204	\$6,568,941	\$6,963,077
Net Income	\$6,203,330	\$4,988,388	\$4,478,679

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Utilization (Visits)	14,877	15,238	15,253
Cost per Visit	\$357.95	\$431.09	\$456.51

The applicant based their Commercial and Medicaid rates upon current arrangements. Medicare and Private Pay reimbursement was projected based on historical experience.

Expenses were projected assuming a 3% increase in the first year, with rent expense projected based on current lease agreements and anticipated common area maintenance fees, and interest expense projected based on outstanding loans with M&T Bank and Community Bank.

Capability and Feasibility

There are no project costs associated with this application. Heritage One Day Surgery, LLC projects an operating excess of \$5,688,387 and \$5,220,679 in Year One and Three, respectively. Revenues are based on current reimbursement rates and the historical procedure mix of participating physicians. The budget appears reasonable.

BFA Attachments A and B are, respectively, Heritage One Day Surgery's 2014 and 2015 certified financial statements and their internal financial statements their October 31, 2016, which show the facility maintained a positive working capital position, positive equity and positive net income for the periods shown.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	2014 and 2015, Certified Financial Statements, Heritage One Day Surgery
BFA Attachment B	October 31, 2016 internal financial statements, Heritage One Day Surgery



Project # 162543-E
True North II DC, LLC d/b/a East Islip Dialysis

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** December 29, 2016

Executive Summary

Description

True North II DC, LLC, a New York limited liability company, requests approval to be established as the new operator of East Islip Dialysis Center, a 21-station chronic renal dialysis diagnostic and treatment center (D&TC) located in leased space at 200 Carleton Ave, East Islip (Suffolk County). The site is currently operated as an extension clinic of Bronx Dialysis Center, which is owned by Knickerbocker Dialysis, Inc. The facility became operational effective June 19, 2016 with the approval of CON 141175. The clinic provides in-center renal dialysis and home-based renal dialysis training and support services. There will be no disruption in services.

On September 29, 2016, a Contribution and Asset Purchase Agreement (CAPA) was entered into by and among True North II DC, LLC, True North DC Holding, LLC, North Shore - LIJ Renal Ventures, LLC, Bay Shore Associates of Long Island, LLC and its members, and Knickerbocker Dialysis, Inc. for the transfer of all rights, title, interests in, and assets and properties used in and for the benefit of the East Islip Dialysis Center facility. The purchase price for the operations is estimated at \$3,037,196. Via the Assignment and Assumption and Bill of Sale Agreement associated with the CAPA, Knickerbocker Dialysis, Inc. will assign its rights and obligations relating to the East Islip facility to True North II DC, LLC. Closure will be effectuated upon approval of this CON by the Public Health and Health Planning Council (PHHPC).

Ownership before and after the requested change in ownership is as follows:

<u>Current Operator</u>	
Knickerbocker Dialysis, Inc. d/b/a East Islip Dialysis Center	
<u>Shareholder</u>	<u>%</u>
Davita of New York, Inc. Davita Inc. (100%)	100%

<u>Proposed Operator</u>	
True North II DC, LLC d/b/a East Islip Dialysis Center	
<u>Members</u>	<u>%</u>
True North DC Holding, LLC	60%
<ul style="list-style-type: none"> • Knickerbocker Dialysis, Inc. (51%) <ul style="list-style-type: none"> ○ Davita of NY, Inc. <ul style="list-style-type: none"> ▪ Davita Inc. • North Shore-LIJ Renal Ventures, LLC (49%) <ul style="list-style-type: none"> ○ Northshore University Hospital <ul style="list-style-type: none"> ▪ Northwell Healthcare, Inc. <ul style="list-style-type: none"> - Northwell Health, Inc. 	
Bay Shore Associates of Long Island, LLC	40%
<ul style="list-style-type: none"> • Ralph Barbato, M.D. (12.5%) • Stephen Bernhardt, M.D. (25%) • William Frank, M.D. (12.5%) • Sudhir Goyal, M.D. (50%) 	

Knickerbocker Dialysis, Inc.'s shares are owned by Davita of New York, Inc., which is owned by Davita Inc.

North Shore-LIJ Renal Venture, LLC's sole member is North Shore University Hospital, Inc., an 804-bed, voluntary not-for-profit, tertiary care hospital located at 300 Community Drive in Manhasset. North Shore University Hospital's sole member is Northwell Healthcare, Inc. whose sole member is Northwell Health, Inc., a comprehensive integrated delivery system

formed to ensure the delivery of a broad range of quality healthcare services to the communities it serves. The hospital is also a member of the Northwell Obligated Group that provides its members an enhanced credit position and expanded access to capital markets.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no change in services as a result of this project.

Program Summary

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

Financial Summary

The acquisition price of \$3,037,196 (Acquired Assets \$2,341,325 plus a \$722,180 adjustment for expenses incurred minus \$26,309 assumed liabilities) will be provided via cash by the members of True North II DC, LLC. There are no project costs associated with this application. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$725,504	\$3,555,600
Expenses	<u>1,297,318</u>	<u>2,792,835</u>
Net Income	(\$571,814)	\$762,765

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of the fully executed Assignment and Assumption and Bill of Sale Agreement (Knickerbocker), the Assignment and Assumption and Bill of Transfer Agreement (Group) and the Assignment and Assumption and Bill of Transfer Agreement (True North Holding) associated with the Contribution and Asset Purchase Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the applicant's amended and executed Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's amended and executed Business Associate Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of the amended and executed Operating Agreement of True North II DC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the Executed Assignment and Assumption Bill of Transfer (Group), acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Assignment and Assumption Bill of Sale (Knickerbocker), acceptable to the Department. [CSL]
7. Submission of a photocopy of the Executed Assignment and Assumption Bill of Sale (True North), 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

April 6, 2017

Need Analysis

Analysis

This proposal involves no changes to the provision of dialysis services within Suffolk County and will ensure the continued delivery of such services to the residents of the county and existing patients of East Islip Dialysis.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

There are no programmatic changes anticipated as a result of this proposal. Dr. Sushil Sagar, a board certified nephrologist, will remain the facility's medical director. It is anticipated that staffing will increase by 6.23 FTEs by the third year of operation.

Character and Competence

The members of the LLC are as follows:

<u>Members</u>	<u>%</u>
True North DC Holding, LLC	60%
• Knickerbocker Dialysis, Inc. (51%)	
○ Davita of NY, Inc.	
▪ Davita Inc.	
• North Shore-LIJ Renal Ventures, LLC (49%)	
○ Northshore University Hospital	
▪ Northwell Healthcare, Inc.	
- Northwell Health, Inc.	
Bay Shore Associates of Long Island, LLC	40%
• Ralph Barbato, M.D. (12.5%)	
• Stephen Bernhardt, M.D. (25%)	
• William Frank, M.D. (12.5%)	
• Sudhir Goyal, M.D. (50%)	

The officers of True North DC Holding, LLC are:

K. Danae Pauli, President
Luann D. Regensburg, VP and Assistant Secretary
Steven N. Fishbane, M.D.
Gregory S. Stewart, Treasurer
Laurence A. Kraemer, Secretary

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

A Character and Competence Review was conducted on the members of True North II DC, LLC, North Shore-LIJ Renal Ventures, LLC, True North DC Holding, LLC, Bay Shore Associates of Long Island, LLC and Northwell Health, 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

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

In 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 (OIG), 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.

In October 2011, OIG requested documents from DaVita, Inc. related to payments for infusion drugs covered by Medicaid composite payments for dialysis. In April 2014 DaVita reached an agreement with the government and is in the process of working to finalize specific terms of the settlement.

In July 2014 the State of Indiana Attorney General's Medicaid Fraud Control Unit requested reimbursement of \$712.66 for dialysis services provided by a DaVita RN to a Medicaid recipient while she was temporarily unlicensed.

In October 2014 OIG determined that DaVita was overpaid for claims that in whole or in part should have been billed to the Nursing Home Division Waiver Program rather than Medicaid Fee-For-Service. DaVita refunded \$267,287.93 covering services provided at nineteen DaVita dialysis facilities.

In November 2015 RMS Lifeline, Inc., a wholly owned subsidiary of DaVita that operates under the name Lifeline Vascular Access received a CID from the DOJ relating to two vascular access centers in Florida. The DOJ is investigating the medical necessity of angiograms performed on 10 patients. This investigation is ongoing.

In February 2016 DaVita's pharmacy services wholly owned subsidiary, DaVita Rx, received a CID from the U.S. Attorney's Office for the Northern District of Texas. The investigation concerns allegations that DaVita Rx presented or caused false claims for payment to the government for prescription medications. DaVita initiated a compliance review which indicated potential billing and operational issues and filed a self-disclosure with the OIG. This investigation remains ongoing.

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

Contribution and Asset Purchase Agreement (CAPA)

The applicant has submitted an executed CAPA for the change in ownership of the operations related to East Islip Dialysis. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	September 29, 2016
Seller:	Knickerbocker Dialysis, Inc.
Buyer:	True North II DC, LLC, True North DC Holding, LLC, North Shore-LIJ Renal Ventures, LLC, Bay Shore Associates of Long Island, LLC and its members: William Frank, M.D., Sudhir Goyal, M.D., Ralph Barbato, M.D., Stephan Bernhardt, M.D.
Assets Acquired:	Seller's right, title and interest in all of the assets and properties owned and used by the seller in the East Islip Dialysis business whether tangible, intangible, real, personal or mixed located on premises, including but not limited to the fixed assets and inventories. East Islip's assets shall include tangible property, equipment, inventories, office and medical supplies, leasehold improvements, goodwill, software, intellectual property, prepaid expense, and applicable deposits, assigned contracts, books and records, policy and procedures, phone numbers, and transferable license and permits.
Excluded Assets:	All cash and cash equivalents or accounts receivable related to the East Islip Dialysis business, any claims or causes of action of Knickerbocker Dialysis Inc. and those unrelated to the dialysis business.
Assumed Liabilities:	All debts, obligations and liabilities incurred by Knickerbocker Dialysis Inc. in connection with the dialysis business regardless of when incurred.
Purchase Price:	The purchase price would be an amount equal to the value of acquired assets less the value of assumed liabilities. The purchase price will be adjusted for revenues and expenses incurred from any source relating to services provided at or with respect to the dialysis business prior to, on and following the closing date. Approximately \$3,037,196.
Payment:	\$30,000 Deposit held in Escrow; and \$3,007,196 cash due at closing

The estimated purchase price is determined as follows:

Assumed Assets	\$2,341,325
Adjustment to purchase price (expenses Incurred)	\$722,180
Less Assumed Liabilities	<u>(\$26,309)</u>
Purchase Price	\$3,037,196

The purchase price is proposed to be satisfied in cash as follows:

Cash from True North DC Holding, LLC (60%)	\$1,822,318
Cash from Bay Shore Associates of Long Island, LLC (40%)	<u>\$1,214,878</u>
Total	\$3,037,196

BFA Attachment A is the Net Worth Statement of the individual members of Bay Shore Associates of Long Island, LLC. BFA Attachments C and D are the 2014-2015 certified financial statements of Northwell Health, Inc. and Davita, Inc., respectively. Review of the net worth summary and the financial statements show the respective members have sufficient liquid resources to meet the equity and working capital requirements of this project.

Assignment and Assumption and Bill of Sale Agreement

The applicant has submitted a signed (undated) Assignment and Assumption and Bill of Sale Agreement (CAPA Exhibit B), which is summarized as follows:

Company:	True North II DC, LLC
Seller:	Knickerbocker Dialysis Inc.
Assignments:	Knickerbocker will convey, transfer, and assign all rights, title and interest in acquired assets and assumed liabilities to the Company. Transfers and assigns are free and clear of any pledge, lien, option, security interest, mortgage or other encumbrance to the Company.

Assignment and Assumption and Bill of Transfer Agreements

The applicant has submitted two separate signed (undated) Assignment and Assumption and Bill of Transfer Agreements between the licensed operator and its members (CAPA Exhibits C and D), which are summarized as follows:

Company:	True North II DC, LLC
Members:	True North Holding DC, LLC, Bay Shore Associates of Long Island, LLC
Assignments:	True North II DC, LLC issues, assigns and delivers free and clear of any pledge, lien option, security interest, mortgage or other encumbrance, all rights, title and interest in, to and under the Members.

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

Consulting Services Agreement

The applicant has submitted an executed Consulting Services Agreement between Davita Inc. and Knickerbocker Dialysis Inc. for development of the Center, which will be assigned to the proposed operator through an assignment and assumption of consulting agreement. The terms of which are summarized as follows:

Consultant:	Davita Inc.
Licensed Operator:	Knickerbocker Dialysis Inc.
Services:	Development of Center, Assets, Equipment and Center Maintenance, Computer Hardware & Software, Budget, Insurance, Supplies & Prescription Drugs, Accounting & Financial Support, Funds Management, staff scheduling, negotiating contracts with suppliers for purchasing & making recommendations to operator, staffing & recruitment, assist in development of a utilization & quality assurance program under Quality Oversight Agreement, billing & collections.
Term:	The Agreement Commence on the Execution date and continue until the date of the transactions contemplated by Contribution and Asset purchase agreement or one of parties, Consultant or Licensed Operator exercised their rights/options to terminate the agreement.
Compensation:	\$65,295 startup services fee (to be paid on the month that the center dialyzes the first patient), 5% developmental fee of the total development costs incurred to renovate and construct the center.

Assignment, Assumption and Restatement of Consulting Agreement:

The applicant has submitted an executed Assignment, Assumption and Restatement of Consulting & Administrative Agreement, which is summarized as follows:

Date:	September 29, 2016
Assignor:	Knickerbocker Dialysis Inc.
Consultant:	Davita Inc.
Licensed Operator:	True North II DC, LLC
Assignment:	Knickerbocker Dialysis Inc. and Davita Inc. will assign the current Consulting and Administrative Service Agreement including Business Associate Agreement to the Licensed Operator.

Administrative Service Agreement:

The applicant has submitted an executed Administrative Service Agreement with Davita Inc. which is summarized as follows:

Date:	September 29, 2016
Administrator:	Davita Inc.
Operating Subsidiary:	True North II DC, LLC d/b/a East Islip Dialysis
Member:	True North DC Holding, LLC
Member:	North Shore-LIJ Renal Ventures, LLC
Services:	Administration, Bookkeeping & Accounting, File Taxes, Arrange Insurance coverage, consulting and advisory services related to center's operational and administrative functions, regulatory monitoring, compliance with laws. quality assurance, implementing policies and procedures for compliance program and marketing services.
Term:	10 years- Automatic renewals for 5 years.
Fee:	\$10,000 per year.

Although Davita, Inc. will be performing the above services, the Licensed Operator retains ultimate authority, responsibility and control in all of the final decisions associated with the services.

The applicant has submitted a revised administrative service agreement stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

There is a common ownership between the applicant and the administrative services agreement provider as shown on BFA Attachment B post-closing organization chart.

Lease Rental Agreement

The applicant has submitted an executed Lease Rental Agreement for the proposed site, the terms of which are summarized below:

Date:	September 29, 2016
Premises:	Premises located at 200 Carleton Ave, East Islip, NY
Landlord:	Danielle Holding, LLC
Lessee:	Knickerbocker Dialysis, Inc.
Term:	12 Years, Option to renew for additional three -5 years' term.
Rental:	1st 12 months-\$146,268 per year (\$12,189 per month), 13-24 months- \$149193.36 (12,432.78 per month), 25-36 months-\$152,177.23 per year (\$12,681.44 per month). Rent increase every year as per rent schedule.
Provisions:	Tenant is responsible for taxes, insurance, maintenance and utilities.

Assignment and Assumption of Lease Agreement

The applicant has submitted an executed Assignment and Assumption Agreement for the assignment of the lease associated with this project to the proposed new operator, as shown below:

Date:	September 29, 2016
Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	True North II DC, LLC
Lessee Assigned:	Lease associated with premises at 200 Carleton Avenue, East Islip, NY 11730
Terms, Payments and Provisions:	No change

The applicant has provided an affidavit stating the lease is an arm's length transaction. The applicant has submitted letters from NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

Operating Budget

The applicant has submitted the facility's year one and three operating budgets, in 2017 dollars, as shown below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid-MC	\$255.00	\$765	\$289.46	\$3,763
Medicare-MC	\$286.20	\$521,743	\$300.09	\$2,567,535
Commercial-FFS	\$1,085.54	\$202,996	\$1,099.78	\$984,302
Total Revenues		\$725,504		\$3,555,600
 <u>Expenses</u>				
Operating	\$429.46	\$864,508	\$247.15	\$2,339,002
Capital	\$215.01	432,810	\$47.95	453,833
Total Expenses	\$644.47	\$1,297,318	\$295.10	\$2,792,835
 Net Income (Loss)		<u>(\$571,814)</u>		<u>\$762,765</u>
 Treatments		2,013		9,464

DaVita, Inc. and Northwell Health, Inc. have provided letters stating that first year losses will be covered by ongoing operations.

East Islip Dialysis became operational effective June 19, 2016. Partial year (4th quarter of 2016) operating results are not expected to be representative of the future operations. Total operating revenue, utilization and expenses assumption are based on the proposed members' extensive experience in the local dialysis markets where they operate several facilities. These assumptions appear reasonable.

Utilization by payor source for the years one and three subsequent the ownership change, are summarized below:

	<u>Year One</u>		<u>Year Three</u>	
Payor:	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-MC	3	0.15%	13	0.14%
Medicare-MC	1,823	90.56%	8,556	90.40%
Commercial-FFS	<u>187</u>	<u>9.29%</u>	<u>895</u>	<u>9.46%</u>
Total	2,013	100.00%	9,464	100.00%

The breakeven utilization is expected at 78.54% or 7,433 visits in the third year.

Capability and Feasibility

The facility's \$3,037,195 purchase price will be funded with equity by the members of True North II DC, LLC. There are no project costs associated with this application.

The working capital requirement is estimated at \$465,472 based on two months of Year Three expenses. The applicant indicated the members will provide \$1,115,805 more than the required working capital from the members' equity. BFA Attachments A, C and D are the Net Worth Statement of individual members of Bay Shore Associates of Long island, LLC and the 2014-2015 certified financial statements of Northwell Health, Inc. and Davita, Inc., respectively. Review of the net worth summary and the financial statements show the members have sufficient liquid resources to meet the equity and working capital requirements of this project. It is noted that liquid resources of the members of Bayshore Associates of Long Island, LLC's may not be available in proportion to the members' ownership interest. The members of Bayshore Associates of Long Island, LLC have provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest in the operating entity.

BFA Attachment E is True North II DC, LLC 's Pro Forma Balance Sheet, which shows operations will start with \$ \$4,153,000 in equity.

BFA Attachment F is the internal financial statements of Knickerbocker Dialysis, Inc. and Northwell Health, Inc. as of December 31, 2016, and the internal financial statements of DaVita, Inc. as of September 30, 2016. Review of the internal financial statements shows that each entity had a positive net asset position, positive operating surpluses and positive working capital position except Knickerbocker Dialysis, Inc., which had a negative working capital cash due to a liability owed to Davita Inc., their ultimate parent company. The negative working capital cash amount of \$110.3 million represents a liability owed to Davita Inc. for fees under the administrative services agreement and expenses paid by Davita Inc. on behalf of Knickerbocker.

Review of Northwell Health Inc.'s and Davita Inc.'s 2014 - 2015 certified financial statements (BFA Attachments C and D, respectively) indicates that during this period both entities maintained a positive working capital and positive net asset position, and generated positive net income from the operation.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net worth Statement of Members of Bay Shore Associates of Long Island, LLC
BFA Attachment B	Post-Closing Organizational Chart
BFA Attachment C	Northwell Health Inc. and Subsidiaries 2014 – 2015 Financial Statements
BFA Attachment D	Davita Inc. and Subsidiaries 2014 - 2015 Financial Statements
BFA Attachment E	Pro-Forma Balance Sheet
BFA Attachment F	Internal Financial Statements of Knickerbocker Dialysis, Inc., Northwell Health, Inc. and DaVita Inc.



Project # 161323-E
Sapphire HC LLC d/b/a Briarcliff Manor Center for Rehabilitation and Nursing Care

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: May 10, 2016

Executive Summary

Description

Sapphire HC LLC, a New York limited liability company, requests approval to be established as the new operator of Briarcliff Manor Center for Rehabilitation and Nursing Care (Briarcliff Manor), a 131-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 620 Sleepy Hollow Road, Briarcliff Manor (Westchester County). As part of this application, Briarcliff Manor is also requesting to decertify 11 RHCF beds, and certify two Respite beds, bringing the total certified bed count to 120 RHCF plus two Respite. A separate entity, Sapphire HC Realty LLC, will acquire the real property. There will be no change in services provided.

On February 1, 2013, Elant at Brandywine, Inc., the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Sapphire HC LLC for the sale and acquisition of the RHCF's operating interest and certain other assets for a purchase price of \$500,000 plus the assumption by Sapphire HC LLC of certain liabilities identified in the APA. Concurrently, Elant at Brandywine, Inc., the current realty owner, entered into a Contract of Sale (COS) with Sapphire HC Realty LLC for the purchase of the real estate associated with Briarcliff Manor for \$10,500,000. The APA and COS will close at the same time upon approval by the Public Health and Health Planning Council (PHHPC). There is a relationship between Sapphire HC Realty LLC and Sapphire HC LLC in that there is common ownership between the entities. Sapphire HC Realty LLC will lease the premises to Sapphire HC LLC for a term of 30 years.

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

Table with 2 columns: Members, % for Sapphire HC LLC. Members include Richard Platschek (25.0%), Joel Leifer (25.0%), Joel Zupnick (37.5%), and Chesky Berkowitz (12.5%).

Ownership of the Real Property after the requested change is as follows:

Table with 2 columns: Members, % for Sapphire Realty HC LLC. Members include Richard Platschek (25.0%), Judy Landa (5.0%), Joel Leifer (25.0%), Joel Zupnick (12.5%), Chesky Berkowitz (12.5%), and Benjamin Landa (20.0%).

BFA Attachment B presents an Organization Chart of the facility and property after the requested change.

Richard Platschek received final PHHPC approval to purchase four other Elant RHCF operations: Elant at Fishkill (CON 151307), Elant at Goshen (CON 151327), Elant at Wappingers Falls (CON 151321), and Elant at Meadow Hill (CON 152005).

OPCHSM Recommendation
Contingent Approval

Need Summary

Utilization, as of December 21, 2016 was 89.3%, with 14 vacant beds. The applicant has agreed to reduce the number of certified beds to 120. This will assist the facility in reaching optimum operating capacity.

Program Summary

No negative information has been received concerning the character and competence of the above applicants. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party.

Financial Summary

There are no project costs associated with this proposal. The purchase price for the operations is \$500,000 and will be met with \$100,000 equity from the proposed members of Sapphire HC LLC and a bank loan for \$400,000 at 6% interest for a five-year term with a five-year extension period and 25-year amortization, and the assumption by Sapphire HC LLC of certain liabilities amounting to \$2,000,000. The purchase price for the realty is \$10,500,000 and will be met with \$2,100,000 equity from the proposed members of Sapphire Realty LLC and a bank loan for \$8,400,000 at 6% for a five-year term with a five-year extension period and 25-year amortization. The projected budget is as follows:

Revenues	\$12,483,443
Expenses	<u>11,977,663</u>
Gain	\$505,780

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 working capital loan agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
6. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
7. Submission and approval of floor plans showing the beds to be decertified and associated nursing units, and the respite rooms. [LTC]
8. Submission of a photocopy of signed and executed Articles of Organization of Sapphire HC LLC. [CSL]
9. Submission of a photocopy the applicant's fully executed and amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy the executed and dated Asset Purchase 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

April 6, 2017

Need Analysis

Project Description

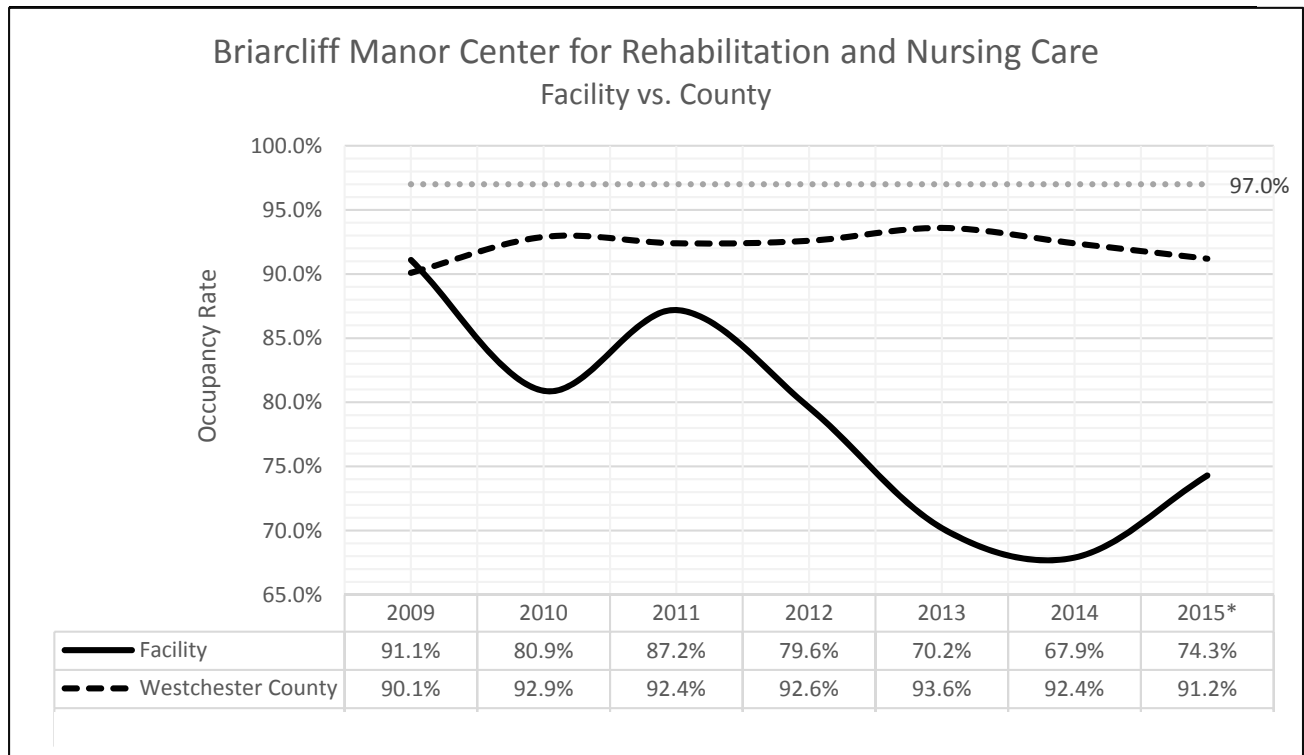
The applicant proposes to decertify 11 of the facility's existing RHCFC beds and add respite services. As a result of this project revision, the facility will have a total of 120 RHCFC beds. There will be no rooms in the RHCFC with more than two beds.

Analysis

There is currently a calculated need for 426 beds in Westchester County.

RHCFC Need – Westchester County

2016 Projected Need	6,716
Current Beds	6,066
Beds Under Construction	224
Total Resources	6,290
Unmet Need	426



The overall occupancy for Westchester County was 92.4% for 2014. Briarcliff Manor Center for Rehabilitation and Nursing Care's (Briarcliff Manor) utilization was 70.2% in 2013, 67.9% in 2014, and 74.3% in 2015. In 2016, the facility's overall utilization is 72.7%, but as of December 21, 2016 was 89.3%.

Population

In 2015, Westchester County's overall population was 954,189 and is expected to grow to 961,026 by 2020. In 2015, the 65 and older population made up 15.3% of the county's population while the 85 and older population made up 2.4%. The 65 and older population is expected to increase from 145,603 to 154,879 by 2020. The 85 and older population is expected to decline from 23,365 to 22,296 by 2020. This cohort is at most risk for requiring skilled nursing care services. This decline is expected to continue until 2030.

Reason for Low Occupancy and Plans to Increase

According to the applicant, the historically low utilization is what precipitated the sale of the nursing home. The facility required significant repairs, including an update/refurbishment of most resident rooms, which were not attractive to prospective residents and the work did not begin until 2015. Throughout 2014-2015, the current operator was in negotiations with the applicant to sell the facility and was more focused on ceasing operations than on enhancing utilization.

The applicant noted the following plan to increase utilization:

- The facility recently improved its level of staff expertise to include complex care patients by adding a full-time Nurse Practitioner and a new physician. This will increase the facility's capacity to accept more challenging cases with better outcomes from Westchester Medical Center and all surrounding area hospitals;
- The facility has established a relationship with the Director of Orthopedics at Westchester Medical Center, who has indicated interest in sending single-joint replacement patients to the facility instead of using area acute care centers;
- A new Medical Director will be hired to oversee the introduction of new programs to the facility, including the establishment of a new cardiovascular rehabilitation program. The Medical Director has extensive ties with area hospitals and will be an excellent source of new referrals to the facility;
- The facility will focus on efforts to becoming an effective hospital partner, which includes identifying ways to reduce the length of hospital stays and to reduce and/or eliminate avoidable re-hospitalizations;
- The applicant plans to invest further in this facility by performing additional substantive renovations. This extensive, multi-million-dollar project will be the subject of a separate CON. The physical plant improvements will make the facility a very attractive option for individuals requiring skilled nursing services;
- A community outreach program will be put in place to market the facility to key stakeholders in the county;
- The facility will have a robust advertising and marketing campaign to include television commercials, radio ads, and social media;
- The applicant plans to add programs and services to allow the facility to serve more medically complex individuals with COPD, vascular insufficiencies, dementia (vascular and behavioral), and psycho-geriatric conditions;
- The applicant plans to work closely with local health care and social services providers, including hospitals, adult care facilities, assisted living programs, senior citizen centers, religious organizations, community centers and the Westchester County Department of Social Services in an effort to publicize the new ownership of the facility.

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.

Briarcliff Manor's Medicaid admissions of 53.8% in 2013 and 82.9% in 2014 exceeded Westchester County's 75% rates in 2013 and 2014 of 21.5% and 18.8%, respectively.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Briarcliff Manor Center for Rehabilitation and Nursing Center	Briarcliff Manor Center for Rehabilitation and Nursing Care
Address	620 Sleepy Hollow Road Briarcliff Manor , NY 10510	Same
RHCF Capacity	131	120
ADHC Program Capacity	None	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit (Voluntary)	Proprietary
Operator	Elant at Brandywine, Inc. Elant, Inc. (Co-Operator)	Sapphire HC LLC <u>Members</u> *Joel Leifer 25% Richard Platschek 25% Joel Zupnick 37.5% Cheskel Berkowitz 12.5% *Managing Member

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Safire Rehabilitation of Southtowns (formerly Ridge View Manor)	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
North Watchester Restorative Therapy & Nursing Center	12/2010 to 09/2011
Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
Sapphire Center for Rehabilitation & Nursing of Central Queens	12/2014 to present
The Pavillion of Queens for Rehabilitation & Nursing	11/2014 to present
Safire Rehab of Northtowns (formerly Sheridan Manor)	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
Williamsville Suburban LLC	10/2012 to present
Ross Center for Nursing and Rehabilitation	06/2016 to present
Cold Spring Hills Nursing and Rehabilitation Center	06/2016 to present
Lakeview Rehabilitation & Care Center (NJ)	09/2015 to present

Home Care Agency

Pella Care LLC	01/2005 to present
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Pharmaceutical Company

Specialty RX, Inc.	06/2014 to present
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Individual Background Review

Richard (Aryeh) Platschek lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York, since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC (4.5% Managing Member)	10/2012 to present
Safire Rehabilitation of Southtowns (32% Managing Member)	10/2012 to present
Safire Rehabilitation of Northtowns (32% Managing Member)	10/2012 to present
South Shore Rehabilitation and Nursing Center (5%)	04/2014 to present
The Pavillion at Queens for Rehabilitation & Nursing (25%)	11/2014 to present
Sapphire Center for Rehabilitation&Nursing of Central Queens (35%)	12/2014 to present

Mr. Platschek has received Public Health and Health Planning Council approval to become the operator of the following nursing homes, which are not yet finalized:

152005 Elant at Meadow Hill
151327 Elant at Goshen
151321 Elant at Wappinger Falls
151307 Elant at Fishkill

Joel Leifer lists his current employment as Administrative Director for Atrium Center for Rehabilitation, since 2010, and Staten Island Care Center, since 2002. Mr. Leifer discloses the following ownership interests in health facilities:

Cold Spring Nursing & Rehabilitation Center (25%)	6/2016 to present
Ross Center for Health & Rehabilitation (55%)	6/2016 to present
Lakeview Rehabilitation and Care Center (NJ) (75%)	9/2015 to present

Joel Zupnick is employed as the vice president of both HHCNY, Inc. and EMPRO, Inc., which are healthcare staffing agencies, and as the vice president of Specialty Rx, Inc., a pharmaceutical company. Mr. Zupnick also serves as the Chief Financial Officer for Pella Care, LLC, a licensed home care services agency. He discloses the following ownership interests in health facilities:

North Westchester Restorative Therapy and Nursing Center (15%)	12/2010 to 09/2011
Seagate Rehabilitation and Nursing Center (25%)	12/2014 to present
Pella Care, LLC (50%)	01/2005 to present
Specialty RX (50%)	06/2004 to present

Cheskel Berkowitz is the president of HHCNY, Inc., a healthcare staffing company located in Brooklyn NY, he also is the Vice President of Speciality RX, Inc. which is a long term care pharmacy. Mr. Berkowitz discloses the following ownership interests in health facilities:

North Westchester Restorative Therapy & Nursing Center (15%)	12/2010 to 04/2011
Cypress Garden Center for Nursing and Rehabilitation (23.3%)	01/2015 to present
Pella Care, LLC (50%)	01/2005 to present
Specialty RX (50% shareholder)	06/2004 to present

Character and Competence – Analysis

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

A review of Safire Rehabilitation of Southtowns for the period identified above reveals the following:

- The facility was fined \$ 6,000 pursuant to a Stipulation and Order # 17-004 issued January 3, 2017 for surveillance findings on May 19, 2016. Deficiencies were found under 10 NYCRR 415.19(b)(2) Infection Control Facility Must Establishment an Infection Control Program, 415.26 Administration and 415.27(a-c) Administration Quality and Assessment and Assurance.

A review of Safire Rehabilitation of Northtowns for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to Stipulation and Order # 17-008 issued on December 19, 2016 for surveillance findings on September 15, 2016. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential and 415.12(m)(2) Quality of Care: Free From Significant Medication Errors.

A review of operations for Seagate Rehabilitation and Health Care Center, North Westchester Restorative Therapy & Nursing Center, Cypress Garden Center for Nursing and Rehabilitation, Sapphire Center for Rehabilitation & Nursing of Central Queens, The Pavillion of Queens for Rehabilitation and Nursing, South Shore Rehabilitation and Nursing Center, Williamsville Suburban, LLC, Ross Center for Nursing and Rehabilitation and Cold Spring Hills Center for Nursing and Rehabilitation reveals there were no enforcements. A review of Pella Care, LLC reveals there are no enforcements. A review of Specialty RX shows they have an active license in good standing.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	NYS Quintile
NY				
Safire Rehabilitation of Southtown, LLC	*	*	***	5
Seagate Rehabilitation and Nursing Center	****	****	*****	4
North Westchester Restorative Therapy & N C	*****	*****	****	2
Cypress Garden Center for Nursing & Rehabilitation	****	****	****	3
Sapphire Ctr for Rehab & Nursing of Central Queens	*****	*****	****	1
The Pavilion at Queens for Rehabilitation & Nrsing	***	***	***	4
Safire Rehabilitation of Northtowns, L L C	*	*	**	5
South Shore Rehabilitation and Nursing Center	****	***	*****	2
Williamsville Suburban L L C	*	*	**	4
Ross Center for Nursing and Rehabilitation	***	***	*****	3
Cold Springs Hills Ctr for Nursing and Rehab	**	*	*****	2

NJ

Lakeview Rehabilitation and Care Center	***	**	****
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Star Ratings: 1=much below average; 5=much above average

NYS Quintiles: 1=top-performing; 5=lowest-performing

Project Review

The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA for the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	February 1, 2013
Purchaser:	Sapphire HC LLC
Seller:	Elant at Brandywine, Inc.
Purchased Assets:	All assets used in the operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents and the name Elant.
Assumed Liabilities:	Any liability arising on or after the effective date of this agreement.
Purchase Price:	\$500,000 and assumption of contracts, liabilities and working capital loans made to the seller under the working capital loan agreement. Assumed liabilities will be \$2,000,000.
Payment of Purchase Price:	\$100,000 paid and held in escrow; and \$400,000 cash at closing.

M&T Bank has provided a loan letter of interest to finance \$400,000 of the purchase price of the operations at 6.0% for five years with a five-year extension period and a 25-year amortization.

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

Working Capital Loan Agreement

The applicant has submitted a draft working capital loan agreement as part of the APA. The terms of the agreement are summarized below:

Date:	February 1, 2013
Borrower:	Elant at Brandywine, Inc.
Lender:	Sapphire HC LLC
Condition to APA:	As part of the consideration for the sale, Lender must make available to borrower a revolving credit facility of up to \$2,000,000 and a guarantee by Benjamin Landa.
Terms:	Any advances will be at 6% interest payable within 3 years (36 months).

The working capital loan agreement is a line of credit that was extended to Elant at Brandywine, Inc. to meet their existing financial obligations while the sale was being finalized. At closing, if there are any outstanding amounts loaned to the applicant, Elant at Brandywine, Inc., that amount will become additional members' equity in Sapphire HC LLC.

Contract of Sale

The applicant has submitted an executed COS for the real estate purchase related to the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	February 1, 2013
Seller:	Elant at Brandywine, Inc.
Buyer:	Sapphire HC Realty LLC
Purchase Price:	\$10,500,000
Property Purchased:	Premises located at 620 Sleepy Hollow Road, Briarcliff Manor, New York

M&T Bank has provided a loan letter of interest to finance \$8,400,000 of the purchase price of the realty at 6.0% for five years with a five-year extension period and 25-year amortization. Proposed realty member, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	May 1, 2016
Premises:	A 131-bed RHCF located at 620 Sleepy Hollow Road, Briarcliff Manor, New York 10510
Landlord:	Sapphire Realty LLC
Tenant:	Sapphire HC LLC
Terms:	12 years from closing.
Rental:	\$1,000,000 first year base rent; \$1,900,000 for second and third years; and \$2,400,000 for years four through year twelve.
Provisions:	Tenant responsible for real estate taxes, general liability insurance, utilities & maintenance.

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

Operating Budget

The applicant has provided the current year (2015 results and the first and third year operating budgets subsequent to the change of ownership, in 2017 dollars, summarized below:

	Current Year		Year One		Year Three	
	Per Diem	131 beds	Per Diem	120 beds	Per Diem	120 beds
<u>Revenues</u>						
Medicaid	\$232.93	\$7,314,880	\$220.26	\$6,796,666	\$220.25	\$7,018,366
Medicare	\$576.59	1,515,285	\$576.59	2,639,640	\$576.63	2,725,743
Private Pay	\$732.39	856,901	\$533.76	2,652,804	\$533.77	2,739,334
Bad Debts		<u>(749,994)</u>		<u>0</u>		<u>0</u>
Total Revenues		\$8,937,072		\$12,089,110		\$12,483,443
<u>Expenses</u>						
Operating	\$262.42	\$9,339,713	\$259.44	\$10,483,168	\$243.63	\$10,165,207
Capital	29.79	1,060,348	29.18	1,179,204	43.43	1,812,456
Total Expenses	\$292.21	\$10,400,061	\$288.62	\$11,662,372	\$287.06	\$11,977,663
Net Income(Loss)		<u>(\$1,462,989)</u>		<u>\$426,738</u>		<u>\$505,780</u>
Total Patient Days		35,590		40,406		41,724

The following is noted with respect to the submitted budget:

- For budget Years One and Three, Medicaid revenues are projected based on the current operating and capital components of the facility's 2016 Medicaid FFS rate.
- All current year rates, including Medicare, reflect the actual rates identified in the facility's 2015 Cost Report. The Private Pay rates in Years One and Three represent an overall average of the actual rates experienced by the facility in 2016 from these payer sources.
- Historical utilization for 2015 was 74.43%. After the decrease of 11 beds per this application request, the overall utilization is projected at 92.25% for year one and 95.26% for year three.
- Utilization by payor source is as follows:

	<u>Year One and Three</u>
Medicaid	76.37%
Medicare	11.33%
Private/Other	12.30%

- Breakeven utilization is 89.0% and 91.4% for the first and third years, respectively.

Capability and Feasibility

There are no project costs associated with this proposal. The purchase price for the operations is \$500,000 and will be met with \$100,000 equity from the proposed members of Sapphire HC LLC and a bank loan for \$400,000 at 6% for five years with a five-year extension period and 25-year amortization, and the assumption by Sapphire HC LLC of certain liabilities amounting to \$2,000,000. The purchase price for the realty is \$10,500,000 and will be met with \$2,100,000 equity from the proposed members of Sapphire Realty LLC and a bank loan for \$8,400,000 at 6% for five years with a five-year extension period and 25-year amortization.

The working capital requirement of \$1,943,729, based on two months of the first year's expenses, will be from proposed members' equity. BFA Attachment A, net worth of the proposed members of Sapphire HC LLC, reveals sufficient resources exist for stated levels of equity. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,908,053 for the operation.

The submitted budget indicates that net income of \$426,738 and \$505,780 will be generated for the first year and third years, respectively. BFA Attachment G is the budget sensitivity analysis based on the current utilization of 85.03% as of December 31, 2016, and with 120 certified RHCf beds, which shows the budgeted revenues would decrease by \$946,576 resulting in a net operating loss of \$519,838 in year one. BFA Attachment H is the budget sensitivity analysis based on the January 31, 2017 utilization, which is 95.48% based on 120 beds. If occupancy remains constant at the January 31, 2017 utilization level going forward, first year budgeted revenues will increase by \$423,128 resulting in a net operating income of \$849,866 in Year One. As previously note, the applicant has planned initiatives to increase utilization and help maintain occupancy going forward. 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 pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, financial summary of Elant at Brandywine, Inc., indicates that the facility experienced negative working capital, negative net asset position and generated an average annual net loss of \$2,082,962 for the 2014-2015 period shown, and a net operating loss of \$571,577 as of November 30, 2016. The negative balance sheet and operating loss is due to the facility incurring large account payable and notes payable balances. The sale of the RHCf will allow Elant at Brandywine, Inc. to pay off \$11,000,000 in debt. Also, the purchasers will be assuming \$2,000,000 in payroll liabilities, payroll tax liabilities and accrued benefits.

BFA Attachments E, financial summary of the proposed members affiliated RHCfs, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Williamsville Suburban shows Operating Net Losses for certain years due to servicing of a high debt level. The facility is in the process of being sold. (Williamsville Suburban is currently under Department review.) The debt will be satisfied upon transfer of ownership.
- South Shore Rehabilitation shows Operating Net Losses due to a lower than expected census and higher accounts payables.

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	Sapphire HC LLC, Proposed Members Net Worth
BFA Attachment B	Sapphire Realty LLC, Proposed Members Net Worth
BFA Attachment C	Organizational Chart
BFA Attachment D	Financial Summary, Elant at Brandywine, Inc.
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Pro Forma Balance Sheet
BFA Attachment G	Budget Sensitivity Analysis based on 2016 census
BFA Attachment H	Budget Sensitivity Analysis based on January 2017 census



Project # 161449-E
GRNC Operating LLC d/b/a
Ghent Rehabilitation & Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Columbia
Acknowledged: June 24, 2016

Executive Summary

Description

GRNC Operating, LLC d/b/a Ghent Rehabilitation & Nursing Center, a New York limited liability company, requests approval to be established as the operator of Whittier Rehabilitation & Skilled Nursing Center, a 120-bed, Article 28 residential health care facility (RHCF) located at 1 Whittier Way, Ghent (Columbia County). Hudson Valley Care Center, Inc., a voluntary not-for-profit, is the current owner of the facility. Whittier Health Services, Inc., a Massachusetts corporation unrelated to the applicant, has been operating the facility under a Department authorized receivership agreement dated March 30, 2005. A separate entity, GRNC Realty, LLC, will acquire the real property. Upon the change in ownership, the RHCF will transition to a proprietary facility.

On March 8, 2016, Hudson Valley Care Center, Inc. and Whittier Health Services, Inc. collectively entered into an Asset Purchase Agreement (APA) with GRNC Realty, LLC for the sale and acquisition of the RHCF's real property for \$12,000,000. Concurrently, Whittier Health Services, Inc. entered into an Operations Transfer Agreement (OTA) with GRNC Operating, LLC assigning its sole rights to act as operator of the facility to GRNC Operating, LLC. The purchase price for the RHCF operations is \$0. The transactions contemplated by the APA and OTA will close simultaneously. The applicant will lease the premises from GRNC Realty, LLC. GRNC Operating, LLC and GRNC Realty, LLC in that the entities have identical ownership.

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

Table with 2 columns: Owner/Receiver and Name. Current Owner: Hudson Valley Care Center, Inc. Current Receiver: Whittier Health Services, Inc.

Table with 2 columns: Operator and Members. Proposed Operator: GRNC Operating, LLC. Members: Ephraim Zigelbaum (50%), Alexander Barth (30%), Yehuda Walden (20%).

Concurrent with the APA for the nursing facility, GALR Realty, LLC, with membership identical to GRNC Operating, LLC and GRNC, Realty LLC, entered into an APA with Hudson Valley Care Center, Inc. to acquire the 80-bed Adult Home with a 40-bed Assisted Living Program known as Whittier Place, and a Licensed Home Care Services Agency (LHCSA). Separate applications for the sale of these programs were filed with the Department of Health and are under review.

The facility has experienced ongoing low utilization for the past three years, and excess nursing home bed capacity exists in the planning region overall.

OPCHSM Recommendation
The Department recommends disapproval as submitted and approval as amended by the Department for 116 beds.

Need Summary

Columbia County RCHF beds are underutilized, with 50 unoccupied beds within the County. This demonstrates a lack of need for all 120 beds at this facility. A four-bed reduction, in conjunction with the applicant's stated plans to improve occupancy and the resolution of the receivership, will ensure that appropriate access to sufficient RCHF beds is maintained within Columbia County.

Program Summary

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

Financial Summary

There are no project costs associated with this proposal. The purchase prices for the sale and acquisition of the RCHF is \$12,000,000. GRNC Realty, LLC will acquire the real property with members' equity of \$2,400,000 and a bank loan

for \$9,600,000 at 5.5% interest with a 25-year term. GRNC Operating, LLC will acquire the operating interests for \$0 through the OTA. M&T Bank has provided a letter of interest for the loan at the stated terms. The projected budgets, as submitted and sensitized, are as follows:

120 beds

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$10,811,787	\$11,426,481
Expenses	<u>\$11,364,331</u>	<u>\$10,638,396</u>
Gain/(Loss)	(\$ 552,544)	\$788,085

116 beds

	<u>Year One</u>
Revenues	\$11,059,784
Expenses	<u>\$10,638,396</u>
Gain/(Loss)	\$421,388

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Disapproval as submitted and approval as amended by the Department for 116 beds, 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 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]
4. 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 nursing 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]
5. 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]
6. Submission and approval of floor plans showing the beds to be decertified and the associated nursing units. [LTC]
7. Submission of a photocopy of a signed Certificate of Assumed Name, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of a signed Articles 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]

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

April 6, 2017

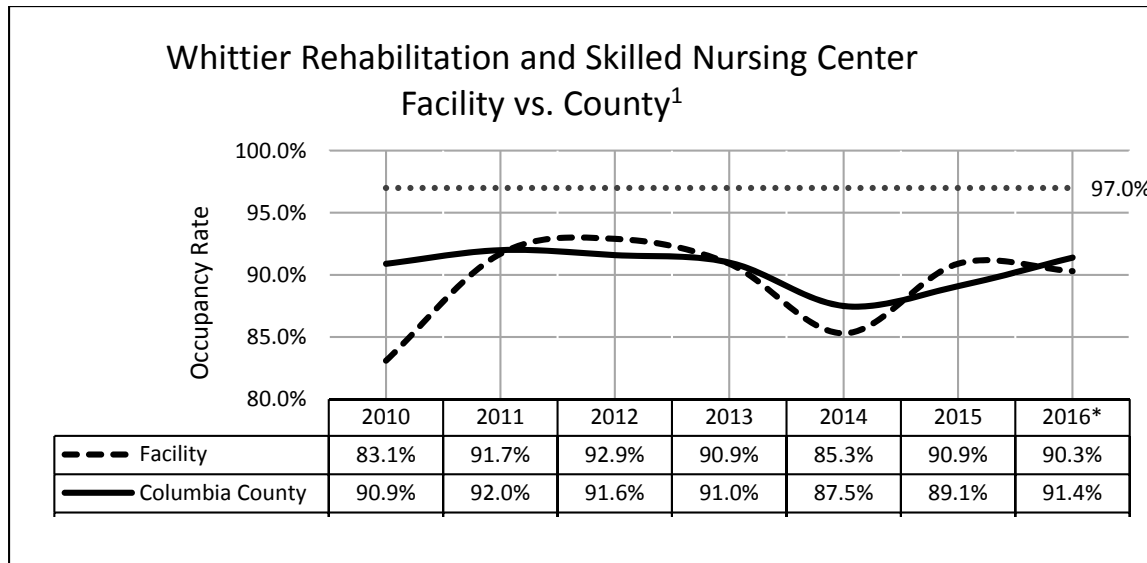
Need Analysis

Project Description

The applicant submitted a proposal at the full 120 bed complement that has been amended by the Department to include a four-bed reduction. Therefore, upon approval, the total certified RHCf beds will decrease from 120 to 116 beds.

Need Summary

As shown in the chart below, Columbia County's total nursing home occupancy has historically hovered around 90% - far below the 97% planning optimum delineated in 10 NYCRR 709.3. Whittier's occupancy has tracked near or below the county level over the same period.



Such sustained underutilization in a planning region necessitates a rebalancing of resources to ensure their continued viability. While not all 120 beds at Whittier seem to be necessary, Columbia County cannot afford to lose all the beds at any one of its facilities through closure. The Department seeks to achieve rebalancing incrementally without unduly penalizing this particular applicant by amending the application with a four-bed reduction and recommending approval as amended. A summary of Columbia county nursing home utilization is shown below.

Occupancy at Facilities Nearby Whittier Rehabilitation and Skilled Nursing Center						
Surrounding Facilities	Distance/Time	RHCf Beds	2013	2014	2015	2016 ¹
<i>Whittier Rehab</i>	<i>0.0</i>	<i>120</i>	<i>90.9%</i>	<i>85.3%</i>	<i>90.9%</i>	<i>90.3%</i>
Pine Haven Home	6.6 mi/12 mins	120	91.8%	81.7%	83.7%	90.7%
Barnwell Nursing ²	11.9 mi/15 mins	236	93.8%	90.7%	90.6%	88.6%
Livingston Hills ²	13.7 mi/22 mins	120	86.8%	89.1%	89.6%	99.2%
County Total³		596	91.0%	87.5%	89.1%	91.4%

¹Occupancies for 2016 are calculated from Weekly Census submissions to the Department and are not certified.

²Only submitted one weekly census report, data possibly unreliable.

³The bed totals above do not include the 92 bed FASNY Firemen's home which accepts only firefighters.

Utilization for area facilities have been historically low, excluding the one weekly census submitted by Livingston Hills in 2016. It is likely that the actual utilization at this facility is more accurately represented by the 2015 certified numbers.

Whittier's current occupancy, as of January 11, 2017 is 92.5% with nine empty beds. The total number of beds at this facility will decrease from 120 to 116, improving the last reported occupancy to 95.7%. The number of certified beds within the county will decrease from 596 to 592. Through the four-bed reduction, the total occupancy within the county will improve from 91.4% to 92.0%, and access for area residents will not be jeopardized.

The applicant has specific plans to sustain occupancy, including:

- Hire a full time community liaison and admissions coordinator with the sole job description and focus on relationship building and admissions;
- Implement a fully comprehensive marketing plan to build awareness and name recognition within the community;
- Add programs and services which will allow the facility to serve more medically complex individuals – including, but not limited to, residents with COPD, vascular insufficiencies, dementia (vascular and behavioral), and psycho-geriatric conditions;
- Implement programs specifically targeted to preventing hospital readmissions and facilitating the earlier discharge of hospital patients;
- Implement various team building programs and staff appreciation initiatives focused on improving overall employee satisfaction at the facility; and
- Upgrade the physical plant, equipment, and systems to ensure a comfortable and inviting atmosphere for the residents and their families.

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 Whittier Rehabilitation and Skilled Nursing Center's Medicaid admissions of 4.6% in 2014 did not exceed the Columbia County 75% rate of 28.9% in 2014. Whittier Rehabilitation and Skilled Nursing Center's Medicaid admissions of 31.4% in 2015 did not exceed the Columbia County 75% rate of 36.8% in 2015. The applicant will have to submit a plan to improve Medicaid admission, per the relevant contingency and condition below.

Conclusion

Columbia County RCHF beds are underutilized, having a total of 50 unoccupied beds within the County. This demonstrates that there is not a need for all 120 beds at this facility. However, the proposed four-bed reduction, in conjunction with the applicant's stated plans to improve occupancy and the resolution of the receivership, will ensure that appropriate access to sufficient RCHF beds is maintained within Columbia County.

Recommendation

From a need perspective, the Department recommends disapproval as submitted and approval as amended by the Department for 116 beds.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Whittier Rehabilitation & Skilled Nursing Center	Ghent Rehabilitation and Nursing Center
Address	1 Whittier Way Ghent, NY 12075	Same
RHCF Capacity	120	116
ADHC Program Capacity	N/A	Same
Type of Operator	Not-for-profit corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Hudson Valley Care Center, Inc. <u>Under Receivership by</u> Whittier Health Services	GRNC Operating LLC <u>Members</u> Ephraim Zagelbaum 50% Alexander Barth 30% Yehudah J. Walden 20%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Tarrytown Hall Care Center	04/2008 to present
Alpine Rehabilitation and Nursing Center	07/2009 to present
Norwich Rehabilitation and Nursing Center	01/2011 to present
Highland Rehabilitation and Nursing Center	02/2013 to present
Utica Rehabilitation and Nursing Center	02/2015 to present
Plattsburgh Rehabilitation and Nursing Center	01/2016 to present
Auburn Rehabilitation and Nursing Center	02/2016 to present
Sodus Rehabilitation and Nursing Center	02/2016 to present

Massachusetts Nursing Homes

Cambridge Rehabilitation and Nursing Center	09/2010 to present
Medford Rehabilitation and Nursing Center	04/2012 to present
Rehabilitation and Nursing Center at Everett	01/2013 to present

Individual Background Review

Ephraim Zagelbaum is a licensed New York State nursing home administrator and is considered to be in good standing. Mr. Zagelbaum has been the President/Chief Executive Officer at Personal Healthcare Management LLC since December 2012, a company administering business office functions for health facilities. He was previously employed as the Administrator of Record at Windsor Park Nursing from 2004 to 2012. Mr. Zagelbaum discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center [80%]	07/2009 to present
Norwich Rehabilitation and Nursing Center [50%]	01/2011 to present
Tarrytown Hall Care Center [43%]	04/2008 to present
Highland Rehabilitation and Nursing Center [45%]	02/2013 to present
Plattsburgh Rehabilitation and Nursing Center [50%]	01/2016 to present
Auburn Rehabilitation and Nursing Center [50%]	02/2016 to present
Sodus Rehabilitation and Nursing Center [50%]	02/2016 to present
Utica Rehabilitation and Nursing Center [50%]	02/2015 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Alexander Barth is a licensed New York State nursing home administrator and is considered to be in good standing. Mr. Barth has been a managing partner at Personal Healthcare Management LLC since January 2013. Previously he was employed as Administrator of Record at Tarrytown Hall Care Center from 2007 to 2012. Mr. Barth discloses the following health facility ownership interests:

Alpine Rehabilitation and Nursing Center [5%]	07/2009 to present
Norwich Rehabilitation and Nursing Center [15%]	01/2011 to present
Tarrytown Hall Care Center [5%]	04/2008 to present
Highland Rehabilitation and Nursing Center [20%]	02/2013 to present
Plattsburgh Rehabilitation and Nursing Center [30%]	01/2016 to present
Auburn Rehabilitation and Nursing Center [30%]	02/2016 to present
Sodus Rehabilitation and Nursing Center [30%]	02/2016 to present
Utica Rehabilitation and Nursing Center [20%]	02/2015 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Yehudah Walden has been a managing member at Personal Healthcare Management LLC since 2010, a company administering business office functions for health facilities located in Tarrytown, New York.

Mr. Walden discloses the following health facility ownership interests:

Highland Rehabilitation and Nursing Center [5%]	02/2013 to present
Plattsburgh Rehabilitation and Nursing Center [20%]	01/2016 to present
Auburn Rehabilitation and Nursing Center [20%]	02/2016 to present
Sodus Rehabilitation and Nursing Center [20%]	02/2016 to present
Utica Rehab and Nursing Center [20%]	02/2015 to present
Cambridge Rehabilitation and Nursing Center (MA)	09/2010 to present
Medford Rehabilitation and Nursing Center (MA)	04/2012 to present
Rehabilitation and Nursing Center at Everett (MA)	01/2013 to present

Character and Competence - Analysis

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

Ephraim Zigelbaum, Alexander Barth, Yehudah Walden, have been approved by the PHHPC (142195) on February 12, 2015 to establish and construct Delhi Nursing & Rehabilitation Center. The facility is projected to open shortly after June 1, 2017.

A review of operations for Highland Rehabilitation and Nursing Center reveals:

- The facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on August 17, 2016. Deficiencies were found under 10NYCRR 415.5(h)(4) Environment: Comfortable and Safe Temperature Level.

A review of operations for Alpine Rehabilitation and Nursing Center reveals:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-036 for surveillance findings on March, 2014. Deficiencies were found under 10NYCRR 415.26 Administration.

A review of operations for Norwich Rehabilitation and Nursing Center, Tarrytown Hall Care Center, Auburn Rehabilitation and Nursing Center, Sodus Rehabilitation and Nursing Center and Utica Rehabilitation and Nursing Center for the periods identified above reveals there were no enforcements for the periods of ownership.

An affidavit submitted by the applicant on August 2, 2016 for Medford Rehabilitation and Nursing Center, Massachusetts reveals:

- The facility was fined \$96,785 for surveillance findings on February 27, 2013. Deficiencies were cited under §483.25 – Quality of Care with a scope and severity of L.
- A review of Medicare.gov shows a Civil Money Penalty of \$177, 600 was imposed on June 8, 2016.

An affidavit submitted by the applicant on August 2, 2016 for Rehabilitation and Nursing Center at Everett, Massachusetts reveals:

- The facility was fined \$49,400 for surveillance findings on June 14, 2013. Deficiencies were cited under §483.10(b)(3) (d)(2) – Informed of Health Status / Medical Condition with a scope and severity of G.
- A review of Medicare.gov shows a Civil Money Penalty of \$46,638 was imposed on February 25, 2016.

An affidavit submitted by the applicant on August 2, 2016 for Cambridge Rehabilitation and Nursing Center, Massachusetts reveals:

- The facility was fined \$2,275 for surveillance findings on January 12, 2015. Deficiencies were cited under §483.20(k)(3)(ii) – Qualifications of Facility Staff with a scope and severity of G.
- A review of Medicare.gov shows a Civil Money Penalty of \$8,125 was imposed on March 29, 2016.

A review of the Massachusetts Health and Human Services website for Cambridge Rehabilitation and Nursing Center lists G and F level citations for substandard quality of care on March 29, 2016 and September 30, 2013.

A review of the Massachusetts Health and Human Services website for Medford Rehabilitation and Nursing Center revealed no additional information.

A review of the Massachusetts Health and Human Services website for Rehabilitation and Nursing Center at Everett lists that denial of payments for new admissions were imposed on November 27, 2015 and December 15, 2016; Substandard Quality of Care is listed on September 15, 2016.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	NYS Quintile
NY				
Alpine Rehabilitation and Nursing Center	**	**	*	5
Norwich Rehabilitation & Nursing Center	**	**	***	4
Tarrytown Hall Care Center	****	***	*****	4
Highland Park Rehabilitation and Nursing Center	***	***	***	2
Plattsburgh Rehabilitation and Nursing Center	*	**	*	5
Auburn Nursing Home	*	*	***	5
Sodus Rehabilitation & Nursing Center	*	*	***	3
Utica Rehabilitation & Nursing Center	*	*	*	5

MA

Cambridge Rehabilitation & Nursing Center	**	*	*****
Medford Rehabilitation and Nursing Center	*	*	****
Rehabilitation & Nursing Center at Everett (The)	*	*	****

Star Ratings: 1=much below average; 5=much above average

NYS Quintiles: 1=top-performing; 5=lowest-performing

The applicants were asked to explain the low quality ratings at some of their facilities and their plans to improve them. For the NYS facilities it was noted that the facilities with low quality ratings were purchased recently, one in 2015 and three in 2016. For these facilities it was stated that new management personnel and clinical leadership have been hired who have implemented new policies and systems to increase the level of care and overall performance of each facility.

For the Massachusetts facilities it is noted that the Quality Measures were low, associated with their poor inspection history. The applicant explains this is related to the age of the facilities and the lack of investment by the previous owner, with the nursing homes having received few improvements prior to their purchase. The applicants state they have invested millions of dollars into each facility and that progress is ongoing.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Recommendation

From a programmatic perspective, contingent approval is recommended for a 116-bed residential health care facility.

Financial Analysis

Operations Transfer Agreement

The applicant submitted an executed OTA for the purchase and transfer of the RHCF's operations. The agreement will close concurrent with the APA upon PHHPC approval. The terms are summarized below:

Date:	March 8, 2016
Seller:	Whittier Health Services, Inc.
Buyer:	GRNC Operating, LLC
Assets Transferred:	All rights, title and interest in the assets including trade name, supplies and inventory, prepaid expenses, all documents and records, assignable licenses and permits including Medicare and Medicaid provider numbers, phone and fax numbers, all logos, names, trade names, trademarks and service marks, assignable software, resident trust funds, deposits and prepayments, cash and cash equivalents, Medicare and Medicaid provider agreements and all other agreements associated with the operations of the facility.
Excluded Assets:	None
Assumed Liabilities:	None
Purchase Price:	\$0

Asset Purchase Agreement (Real Property)

The applicant submitted an executed APA for the purchase of the RHCF's real property. The agreement will close concurrent with the OTA upon PHHPC approval. The terms are summarized below:

Date:	March 8, 2016
Seller:	Hudson Valley Care Center, Inc. and Whittier Health Services, Inc.
Buyer:	GRNC Realty, LLC.
Purchased Assets:	All seller's rights, title and interest in and to the real property, buildings and improvements located at 1 Whittier Way, Ghent (Columbia County), New York, commonly known as Whittier Rehabilitation & Skilled Nursing Center
Excluded Assets:	All assets listed as part of the OTA.
Assumed Liabilities:	None

Excluded Liabilities:	N/A
Purchase Price:	\$12,000,000
Payment of Purchase Price:	\$500,000 paid/held in escrow; \$11,500,000 due at closing.

The purchase price for the realty is to be satisfied as follows:

Cash (paid/held in escrow)	\$500,000
Members' Equity (due at closing)	\$1,900,000
Mortgage (25-year loan at 5.5% interest)	<u>\$9,600,000</u>
Total	\$12,000,000

M&T Bank has provided a letter of interest for the financing at the stated terms.

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 February 15, 2017, the facility had an outstanding Medicaid liability of \$32,230 related to a retroactive Medicaid rate adjustment.

Lease Agreement

The applicant submitted an executed lease agreement, summarized below:

Date:	April 25, 2016
Premises:	120-bed RHC located at 1 Whittier Way, Ghent (Columbia County), New York
Lessor:	GRNC Realty, LLC
Lessee:	GRNC Operating, LLC
Term:	10 years with ten (10) 1 year renewals
Rental:	\$907,429 annually (\$75,619.08 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 submitted an affidavit attesting to the relationship between the landlord and tenant in that there is common ownership between the entities.

Operating Budget

The following is a summary of the submitted operating budget, presented in 2017 dollars, for the current year (2015) and year one subsequent to the change in ownership:

	Current Year		Year One	
	Per Diem	Total	Per Diem	Total
<u>Revenues</u>				
Medicaid	\$222.20	\$6,128,746	\$212.08	\$6,239,181
Medicare	\$480.40	\$2,141,154	\$465.00	\$2,070,645
Private Pay	\$318.13	\$2,472,221	\$343.19	\$2,668,313
Other Revenue *		<u>\$69,666</u>		<u>\$448,342</u>
Total		\$10,811,787		\$11,426,481
<u>Expenses</u>				
Operating	\$247.39	\$9,848,641	\$222.85	\$9,280,967
Capital	<u>\$38.07</u>	<u>\$1,515,690</u>	<u>\$32.59</u>	<u>\$1,357,429</u>
Total	\$285.46	\$11,364,331	\$255.44	\$10,638,396
Net Income/loss		<u>(\$552,544)</u>		<u>\$788,085</u>
Utilization - Pt days		39,810		41,647
Occupancy		90.89%		95.08%

The sensitized year one budget to reflect 116 beds is as follows:

	<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>		
Medicaid	\$212.08	\$6,031,131
Medicare	\$465.00	\$2,000,895
Private Pay	\$343.19	\$2,579,416
Other Revenue *		<u>\$448,342</u>
Total		\$11,059,784
 <u>Expenses</u>		
Operating	\$222.85	\$9,280,967
Capital	<u>\$32.59</u>	<u>\$1,357,429</u>
Total	\$255.44	\$10,638,396
 Net Income/loss		 <u>\$421,388</u>
 Utilization-Pt days		 40,257
Occupancy		95.08%

*Other Revenue consists of miscellaneous revenue (\$69,666 in current year and \$15,000 in year one) and Medicaid cash receipts assessment for \$433,342 (in year one, included in per diem rate for current year).

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

- Medicaid revenue is based on the facility's current Medicaid FFS rate, which remains the benchmark rate for payments by Medicaid Managed Care Plans through to April 2018.
- The applicant indicated that the facility's current Private Pay rate is low, being well below the average nursing home rate of \$322 for the Northeastern Region per the Department's website. The rate is projected to be increased to \$343 going forward, which is still well below the average \$387 rate for the Northern Metropolitan Region (a contiguous region to Columbia County).
- With the change from a voluntary to a proprietary facility, the methodology for capital cost reimbursement would change in accordance with the Title 10 of the NYCRR, Part 86.2. While the capital reimbursement structure for proprietary and voluntary NHs differ, 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:

	<u>Current Year</u>	<u>Year One</u>
Medicaid	69.28%	70.64%
Medicare	11.20%	10.69%
Private Pay	19.52%	18.67%

- To sensitize the budget to 116 beds, utilization was determined based on the percent utilization projected for the 120-bed budget submission times the maximum annual days for a 116-bed RHCF (365 X 116 X 95.08% = 40,257 patient days). Days by payer were determined based on the projected year one percent utilization by payor times total sensitized patient days, then multiplied by the projected per diem rate by payor to sensitize revenue projections. Operating costs were not sensitized as the applicant's projected budget included cost reductions to reflect staffing/other efficiencies, and a reduction of four beds was deemed to not have materially impact labor, supply and other such patient care related operating costs.
- Breakeven utilization at 120 beds is projected at approximately 88.52% for Year One.
- Breakeven utilization sensitized to 116 beds is projected at approximately 91.45% for Year One.

Capability and Feasibility

There are no project costs associated with this proposal. GRNC Operating, LLC will acquire the RHCF's operating interest for \$0 and GRNC Realty, LLC will acquire the RHCF's real property for \$12,000,000 at the above stated terms. M&T Bank provided a letter of interest for the financing.

Working capital requirements are estimated at \$1,773,066 based on two months of Year One expenses. The proposed members will provide \$892,637 in equity equivalent to their ownership percentages. The

remaining \$880,429 will be provided through a working capital loan at 5% interest with a five-year term. M&T Bank has provided a letter of interest for the proposed working capital financing. Affidavits have been provided confirming the members' willingness to contribute resources disproportionate to their ownership interest to fulfill the equity requirements for the project. BFA Attachment A is the net worth statement for the proposed owners, which shows significant resources available to cover both the purchase price and the working capital equity requirements.

BFA Attachment B is the pro-forma balance sheet of GRNC Operating, LLC and GRNC Realty, LLC, which indicates a positive members' equity of \$892,637 as of the first day of operations for the facility, and a members' equity of \$2,400,000 as of day one of operations for the reality entity.

The submitted budget indicates a net income of \$788,085 for Year One. The sensitized budget indicates a net income of \$421,388 for Year One. 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 requires 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 a summary of Whittier Rehabilitation & Skilled Nursing Center's 2013-2015 certified financial statements and their internal financial statements as of December 31, 2016. As shown, the facility maintained an average negative net asset position and a positive working capital position for the period 2013-2015. During the same period, the facility had an average operating loss of \$896,012. The facility had a positive working capital position and negative net asset position and reported a net gain of \$37,400 as presented on the internal financial statements ending December 31, 2016. The reason for the average net loss for the period 2013-2015 is due to the facility currently operating under a long term receivership with a receiver that has limited access and familiarity with the New York market. This has hindered them in creating and maintained referral relationships to sustain the business. The proposed new owners have access and familiarity with the New York market and have a proven record of accomplishment in turning around facilities.

BFA Attachment E is the certified financial summaries and the internal financial summaries as of November 30, 2016 for four of the proposed members' affiliated NYS RHCFS. The following is noted:

- Alpine Rehabilitation & Nursing Center maintained a positive average net asset position and a negative average working capital position for the period 2013-2015. The facility generated a positive average net income of \$572,920 for the period 2013-2015. The internal financial statements ending 11/30/2016 show that the facility achieved both positive work capital and net asset positions and generated a net income of \$1,221,464. The negative working capital position for the period 2013-2015 was due to higher accounts payable for work being done at the facility. The Loans Payable and Due to Prior Owner liabilities are expected to be eliminated in 2016.
- Tarrytown Hall Care Center maintained a positive net asset position and a negative average working capital position for the period 2013-2015. The facility generated a positive average net income of \$484,286 for the same period. The internal financial statements ending 11/30/2016 show that the facility achieved both positive work capital and net asset positions and generated a net income of \$2,169,162. The negative working capital for the period 2013-2015 is due to the facility's auditor categorizing "Due to Third party" as a liability. In 2016 and going forward, "Due to Third party" will be categorized as income.
- Highland Rehab & Nursing Center maintained a positive average net asset position and a negative average working capital position for the period 2014-2015. The facility generated a positive average net income of \$709,652 for the same period. The internal financial statements ending 11/30/2016 show that the facility achieved both positive work capital and net asset positions and generated a net income of \$1,894,717. The negative working capital position for 2014 was due to inefficiencies in operations from the previous owners, which have been rectified by the current owners.
- Norwich Rehab & Nursing Center maintained a positive average net asset position and a positive average working capital position for the period 2013-2015. The facility generated a positive average net income of \$247,647 for the same period. The internal financial statements ending 11/30/2016

show that the facility achieved both positive work capital and net asset positions and generated a net income of \$1,816,103. The 2013 negative working capital position is due to the facility still being in the initial startup period for operations under the new owners. By 2014, the facility showed a positive working capital position going forward.

Financial statements for the other six affiliated NYS nursing homes are not available as the facilities were recently acquired.

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 for a 116-bed residential health care facility.

Attachments

- | | |
|------------------|--|
| BFA Attachment A | Net Worth of Proposed Members of GRNC Operating, LLC d/b/a Ghent Rehabilitation & Nursing Center and GRNC Realty, LLC |
| BFA Attachment B | Pro-forma Balance Sheets for GRNC Operating, LLC d/b/a Ghent Rehabilitation & Nursing Center and GRNC Realty, LLC |
| BFA Attachment C | 2013 -2015 certified and the 1/1/2016-9/30/2016 internal financial statements for Whittier Rehabilitation & Skilled Nursing Center |
| BFA Attachment D | Ownership interest of the proposed members' of GRNC Operating, LLC d/b/a Ghent Rehabilitation & Nursing Center |
| BFA Attachment E | Financial Summaries of the proposed members' of GRNC Operating, LLC d/b/a Ghent Rehabilitation & Nursing Center |



Project # 162187-E
Optima Care Smithtown, LLC
d/b/a Brookside Multicare Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Suffolk
Acknowledged: September 6, 2016

Executive Summary

Description

Optima Care Smithtown, LLC d/b/a Brookside Multicare Nursing Center (Brookside), a New York limited liability company, requests approval to be established as the new operator of Brookside Multicare Nursing Center, a 353-bed, proprietary, Article 28 residential health care facility (RHCF) located at 7 Route 25A, Smithtown (Suffolk County). The facility also operates an off-site 40-slot Adult Day Health Care Program (ADHCP). Avalon Gardens Rehabilitation and Health Care Center, LLC is the current operator of the facility. Upon approval of this application, the facility will be named Brookside Multicare Nursing Center. A separate entity, RM Holding Smithtown, LLC, will acquire the real property. There will be no change in beds or services provided.

On July 22, 2016, Avalon Gardens Rehabilitation and Health Care Center, LLC entered into an Asset Purchase Agreement (APA) with Optima Care Smithtown, LLC for the sale and acquisition of the RHCF operating interests for \$3,246,400. Concurrently, Avalon Gardens Real Estate, LLC, the current realty owner, entered into a Real Estate Purchase Agreement (REPA) with RM Holdings Smithtown, LLC for the sale and acquisition of the real property for \$77,913,600. The APA and REPA will close at the same time upon CON approval by the Public Health and Health Planning Council (PHHPC). There is a relationship between Optima Care Smithtown, LLC and RM Holdings Smithtown, LLC in that there are related members in both entities. The

applicant will lease the premises from RM Holdings Smithtown, LLC.

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

Table with 2 columns: Member Name and Percentage. Title: Current Operator. Content: Avalon Gardens Rehabilitation & Health Care Center, LLC. Members: Bent Philipson (63%), Benjamin Landa (36%), Alan Chopp (1%).

Table with 2 columns: Member Name and Percentage. Title: Proposed Operator. Content: Optima Care Smithtown, LLC. Members: Alexander Rovt (90%), Boris Mendel (5%), EMM Healthcare Group, LLC (5%), Eric Mendel (100%).

BFA Attachment C presents the Current and Proposed Owners of the real property.

Concurrently under review, the applicant members of Optima Care Smithtown, LLC and the realty members of RM Holdings Smithtown, LLC are seeking approval to acquire the operating and realty interests, respectively, in Little Neck Care Center (CON 162190) and White Plains Center for Nursing Care (CON 162192).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Brookside Multicare Nursing Center's occupancy was 96.4% in 2013, 97.3% in 2014 and 97.3% in 2015. Current occupancy, as of December 21, 2016 is 96.5%.

Program Summary

No negative information has been received concerning the character and competence of the proposed members of the applicant. The applicant will enter into a consulting and administrative services contract with EMM Healthcare Group, LLC (EMM), which is also a member of the applicant LLC. The applicant has demonstrated an understanding of the components of a quality pediatric program, and has shown flexibility and a willingness to improve the resident environment.

Financial Summary

Optima Care Smithtown, LLC will acquire the RHC operations for \$3,246,400 to be funded by members' equity. RM Holdings Smithtown, LLC will purchase the real property for \$77,913,600 funded by a U.S. Department of Housing and Urban Development (HUD) loan for \$39,765,000 at 4% interest (plus FHA mortgage insurance at 65 basis points) for a 30-year term, and \$38,148,600 members' equity. Greystone Funding Corporation has provided a letter of interest to underwrite and fund the HUD realty loan at the stated terms. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$45,545,193
Expenses	<u>42,938,390</u>
Net Income	\$2,606,803

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, 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 from the U.S. Department of Housing and Urban Development (HUD) for the purchase of the real property, acceptable to the Department of Health. [BFA]
5. Submission of an executed promissory note from Alexander Rovt to the Rovt 2011 Family Trust for the purchase of the real property, acceptable to the Department of Health. [BFA]
6. Submission of an executed promissory note from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust for the purchase of the real property, acceptable to the Department of Health. [BFA]
7. Submission of an executed declaration of gift to the Boris Mendel Family 2012 Irrevocable Trust, for the purchase of the real property, acceptable to the Department of Health. [BFA]
8. 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)
9. 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)
10. 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)
11. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of EMH Healthcare Group, LLC's amended operating agreement, which is acceptable to the Department. [CSL]

13. Submission of a photocopy of the applicant's completed services agreement and HIPPA business association agreement, which are acceptable to the Department. [CSL]
14. Submission of a completed asset purchase agreement and purchase and sale agreement for real estate of the applicant, including all supplemental documents, 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]
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

April 6, 2017

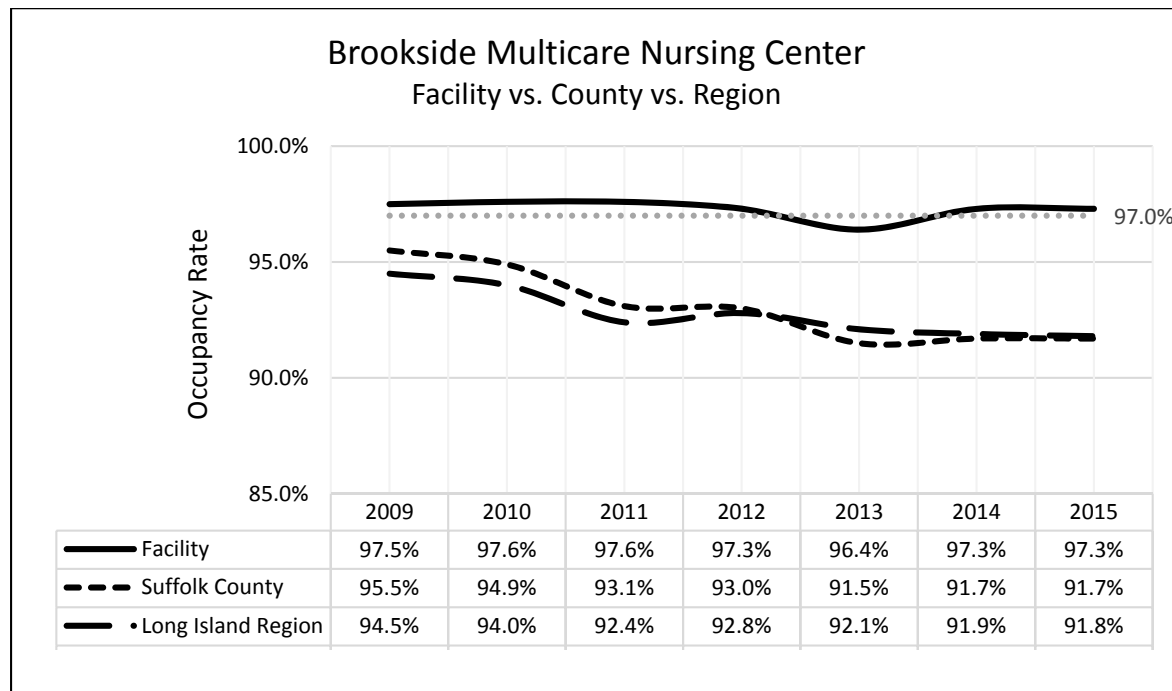
Need Analysis

Analysis

There is currently a calculated need for 1,891 beds in the Long Island region.

RHCF Need – Long Island Region

2016 Projected Need	16,962
Current Beds	15,299
Beds Under Construction	-228
Total Resources	15,071
Unmet Need	1,891



The overall occupancy for the Long island region was 91.8% in 2015. Brookside Multicare Nursing Center's occupancy was 96.4% in 2013, 97.3% in 2014, and 97.3% in 2015. Overall self-reported 2016 occupancy was 97.0%. This facility includes 36 pediatric beds. Overall occupancy for this unit for 2016 was 100.0%. The facility has a history of high RHCF occupancy at or near the Department's planning optimum, which is expected to continue going forward.

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.

Brookside Multicare Nursing Center's Medicaid admissions of 42.7% in 2014 and 48.0% in 2015 exceeded Suffolk County's 75% threshold rates in 2014 and 2015 of 19.4% and 16.7%, respectively.

Conclusion

Contingent approval of this application is being recommended to maintain a much needed resource to meet the needs of residents of Suffolk County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Brookside Multicare Nursing Center	Same
Address	7 Route 25A Smithtown, NY 11787	Same
RHCF Capacity	353 (including 36 pediatric)	Same
ADHC Program Capacity	40	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Avalon Gardens Rehabilitation and Health Care Center, LLC	Optima Care Smithtown, LLC Alexander Rovt 90% Boris Mendel 05% EMM Healthcare Group, LLC 05% *Eric Mendel (100%) <div style="text-align: right; border-top: 1px solid black; width: 50px; margin-left: auto;">100%</div> *Managing Member

Character and Competence - Background

Facilities Reviewed

Hospitals

Brookdale University Hospital	05/2015 to present
Maimonides Medical Center	10/2001 to present

Assisted Living Program

Central Assisted Living LLC	02/1981 to present
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Licensed Health Care Services Agency

Prime Health Choice, LLC	09/2007 to present
Prime Assisted Home Care	04/2016 to present
Metrostar Home Care LLC	06/2015 to present

Certified Home Health Agency

Prime Home Health Services, LLC	09/2007 to present
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Individual Background Review

Alexander Rovt is the president and owner of IBE Trade Corp., a real estate company, and is a currently licensed Private Investigator. Mr. Rovt serves as the Chairman of the Board of Trustees of Brookdale Medical Center, since August 2001. Mr. Rovt is also a member of the Board of Trustees of Maimonides Medical Center, since May 2012. Mr. Rovt discloses the following healthcare ownership interests:

Prime Home Health Services [20%]	09/2007 to present
Prime Assisted Home Care (20%)	04/2016 to present
Prime Health Choice, LLC (30%)	02/2014 to present

Boris Mendel has been employed since 1981 as the administrator of Central Assisted Living, an assisted living program. Mr. Mendel discloses the following health care ownership interests:

Central Assisted Living LLC (49%)	02/1981 to present
Prime Health Services, LLC (30%)	09/2007 to present
Prime Health Choice, LLC (30%)	09/2007 to present
Metrostar Home Care, LLC (15%)	06/2015 to present
Prime Assisted Home Care (6.25%)	04/2016 to present

Eric Mendel has been employed as the CEO of Central Assisted Living since 2002, and serves on the Boards of Age Friendly New York City Commission, a partnership of the Office of the Mayor, NYC City Council and the New York Academy of Medicine, and Empire State Association of Assisted Living, a trade association. Mr. Mendel discloses the following health facility ownership interests:

Central Assisted Living (51%)	02/2008 to present
Prime Health Services, LLC (6.25%)	09/2007 to present
Prime Health Choice, LLC (30%)	09/2007 to present
Prime Assisted Home Care (6.25%)	04/2016 to present
Metrostar Home Care, LLC (15%)	06/2015 to present

Character and Competence - Analysis

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

A review of operations for Brookdale University Hospital and Maimonides Medical Center for the periods identified above reveals there were no enforcements. An immediate jeopardy was issued for Maimonides Medical Center in Surgery Services in 2011.

A review of Central Assisted Living LLC, Prime Health Choice, LLC, Prime Assisted Home Care, Metrostar Home Care LLC, and Prime Home Health Services LLC for the periods identified above reveals there were no enforcements.

Quality Review

Brookdale University Hospital

Mortality	Same as the National average
Safety of Care	Below the National average
Readmission	Below the National average
Patient Experience	Below the National average
Effectiveness of Care	Below the National average
Timeliness of Care	Below the National average
Efficient use of Medical Imaging	Same as the National average

Maimonides Medical Center

Mortality	Above the National average
Safety of Care	Same as the National average
Readmission	Below the National average
Patient Experience	Below the National average
Effectiveness of Care	Below the National average
Timeliness of Care	Below the National average
Efficient use of Medical Imaging	Same as the National average

Program Review

The applicant has disclosed that it will enter into a consulting and administrative services contract with EMM Healthcare Group, LLC (EMM), which is also a member of the applicant LLC. EMM Healthcare Group, LLC is 100% owned by Eric Mendel. The applicant will also enter into a Business Associate Agreement with EMM. The applicant has described the agreement as necessary to ensure EMM will not

disclose residents' protected information other than as permitted or required by the CASA consistent with HIPAA regulations

The nursing home, formerly known as Avalon Gardens Rehabilitation and Health Care Center, operates a 36-bed pediatric nursing unit. The unit consists of 17 doubles, and two single bedrooms. After a prolonged review process the current operator agreed to a limited renovation project to upgrade the pediatric unit. The work involved the installation of piped in oxygen throughout the nursing unit, and an upgrade of the electrical system to Type 1 certification. A small playground outside the pediatric unit was also added, and the school classroom was moved from the basement to the opposite end of the unit.

The current pediatric unit, however, does not include those elements found in a contemporary pediatric nursing home and offers few amenities geared toward children. The unit design is virtually unchanged from its earlier use as a geriatric nursing unit, with the bedrooms arrayed in a linear configuration with a double loaded corridor. Contemporary pediatric nursing design features ample socialization and activity spaces to resemble a child's home, and employs unique spaces to drive program development. In contrast other pediatric nursing homes have specially outfitted rehabilitation areas with piped in oxygen allowing the children an opportunity to receive therapy in an appropriate setting. Additional therapies including art, music and sensory stimulation are restricted by the spatial limitations of the unit. Similarly, recreational and socialization space is minimal, with a single day room/activity room providing activity space only during hours outside of mealtimes.

A pediatric nursing program should also be rooted in the involvement of parents and family in the child's care. The current unit does not offer "rooming in" space for parents, or accommodations for family members to sleep over. Parents and caregivers must seek lodging at neighboring hotels in order to engage in visitation with their children.

Staff has discussed these programmatic elements with Eric Mendel, the managing member of the applicant LLC. The applicant confirmed their intention to construct a suite adjacent to the pediatric unit to enable parents and caregivers to stay overnight, and committed to increasing activity and therapy space for the pediatric program. Following the change of ownership, the applicant will work with the Department to convert existing space or construct new space to enlarge the unit.

Conclusion

The applicant has demonstrated an understanding of the components of a quality pediatric program, and has shown flexibility and a willingness to improve the resident environment.

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	July 22, 2016
Seller:	Avalon Gardens Rehabilitation & Health Care Center, LLC
Buyer:	Optima Care Smithtown, LLC
Asset Acquired:	Right, title and interest in business assets clear of liens including: tangible assets, inventory, books & records, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "Brookside Multicare Nursing Care"), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds and goodwill.
Excluded Assets:	Seller's cash, cash equivalents, short term investments, bank accounts, claims, accounts receivables, refunds, lawsuits, and Universal Settlement.
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the closing date.
Purchase Price:	\$3,246,400
Payment of Purchase Price:	\$243,480 Escrow Deposit at signing of contract. \$3,002,920 due at Closing.

The purchase price of the operations will be satisfied through equity contributions from the applicant members. BFA Attachment A is the net worth summary of the members of Optima Care Smithtown, LLC, which reveals sufficient resources to meet the equity requirement.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, 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 will close concurrent with the APA upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	July 22, 2016
Seller:	Avalon Gardens Real Estate, LLC
Buyer:	RM Holdings Smithtown, LLC
Asset Transferred Realty:	Real Property located at 7 Route 25A, Smithtown, NY
Purchase Price:	\$77,913,600
Payment of Purchase Price:	\$5,843,520 Escrow Deposit at signing of contract. \$72,070,080 at Closing.

The purchase price of the real property is proposed to be satisfied as follows:

Equity – RM Holdings Smithtown, LLC Members	\$38,148,600
HUD Loan (4% interest + 65 basis points, 30 years, 30-year amortization)	<u>39,765,000</u>
Total	\$77,913,600

Greystone Funding Corporation has provided a letter of interest.

BFA Attachment B is the net worth summary for the proposed members of RM Holdings Smithtown, LLC. Alexander Rovt will loan \$46,548,000 from personal resources to the Rovt 2011 Family Trust, which is evidenced by a draft promissory note for a 9-year term, interest only at the Mid Term AFR rate (2.10% as of February 2017). Boris Mendel will loan \$1,000,000 and gift \$4,172,000 to the Boris Mendel Family 2012 Irrevocable Trust, which is evidenced by a draft promissory note at 2% interest with principal on demand by lender, and a draft declaration of gift agreement, respectively. The funds will be used to satisfy real property equity along with the equity in the real property associated with the concurrent applications (CON 162190 and CON 162192). Review of the net worth statements reveals sufficient resources to meet the equity requirements.

The applicant states that neither promissory note will have any impact on the RHCF operations. In the event of a demand for payment under the Boris Mendel Family 2012 Irrevocable Trust note or upon the maturity of the Rovt 2011 Family Trust note, only the Trusts would be responsible to repay the notes. It should be noted that, pursuant to Section 2 (“Quiet Possession”) of the Lease Agreement, the operating entity’s possession of the premises cannot be disturbed by RM Holdings Smithtown, LLC (the landlord), its successors and/or assigns, provided it complies with its obligations under the Lease.

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	353-bed RHCF located at 7 Route 25A, Smithtown, NY 11787
Landlord:	RM Holdings Smithtown, LLC
Lessee:	Optima Care Smithtown, LLC
Term:	10 years with one (1) 10-year renewal option.
Rental:	\$3,938,000 per year (\$328,167 per month), 2% rent increase starting in 3 rd year.
Provisions:	Triple Net.

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

Administrative Services Agreement

The applicant has provided a draft Administrative services agreement, with terms summarized below:

Provider:	EMM Healthcare Group, LLC
Company/Facility:	Optima Care Smithtown, LLC
Services Provided:	Administration, consulting and advisory services related to RHCF’s operational and administrative functions, including advice and assistance with regard to regulatory monitoring, compliance and quality assurance, implementing policies and procedures for compliance program and marketing services.
Term:	Remain in place until Eric Mendel resigns his position as facility Manager or otherwise terminated
Fee:	5% of the gross revenue of the facility.

EMM Healthcare Group, LLC is a proposed member and is solely owned by Eric Mendel. EMM Healthcare Group, LLC is also providing consulting services to the other RHCFs concurrently being reviewed, identified above. The draft ASA provides that Optima Care Smithtown, LLC retains ultimate authority, responsibility and control in all of the final decisions associated with the services.

10 NYCRR Section 600.9(c) provides that an individual, partnership or corporation which has not received establishment approval may not participate in the total gross income or net revenue of a medical facility. EMM Healthcare Group, LLC (the proposed administrative services provider) is also a proposed member of the applicant and is expected to receive establishment approval through this application.

Operating Budget

The applicant has provided the current year results and the first year operating budget subsequent to the change in ownership, in 2016 dollars, 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-FFS	\$300.44	\$30,511,255	\$279.00	\$24,476,682
Medicaid-MC		0.00	\$265.05	3,664,011
Medicaid-Pediatric	\$582.87	7,440,873	\$582.61	7,437,599
Medicare-FFS	\$587.30	1,935,158	\$587.30	1,935,158
Private Pay	\$402.98	3,103,318	\$402.98	3,103,318
Private-Pediatric	\$540.31	202,075	\$540.31	202,075
Adult Day Health Care		1,758,713		1,758,713
Assessment Revenue		<u>0</u>		2,121,977
Other Income*		<u>845,660</u>		<u>10,886</u>
Total Revenue		<u>\$45,797,052</u>		<u>\$44,710,419</u>
<u>Expenses</u>				
Operating	\$297.65	\$37,412,091	\$303.55	\$38,152,965
Capital	<u>\$26.42</u>	<u>\$3,320,611</u>	<u>\$38.07</u>	<u>\$4,785,425</u>
Total Expenses	\$324.07	\$40,732,702	\$341.62	\$42,938,390
Net Income		<u>\$5,064,350</u>		<u>\$1,772,028</u>
RHCF Inpatient Days		125,691		125,691
Inpatient Utilization		97.55%		97.55%
ADHCP Visits		10,423		10,423
ADHCP Utilization		83%		83%

*Write offs by the facility of old checks that were cleared in prior year (\$614,519), disaster relief funds received from NY (\$174,000) and Miscellaneous income (\$56,509).

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

- The current year reflects the facility's 2015 revenues and expenses.
- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate and the 2016 Medicaid Rate Sheet for the facility's Specialty Pediatric Beds. The Current Year Medicare and Private pay rates are the actual daily rate experienced by the facility during 2015 and held constant for the Year One and Year Three.
- Expense and staffing assumptions were based on the current operator's model and then adjusted for inflation.
- The facility's projected utilization for Year One is 97.55% and 97.55% for Year Three. It is noted that utilization for the past three years has averaged around 97.16% and current occupancy was 97.2% as of July 6, 2016. Medicaid Managed Care utilization is based on the facility's Medicaid MC utilization during 2016 and then annualized. The applicant plans on upgrading and reconfiguring the physical plant to improve the overall resident experience.
- Utilization by payer source for the first year after the change in ownership is summarized below:

	<u>Current Year</u>	<u>Year One</u>
Medicaid-FFS	80.80%	69.80%
Medicaid-MC	0.00%	11.00%
Medicaid-Pediatric	10.16%	10.16%
Medicare-FFS	2.62%	2.62%
Private Pay	6.12%	6.12%
Private Pay-Pediatric	<u>.30%</u>	<u>.30%</u>
Total	100.00%	100.00%

- The breakeven utilization is projected at 92% for the first year.

Capability and Feasibility

There are no project costs associated with this application. Optima care Smithtown, LLC will acquire the RHCF's operations for \$3,246,400, to be funded by members' equity. RM Holdings Smithtown, LLC will acquire the real property for \$77,913,600 funded by \$38,148,600 in members' equity and a HUD loan for \$39,765,000 at the above stated terms. Greystone Funding Corporation has provided a letter of interest to underwrite and fund the HUD loan. Review of BFA Attachments A and B, proposed members' net worth summaries reveal sufficient resources to meet equity requirements.

The working capital requirement is estimated at \$7,156,398 based on two months of first year expenses. The applicant will provide \$3,578,199 from the members' equity with the remaining \$3,578,199 satisfied through a five-year loan at 5% interest rate. Greystone Funding Corporation has provided a letter of interest. The members have sufficient liquid resources to meet working capital equity requirement.

The submitted budget projects \$2,606,803 of net income in Year One after the change in ownership. Revenues are estimated to decrease by approximately \$251,859 coming from Medicaid Manage Care. Overall expenses are expected to increase by \$2,205,688 coming from a \$740,874 increase in operating expense and a \$1,464,814 increase in interest and rent expense. As noted above, most of the operating expenses were adjusted for inflation. BFA Attachment D is Brookside Multicare Nursing Center's pro forma balance sheet for operation and realty, which shows the operating entity will start with \$6,824,599 in member's equity and the realty entity will start with \$38,148,600 in members' equity. 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 Avalon Gardens Rehabilitation & Health Care Center, LLC for 2013 through 2015. As shown, the RHCF had an average negative working capital position of \$5,829,647, average positive net assets of \$7,703,807, and average positive net income of \$ 3,606,282 for the period. BFA Attachment F is the internal financial statements for Avalon Gardens Rehabilitation & Health Care Center, LLC as of November 30, 2016, which shows negative working capital, positive net assets and the operating loss of \$ 567,677. The 2016 net loss is due to increase in rent expense compared to prior periods. The negative working capital of \$5,258,830 is due to a higher accounts payable balance, which the applicant expects will be paid off by year-end.

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 Optima Care Smithtown, LLC
BFA Attachment B	Net Worth of Proposed Realty Members of RM Holdings Smithtown, LLC
BFA Attachment C	Current and Proposed Owners of the Real Property
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary and 2015 Certified Financial Statement of Avalon Gardens Rehab & Health Care Center, LLC
BFA Attachment F	Internal Financial Summary, Avalon Gardens Rehab & Health Care Center, LLC



Project # 162190-E
Optima Care Little Neck, LLC d/b/a Little Neck Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: September 7, 2016

Executive Summary

Description

Optima Care Little Neck, LLC, a New York limited liability company, requests approval to be established as the new operator of Little Neck Care Center, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 260-19 Nassau Boulevard, Little Neck (Queens County). Little Neck Care Center, LLC is the current operator of the facility. Upon approval, the facility will do business as Little Neck Care Center. A separate entity, RM Holdings Little Neck, LLC, will acquire the real property. There will be no change in beds or services provided.

On July 22, 2016, Little Neck Care Center, LLC, entered into an Asset Purchase Agreement (APA) with Optima Care Little Neck, LLC for the sale and acquisition of the operating interests of the facility. In conjunction with the APA, BL Acquisitions, LLC, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with RM Holdings Little Neck, LLC for the sale and acquisition of the RHCF's real property. The members of RM Holdings Little Neck, LLC are Rovt 2011 Family Trust (90%) and Boris Mendel Family 2012 Irrevocable Trust (10%). The APA and REPA will close at the same time upon CON approval by the Public Health and Health Planning Council (PHHPC). The applicant will lease the premises from RM Holdings Little Neck, LLC. There is a relationship between RM Holdings Little Neck, LLC and Optima Care Little Neck, LLC in that there are related members in both entities.

The current and proposed ownership of Little Neck Care Center is as follows:

<u>Current Operator</u>	
Little Neck Care Center, LLC	
<u>Members</u>	
Judy Landa	42.5%
Bent Philipson	17.5%
David Rubenstein	15.0%
Leah Friedman	12.5%
Rachel David	12.5%

<u>Proposed Operator</u>	
Optima Care Little Neck, LLC	
<u>Members</u>	
Alexander Rovt	90%
Boris Mendel	5%
EMM Healthcare Group, LLC	5%
Eric Mendel (100%)	

Concurrently under review, the applicant members of Optima Care Little Neck, LLC and the realty members of RM Holdings Little Neck, LLC are seeking approval to acquire the operating and realty interests, respectively, in the following entities: Optima Care White Plains, LLC (CON 162192) and Optima Care Smithtown, LLC (CON 162187).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Overall occupancy for 2016 was 91.9%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. 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 the application. The purchase price for the acquisition of the RHCF's operating interests is \$1,056,000, which will be met via equity from the proposed members. The purchase price for the real estate is \$25,344,000. The real estate purchase price will be met via a U.S. Department of Housing and Urban Development (HUD) loan for \$11,602,000 at 4% interest (plus FHA mortgage insurance at 65 basis points) for a 30-year term, and \$13,742,000 members' equity. Greystone Funding Corporation has a

provided letter of interest to underwrite and fund the HUD loan at the stated terms. The realty equity contribution will be funded via equity of \$2,723,536 from the proposed members, via a gift of \$888,806 from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust, a \$213,041 loan from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust and a \$9,916,617 loan from Alexander Rovit to the Rovit Family Trust at a Mid Term AFR Rate (2.10% as of February 2017) for a nine-year term with principal due at term and no penalty for prepayment. Below is the proposed budget.

	<u>Year One</u>
Revenues	\$15,922,776
Expenses	<u>14,987,131</u>
Net Income	\$935,645

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 administrative services agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment from the U.S. Department of Housing and Urban Development (HUD) for the purchase of the real property, acceptable to the Department of Health. [BFA]
8. Submission of an executed declaration of gift from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust for the purchase of the real property, acceptable to the Department of Health. [BFA]
9. Submission of an executed promissory note from Alexander Rovt to the Rovt 2011 Family Trust for the purchase of the real property, acceptable to the Department of Health. [BFA]
10. Submission of an executed promissory note from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust for the purchase of the real property, acceptable to the Department of Health. [BFA]
11. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]

12. Submission of a photocopy of EMH Healthcare Group, LLC's amended operating agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's completed services agreement and HIPPA business association agreement, which are acceptable to the Department. [CSL]
14. Submission of a completed asset purchase agreement and purchase and sale agreement for real estate of the applicant, including all supplemental documents, 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]
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

April 6, 2017

Need Analysis

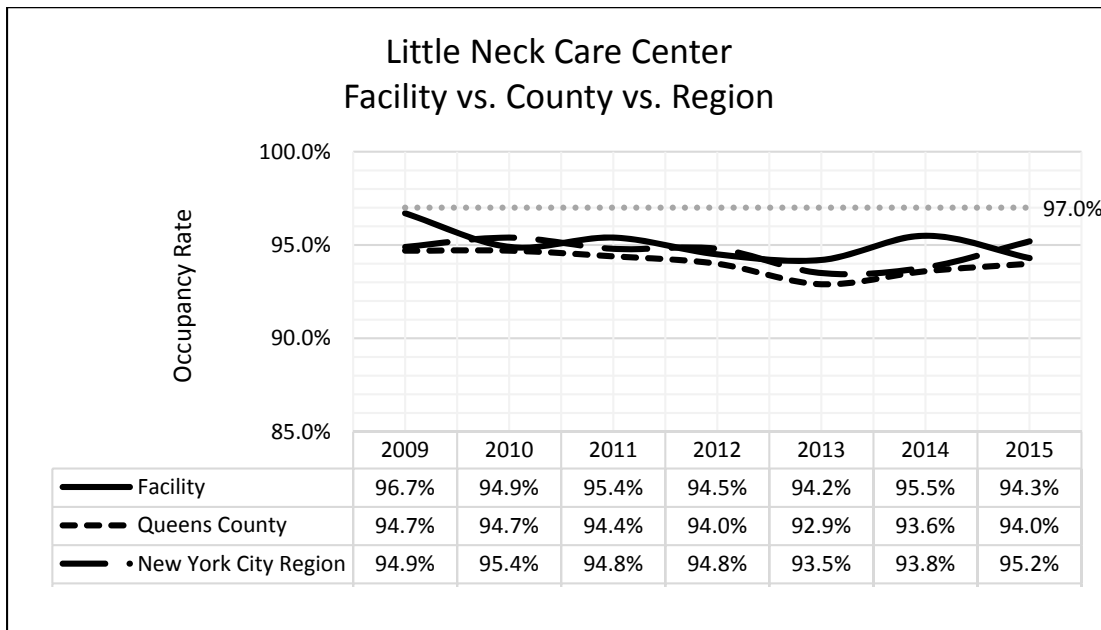
Analysis

There is currently a calculated need for 9,853 beds in the New York City region:

RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	41,368
Beds Under Construction	-150
Total Resources	41,218
Unmet Need	9,583

The overall occupancy rate in 2015 for the New York City Region is 95.2%, and the overall occupancy for Queens County is slightly lower, at 94.0%, as indicated in the following chart:



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

Among such factors that may be considered are occupancy rates at other RHCFs. Although the occupancy rate for RHCFs overall in the New York City Region is below the planning optimum of 97%, the facilities in the area of Queens County within a ten-mile radius demonstrate higher occupancy rates.

As the table indicates, the majority of these facilities have occupancy rates near or above the 97% optimum.

Surrounding Facilities	Distance/Time	RHCF Beds	2015 Occupancy	2016 Occupancy ¹	Current Occupancy ¹
Little Neck Care Center	0 mi/ 0 mins	120	94.3%	91.9%	89.2%
New Glen Oaks NH	1.7 mi/9 mins	60	98.1%	97.5%	100.0%
Ozanam Hall of Queens	4.4 mi/11 mins	432	89.1%	86.9%	85.6%
Windsor Park NH	4.5 mi/9 mins	70	95.3%	97.9%	95.7%
Hillside Manor	5.5 mi/13 mins	400	95.3%	94.4%	95.8%
Queen of Peace	5.7 mi/11 mins	53	98.9%	98.4%	100.0%
Holliswood Center	5.9 mi/14 mins	314	97.6%	97.7%	96.2%
Meadow Park Rehab	6.0 mi/16 mins	143	92.6%	97.1%	95.8%
Hollis Park Manor	6.1 mi/12 mins	80	95.9%	97.5%	96.3%
The Grand Rehab	6.3 mi/12 mins	179	95.4%	97.3%	93.3%
Highland Care	6.9 mi/15 mins	320	95.9%	97.7%	98.8%
Margaret Tietz Center	7.0 mi/13 mins	200	96.6%	95.2%	96.5%
Franklin Center	7.0 mi/16 mins	308	97.9%	99.0%	98.1%
Chapin Home	7.1 mi/13 mins	220	88.9%	95.3%	92.3%
The Pavilion at Queens	7.4 mi/20 mins	282	97.3%	98.0%	98.9%
Bridge View	7.6 mi/12 mins	200	96.3%	98.2%	98.5%
Long Island Care Center	7.6 mi/21 mins	190	89.1%	90.8%	85.8%
Rego Park NH	7.7 mi/14 mins	200	94.7%	98.0%	100.0%
Silvercrest	7.9 mi/19 mins	240	94.9%	91.5%	94.6%
Fairview Nursing	8.6 mi/14 mins	200	96.2%	95.6%	89.5%
Sapphire Center	8.8 mi/18 mins	227	97.4%	98.0%	97.8%
Union Plaza Care Center	9.0 mi/16 mins	280	92.8%	94.5%	97.1%
Dry Harbor NH	9.2 mi/14 mins	360	96.0%	96.6%	98.6%
Waterview Nursing	9.2 mi/16 mins	200	89.3%	94.1%	89.5%
Woodcrest Rehab	9.2 mi/16 mins	200	95.1%	97.0%	98.5%
Cliffside Rehab	9.2 mi/17 mins	180	92.6%	98.5%	98.3%
Forest Hills	9.4 mi/21 mins	100	92.4%	90.2%	85.0%
Forest View	9.8 mi/15 mins	160	96.6%	96.3%	95.6%
Midway NH	9.8 mi/16 mins	200	90.9%	92.3%	94.5%
10-mile Radius Total		6,118	94.4%	95.3%	95.0%

¹ Unaudited data; based on facility reporting

Additionally, the applicant attributes the slightly lower occupancy to renovations having been done to the first floor, second floor, and the outdoor seating areas. The construction has taken approximately two years, and has just recently finished.

In order to increase occupancy going forward, the applicant plans to:

- Hire a community outreach staff member who will focus on community outreach programs such as: participation in eldercare events, presentations made to community senior centers, and to foster community participation in facility activities.
- Create a concierge program that focuses on ensuring that resident's needs are met.
- Offer post-acute rehabilitation services such as cardiovascular rehab program that will specialize in providing rehabilitation services after hospitalizations for cardiac episodes.

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.

Little Neck Care Center's Medicaid admissions of 36.4% in 2014 and 44.7% in 2015 exceeded Queens County's 75% threshold rates in 2014 and 2015 of 24.0% and 22.4%, respectively.

Conclusion

Given the occupancies of surrounding facilities and a two-year renovation project, the applicant has presented local factors to support maintaining the full bed compliment to preserve this long term care resource in Queens County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

This application proposes to establish Optima Care Little Neck, LLC as the new operator of Little Neck Care Center, a 120-bed residential health care facility.

Facility Information

	Existing	Proposed
Facility Name	Little Neck Care Center	Little Neck Care Center for Nursing and Rehabilitation
Address	260-19 Nassau Blvd. Little Neck, NY 11362	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Little Neck Care Center, LLC	Optima Care Little Neck, LLC Alexander Rovt 90% Boris Mendel 05% EMM Healthcare Group, LLC 05% *Eric Mendel (100%) <hr style="width: 10%; margin-left: 100px;"/> 100% *Managing Member

Character and Competence - Background

Facilities Reviewed

Hospitals

Brookdale University Hospital
Maimonides Medical Center

05/2015 to present
10/2001 to present

Assisted Living Program

Central Assisted Living LLC

02/1981 to present

Licensed Health Care Services Agency

Prime Health Choice, LLC	09/2007 to present
Prime Assisted Home Care	04/2016 to present
Metrostar Home Care LLC	06/2015 to present

Certified Home Health Agency

Prime Home Health Services, LLC	09/2007 to present
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Individual Background Review

Alexander Rovt is the president and owner of IBE Trade Corp. a real estate company and is a currently licensed Private Investigator. Mr. Rovt serves as the Chairman of the Board of Trustees of Brookdale Medical Center, since August 2001. Mr. Rovt is also a member of the Board of Trustees of Maimonides Medical Center, since May 2012. Mr. Rovt discloses the following healthcare ownership interests:

Prime Home Health Services [20%]	09/2007 to present
Prime Assisted Home Care (20%)	04/2016 to present
Prime Health Choice, LLC (30%)	02/2014 to present

Boris Mendel has been employed since 1981 as the administrator of Central Assisted Living, an assisted living program. Mr. Mendel discloses the following health care ownership interests:

Central Assisted Living LLC (49%)	02/1981 to present
Prime Health Services, LLC (30%)	09/2007 to present
Prime Health Choice, LLC (30%)	09/2007 to present
Metrostar Home Care, LLC (15%)	06/2015 to present
Prime Assisted Home Care (6.25%)	04/2016 to present

Eric Mendel has been employed as the CEO of Central Assisted Living since 2002, and serves on the Boards of Age Friendly New York City Commission, a partnership of the Office of the Mayor, NYC City Council and the New York Academy of Medicine, and Empire State Association of Assisted Living, a trade association. Mr. Mendel discloses the following health facility ownership interests:

Central Assisted Living (51%)	02/2008 to present
Prime Health Services, LLC (6.25%)	09/2007 to present
Prime Health Choice, LLC (30%)	09/2007 to present
Prime Assisted Home Care (6.25%)	04/2016 to present
Metrostar Home Care, LLC (15%)	06/2015 to present

Character and Competence - Analysis

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

A review of operations for Brookdale University Hospital and Maimonides Medical Center for the periods identified above reveals there were no enforcements. An immediate jeopardy was issued for Maimonides Medical Center in Surgery Services in 2011.

A review of Central Assisted Living LLC, Prime Health Choice, LLC Prime Assisted Home Care, Metrostar Home Care LLC and Prime Home Health Services LLC for the periods identified above reveals there were no enforcements.

Quality Review

Brookdale University Hospital

Mortality	Same as the National average
Safety of Care	Below the National average
Readmission	Below the National average
Patient Experience	Below the National average
Effectiveness of Care	Below the National average
Timeliness of Care	Below the National average
Efficient use of Medical Imaging	Same as the National average

Maimonides Medical Center

Mortality	Above the National average
Safety of Care	Same as the National average
Readmission	Below the National average
Patient Experience	Below the National average
Effectiveness of Care	Below the National average
Timeliness of Care	Below the National average
Efficient use of Medical Imaging	Same as the National average

Project Review

No changes in the program or physical environment are proposed in this application. No negative information has been received concerning the character and competence of the proposed members of the applicant. The applicant has entered into a consulting and administrative services contract with EMM Healthcare Group, LLC, (EMM) which is also a member of the applicant LLC. EMM Healthcare Group, LLC is 100% owned by Eric Mendel. The applicant will also enter into a Business Associate Agreement with EMM. The applicant has described the purpose of the agreement as necessary to ensure EMM will not disclose residents' protected information other than as permitted or required by the CASA consistent with HIPAA regulations.

Conclusion

The review indicates the applicant has met the standards 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 Transfer Agreement

The applicant has submitted an executed APA for the transfer of the operations. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	July 22, 2016
Premises:	The RHCF located at 260-19 Nassau Boulevard, Little Neck, New York.
Seller:	Little Neck Care Center
Purchaser:	Optima Care Little Neck, LLC
Assets Acquired:	Business and operation of the Facility, all inventory, equipment, instruments, tools, vehicles, furniture and office equipment, all fixtures and leasehold improvements, all of Seller's deposits and prepaid charges and expenses of Seller relating to periods on or after the Closing Date, completed copies of all personnel and payroll records of Transferred Employees, any and all insurance claims and rights with respect to injury, all of Seller's books and records relating to the operation of the Business, all resident funds held in trust by Seller in conjunction with the Nursing Home, the goodwill and going concern value of the Business and all telephone numbers and facsimile numbers used by the Facility.
Excluded Assets:	All cash, cash equivalents, bank deposits or similar cash items of Seller at the time of the closing, all contracts that are not assigned and assumed contracts, refunds, settlements and retroactive adjustments from goods and services provided by Seller prior to the Closing Date and all rights of Seller relating to deposits, prepayments and prepaid expenses and claims for refund.
Assumed Liabilities:	Purchaser agrees to assume and be responsible for all accrued and unused vacation, holiday time and other paid time off, all liabilities and obligations of Seller arising under the Assigned Assumed Contracts, all liabilities, including but not

	limited to Healthcare Program Liabilities, and obligations related to the Purchased Assets or the operation of the Facility on or after the Closing Date and all Medicare and Medicaid Liabilities arising under Seller's Medicare and Medicaid provider numbers.
Purchase Price:	\$1,056,000
Payment of Purchase Price:	\$79,200 Deposit paid on execution: \$976,800 due as Closing.

The purchase price will be met via equity from the proposed members.

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

Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the site they will occupy, which is summarized below:

Date:	July 22, 2016
Premises:	260-19 Nassau Boulevard, Little Neck, New York
Seller:	BL Acquisitions, LLC
Purchaser:	RM Holdings Little Neck, LLC
Purchase Price:	\$25,344,000
Payment of Purchase Price:	\$1,900,800 deposit paid on execution: \$23,443,200 due at Closing

The purchase price of the real estate will be met as follows:

HUD Loan (4% interest rate + 65 basis points, 30-year term, 30-year amortization)	\$11,602,000
Equity via Gift from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust	888,806
Equity funded via Personal loan from Alexander Rovt to the Rovt Family Trust *	9,916,617
Equity via proposed members	2,723,536
Loan from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust**	213,041
Total	\$25,344,000

* Terms: Interest at Mid Term AFR Rate (2.10% as of February 2017) for a 9-year term with principal due at term and no penalty for prepayment.

**Terms: Interest at 2% with principal on demand by lender.

Greystone Funding Corporation has provided a letter of interest to underwrite and fund the HUD loan.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the nursing home site they will occupy, which is summarized below:

Premises:	The site located at 260-19 Nassau Boulevard, Little Neck, New York
Lessor:	RM Holdings Little Neck, LLC
Lessee:	Optima Care Little Neck, LLC
Term:	10 years
Rent:	Years One through Three at \$1,257,680. Each year thereafter, the base rent shall increase by 2% per year.
Provisions:	The lessee shall be responsible for real estate taxes, utilities and insurance.

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

Administrative Services Agreement

The applicant submitted a draft administrative services agreement (ASA), with terms summarized below:

Consultant:	EMM Healthcare Group, LLC
Facility:	Optima Care Little Neck, LLC
Services Provided:	All functions related to accounts receivable, accounts payable, payroll, budgets, financial reporting, regulatory reports, bookkeeping, human resources, information technology, marketing and business development, reimbursement, ancillary and other services, insurance and risk management and corporate compliance.
Fee:	5% of the gross revenue of the facility.

EMM Healthcare Group, LLC is a proposed member and is solely owned by Eric Mendel. EMM Healthcare Group, LLC is also providing consulting services to the other RHCF's concurrently being reviewed. The draft ASA provides that Optima Care Little Neck, LLC retains ultimate authority, responsibility and control in all of the final decisions associated with the services.

10 NYCRR Section 600.9(c) provides that an individual, partnership or corporation which has not received establishment approval may not participate in the total gross income or net revenue of a medical facility. EMM Healthcare Group, LLC (the proposed administrative services provider) is also a proposed member of the applicant and is expected to receive establishment approval through this application.

Operating Budget

The applicant has submitted an operating budget, in 2017 dollars, during the first year subsequent to the change in operator, 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>				
Medicaid FFS	\$247.27	\$7,166,070	\$289.44	\$8,104,468
Medicaid MC	\$0	0	\$259.08	473,867
Medicare FFS	\$681.41	4,128,004	\$681.44	4,293,124
Private Pay	\$476.97	<u>2,993,959</u>	\$467.42	<u>3,051,317</u>
Total Revenues		\$14,288,033		\$15,922,776
<u>Expenses</u>				
Operating	\$279.70	\$11,555,954	\$282.44	\$12,047,956
Capital	<u>21.01</u>	<u>1,867,889</u>	<u>68.90</u>	<u>2,939,175</u>
Total Expenses	\$300.71	\$13,423,843	\$351.34	\$14,987,131
Net Income		<u>\$864,190</u>		<u>\$935,645</u>
Utilization (patient days)		41,316		42,657
Utilization		94.33%		97.39%

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

- The current year reflects the facility's 2015 revenues and expenses.
- Medicaid revenues are based on the facility's current 2016 Medicaid Regional Pricing rate. The current year Medicare and Private Pay rates are the actual daily rate experienced by the facility during 2015. The Medicare rate is held constant while the Private Pay rate decreases slightly.
- Expense and staffing assumptions were based on the current operator's model and then adjusted for inflation based on the applicant's experience.
- The facility's projected utilization for Year One is at 97.39%. The applicant indicated that the reason for the increase in occupancy from the current year to the first year is as follows: The facility will hire a community outreach staff member who will engage in weekly strategy meetings to help ensure that the facility's fullest potential is realized, and the facility will offer post-acute rehabilitation services, such as a cardiovascular rehab program.
- The breakeven utilization is projected at 92.60% for the first year.

Utilization by payor source for the first year after the change in ownership is summarized below:

	<u>Current Year (2015)</u>	<u>Year One</u>
Medicaid FFS	70.14%	65.63%
Medicaid MC	0.00%	4.28%
Medicare FFS	14.66%	14.77%
Private Pay	15.20%	15.32%

Capability and Feasibility

The purchase price for acquisition of the RHCF's operating interests is for \$3,246,400, which will be met via equity from the proposed members. RM Holdings Little Neck, LLC will acquire the real property for \$25,344,000 funded by a HUD Loan for \$11,602,000 at an interest rate of 4% (plus FHA mortgage insurance at 65 basis points) for a 30-year term, and \$13,742,000 members' equity. Greystone Funding Corporation has provided letter of interest to underwrite and fund the HUD loan at the stated terms. The realty equity contribution will be funded via equity of \$2,723,536 from the proposed members, via a gift of \$888,806 from Boris Mendel to the Mendel Family 2012 Irrevocable Trust, a \$213,041 loan from Boris Mendel to the Mendel Family 2012 Irrevocable Trust and \$9,916,617 via a loan from Alexander Rovt to Rovt Family Trust at a Mid Term AFR Rate (2.10% as of February 2017) for a nine-year term with principal due at term and no penalty for prepayment.

The working capital requirement is estimated at \$2,494,521 based on two months of first year expenses. The applicant will finance \$1,247,260 at an interest rate of 5% for a five-year term. The remaining \$1,247,261 will be provided via members' equity. Review of BFA Attachment A indicates that the proposed members have sufficient resources to meet the equity requirements. BFA Attachment B is the pro forma balance sheet of the proposed operating entity as of the first day of operation, which indicates a positive net asset position of \$2,303,261.

The submitted budget projects \$935,645 of net income in Year One after the change in ownership. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Little Neck Care Center. As shown, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2015. Also, the entity achieved an average net income of \$737,600 from 2013 through 2015.

BFA Attachment D provides the internal financial statements of Little Neck Care Center as of October 31, 2016. As shown, the entity had a positive working capital position and a positive net asset position through October 31, 2016. Also, the entity achieved a net income of \$1,172,242 through October 31, 2016.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements of Proposed Members
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary- Little Neck Care Center
BFA Attachment D	Financial Summary - October 31, 2016 internal financial statements.



Project # 162192-E
Optima Care White Plains, LLC
d/b/a White Plains Center for Nursing Care

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: September 8, 2016

Executive Summary

Description

Optima Care White Plains, LLC d/b/a White Plains Center for Nursing Care, a New York limited liability company, requests approval to be established as the new operator of White Plains Center for Nursing Care, LLC, an 88-bed, proprietary, Article 28 residential health care facility (RHCF) located at 220 West Post Road, White Plains (Westchester County). White Plains Center for Nursing Care, LLC is the current operator of the facility. Upon approval of this application, the facility will be named White Plains Center for Nursing Care. A separate entity, RM Holdings White Plains, LLC, will acquire the real property. There will be no change in beds or services provided.

On July 22, 2016, White Plains Center for Nursing Care, LLC entered into an Asset Purchase Agreement (APA) with Optima Care White Plains, LLC for the sale and acquisition of the RHCF operating interests for \$654,400. Concurrently, White Plains Real Estate, LLC, the current real property owner, entered into a Real Estate Purchase Agreement (REPA) with RM Holdings White Plains, LLC for the sale and acquisition of the real property for \$15,705,600. The members of RM Holdings White Plains, LLC are Rovt 2011 Family Trust (90%) and Boris Mendel Family 2012 Irrevocable Trust (10%). The APA and REPA will close at the same time upon CON approval by the Public Health and Health Planning Council (PHHPC). There is a relationship between Optima Care White Plains, LLC and RM Holdings White Plains, LLC in that there are related members in both entities. The

applicant will lease the premises from RM Holdings White Plains, LLC.

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

Table with 2 columns: Member Name and Percentage. Title: Current Operator. Content: White Plains Center for Nursing Care, LLC. Members: Deborah Philipson (50%), Ruth Hirsch (25%), Agnes Arnstein (10%), Anne Gottlieb (10%), Nat Sherman (5%).

Table with 2 columns: Member Name and Percentage. Title: Proposed Operator. Content: Optima Care White Plains, LLC. Members: Alexander Rovt (90%), Boris Mendel (5%), EMM Healthcare Group, LLC (5%), Eric Mendel (100%).

Concurrently under review, the applicant members of Optima Care White Plains, LLC and the realty members of RM Holdings White Plains, LLC are seeking approval to acquire the operating and realty interests, respectively, in Brookside Multicare Nursing Center (CON 162187) and Little Neck Care Center (CON 162190).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Current utilization, as of February 15, 2017 is 92.0%.

Program Summary

No negative information has been received concerning the character and competence of the proposed members of the applicant. The applicant has entered into a consulting and administrative services contract with EMM Healthcare Group, LLC, (EMM) which is also a member of the applicant LLC.

Financial Summary

There are no project costs associated with this application. Optima Care White Plains, LLC will

acquire the RHCF's operations for \$654,400 to be funded by members' equity. RM Holdings White Plains, LLC will purchase the real property for \$15,705,600 funded by \$8,805,600 in members' equity and a U.S. Department of Housing and Urban Development (HUD) loan for \$6,900,000 at 4% interest (plus FHA mortgage insurance at 65 basis points) for a 30-year term. Greystone Funding Corporation has a provided letter of interest for the realty loan at the stated terms.

	<u>Year One</u>
Revenues	\$11,864,236
Expenses	<u>10,626,874</u>
Net Income	\$1,237,362

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 administrative services agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed 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 an executed promissory note from Alexander Rovt to the Rovt 2011 Family Trust for the purchase of the real property, acceptable to the Department of Health. [BFA]
9. Submission of an executed promissory note from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust for the purchase of the real property, acceptable to the Department of Health. [BFA]
10. Submission of an executed declaration of gift from Boris Mendel to the Boris Mendel Family 2012 Irrevocable Trust for the purchase of the real property, acceptable to the Department of Health. [BFA]
11. Submission of a photocopy of an executed and completed facility lease agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of EMH Healthcare Group, LLC's amended operating agreement, which is acceptable to the Department. [CSL]

13. Submission of a photocopy of the applicant's completed services agreement and HIPPA business association agreement, which are acceptable to the Department. [CSL]
14. Submission of a completed asset purchase agreement and purchase and sale agreement for real estate of the applicant, including all supplemental documents, 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]
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

April 6, 2017

Need Analysis

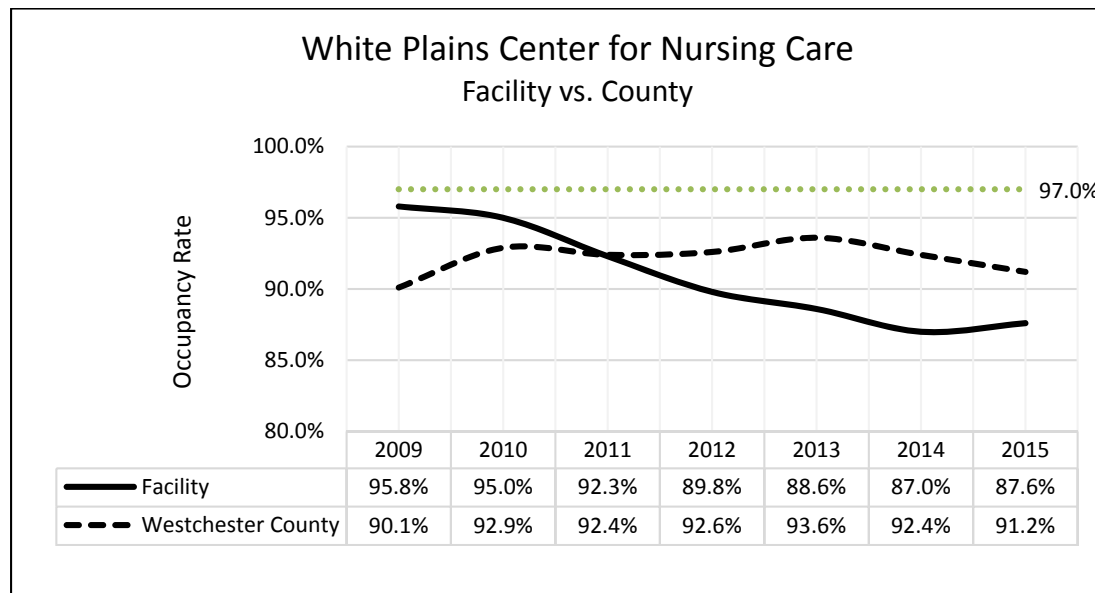
Analysis

There is currently a calculated need for 502 beds in Westchester County:

RHCF Need - Westchester County

2016 Projected Need	6,716
Current Beds	6,062
Beds Under Construction	152
Total Resources	6,214
Unmet Need	502

The overall occupancy rate in 2015 for Westchester County was 91.2% as indicated in the following chart:



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

One such consideration is the on-going renovations within the facility which have involved numerous resident rooms and beds. The renovations have included asbestos abatement and reconfiguration of the resident rooms, including the bathrooms. The facility is also renovating the hallways including installation of new ceilings and floors and renovating the nursing stations. The construction has taken approximately two and half years, and is projected to be completed very soon. Depending upon the phase of construction, between six and nine RHCF beds have been offline at any given time.

In order to increase occupancy going forward, the applicant plans to:

- Hire a new Medical director to oversee the introduction of new programs, including the establishment of a new cardiovascular rehabilitation program.
- Focus efforts on becoming an effective hospital partner, which includes identification of ways to reduce the length of hospital stays.
- Establish a community outreach program for key staff members to market the facility to key stakeholders in the surrounding communities.

- Add programs and services that allow the facility to serve more medically complex patients with Chronic Obstructive Pulmonary Disease (COPD), vascular insufficiencies, dementia, and psycho-geriatric conditions.
- Invest in the facility by performing additional, substantive renovations.

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. White Plains Center’s Medicaid admissions of 21.5% in 2014 and 36.9% in 2015 exceeded Westchester County’s 75% threshold rates in 2014 and 2015 of 18.8% and 21.2%, respectively.

Conclusion

Given the on-going renovations the applicant has presented local factors to support maintaining the full bed complement to preserve this long term care resource for the residents of Westchester County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	White Plains Center for Nursing Care, LLC	White Plains Center for Nursing Care
Address	220 West Post Road White Plains, NY 10606	Same
RHCF Capacity	88	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	White Plains Center for Nursing Care, LLC	Optima Care White Plains, LLC Alexander Rovt 90% Boris Mendel 05% EMM Healthcare Group, LLC 05% Eric Mendel (100%) 100%

Character and Competence - Background

Facilities Reviewed

Hospitals

Brookdale University Hospital	05/2015 to present
Maimonides Medical Center	10/2001 to present

Assisted Living Program

Central Assisted Living LLC	02/1981 to present
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Licensed Health Care Services Agency

Prime Health Choice, LLC	09/2007 to present
Prime Assisted Home Care	04/2016 to present
Metrostar Home Care LLC	06/2015 to present

Certified Home Health Agency

Prime Home Health Services, LLC	09/2007 to present
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Individual Background Review

Alexander Rovt is the president and owner of IBE Trade Corp. a real estate company and is a currently licensed Private Investigator. Mr. Rovt serves as the Chairman of the Board of Trustees of Brookdale Medical Center, since August 2001. Mr. Rovt is also a member of the Board of Trustees of Maimonides Medical Center, since May 2012. Mr. Rovt discloses the following healthcare ownership interests:

Prime Home Health Services [20%]	09/2007 to present
Prime Assisted Home Care (20%)	04/2016 to present
Prime Health Choice, LLC (30%)	02/2014 to present

Boris Mendel has been employed since 1981 as the administrator of Central Assisted Living, an assisted living program. Mr. Mendel discloses the following health care ownership interests:

Central Assisted Living LLC (49%)	02/1981 to present
Prime Health Services, LLC (30%)	09/2007 to present
Prime Health Choice, LLC (30%)	09/2007 to present
Metrostar Home Care, LLC (15%)	06/2015 to present
Prime Assisted Home Care (6.25%)	04/2016 to present

Eric Mendel has been employed as the CEO of Central Assisted Living since 2002, and serves on the Boards of Age Friendly New York City Commission, a partnership of the Office of the Mayor, NYC City Council and the New York Academy of Medicine, and Empire State Association of Assisted Living, a trade association. Mr. Mendel discloses the following health facility ownership interests:

Central Assisted Living (51%)	02/2008 to present
Prime Health Services, LLC (6.25%)	09/2007 to present
Prime Health Choice, LLC (30%)	09/2007 to present
Prime Assisted Home Care (6.25%)	04/2016 to present
Metrostar Home Care, LLC (15%)	06/2015 to present

Character and Competence - Analysis

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

A review of operations for Brookdale University Hospital and Maimonides Medical Center for the periods identified above reveals there were no enforcements. An immediate jeopardy was issued for Maimonides Medical Center in Surgery Services in 2011.

A review of Central Assisted Living LLC, Prime Health Choice, LLC, Prime Assisted Home Care, Metrostar Home Care, LLC, and A Prime Home Health Services LLC for the periods identified above reveals there were no enforcements.

Quality Review

Brookdale University Hospital

Mortality	Same as the National average
Safety of Care	Below the National average
Readmission	Below the National average
Patient Experience	Below the National average
Effectiveness of Care	Below the National average
Timeliness of Care	Below the National average
Efficient use of Medical Imaging	Same as the National average

Maimonides Medical Center

Mortality	Above the National average
Safety of Care	Same as the National average
Readmission	Below the National average
Patient Experience	Below the National average
Effectiveness of Care	Below the National average
Timeliness of Care	Below the National average
Efficient use of Medical Imaging	Same as the National average

Project Review

No changes in the program or physical environment are proposed in this application. No negative information has been received concerning the character and competence of the proposed members of the applicant. The applicant has entered into a consulting and administrative services contract with EMM Healthcare Group, LLC, (EMM) which is also a member of the applicant LLC. EMM Healthcare Group, LLC is 100% owned by Eric Mendel. The applicant will also enter into a Business Associate Agreement with EMM. The applicant has described the purpose of the agreement as necessary to ensure EMM will not disclose residents' protected information other than as permitted or required by the CASA consistent with HIPAA regulations.

Conclusion

The individual background review indicates the applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the RHCf's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	July 22, 2016
Seller:	White Plains Center for Nursing Care, LLC
Purchaser:	Optima Care White Plains, LLC
Assets Transferred:	Right, title and interest in business assets clear of liens including: tangible assets, inventory, books & records, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "White Plains Center for Nursing Care), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds and goodwill.
Excluded Assets:	Sellers' cash, deposits, account receivables, prepayments, refunds, Universal Settlement
Assumed Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date
Purchase Price:	\$654,400
Payment of the Purchase Price:	\$49,080 paid upon execution; \$605,320 due at Closing

The purchase price of operations of \$654,400 is to be funded from members' equity. BFA Attachment A is the net worth summary of the members of Optima Care White Plains, LLC and shows sufficient resources to meet the equity requirement.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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 9, 2016, the facility had no outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed real estate purchase agreement related to the purchase of the RHCf's real property. The agreement will close concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	July 22, 2016
Seller:	White Plains Real Estate, LLC
Purchaser:	RM Holdings White Plains, LLC
Asset Transferred Realty:	Real Property located at 220 West Post Road, White Plains, NY 10606
Purchase Price:	\$15,705,600
Payment of Purchase Price:	\$1,177,920 paid upon execution; \$14,527,680 due at Closing

The purchase price of the real property is proposed to be satisfied as follows:

Equity - RM Holdings White Plains, LLC Members	\$8,805,600
HUD Loan (4% interest + 65 basis points, 30 years, 30-year amortization)	<u>6,900,000</u>
Total	\$15,705,600

A letter of interest has been provided by Greystone Funding Corporation.

BFA Attachments B is the net worth summary for the proposed members of RM Holdings White Plains, LLC. Alexander Rovt will loan \$46,548,000 from his personal resources to the Rovt 2011 Family Trust, which is evidenced by a draft promissory note for a 9-year term, interest only at the Mid Term AFR rate (2.10% as of February 2017). Boris Mendel will loan \$1,000,000 and gift \$4,172,000 to the Boris Mendel Family 2012 Irrevocable Trust, which is evidence by a draft promissory note at 2% interest with principal on demand by lender, and a draft declaration of gift agreement, respectively. The funds will be used to satisfy real property equity along with the equity in the real property associated with the concurrent applications (CON 162187 and CON 162190). Review of the net worth statements reveals sufficient resources to meet the equity requirements.

The applicant states that neither promissory note will have any impact on the RHCF operations. In the event of a demand for payment under the Boris Mendel Family 2012 Irrevocable Trust note or upon the maturity of the Rovt 2011 Family Trust note, only the Trusts would be responsible to repay the notes. It should be noted that, pursuant to Section 2 ("Quiet Possession") of the Lease Agreement, the operating entity's possession of the premises cannot be disturbed by RM Holdings White Plains, LLC (the landlord), its successors and/or assigns, provided it complies with its obligations under the Lease.

Lease Agreement

The applicant submitted a draft lease agreement, the terms of which are summarized below:

Premises:	88-bed RHCF located at 220 West Post Road, NY 10606
Owner/Landlord:	RM Holdings White Plains, LLC
Lessee:	Optima Care White Plains, LLC
Term:	10 years with one (1) 10-year renewal option
Rent:	\$770,100 (\$64,175 monthly) 2% rent increase starting in 3 rd year
Provisions:	Triple Net

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

Administrative Services Agreement

The applicant has provided a draft administrative services agreement, with terms summarized below:

Contractor:	EMM Healthcare Group, LLC
Facility:	Optima Care White Plains, LLC
Services Provided:	Administration, consulting and advisory services related to RHCF's operational and administrative functions, including advice and assistance with regard to regulatory monitoring, compliance and quality assurance, implementing policies and procedures for compliance program and marketing services.
Term:	Remain in place until Eric Mendel resigns his position as facility Manager or otherwise terminated.
Fee:	5% of Gross Revenues (1 st year estimated is approximately \$593,211)

EMM Healthcare Group, LLC is a proposed member and is solely owned by Eric Mendel. EMM Healthcare Group, LLC is also providing consulting services to the other RHCFs concurrently being reviewed and identified above. The draft ASA provides that Optima Care White Plains, LLC retains ultimate authority, responsibility and control in all of the final decisions associated with the services

10 NYCRR Section 600.9(c) provides that an individual, partnership or corporation which has not received establishment approval may not participate in the total gross income or net revenue of a medical facility. EMM Healthcare Group, LLC (the proposed administrative services provider) is also a proposed member of the applicant and is expected to receive establishment approval through this application.

Operating Budget

The applicant has provided the current year results and the first (presented below) and third year operating budgets subsequent to the change in ownership, in 2017 dollars, summarized as follows:

	<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-FFS	\$268.18	\$4,729,392	\$271.05	\$5,162,421
Medicaid-MC	\$268.18	182,096	\$257.38	240,138
Medicare-FFS	\$594.92	3,632,011	\$594.96	3,922,572
Medicare-MC	\$594.92	508,660	\$595.18	549,353
Commercial	\$274.67	181,008	\$274.56	195,489
Private Pay	\$648.19	1,427,968	\$648.26	1,542,205
Assessment		0		<u>252,058</u>
Total Revenue		\$10,661,135		\$11,864,236
<u>Expenses</u>				
Operating	\$312.85	\$8,802,276	\$302.46	\$9,250,984
Capital	<u>43.39</u>	<u>1,220,868</u>	<u>44.98</u>	<u>1,375,890</u>
Total Expenses	\$356.24	\$10,023,144	\$347.44	\$10,626,874
Net Income (Loss)		<u>\$637,991</u>		<u>\$1,237,362</u>
RHCF Patient Days		28,136		30,586
Utilization %		87.60%		95.22%

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

- The current year reflects the facility's 2015 revenues and expenses.
- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2015 and the forecasted year one and year three Medicare rate is the actual daily rate experienced during 2015. The forecasted Commercial and Private Pay rates are based on 2015 average actual daily rates.
- Expense and staffing assumptions were based on the current operator's cost report and then adjusted for increase in expenses.
- The facility's projected utilization for Year One and Year Three is 95.22% and 97.26%, respectively. It is noted that utilization for the past four years has averaged around 88.25% and current occupancy was 89.8% as of September 28, 2016.
- Utilization by payer source for the first and third year after the change in ownership is summarized below:

	<u>Current Year</u>		<u>Years One (& Three)</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid-FFS	17,635	62.68%	19,046	62.27%
Medicaid-MC	679	2.41%	933	3.05%
Medicare-FFS	6,105	21.70%	6,593	21.56%
Medicare-MC	855	3.04%	923	3.02%
Commercial	659	2.34%	712	2.33%
Private Pay	<u>2,203</u>	<u>7.83%</u>	<u>2,379</u>	<u>7.77%</u>
Total	28,136	100%	30,586	100%

- The first year Medicaid MC utilization is based on results for July 31, 2016, annualized.
- The breakeven utilization is projected at 83.1% for the first year.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF's operating interest is \$654,400 to be funded from members' equity. RM Holdings White Plains, LLC will purchase the real property for \$15,705,600 funded by \$8,805,600 in members' equity and a HUD loan for \$6,900,000 at the above stated terms. Greystone Funding Corporation has provided a letter of interest to underwrite and fund the HUD loan. Review of Attachments A and B, net worth summaries of the operating and realty entity members, respectively, shows sufficient assets to complete the transactions.

The working capital requirement is estimated at \$1,771,146 based on two months of Year One expenses. The applicant will provide \$921,146 from the members' equity with the remaining \$850,000 to be satisfied through a five-year term loan at 5% interest. A letter of interest has been provided by Greystone Funding Corporation. The members have sufficient liquid resources to meet the working capital requirement.

The submitted budget projects \$1,237,362 and \$1,246,884 of net income in the first and third years, respectively. Revenues are estimated to increase by approximately \$1,203,101. Overall expenses are expected to increase by \$603,730, coming from a \$448,708 increase in operating expense and a \$155,022 increase in depreciation and rent. The increase in operating expenses is due primarily from a \$225,639 increase in wages and fringe benefits cost (a portion of the increase is for adding Medical Director to the staff). The percentage of fringe benefits to wages remains approximately at 31.6%. The remaining \$223,069 increase in expenses was spread among multiple categories. BFA Attachment D is Optima Care White Plains, LLC's pro forma balance sheet, which shows the entity will start with \$1,575,546 in equity. The budget was created taking into consideration the changes in utilization.

DOH staff notes that through November 30, 2016, utilization was approximately 87.2%, which is less than the first year's projections by approximately 8%. BFA Attachment G is a budget sensitivity analysis that incorporates actual patient days through November 30, 2016, while using the applicant's projected payer mix and expenses for the first year. Based upon this scenario, net profits would decline by \$1,230,677 going from \$1,237,362 to \$6,695. For comparison, the internal financial summary for the nine months ending November 30, 2016, showed net earnings of \$907,296. 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 White Plains Center for Nursing, LLC for 2013 through November 30, 2016. For the periods 2013 through 2015, the RHCF had average positive working capital and average positive net assets and generate an average positive net income of \$578,330. BFA Attachment F is the internal financial statements for White Plains Center for Nursing, LLC as of November 30, 2016, which shows positive working capital, positive net assets and net income of \$907,296.

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	Optima Care White Plains, LLC, Proposed Members Net Worth
BFA Attachment B	RM Holdings White Plains, 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 2013, 2015, White Plains Center for Nursing, LLC
BFA Attachment F	Internal Financial Summary, White Plains Center for Nursing, LLC
BFA Attachment G	Budget Sensitivity Analysis



Project # 162463-B
Cayuga Ridge, LLC d/b/a Cayuga Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment and Construction
County: Tompkins
Acknowledged: December 7, 2016

Executive Summary

Description

Cayuga Ridge, LLC d/b/a Cayuga Ridge Extended Care (Cayuga Ridge) is a New York limited Liability company that operates a 160-bed, Article 28 residential health care facility (RHCF) located at 1229 Trumansburg Road, Ithaca (Tompkins County). The applicant seeks approval to be re-established as the operator (due to a limited life expiration), and to reorganize, reconfigure and renovate the facility to improve operations. As part of this application, Cayuga Ridge is also requesting to decertify 16 RHCF beds and certify respite services, bringing the total certified bed count to 144 RHCF beds. Upon Public Health and Health Planning Council (PHHPC) approval of this CON application, the facility will be operated under the new assumed name, Cayuga Nursing and Rehabilitation Center. There will be no change in services provided.

The reorganization, reconfiguration and renovation of the facility includes improvements to the site, the building, resident rooms and central bathrooms. The internal building organization has been reconfigured for improved efficiency, isolation of individual nursing units, ease of resident access to centralized services, expansion of private rooms, and elimination of all side-by-side double bedded rooms sharing a single bathroom.

In addition to the renovation work, all of the existing building physical deficiencies will be corrected, repaired, and/ or replaced. This includes updating the cosmetic finishes throughout all public and resident areas.

Cayuga Ridge Extended Care is a Berger Commission facility approved for an anticipated 100 RHCF beds (from a 260-bed RHCF) upon completion of the companion construction of 80 Adult Home (AH) beds, of which 55 would be Assisted Living Program (ALP) beds. Due to high occupancy, the Department granted Cayuga Ridge temporary approval to operate 160 RHCF beds to allow for the AH/ALP construction, which never occurred and approval of which is now null and void. The temporary approval to operate 160 beds, along with the RHCF's limited-life approval, has expired.

On October 15, 2016, two Assignment and Assumption Agreements (AAAs) were drafted to transfer membership interest in Cayuga Ridge, LLC as part of a membership reorganization. Under the first AAA, existing member Barry Braunstein proposes to transfer 12.5% if his membership interest to existing member Esther Manela for \$10.00. Under the second AAA, existing member Shalom Braunstein proposes to transfer 17.5% of his membership interest to new member Brenda Bertram for \$10.00.

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

Table with 3 columns: Members, Current %, Proposed %. Rows include Shalom Braunstein, Barry Braunstein, Esther Manela, and Brenda Bertram.

OPCHSM Recommendation
Contingent Approval

Need Summary

This proposal will decrease the number of RHCF beds at this facility from 160 to 144. Cayuga Ridge Extended Care's occupancy was 94.8% in 2013, 92.5% in 2014 and 81.2% in 2015. Current occupancy, as of February 8, 2017 is 81.0% with 30 empty beds.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard for approval as set forth in Public Health Law §2801-a(3). The reconstruction of the nursing home will address the physical plant deficiencies and improve the quality of care.

Financial Summary

The total project cost is \$18,297,268 and will be financed with a \$13,516,895 loan for a 20-year term at 5% interest, and members' equity of \$4,780,373. Harborview Capital Funding has provided a letter of interest at the stated terms. Under the two AAA's, Barry Braunstein will transfer 12.5% of his membership interest and Shalom Braunstein will transfer 17.5% of his membership interest in Cayuga Ridge to one new and one existing member. Below is the proposed budget.

Revenues	\$11,810,028
Expenses	<u>11,334,858</u>
Gain	\$475,170

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
5. Submission of the two executed assignment and assumption agreements for the transfer of membership interest, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment for project costs, acceptable to the Department of Health. [BFA]
7. Submission and programmatic approval of final floor plans. [LTC]
8. Submission of a photocopy of the applicant's amended and executed Fourth Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended and executed lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Assignment and Assumption Agreements, acceptable to the Department. [CSL]
11. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. [AER]

12. Submission of engineering drawings (MEP) for review and approval, as described in BAER Drawing Submission Guidelines DSG-04. [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 October 1, 2017 and construction must be completed by December 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. 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]
4. 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]
5. Submission of and approval of the patient safety plan by the Central New York Regional Office prior to the commencement of construction. [LTC]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 6, 2017

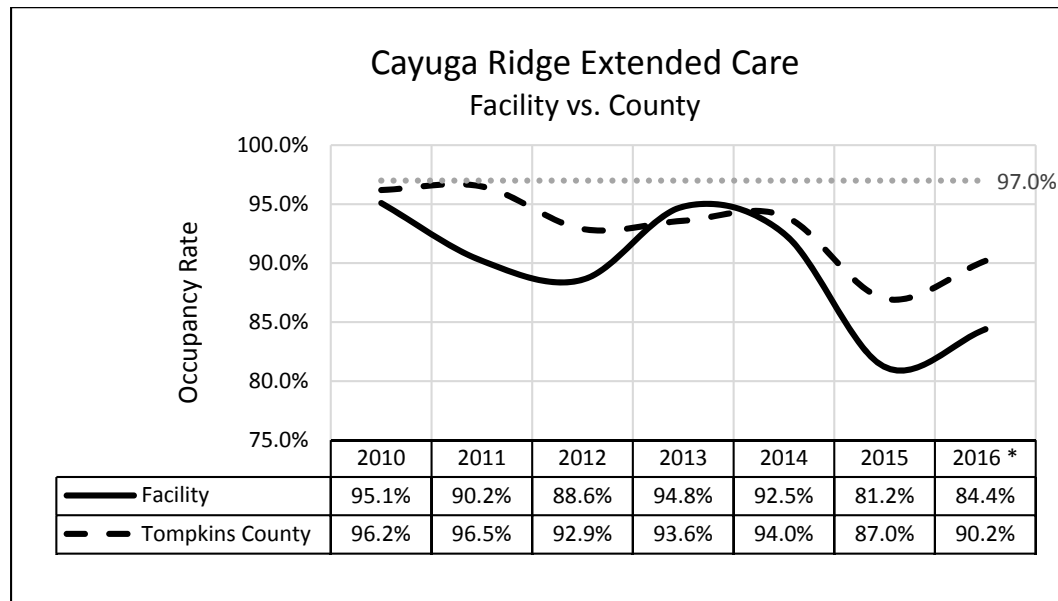
Need Analysis

Analysis

There is calculated unmet need for 118 beds in Tompkins County.:

RHCF Need – Tompkins County

2016 Projected Need	478
Current Beds	420
Beds Under Construction	-60
Total Resources	360
Unmet Need	118



The overall occupancy for Tompkins County was 85.8% in 2015. Cayuga Ridge Extended Care's occupancy was 94.8% in 2013, 92.5% in 2014 and 81.2% in 2015. According to the applicant, the low occupancy is the result of several factors which include: the facility administrator left in early 2012, in late 2014 there was a ban on admissions due to a negative survey, and the new operator has concentrated primarily on correcting operational and physical plant issues.

In addition to the 16-bed reduction, the applicant plans to increase occupancy in the following ways:

- Hiring of new facility Administrator and Director of Nursing, along with higher rates of pay for staff that will improve staff retention and should result in better care of patients;
- Retain outside consultant to re-train key staff members as well as a survey specialist to improve staff members' communication skills;
- Bi-weekly quality improvement meetings are held with staff and the administration of the facility. Current leadership believes these improvements in operations will increase occupancy;
- Invest significant capital to improve the physical environment, as well as improve the facility's infrastructure. Applicant states that they have spent approximately one million dollars on facility improvements and upgrades. All resident rooms will have either one or two beds.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage,

whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Cayuga Ridge Extended Care's Medicaid admissions of 34.1% in 2014 and 21.6% in 2015 exceeded Tompkins County 75% rate of 18.5% in 2014 and 19.8% in 2015, respectively.

Conclusion

Contingent approval of this application will maintain a necessary resource in Tompkins County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Cayuga Ridge Extended Care	Cayuga Nursing and Rehabilitation Center
Address	1229 Trumansburg Road Ithaca, NY 14850	Same
RHCF Capacity	160	144
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Cayuga Ridge LLC	Cayuga Ridge, LLC <u>Members</u> *Barry Braunstein 35.00% Shalom Braunstein 30.00% Esther Manela 17.50% Brenda Bertram 17.50% *Managing Member

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Elcor Nursing Home	6/2011 to present
Cayuga Ridge Extended Care Facility	12/2012 to present
Laconia Nursing Home	07/2005 to present
Oxford Nursing Home	07/2005 to present

Individual Background Review

Barry Braunstein is a New York State licensed nursing home administrator and is considered to be in good standing. He is currently employed at Laconia Nursing Home as an administrator. Mr. Braunstein discloses the following nursing home ownership interests:

Laconia Nursing Home (100%)	12/1992 to present
Oxford Nursing Home (45.01%)	12/1992 to present
Cayuga Ridge Extended Care Facility (47.505%)	12/2012 to present

Shalom Braunstein is a New York State licensed nursing home administrator and is considered to be in good standing. He is managing employee at Laconia Nursing Home, since October 2007. Mr. Braunstein discloses the following nursing home ownership interests:

Elcor Nursing and Rehabilitation Center (20%)	06/2011 to present
Cayuga Ridge Extended Care Facility (47.505%)	12/2012 to present

Brenda Bertram does not list any employment or education leading to a degree. Ms. Bertram discloses the following nursing home ownership interest:

Elcor Nursing and Rehabilitation Center 9.99%	10/2011 to present
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Esther Manela has a Masters Degree from Touro College and is a Licensed Master Social Worker in good standing. She was most recently employed as a social worker in 2011 at Counter Force in Brooklyn. Ms. Manela discloses the following nursing home ownership interest:

Elcor Nursing and Rehabilitation Center 9.99%	10/2011 to present
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Character and Competence – Analysis

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

A review of operations for Cayuga Ridge Extended Care Center for the periods identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on August 17, 2016. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care: Accident Free Environment; 415.3(e) Notice of Rights and Services-Right to Refuse Treatment, Refuse to Participate in Research and the Right to Be Able to Formulate An Advanced Directive; 415.26(a) Administration; 415.12(c)(1) Quality of Care: Pressure Sores, Prevention; and 415.29(a)(1&2) NFPA Life Code Standard and 711.2(2)(1) Fire Alarm Systems.
- The facility was fined \$16,000 pursuant to Stipulation and Order NH-16-169 for surveillance findings on March 3, 2011, which preceded ownership by the Braunsteins, and September 17, 2015. Deficiencies for the March 3, 2011 survey were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential; and 415.12(h)(1) Quality of Care: Accident Free Environment. Deficiencies for the September 7, 2015 survey were found under 10NYCRR 415.12 Quality of Care: Highest Practicable Potential; and 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-119 for surveillance findings on November 11, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.14(b)(2)(h) Food Procurement, Store/Prepare/Serve/Sanitary; 415.26(b)(2)(3) Administration Governing Body; 415.27(a-c) Administration Quality Assessment and Assurance; and 415.26 Administration Effective Administration Resident Well-Being.
- The Centers for Medicare & Medicaid Services imposed Civil Monetary Penalties (CMPs) totaling \$130,487.50 for the enforcement cycle starting November 18, 2014 through April 20, 2015, when substantial compliance was achieved.

An assessment of the underlying causes of the above enforcements determined that they were unique and non-recurrent in nature, and that the operator investigated the circumstances surrounding each violation and undertook appropriate steps that a reasonably prudent operator would have taken to prevent a repeat of the violation.

A review of operations for Elcor Nursing and Rehabilitation Center, Laconia Nursing Home and Oxford Nursing Home for the periods identified above, reveals there were no enforcements.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	NYS Quintile
Elcor Nursing and Rehabilitation Center	*	**	*	3
Cayuga Ridge Extended Care	*	*	***	5
Laconia Nursing Home	*****	****	*****	2
Oxford Nursing Home	****	****	*****	3

Star Ratings: 1=much below average; 5=much above average

NYS Quintiles: 1=top-performing; 5=lowest-performing

Program Review

Shalom and Barry Braunstein are on the current ownership structure for Cayuga Ridge Extended Care Center. Cayuga Ridge had been operating on a five year limited life operating certificate which expired on November 14, 2014. During this period the nursing home was subjected to neglect from the previous owners, and the physical plant suffered from a severe lack of maintenance and upkeep. A 90-day notice of ownership interest transfer was approved in February, 2012 adding Shalom Braunstein and Barry Braunstein in an effort to stabilize the nursing home. The subject application will install a permanent operator for the nursing home, which will be renamed Cayuga Nursing and Rehabilitation Center (CNRC).

Going forward, no consulting and administrative services agreements are proposed in this application.

CNRC will also undergo a gut rehabilitation of the physical plant, which is crucial to improving its survey record and transforming the nursing home into a high quality facility.

Physical Environment

CNRC is a four story structure originally constructed in the 1960's containing 139,017 square feet located on a sloping site. The building was designed for 260 beds creating excess space for a 160 bed facility. The actual occupied square footage is 117,755 square feet with two nursing units currently unoccupied. The building has had virtually no capital investment, resulting in the primary building systems having exceeded the manufacturer's useful life. The project will address the decaying infrastructure outlined in a September 2015 building conditions survey. These include repair of the exterior areas, replacement of windows, the repair of crumbling brick and concrete foundations and landings and the renovation of two inoperable elevators. The project will also replace the entire HVAC system including new boilers, installation of rooftop air conditioning and the elimination of resident room PTAC units, and replacement of the domestic hot water system.

All of the nursing units will be reconstructed and reconfigured to contemporary nursing home design principles. The excess square footage and the reduction of the bed complement from 160 to 144 beds permits the units to be transformed into neighborhoods of varying sizes. The nursing units will be located on the first three floors, with the fourth floor vacated due to access considerations into the floor. The fourth floor may be allocated for future alternative program development. The nursing units will be configured as follows: first floor 35 beds with three doubles and 29 singles; second floor 40 beds with 11 doubles and 18 singles; third floor east 40 beds with 11 doubles and 18 singles; and third floor west 29 beds with two doubles and 25 singles. Ninety beds or 65% of the nursing home's bed complement will be single bedded rooms. All of the resident rooms in the facility will be fully ADA compliant.

The first floor nursing unit will be located to the east of the main entrance and past the central elevator bank, and serve short term rehabilitation residents. The nursing unit will be divided into clusters of 14 and 21 beds, with a discrete bathing area with tub or shower serving each. The majority of rooms on the floor will be singles, with the doubles orienting the beds toe to toe on the opposite corners of the room. A large dining room is located on the lower end of the unit looking out to the back courtyard. A toilet will need to

be created adjacent to the dining area. Lounges are located on the opposite corners of the central core at the east end of the unit.

The second floor east and third floor east units are identical, divided into clusters of 17, nine and 14 beds, each with a lounge or sunroom. A single central shower area serves the entire floor, necessitating a revision to the design for the addition of a second bathing area to include a tub. Four of the doubles employ an undesirable head to head layout, affording limited access to light for the inboard bed. Design development should seek to mitigate both of these issues. The dining area is located in the west end of the unit by the elevator bank, across from the central nursing station. A resident toilet needs to be situated in proximity to the dining room area.

Third floor west is the most homelike residential environment of all the nursing units. A second elevator on the northern side provides additional access into both the third floor east and west units, as well as the second floor. The resident rooms are arrayed around the back enclosed courtyard in clusters of 18 and 11 beds respectively. Each cluster contains dedicated lounge space and a bathing area with shower or shower and tub. The nursing unit includes two double bedrooms with the remainder all single bedrooms. Staff has discussed an alternative layout for one of the double bedrooms to create a more desirable toe to toe configuration, leaving one head to head double available for couples desiring to room together. The dining area is located in the southwest corner, adjacent to the main nursing station. Two respite rooms, each with in-room shower, lie on the other side of the dining room. A resident toilet needs to be situated in proximity to the dining area.

Entrance into the nursing home will be made through a new front porch which will be connected to the new drop off area by covered walkway. In light of the severity of the Ithaca winters this may represent the most significant public amenity. The redesigned lobby will include large areas for family socialization, with administrative offices flanking the public areas. Further design development will focus on additional enhancements, including the inclusion of a snack bar or informal dining space for use by the public and residents. The central corridor will lead past the rehabilitation area to the central elevators. The rehabilitation suite will occupy 2450 square feet of space and include a full ADL kitchen, bathroom and car simulator, with the front courtyard accessible for use as additional therapy space. The rehab area will continue around the corner and end across from the first floor dining area. Beyond the elevator bank new medical and dental exam rooms will be constructed, and a new barber and beauty salon. Staff has suggested spa amenities be offered in the salon, including massage table and whirlpool tub. A large multipurpose activity room and conference room will be located past the exam rooms. The spaciousness of the first floor public areas will serve as a blank canvas for further design programming.

Project Review- Analysis

The nursing home offers ample outdoor space for the residents, affording them views of nearby Cayuga Lake. The amount of vacant space in the building permits a gut rehab to proceed without significant disruption to the residents. While the decaying infrastructure will require complete replacement, the cost of renovating and modernizing the building will be significantly less than constructing a new, and smaller building. Some of the industrial functions and service areas will not require renovation, although the kitchen will require a complete modernization. After the project concludes significant vacant space will remain available for other purposes. Many of the quirks of the building are not replicable, for example the availability of direct entrance into the basement and the first three levels due to the sloping topography.

Overall the design is resident centered, and the flexibility afforded by the applicant expedites the design development process. Many of the suggestions made in the staff report have already been addressed, with further refinement expected in subsequent drawing submissions.

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).

The subject application will transform CNRC to a contemporary residential health care facility and address the decay of the physical plant and severe infrastructure issues. While the new owners have experienced somewhat of a learning curve, the operation seems to have turned the corner. With the additional infusion of capital into the nursing home it is expected that the facility will emerge as a high quality nursing home and long term care resource.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Assignment and Assumption Agreement (AAA)

The applicant has submitted draft AAAs for the transfer of membership interest in Cayuga Ridge Extended Care as follows:

Membership transfer

Date:	October 15, 2016
Assignor:	Barry Braunstein
Assignee:	Esther Manela
Rights assigned:	All rights assigned under the agreement regarding membership interest.
Purchase Price:	\$10 cash has been paid.

Membership transfer

Date:	October 15, 2016
Assignor:	Shalom Braunstein
Assignee:	Brenda Bertram
Rights assigned:	All rights assigned under the agreement regarding membership interest.
Purchase Price:	\$10 cash has been paid.

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

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	November 8, 2009
Premises:	A 160-bed RHC located at 1229 Trumansburg Road, Ithaca, New York 14850
Lessor:	LNH Operating Company, LLC
Lessee:	Cayuga Ridge, LLC
Terms:	20 years commencing on execution of the lease
Rental:	Base rent of \$10,000 per month plus the sum of \$666,680 for the debt service, all reserve and/or escrow payments and all other fees and expenses payable by Lessor in connection with the HUD loan. Additional rent includes all other amounts, liabilities and obligations relating to the Leased Premises and the operation of the Operating Facility and all other amounts payable by Lessee.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity. LNH Operating Company, LLC and Cayuga Ridge, LLC have common ownership in that Barry Braunstein and Shalom Braunstein are members of Cayuga Ridge, LLC and LNH Operating Company, LLC.

Total Project Cost and Financing

Total project costs for renovations and moveable equipment are estimated at \$18,297,268 broken down as follows:

Renovation & Demolition	\$12,435,713
Asbestos Abatement or Removal	514,800
Design Contingency	1,243,571
Construction Contingency	1,243,571
Planning Consultant Fees	50,000
Architect/Engineering Fees	131,788
Other Fess (Consultant, etc.)	5,200
Movable Equipment	1,517,464
Financing Costs	137,230
Interim Interest Expense	914,863
Application Fee	3,000
Processing Fee	<u>100,068</u>
Total Project Cost	\$18,297,268

Project costs are based on a construction start date of June 1, 2017, and a 14-month construction period.

The applicant's financing plan appears as follows:

Members' Equity	\$4,780,373
Loan (5% interest, 20-year term)	<u>13,516,895</u>
Total	\$18,297,268

Harborview Capital Funding has provided a letter of interest for the loan. Harborview Capital Partners is a full service commercial real estate finance, equity and advisory firm.

Operating Budget

The applicant has provided an operating budget, in 2017 dollars, for the first and third year subsequent to the change of ownership. The budget is summarized below:

	<u>Current Year (2015)</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Per Diem</u>	<u>(160 beds)</u>	<u>Per Diem</u>	<u>(144 beds)</u>	<u>Per Diem</u>	<u>(144 beds)</u>
<u>Revenues</u>						
Medicaid	\$188.23	\$7,596,415	\$202.81	\$8,637,291	202.81	\$8,727,421
Medicare	\$427.75	1,449,643	\$427.78	1,508,789	427.70	1,524,753
Private Pay	\$275.54	1,011,244	\$275.52	1,052,503	275.55	1,063,638
Assessment Rev		<u>0</u>		<u>489,047</u>		<u>494,216</u>
Total Revenues		\$10,057,302		\$11,687,630		\$11,810,028
<u>Expenses</u>						
Operating	\$227.68	\$10,795,835	\$180.87	\$9,031,708	180.67	\$9,115,997
Interest	1.65	78,007	0.70	35,000	0.69	35,000
Depreciation/Rent	<u>14.31</u>	<u>678,728</u>	<u>44.57</u>	<u>2,225,761</u>	<u>43.28</u>	<u>2,183,861</u>
Total Expenses	\$243.64	\$11,552,570	\$226.14	\$11,292,469	\$224.64	\$11,334,858
Net Income		<u>(\$1,495,268)</u>		<u>\$395,161</u>		<u>\$475,170</u>
Total Patient Days		47,416		49,935		50,457
Occupancy		81.2%		95.0%		96.0%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2015 payor and 2015 RHCF-4 cost report information. Historical utilization for base year 2015 was 81.2%.
- The historical utilization for 2016 was 84.58% based on 160 RHCF beds.
- The projected Medicaid rate is based on the 2016 Medicaid Pricing Rate plus the additional Capital Add-On the facility expects to experience as a result of this project.
- Utilization is expected to increase to 95% in Year One and 96% in Year Three as a result of the applicant's significant capital investment in the physical environment of the facility, as well as the improved facility infrastructure.
- Utilization by payor source is as follows:

	<u>First and Third Year</u>
Medicaid	85.28%
Medicare	7.06%
Private/Other	7.66%

- Breakeven utilization is 91.79% and 92.14% for the first and third year, respectively.

Capability and Feasibility

The total project cost is \$18,297,268 and will be financed with a \$13,516,895 loan for a 20-year term at 5% interest, and members' equity of \$4,780,373. Barry Braunstein has submitted an affidavit attesting that he is willing to contribute resources disproportionate to his ownership interest percentage to provide needed equity. Harborview Capital Funding has provided a letter of interest for financing the project at the stated terms.

The working capital requirement for the facility is estimated at \$1,882,078 based on two months of the first year budget. Cayuga Ridge, LLC will fund the working capital requirement from members' equity. Barry Braunstein has submitted an affidavit attesting that he is willing to contribute resources disproportionate to his ownership interest to provide needed equity. BFA Attachment A, net worth of the proposed members of Cayuga Ridge, LLC, shows sufficient equity levels for working capital. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,007,154.

The submitted budget indicates that net income of \$395,161 will be generated for the first year. BFA Attachment E is the budget sensitivity analysis based on current utilization of the facility as of December 31, 2016, which shows the budgeted revenues would increase by \$107,476 resulting in a net operating income of \$502,637 in Year One. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B, the financial summary of Cayuga Ridge Extended Care, indicates that the facility experienced negative working capital, negative equity position and maintained an annual net operating income of \$325,000 in 2014, a net operating loss of \$1,494,000 in 2015, and a net operating income of \$5,855 as of November 30, 2016. The negative working capital and negative equity position are due to higher than expected accounts payable and due to related parties balance. The decertification of sixteen RHCF beds and the renovations to the RHCF should stabilize the negative equity and working capital over time.

BFA Attachment C, financial summary of the proposed members' affiliated RHCF, shows the facility has 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	Cayuga Ridge, LLC, Proposed Members Net Worth
BFA Attachment B	Cayuga Ridge Extended Care, Financial Summary
BFA Attachment C	Affiliated Residential Health Care Facility
BFA Attachment D	Cayuga Ridge, LLC, Pro Forma Balance Sheet
BFA Attachment E	Budget Sensitivity
BFA Attachment F	2016 Census Data by Payor



Project # 162570-E

The Center for Nursing and Rehabilitation at Hoosick Falls

Program: Residential Health Care Facility
Purpose: Establishment

County: Rensselaer
Acknowledged: January 6, 2017

Executive Summary

Description

SVHC-Hoosick Falls LLC (SVHC-HF), a to-be-formed New York State limited liability company, requests approval to become the active parent, co-operator and sole corporate member of Hoosick Falls Health Center, Inc. d/b/a The Center for Nursing and Rehabilitation at Hoosick Falls (CNR), an 82-bed residential health care facility (RHCF) located at 21 Danforth Street, Hoosick Falls, (Rensselaer 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.

CNR is ultimately expected to experience cost benefits related to operational efficiencies resulting from the active parent co-operator designation. The RHCF will remain a separate voluntary not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its own separate operating certificate following Public Health & Health Planning Council (PHHPC) approval.

CNR is located in a small rural community in northeast Rensselaer County approximately five miles from the New York-Vermont border. The RHCF has been experiencing operational and financial challenges that threaten its viability and sustainability. As active parent, SVHC-HF will gain oversight of the day-to-day operations of the RHCF and develop a financially sound health care service delivery platform for CNR to best meet the long-term care needs of the area.

SVHC-HF's active parent powers would give them authority to:

- Approve the capital and operating budgets of CNR to ensure that such budgets conform to the mission and philosophy of the Company;
- Approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund; and
- Approve any Certificate of Need application by CNR to the New York State Department of Health.

In addition to the active parent powers described above, SVHC-HF, by virtue of establishment as co-operator, will have the following additional powers within the scope of 10 NYCRR 405.1(c):

- To approve, interpret and change the statement of mission and philosophy adopted by CNR and to require that CNR operate in conformance with its mission and philosophy;
- To elect and remove, with or without cause, the Chief Executive Officer of CNR;
- To approve and amend the Bylaws and Certificate of Incorporation of CNR;
- To approve any plan of merger, consolidation, dissolution or reorganization of the CNR or any sale, lease or other disposition of all or substantially all of their assets;
- To appoint, fix the number of, and remove, with or without cause the directors of CNR;
- To approve the debt of CNR, in excess of an amount to be fixed from time to time by the Company, except for debt necessary to

finance the cost of compliance with operational or physical plant standards required by law;

- To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of CNR in excess of an amount to be fixed from time to time by the Company;
- To approve any corporate reorganization of CNR and the development or dissolution of any subsidiary Organizations of CNR;
- To approve the strategic plan of CNR, provided that such right of approval shall not permit the Company to exercise any of the governance authority under applicable regulations unless the Company has received establishment approval from the Public Health and Health Planning Council;
- To approve any final settlement by CNR related to Medicaid or any other payor audits; and
- To approve any rate appeals to be initiated by CNR.

SVC-HF will have a passive parent, Southwestern Vermont Health Care Corporation (SVHC), a comprehensive health care delivery system serving Bennington and Windham Counties in Vermont, eastern Rensselaer and Washington Counties in New York, and northern Berkshire County in Massachusetts. SVHC consists of:

- Southwestern Vermont Medical Center (SVMC), a 99-bed hospital located at 100 Hospital Drive, Bennington (Bennington County), Vermont;
- The Center for Living and Rehabilitation (CLR), a 130-bed skilled nursing facility located on the campus of SVMC;
- Southwestern Vermont Regional Cancer Center, a full-service cancer center offering chemotherapy, radiation therapy and access to clinical trials, located on the campus of SVMC;
- SVHC Foundation, the fundraising arm of SVHC; and
- Three ambulatory care campuses, which provide access to primary care services to the communities served by SVHC.

SVHC plans to create economies of scale through sharing operational services between CNR and CLR. This collaboration should generate cost savings for both facilities. Services likely to be shared include finance and accounting operations, human resources, IT,

compliance, dietary, central intake and purchasing.

The facilities will look to develop joint clinical programs and services that can meet identified clinical needs of the elderly in each facility's service area. The purpose of these actions is to improve the quality of services provided. In addition, a consolidated Electronic Medical Records System would be beneficial to both facilities.

Finally, as part of its relationship with SVHC, CNR will have access to the training and education programs offered by SVHC, fostering career growth and retention of CNR staff.

BFA Attachment A is the current and proposed organizational chart of SVHC.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility.

Program Summary

No negative information has been received concerning the character and competence of the board members. No changes in the program or physical environment are proposed with this application.

Financial Summary

There are no project costs or working capital requirements 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 an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
4. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
5. Submission of a photocopy of the Amended Articles of Organization of SVHC-Hoosick Falls, LLC, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the Operating Agreement of SVHC-Hoosick Falls, LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of the Certificate of Incorporation of Hoosick Falls Health Center, Inc., which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an Administrative Services 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

April 6, 2017

Need Analysis

Background

The purpose of the project is to help CNR experience operational and cost efficiencies while strengthening its clinical programs and services as part of an integrated health care delivery system.

The Center for Nursing & Rehabilitation at Hoosick Falls occupancy was 92.7% in 2013, 88.2% in 2014, and 88.9% in 2015. In order to increase utilization going forward, the applicant plans to:

- Enroll in managed long-term care plans that will facilitate admissions to the facility.
- Integrate palliative services into the care model to increase access to palliative care services for residents with serious illnesses.
- Look to put in a pulmonary rehabilitation program in place to help individuals manage and minimize debilitating effects of pulmonary disease.
- Develop a hospital/nursing home relationship with Southwestern Vermont Medical Center that will allow the hospital to place patients on a rapid basis, ensuring the flow of hospital patients to more appropriate care settings.

Access

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

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

The Center for Nursing & Rehabilitation at Hoosick Falls Medicaid admissions of 23.0% in 2014 and 36.4% in 2015 exceeded Rensselaer County's 75% threshold rates in 2014 and 2015 of 13.3% and 19.4%, respectively.

Conclusion

This project will help insure the continuation of necessary long term care services in Rensselaer County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	The Center for Nursing and Rehabilitation at Hoosick Falls	Same
Address	21 Danforth Street Hoosick Falls, NY 12090	Same
	82	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Not for Profit	Not for Profit
Operator	Hoosick Falls Health Center, Inc.	Hoosick Falls Health Center, Inc.
Co-Operator		SVHC- Hoosick Falls LLC

Character and Competence - Background

Facilities Reviewed

- Rockland Paramedics
- Southwestern Vermont Medical Center (Hospital)
- Center for Living and Rehabilitation (Nursing Home)

Individual Background Review

Sean Casey discloses that he is a partner in Eric Mower & Associates, a communications company. He has also been a board member since September of 2003 of Southwestern Vermont Health Care Corporation (Southwestern), the operator of the hospital and nursing home referenced above. Mr. Casey has no health facility ownership interests.

Carol Conroy discloses that she is employed as the Chief Nursing Officer/Vice President of Operations at Southwestern, since 2009. She has a nursing license in good standing from the state of Vermont. Ms. Conroy has no health facility ownership interests.

Stephen Majetkh discloses he is the Chief Financial Officer of Southwestern since 2010. He also serves treasurer for the board of Rockland Paramedics, a 501(c)3 not-for-profit advanced life support service operating in Rockland County. Mr. Majetkh has no health facility ownership interests.

Thomas Dee discloses he is the President and CEO of Southwestern. He discloses that previously he was the CEO for Health Alliance of the Hudson Valley and the President and CEO at Benedictine Hospital. He discloses no ownership interests.

Character and Competence – Analysis

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

The Vermont Department of Health has confirmed that both Southwestern Vermont Medical Center and the Centers for Living and Rehabilitation are in current compliance with no enforcements pending. Medicare.gov Nursing Home Compare shows that Centers for Living and Rehabilitation has not incurred any civil money penalties in the last three years.

The Bureau of Emergency Medical Services and Trauma Systems, DOH has verified that Rockland Paramedics is good standing.

Quality Review

Vermont

Provider Name	Overall	Health Inspection	Quality Measures
Centers for Living And Rehab	****	***	****

Southwestern Vermont Medical Center

Mortality	Above the National average
Safety of Care	Above the National average
Readmission	Above the National average
Patient Experience	Above the National average
Effectiveness of Care	Same as the National average
Timeliness of Care	Same as the National average
Efficient use of Medical Imaging	Same as the National average

Conclusion

No negative information has been received concerning the character and competence of the board members. No changes in the program or physical environment are proposed with this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement, which is summarized below:

Facility:	Hoosick Falls Health Center, Inc. d/b/a The Center for Nursing and Rehabilitation at Hoosick Falls
Contractor:	SVHC-Hoosick Falls, LLC
Administrative Term:	1 Year, with automatic one-year renewal each year thereafter.
Compensation:	Administrative services total \$869,642 for year one and \$904,776 for year three.
Duties of the Contractor:	Non-Clinical administrative services, acquisition and storage of supplies, perform negotiations on behalf of CNR if authorized by CNR.

While SVHC-HF will be providing all of the above services, CNR retains ultimate control in all of the final decisions associated with the services. SVHC-HF shall provide general administration of the day-to-day business operations of CNR, exclusive of the medical, professional and ethical aspects of CNR. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

The applicant has provided an operating budget, in 2017 dollars, for the current (2015) first and third years subsequent to the change of ownership of CNR. The budget is summarized below:

	<u>Per Day</u>	<u>Current Year</u>	<u>Per Day</u>	<u>Year One</u>	<u>Per Day</u>	<u>Year Three</u>
<u>Revenues</u>						
Commercial	\$263.64	\$321,900	\$186.36	\$213,945	\$186.48	\$225,831
Medicare	\$447.57	\$1,574,099	\$430.58	\$2,018,562	\$430.71	\$2,130,705
Medicaid	\$178.75	3,507,854	178.33	3,300,730	\$178.33	3,484,104
Private Pay	\$307.51	689,440	316.22	843,350	\$316.24	890,203
Bad Debt		0		203,066		214,348
All Other		<u>120,270</u>		<u>0</u>		<u>0</u>
Total Revenues		\$6,213,563		\$6,579,653		\$6,945,191
<u>Expenses</u>						
Operating	\$230.60	\$6,134,996	\$232.28	\$6,274,362	\$228.97	\$6,527,878
Interest	6.62	176,083	\$6.65	179,605	6.30	179,605
Rent/Depre.	<u>14.32</u>	<u>380,926</u>	<u>\$14.38</u>	<u>388,545</u>	<u>13.63</u>	<u>388,545</u>
Total Expenses	\$251.54	\$6,692,005	\$253.31	\$6,842,542	\$248.90	\$7,096,028
Net Income		<u>(\$478,442)</u>		<u>(\$262,889)</u>		<u>(\$150,837)</u>
Inpatient Days		26,604		27,012		28,510
Occupancy		88.9%		90.3%		95.3%

The following is noted with respect to the submitted budget:

- All Other revenue consists of Rental of Living Quarters, Rental of Physicians' Offices, Cash Discounts, Vending Machine Revenue, Investment Income. Nurse Aide Training and Other Miscellaneous Adjustments.
- Historical utilization as of December 31, 2016 is 83.66%, whereas first and third year budgeted utilization is 90.3% and 95.3%, respectively.
- Utilization by payor source is as follows:

	<u>Current Year (2015)</u>	<u>Years One and Three</u>
Commercial	4.6%	4.2%
Medicare	13.2%	17.4%
Medicaid	73.8%	68.5%
Private Pay	<u>8.4%</u>	<u>9.9%</u>
Total	100.0%	100.0%

- Breakeven utilization is 93.86% and 97.32% for the first and third year, respectively.

Capability and Feasibility

The applicant has stated that upon approval of this application by the Public Health and Health Planning Council (PHHPC), SVHC would obtain consent for the proposed changes from necessary lenders, insurers and trustees to proceed with the proposed membership transaction with CNR. 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. CNR is described as being an essential component of the overall mission of SVHC to develop programs that support the health and well-being of the low-income and underserved in the community. As such, the applicant has submitted a letter of financial support, stating that any operational losses will be met with SVHC funds. BFA Attachments D and E show sufficient resources.

The submitted budget indicates that a net operating loss of \$262,889 and \$150,837 will be generated by Year One and Year Three, respectively. BFA Attachment G is the budget sensitivity analysis based on current utilization of the facility as of December 31, 2016, which shows the budgeted revenues would decrease by \$765,588 resulting in a net operating loss of \$1,028,477 in Year One. The applicant has submitted a letter from SVHC that they will support the operating losses. The budget is reasonable.

BFA Attachments B and C are CNR's certified 2015 financial statement and their internal financial statement as of December 31, 2016. In 2015, the entity maintained a positive working capital position and a positive net asset position, but experienced an operating loss of \$450,804. As of December 31, 2016, CNR experienced a negative working capital position, a net deficit position and a loss from operations of \$415,197, which was due to lower census than anticipated, higher volume of Medicaid patients and CNR's inability to compete in the current market for patients.

BFA Attachments D and E are SVHC's consolidated audited financial statement (fiscal year ending September 30, 2016) and their internal financial statements for the three months ending December 31, 2016. As shown, SVHC maintained positive working capital and a positive net asset position for both periods. SVHC had positive net income of \$4,336,133 for the fiscal year ending September 30, 2016, and \$551,824 for the three-month period ending December 31, 2016.

BFA Attachment F is CLR's internal financial statements for the four months ending January 31, 2017. As shown, CLR maintained positive working capital and a positive net assets position. CLR had a loss from operations of \$14,614. The significant contributing factor in the loss was the shift in patient census from budget. The anticipated patient volumes, especially the Medicare sub-acute volume, were under plan. A majority of the loss in volume was due to Hospital volume decline due to the local orthopedic service closing down.

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 is recommended.

Attachments

BFA Attachment A	Current and Proposed Organizational Chart
BFA Attachment B	The Center for Nursing and Rehabilitation at Hoosick Falls - Certified 2015 Financial Statements
BFA Attachment C	The Center for Nursing and Rehabilitation at Hoosick Falls - Internals Financial Statements as of December 31, 2016
BFA Attachment D	Southwestern Vermont Health Care Corporation - Consolidated Audited Financial Statements for the Fiscal Year Ending September 30, 2016
BFA Attachment E	Southwestern Vermont Health Care Corporation - Internal Financial Statements as of December 31, 2016
BFA Attachment F	The Center for Living and Rehabilitation – Internal Financial Statements as of January 31, 2017
BFA Attachment G	Budget Sensitivity



Project # 162528-E
**Jamaica Acquisition III, LLC d/b/a Hillside Certified Home
Care Agency**

Program: Certified Home Health Agency
Purpose: Establishment

County: Queens
Acknowledged: January 6, 2017

Executive Summary

Description

Jamaica Acquisition III, LLC d/b/a Hillside Certified Home Care Agency, a New York limited liability company, requests approval to be established as the new operator of Hillside Manor Certified Home Health Agency (Hillside Manor), a proprietary, Article 36 Certified Home Health Agency (CHHA) with main offices located in leased space at 188-11 Hillside Avenue, Hollis, (Queens County) and add Homemaker, Housekeeper and Personal Care to the licensed services. Upon termination of the current lease, the applicant will seek to relocate the CHHA operations and will seek approval from the appropriate Regional Area Office prior to any relocation.

The CHHA is currently owned and operated by Hillside Manor Rehabilitation and Extended Care Center, LLC, which also operates a 400-bed residential health care facility located at 182-15 Hillside Avenue, Jamaica Estates. On July 5, 2016, the CHHA's current operator entered into a Purchase and Sale Agreement (PSA) with Jamaica Acquisition III, LLC (the parties) for the sale and acquisition of the CHHA operating assets for \$500,000, subject to adjustment in accordance with PSA. The transaction will be effectuated upon Public Health and Health Planning Council (PHHPC) approval of this application.

Hillside Manor is currently authorized to provide CHHA services in Bronx, Kings, New York, Queens and Richmond Counties. The proposal involves certifying Homemaker, Housekeeper and Personal Care to the CHHA's current

licensed services, which include the following: Home Health Aide, Medical Social Services, Medical Supply, Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy and Speech-Language Pathology. There will be no changes in the counties served.

Per the applicant, the Bureau of Long Term Home Care has been notified that as part of the ownership change, Hillside Manor Long Term Home Health Care Program (LTHHCP) will be closing.

On July 5, 2016, in anticipation of PHHPC approval of this CON application, the current operator entered into an interim Consulting Agreement whereby the proposed operator would provide administrative services in the ordinary course of operation of the CHHA. Concurrently, the parties also entered into a Management Agreement, to be effective upon Department review and approval, pursuant to which the applicant would assume responsibility for the day-to-day management of the CHHA. The Management Agreement was submitted for Department for review on August 16, 2016, and the parties were notified of approval on October 11, 2016.

Ownership before and after the requested change is as follows:

<u>Current Operator</u>	
Hillside Manor Rehabilitation and Extended Care, LLC	
<u>Members</u>	<u>%</u>
Judith Dicker	37.505%
Meryl Dicker	26.748%
Marcia Dicker Trupin	26.748%
Douglas J. Wissmann	6.000%
Jeffrey Jackson	2.999%

<u>Proposed Operator</u>	
Jamaica Acquisition III, LLC	
<u>Members</u>	<u>%</u>
Pasquale DeBenedictis	30%
Alex Solovey	30%
Joseph F. Carillo, II	5%
Solomon Rutenberg	5%
Leopold Friedman	30%

Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the LLC members and managers of Jamaica Acquisition III, LLC d/b/a Hillside Certified Home Care Agency, to adversely affect their positions with the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Financial Summary

Jamaica Acquisition III, LLC will acquire the CHHA's operations for \$500,000 funded by members' equity. There are no project costs associated with this application. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$5,470,131	\$17,628,371
Expenses	<u>5,902,648</u>	<u>16,722,564</u>
Gain/(Loss)	(\$432,517)	\$905,807

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no Need recommendation for this project.

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 building lease agreement, acceptable to the Department of Health. [BFA]
2. Approval is contingent on the official voluntary closure of Hillside Manor Rehabilitation and Extended Care Center, LLC d/b/a Hillside Manor Long Term Home Health Care Program, and the surrender to NYS Department of Health, Metropolitan Area Regional Office (MARO) Home Care Program, of the Hillside Manor Long Term Home Health Care Program (LTHHCP) operating certificate, following implementation of the LTHHCP's MARO-approved closure plan. [CHA]
3. Submission of a copy of the amended operating agreement of the applicant, which is acceptable to the Department. [CSL]
4. Submission of an executed copy of the lease agreement of the applicant, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 6, 2017

Program Analysis

Review Summary

Hillside Manor Certified Home Health Agency is currently approved to serve Bronx, Kings, New York, Queens, and Richmond Counties, and its sole practice is currently located in Queens County at 188-11 Hillside Avenue, Hollis. Jamaica Acquisition III, LLC will continue to serve Bronx, Kings, New York, Queens, and Richmond Counties from the same practice location.

Hillside Manor Rehabilitation and Extended Care Center, LLC, d/b/a Hillside Manor Long Term Home Health Care Program, the CHHA-based Long Term Home Health Care Program (LTHHCP) currently operated by Hillside Manor Rehabilitation and Extended Care Center, LLC, is not included in the proposed change of ownership for the CHHA. The applicant confirms that Hillside Manor Rehabilitation and Extended Care Center, LLC plans to submit a voluntary closure plan for its CHHA-based LTHHCP to NYS Department of Health, Metropolitan Area Regional Office (MARO) Home Care Program, for review, approval and implementation prior to the change of ownership of the CHHA.

Jamaica Acquisition III, LLC has no parent, sibling, or child entities or organizations in its corporate organizational structure. The members and managers of Jamaica Acquisition III, LLC disclosed the following interests in other health care facilities/agencies:

Pasquale DeBenedictis, CPA, Manager

30% LLC Membership / Ownership

Managing Member, Cassena Care, LLC (Financial Consulting); Director of Accounting and Finance, Theradynamics (Outpatient Physical Rehabilitation); Controller, Hillside Manor Rehabilitation and Extended Care Center, LLC d/b/a Hillside Manor Certified Home Health Agency (CHHA)

Alex Solovey, RPT, Manager

30% LLC Membership / Ownership

Director of Rehabilitation, Theradynamics (Outpatient Physical Rehabilitation); Director of Operations, Hillside Manor Rehabilitation and Extended Care Center, LLC d/b/a Hillside Manor Certified Home Health Agency (CHHA)

Leopold Friedman

30% LLC Membership / Ownership

Receiver / Operator, Peninsula Nursing and Rehabilitation Center (RHCF); Chief Executive Officer, Advanced Care Staffing (Nurse Staffing/Employment Agency); 33.3% Owner/Operator, Ultimate Care, Inc. (LHCSA)

Soloman Rutenberg

5% LLC Membership / Ownership

Chief Executive Officer, Workmen's Circle MultiCare Center (RHCF)

Joseph F. Carillo, LNHA

5% LLC Membership / Ownership

Administrator, Carillon Nursing and Rehabilitation Center, LLC (RHCF)

Affiliations

- JOPAL, LLC d/b/a Barnwell Nursing and Rehabilitation (RHCF);
- PALJR, LLC d/b/a East Neck Nursing and Rehabilitation Center (RHCF);
- JOPAL at St. James d/b/a Mills Pond Nursing and Rehabilitation (RHCF);
- JOPAL Sayville, LLC d/b/a Sayville Nursing and Rehabilitation Center (RHCF);
- JOPALS Bronx, LLC d/b/a Workmen's Circle MultiCare Center (RHCF);
- Shore View Acquisition I, LLC d/b/a Shore View Nursing and Rehabilitation (RHCF);
- Morningside Acquisition I, LLC d/b/a Morningside Nursing and Rehabilitation Center (RHCF, ADHCP, and LTHHCP);
- Morningside Acquisition III, LLC (ACF/ALP and LHCSA - pending);
- Cardiff Bay Center, LLC d/b/a Peninsula Nursing and Rehabilitation Center (RHCF);
- DeWitt Rehabilitation and Nursing Center, Inc. d/b/a Upper East Side Rehabilitation and Nursing Center (RHCF);
- Sea Crest Acquisition I, LLC d/b/a Sea Crest Nursing and Rehabilitation Center (RHCF);
- Terrace Acquisition II, LLC d/b/a Fordham Nursing and Rehabilitation Center (RHCF);
- MLAP Acquisition I, LLC d/b/a Long Beach Nursing and Rehabilitation Center (RHCF);
- Workmen's Circle Dialysis Management, LLC d/b/a Workmen's Circle Dialysis Center (D&TC/ESRD);
- Mills Pond Dialysis, LLC d/b/a East Neck Dialysis Center (D&TC/ESRD);
- Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula (D&TC/ESRD - pending);
- Morningside Dialysis Center, LLC (D&TC/ESRD - pending);
- Stamford Acquisition I, LLC d/b/a Cassena Care at Stamford (RHCF in CT);
- New Britain Acquisition I, LLC d/b/a Cassena Care at New Britain (RHCF in CT);
- Cassena Care of Norwalk (RHCF in CT)
- Providence Care, Inc. d/b/a Brooklyn Gardens Nursing and Rehabilitation (RHCF);
- Ultimate Care, LLC (LHCSA);
- Hendon Garden Center, LLC d/b/a Beach Gardens Rehabilitation and Nursing Center (RHCF);
- Highland View Care Center Operating Company, LLC d/b/a The Citadel Rehabilitation and Nursing Center at Kingsbridge (RHCF) and d/b/a Citadel Home Care (LTHHCP);
- DeWitt Rehabilitation and Nursing Center, Inc. d/b/a Upper East Side Rehabilitation and Nursing Center (RHCF);
- MLAP Acquisition I, LLC d/b/a Long Beach Nursing and Rehabilitation Center (RHCF);
- Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula (D&TC/ESRD - pending);
- Brooklyn Gardens Dialysis Center, LLC (D&TC/ESRD - pending);
- Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (RHCF - pending);
- SBNH Acquisition, LLC d/b/a St. Barnabas Rehabilitation and Continuing Care Center (RHCF - pending);
- TCPRNC, LLC d/b/a The Plaza Rehabilitation and Nursing Center (RHCF);
- Ross Acquisition, LLC d/b/a Ross Center for Nursing and Rehabilitation (RHCF)

A search of all of the above named LLC members and managers, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List. The NYS Education Department, Office of the Professions, indicates no disciplinary issues with either the Certified Public Accountant licensure of Mr. DeBenedictis or the Registered Physical Therapist licensure of Mr. Solovey. The NYS Department of Health, Bureau of Professional Credentialing, indicates no disciplinary issues with the Nursing Home Administrator licensure of Mr. Carillo.

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Diagnostic and Treatment Centers for the time period 2010

through 2017, and reported that during that time period, the affiliated Diagnostic and Treatment Centers had no enforcement actions taken.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID reviewed the compliance histories of all affiliated Nursing Homes for the time period 2010 to 2017, and reported that during that time period, the following enforcement actions were taken:

An enforcement action was taken against PALJR, LLC d/b/a East Neck Nursing and Rehabilitation Center, in 2015 based on a March 2014 survey citing violations in Residents Rights: Right to Accept/Refuse Treatment, Right to Formulate Advance Directives; Administration; and Administration: Quality Assessment and Assurance. This enforcement action was resolved with a \$6,000 civil penalty.

An enforcement action was taken against Highland View Care Center Operating Company, LLC d/b/a The Citadel Rehabilitation and Nursing Center at Kingsbridge, in 2016 based on an August, 2016 survey citing violations in Quality of Care: Accident Free Environment; and Administration. This enforcement action was resolved with a \$4,000 civil penalty.

An enforcement action was taken against JOPAL, LLC d/b/a Barnwell Nursing and Rehabilitation, in 2015 based on a March, 2012 survey citing violations in Quality of Care: Accidents / Supervision. This enforcement action was resolved with a \$2,000 civil penalty. In addition, a federal Civil Monetary Penalty of \$3,250 was imposed and paid.

An additional enforcement action was taken against JOPAL, LLC d/b/a Barnwell Nursing and Rehabilitation, in 2015 based on a February, 2013 survey citing violations in Quality of Care: Significant Medication Errors; Administration; and Quality Assurance. This enforcement action was resolved with a \$8,000 civil penalty. In addition, a federal Civil Monetary Penalty of \$5,000 was imposed and paid.

An additional enforcement action was taken against JOPAL, LLC d/b/a Barnwell Nursing and Rehabilitation, in 2015 based on a September, 2013, survey citing violations in Residents Rights: Freedom from Mistreatment, Neglect, and Misappropriation of Property; and Quality of Care: Highest Practicable Potential. This enforcement action was resolved with a \$10,000 civil penalty. In addition, a federal Civil Monetary Penalty of \$8,000 was imposed and paid.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID reports that the remaining affiliated Nursing Homes had no enforcement actions taken for the time period 2010 through 2017.

The Division of Home and Community Based Services reviewed the compliance histories of all affiliated Certified Home Health Agencies, Long Term Home Health Care Programs, and Licensed Home Care Services Agencies, for the time period 2010 to 2017, and reported that during that time period, the affiliated Certified Home Health Agencies, Long Term Home Health Care Programs, and Licensed Home Care Services Agencies have all remained in compliance with no history of enforcement action taken.

The NYS Department of Health Division of Adult Care Facilities and Assisted Living reports that the change of ownership for the pending ACF/ALP has not yet become effective, and therefore, no compliance or enforcement history is applicable at this time for that pending affiliation.

To date, we have not received out-of-state compliance responses from the State of Connecticut. Accordingly, the applicant has submitted signed and notarized affidavits stating that, to the best of their knowledge, the following is the enforcement history for their affiliated nursing homes in Connecticut:

Stamford Acquisition I, LLC d/b/a Cassena Care at Stamford is currently in compliance, with no enforcement actions taken during the time period 2010 through 2017.

New Britain Acquisition I, LLC d/b/a Cassena Care at New Britain is currently in compliance, but was subject to a federal enforcement in January 2017, based on a federal survey conducted from September 15, 2016 through October 28, 2016, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; Quality of Care: Accidents / Hazards / Environment / Supervision /

Devices; and Quality of Care: Sufficient Fluid to Maintain Hydration. A federal Civil Monetary Penalty of \$17,821.05 was imposed and paid, and a federal prohibition was imposed on Nurse Aide Training and Competency Evaluation programs offered by, or in, the facility for the time period September 15, 2016 through September 14, 2018.

Cassena Care of Norwalk is currently in compliance, but was subject to an enforcement action in February, 2014, based on a survey conducted during August and September, 2013, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; and Quality of Care: Pressure Sores. A civil penalty of \$13,650 was imposed and paid.

CHHA Quality of Patient Care Star Ratings

CHHA Name	Quality of Care Rating
Hillside Manor Certified Home Health Agency	2.5 out of 5 stars
New York Average: 3 out of 5 stars National Average: 3 out of 5 stars	

A review of all personal qualifying information indicates there is nothing in the background of the LLC members and managers of Jamaica Acquisition III, LLC d/b/a Hillside Certified Home Care Agency, to adversely affect their positions with the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Purchase and Sale Agreement

The applicant has submitted an executed PSA to acquire the Seller's CHHA business assets, to be effective upon PHHPC approval of the change in ownership. The terms are summarized below:

Date:	July 5, 2016
Seller:	Hillside Manor Rehabilitation and Extended Care Center, LLC
Purchaser:	Jamaica Acquisition III, LLC
Assets Transferred:	All rights, title and interest in the CHHA designated assets. Includes on or after effective date: accounts receivable, retroactive rate increases, all CHHA assets, computers and software, assignable contracts and leases, security deposits and prepayments for CHHA services. Includes on closing: cash & equivalents in new operating account, copies of permitted business records, policy & procedures, intellectual property rights and trademarks operating certificates, Medicare and Medicaid Provider numbers and all other assignable licensers, permits and governmental authorizations; and good-will.
Fund Deficits:	Section 10.08: Buyer agrees to fund any deficits of the CHHA commencing as of the Effective Date until the closing. Buyer's affiliate shall loan the Seller the amount of working capital needed and shall be evidenced by a promissory note. At closing, the Buyer will assume the outstanding liabilities under the promissory note.
Excluded Assets:	All assets associated with business ventures other than the CHHA.
Assumed Liabilities:	Obligations and liabilities incurred by the CHHA on or after the Effective Date.
Purchase Price:	\$500,000 subject to adjustment in accordance with PSA. * * Buyer is entitled to any changes in Seller's balance sheet w/respect to the CHHA.
Payment:	\$250,000 escrow deposit \$250,000 due by closing.

The CHHA's purchase price is proposed to be satisfied via members' equity. BFA Attachment A is the net worth summary which shows the proposed members of Jamaica Acquisition III, LLC have sufficient resources to meet the equity requirement.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of January 27, 2017 the facility had no outstanding Medicaid liabilities.

Lease Agreement

A draft lease has been submitted to lease a portion of real property. The terms are summarized below:

Date:	July 5, 2016 (not fully executed by landlord)
Premises:	2,400 sq. ft., located at 188-11 Hillside Avenue, Hollis, NY 11423
Owner/Landlord:	Hudson Valley Real Estate Holding Corp.
Lessee:	Jamaica Acquisition III, LLC
Term:	July 5, 2016 (Effective Date of Consulting Agreement) to 4 months after closing.
Rent:	\$9,500 per month, including utilities, taxes & maintenance

The applicant has attested that the lease is a non-arm's length arrangement as the landlord and tenant have a pre-existing relationship in other nursing home transactions. Upon termination of the current lease, the applicant will seek to relocate the CHHA operations and will seek approval from the appropriate Regional Area Office prior to any relocation.

Operating Budget

The applicant has submitted the CHHA's current results for 2015, and the projected first and third year operating budgets, in 2017 dollars, as summarized below:

	<u>*Current</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare	\$171,742	\$2,320,350	\$7,458,600
Medicaid	0	1,396,585	4,489,224
Private/Other	0	1,871,250	6,015,000
Charity Care	0	(118,054)	(334,453)
Total Revenues	171,742	\$5,470,131	\$17,628,371
<u>Expenses</u>			
Operating	\$606,747	\$5,772,448	\$16,591,377
Capital	131,923	130,200	131,187
Total Expenses	\$738,670	\$5,902,648	\$16,722,564
Net Income or (Loss)	<u>(\$566,928)</u>	<u>(\$432,517)</u>	<u>\$905,807</u>
Utilization-cases	131	1,551	4,890
Utilization-visits	2,447	79,104	248,895
Average Revenue per case	\$1,311.00	\$3,526.84	\$3,604.98
Average Expense per case	\$5,638.70	\$3,805.70	\$3,419.75

*From the 2015 CHHA cost report

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

	<u>*Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare	83.2%	48.90%	48.90%
Medicaid	0.0%	24.45%	24.45%
Private /Other	16.8%	24.45%	24.45%
Charity	<u>0.0%</u>	<u>2.20%</u>	<u>2.20%</u>
	100.0%	100.00%	100.00%

* From the 2015 CHHA cost report

Charity care is expected to be 2%. The applicant state their policy is to assess individual based on income to determine eligibility for reduced fees and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.

Rate and revenue projections are as follows:

- Medicare revenue is based on an average episodic payment of approximately \$3,100.
- Medicaid revenue is based on an average episodic payment of approximately \$3,732.
- Private/Other (includes Medicare Advantage) average episodic rate is approximately \$5,000.

Expense projection are based on an average of 50 visits per episode including: 15 nursing visits, 10 therapy visits, 1 social service visit, and 24 home health aide visits. General and operating expenses are based on proposed operator's experience.

Utilization was based on the applicant's existing footprint in the NYC area. The breakeven point is expected to be reached by the second year on approximately 2,740 cases.

Capability and Feasibility

Jamaica Acquisition III, LLC will acquire the CHHA's operations for \$500,000 funded by members' equity. The total working capital requirement is estimated at \$1,416,292 based on two months of first year expenses of \$983,775 plus first year loss estimated at \$432,517. The \$1,416,292 will be funded from the members' equity. BFA Attachment A is the net worth summaries for the proposed members of Jamaica Acquisition III, LLC which reveals sufficient resources to meet the equity requirements.

The submitted budget projects a \$432,517 loss in the first year and a \$905,808 profit by the third year. Revenues and expenses will increase based the cases handled. Between the first and third year, the cost per visit is expected to decline by approximately 10% (going from \$74.62 to \$67.19) while the revenue per visit is expected to increase by approximately 2.4% (going from \$72.03 to \$73.44).

BFA Attachment B is Jamaica Acquisition III, LLC's pro forma balance sheet, which shows the entity will start with \$1,941,500 in equity (which includes first year's loss). The budget appears to be reasonable

BFA Attachment C is the Internal Financial Summary from as of November 30, 2016, which shows the facility had positive working capital, positive net assets and had a profit of \$76,740. As noted above, since July 5, 2016 Jamaica Acquisition III, LLC assisted in operating the CHHA.

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	Jamaica Acquisition III, LLC, Proposed Members Net Worth
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Internal Financial Summary, Hillside Manor Rehabilitation and Extended Care Center, LLC

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Liz's Compassionate Care, Inc.
Address: Horseheads
County: Chemung
Structure: For-Profit Corporation
Application Number: 2480L

Description of Project:

Liz's Compassionate Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock of which 100 shares are owned by Elizabeth Ennis. The remaining 100 shares are unissued.

The Board of Directors of Liz's Compassionate Care, Inc. is comprised of the following individual:

Elizabeth Ennis, PCA – President
Unemployed

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York Home Care Registry revealed that the individual is certified as a Personal Care Aide and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 205 Meadowlark Road, Horseheads, New York 14845:

Chemung Steuben Schuyler

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

Elizabeth Ennis disclosed that she was convicted of the charge of Issuing a Bad Check in violation of Section 190.05-01 of the Penal Law of the State of New York, a Class B Misdemeanor on February 6, 1995. Ms. Ennis was sentenced to a one year conditional discharge, a Crime and Victim Assistant Fee, restitution of \$55.69 and surcharge was waived. On February 29, 1996 the restitution of \$55.69 was paid and the case was closed. The Department's recommendation for approval has been made after consideration of the statutory factors found in the New York State Correction Law Sections 752 and 753.

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: March 1, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: T & L Care, Inc. d/b/a Caring Companions of Buffalo
Address: Derby
County: Erie
Structure: For-Profit Corporation
Application Number: 2482L

Description of Project:

T & L Care, Inc. d/b/a Caring Companions of Buffalo, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

T & L Care, Inc. d/b/a Caring Companions of Buffalo has proposed to operate as a Franchise of Home Companions, Inc. d/b/a ADL Caring Companions/First Step Home Care.

T & L Care, Inc. d/b/a Caring Companions of Buffalo has authorized 200 shares of stock which are owned as follows:

Timothy West - 78 shares Lana West – 102 shares Sheila Prowse – 20 shares

The Board of Directors of T & L Care, Inc. d/b/a Caring Companions of Buffalo is comprised of the following individuals:

Timothy West – President Lana West – Chief Executive Officer
Unemployed Preschool Teacher, Southtowns Catholic School

Sheila Prowse, RN – Director of Patient Care
Registered Nurse, Suburban Adult Services, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 6783 Black Road, Derby, New York 14047:

Erie Niagara Orleans Genesee
Wyoming Chautauqua Cattaraugus Allegany

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: March 9, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Western New York Homecare, Inc.
Address: Cheektowaga
County: Erie
Structure: For-Profit Corporation
Application Number: 2534L

Description of Project:

Western New York Homecare, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows:

Chaim Lieberman – 200 Shares
Administrator, Community Home Health Care
President, Priority Home Care Services

Affiliations:

- Community Home Health Care (2003-present)
- Cudley's Home Care Services, Inc. (2005-2015)
- All Pro Home & Health Care Services, Inc. (2012-2013)

The following individual is the sole member of the Board of Directors of Western New York Homecare, Inc.:

Chaim Lieberman – President/Director
(Previously Disclosed)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Community Home Health Care (LHCSA)
- Cudley's Home Care Services, Inc. (LHCSA)(2010-2015)
- All Pro Home & Health Care Services, Inc. (LHCSA)(2012-2013)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 1109 Harlem Road, Cheektowaga New York 14227:

Allegany	Cattaraugus	Chautauqua	Erie
Genesee	Monroe	Niagara	Orleans
Wyoming			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Medical Equipment, Supplies & Appliances	
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: March 8, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Angels at Heart Senior Care, LLC
 Address: Tonawanda
 County: Erie
 Structure: Limited Liability Company
 Application Number: 152081

Description of Project:

Angels at Heart Senior Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of Angels at Heart Senior Care, LLC comprise the following individuals:

Sandra L. Padovano, President/Member – 50%
 Co-Managing Member/Partner and Director of
 Business Finance, Angels at Heart Senior Care,
 LLC (companion care)
 Accountant/Business Management Consultant,
 MYB Business Support Services

Deborah A. Ayler, Vice President/Member – 50%
 Co-Managing Member/Partner and Director of Client
 Relations, Angels at Heart Senior Care, LLC
 (companion care)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant, Angels at Heart Senior Care, LLC, entered into a Stipulation of Settlement dated June 25, 2015 with Attorney General of New York State after receiving a cease and desist letter on January 22, 2015. The applicant was to immediately cease providing any home health aide services or personal care services, as defined in Public Health Law § 3602. Secondly, within thirty (30) days of execution of the Stipulation, the applicant was to apply for license pursuant to New York Public Health Law § 3605, and submit all required documentation and pay all attendant fees. The applicant was permitted to continue to provide homemaker and housekeeper or chore services as defined in Public Health Law § 3605.

The applicant proposes to serve the residents of the following counties from an office located at 320 Irvington Drive, Tonawanda, New York 14150:

Erie	Niagara
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
 Date: February 21, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Capital Region Home Care, LLC d/b/a Right At Home Albany
Address: Latham
County: Albany
Structure: Limited Liability Company
Application Number: 152104

Description of Project:

Capital Region Home Care, LLC d/b/a Right At Home Albany, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Capital Region Home Care, LLC d/b/a Right At Home Albany has entered into a franchise agreement with Right at Home, Inc.

The membership of Capital Region Home Care, LLC d/b/a Right At Home Albany is comprised of the following individuals:

Stacey Ellis, RN – 51% President, Capital Region Home Care, LLC d/b/a Right At Home Albany (Companion Care)	James Davis – 49% Chief Operating Officer, Capital Region Home Care, LLC d/b/a Right At Home Albany (Companion Care)
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The information provided by the Bureau of Emergency Medical Services indicated that James Davis held an EMT license (# 92674) and there had never been any disciplinary action taken against this individual or his license.

The applicant proposes to serve the residents of the following counties from an office located at 640 New Loudon Road, Suite 103, Latham, New York 12110:

Albany	Columbia	Fulton	Schenectady
Greene	Montgomery	Saratoga	Rensselaer

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 15, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review]

Name of Agency: S.M.R. Cares, Inc. d/b/a Home Helpers/Direct Link of Buffalo
Address: Delevan
County: Erie
Structure: For-Profit Corporation
Application Number: 161260

Description of Project:

S.M.R. Cares, Inc. d/b/a Home Helpers/Direct Link of Buffalo, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has proposed to operate as a Franchisee of H.H. Franchising Systems, Inc.

S.M.R. Cares, Inc. has authorized 10,000 shares of stock, which are owned as follows:

Scott M. Rimbey, EMT (expired 8/16) – 10,000 Shares
CEO/Manager, S.M.R. Cares, Inc.

The following individual is the sole member of the Board of Directors of S.M.R. Cares, Inc. d/b/a Home Helpers/Direct Link of Buffalo:

Scott M. Rimbey – President, Secretary, Treasurer
(Previously Disclosed)

A search of the individual (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Emergency Medical Services indicated that there were no issues with the Scott M Rimbey's licensure as an Emergency Medical Technician, but that he is not currently certified.

The applicant proposes to serve the residents of the following counties from an office located at 44 North Main Street, Delevan, New York, 14042:

Alleghany Cattaraugus Erie Wyoming

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 9, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: New York Regional Home Care, LLC
Address: Rochester
County: Monroe
Structure: Limited Liability Company
Application Number: 161284

Description of Project:

New York Regional Home Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The membership of New York Regional Home Care, LLC comprises the following individuals:

Nerissa Denaro, RN – 75%	Venancio Maloto – 25%
Clinician 1/RN, Rochester Regional Health CEO, Trinity Assistance Corporation	Chief Finance Officer, Trinity Assistance Corporation

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 3545 Buffalo Road #2, Suite 3, Rochester, New York 14624:

Monroe	Genesee	Livingston
Ontario	Wayne	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Housekeeper	Medical Social Services
Nutrition	Homemaker	Medical Equipment, Supplies & Appliances

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 6, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Independence Home Care of New York, Inc.
Address: East Amherst
County: Erie
Structure: For-Profit Corporation
Application Number: 162441

Description of Project:

Independence Home Care of New York, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Independence Home Care of New York, Inc. has authorized 200 shares of stock which are owned solely by Lydia Brown.

The Board of Directors of Independence Home Care of New York, Inc. is comprised of the following individual:

Lydia Brown, PhD – President
President/CEO, Clinical Healthcare Management

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 100 Summershade Court, East Amherst, New York 14051:

Erie Niagara

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	Medical Social Services

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: March 6, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Elegance Home Care LLC d/b/a Elegance at Home
Address: Garden City
County: Nassau
Structure: Limited Liability Company
Application Number: 162121

Description of Project:

Elegance Home Care LLC d/b/a Elegance at Home, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be affiliated with the assisted living program to be operated by Lynbrook Senior Care LLC d/b/a The Bristal at Lynbrook. The LHCSA and the ALP will have identical ownership.

The members of the Elegance Home Care LLC d/b/a Elegance at Home comprise the following individuals:

Steven Krieger, Esq. – Member/Manger – 30%
President, Steven M. Roberts Management Corp.

Jan A. Burman – Member/Manger – 21%
President, The Engel Burman Group

Affiliations:

- The Bristal at Lake Grove (02/15-present)
- The Bristal at Sayville (02/14-present)
- The Bristal at Armonk (02/14-present)
- The Bristal at Woodcliff Lake (11/13-present)
- The Bristal at White Plains (11/12-present)
- The Bristal at East Northport (03/11-present)
- The Bristal at North Woodmere (02/04-present)
- The Bristal at Westbury (11/01-present)
- The Bristal at East Meadow (01/01-present)
- The Bristal at North Hills (03/06-present)
- The Bristal at Massapequa (08/06-present)

Affiliations:

- The Bristal at Lake Grove (02/15-present)
- The Bristal at Sayville (02/14-present)
- The Bristal at Armonk (02/14-present)
- The Bristal at White Plains (11/12-present)
- The Bristal at East Northport (03/11-present)
- The Bristal at Massapequa (08/06-present)

Scott M. Burman – Member/Manger – 19.5%
Principle, The Engel Burman Group

David M. Burman – Member/Manger – 19.5%
Principle, The Engel Burman Group

Affiliations:

- The Bristal at Lake Grove (02/15-present)
- The Bristal at Sayville (02/14-present)
- The Bristal at Armonk (02/14-present)
- The Bristal at White Plains (11/12-present)
- The Bristal at East Northport (03/11-present)
- The Bristal at Massapequa (08/06-present)

Affiliations:

- The Bristal at Lake Grove (02/15-present)
- The Bristal at Sayville (02/14-present)
- The Bristal at Armonk (02/14-present)
- The Bristal at White Plains (11/12-present)
- The Bristal at East Northport (03/11-present)
- The Bristal at Massapequa (08/06-present)

Michael S. Weiss, Esq. – Member/Manger – 5%
Corporate Counsel, The Engel Group

Jonathan M. Weiss – Member/Manger – 5%
The Engel Group

Affiliations:

- The Bristal at Lake Grove (02/15-present)
- The Bristal at Sayville (02/14-present)
- The Bristal at Armonk (02/14-present)
- The Bristal at White Plains (11/12-present)
- The Bristal at East Northport (03/11-present)
- The Bristal at Lynbrook (11/07-present)
- Bay Park Center for Nursing & Rehabilitation, LLC (01/07-present)
- The Bristal at Massapequa (08/06-present)
- The Bristal at North Hills (03/09-present)
- The Bristal at North Woodmere (02/04-present)
- The Bristal at Westbury (11/01-present)
- The Bristal at East Meadow (01/01-present)

Affiliations:

- The Bristal at Lake Grove (02/15-present)
- The Bristal at Sayville (02/14-present)
- The Bristal at Armonk (02/14-present)
- The Bristal at White Plains (11/12-present)
- The Bristal at East Northport (03/11-present)
- The Bristal at Massapequa (08/06-present)

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for Michael Weiss and Steven Krieger.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- The Bristal at Lake Grove (02/15-present)
- The Bristal at Sayville (02/14-present)
- The Bristal at Armonk (02/14-present)
- The Bristal at White Plains (11/12-present)
- The Bristal at East Northport (03/11-present)
- The Bristal at Lynbrook
- The Bristal at Massapequa
- The Bristal at North Hills (03/09-present)
- The Bristal at North Woodmere
- The Bristal at Westbury
- The Bristal at East Meadow
- Bay Park Center for Nursing & Rehabilitation, LLC

Bay Park Center for Nursing and Rehabilitation, LLC was fined eighteen thousand dollars (\$18,000) pursuant to a Stipulation and Order dated May 30, 2012 for surveillance findings on February 16, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Definition Free from Abuse; 415.4(b) Development of Abuse Policies; 415.12(h)(2) Quality of Care: Accidents; 415.12(i)(l) Quality of Care: Nutrition; and 415.26(c)(1)(iv) Nurse Aide Competency.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that 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 applicant proposes to serve the residents of the following counties from an office located at 67 Clinton Street, Garden City, New York 11530:

Nassau Queens Rockland Suffolk Westchester

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Respiratory Therapy
Physical Therapy Occupational Therapy

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: February 8, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: St. Johnland LHCSA, Inc. d/b/a St. Johnland LHCSA
 Address: Kings Park
 County: Suffolk
 Structure: Not-For-Profit Corporation
 Application Number: 162301

Description of Project:

St. Johnland LHCSA, Inc., a proposed not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. St. Johnland Nursing Center, Inc., a not-for-profit corporation, will be the sole member of St. Johnland LHCSA Inc. d/b/a St. Johnland LHCSA.

This LHCSA will be associated with the Assisted Living Program to be operated by St. Johnland Assisted Living Program, a proposed corporation. The Board of Directors of the LHCSA and the ALP will be identical.

The Board of Directors of St. Johnland LHCSA, Inc. and St. Johnland Nursing Center, Inc. are identical and are comprised of the following individuals:

Linda (aka Trudy) H. Calabrese – President Retired	Carl H. Doerge, Jr. – Vice-President Retired
David H. Deming – Vice-President Managing Partner, TAG Healthcare Advisors, LLC	Sharon A. Fuentes, RN - Vice-President Retired
Peter L. Fetterolf – Secretary Retired	Joan M. Heaney – Assistant Secretary Retired
William D. Keen, CPA – Treasurer Retired	Michael A. Agnes, CPA – Assistant Treasurer Retired
Fredric R. LaMarca – Assistant Treasurer Retired	Virginia P. Jacobsen – Board Member Retired
Arthur F. Brings – Board Member Vice-President of Facilities, Cold Spring Harbor Laboratory	Marian Conway – Board Member Executive Director, NY Community Bank Foundation
Thomas Zoller – Board Member President, Walnut Grove Builders, Inc.	Brian E. Swiggett - Board Member Managing Partner, Prismark Partners, LLC
Heather W. Lane - Board Member Retired	Arlene Q. Vermeylen, Esq. – Board Member Unemployed

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

A Certificate of Good Standing stating that Arlene Vermylen is an inactive member in good standing was received from the District of Columbia Court of Appeals.

The applicant proposes to serve the residents of the following counties from an office located at 395 Sunken Meadow Road, Kings Park, New York 11754:

Suffolk

Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facility/ agency was performed as part of this review:

St. Johnland Nursing Center, Inc. (SNF)

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has proved 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: February 14, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Ateret of Midwood LLC d/b/a Ateret Home Care
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 162310

Description of Project:

Ateret of Midwood LLC d/b/a Ateret Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with an Assisted Living Program to be operated by Ateret of Midwood LLC d/b/a Ateret Avot Assisted Living Program. The LHCSA and the ALP will have identical ownership.

The membership of Ateret of Midwood LLC d/b/a Ateret Home Care comprises the following individuals:

Moses J. Scharf, Managing Member – 65%
Owner, Ateret Avot, LLC
Chief Operating Officer, New Century Home Care, Inc.

Affiliations:

New Century Home Care (LHCSA, 2002-present)

Eliyahu Scharf, Member – 25%
Director of Operations, Ateret Avot, LLC

Rivkie Scharf, Member – 10%
Owner/President, New Century Home Care, Inc.

Affiliations:

New Century Home Care (LHCSA, 2002-present)

A search of the individuals and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1410 East 10th Street, Brooklyn, New York 12230:

Kings	Bronx	Queens
New York	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Personal Care	Occupational Therapy	Speech-Language Pathology

A seven (7) year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

New Century Home Care (LHCSA, 2009-present)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: February 1, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: St. Joseph's Adult Care Home, Inc. d/b/a St. Joseph's Home Care
 Address: Sloatsburg
 County: Rockland
 Structure: Not-For-Profit Corporation
 Application Number: 162311

Description of Project:

St. Joseph's Adult Care Home, Inc. d/b/a St. Joseph's 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 the Assisted Living Program, St. Joseph's Assisted Living, to be operated by St. Joseph's Adult Care Home, Inc.

The Board of Directors of St. Joseph's Adult Care Home, Inc. d/b/a St. Joseph's Home Care is comprised of the following individuals:

Sister Kathleen Hutsko, President Provincial Supervisor, Sisters Servants of Mary Immaculate	Sister Michele Yakymovitch, Vice President Administrator, Sisters Servants of Mary Immaculate
Sister Barbara Ann Stefaniak (fka Alexandra Stefaniak), Treasurer Assistant Administrator/Treasurer, St. Joseph's Adult Care Home	Sister Cecelia Ann Sworin, SSMI, Secretary Pennsylvania Licensed RN – Inactive Retired
Sister Natalya Stoczanyyn, Board Member Spanish Teacher, St. Nicholas Ukrainian Catholic Church Editor in Chief, SOWER Newspaper for Ukrainian Diocese of Stanford	Sister Elaine Ilniski, Board Member School Principal, St. Nicholas Ukrainian Catholic Church/School

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The State of Pennsylvania, Department of State, indicates that the license of the health care professional associated with this application is currently inactive and no disciplinary actions were found for this license.

The applicant proposes to serve the residents of Rockland County from an office located at 125 Sisters Servants Lane, Sloatsburg, New York 10974:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

St. Joseph's Adult Care Home

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated the following:

St. Joseph's Adult Care Home was fined \$1,140 (one thousand one hundred forty dollars) pursuant to a stipulation and order dated September 23, 2013 for deficiencies found under 18 NYCRR 487.6(c)(10) Resident Funds and Valuables.

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: February 16, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Rosewood of Rochester, LLC d/b/a Rosewood of Rochester Home Care
Address: Rochester
County: Monroe
Structure: Limited Liability Company
Application Number: 162312

Description of Project:

Rosewood of Rochester, LLC d/b/a Rosewood of Rochester Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA will be affiliated with the assisted living program to be operated by Rosewood of Rochester, LLC at Rosewood of Rochester Assisted Living.

The members of Rosewood of Rochester, LLC d/b/a Rosewood of Rochester Home Care comprise the following individuals:

Steven E. Lowinger, EMT (expired 10/16), Member – 50%
Executive Director, DMC Scientific LLC
Marketing Director, Cocoon Innovations LLC

Brian H. Rosenman, Member – 50%
Owner/Operator, Sutton Gardens LLC

Affiliation:

- Rosewood on the Sound, LLC (08/05-Present)

Affiliations:

- Sutton Gardens Senior Living (ALR/EALR) (11/11-Present)
- Narrowsburg Manor Kelly's Home for Adults" (AH) (11/11-Present) (Receivership)
- Birchwood Suites Realty LLC (AH) (09/14-Present)
- Rosewood on the Sound, LLC (AH/ALR/EALR) (08/15-Present)
- Shire Senior Living LLC (LHCSA/AH/ALP) (08/15-Present)
- Kenwell Gardens d/b/a Oakwood Senior Living (AH/ALP) (01/16-Present)
- Sullivan Manor Home Care Agency (LHCSA) (08/16-Present)
- Garden Home Care LLC (LHCSA) (01/16-Present)
- Comprehensive Elder Care LLC (LHCSA) (08/16 – Present)

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

- Sutton Gardens Senior Living (ALR/EALR) (11/11-Present)
- Narrowsburg Manor "Kelly's Home for Adults" (AH) (11/11-Present) (Receivership)
- Birchwood Suites Realty LLC (AH) (09/14-Present)
- Rosewood on the Sound, LLC (AH/ALR/EALR) (08/15-Present)
- Shire Senior Living LLC (LHCSA/AH/ALP) (08/15-Present)
- Kenwell Gardens d/b/a Oakwood Senior Living (AH/ALP) (01/16-Present)
- Sullivan Manor Home Care Agency (LHCSA) (8/16-Present)
- Garden Home Care LLC (LHCSA) (01/16-Present)
- Comprehensive Elder Care LLC (LHCSA) (08/16-Present)

Sutton Gardens, LLC was fined five hundred dollars (\$500) pursuant to a stipulation and order dated March 16, 2016 for Enforcement for surveillance inspection report dated July 6, 2015. Deficiencies were found under 18 NYCRR in the area of Records and Reports (487.10(e)(2)).

Kelly's Home for Adults was fined thirty thousand dollars (\$30,000) pursuant to a stipulation and order dated February 6, 2014 for Enforcement for surveillance inspection reports dated September 8, 2011, September 20, 2012, January 17, 2013 and October 10, 2013. Deficiencies were found under 18 NYCRR in the areas of Environmental Standards (487.11), Admission Standards (487.10), Resident Protections (487.6) and Resident Services (487.7).

Kelly's Home for Adults was fined one thousand five hundred dollars (\$1,500) pursuant to a stipulation and order dated October 22, 2014 for Enforcement for surveillance inspection reports dated October 10, 2013 and March 4, 2014. Deficiencies were found under 18 NYCRR in the area of Environmental Standards (487.11).

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 4635 West Henrietta Road, Rochester, New York 14467:

Genesee	Livingston	Monroe
Ontario	Wayne	

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Speech-Language Pathology	Physical Therapy	Occupational Therapy

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 26, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Advanced Care, Inc.
Address: Farmingdale
County: Nassau
Structure: For-Profit Corporation
Application Number: 161046

Description of Project:

Advanced 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.

Advanced Care, Inc. was previously approved by the Public Health Council at its May 29, 1992 meeting and subsequently licensed as 9296L001, 9296L002, 9296L003 and 9296L004. Advanced Care, Inc. subsequently submitted LHCSA application #2325L which was approved by the Public Health and Health Planning Council at its April 10, 2014 meeting for AxelaCare Holdings, Inc. to acquire 100% of the stock of Advanced Care, Inc. At that time, all issued and outstanding shares of stock were solely owned by AxelaCare Intermediate Holdings, Inc. through their subsidiary AxelaCare Holdings, Inc.

This application seeks Public Health and Health Planning Council approval for Optum RX, Inc.'s acquisition of 100% membership of AxelaCare Intermediate Holdings, LLC through a stock purchase agreement that became effective on November 16, 2015. On November 9, 2015, and in accordance with Section 765-1.14 of Title 10 NYCRR, the acquiring entity submitted an affidavit to the New York State Department of Health stating it would refrain from exercising control over the LHCSA until the Public Health and Health Planning Council (PHHPC) grants approval.

The sole stockholder of Advanced Care, Inc. (the LHCSA) will remain AxelaCare Holdings, Inc. The sole stockholder of AxelaCare Holdings, Inc. will remain AxelaCare, LLC. The sole member of AxelaCare, LLC will remain AxelaCare Intermediate Holdings, LLC.

OptumRX, Inc. is the sole corporate member of AxelaCare Intermediate Holdings, LLC.

OptumRX, Inc. authorized 1,000,000 shares of stock, which are owned as follows:

Optum RX Holdings, LLC – 100 Shares

999,000 shares of stock remain unissued.

The Board of Directors of OptumRX, Inc. is comprised of the following individuals:

Mark A. Thierer, Director & CEO
CEO, Secretary, Treasurer, Director, UnitedHealth
Group Incorporated

Timothy A. Wicks, Director & President
CEO & EVP, OptumRX, SVP, Optum Insight,
UnitedHealth Group Incorporated

Optum, Inc. is the sole corporate member of Optum RX Holdings, LLC.

The Board of Managers for Optum RX Holdings, LLC is comprised of the following individuals:

Mark A. Thierer, Board Manager & CEO
(Previously Disclosed)

Timothy A. Wicks, Board Manager & President
(Previously Disclosed)

Optum, Inc. authorized 10,000 shares of stock which are owned as follows:

United HealthCare Services, Inc. – 100 Shares

9,900 shares of stock remain unissued.

The Board of Directors of Optum, Inc. is comprised of the following individuals:

Karen L. Erickson, Director & Chief Executive Officer
Executive Vice President, Chief Quality Officer,
UnitedHealth Group Incorporated

Amy L. Shaw, Director
Vice President and Controller, Optum,
UnitedHealth Group Incorporated

United HealthCare Services, Inc. authorized 10,000 shares of stock which are owned as follows:

UnitedHealth Group Incorporated – 100 Shares

9,000 shares of stock remain unissued.

The Board of Directors of United HealthCare Services, Inc. is comprised of the following individuals:

Tarrant J. Putnam, Director, CEO, President
Senior Vice President & Controller, UnitedHealth
Group Incorporated

Brian R. Thompson, Director
UnitedHealthcare M&R CFO, UnitedHealth Group
Incorporated

United HealthCare Services, Inc. authorized 10,000,000 shares of preferred stock and 3,000,000,000 shares of common. As of January 29, 2016 950,673,998 shares of common stock have been issued. No individuals own ten (10) percent or more of the issued common stock. 2,049,326,002 shares of common stock remain unissued. 10,000,000 shares of preferred stock remain unissued.

The Board of Directors of UnitedHealth Group Incorporated is comprised of the following individuals:

Stephen J. Hemsley, Director, CEO
CEO/Director, UnitedHealth Group Incorporated
Director, Cargill, Incorporated

Larry C. Renfro, Vice Chair
Vice Chairman, UHG & CEO, Optum, UnitedHealth
Group Incorporated

David S. Wichmann, President & CFO
CFO, President, UnitedHealth Group Incorporated

William C. Ballard, Jr., Director
Director, UnitedHealth Group Incorporated

Edson de Godoy Bueno, M.D., Director
Director, UnitedHealth Group Incorporated
President & CEO, Amil Assistência Médica
Internacional Ltda.
Vice President, Federação Nacional de Saúde
Suplementar
President, Instituto de Estudos de Saúde
Suplementar – IESS
Global Advisory Council, Bank of America

Richard T. Burke, Sr., Esq. Director
Director & Chairman of the Board, UnitedHealth
Group Incorporated
General Partner, Rainy Partners LLC
Director, Meritage Homes Corporation

Affiliation:

- Amil Assistência Médica Internacional Ltda.
(Brazil)

Robert J. Darretta, Director
Director, UnitedHealth Group Incorporated
Trustee, Putnam Investments

Michele J. Hooper, Director
Director, UnitedHealth Group Incorporated
Cofounder, President & CEO, The Directors' Council
Founder/President, MJH Consulting
Director, BPG Industries
Director, Center for Audit Quality

Rodger A. Lawson, Director
 Director, UnitedHealth Group Incorporated
 Chairman of the Board, E*TRADE Financial Corporation

Glenn M. Renwick, Director
 Director, UnitedHealth Group Incorporated
 Director, CEO, President; Executive Committee
 Chairman & Member, The Progressive Corporation
 Director; Vice President, Progressive RSC, Inc.
 President, Progressive Insurance Foundation
 Director, Executive Committee Chairman,
 Progressive County Mutual Insurance Co.
 Director, ASI Lloyds, Inc.
 Director, Progressive Director Holdings, Inc.
 Director, Drive Insurance Holdings Company, Inc.
 Director, Progressive Commercial Holdings, Inc.
 Director, Fiserv, Inc.
 Director, ARX Holdings Corp
 Director, American Strategic Insurance Corp
 Director, ASI Lloyds
 Director, ASI Assurance Corp
 Director, ASI Select Insurance Corp
 Director, Pacific Motor Club
 Director, ASI Underwriters of Texas, Inc.
 Director, Sunshine Security Agency, Inc.
 Director, ASI Services, Inc.
 Director, Safe Harbour Underwriters, LLC
 Director, ASI Underwriters Corp
 Director, e-Ins, LLC
 Director, ASI Preferred Insurance Corp
 Director, ASI Home Insurance Corp
 Director, ASI RE, LLC
 Director, ProgNY Agency, Inc.

Kenneth I. Shine, M.D., Director
 Retired

Gail R. Wilensky, Ph.D., Director
 Director, UnitedHealth Group Incorporated
 Senior Fellow, Project HOPE
 Director, Quest Diagnostics Incorporated
 Trustee, Uniformed Services University of Health Sciences
 Trustee, UMWA Health & Retirement Funds
 Trustee, National Opinion Research Center
 Director, The Brainscope Company
 Director, Geisinger Health System Foundation

A search of the individuals named (and entities) above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve the residents of the following counties from the offices listed below:

Address	Counties Served
931 Conklin St., Suite D Farmingdale, NY 11735	Dutchess, Nassau, Suffolk, Orange, Putnam, Rockland, Westchester, Sullivan and Queens
61-43 186th Street Fresh Meadows, NY 11365	Bronx, Kings, New York and Richmond
25 Post Road, Suite 5 Albany, NY 12205	Albany, Columbia, Delaware, Fulton, Greene, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster,

	Warren, Washington, Clinton, Essex, Franklin and Hamilton
6508A Basile Row East Syracuse, NY 13057	Broome, Cayuga, Chenango, Cortland, Herkimer, Madison, Oneida, Onondaga, Oswego, Tioga, Tompkins, Chemung, Jefferson, Lewis and St. Lawrence

The applicant proposes to continue to provide nursing services.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A Certificate of Good Standing has been received for the attorney associated with this application.

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Facility/Agency Name	Type of Agency	State	Compliance Time Frame
Advanced Care, Inc.	LHCSA	NY	
Nutritional/Parenteral Home Care, Inc.	Home Care Service Agency	AL	
Nutritional/Parenteral Home Care of Huntsville, Inc.	Home Medical Equipment	AL	1/2006-present
Nutritional/Parenteral Homecare, Inc.	Home Medical Equipment	AL	1/2006-present
Nutritional/Parenteral Homecare, Inc.	Home Medical Equipment	AL	1/2006-present
Nutritional/Parenteral Home Care, Inc.	Home Medical Equipment	AL	1/2006-present
AxelaCare Holdings, Inc. DBA Sirona Infusion, LLC	Home Care Agency	CO	5/10/12-present
Ambient Healthcare of Central Florida, Inc.	Home Health Agency	FL	
Ambient Healthcare of West Florida, Inc.	Home Health Agency	FL	
Ambient Healthcare of South Florida, Inc.	Home Health Agency	FL	
Ambient Healthcare of Northeast Florida, Inc.	Home Health Agency	FL	
Ambient Healthcare of West Florida, Inc.	Home Health Agency	FL	
Ambient Nursing Services, Inc.	Home Health Agency	FL	
Ambient Nursing Services, Inc.	Home Health Agency	FL	
Ambient Nursing Services, Inc.	Home Health Agency	FL	
Ambient Healthcare of South Florida, Inc.	Home Health Agency	FL	
Ambient Healthcare of West Florida, Inc.	Home Health Agency	FL	
Ambient Healthcare of South Florida, Inc.	Bio Waste Permit	FL	
Ambient Healthcare of Northeast Florida, Inc.	Bio Waste Permit	FL	
Ambient Healthcare of West Florida, Inc.	Bio Waste Permit	FL	
Ambient Healthcare of West Florida, Inc.	Bio Waste Permit	FL	
Ambient Healthcare of West Florida, Inc.	Bio Waste Permit	FL	
Ambient Healthcare of Central Florida, Inc.	Bio Waste Permit	FL	
Ambient Healthcare of Central Florida, Inc.	Bio Waste Permit	FL	

AxelaCare Health Services	Home Nursing Agency	IL	
AxelaCare Health Solutions, LLC	Home Health Agency	IN	
AxelaCare Health Solutions, LLC	Home Health Agency	KS	1/2006-present
Trinity Infusion, Inc.	Home Care Service Agency	NC	
Home Infusion with Heart, LLC DBA AxelaCare	Home Health Agency	NE	7/24/15-present
Advanced Care, Inc.	Home Care Service Firm	NJ	7/7/09-6/30/15
Sirona Infusion, LLC	Health Care Service Agency	NM	2011-present
AxelaCare Health Solutions, LLC	Home and Community Service Support Agency	TX	
AxelaCare Health Solutions, LLC	Residential Service Agency	MD	
Serquinox LLC DBA AxelaCare	Residential Service Agency	MD	
Nutritional/Parenteral Home Care of Huntsville, Inc.	Pharmacy & Controlled Substance	AL	
Nutritional/Parenteral Home Care of Huntsville, Inc.	Parenteral	AL	
Nutritional/Parenteral Homecare, Inc.	Pharmacy & Controlled Substance	AL	6/21/01-5/25/16
Nutritional/Parenteral Homecare, Inc.	Parenteral	AL	
Nutritional/Parenteral Homecare, Inc.	Pharmacy & Controlled Substance	AL	2/4/08-5/25/16
Nutritional/Parenteral Homecare, Inc.	Parenteral	AL	
Nutritional/Parenteral Home Care, Inc.	Pharmacy & Controlled Substance	AL	3/31/14-5/25/16
Nutritional/Parenteral Home Care, Inc.	Parenteral	AL	
Access I.V., LLC	Pharmacy	CA	
ARC Infusion, LLC DBA Access IV	Pharmacy	CA	
Access I.V., LLC	Pharmacy	CA	
InfuSource, LLC dba Access IV	Pharmacy	CA	
Sirona Infusion, LLC DBA AxelaCare	Pharmacy	CO	
Ambient Healthcare of Central Florida, Inc.	Pharmacy	FL	12/13/2002-present
Ambient Healthcare of West Florida, Inc.	Pharmacy	FL	12/23/2002-present
Ambient Healthcare of Northeast Florida, Inc.	Pharmacy	FL	9/18/2006-present
Ambient Healthcare of West Florida, Inc.	Pharmacy	FL	8/28/2007-present
Ambient Healthcare of Central Florida, Inc.	Pharmacy	FL	7/11/2014-present
Ambient Healthcare of West Florida, Inc.	Pharmacy	FL	7/10/2012-present
Ambient Healthcare of Georgia, Inc.	Pharmacy	GA	
Ambient Healthcare of Georgia, Inc.	Pharmacy	GA	
AxelaCare Health Solutions, LLC	Pharmacy	IA	2009-2016
Home Infusion With Heart, LLC DBA AxelaCare	Pharmacy	IA	2010-2016
AxelaCare Health Solutions, LLC	Pharmacy	IL	01/06-Present
Home Infusion With Heart, LLC DBA AxelaCare	Pharmacy	IL	

Home Infusion With Heart, LLC DBA AxelaCare	Controlled Substance	IL	
AxelaCare Health Solutions, LLC	Pharmacy	IN	9/5/2008-
AxelaCare Health Solutions, LLC	Pharmacy	KS	2/11/2015-present
AxelaCare Health Solutions, LLC	Pharmacy	MD	1/2006-present
Serquinox LLC DBA AxelaCare	Pharmacy	MD	1/2006-present
Trinity Infusion, Inc., dba AxelaCare	Pharmacy	NC	11/9/15-present
Sirona Infusion, LLC	Pharmacy	NM	
Sirona Infusion, LLC	Pharmacy	NM	
Guardian Health Systems, Limited Partnership	Pharmacy	OK	1/2006-present
Home Care I.V. of Bend, LLC dba AxelaCare	Pharmacy & Controlled Substance	OR	
Summit Home Infusion, LLC	Pharmacy	PA	
AxelaCare Health Solutions, LLC	Pharmacy	PA	
Pronetics Healthcare Group, Inc.	Pharmacy	SC	3/7/2002-present
AxelaCare Health Solutions, LLC	Pharmacy	TX	
AxelaCare Health Solutions, LLC	Pharmacy	TX	1/2006-present

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The states of Alabama, California, Colorado, Florida, Indiana, Iowa, Kansas, Maryland, North Carolina, Nebraska, New Jersey, New Mexico, Oklahoma, Oregon, Pennsylvania, South Carolina, and Texas have indicated that the above referenced agencies are in good standing with the respective licensing agencies.

The applicant requested compliance information from the States of Alabama, California, Colorado, Illinois (but located in Nebraska) Florida, Georgia, and North Carolina, but these states have either not responded or responded regarding only some of the licensed facilities in the respective state. The applicant submitted signed attestations stating that these agencies/facilities in the above listed states have not taken any enforcement or administrative actions against these agencies with the following two exceptions:

- The Marina, a California Pharmacy was subject to a citation and fine of five hundred (\$500.00) dollars in August 2015 for two instances of dispensing the incorrect nutritional supplement.
- Home Infusion With Heart, LLC DBA AxelaCare, an Illinois Pharmacy received a notice of disciplinary action and a fine of five hundred (\$500.00) dollars in July 2015 for employing an unlicensed pharmacist for 63 days.

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: February 27, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: YALR Operating, LLC
Address: Cortlandt Manor
County: Westchester
Structure: Limited Liability Company
Application Number: 161186

Description of Project:

YALR Operating, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Catharine Field Home, Inc. d/b/a The Seabury at Fieldhome ALP was previously approved as a home care services agency by the Public Health Council at its September 22, 1995 meeting and was subsequently licensed as 9466L001 effective January 30, 2003.

The purpose of this application is to seek approval for YALR Operating, LLC to acquire the LHCSA currently operated by Catharine Field Home, Inc. through an asset purchase agreement.

This LHCSA will be associated with the assisted living program to be operated by YARL Operating, LLC d/b/a Yorktown Assisted Living Residence and will serve the residents of the assisted living program. The LHCSA and the ALP will have identical ownership.

The members of YARL Operating, LLC are comprised of the following individuals:

Ephraim D. Zagelbaum, NHA – Managing Member, 50%
CEO, Personal Healthcare

Alexander Barth, NHA – Managing Member, 28%
Managing Partner, Personal Healthcare

Affiliations:

- Alpine Rehabilitation & Nursing Center (07/2009-present)
- Auburn Rehabilitation & Nursing Center (03/2016-present)
- Cambridge Rehab & Nursing Center (09/2010-present)
- Highland Rehabilitation & Nursing Center (02/2013-present)
- Medford Rehab & Nursing Center (04/2012-present)
- Norwich Rehabilitation & Nursing Center (01/2011-present)
- Plattsburgh Rehabilitation & Nursing Center (01/2016-present)
- Rehab & Nursing Center at Everett (01/2013-present)
- Sodus Rehabilitation & Nursing Center (03/2016-present)
- Tarrytown Hall Care Center (4/2008-present)
- Utica Rehabilitation & Nursing Center (02/2015-present)

Affiliations:

- Alpine Rehabilitation & Nursing Center (07/2009-present)
- Auburn Rehabilitation & Nursing Center (03/2016-present)
- Cambridge Rehab & Nursing Center (09/2010-present)
- Highland Rehabilitation & Nursing Center (02/2013-present)
- Medford Rehab & Nursing Center (04/2012-present)
- Norwich Rehabilitation & Nursing Center (01/2011-present)
- Plattsburgh Rehabilitation & Nursing Center (01/2016-present)
- Rehab & Nursing Center at Everett (01/2013-present)
- Sodus Rehabilitation & Nursing Center (03/2016-present)
- Tarrytown Hall Care Center (4/2008-present)
- Utica Rehabilitation & Nursing Center (02/2015-present)

Yehuda Walden – Managing Member, 12%
Managing Partner, Personal Healthcare

Yechiel Y. Zagelbaum, M.D. – Member, 10%
Pediatrician, Self-employed

Affiliations:

- Auburn Rehabilitation & Nursing Center (03/2016-present)
- Cambridge Rehab & Nursing Center (09/2010-present)
- Highland Rehabilitation & Nursing Center (02/2013-present)
- Medford Rehab & Nursing Center (04/2012-present)
- Plattsburgh Rehabilitation & Nursing Center (01/2016-present)
- Rehab & Nursing Center at Everett (01/2013-present)
- Sodus Rehabilitation & Nursing Center (03/2016-present)
- Utica Rehabilitation & Nursing Center (02/2015-present)

Affiliations:

- Alpine Rehabilitation & Nursing Center (07/2009-present)
- Cambridge Rehab & Nursing Center (09/2010-present)
- Highland Rehabilitation & Nursing Center (02/2013-present)
- Medford Rehab & Nursing Center (04/2012-present)
- Norwich Rehabilitation & Nursing Center (01/2011-present)
- Rehab & Nursing Center at Everett (01/2013-present)
- Tarrytown Hall Care Center (4/2008-present)
- Utica Rehabilitation & Nursing Center (02/2015-present)

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

The Bureau of Professional Credentialing has indicated that Ephraim D. Zagelbaum NHA license #05060 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of Professional Credentialing has indicated that Alexander Barth NHA license #05215 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Alpine Rehabilitation & Nursing Center
- Auburn Rehabilitation & Nursing Center (03/2016-present)
- Highland Rehabilitation & Nursing Center (02/2013-present)
- Norwich Rehabilitation & Nursing Center (01/2011-present)
- Plattsburgh Rehabilitation & Nursing Center (01/2016-present)
- Sodus Rehabilitation & Nursing Center (03/2016-present)
- Tarrytown Hall Care Center
- Utica Rehabilitation & Nursing Center (02/2015-present)
- Cambridge Rehab & Nursing Center – Massachusetts (09/2010-present)
- Medford Rehab & Nursing Center – Massachusetts (04/2012-present)
- Rehab & Nursing Center at Everett – Massachusetts (01/2013-present)

Alpine Rehabilitation and Nursing Center was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated January 5, 2016 for surveillance findings on March 6, 2014. Deficiencies were found under 10 NYCRR 415.26 Administration.

Highland Rehabilitation & Nursing Center was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated January 3, 2017 for surveillance findings on July 14, 2016. Deficiencies were found under 10 NYCRR 415.5(h)(4) Environment Comfortable and Safe Temperature Level.

Plattsburgh Rehabilitation & Nursing Center was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated January 31, 2017 for surveillance findings on February 29, 2016. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicants submitted affidavits stating that the State of Massachusetts had enforced the following residential health care facilities as indicated below:

Cambridge Rehab & Nursing Center (Massachusetts) was fined two thousand two hundred and seventy-five dollars (\$2,275) pursuant to an incident on January 12, 2015. Deficiencies were found – F282G: Elopement.

Medford Rehab & Nursing Center (Massachusetts) was fined ninety-six thousand seven hundred and eight five dollars (\$96,785) pursuant to an incident on February 27, 2013. Deficiencies were found - F309L: A Resident Seizure was announced as a wrong code.

The Rehab & Nursing Center at Everett (Massachusetts) was fined forty-nine thousand four hundred dollars (\$49,400) pursuant to an incident on June 4, 2013. Deficiencies were found – F154G: Elopement.

The applicant proposes to serve Westchester County from the office located at 2276 Catherine Street, Cortlandt Manor, New York 10567.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 15, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Brighton Home Care, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 161455

Description of Project:

Brighton Home Care, Inc, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Brighton Home Care, Inc. (f/k/a Chinatown Home Health Care Inc.) was previously approved as a home care services agency by the Public Health and Health Planning Council at its February 12, 2015 meeting and subsequently licensed as 2268L001 effective January 19, 2016. At that time the shareholders were Jie Li (100 shares) and Yue Lam (100 shares).

Brighton Home Care, Inc. and Extreme Care LHCSA Management, LLC entered into a management agreement which was approved by the NYS Department of Health on August 29, 2016.

The purpose of this application is to establish Extreme Care LHCSA Management, LLC as the sole shareholder of Brighton Home Care, Inc. Brighton Home Care, Inc. has authorized 200 shares of stock, which will be solely owned by Extreme Care LHCSA Management, LLC.

The proposed Board of Directors of Brighton Home Care, Inc. is comprised of the following individuals:

David Israilov, President/Board Member Manager, Sandoony USA	Michael Israilov, Treasurer/Board Member Manager, Sandoony USA
Eva Israilova, RN, BSN, Secretary/Board Member RN, All American Home Care	

The membership of Extreme Care LHCSA Management, LLC comprises the following individuals:

David Israilov – 40% Disclosed Above	Michael Israilov – 40% Disclosed Above
Eva Israilova, RN, BSN – 20% Disclosed Above	

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to continue serve the residents of the following counties from an office located at 100 Park Avenue, 16th Floor, New York, New York 10017:

New York	Kings	Bronx
Queens	Richmond	Nassau

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 16, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: GALR Operating LLC d/b/a Ghent Assisted Living
Address: Ghent
County: Columbia
Structure: Limited Liability Company
Application Number: 162070

Description of Project:

GALR Operating LLC d/b/a Ghent Assisted Living, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Hudson Valley Care Center, Inc. d/b/a Green Manor Home Care Services Agency was previously approved as a home care services agency by the Public Health Council at its January 25, 2002 meeting and subsequently licensed as 1104L001 on February 28, 2002.

Hudson Valley Care Center, Inc. d/b/a Green Manor Home Care Services Agency is currently being operated by Whittier Health Services, Inc., a Massachusetts corporation, under a receivership agreement.

This LHCSA will be associated with the Adult Home/Assisted Living Program to be operated by GALR Operating LLC.

The membership of GALR Operating LLC d/b/a Ghent Assisted Living comprises the following individuals:

Ephraim Zagelbaum, LNHA – 50%
President/CEO, Personal Healthcare

Affiliations:

Tarrytown Hall Care Center (RHCF, New York, 2008 – Present)
Alpine Rehabilitation & Nursing Center (RHCF, New York, 2009 – Present)
Norwich Rehabilitation & Nursing Center (RHCF, New York, 2011 – Present)
Highland Rehabilitation & Nursing Center (RHCF, New York, 2013 – Present)
Utica Rehabilitation & Nursing Center (RHCF, New York, 2015 – Present)
Plattsburgh Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Sodus Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Auburn Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Cambridge Rehabilitation & Nursing Center (RHCF, Massachusetts, 2010 – Present)
Medford Rehab & Nursing Center (RHCF, Massachusetts, 2012 – Present)
The Rehab and Nursing Center at Everett (RHCF, Massachusetts, 2013 – Present)

Alexander Barth, LNHA – 30%
EMT (2008 – 2015)
Managing Partner, Personal Healthcare

Affiliations:

Tarrytown Hall Care Center (RHCF, New York, 2008 – Present)
Alpine Rehabilitation & Nursing Center (RHCF, New York, 2009 – Present)
Norwich Rehabilitation & Nursing Center (RHCF, New York, 2011 – Present)
Highland Rehabilitation & Nursing Center (RHCF, New York, 2013 – Present)
Utica Rehabilitation & Nursing Center (RHCF, New York, 2015 – Present)

Plattsburgh Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Sodus Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Auburn Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Cambridge Rehabilitation & Nursing Center (RHCF, Massachusetts, 2010 – Present)
Medford Rehab & Nursing Center (RHCF, Massachusetts, 2012 – Present)
The Rehab and Nursing Center at Everett (RHCF, Massachusetts, 2013 – Present)

Yahudah (AKA Jay) Walden – 20%
Managing Member, Personal Healthcare
Managing Partner, Ellington Capital Group

Affiliations:

Highland Rehabilitation & Nursing Center (RHCF, New York, 2013 – Present)
Utica Rehabilitation & Nursing Center (RHCF, New York, 2015 – Present)
Plattsburgh Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Sodus Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Auburn Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Cambridge Rehabilitation & Nursing Center (RHCF, Massachusetts, 2010 – Present)
Medford Rehab & Nursing Center (RHCF, Massachusetts, 2012 – Present)
The Rehab and Nursing Center at Everett (RHCF, Massachusetts, 2013 – Present)

The Bureau of Professional Credentialing has indicated that the NHA licenses held by Ephraim Zagelbaum and Alexander Barth are in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against these individuals or their licenses.

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 Columbia County from an office located at 30 Green Manor Avenue (AKA Whittier Way), Ghent, New York 12075.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Tarrytown Hall Care Center (RHCF, New York)
Alpine Rehabilitation & Nursing Center (RHCF, New York)
Norwich Rehabilitation & Nursing Center (RHCF, New York, 2011 – Present)
Highland Rehabilitation & Nursing Center (RHCF, New York, 2013 – Present)
Utica Rehabilitation & Nursing Center (RHCF, New York, 2015 – Present)
Plattsburgh Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Sodus Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Auburn Rehabilitation & Nursing Center (RHCF, New York, 2016 – Present)
Cambridge Rehabilitation & Nursing Center (RHCF, Massachusetts, 2010 – Present)
Medford Rehab & Nursing Center (RHCF, Massachusetts, 2012 – Present)
The Rehab and Nursing Center at Everett (RHCF, Massachusetts, 2013 – Present)

A review of operations for Highland Rehabilitation and Nursing Center reveals: The facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on August 17, 2016. Deficiencies were found under 10NYCRR 415.5(h)(4) Environment: Comfortable and Safe Temperature Level.

A review of operations for Alpine Rehabilitation and Nursing Center reveals: The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-036 for surveillance findings on March, 2014. Deficiencies were found under 10NYCRR 415.26 Administration.

A review of operations for Norwich Rehabilitation and Nursing Center, Tarrytown Hall Care Center, Auburn Rehabilitation and Nursing Center, Sodus Rehabilitation and Nursing Center and Utica Rehabilitation and Nursing Center for the periods identified above reveals there were no enforcements for the periods of ownership.

An affidavit submitted by the applicant on August 2, 2016 for Medford Rehabilitation and Nursing Center, Massachusetts reveals: The facility was fined \$96,785 for surveillance findings on February 27, 2013. Deficiencies were cited under §483.25 – Quality of Care.

A review of Medicare.gov shows a Civil Money Penalty of \$177, 600 was imposed on June 8, 2016.

An affidavit submitted by the applicant on August 2, 2016 for Rehabilitation and Nursing Center at Everett, Massachusetts reveals: The facility was fined \$49,400 for surveillance findings on June 14, 2013. Deficiencies were cited under §483.10(b)(3) (d)(2) – Informed of Health Status / Medical Condition.

A review of Medicare.gov shows a Civil Money Penalty of \$46,638 was imposed on February 25, 2016.

An affidavit submitted by the applicant on August 2, 2016 for Cambridge Rehabilitation and Nursing Center, Massachusetts reveals: The facility was fined \$2,275 for surveillance findings on January 12, 2015. Deficiencies were cited under §483.20(k)(3)(ii) – Qualifications of Facility Staff.

A review of Medicare.gov shows a Civil Money Penalty of \$8,125 was imposed on March 29, 2016.

A review of the Massachusetts Health and Human Services website for Rehabilitation and Nursing Center at Everett lists that denial of payments for new admissions were imposed on November 27, 2015 and December 15, 2016; Substandard Quality of Care is listed on September 15, 2016.

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: March 10, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Naidu Associates LLC d/b/a Comfort Keepers #512
Address: Peekskill
County: Westchester
Structure: Limited Liability Company
Application Number: 162302

Description of Project:

Naidu Associates LLC d/b/a Comfort Keepers #512, a limited liability company, requests approval for a change in ownership and legal entity of a licensed home care services agency under Article 36 of the Public Health Law.

Naidu Associates LLC has proposed to operate as a Franchisee of CK Franchising, Inc.

Living Life Home Care, Inc. d/b/a Comfort Keepers #512 was originally approved as a home care services agency by the Public Health Council at its June 24, 2005 meeting and subsequently licensed as 1280L001 effective November 30, 2006. At the time of licensure ownership of Living Life Home Care, Inc. d/b/a Comfort Keepers #512 consisted of Joy Traille (180 shares) and Wilson Traille (20 shares).

The purpose of this application is to transfer the entire home care operations of Living Life Home Care, Inc. d/b/a Comfort Keepers #512 to Naidu Associates LLC d/b/a Comfort Keepers #512.

The membership of Naidu Associates LLC d/b/a Comfort Keepers #512 comprises the following individuals:

Rajendra Naidu, MBA – 87.5%
Senior Project Manager, IBM Credit Corporation

Srivani Naidu – 7.5%
Senior Software Engineer, Swiss Re America, Inc.

Priyanka Koneni, RN – 5%
North Carolina Registered Nurse
RN, Carolinas Health Care System Cleveland

The North Carolina Board of Nursing website indicates no issues with the license of the healthcare professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 32 North Division Street, 2nd Floor, Peekskill, New York 10566:

Dutchess	Putnam	Westchester	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 1, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Better Choice Home Care Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 162476

Description of Project:

Better Choice Home Care Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Better Choice Home Care Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 8, 2015 meeting and was subsequently licensed as 2542L001 effective February 5, 2016. At that time David Li was the sole shareholder.

The purpose of this application is to seek approval to transfer 79% of the stock to the six individuals disclosed below through a Stock Purchase Agreement.

The applicant has authorized 200 shares of stock, which will be owned as follows:

David Li – 42 Shares
(Previously approved by PHHPC for this operator)

Xiang R. Mei – 36 Shares
Director, Grand Adult Daycare

KePing Du – 26 Shares
Director, Duke Acupuncture PC
Director, Kent Senior Care, Inc.

Rou Li Wong – 12 Shares
Operation Manager, Better Choice Home Care,
Inc.

Lily Austin, RN – 36 Shares
Clinical Nurse, New York – Presbyterian/Columbia
University Medical Center

Yanli Wong – 26 Shares
Manager, Kent Senior Care, Inc.

Yan Zhuang – 22 Shares
Manager, RS Lin L.ac, P.C.
Administrator/Vice President, Kent Senior Care, Inc.

The proposed Board of Directors of Better Choice Home Care Inc. will comprise the following individuals:

David Li – President
(Previously approved by PHHPC for this operator)

Xiang Mei – Vice President
(Previously Disclosed)

KePing Du – Treasurer
(Previously Disclosed)

Rou Li Wong – Secretary
(Previously Disclosed)

Lily Austin – Director
(Previously Disclosed)

Yanli Wong – Director
(Previously Disclosed)

Yan Zhuang – Director
(Previously Disclosed)

David Li is exempt from character and competence review due to the fact that he was previously approved by the Public Health and Health Planning Council for this operator.

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A review of the operations of Better Choice Home Care Inc. (February 2016-Present) was performed as part of this review. The information provided by the Division of Home and Community Based Services 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 7104 18th Avenue, Brooklyn, New York 11204:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 21, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: MedPro Homecare Agency, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 162499

Description of Project:

MedPro Homecare Agency, 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.

MedPro Homecare Agency, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 8, 2015 meeting and was subsequently licensed as 1909L001 effective June 17, 2016. At that time, the shareholders were Natalya Chornaya, RN – 10 shares and Marina Rabinovich, Esq. - 190 shares.

The purpose of this application is to seek approval for the purchase of MedPro Homecare Agency, Inc. through a Stock Purchase Agreement.

The applicant has authorized 200 shares of stock which will be owned as follows:

Hang Guo – 200 Shares
CEO, Xincon Home-HealthCare Services, Inc.

Affiliation:

- Xincon Home-HealthCare Services, Inc. (LHCSA)

Hang Guo, is the proposed sole member (President) of the Board of Directors of MedPro Homecare Agency, Inc.

A search of the individual (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Xincon Home-HealthCare Services, Inc. (LHCSA)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 5 Penn Plaza, 23rd Floor, Suite 2301, New York, New York 10001:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to continue to provide the following health care services:

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

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.


Recommendation: Contingent Approval

Date: March 1, 2017



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter 
General Counsel

Date: February 24, 2017

Subject: Troy Conference Geriatric Foundation, Inc.; Certificate of Amendment to the Certificate of Incorporation to Effectuate a Corporate Name Change

The Troy Conference Geriatric Foundation, Inc. (Foundation) received PHHPC approval to solicit contributions for the benefit of Wesley Health Care Center, Inc. (Wesley) in 1998. Since that time, Wesley's relationship with the Troy Conference of the Methodist Church has ended. Therefore, the Foundation now seeks to change its name so as to eliminate any confusion and to align the Foundation's name with its corporate purposes.

The proposed new name of the Foundation is, "The Wesley Foundation, Inc.". PHHPC approval of the name change is required pursuant to Not-for-Profit Corporation Law § 804 and 10 NYCRR § 600.11(a)(2).

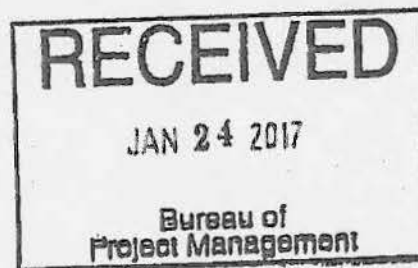
There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation of Troy Conference Geriatric Foundation, Inc. nor is there an objection to the name change. The proposed Certificate of Amendment of the Certificate of Incorporation of Troy Conference Geriatric Foundation, Inc. is in legally acceptable form.

Attachments.

January 20, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Colleen Leonard
Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Empire State Plaza, Corning Tower
Room 1805
Albany, New York 12237



Re: *Troy Conference Geriatric Foundation, Inc.*
Certificate of Amendment of Certificate of Incorporation
Corporate Name Change

Dear Ms. Leonard:

We represent the Troy Conference Geriatric Foundation, Inc. (the "Foundation"). The Foundation was established on June 16, 1998. Among the Foundation's purposes is to solicit contributions on behalf of Wesley Health Care Center, Inc., a New York not-for-profit residential health care facility licensed pursuant to Article 28 of the New York Public Health Law. As such, the Public Health and Health Planning Council had consented to the filing of the Foundation's Certificate of Incorporation.

At the time of the Foundation's formation, Wesley Health Care Center, Inc. had a relationship with the Troy Conference of the Methodist Church, hence, the Foundation's name. The relationship between Wesley Health Care Center, Inc. and the Troy Conference has since ended. The Foundation's legal name is now a source of confusion. To rectify that confusion, the Foundation desires to change its corporate name through a Certificate of Amendment of its Certificate of Incorporation. As the Foundation required the Public Health and Health Planning Council's consent to file its Certificate of Incorporation, the Foundation now requires the Public Health and Health Planning Council's consent to file the Certificate of Amendment.

Enclosed please find the original and one copy of the Foundation's proposed Certificate of Amendment to change the Foundation's legal name to "The Wesley Foundation, Inc." This will align the Foundation's name to its purposes, to wit, to solicit contributions on behalf of Wesley Health Care Center, Inc. Also enclosed for your reference is a copy of the Foundation's Certificate of Incorporation.

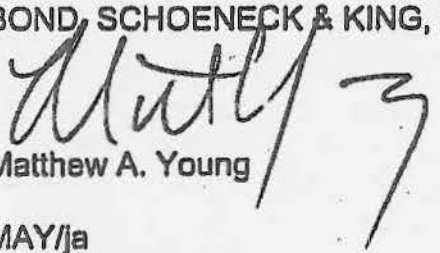
Ms. Colleen Leonard
January 20, 2017
Page 2

If the enclosed Certificate of Amendment meets with the approval of the Public Health and Health Planning Council, please provide the undersigned with the Public Health and Health Planning Council's consent to the filing of the Certificate of Amendment.

Thank you for your attention to this matter.

Very truly yours,

BOND, SCHOENECK & KING, PLLC


Matthew A. Young

MAY/ja
Enclosures

Cc: David A. Ruffo, Esq.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
TROY CONFERENCE GERIATRIC FOUNDATION, INC.**

**Under Section 803 of the
Not-For-Profit Corporation Law**

The undersigned, being the Secretary of the Troy Conference Geriatric Foundation, Inc., does hereby certify:

FIRST: The name of the corporation is Troy Conference Geriatric Foundation, Inc.

SECOND: The Certificate of Incorporation of the Troy Conference Geriatric Foundation, Inc. was filed by the Department of State on June 16, 1998. The corporation was formed under the Not-for-Profit Corporation Law of the State of New York.

THIRD: Troy Conference Geriatric Foundation, Inc. is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

FOURTH: Paragraph **FIRST** of the Certificate of Incorporation of Troy Conference Geriatric Foundation, Inc. which sets forth the name of the corporation is hereby amended to change the corporation's name to The Wesley Foundation, Inc. Paragraph **FIRST**, as amended, will provide as follows:

FIRST The name of the corporation is The Wesley Foundation, Inc.

FIFTH: This amendment to the Certificate of Incorporation of the Troy Conference Geriatric Foundation, Inc. was authorized by the affirmative vote of a majority of the members entitled to vote thereon at a meeting of the members at which a quorum was present.

SIXTH: The Secretary of State of the State of New York is hereby designated the agent of the corporation upon him process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is: The Wesley Foundation, 131 Lawrence Street, Saratoga Springs, New York, 12866.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 17th day of

~~January~~, 2018.
2017
(DB)

Donald Braim
Donald Braim, Secretary

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
TROY CONFERENCE GERIATRIC FOUNDATION, INC.**

**Under Section 803 of the
Not-For-Profit Corporation Law**

**Bond Schoeneck & King PLLC
David A. Ruffo, Esq.
22 Corporate Woods Boulevard, Suite 501
Albany, New York 12211
(518) 533-3000**

CERTIFICATE OF INCORPORATION

OF

F980616000244

TROY CONFERENCE GERIATRIC FOUNDATION, INC.

**Under Section 402 of the
Not-For-Profit Corporation Law**

THE UNDERSIGNED, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law, hereby certifies:

FIRST: The name of the corporation is Troy Conference Geriatric Foundation, Inc.

SECOND: The corporation is not formed for pecuniary profit or financial gain. All income and earnings of the corporation shall be used exclusively for its corporate purposes.

The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.

THIRD: The purposes for which the corporation is to be formed are as follows:

(a) To assist and sponsor programs which address the social, health, housing and welfare needs of persons, including Wesley Health Care Center, Inc. and other programs which may include those licensed pursuant to Articles 28, 36, 40 and 44 of the New York Public Health Law, and to develop and expand community involvement and participation in these fields by mobilizing and coordinating the efforts of community leaders, including those with expertise in such fields as finance, corporate management, trusts, insurance, real estate and law; providing a focal point and recipient for philanthropic support stimulating such sources of revenue as bequests and devises, charitable remainder trusts, unit trusts and pooled income funds, and providing for the effective management thereof. Nothing contained in the Certificate of Incorporation shall authorize the corporation to establish, operate or maintain a hospital or provide hospital services or health related service, or to operate a home care service agency, a hospice, a health maintenance organization or a comprehensive services plan, as provided for by Articles 28, 36, 40 and 44 respectively of the Public Health Law.

(b) To solicit, collect, receive, hold, invest, reinvest, distribute, and disburse donations, subscriptions, gifts, bequests, grants and other funds for the purposes of this Corporation and for the benefit and support of Wesley Health Care Center, Inc., Embury Apartments, Inc., Keeseville Country Gardens, Inc., and any other 501(c)(3) corporations directly affiliated with this Corporation, Wesley Health Care Center, Inc., Embury Apartments, Inc. or Keeseville Country Gardens, Inc.

(c) To do any other act of thing incidental to or in connection with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its individual members, directors or officers, except as provided under Article 5 of the Not-For-Profit Corporation Law.

(d) To operate exclusively for charitable and benevolent purposes as defined by Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Law).

FOURTH: This corporation is a Type "B" corporation as defined in Section 201 of the Not-For-Profit Corporation Law.

FIFTH: The principal office of the corporation is to be located in the County of Saratoga, State of New York:

<u>Name</u>	<u>Address</u>
Ronald Brown	2286 Route 9 Mechanicville, NY 12118
Alem Smith	RD #2, 2489 Cornhill Drive Pittsford, VT 05763
Thomas Peterson	Locust Grove Road Saratoga Springs, NY 12866
Rosemary Munter	515 Sodeman Road Middle Grove, NY 12850
Marge Meinhard	16 Fifth Avenue Saratoga Springs, NY 12866
Anne Phillips	3 Somerset Lane Scotia, NY 12302

SEVENTH: The name and residence of the incorporator to this Certificate of Incorporation is as follows:

David A. Ruffo

23 Van Buren Avenue
East Greenbush, New York 12061

The incorporator is of the age of 18 years or over and each person named as a Director of the corporation is 18 years or older.

EIGHTH: The duration of the corporation shall be perpetual.

NINTH: The corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay any dividends, and shall be operated exclusively for the purposes enumerated in Paragraph Third hereof, thereby to lessen the burdens of government and promote social welfare.

TENTH: No part of the net income or net earnings of the corporation shall inure to the benefit or profit of any individual member, or any trustee, director or officer of the corporation. No director, officer or employee of the corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services to or for the corporation.

ELEVENTH: No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

TWELFTH: In the event of dissolution, liquidation or winding up of the corporation, whether voluntary or involuntary, the funds, property, or other assets then held legally or beneficially by the Corporation shall be distributed to corporations which are now or may hereinafter be affiliated with this Corporation as determined by the Board of Directors and subject to an order of a Justice of the Supreme Court for the Fourth Judicial District, as long as such corporations qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or in the event all such affiliates are not at the time of the dissolution entitled to exemption under Section 501 (c)(3) of the Internal Revenue Code, then to charitable corporations or institutions within the primary service area of this Corporation which are entitled to the exemption status under Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue Law) as determined by the Board of Directors of the Corporation and subject to approval of a Justice of the Supreme Court of the State of New York for the Fourth Judicial District.

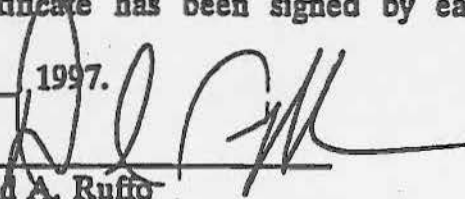
THIRTEENTH: Troy Conference Geriatric Foundation, Inc., designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him is as follows:

Troy Conference Geriatric Foundation, Inc.
131 Lawrence Street
Saratoga Springs, New York 12866

FOURTEENTH: Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of

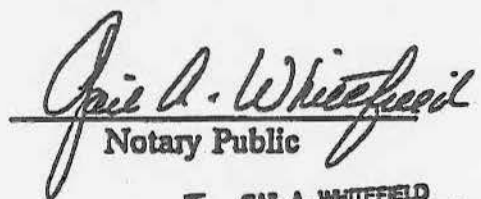
the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue law).

IN WITNESS WHEREOF, this certificate has been signed by each of the incorporators this 28th day of October, 1997.


David A. Ruffo
23 Van Buren Avenue
East Greenbush, New York 12061

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

On this 28th day of October, 1997 before me personally came DAVID A. RUFFO, to me known and known to me to be the person described in and who executed the foregoing Certificate of Incorporation of Troy Conference Geriatric Foundation, Inc., and he duly acknowledged to me that he executed the same.


Notary Public

GAL A. WHITEFIELD
Notary Public, State of New York
No. 5000943
Qualified in Rensselaer County
Commission Expires Aug. 24, 1998

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CERTIFICATE OF INCORPORATION
OF
TROY CONFERENCE GERIATRIC FOUNDATION, Inc.

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

LAW OFFICES
TOBIN AND DEMPSEY
33 ELK STREET
ALBANY, NEW YORK 12207

2cc

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUN 18 1998
TAX \$

BY: SAC
Saratoga

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Tyrone*

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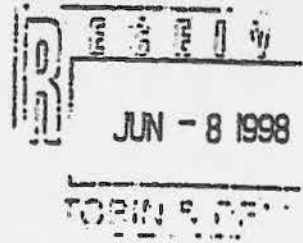
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STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

June 3, 1998



David A. Ruffo, Esq.
Tobin & Dempf Law Offices
33 Elk Street
Albany, New York 12207

Re: Certificate of Incorporation of Troy Conference Geriatric Foundation, Inc.

Dear Mr. Ruffo:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 29th day of May, 1998, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Troy Conference Geriatric Foundation, Inc., dated October 28, 1997.

Sincerely,


Karen S. Westervelt
Executive Secretary

6



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuten
General Counsel 

Date: March 9, 2017

Subject: Certificate of Amendment to the Certificate of Incorporation of Winthrop South Nassau University Health System, Inc. Relative to Application #162391-E, an Application which Received PHHPC Contingent Approval on March 9, 2017

Winthrop South Nassau University Health System, Inc. (the Corporation) seeks Public Health and Health Planning Council (PHHPC) approval of, and permission to file with the New York Secretary of State, a Certificate of Amendment to the Certificate of Incorporation of the Corporation that: a. changes the name of the Corporation to remove the first word, "Winthrop"; and b. removes Winthrop University Hospital Association from the Corporation's Certificate of Incorporation.

The need for these changes stems from project 162391-E; an application submitted by NYU Lagone Health System seeking approval to replace the Corporation as the active parent of Winthrop University Hospital Association. Project 162391-E received the contingent approval of the PHHPC on March 9, 2017.

The Corporation's new name is proposed as, "South Nassau University Health System, Inc.". The Corporation's proposed Certificate of Amendment to the Certificate of Incorporation affects that change and removes all reference to any relationship with Winthrop University Hospital Association. The corporation's By-laws accomplish the same. Lastly, note that the Corporation's relationship with South Nassau Communities Hospital remains the same.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the proposed Certificate of Amendment to the Certificate of Incorporation of Winthrop South Nassau University Health System, Inc. and it is in legally acceptable form.

Attachments



ROPE & GRAY LLP
PRUDENTIAL TOWER
800 BOYLSTON STREET
BOSTON, MA 02199-3600
WWW.ROPEGRAY.COM

February 17, 2017

Timothy M. McCrystal
T +1 617 951 7278
timothy.mccrystal@ropesgray.com

Ms. Colleen Leonard, Executive Secretary
NEW YORK STATE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

Re: **WINTHROP SOUTH NASSAU UNIVESRITY HEALTH SYSTEM, INC. (Nassau County)**
Disestablishment of Winthrop South Nassau University Health System, Inc. as active parent
and co-operator of Winthrop-University Hospital Association

Dear Ms. Leonard:

On November 7, 2016, Winthrop-University Hospital Association ("Winthrop") submitted Establishment-Only CON Application Project No. 162391-E via the NYS-CON system seeking approval to establish NYU Langone Health System as the active parent and co-operator of Winthrop and the simultaneous disestablishment of Winthrop South Nassau University Health System, Inc. ("WSN") as Winthrop's active parent and co-operator.

WSN herein separately requests approval from the Public Health and Health Planning Council for changes in its corporate documents reflecting the aforementioned disestablishment.

Please find enclosed with this letter the following:

- Unanimous Written Consent of the Board of Directors of WSN;
- Organizational chart of WSN before and after the disestablishment;
- Certificate of Incorporation, including all existing amendments;
- Proposed amendment to the Certificate of Incorporation;
- Bylaws;
- Proposed amended bylaws; and
- Agreement of Disaffiliation.

As reflected in the enclosed documents, WSN will remain the active parent and co-operator of South Nassau Communities Hospital ("SNCH"). The Department has determined that no CON Application is required from SNCH since the relationship with WSN as its active parent is not changing. Please feel free to contact me if you have any questions.

Sincerely,

Timothy M. McCrystal
Enclosures

CERTIFICATE OF AMENDMENT
to the
CERTIFICATE OF INCORPORATION
of
Winthrop South Nassau University Health System, Inc.
under
Section 803 of the Not-for-Profit Corporation Law

THE UNDERSIGNED, being the Chairman and Secretary of Winthrop South Nassau University Health System, Inc. (the "Corporation"), hereby certify:

FIRST: The name of the Corporation is Winthrop South Nassau University Health System, Inc.

SECOND: The original Certificate of Incorporation of the Corporation was filed in the Office of the Secretary of State on March 26, 1996 under Section 402 of the New York Not-for-Profit Corporation Law.

THIRD: The Corporation is a charitable corporation as defined in Section 102(a)(5) of the New York Not-for-Profit Corporation Law.

FOURTH: The Corporation was formed under the Not-for-Profit Corporation Law of the State of New York.

FIFTH: Section 1 of the Certificate of Incorporation of the Corporation, regarding the Corporation's name, is hereby amended to read as follows:

"(1) The name of the corporation is South Nassau University Health System, Inc."

SIXTH: Section 3 of the Certificate of Incorporation of the Corporation, regarding the purposes of the Corporation, is hereby amended to read as follows:

"(3) The purpose or purposes for which the corporation is formed are as follows: (i) To coordinate policy making and strategic planning and to provide support services to South Nassau Communities Hospital, a non-for-profit corporation existing under the laws of the State of New York, and such other affiliates or organizations which are controlled by the Corporation, South Nassau Communities Hospital, or in which the Corporation or South Nassau Communities Hospital is or hereafter becomes the sole member; (ii) to provide support services in connection with the educational and research programs for the prevention, diagnosis, treatment and cure of all forms of human illness conducted by South Nassau Communities Hospital and its affiliates; (iii) to act for the benefit of and to support South Nassau Communities Hospital and its affiliates; (iv) to carry on any other activity that may lawfully be carried on by a corporation formed under the Not-for-Profit Law of the State of New York."

SEVENTH: Section 13 of the Certificate of Incorporation of the Corporation, regarding the address of the post office to which the Secretary of State shall mail a copy of any process, is hereby amended to read as follows:

“(13) The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of process against the Corporation served upon it is:

South Nassau University Health System, Inc.
One Healthy Way
Oceanside, New York 11572
Attn: President”

EIGHTH: Section 14.5 of the Certificate of Incorporation of the Corporation, regarding the required approvals of the Board of Directors, is hereby amended to read as follows:

“14.5. The Board of Directors of the Corporation then in office shall be required to approve following actions with respect to South Nassau Communities Hospital and other direct subsidiaries of which the Corporation services as a member as specified below:

- (a) Approve and interpret the statement of mission and philosophy of each hospital that is a subsidiary of the Corporation (including, but not limited to, South Nassau Communities Hospital, hereinafter referred to as the “Hospital”) and require that the Hospital operate in conformance with the Hospital’s statement of mission and philosophy;
- (b) Election of the Board of Director of the Hospital and each other direct subsidiary in accordance with the bylaws of each entity;
- (c) Establishment of the number of directors of the Hospital and each direct subsidiary consistent with the bylaws of the Hospital and each direct subsidiary;
- (d) Appointment of directors of the Hospital and each direct subsidiary to fill vacant positions;
- (e) The removal, with or without cause, of a director of the Hospital or direct subsidiary;
- (f) The selection and removal, with or without case, of the Chairperson of the Board of Directors of the Hospital;
- (g) The establishment of criteria for, and the process of evaluating the performance of the chief executive officers of the Hospitals;
- (h) Election or removal, with or without cause, of the chief executive officer of the Hospital;

(i) The operating and capital budget of the Hospital to ensure that such budgets confirm to the mission and philosophy of the Hospital;

(j) Establishment, operation or acquisition of a health maintenance organization or insurance company requiring an HMO or insurance license by any of the Corporation's direct subsidiaries;

(k) The initiation by any of the Corporation's direct subsidiaries of a joint venture or partnership, including, without limitation, health insurance joint venture initiatives. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to a joint venture of the direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law;

(l) Establishment of any material line of business (e.g. home health care, pharmacy, infusion therapy services, etc.) proposed for any of the Corporation's direct subsidiaries that is not otherwise contemplated by an approved business plan of a direct subsidiary. Except in connection with exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the direct Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to a material new line of business of the direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law.

(m) Any merger, consolidation or dissolution of the Hospital or a direct subsidiary;

(n) Any corporate reorganization of the Hospital or a direct subsidiary along with the development or dissolution of any subsidiary organization, including provider subsidiaries, partnerships, or other entities of the Hospital;

(o) Any acquisition or any sale, lease, exchange, mortgage, pledge or other alienation of assets or property of the Hospital or any one of the Corporation's direct subsidiaries in excess of an amount to be fixed from time to time by the Corporation. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the direct Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to any sale, lease exchange, mortgage, pledge or other alienation of assets or property by a direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law.

(p) Any transaction that results in the Hospital or any of the Corporation's direct subsidiaries becoming the sole member or, to the extent permitted by law, the sole shareholder of any corporation owning or operating a licensed hospital.

(q) Any transaction that results in any other corporation, entity, or person becoming entitled to appoint designees to the Board of Directors of the Hospital or any of the Corporation's other direct subsidiaries;

(r) The business plan of the Hospital or any of the Corporation's direct subsidiaries, subject to the last paragraph of this Section 14.5;

(s) Initiation by any of the Corporation's direct subsidiaries of bankruptcy or insolvency actions with respect to the direct subsidiary;

(t) Any action that results in the complete closure or conversion of use from a general acute care hospital of a Hospital or any of the Corporation's other direct subsidiaries. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the direct Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law.

(u) Any amendment to the bylaws or certificate of incorporation of the Hospital or any of the Corporation's direct subsidiaries;

(v) Issuance of long term debt in excess of \$2 million or the incurrence of any other debt by the Hospital or any of the Corporation's direct subsidiaries that: (i) is not part of the approved budgets and is in excess of \$1 million; and (ii) is not necessary to finance the cost of compliance with operational or physical plan standards required by law;

(w) Settlements of litigation involving the Hospital or any of the Corporation's direct subsidiaries when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;

(x) The submission of any certificate of need to any regulatory authority. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the direct Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law.

(y) The addition of a new clinical service. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct

Hospital subsidiary with respect to the addition of a new clinical service unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law.

(z) The discontinuance or substantial change in an existing clinical services. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to the discontinuance or substantial change in existing clinical service unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law.

(aa) The expenditure of an amount in excess of \$2 million dollars in connection with a single transaction related to health service delivery. Except in connection with the Corporation's right to ensure at actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to the expenditure of an amount in excess of \$2 million in connection with a single transaction related to health services delivery, unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law."

NINTH: Section 14.6 of the Certificate of Incorporation of the Corporation, regarding the ability of the Corporation to enter into a master trust indenture, is hereby amended to read as follows:

"14.6. The Corporation shall have the purpose and power to accept delegations from pursuant to Section 701 of the Not-for-Profit Corporation Law, and to share in the exercise and to exercise on behalf of South Nassau Communities Hospital authority to accept, utilize, transfer and share in the assets, revenues and income of South Nassau Communities Hospital and to take such other actions as may be necessary or desirable to carry out the obligations of South Nassau Communities Hospital pursuant to a master trust indenture or similar instrument in connection with the undertaking by South Nassau Communities Hospital of an obligated group financing or similar financing."

TENTH: This amendment to the Certificate of Incorporation of the Corporation was authorized by a vote of the Board of the Corporation at a meeting of the Corporation duly called and held in accordance with the bylaws of the Corporation.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate of Amendment this 24th day of February, 2017 and do hereby affirm, under the penalties of perjury, that the statements contained herein have been examined by us and are true and correct.

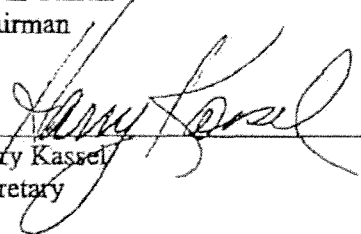


Kevin Curran
Chairman

Harry Kassel
Secretary

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate of Amendment this 22 day of February, 2017 and do hereby affirm, under the penalties of perjury, that the statements contained herein have been examined by us and are true and correct.

Kevin Curran
Chairman


Harry Kassel
Secretary

**CERTIFICATE OF AMENDMENT
to the
CERTIFICATE OF INCORPORATION
of
Winthrop South Nassau University Health System, Inc.
under
Section 803 of the Not-for-Profit Corporation Law**

Filed By:

South Nassau University Health System, Inc.
One Healthy Way
Oceanside, New York 11572

**BYLAWS
OF
SOUTH NASSAU UNIVERSITY HEALTH SYSTEM, INC.**

AS APPROVED BY THE BOARD OF DIRECTORS
AND AMENDED ON JUNE 19, 1996, MARCH 23, 1999, JUNE 8, 1999, FEBRUARY 27,
2001, JUNE 11, 2001 AND February 14, 2017

BYLAWS
OF SOUTH NASSAU UNIVERSITY HEALTH SYSTEM, INC.

(a New York Not-for-Profit Corporation)

ARTICLE I

Offices and Fiscal Year

Section 1.1. Registered Office. The principal office of the Corporation in the State of New York shall be at the place set forth in the certificate of incorporation until otherwise established by a vote of the Board of Directors, and a certificate of amendment of the certificate of incorporation is filed in the New York Department of State.

Section 1.2. Other Offices. The Corporation may also have offices at such other places within or without the United States of America as the Board of Directors may from time to time appoint or the business of the Corporation requires.

Section 1.3. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January in each year.

Section 1.4. Purpose. The purposes of the Corporation shall be set forth in the certificate of incorporation of the Corporation.

ARTICLE II

Membership

The Corporation shall have no Members. Any action or vote required or permitted to be taken by the Members under applicable law shall be taken by action or vote of the directors of the Corporation.

ARTICLE III

Board of Directors

Section 3.1. Powers. The Board of Directors shall have full power to establish and direct the policies governing the business and affairs of the Corporation; and all powers of the Corporation are hereby granted to and vested in the Board of Directors. The Board of Directors shall generally coordinate the activities of the Corporation and its Direct Subsidiaries. For purposes of these bylaws, a "Direct Subsidiary" shall mean any corporation, partnership, limited liability company, limited liability partnership, joint venture, or other organization which is directly controlled by the Corporation, including South Nassau Communities Hospital ("South Nassau"). For the purpose of this definition, "controlled by the Corporation" shall mean the direct power to cause or direct the direction of the management or policies of the Direct Subsidiary whether through the ownership of voting securities, corporate membership, or by contract. The Board of Directors shall, among other things, coordinate the activities of South

Nassau, maintain highest quality standards, approve the strategic plan of the Corporation, approve the strategic plan of South Nassau (provided that such approval right shall not permit the Corporation to exercise any of the governance authority under applicable regulations unless the Corporation has received establishment approval from the Public Health Council of the State of New York), review the annual capital and operating budget of South Nassau to ensure that such budgets conform to the mission and philosophy of South Nassau, and elect or remove, with or without cause, the chief executive officer of South Nassau.

Section 3.2. Qualifications. Each director of the Corporation shall be a natural person of at least eighteen years of age who, by his or her experience, community interest, or prior action, demonstrates a willingness to devote time and talent to the affairs of the Corporation.

Section 3.3. Number, Election and Term of Office. The Board of Directors shall consist of between twelve (12) and forty-two (42) persons, as determined by the Board of Directors from time to time. The terms of office of the Board of Directors shall be staggered and the Board of Directors shall at each annual meeting elect the persons who shall replace the directors whose terms of office are then expiring and each director shall serve for a two (2) year term or until a successor shall have been elected and qualified, except in the event of the death, resignation, disqualification, or removal of a director.

Section 3.4. Organization. At every meeting of the Board of Directors, the chairman of the board, or, in the case of a vacancy in the office or absence of the chairman, the following officers present in the order stated: the vice chairman of the board, or a chairman chosen by a majority of the directors present, shall preside, and the secretary, or, in the absence of the secretary, an assistant secretary, or in the absence of the secretary and the assistant secretaries, any person appointed by the chairman of the meeting, shall act as secretary.

Section 3.5. Resignations. Any director of the Corporation may resign at any time by giving written notice to the chairman or the secretary of the Corporation. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.6. Vacancies. The Board of Directors may declare vacant the office of a director if such director is declared of unsound mind by an order of court, or convicted of a felony, or for any other proper cause, or if within sixty (60) days after notice of selection, the director does not accept such office either in writing or by attending a meeting of the Board of Directors.

Any vacancy or vacancies in the Board of Directors caused because of the death, resignation, disqualification or removal of a director, an increase in the number of directors, or any other cause, may be filled by the Board of Directors in accordance with the voting requirements of Section 3.13; and each such director shall serve until the next annual meeting at which the directors are elected in the regular order of business, and until his or her successor is elected, appointed and qualified.

Section 3.7. Removal. At any special meeting called for the purpose of removing or electing directors, any director may be removed from office without assigning any cause by a vote of the Board of Directors in accordance with the voting requirements of Section 3.13. In case any one or more directors are so removed, new directors may be elected in accordance with Section 3.6, if applicable, and the voting requirements of Section 3.13.

Section 3.8. Place of Meeting. Meetings of the Board of Directors may be held at such place within or without the State of New York as the Board of Directors may from time to time appoint, or as may be designated in the notice of the meeting.

Section 3.9. Annual Meeting and Organization Meeting. Unless otherwise fixed by the Board of Directors, the annual meeting of the Board of Directors shall be held on the second Tuesday in June in each year commencing in 1997 unless such day shall be a holiday, in which case the meeting shall be held on the following day. At each annual meeting, the Board of Directors shall elect the directors who shall replace the directors whose terms are then expiring, and transact such other business as may properly be brought before the meeting. If the annual meeting shall not be called and held within one (1) month of the date specified in this Section 3.9, a special meeting may be held in place thereof with the same force and effect as the annual meeting, and in such case all references in these bylaws, except in this Section 3.9, to the annual meeting of the Board of Directors shall be deemed to refer to such special meeting. Any such special meeting shall be called and notice given as provided in Section 3.11. Immediately after each annual election of directors or other such special meeting, the Board of Directors shall meet for the purpose of organization, election of officers, and the transaction of other business at the place where said annual or special meeting was held. Notice of such meeting need not be given. If such organizational meeting is to be held at any other time or place, notice thereof shall be given as provided in Section 3.11 for special meetings of the Board of Directors,

Section 3.10. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as shall be designated from time to time by resolution of the Board of Directors. If the date fixed for any such regular meeting be a legal holiday under the laws of the state where such meeting is to be held, then the same shall be held on the next succeeding business day, not a Saturday, or at such other time as is determined by resolution of the Board of Directors. At such meetings, the directors shall transact such business as may properly be brought before the meeting. Notice of regular meetings need not be given unless otherwise required by law or these bylaws.

Section 3.11. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the chairman or by any director upon written demand of not less than one fifth (1/5) of the entire Board of Directors. Notice of each such meeting shall be given to each director by telephone or in writing at least twenty-four (24) hours (in the case of notice by telephone) or forty-eight (48) hours (in the case of notice by telegram or telecopy) or five (5) days (in the case of notice by mail or hand delivery) before the time at which the meeting is to be held. Every such notice shall state the time and place of the meeting.

Section 3.12. Quorum, Manner of Acting and Adjournment. Except as otherwise provided in these bylaws or the certificate of incorporation or by statute, a majority of the directors shall be present at each meeting in order to constitute a quorum for the transaction of

business. Every director shall be entitled to one (1) vote. Except as otherwise specified in the certificate of incorporation or these bylaws, or provided by the statute, the acts of a majority of the directors present and voting at a meeting at which a quorum is present shall be the acts of the Board of Directors. In the absence of a quorum, the directors present and voting may adjourn the meeting from time to time until a quorum is present.

Section 3.13. Approval of Certain Matters Relating to the Corporation.

Notwithstanding any other provision of these bylaws, a vote of at least two-thirds (2/3) of the entire Board of Directors then in office shall be required to approve the following actions;

- (a) Election of the Board of Directors of the Corporation, except with respect to the selection of a replacement director in accordance with Section 3.6;
- (b) Appointment of the Executive Committee and Nominating Committee of the Board of Directors of the Corporation;
- (c) The removal, with or without cause, of a director of the Corporation;
- (d) Appointment and removal of the executive vice president of the Corporation;
- (e) Establishment, operation or acquisition of a health maintenance organization or insurance company requiring an HMO or insurance license by the Corporation;
- (f) Creation or acquisition of a direct subsidiary not otherwise contemplated by an approved business plan of the Corporation;
- (g) The initiation by the Corporation of a joint venture, including, without limitation, health insurance joint venture initiatives;
- (h) Establishment of any material new line of business (e.g., home health care, pharmacy, infusion therapy services, etc.) proposed for the Corporation that is not otherwise contemplated by an approved business plan of the Corporation;
- (i) Any merger, consolidation or dissolution of the Corporation;
- (j) Any acquisition or any sale, lease, exchange, mortgage, pledge or other alienation of assets or property of the Corporation in excess of an amount to be fixed from time to time by the Corporation;
- (k) Any transaction that results in the Corporation becoming the sole member or, to the extent permitted by law, the sole shareholder of any corporation owning or operating a licensed hospital;
- (l) Any transaction that results in any other corporation, entity or person becoming entitled to appoint designees to the Board of Directors of the Corporation;
- (m) The business plan (which shall include, among other things, the Corporation's strategic and marketing plans) of the Corporation;

- (n) Material modifications to the annual capital and operating budgets of the Corporation;
- (o) Initiation by the Corporation of bankruptcy or insolvency actions with respect to the Corporation;
- (p) Any amendment to the bylaws or certificate of incorporation of the Corporation;
- (q) Issuance of long term debt in excess of \$2 million or the incurrence of any other debt by the Corporation that: (i) is not part of approved budgets and is in excess of \$1 million; and (ii) is not necessary to finance the cost of compliance with operational or physical plant standards required by law;
- (r) Settlements of litigation involving the Corporation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund.
- (s) The submission of any certificate of need to any regulatory authority by the Corporation;
- (t) The addition of a new clinical service by the Corporation;
- (u) The discontinuance or substantial change in an existing clinical service by the Corporation; and
- (v) The expenditure by the Corporation in excess of Two Million Dollars (\$2,000,000.00) in connection with a single transaction related to health service delivery.

Section 3.14. Approval of Certain Matters Relating to South Nassau and Direct Subsidiaries. Notwithstanding any other provision of these bylaws, a vote of at least two-thirds (2/3) of the entire Board of Directors then in office shall be required to approve the following actions with respect to South Nassau Communities Hospital and other Direct Subsidiaries of which the Corporation serves as a member as specified below;

- (a) Approve and interpret the statement of mission and philosophy of each hospital that is a subsidiary of the Corporation (including, but not limited to South Nassau Communities Hospital) and require that South Nassau operate in conformance with South Nassau's statement of mission and philosophy;
- (b) Election of the Board of Directors of South Nassau and each other Direct Subsidiary in accordance with the bylaws of each entity;
- (c) Establishment of the number of directors of South Nassau and each Direct Subsidiary consistent with the bylaws of South Nassau;
- (d) Appointment of directors of South Nassau and each Direct Subsidiary to fill vacant positions;

- (e) The removal, with or without cause, of a director of a Hospital or a Direct Subsidiary;
- (f) The selection and removal, with or without cause, of the Chairperson of the Board of Directors of South Nassau;
- (g) The establishment of criteria for, and the process of, evaluating the performance of the chief executive officer of South Nassau;
- (h) Election or removal, with or without cause, of the chief executive officer of South Nassau;
- (i) The operating and capital budget of South Nassau to ensure that such budgets conform to the mission and philosophy of South Nassau;
- (j) Establishment, operation or acquisition of a health maintenance organization or insurance company requiring an HMO or insurance license by any of the Corporation's Direct Subsidiaries;
- (k) The initiation by any of the Corporation's Direct Subsidiaries of a joint venture, including, without limitation, health insurance joint venture initiatives. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to a joint venture of the direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary' pursuant to Article 28 of the Public Health Law;
- (l) Establishment of any material new line of business (e.g., home health care, pharmacy, infusion therapy services, etc.) proposed for any of the Corporation's Direct Subsidiaries that is not otherwise contemplated by an approved business plan of a Direct Subsidiary. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the direct Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to a material new line of business of the direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law;
- (m) Any merger, consolidation or dissolution of South Nassau or a Direct Subsidiary;
- (n) Any corporate reorganization of South Nassau or a Direct Subsidiary along with the development or dissolution of any subsidiary organization, including provider subsidiaries, partnerships, or other entities of South Nassau;

- (o) Any acquisition or any sale, lease, exchange, mortgage, pledge or other alienation of assets or property of any Hospital or any one of the Corporation's Direct Subsidiaries in excess of an amount to be fixed from time to time by the Corporation, Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the direct Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to any sale, lease, exchange, mortgage, pledge or other alienation of assets or property by a direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law;
- (p) Any transaction that results in a Hospital or any of the Corporation's Direct Subsidiaries becoming the sole member or, to the extent permitted by law, the sole shareholder of any corporation owning or operating a licensed hospital;
- (q) Any transaction that results in any other corporation, entity or person becoming entitled to appoint designees to the Board of Directors of the Hospital or any of the Corporation's other Direct Subsidiaries;
- (r) The business plan of South Nassau or any of the Corporation's Direct Subsidiaries; subject to the second to the last paragraph of this Section 13.4;
- (s) Initiation by any of the Corporation's Direct Subsidiaries of bankruptcy or insolvency actions with respect to the Direct Subsidiary;
- (t) Any action that results in the complete closure or conversion of use from a general acute care hospital of a Hospital or any of the Corporation's other Direct Subsidiaries. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the direct Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to the complete closure or conversion of use of a general acute care hospital by a direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law;
- (u) Any amendment to the bylaws or certificate of incorporation of South Nassau or any of the Corporation's Direct Subsidiaries;
- (v) Issuance of long term debt in excess of \$2 million or the incurrence of any other debt by South Nassau or any of the Corporation's direct subsidiaries that: (i) is not part of approved budgets and is in excess of \$1 million; and (ii) is not necessary to finance the cost of compliance with operational or physical plant standards required by law;

- (w) Settlements of litigation involving South Nassau or any of the Corporation's Direct Subsidiaries when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;
- (x) The submission of any certificate of need to any regulatory authority. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law;
- (y) The addition of a new clinical service. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to the addition of a new clinical service unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law;
- (z) The discontinuance or substantial change in an existing clinical service. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to the discontinuance or substantial change in an existing clinical service unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law; and
- (aa) The expenditure of an amount in excess of \$2 million dollars in connection with a single transaction related to health service delivery. Except in connection with the exercise of the Corporation's right to ensure that actions taken by a direct Hospital subsidiary conform to the mission and philosophy of the Hospital subsidiary, the Corporation shall not exercise control over the filing of a certificate of need by a direct Hospital subsidiary with respect to the expenditure of an amount in excess of \$2 million dollars in connection with a single transaction related to health service delivery, unless the Corporation has received establishment approval with respect to the direct Hospital subsidiary pursuant to Article 28 of the Public Health Law.

Except with respect to matters listed in Sections 3.14 (k), (x), (y), (z), and (aa), any of the aforementioned actions which may be taken with respect to South Nassau shall be taken for the purpose of requiring its conformance with its respective operating mission and corporate philosophy. Should exercise of any of the voting rights in this Section 3.14 require the Corporation to take any action that would contravene any law or regulation to which the Corporation may now or hereafter be subject, or require the establishment of the Corporation by

the Public Health Council, such voting rights shall not be exercised unless and until any necessary regulatory approvals are obtained.

Any action which may be taken at a meeting of the directors may be taken without a meeting, if a consent or consents in writing setting forth the action so taken shall be signed by all of the directors in office and shall be filed with the secretary of the Corporation.

ARTICLE IV

Section 4.1. Sponsors, Benefactors, Contributors, Advisors, Friends of the Corporation. The Board of Directors may designate a class of persons as sponsors, benefactors, contributors, advisors or friends of the Corporation (or such other title as the Board of Directors deems appropriate). Such class of persons shall be comprised of an equal number of individuals not to exceed twenty (20), as determined by the Board of Directors.

Section 4.2. Rights. Such persons shall serve in an honorary capacity and, except as contained herein, shall have no other rights and responsibilities. Persons serving in an honorary capacity shall have the right to receive notice of, and attend, all regular and special meetings of the Board of Directors, to review minutes of such meetings, and, to the extent approved by the Board of Directors, to be appointed to and serve in an advisory capacity on any committee of the Board of Directors. Such persons shall not have the right to vote at any meeting of the Board of Directors or any committee, nor shall they be considered for purposes of establishing a quorum.

ARTICLE V

Section 5.1. Committees. The chairman of the Corporation shall appoint the members of all committees of the Corporation, including the Executive Committee and the Nominating Committee, subject to approval of the Board of Directors of the Corporation and except as otherwise set forth herein with respect to *ex-officio* members of committees.

The Board of Directors shall maintain an Executive Committee which shall have and may exercise the powers of the Board of Directors in the management of the business affairs of the Corporation, except for the actions requiring a two-thirds vote of the entire Board of Directors listed in Sections 3.13 and 3.14 hereof, and as otherwise prohibited by law. The Executive Committee shall be comprised of between eight (8) and fifteen (15) directors. In addition, the chairman of the board of South Nassau shall be an *ex-officio* member of the Executive Committee.

A Nominating Committee shall be comprised of between four (4) and six (6) directors. The Nominating Committee shall, at each annual meeting of the Board of Directors thereafter, and at such other times thereafter that a director may die, resign, or become disqualified or removed, present to the Board of Directors a slate of candidates to be elected by the remaining members of the Board of Directors of the Corporation to fill the vacancy of a director whose term of office has expired or who has died, resigned, or become disqualified or has been removed. The Nominating Committee shall also present annually to the Board of Directors of the Corporation a slate of candidates to be elected to the Board of Directors of South Nassau and any other Direct Subsidiary in accordance with the terms of the bylaws of South Nassau or any other

Direct Subsidiary. Representation on the Board of Directors of South Nassau by individuals residing in or affiliated with the community in which South Nassau is located shall be a factor considered by the Nominating Committee when preparing the slate of candidates for election to the Board of Directors of South Nassau.

The Board of Directors may establish one or more other committees, including a Finance Committee, and delegate to any such committee or committees that consist solely of directors, specific powers of the directors, except those which by law, the certificate of incorporation or these bylaws they are prohibited from delegating. Each committee established by the Board of Directors shall consist of at least four (4) or more directors of the Corporation, and such other persons as may be appointed in accordance with Section 4.1 of these bylaws. The Board of Directors may designate one or more directors as an alternate member of any standing committee, who may replace any absent committee member at any meeting of such committee. Each committee of the board shall serve at the pleasure of the Board of Directors.

The quorum and voting requirements for the Board of Directors set forth in Sections 3.12 through 3.14 shall apply to all meetings of the Executive Committee. With respect to all other committees of the Board of Directors, a majority of the directors in office designated to a committee, or directors designated to replace them as provided in this Section 4.1, shall be present at each meeting to constitute a quorum for the transaction of business and the acts of a majority of the directors at a meeting at which a quorum is present shall be the acts of the committee.

Each committee shall keep regular minutes of its proceedings and report such proceedings periodically to the Board of Directors. Sections 3.10 and 3.11 shall be applicable to committees of the Board of Directors.

Section 5.2. Interested Directors or Officers; Quorum. No person shall be disqualified from holding any office by reason of any interest. No contract or transaction between the Corporation and one (1) or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one (1) or more of its directors or officers are directors or officers or have a financial interest (an "interested director or officer"), shall be void or voidable solely for such reason, or solely because the director or officer is present at the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction; provided, however, that: (i) the material facts as to such relationship or interest and as to the contract or transaction and as to any such common directorship, ownership, or financial interest are disclosed or are known to the Board of Directors or committee authorizing the contract or transaction; (ii) if requested by the chairman, or the individual presiding at the meeting, the interested director or officer shall be excused from that portion of the meeting of the Board of Directors or committee during which the contract or transaction involving the interested director or officer is considered by the Board of Directors or committee; (iii) the interested director or officer is not counted when considering whether a quorum of the Board of Directors or the committee which shall authorize the contract or transaction is present; (iv) the interested director or officer abstains from voting on the contract or transaction; and (v) the contract or transaction is approved by the Board of Directors or the committee in accordance with the voting requirements of Sections 3.12 through 3.14.

If the requirements of the immediately preceding paragraph are met, the contract or transaction may not be avoided by the Corporation. If the requirements of the immediately preceding paragraph are not met, the Corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the Corporation at the time it was authorized by the Board of Directors or a committee.

For purposes of this Section 5.2, a contract or transaction between the Corporation and an organization with which an officer or director of the Corporation is affiliated (as a stockholder, member, director, officer, employee, agent or otherwise) shall be deemed to be a contract or transaction involving an interested officer or director.

ARTICLE VI

Notice - Waivers - Meetings

Section 6.1. Notice, What Constitutes. Unless otherwise provided in these bylaws, whenever written notice is required to be given to any person under the provisions of the certificate of incorporation, these bylaws, or the New York Not-for-Profit Corporation Law, it may be given to such person, personally, by sending a copy thereof first class mail, postage prepaid, by certified mail, return receipt requested, by hand delivery, or by telecopy with confirmed receipt to the address of the person appearing on the books of the Corporation, or in the case of directors, supplied by the director to the Corporation for the purpose of notice. If the notice is sent by mail, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a telegraph office for transmission to such person. A notice of meeting shall specify the place, day and hour of the meeting and any other information required by law or these bylaws.

When a meeting is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.

Section 6.2. Waivers of Notice. Whenever any written notice is required to be given under the provisions of the certificate of incorporation, these bylaws, or the New York Not-for-Profit Corporation Law, such notice of the meeting need not be given to any alternate director, nor to any director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to the director. Except as otherwise required by this Section 6.2 and by Section 10.6, neither the business to be transacted at nor the purpose of a meeting need be specified in the waiver of notice of such meeting. In the case of a special meeting of the directors, such waiver of notice shall specify the general nature of the business to be transacted.

Section 6.3. Modification of Proposal Contained in Notice. Whenever the language of a proposed resolution is included in a written notice of a meeting, the meeting considering the resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose.

Section 6.4. Conference Telephone Meetings. One (1) or more persons of the Board of Directors or any committee thereof may participate in a meeting of the board or any committee thereof by a means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation in a meeting pursuant to this Section 6.4 shall constitute presence in person at such meeting.

ARTICLE VII

Officers

Section 7.1. Number, Qualifications and Designation. There shall be a chairman and a vice chairman of the Board of Directors. In addition to the chairman and vice chairman, the officers of the Corporation shall be an executive vice president, a secretary, a treasurer, and such other officers as may be elected in accordance with the provisions of Section 7.3. Any number of offices may be held by the same person, except the office of the president (if a president is appointed) and secretary. Officers may, but need not, be directors of the Corporation.

Section 7.2. Election and Term of Office. The officers of the Corporation, except the executive vice president and those elected by delegated authority pursuant to Section 7.3, shall be elected annually by the Board of Directors, and shall hold office until the next annual organization meeting of directors and until a successor shall have been elected and qualified, or until death, resignation, or removal. The executive vice president and those officers elected by delegated authority pursuant to Section 7.3 shall serve at the pleasure of the Board of Directors or the individual(s) who appointed such officers in accordance with Section 7.3.

Section 7.3. Subordinate Officers, Committees and Agents. The Board of Directors may from time to time elect such other officers and appoint such committees, employees or other agents as the business of the Corporation may require, including but not limited to, one (1) or more vice presidents, one (1) or more assistant secretaries, and one (1) or more assistant treasurers, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws, or as the Board of Directors may delegate to any officer or committee the power to elect subordinate officers and to retain or appoint employees or other agents, or committees thereof, and officers, committees, employees or other agents.

Section 7.4. Resignations. Any officer or agent may resign at any time by giving written notice to the Board of Directors, or to the chairman or the secretary of the Corporation. Any such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.5. Removal. Subject to Section 3.13(d), any officer, committee member, employee or other agent of the Corporation may be removed, either with or without cause, by the Board of Directors or other authority which elected, retained or appointed such officer, committee or other agent whenever in the judgment of such authority the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed. The election or appointment of an officer shall not of itself

create contract rights. An action to procure a judgment removing an officer for cause may be brought by any director.

Section 7.6. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause, shall be filled by the Board of Directors or by the officer or committee to which the power to fill such office has been delegated pursuant to Section 7.3, as the case may be, and if the office is one for which these bylaws prescribe a term, shall be filled for the unexpired portion of the term.

Section 7.7. General Powers. All officers of the Corporation, as between themselves and the Corporation, shall respectively have such authority and perform such duties in the management of the property and affairs of the Corporation as may be determined by resolutions or orders of the Board of Directors, or, in the absence of controlling provisions in resolutions or orders of the Board of Directors, as may be provided in these bylaws.

Section 7.8. Chairman and Vice Chairman of the Board. The individual serving in the position of Chairman shall be a Corporation Board member historically affiliated with South Nassau. The chairman of the Corporation shall be elected annually for a term of one (1) year by the Board of Directors of the Corporation.

Section 7.9. Role of the Chairman; Vice Chairman. The Chairman of the Board or, in the absence of the chairman, the vice chairman of the Board shall preside at all meetings of the Board of Directors, and shall perform such duties as may from time to time be requested by the Board of Directors. The chairman shall, in conjunction with the board members, meet with and receive reports from the executive vice president and South Nassau chief executive officer.

Section 7.10. Executive Vice President. The executive vice president shall have general supervision over certain activities and operations of the Corporation as determined by and subject to the control of the Board of Directors. The executive vice president shall sign, execute, and acknowledge, in the name of the Corporation, deeds, mortgages, bonds, contracts or other instruments, authorized by the Board of Directors, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors, or by these bylaws, to some other officer or agent of the Corporation; and, in general, shall perform all duties incident to the office of the executive vice president, and such other duties as from time to time may be assigned by the Board of Directors. The duties of the executive vice president shall include the identification of new initiatives involving the Corporation. The executive vice president shall report to the Board of Directors and the Executive Committee of the Board of Directors of the Corporation.

Section 7.11. Secretary. The secretary or an assistant secretary shall have a business address in the State of New York; shall attend all meetings of the Board of Directors and shall record all the votes of the directors and the minutes of the meetings of the Board of Directors and of committees of the board in a book or books to be kept for that purpose; shall see that notices are given and records and reports properly kept and filed by the Corporation as required by law; shall be the custodian of the seal of the Corporation and see that it is affixed to all documents to be executed on behalf of the Corporation under its seal; and, in general, shall perform all duties incident to the office of the secretary, and such other duties, including serving as the registered

agent for service of process on the Corporation, as may from time to time be assigned by the Board of Directors.

Section 7.12. Treasurer. The treasurer or an assistant treasurer shall have or provide for the custody of the funds or other property of the Corporation; shall collect and receive or provide for the collection and receipt of monies earned by or in any manner due to or received by the Corporation; shall deposit all funds in his or her custody as treasurer in such banks or other places of deposit as the Board of Directors may from time to time designate; shall, whenever so required by the Board of Directors, render an account showing all transactions as treasurer, and the financial condition of the Corporation; and, in general, shall discharge such other duties as may from time to time be assigned by the Board of Directors.

Section 7.13. Officers' Bonds. Any officer shall give a bond for the faithful discharge of the duties of the officer in such sum, if any, and with such surety or sureties as the Board of Directors shall require.

ARTICLE VIII

Indemnification of Directors, Officers and Other Authorized Representatives

The indemnification of directors, officers and other persons by the Corporation shall be governed by the indemnification provisions set forth in the certificate of incorporation.

ARTICLE IX

Rules and Regulations of Directors

The Board of Directors shall adopt such Rules and Regulations from time to time as may be necessary to implement more specifically the general principles of these bylaws. Such Rules and Regulations shall be a part of these bylaws except that they may be amended or repealed by the vote of the Board of Directors at any regular meeting of the board without previous notice or at any special meeting after appropriate notice.

ARTICLE X

Miscellaneous

Section 10.1. Corporate Seal. The Corporation shall have a corporate seal in the form of a circle containing the name of the Corporation, the year of the incorporation and such other details as may be approved by the Board of Directors.

Section 10.2. Checks. All checks, notes, bills of exchange or other orders in writing shall be signed by such person or persons as the Board of Directors may from time to time designate.

Section 10.3. Contracts. Except as otherwise provided in these bylaws, the Board of Directors may authorize any officer or officers, agent or agents, to negotiate and/or enter into any contract or to execute or deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 10.4. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may approve or designate, and all such funds shall be withdrawn only upon checks signed by such one or more officers or employees as the Board of Directors shall from time to time determine,

Section 10.5. Annual Report of Directors. The Board of Directors shall publish annually a report, verified by the executive vice president and treasurer or by a majority of the directors.

Section 10.6. Amendment of Bylaws. These bylaws may also be amended or repealed, or new bylaws may be adopted by the vote of two thirds (2/3) of the entire Board of Directors then in office. Such proposed amendment, repeal or new bylaws, or a summary thereof, shall be set forth in any notice of such meeting, whether annual, regular or special.

Section 10.7. Expenses. It will be a goal of the Corporation to reduce expenses for the Corporation and its Direct Subsidiaries and to operate in a fiscally prudent manner.

WITNESS MY HAND AND SEAL OF THE CORPORATION

Seal

By: *Harry [unclear]*
Secretary

Date: Feb. 14, 2017

AGREEMENT OF DISAFFILIATION

BY AND BETWEEN

WINTHROP SOUTH NASSAU UNIVERSITY HEALTH SYSTEM, INC.

AND

WINTHROP-UNIVERSITY HOSPITAL ASSOCIATION

AND

SOUTH NASSAU COMMUNITIES HOSPITAL

This Disaffiliation Agreement (hereinafter referred to as the "Agreement") is effective as of December 28, 2016 (the "Effective Date") by and among Winthrop South Nassau University Health System, Inc., located at 50 Charles Lindberg Blvd, Suite 601, Uniondale, NY 11553 (the "System"), Winthrop-University Hospital Association, located at 259 First Street, Mineola, NY 11501 ("WUH") and South Nassau Communities Hospital, located at One Healthy Way, Oceanside, NY 11572 ("SNCH") (the System, WUH and SNCH are hereinafter each referred to as a "Party" or collectively as the "Parties").

WHEREAS, pursuant to that certain Amended and Restated Collaboration Agreement entered into by and among the System, WUH and SNCH on or about August 31, 2013 (the "Collaboration Agreement"): (i) each of WUH and SNCH have the unilateral right to disaffiliate from the System; and (ii) the System has agreed to take all necessary actions to withdraw as the sole member of an institution electing to disaffiliate from the System; and

WHEREAS, on October 18, 2016, WUH provided written notice to SNCH of its election to disaffiliate from the System (the "Disaffiliation"); and

WHEREAS, on January 5, 2017 the Board of Directors of the System (the "Board of Directors") approved the withdrawal of the System as the sole corporate member of WUH on the date of the receipt of all necessary governmental approvals required to consummate such action (the "Withdrawal Date"); and

WHEREAS, WUH has informed the System that effective upon the Disaffiliation, WUH intends to consummate an affiliation transaction pursuant to an affiliation agreement (the "Affiliation Agreement") negotiated by WUH with NYU Langone Health System ("NYU"), a New York not-for-profit corporation, under which it is contemplated that NYU would become the sole corporate member of WUH (the "Affiliation"); and

WHEREAS, the Parties desire to memorialize the terms and conditions of the Disaffiliation in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the promises and mutual covenants contained herein, the Parties hereto agree as follows:

1. Withdrawal of System as Sole Member of WUH. The Parties acknowledge and agree that WUH provided notice of the Disaffiliation dated October 18, 2016 to the System and SNCH. The Parties shall in good faith work to obtain all governmental approvals necessary to consummate the Disaffiliation. Although WUH intends to consummate the Affiliation following the Disaffiliation, the Parties acknowledge and agree that the Disaffiliation is not contingent upon, and shall proceed without regard to, the status of the Affiliation contemplated by the Affiliation Agreement.

2. Resignation of Directors and Officers. The individuals serving as members of the Board of Directors, committees of the Board of Directors or as officers of the System or SNCH who are listed on Exhibit A attached hereto and incorporated herein shall resign from their respective positions as of the Withdrawal Date. From the Effective Date through the Withdrawal Date, the individuals listed in Exhibit A shall take action to approve any strategic initiative or affiliation proposed by SNCH with any third party that requires approval of the System. Such action shall be approved in accordance with the timeframe reasonably requested by SNCH. On the Effective Date, the individuals listed on Exhibit A shall resign from the Joint Planning Committee ("JPC") of the Long Island Health Network ("LIHN") and all committees of the JPC.

3. Use of the Name "Winthrop". The Parties agree to cooperate in good faith to take all steps necessary to remove the word "Winthrop" from the legal name of the System as soon as reasonably practicable after the Effective Date.

4. LIHN Payor Agreements. WUH has informed the System and SNCH that it intends to remain a participating hospital in LIHN until the Withdrawal Date. The System and SNCH agree that to the extent that any LIHN payor agreements are renewed prior to the Withdrawal Date, the System and SNCH shall use good faith efforts to include in such payor agreement(s): (i) compensation terms that provide that WUH will receive increases in compensation equivalent to any increases received by SNCH during the first year of the renewal term; and (ii) term and/or termination provisions that include either a term of one year for WUH or a termination without cause provision that would permit WUH to terminate the relevant payor agreement without cause by providing not more than one hundred and eighty (180) days written notice to the relevant payor and LIHN.

5. Tail Insurance. On the Withdrawal Date, the System shall terminate the insurance coverages listed on Exhibit B attached hereto and incorporated herein that cover the System and its affiliates, including WUH and SNCH. The Parties shall jointly purchase tail insurance policies covering claims made following the Withdrawal Date that would otherwise have been covered by the claims-made insurance policies listed on Exhibit B. The Parties shall mutually agree upon an appropriate methodology to share the cost of such tail insurance policies.

6. Shared Services. The Parties acknowledge that the Parties have historically provided certain administrative and operational services to the System that are listed on Exhibit

C attached hereto and incorporated herein (the "Shared Services"). The provision of Shared Services to the System by WUH and/or SNCH shall terminate immediately on the Withdrawal Date; *provided, however* that

- a. WUH shall prepare on behalf of the System (i) the 2016 audited financial statement (and, to the extent required, an audited financial statement for the 2017 stub period) and (ii) any tax forms required by applicable law, and WUH and SNCH each further agree that they shall each be responsible for fifty percent (50%) of the costs associated with each of the foregoing (i) and (ii); and
- b. WUH shall maintain, on behalf of the System, all System books and records currently within its custody and control for no less than the amount of time such books and records are required to be maintained under applicable law. WUH shall provide to the System and/or SNCH access to and copies of all such books and records upon request by the System and/or SNCH, as the case may be.

7. Notice to Pension Benefit Guaranty Corporation. To the extent required by law, the Parties shall coordinate to provide written notice to the Pension Benefit Guaranty Corporation regarding the Disaffiliation at least thirty (30) days prior to execution of this Agreement.

8. Expenses and Liabilities Related to the Disaffiliation. The Parties acknowledge and agree that they shall pay certain expenses and or liabilities related to the Disaffiliation and the ongoing operations of the System:

- a. WUH agrees that it shall be responsible for one hundred percent (100%) of its own transaction costs incurred in connection with consummating the Affiliation.
- b. WUH and SNCH agree that they shall each be responsible for fifty percent (50%) of:
 - i. any costs or liabilities incurred by the System (or by a Party on behalf of the System) prior to the Disaffiliation;
 - ii. any payments, and/or related costs, if any, assessed by LIHN against WUH, SNCH and/or the System pursuant to the Amended and Restated LIHN Joint Venture Affiliation Agreement (the "LIHN Agreement") or otherwise related to participation in LIHN; and
 - iii. Current or future payment, contribution or reimbursement obligations of WUH and SNCH arising under the LIHN Agreement and/or any other contractual arrangements with respect to which WUH and SNCH and/or the System are parties, including, but not limited to, obligations of the Parties arising in connection with any annual operating or capital budget

expenditures of LIHN approved prior to the Disaffiliation and for which WUH, SNCH and/or the System are responsible in accordance with the LIHN Agreement. Notwithstanding the foregoing, the Parties shall cooperate with each other in negotiating with LIHN and/or any other contract parties, as the case may be, to eliminate or minimize the amount of any payment, contribution or reimbursement obligation.

9. Indemnification.

- a. In addition to the obligations of WUH under Section 8, WUH shall indemnify, defend and hold harmless the System, SNCH, their affiliates, and their respective officers, directors, employees, agents and representatives from and against any and all claims, liabilities, costs, damages and expenses of every kind and nature (including, without limitation, court costs and reasonable attorneys' fees) (collectively "Damages") to the extent such Damages arise out of or are caused by:
- i. breach of this Agreement or any agreement in which WUH has an obligation or duty to the System or SNCH;
 - ii. the Affiliation or any act or omission by WUH or its affiliates related to the Affiliation or the Affiliation Agreement;
 - iii. the negligent, grossly negligent or willful acts or omissions of WUH, its affiliates, or their respective employees, representatives and agents in connection with the conduct of WUH's business before or after the Effective Date; and
 - iv. Any penalties or other costs (A) incurred by the System, SNCH or any of SNCH's subsidiaries or affiliates, or (B) assessed against the System, SNCH or any of SNCH's subsidiaries or affiliates by the Pension Benefit Guaranty Corporation, in each case in connection with the failure to give notice of the Disaffiliation as required by applicable law.
- b. SNCH shall indemnify, defend and hold harmless the System, WUH, their affiliates, and their respective officers, directors, employees, agents and representatives from and against any and all Damages to the extent such Damages arise out of or are caused by:
- i. breach of this Agreement or any agreement in which SNCH has an obligation or duty to the System or WUH; and
 - ii. the negligent, grossly negligent or willful acts or omissions of SNCH, its affiliates, or their respective employees, representatives and agents in

connection with the conduct of SNCH's business before or after the Effective Date.

10. Good Faith and Cooperation. The Parties agree to cooperate in good faith to take all necessary actions, including those set forth in this Agreement, to effectuate the Disaffiliation and for the System to withdrawal as the sole member of WUH on the Withdrawal Date. The Parties shall provide to each other information and documents necessary to complete the Disaffiliation as soon as reasonably practicable. The System and SNCH agree that they shall support and shall not oppose the Affiliation contemplated by WUH and as described in this Agreement. WUH agrees that it shall support and not oppose any future affiliation between the System and/or SNCH and any third party selected by the System and/or SNCH.

11. Entire Agreement. This Agreement represents the complete understanding between the Parties with respect to the subject matter hereof and no other promises or agreements shall be binding unless contained in a writing signed by all of the undersigned Parties or their duly authorized representatives.

12. Amendment. This Agreement may not be modified or amended without the prior written consent of all Parties.

13. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

14. Severability. If at any time after the date of the execution of this Agreement, any provision of this Agreement shall be held to be illegal, void or unenforceable by a court of competent jurisdiction, such provision shall be of no force and effect. However, the illegality or unenforceability of such provisions shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement.

15. Assignment/Binding Agreement. This Agreement may not be assigned without the written consent of all Parties. This Agreement shall inure to the benefit of and be binding upon the undersigned Parties and their respective successors and assigns.

16. Notices. Any statements, communications, elections, request for cooperation, or notices to be provided pursuant to this Agreement shall be sent by both certified mail, return receipt requested, and facsimile to the attention of the persons indicated below, until such time as notice of any change of person to be notified or change of address is forwarded to all Parties:

Winthrop South Nassau University Health System, Inc.
50 Charles Lindberg Blvd.
Suite 601
Uniondale, NY 11553
Tel.: (516) 794-9730
Fax.: (516) 794-9718

With a copy to:
Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
Attn: Timothy McCrystal, Esq.
Tel.: (617) 951-7278
Fax: (617) 951-7050

Winthrop-University Hospital Association
259 First Street
Mineola, NY 11501
Attn: John F. Collins, President
Tel.: (516) 663-2200

With a copy to:
Farrell Fritz, P.C.
1320 RXR Plaza
Uniondale, NY 11556
Tel.: (516) 227-0700
Fax: (516) 227-0777
Attn: Robert C. Creighton, Esq.


South Nassau Communities Hospital
One Healthy Way
Oceanside, NY 11572
Attn: Richard Murphy, President
Tel.: (516) 632-3939

17. Counterpart Signatures. This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original and all of which together shall constitute a single instrument binding upon the Parties.

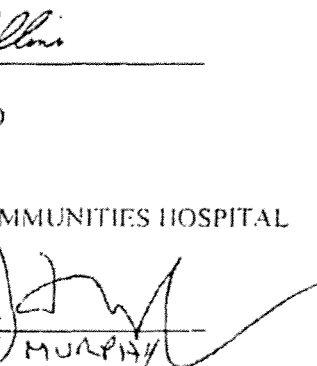
[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this 28th
day of December, 2016.

WINTHROP-UNIVERSITY HOSPITAL ASSOCIATION

By: 
Name: John F. Collins
Title: President & CEO

SOUTH NASSAU COMMUNITIES HOSPITAL

By: 
Name: RICHARD J. MURPHY
Title: PRESIDENT & CEO

WINTHROP SOUTH NASSAU UNIVERSITY HEALTH SYSTEM, INC.

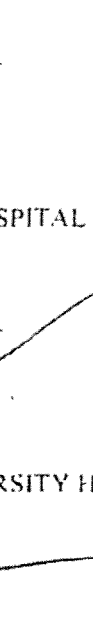
By: 
Name:
Title:

Exhibit A

List of Resigning Directors and Officers

John F. Aloia, M.D.

John D. Catalano

Kevin T. Curran

James Giorgio, Sr.

Patrick K. Long

Charles M. Strain, Esq.

Harriette Thayer

Edward Travagianti

John H. Treiber

Exhibit B
Tail Insurance Coverage

1. Directors and Officers Liability Insurance
2. Employment Practices Liability Insurance
3. Crime and Fiduciary Liability Insurance

Exhibit C
Shared Services

Accounting Services

Preparation of Audited Financial Statements

Preparation of Tax Filings

Maintenance of Books and Records

**UNANIMOUS WRITTEN CONSENT OF THE
BOARD OF DIRECTORS OF
WINTHROP SOUTH NASSAU UNIVERSITY HEALTH SYSTEM, INC.**

~~November 21, 2016~~ January 5, 2017

The undersigned, being all of the directors of WINTHROP SOUTH NASSAU UNIVERSITY HEALTH SYSTEM, INC. (the "Corporation"), do hereby adopt the following preambles and resolutions, waive all notice of a meeting and the holding of any meeting of the directors to act upon said resolutions and direct that this consent be filed with the secretary of the Corporation:

WHEREAS, pursuant to that certain Amended and Restated Collaboration Agreement entered into by and among Winthrop-University Hospital Association ("WUH"), South Nassau Communities Hospital ("SNCH") and the Corporation on or about August 31, 2013: (i) each of WUH and South Nassau have the unilateral right to disaffiliate from the Corporation; and (ii) the Corporation has agreed to take all necessary actions to withdraw as the sole member of an institution electing to disaffiliate from the Corporation; and

WHEREAS, on October 18, 2016, WUH provided written notice to SNCH of its election to disaffiliate from the Corporation; and

WHEREAS, the Board of Directors of the Corporation ("Board of Directors") desires to approve withdrawal of the Corporation as the sole corporate member of WUH upon receipt of all necessary governmental approvals required to consummate such action (the "Withdrawal Date"); and

WHEREAS, WUH has informed the corporation that effective upon disaffiliation from the Corporation, WUH intends to consummate an affiliation transaction pursuant to an affiliation agreement (the "Affiliation Agreement") negotiated by WUH with NYU Langone Health System, a New York not-for-profit corporation (the "System") under which it is contemplated that the System would become the sole corporate member of WUH (the "Affiliation"); and

WHEREAS, WUH has informed the corporation that the Board of Directors of WUH (the "WUH Board") has determined that it is in the best interest of WUH to consummate the Affiliation contemplated by the Affiliation Agreement because the Affiliation will enable WUH to advance its charitable mission and improve its ability to provide and coordinate the highest quality patient care to patients.

NOW, THEREFORE, BE IT:

RESOLVED, that the Board of Directors hereby approves and authorizes withdrawal of the Corporation as the sole corporate member of WUH effective upon the Withdrawal Date; and further

RESOLVED, that the Board of Directors authorizes WUH to approve, adopt and execute the Amendment to the Certificate of Incorporation of WUH in substantially the form

annexed hereto as Exhibit A (the "WUH Certificate Amendment"), with such changes as may be approved by either the Chairman of the WUH Board or WUH CEO, each of them acting singly, and to take all other action necessary to implement such WUH Certificate Amendment effective on the Withdrawal Date, including but not limited to the filing of the WUH Certificate Amendment with the New York State Department of State; and further

RESOLVED, that the Board of Directors authorizes WUH to approve and adopt the Amended and Restated Bylaws of WUH substantially in the form annexed hereto as Exhibit B (the "WUH Amended and Restated Bylaws"), with such changes as may be approved by either the Chairman of the WUH Board or WUH CEO, each of them acting singly, and to take all other action necessary to implement such WUH Amended and Restated Bylaws effective on the Withdrawal Date; and further

RESOLVED, that the Board of Directors authorizes SNCH to approve and adopt the Amended and Restated Bylaws of SNCH substantially in the form annexed hereto as Exhibit C (the "SNCH Amended and Restated Bylaws"), with such changes as may be approved by either the Chairman of the SNCH Board or SNCH CEO, each of them acting singly, and to take all other action necessary to implement such SNCH Amended and Restated Bylaws effective on the Withdrawal Date; and further

RESOLVED, that the Board of Directors approves, adopts and authorizes execution of the Amendment to the Certificate of Incorporation of the Corporation in substantially the form annexed hereto as Exhibit D (the "Corporation Certificate Amendment"), with such changes as may be approved by either the Chairman of the Board or SNCH CEO, each of them acting singly, and to take all other action necessary to implement such Corporation Certificate Amendment effective on the Withdrawal Date, including but not limited to the filing of the Corporation Certificate Amendment with the New York State Department of State; and further

RESOLVED, that the Board of Directors authorizes the approval and adoption of the Amended and Restated Bylaws of the Corporation substantially in the form annexed hereto as Exhibit E (the "Corporation Amended and Restated Bylaws"), with such changes as may be approved by either the Chairman of the Board or SNCH CEO, each of them acting singly, and to take all other action necessary to implement such Corporation Amended and Restated Bylaws effective on the Withdrawal Date; and further

RESOLVED, that the Board of Directors authorizes John Collins to execute and file, or direct the filing of, a form pursuant to the Hart-Scott-Rodino Premerger Notification Rules (16 C.F.R. Part 803) ("HSR") entitled "Notification and Report Form for Certain Mergers and Acquisitions" on behalf of the Corporation seeking HSR approval for the consummation of the Affiliation, and to take all other action necessary to obtain such HSR approval; and further

RESOLVED, that the individuals whose names are set forth below be, and they are, and that each of them acting hereby is, authorized to execute, on behalf of the

Corporation, any certificates or other instruments necessary to affect the foregoing Resolutions:

Anthony Cancellieri for the Corporation

Richard Murphy for SNCH

John Collins for WUH

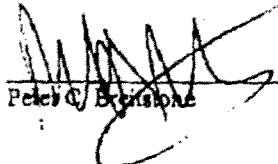
and further;

RESOLVED, that the Board of Directors hereby ratifies, confirms and approves any and all actions heretofore or hereafter taken by WUH, SNCH, and the Corporation and any officer of WUH, SNCH, and the Corporation consistent with the foregoing resolutions.

RESOLVED, that the Corporation, WUH, and SNCH shall undertake the actions described in the above resolutions as soon as reasonably practicable.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the 5th day of ~~November, 2016~~ January, 2017

DIRECTORS:



Peter C. Breitstone

Anthony Cancellieri

Kevin T. Curran

Joseph J. Fennessy

James Giorgio, Sr.

Corporation, any certificates or other instruments necessary to affect the foregoing Resolutions:

Anthony Cancellieri for the Corporation

Richard Murphy for SNCH

John Collins for WUH

and further:

RESOLVED, that the Board of Directors hereby ratifies, confirms and approves any and all actions heretofore or hereafter taken by WUH, SNCH, and the Corporation and any officer of WUH, SNCH, and the Corporation consistent with the foregoing resolutions.

RESOLVED, that the Corporation, WUH, and SNCH shall undertake the actions described in the above resolutions as soon as reasonably practicable.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the 5th day of ~~November, 2016.~~ January, 2017

DIRECTORS:

Peter C. Breitstone



Anthony Cancellieri

Kevin T. Curran

Joseph J. Fennessy

James Giorgio, Sr.

Corporation, any certificates or other instruments necessary to affect the foregoing Resolutions:

Anthony Cancellieri for the Corporation

Richard Murphy for SNCH

John Collins for WUH

and further:

RESOLVED, that the Board of Directors hereby ratifies, confirms and approves any and all actions heretofore or hereafter taken by WUH, SNCH, and the Corporation and any officer of WUH, SNCH, and the Corporation consistent with the foregoing resolutions.

RESOLVED, that the Corporation, WUH, and SNCH shall undertake the actions described in the above resolutions as soon as reasonably practicable.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the ~~5th day of November, 2014~~

December 2016 *KSC* *5th day of January 2017*

DIRECTORS:

Peter C. Braibrons

Anthony Cancellieri

Kevin T. Curran

Joseph J. Fennessy

James Giorgio, Sr.

Corporation, any certificates or other instruments necessary to affect the foregoing Resolutions:

Anthony Cancellieri for the Corporation

Richard Murphy for SNCH

John Collins for WUH

and further;

RESOLVED, that the Board of Directors hereby ratifies, confirms and approves any and all actions heretofore or hereafter taken by WUH, SNCH, and the Corporation and any officer of WUH, SNCH, and the Corporation consistent with the foregoing resolutions.

RESOLVED, that the Corporation, WUH, and SNCH shall undertake the actions described in the above resolutions as soon as reasonably practicable.

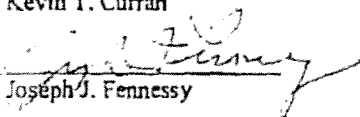
IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the 5th day of ~~November, 2016~~ January, 2017

DIRECTORS:

Peter C. Breistone

Anthony Cancellieri

Kevin T. Curran



Joseph J. Fennessy

James Giorgio, Sr.

RESOLVED, that the Board of Directors authorizes John Collins to execute and file, or direct the filing of, a form pursuant to the Hart-Scott-Rodino Premerger Notification Rules (16 C.F.R. Part 803) ("HSR") entitled "Notification and Report Form for Certain Mergers and Acquisitions" on behalf of the Corporation seeking HSR approval for the consummation of the Affiliation, and to take all other action necessary to obtain such HSR approval; and further

RESOLVED, that the individuals whose names are set forth below be, and they are, and that each of them acting singly hereby is, authorized to execute, on behalf of the Corporation, any certificates or other instruments necessary to affect the foregoing Resolutions:

Anthony Cancellieri for the Corporation

Richard Murphy for SNCH

John Collins for WUH

and further;

RESOLVED, that the Board of Directors hereby ratifies, confirms and approves any and all actions heretofore or hereafter taken by WUH, SNCH, and the Corporation and any officer of WUH, SNCH, and the Corporation consistent with the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the 5th day of ~~November, 2016~~ January, 2017

DIRECTORS:

Peter C. Breitstone

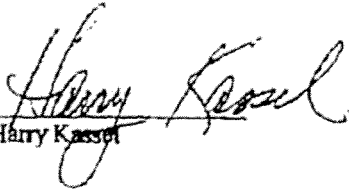
Anthony Cancellieri

Kevin T. Curran

Joseph J. Fennessy



James Giorgio, Sr.


Harry Kassel

Patrick K. Long

Harold A. Mahony

Charles M. Strain

George A. Schieren

Edward Travaglianti

John H. Treiber

Harry Kassel



Patrick K. Long

Harold A. Mahony

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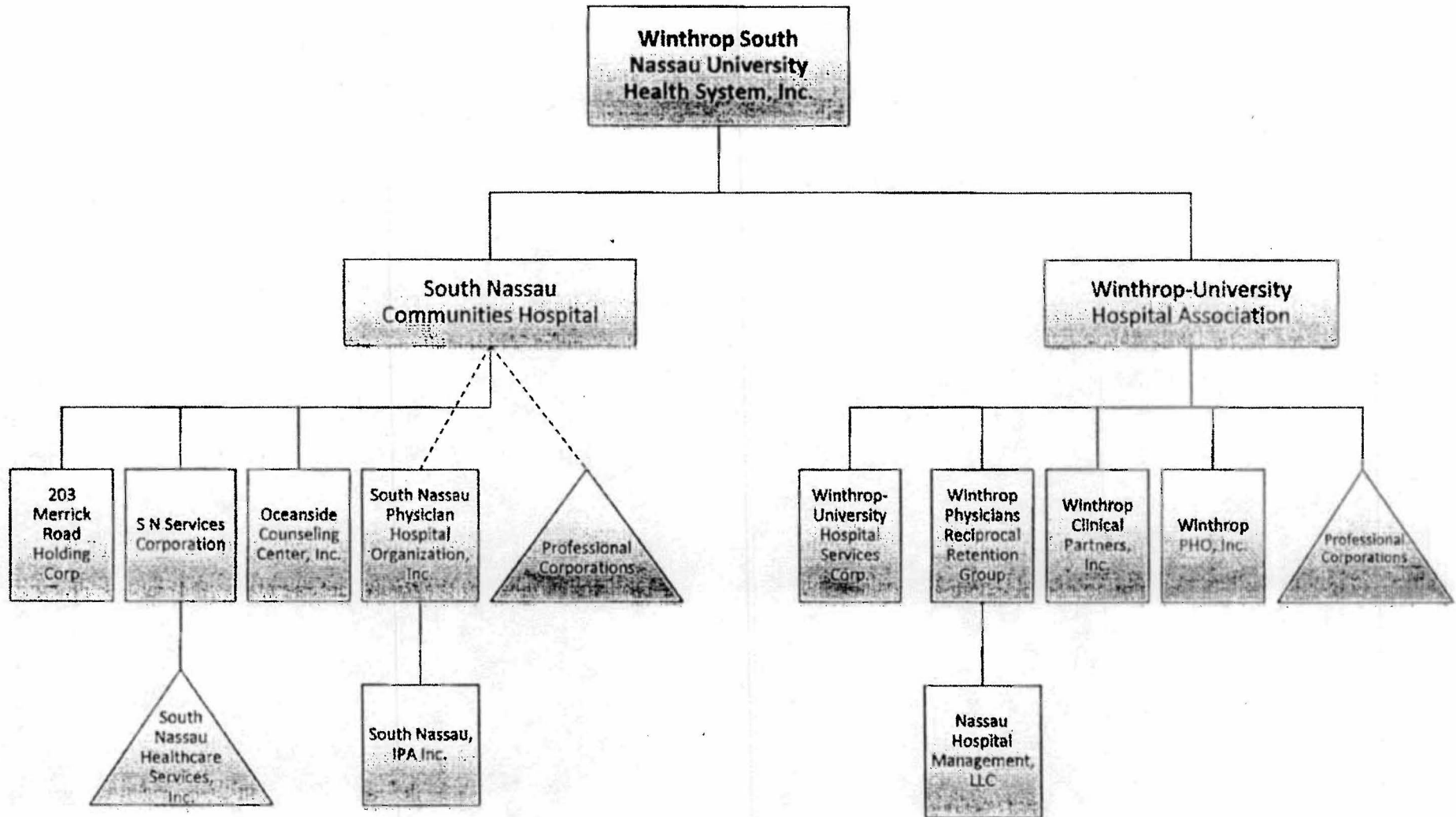
George A. Schieren

Edward Travagianti



John H. Treiber

Winthrop South Nassau University Health System, Inc. Org Chart (Pre-Disaffiliation)



South Nassau University Health System, Inc. Org Chart (Post-Disaffiliation)

