

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

August 3, 2017

*Immediately following the Committee on Codes, Regulations and Legislation meeting
(Scheduled to begin at 10:15 a.m.)*

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

June 8, 2017

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

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

C. Report of the Office of Public Health Activities

Brad Hutton, Deputy Commissioner, Office of Public Health

IV. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Adoption

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

17-10 Amendment of Section 710.1 of Title 10 NYCRR (Updating Certificate Need Thresholds)

For Emergency Adoption

Amendments to Parts 400 and 405 of Title 10 NYCRR – Hospital Policies for Individuals with Substance Use Disorders

*****TO BE DISTRIBUTED UNDER SEPARATE COVER*****

For Discussion

Amendments to Parts 400 and 405 of Title 10 NYCRR – Hospital Policies for Individuals with Substance Use Disorders

*****TO BE DISTRIBUTED UNDER SEPARATE COVER*****

V. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Angel Gutiérrez, M.D., Member of the Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Residential Health Care Facilities - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171289 C	Albany County Nursing Home (Albany County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171326 C	St. Francis Hospital (Nassau County) Dr. Bennett – Opposed at ERPC	Contingent Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171176 C	NYU Hospitals Center (New York County) Dr. Kalkut – Recusal Dr. Berliner – Abstained at EPRC	Contingent Approval

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162026 B	Manhattan RSC, LLC d/b/a Manhattan Reproductive Surgery Center (New York County)	Contingent Approval
2.	162088 E	Day-OP Center of Long Island, Inc. (Nassau County)	Contingent Approval
3.	171282 B	Dutchess Ambulatory Surgical Center (Dutchess County)	Contingent Approval
4.	171310 E	Queens Boulevard ASC, LLC (Queens County)	Approval

Residential Health Care Facility – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171227 E	104 Old Niagara Road Operating Company, LLC d/b/a Elderwood at Lockport (Niagara County)	Contingent Approval

Certificates

Certificate of Dissolution

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Resurrection Ministries of New York	Approval

Restated Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Mercy Hospital Foundation, Inc.	Approval

Certificate of Assumed Name

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Hudson Valley Regional Community Health Centers – Dutchess	Approval
Hudson Valley Regional Community Health Centers – Putnam	Approval

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Chase Memorial Nursing Home Company, Inc.	Approval
The Center for Discovery, Inc.	Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171342 E	112 Ski Bowl Road Operating Company, LLC d/b/a Elderwood at North Creek (Warren County) Dr. Rugge - Recusal	Contingent Approval

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171239 E	Somers Operating, LLC d/b/a Somers Rehabilitation & Nursing Center (Westchester County) Mr. La Rue – Recusal	Contingent Approval

Certified Home Health Agencies – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171315 E	Jamaica Acquisition III, LLC d/b/a Hillside Certified Home Health Agency (Queens County) Mr. La Rue - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162581 E	SCOB, LLC d/b/a SurgiCare of Brooklyn (Kings County) Dr. Berliner – Opposed at EPRC Dr. Gutiérrez – Opposed at EPRC Dr. Martin – Abstained at EPRC	Contingent Approval

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 162541 E	Nyack Operating LLC d/b/a Nyack Ridge Rehabilitation and Nursing Center (Rockland County) Dr. Gutiérrez - Abstained at EPRC	Contingent Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 171229 E	ILF Operating, LLC d/b/a Elm Manor Nursing and Rehabilitation Center (Ontario County) Dr. Bennett – Abstained at EPRC Dr. Berliner – Abstained at EPRC Dr. Brown – Abstained at EPRC Dr. Martin – Abstained at EPRC Mr. La Rue – Opposed at EPRC	No Recommendation
2. 171231 E	LFG Operating, LLC d/b/a Wedgewood Nursing and Rehabilitation Center (Monroe County) Dr. Bennet – Abstained at EPRC Dr. Berliner – Abstained at EPRC Mr. La Rue – Opposed at EPRC	Contingent Approval

HOME HEALTH AGENCY LICENSURES

New LHCSA

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2100 L	Sterling Care Homecare Services LLC (Bronx and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2198 L	Divine Home Care Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2214 L	You First Home Care LLC (Kings, New York, Queens, Bronx, and Richmond Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2326 L	Miracle Home Care Agency Inc. (Kings, Richmond, Queens, Bronx, New York and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2346 L	Seaside Home Care, Inc. (Bronx, Queens, New York, Richmond, Kings and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2364 L	One Caring Place Plus, Inc. (Oneida and Herkimer Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval

2379 L	Care One Licensed Home Care Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2416 L	Silver Home Care Services, Inc. (Richmond, Queens, New York, Bronx, Kings, and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2440 L	Good Shepherd Personal Care Inc. (Nassau, Suffolk and Queens Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2446 L	Focus Care Group, Inc. (Westchester and Bronx Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2494 L	Sequoia Home Care, Inc. d/b/a Senior Helpers (Nassau and Suffolk Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2498 L	Aldon Magloire and Tami N. Johnson d/b/a Precious Pearls Home Health Care (Nassau, Suffolk and Queens Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2502 L	Kind Loyal Service RN Healthcare Services PLLC (Westchester County) Ms. Baumgartner – Opposed at EPRC	Contingent Approval

2513 L	Kingsbridge Home Healthcare Services Corp. (Kings, New York, Queens, Richmond, Bronx and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2518 L	Lavena Home Health Inc. (Queens, Bronx, Kings, Richmond, New York, and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2520 L	Greater New York Health Care, Inc. d/b/a Loving Home Care Hewlett (Nassau, Orange, Westchester, Suffolk, Putnam, Queens, Rockland and Dutchess Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2522 L	Alastar Family & Senior In-Home Care, LLC (Westchester and Bronx Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2524 L	Diva Multicare Services, Inc. (Queens, Bronx, Kings, Richmond, New York and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2526 L	ACME Home Care, Inc. (Bronx, Kings, New York, Richmond, and Queens Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2536 L	Choose Home Care, Inc. (Bronx, Queens, Kings, Richmond, New York and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval

2550 L	ATD Home Health Agency Inc. (Queens, Bronx, Kings, Richmond, New York and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2551 L	Divine Mercy Tender Loving Care (DMTLC), LLC d/b/a Acti-Kare Responsive In-Home Care (Queens Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2553 L	MDB Home Care, LLC (Bronx, Queens, Kings, Richmond, New York and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2565 L	No One Left Out Services Inc. (Suffolk, Nassau, Westchester, Putnam, and Rockland Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2570 L	CarePark Home Care LLC (Bronx, Kings, New York and Queens Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2593 L	Autumn Hills Home Care, LLC (Nassau, Suffolk, Westchester and Queens) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2603 L	Seniors First Inc. d/b/a Home Instead Senior Care (Suffolk County) Ms. Baumgartner – Opposed at EPRC	Contingent Approval

2619 L	1 st Help HomeCare Inc. (Kings, New York, Queens, Richmond, Bronx, and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2622 L	Medi One Home Care Inc (Rockland, Westchester and Orange Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2627 L	Argent Home Care Inc. (Westchester, Nassau, Rockland, Suffolk, Putnam and Bronx Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2629 L	Luba’s Homecare Inc. (Kings, Bronx, Queens, Richmond, New York and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2637 L	NoLimits NYC, Corp. (Bronx, Queens, Kings, Richmond, New York and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2641 L	Baychester Services LLC d/b/a Regeis@Home (Bronx, Queens, Kings, Richmond, New York and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2642 L	Surrogate Family Care, LLC (Nassau, Suffolk, and Queens Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval

2646 L	Spring Home Health Services, LLC (Queens, Bronx, Kings, Richmond, New York and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
2647 L	Senior Assist Home Care LLC (Kings, Richmond, Queens, Bronx, New York and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
151341	Chai Homecare LLC (Bronx, Queens, Kings, Richmond, New York, and Nassau Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
152066	All Purpose Care LLC (Bronx, New York, Queens, and Westchester Counties) Ms. Baumgartner – Opposed at EPRC	Contingent Approval
152179	GWS Home Care LLC d/b/a Right at Home (New York County) Ms. Baumgartner – Opposed at EPRC	Contingent Approval

New LHCSAs – Affiliated with Assisted Living Programs (ALPs)

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
162319	Trustees of the Eastern Star Hall and Home of the State of New York d/b/a Easter Star Home Care (Oneida and Herkimer Counties)	Contingent Approval
162327	The Church Aid of the Protestant Episcopal Church in the Town of Saratoga Springs, Inc. d/b/a Home of the Good Shepherd Licensed Home Care (Saratoga County)	Contingent Approval

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
162065	Mavencare (NY) Inc. (New York, Queens, Bronx, Richmond, Kings and Nassau Counties)	Contingent Approval
162244	Seniorcare HHA Inc. (Nassau and Queens Counties)	Contingent Approval
162509	Eva Homecare Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
171256	BE Home Care, LLC d/b/a Central Home Care (Bronx, New York, Kings, Queens, Nassau and Richmond Counties)	Contingent Approval

VI. NEXT MEETING

September 20, 2017 – NYC
October 4, 2017 – NYC

VII. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
June 8, 2017

The meeting of the Public Health and Health Planning Council was held on Thursday, March 9, 2017 at the New York State Department of Health Offices at 90 Church Street, 4th Floor, Rooms 4A & 4B, NYC. Dr. Jo Ivey Boufford, Vice Chair of the Council presided.

COUNCIL MEMBERS PRESENT

Ms. Judy Baumgartner	Mr. Harvey Lawrence
Dr. John Bennett	Dr. Glenn Martin
Dr. Howard Berliner	Dr. John Palmer
Dr. Jo Ivey Boufford	Ms. Ellen Rautenberg
Dr. Lawrence Brown	Mr. Peter Robinson
Ms. Kathleen Carver-Cheney	Dr. John Ruge
Dr. Angel Gutierrez	Ms. Nilda Soto
Mr. Thomas Holt	Dr. Andersen Torres
Dr. Gary Kalkut	Dr. Patsy Yang
Mr. Scott La Rue	Commissioner Zucker – Ex-officio

DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Charles Abel	Ms. Sylvia Pirani - Albany via video
Ms. Nancey Agard	Ms. Tracy Raleigh
Ms. Barbara DelCogliano	Ms. Linda Rush - Albany via video
Ms. Alejandra Diaz - Albany via video	Dr. Michael Ryan – Albany via video
Mr. Mark Furnish	Mr. Daniel Sheppard
Ms. Colleen Leonard	Ms. Lisa Thomson
Mr. George Macko – Albany via video	Ms. Lisa Ullman
Ms. Lisa McMurdo	Mr. Richard Zahnleuter

INTRODUCTION

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

APPROVAL OF THE MINUTES OF APRIL 6, 2017

Dr. Boufford asked for a motion to approve the April 6, 2017 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutiérrez motioned for approval which was seconded by Dr. Torres. The minutes were unanimously adopted. Please refer to page 4 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Office of Primary Care and Health Systems Management Activities

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

Mr. Sheppard began his report by stating that the Office of Professional Medical Conduct was asked by the Urgent care association of America to speak at its annual conference about ensuring quality care and patient safety in the urgent care settings. The association reported that New York is in the top five states with respect to the number of urgent care centers that are operating, and most of these are private physician's offices. Mr. Servis reported that since more than 85 percent of those urgent care centers provide episodic care, that effective communication with patients and delivery of appropriate and timely care as well as coordination with other treating providers is critical to insuring that patients are treated and managed safely.

Mr. Sheppard noted that April is Organ Donor Awareness Month. Commissioner Zucker sent a letter to all physicians asking them to be part of this movement to strengthen organ donation in New York. The Department worked with broadcasters all across New York and had on-air media talent wear blue and green as well as donate life lapel pins. The Freedom Tower in New York City, the State University of New York Central Administration building in Albany, and the State Fairgrounds in Syracuse were all lit up blue and green to emphasize the importance of organ donation. On April 21, 2017, the Department was joined by Lauren Sheilds who is a well-known organ donor recipient, as well as Ed Kranepool from 1969 New York Mets who is as is publicly known needs a kidney. They gathered to help kick off a new way to sign up to be an organ donor and that is through the New York State of Health, the New York's health insurance exchange. You can now register directly to be an organ donor through that link.

Mr. Sheppard announced the OPCHSM's Division of Nursing Homes won a national award for its nursing home complaint processing. The Nursing Home Division implemented a series of efficiencies and complaint processing to increase the time, to decrease the time from the filing of a complaint to when the response to that complaint is responded to and in recognition of this work New York was one of only three states nationally who got an award from CMS for innovative processes. This is the second year in a row that the Department's efficiency processes have been recognized by CMS. Last year it was the Division of Hospitals and Diagnostic Treatment Centers that won an award for their lean improvements to the facility pre-opening survey process.

Lastly, Mr. Sheppard updated the Council on the Department's regulatory modernization efforts. The first wave of regulatory monitorization and streamlining will begin in July, August, and September, the Department will convene a series of policy development workshops. Each workshop is going to focus on a specific topic or cluster of related topics. The workshops will be open to the public and webcast and archived. The meetings will engage a wide array of stakeholders that are relevant to the topic and that is going to include providers and payers and consumers as well as subject matter experts. The expected areas of focus are going to be

integrated primary behavioral health services, basic primary care, telehealth, community paramedicine, emerging care management models for post-acute services that are being provided at home or other non-hospital settings, needs methodologies and licensing requirements for cardiac services, freestanding emergency departments, nursing home beds, homecare agencies, and assisted living programs. requirements for the establishment and governance of healthcare facilities given the increasing prevalence of these large multi-system, multi-site systems and separately licensed corporations with owners in common. Also being reviewed will be issues such as character and competence, revenue sharing, and ways of incorporating quality and performance into licensure. Important area focus is going to be improving the CON process with respect to communication, education, engagement of communities when proposed projects or services are very significant or impactful, along the lines of some of the comments made by the public during the committee meeting, Codes Committee meeting earlier today.

Mr. Sheppard explained that the policy and regulation changes that would come out of the workshop, would begin implementing immediately in late 2017, early 2018, and in statutory changes could be considered in the 2018 legislative session.

Mr. Sheppard concluded his report. To view the complete report and questions from the members, please see pages 4 through 16 of the attached transcript.

Office of Public Health Activities

Next, Dr. Boufford introduced Mr. Hutton to give the update on the activities of the Office of Public Health Activities.

Mr. Hutton gave an update on regulations that were presented to the PHHPC in March for information on public water systems. A bill proposed amendments were ultimately then published in the state register on February 15 starting off a 45 day public comment period. The regulations are needed to be adopted to formalize our compliance with the federal regulations. The Department received three comments on the regulations during the public comment period and the Department is currently in the process of revising the proposed regulation to address some of those comments. The proposed regulation will be presented to the PHHPC again for final adoption in the near future.

Mr. Hutton spoke on the topic of new aspects of the Public Health Law (PHL) as it relates to emerging contaminants. The PHL was modified to require all water systems in the state to monitor for emerging contaminants, and to require the department with the input of a newly established drinking water quality council, to establish notification levels for each of those contaminants that we require to be tested for. The requirement pertains to both large and small public systems including municipal water systems, and water systems serving schools, hospitals, office buildings, and other types of buildings. Unlike the federal unregulated contaminant monitoring rule which pertains to systems that serve 10,000 users or more, resulting in New York being the first state in the nation to require testing for unregulated contaminants for systems that serve as few users as 25. The legislation requires the Department to begin to require testing for PFOA and PFOS and for 1-4 Dioxane, 3 specific emerging contaminants, and requires the Department to promulgate regulations that identify and list any additional emerging

contaminants using specific criteria that are set up in the law, and in consultation with this newly established Drinking Water Quality Council. The Council is comprised of 12 members and will meet early this summer with an initial charge focusing on giving the Department recommendations on 1-4 Dioxane.

Mr. Hutton gave an update on Candida Auris which is a fungal infection that has begun emerging in the United States with a heavy focus on the New York City area. There have been 57 clinical cases identified. The fungal infection is a concern primarily because of multidrug resistance among the organisms. There has been one instance of a patient where the patients developed a resistance to one of the (oconocandins) the go-to drug for this kind of infection. There have been 52 involved facilities. On May 5, 2017, the Department issued a health advisory on May 5 that provided updated information for facilities including enhanced recommendation for infection control, for environmental cleaning, and also a requirement that all staff in hospitals and nursing homes in New York City were required to participate in a webinar on C.Auris that focused on some of those key infection control and environmental cleaning principles. The webinar was held on May 11, 2017 and the Department is working to follow up with those facilities that did not have representation. On May 9, 2017, the Department held a roundtable for leaders of different segments of healthcare to get their input on additional strategies that could be implemented to address some of the specific challenges that this organism presents. The Department sent out a self-assessment for facilities in preparation for some on-site surveys that will begin with each facility in Brooklyn and Queens, all nursing homes and hospitals in those two boroughs will receive reviews to check on their progress and compliance with respect to infection control. The Department has been working in strong collaboration with the Centers for Disease Control in addressing this outbreak, and with a real focus on slowing the geographic spread. There has been one case in Monroe County that happened to be a person who is recently hospitalized and transferred from a facility in New York City. No additional transmission in the Monroe County area, there has also been two cases, one in each facility in Rockland and a facility in Westchester county which to date had been successful in limiting any further spread in those facilities and further geographic spread.

Mr. Hutton concluded his report. To view his report, please see pages 16 through 26 of the attached transcript.

PUBLIC HEALTH SERVICES

Report on the Activities of the Public Health Committee

Dr. Boufford next gave a report on the activities of the Public Health Committee and presented a power point presentation and gave an update on the New York State Prevention Agenda. On May 17, 2017, the Ad Hoc Committee to Lead the Prevention Agenda and covered a review of progress on local community health improvement plans from 2016 to 2018. Cattaraugus County, the Capital District Initiative and representatives from the New York City Department of Health and Mental Hygiene gave presentations. There was also staff from the Department Office of Minority Health who presented information on the 2017 health equity reports.

Dr. Boufford explained there is cycle for local community health improvement. We are now in the 2016-2018 and these are the guidance for collaboration is issued by the Commissioner and coalitions at a community level are anchored by local health departments and hospitals, and in some instances health systems representatives when there are multiple hospitals involved. They are charged to bring in other stakeholders and have begun using the same community health needs assessment and encouraged to also submit joint community health plans as to how they would take forward their actions.

Dr. Boufford noted that Ms. Pirani gave a report on the 127 plans submitted, about 31 were joint and she noted she was encouraged by the increasing collaboration in the planning write up.

Dr. Boufford presented the power point presentation. To view the complete report and detailed information from Dr. Boufford's report, please see pages 26 through 41 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Next, Dr. Boufford introduced Dr. Zucker to give a report on the Department of Health report.

Dr. Zucker stated that the health across all policies initiative really is going to make a big difference such as improving the health of all New Yorkers and noted that Ms. Pirani has been working tirelessly on the initiative.

Health Coverage

Dr. Zucker explained Governor Cuomo's initiatives to protect the healthcare in New York. The first in the nation regulations that ban health insurance providers from discriminating against New Yorkers with preexisting conditions or based on their age or gender. These regulations also protect the 10 essential health benefits that are guaranteed by the affordable care act. Any insurer who discontinues offering qualified health plans on the state health marketplace, the exchange, will be prohibited from participating in Medicaid, in Child Health Plus, and the essential plan. The Governor has also directed state agencies and authorities to ban insurers who withdraw from the marketplace from contracting with the state and regardless of what the federal government does, the state has insured that contraceptive drugs and devices as well as abortion services are covered by commercial health insurers, insurance policies without co-pays, without co-insurance or deductibles.

Health Exchange and Organ Donation

Dr. Zucker next spoke on the issue of the State of Health, health exchange. The latest data shows that 18 percent of all New Yorkers are getting the health insurance from the exchange. The success of the marketplace has led to a significant decrease in the number of uninsured people in New York. It has dropped down from 10 percent which was in 2013 to five percent today. The Department has taken advantage of the popularity of the New York State of Health and linked it to another one of our initiatives and that is the issue of increasing the number of organ donors in the state. New York has launched an ambitious effort to increase organ donation. New York is in dire need of organ donors, and despite the uptick in supply in 2016, the demands for organs and tissues continues to surpass the supply. More than 10,000 New Yorkers are on the waiting list right now, and they're desperately hoping for a life saving organ, and one is a cure for patients waiting for transplant really is really a wait against time in some ways and a worry. On April 20 New York State of Health made it possible for individuals applying for health insurance coverage to also enroll in New York State donate life registry and since this option was made available there's about more than 24,000 New Yorkers who have signed up via the exchange to donate. One person can save up to eight lives by donating organs and can improve the lives of many others with donated tissues and eyes as well. Even so, there is still a shortage of organs for transplant. 22 people a day in the United States die waiting for an organ and making this a critical population health issue that we have. While over 10,000 New Yorkers as I mentioned are waiting for an organ, less than 1/3 of New Yorkers are signed up to donate.

Dr. Zucker stated that New York has made it its priority to address the critical needs to improve organ and tissue donation rates. The Department is making it possible to enroll in the Donate Life registry through the marketplace as an example of our commitment, and will keep moving forward on these issues. The latest efforts involved developing, promoting a more modernized registry so it is a little easier and more easy to navigate. The new registry which we expect to launch in the fall will allow for a more seamless web-based enrollment experience and it will be connected to social media and this will allow those who are younger individuals who really manage everything through the internet to manage their own accounts and to also use social media to sign up. We expect more millennials and others who have grown up in a high tech era. The launch of the revamped registry will be supported by a new marketing campaign designed to raise awareness of the need for organ donation, and the availability of this new enrollment opportunity as well.

C. Auris

Dr. Zucker advised that the Department issued a health advisory asking all healthcare facilities and nursing homes to be on alert for Candida Auris. This is the third health advisory on C. It was first identified in Japan in 2009 and it has turned up now in about a dozen countries. It is also in six states including right here in New York. C. Auris is spread in healthcare settings through contact with contaminated surfaces or equipment or from one person to another. Interestingly it hangs around on surfaces moreso than other infections. Preventing the spread of C. Auris requires really strict and stringent infection control measures and it means obviously hand washing and good hand hygiene, the proper use of protecting gowns and gloves, and

regular cleaning of the surfaces with the appropriate EPA hospital grade disinfectants which work against clostridium difficile, it also works against C. Auris. Patients who are infected are colonized need to be placed in single rooms and they also need to be on contact precautions and we'll continue to monitor the situation, keep providers updated. The Department has been in contact with the CDC about this on a regular basis.

Medical Marijuana

Dr. Zucker stated that the Department's Medical Marijuana program continues to expand. Chronic pain was added as a qualifying condition in March and since the Department added it there has now been an additional 3350 patients, and that brings us to a little over 21,000 patients who are certified for the use of medical marijuana. The Department also added nurse practitioners and physicians' assistants as professions who can certify patients, and this has now raised a total number of registered practitioners to 1043. The Department has published a list of registered practitioners who have consented to be listed publicly. This was a concern by those in the community because they felt they did not have a list available. In addition to the public list, the Department has a list of practitioners registered with the medical marijuana program on our health commerce system which is obviously open to providers. Certified patients simply need to speak with their healthcare providers to find a registered practitioner. As of June 6, 2017, 61 percent of practitioners are listed through the health commerce system while about 33 percent are listed publicly. The Department is making sure that the medical marijuana program is successful to those who need it most, and that it grows responsibly.

Mandatory Pain Training

Dr. Zucker spoke on the topic of mandatory pain training for prescribers. The Department has been working to improve prescribing practices for controlled substances especially given this whole issue with opioids and the opioid epidemic which is obviously frightening and a concern. A new Public Health Law now requires practitioners licensed to prescribe controlled substances to undergo a mandatory pain management training. The new law applies to prescribers licensed to treat humans under Title 9 of the Education Law in New York and also have a DA drug enforcement administration registration number to prescribe controlled substances. That also applies to medical residents. Obviously a lot of residents are under the hospital DA registration number, so medical residents who prescribe controlled substances under a facility with the DA number also need to take the course. Practitioners must complete at least three hours of coursework or training in pain management, palliative care, and addiction for an accredited organization by July 1, 2017. It is an excellent course which covers eight topics such as New York State and Federal requirements for prescribing controlled substances, pain management, appropriate prescribing, managing acute pain, palliative medicine, prevention, screening and signs of addiction, responses to abuse and addiction as well as end of life care.

Flu, Ticks, and Zika

Dr. Zucker noted that the flu season is over. With warmer climate comes the return of ticks and mosquitoes and the potential for spread of diseases that they carry. Once again, the Department will monitor ticks and mosquito populations. The Department will encourage New

Yorkers to take steps to protect themselves from bites. To date, regarding Zika, the only Zika cases in New York State are in people acquire the virus while travelling to affected areas or through sexual transmission from someone who actually travelled to those areas. Women who are pregnant or trying to become pregnant are most at risk for the negative consequences of Zika infection. This year New York State Zika public awareness campaign will focus on pregnant women travelling through Zika affected countries. The Department will continue our aggressive six point Zika action plan which was put into place last year.

Global Warming

Lastly, Dr. Zucker spoke on the topic of Governor Cuomo's commitment to an issue on climate change. In response to the US withdrawal from the Paris Climate Accord, Governor Cuomo joined California Jerry Brown and Washington State Governor Jay Insly to form the US Climate Alliance. The alliance brings together states committed to achieving the US goal of reducing emissions by 26 to 28 percent from 2005 and meeting or exceeding the targets of the federal clean power plan. The alliance will also act as a forum to sustain strengthening existing climate programs, promote the sharing of information and best practices, and implement new programs to reduce carbon emissions from all sectors of the economy. The Department is pleased to see Governor Cuomo's commitment to creating a cleaner environment which is essential to good health, not just New Yorkers, but all across the globe, and we are working on all the fronts to make sure New York is as healthy as possible.

Dr. Zucker concluded his report. To read the complete report, please see pages 41 through 54 of the attached transcript.

Dr. Boufford introduced Dr. Ruge to give the Report of the Health Planning Committee activities.

HEALTH POLICY

Report on the Activities of the Health Planning Committee

Dr. John Ruge, Chair, Health Planning Committee

Request for Stroke Center Designation

Applicant

Woman's Christian Association Hospital
Mr. Holt - Recusal

Dr. Ruge noted for the record that Mr. Holt has a conflict and has exited the meeting room. Dr. Ruge then briefly discussed the topic of stroke center designations. He described the Woman's Christian Association Hospital application and motioned for approval. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion carried with Mr. Holt's noted recusal. Mr. Holt returned to the meeting room. Please see pages 54 through 69 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Information

17-10 Amendment of Section 710.1 of Title 10 NYCRR (Updating Certificate of Need Thresholds)

17-07 Amendment of Section 34-2.11 of Title 10 NYCRR (Communication Between Clinical Laboratory Physicians and Patients)

Dr. Gutiérrez briefly described for information Amendment of Section 710.1 of Title 10 NYCRR (Updating Certificate of Need Thresholds) and Amendment of Section 34 - 2.11 of Title 10 NYCRR (Communication Between Clinical Laboratory Physicians and Patients). To review the complete report, please see pages 70 and 71 of the attached transcript.

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Dr. Gary Kalkut, Vice Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162544 C	Memorial Hospital for Cancer and Allied Diseases (New York County)	Contingent Approval

Dr. Kalkut called application 162544 and motioned for approval, Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see page 72 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	171047 C	Erie County Medical Center (Erie County) Ms. Baumgartner - Recusal	Contingent Approval
2.	171075 C	Eastern Niagara Hospital (Niagara County) Ms. Baumgartner - Recusal	Contingent Approval

Dr. Kalkut introduced applications 171047 and 171075 and noted for the record that Ms. Baumgartner has a conflict and has left the room. Dr. Kalkut motions for approval Dr Gutiérrez seconds the motion. The motion to approve carries with Ms. Baumgartner's noted recusals. See pages 72 and 73 of the attached transcript.

Residential Health Care Facilities - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	171079 C	Victoria Home (Westchester County) Mr. La Rue – Recusal	Contingent Approval

Dr. Kalkut described application 171079 and noted for the record that Mr. La Rue has a conflict and has left the meeting room. Dr. Kalkut motioned to approve, Dr. Gutiérrez seconded the motion. The motion carried with Mr. La Rue's noted recusal. Mr. La Rue returned to the meeting room. Please see pages 73 and 74 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

Acute Care Transplant Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 162381 C	NYU Hospitals Center (New York County) Dr. Kalkut – Recusal Mr. Kraut – Recusal (not present) Dr. Lawrence - Recusal Dr. Martin – Recusal Mr. Robinson – Recusal Dr. Brown – Abstained	Contingent Approval

Dr. Gutiérrez introduced application 162381 and noted for the record that Dr. Kalkut, Mr. Kraut who was not present at the meeting, Dr. Lawrence, Dr. Martin and Mr. Robinson have a conflict and have exited the meeting room. Dr. Gutiérrez makes a motion to approve, Dr. Torres seconds the motion. The motion passes with the noted recusals and Dr. Brown’s abstention. Please see page 74 and 75 of the attached transcript.

2. 171167 C	North Shore University Hospital (Nassau County) Dr. Kalkut – Recusal Mr. Kraut – Recusal (not present) Dr. Lawrence - Recusal Dr. Martin – Recusal Mr. Robinson – Recusal Dr. Brown – Abstained	Contingent Approval
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Dr. Gutiérrez introduced application 171167 and noted for the record that Dr. Kalkut, Mr. Kraut who was not present, Dr. Lawrence, Dr. Martin and Mr. Robinson have a conflict and have exited the meeting room. Dr. Gutiérrez makes a motion to approve, Dr. Berliner seconds. The motion passes with the noted recusals and Dr. Brown’s abstention. All members who had noted recusals returned to the meeting room. Please see pages 75 and 76 of the transcript.

Acute Care Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 171267 C	F.F. Thompson Hospital (Ontario County) Mr. Robinson - Recusal One Member Opposed	Contingent Approval

Dr. Kalkut called application 171267 and noted for the record that Mr. Robinson has exited the meeting room since he has a conflict. Dr. Kalkut motions for approval, Dr. Gutiérrez seconds the motion. The motion to approve carried with Mr. Robinson’s recusal and one member opposing the motion. Mr. Robinson returned to the meeting room. See pages 76 and 77 of the attached transcript.

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162556 E	Progressive Surgery Center, LLC (Suffolk County)	Contingent Approval
2.	171198 B	Star Suites, LLC t/b/k/a Star Surgical Suites, LLC (Nassau County)	Contingent Approval
3.	162112 E	Hudson Valley Center for Digestive Health (Westchester County)	Approval
4.	171110 E	University Gastroenterology at the Philip Holtzapple Endoscopy Center (Onondaga County)	Approval

Dialysis Services– Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	161355 B	Freedom Center of Newark, LLC d/b/a Fresenius Kidney Care – Newark (Wayne County)	Contingent Approval
2.	171122 E	Freedom Center of Syosset, LLC (Nassau County)	Contingent Approval
3.	162601 B	The Rogosin Institute at Methodist Home for Nursing and Rehabilitation, LLC (Bronx County)	Contingent Approval

Dr. Kalkut called applications 162556, 171198, 162112, 171110, 161355, 171122, and 162601 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 78 and 79 of the transcript.

Certified Home Health Agency – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162220 E	Prime Home Health Services, LLC (Dutchess County)	Contingent Approval

Dr. Kalkut introduced application 162220 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 80 of the attached transcript.

Certificate of Dissolution

<u>Applicant</u>	<u>Council Action</u>
Glens Falls Hospital Guild, Inc.	Approval
Mount Loretto Nursing Home, Inc.	Approval
Resurrection Nursing Home, Inc.	Approval
Mount Saint Ursula Speech Center	Approval

Dr. Kalkut introduced for consent to file the Certificate of Dissolution of Glens Falls Hospital Guild, Inc., Mount Loretto Nursing Home, Inc., Resurrection Nursing Home, Inc. and Mount Saint Ursula Speech Center for approval. Dr. Gutierrez seconded the approval. The motion carried. Please see pages 80 through 82 of the transcript.

Certificate of Amendment of Articles of Organization

Applicant

LI Replacement, LLC

Council Action

Approval

Dr. Kalkut introduced for consent to file the Certificate of Amendment of Articles of Organization of LI Replacement, LLC and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve passed. Please see page 82 of the transcript.

Certificate of Amendment to the Certificate of Incorporation

Applicant

At Home Care, Inc.

Aurelia Osborn Fox Memorial Hospital Society

Bassett Hospital of Schoharie County

Friends of Bassett, Inc.

Little Falls Hospital

O'Connor Hospital

The Mary Imogene Bassett Hospital

Tri Town Regional Healthcare

Valley Health Services, Inc.

Valley Residential Services, Inc.

Council Action

Approval

Approval

Approval

Approval

Approval

Approval

Approval

Approval

Approval

Approval

Dr. Kalkut introduced for consent to file the Certificate of Amendment to the Certificate of Incorporation for the above listed entities and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve passed. Please see page 82 and 83 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Hospice Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162451 E	Hospice Care in Westchester and Putnam, Inc. (Westchester County) Mr. Kraut Recusal (not present)	Contingent Approval

Dr. Kalkut called application 162451 and noted for the record that Mr. Kraut has declared a conflict and was not present at the meeting. Dr. Kalkut motioned for approval, Dr. Gutiérrez seconded the motion to approve. The motion carried. Please see page 83 of the attached transcript.

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162385 E	Yonkers Gardens, LLC d/b/a Yonkers Gardens Center for Nursing and Rehabilitation (Westchester County) Mr. La Rue – Interest	Contingent Approval
2.	171017 E	Massapequa Center d/b/a Massapequa Center Rehabilitation and Nursing (Suffolk County) Mr. Kraut – Recusal	Contingent Approval

Certified Home Health Agency – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162447 E	Visiting Nurse Association of Hudson Valley (Westchester County) Mr. Kraut - Recusal	Contingent Approval

Dr. Kalkut called applications 162385, 171017 and 162447 and noted for the record that Mr. Kraut who is not present has declared on conflict on applications 171017 and 162447 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 84 and 85 of the attached transcript.

Certificates

Restated Certificate of Incorporation

Applicant

NYU Hospitals Center
Dr. Kalkut - Recusal

Council Action

Approval

Certificate of Assumed Name

Applicant

NYU Langone Hospital for Orthopedics
Dr. Kalkut - Recusal

Council Action

Approval

NYU Langone Hospital-Brooklyn
Dr. Kalkut – Recusal

Approval

NYU Langone Health-Cobble Hill
Dr. Kalkut – Recusal

Approval

Mr. Kraut introduced for consent to file the Restated Certificate of Incorporation of NYU Hospitals Center and Certificate of Assumed Name for NYU Langone Hospital for Orthopedics, NYU Langone Hospital-Brooklyn, and NYU Langone Health-Cobble Hill and noted that Dr. Kalkut has a conflict and has exited the meeting room. Mr. Kraut motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Dr. Kalkut’s recusal. Dr. Kalkut returned to the meeting room. Please see pages 85 and 86 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 171077 B	CMSC, LLC t/b/k/a CitiMed Surgery Center (Queens County) Dr. Martin – Abstained	Contingent Approval

Dr. Kalkut called application 171077 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 86 of the attached transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

HOME HEALTH AGENCY LICENSURES

Changes in Ownership

162459	VNA Home Health Services, Inc. (Putnam and Westchester Counties) Mr. Kraut - Recusal	Contingent Approval
2072 L	American Outcomes Management LP (New York County)	Contingent Approval
162492	Smile Homecare Agency, Inc. (Kings, Queens, Bronx, Richmond, New York and Nassau Counties)	Contingent Approval
162603	ProLife Home Care, Inc. (Kings, Queens, Bronx, New York, Richmond and Nassau Counties)	Contingent Approval
171120	The W Group at Catskill, LLC d/b/a Home Sweet Home on the Hudson (Greene County)	Contingent Approval
171133	The W Group at Hudson, LLC d/b/a Home Sweet Home of Athens (Greene County)	Contingent Approval

Dr. Kalkut called applications 162459, 2072, 162492, 162603, 171120 and 171133 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve passed. Please see page 87 of the attached transcript

New LHCSA

2368 L	Friends & Family Home Care Services, LLC (New York, Bronx, Kings, Queens, Richmond and Westchester Counties)	Contingent Approval
2402 L	N and J Home Care, Inc. (Queens, Kings, Richmond, New York and Bronx Counties)	Contingent Approval
2410 L	Beth Haahesed Home Care Inc. (Kings, Queens, Bronx, New York, Richmond and Nassau Counties)	Contingent Approval
2417L	Manach LLC d/b/a Lach Home Care Services (Bronx and Westchester Counties)	Contingent Approval
2435L	St. Xavier Home Care Services, Inc. (Queens, Kings, New York, Bronx, Richmond and Nassau Counties)	Contingent Approval
2455L	Long Island Home Care Services, Inc. (Suffolk, Nassau and Queens Counties)	Contingent Approval
2472 L	Phoenix's United Agency Inc. d/b/a Sar One Staffing Agency (Bronx, New York, Kings, Queens, Richmond and Westchester Counties)	Contingent Approval

2478 L	Millennium Children Home Care, LLC (Saratoga, Albany, Dutchess and Columbia Counties)	Contingent Approval
2500 L	Serenity Care Agency, LLC (Queens, New York, Kings, Bronx, Richmond and Nassau Counties)	Contingent Approval
2507 L	Hyman's Homecare Agency, LLC (Nassau, Suffolk and Queens Counties)	Contingent Approval
2529 L	Igvara Home Care Services, LLC d/b/a Comfort Keepers (Nassau and Suffolk Counties)	Contingent Approval
2544 L	One Stop Home Care Agency, LLC (Queens County)	Contingent Approval
2549 L	Expert Home Care, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)	Contingent Approval
2555 L	Photuris Home Care Inc. (Bronx and New York Counties)	Contingent Approval
2559 L	Royal Home Care (Fulton, Montgomery, Hamilton, Saratoga, Warren, Herkimer and Schoharie Counties)	Contingent Approval
2561 L	Always An Angel Licensed Homecare, LLC d/b/a Always An Angel Licensed Homecare (Putnam, Westchester, Rockland, Dutchess, Orange and Bronx Counties)	Contingent Approval
2563 L	CitiCare, LLC (Kings, New York, Bronx, Queens, Richmond and Nassau Counties)	Contingent Approval

2575 L	L.A.M. Care, Inc. d/b/a Comfort Keepers (Bronx, Kings, New York, Queens and Richmond Counties)	Contingent Approval
2578 L	Divinity Care at Home, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)	Contingent Approval
2579 L	Nancy Marie Taylor d/b/a Taylors Tender Care Home Health Service (Essex and Clinton Counties)	Contingent Approval
2584 L	Rosetta Care, Inc. (Bronx, Kings, New York, Richmond and Queens Counties)	Contingent Approval
2602 L	Covenant Home Health Care Services Inc. (Queens, Kings, Bronx, New York, Richmond and Nassau Counties)	Contingent Approval
2614 L	Triple J and A Corporation d/b/a Right at Home South Shore Long Island (Nassau and Suffolk Counties)	Contingent Approval
2632 L	GSNY Home Care Services, Inc. (Bronx, Kings, New York, Queens, Richmond, and Westchester Counties)	Contingent Approval
151286	ABJ Home Care Inc. (Queens, Bronx, New York, Kings, Richmond and Nassau Counties)	Contingent Approval
151306	Caring Family Home Care Inc. (Rockland, Orange, Putnam, Westchester and Bronx Counties)	Contingent Approval

151318	Brooklyn Care LLC d/b/a ComForCare (Kings, Queens, New York, Bronx, Richmond and Nassau Counties)	Contingent Approval
151346	Enriched Home Care Agency, Inc. (Bronx, Kings, New York, Queens, Richmond and Nassau Counties)	Contingent Approval
152037	Family and Child Service of Schenectady, Inc. (Schenectady, Albany, Saratoga, Schoharie, Rensselaer, Warren, Montgomery, Fulton and Columbia Counties)	Contingent Approval
152087	LI Home Care Services, Inc. d/b/a SeniCare Plus (Nassau, Suffolk and Queens Counties)	Contingent Approval
152088	B-Well Home Care Agency, Inc. (Richmond, Bronx, New York, Kings and Queens Counties)	Contingent Approval
152097	Healthy Life Home Care, Inc. (Kings, Queens, Bronx, New York, Richmond and Westchester Counties)	Contingent Approval
152102	Rehoboth Elderly Care and Companionship LLC (Nassau, Suffolk and Queens Counties)	Contingent Approval
161135	Buffalo Homecare Inc. (Cattaraugus, Chautauqua, Erie, Genesee, Niagara and Wyoming Counties)	Contingent Approval

162108

Specialty Pharmacy Nursing
Network, Inc.
(Albany, Columbia, Fulton,
Montgomery, Rensselaer,
Saratoga, Schenectady, Schoharie,
Warren and Washington Counties)

Contingent Approval

Dr. Kalkut called all the applications for New LHCSA's and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 87 and 88 of the attached transcript.

ADJOURNMENT:

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

1 PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

2 JUNE 8, 2017

3 FULL COUNCIL MEETING

4 TRANSCRIPT

5 90 CHURCH STREET, NYC

6

7

8 JO BOUFFORD: Good morning. I'm Dr. Jo Boufford, Vice Chair of
9 the Council. Jeff Kraut is away and I have the privilege of
10 calling to order the meeting of the public health and health
11 planning council and welcome members, participants, and
12 observers. Dr. Zucker will be joining us about 11, so we'll
13 just move the agenda around his ability to be with us.

14 Let me remind council members, staff, and the audience that
15 this meeting is subject to the open meeting law and is broadcast
16 over the internet, and I think we're getting a lot of
17 information about how the IT is working. But these webcasts can
18 be accessed at the Department of Health's website
19 <http://NYHealth.gov> [sic] and the on-demand webcast will be
20 available no later than seven days after the meeting for a
21 minimum of 30 days and then a copy will be retained by the
22 Department for four months.

23 Some familiar ground rules to follow to make the meeting
24 work, there is synchronized captioning so people are asked not

1 to talk over each other, and respect the ability to interpret
2 individuals statements. First time you speak, please state your
3 name and briefly whether you are a council member of DOH staff
4 as this will help the broadcasting company who are recording the
5 meeting, and again, the microphones are hot so they pick up
6 every sound, rustling papers, moving, and private conversations.
7 So please be cognizant of that. And final reminder for the
8 audience, there is a form that you should have filled out before
9 you came into the meeting. If you have not, please be sure you
10 get it. It's required by the joint commission on public ethics
11 in accordance with executive law section 166. It's also posted
12 on the Department's website at this point. Nyhealth.gov under
13 Certificate of Need so in future you can pull it down and sign
14 it in advance and submit it. So we thank you for your
15 cooperation for those legal duties.

16 Brief overview of today's meeting, first we will not first
17 hear from Dr. Zucker, We'll hear from Dr. Zucker. He'll report
18 on activities of the Department since our last meeting. Mr.
19 Sheppard will give an update on the office of primary care and
20 health systems management activities and Mr. Hutton will give an
21 update on the office of public health activities. Under public
22 health services, I'm going to give you an update on the
23 activities of the public health committee, followed by Dr. Ruggie
24 presenting the health policy committee request for a stroke

1 center designation and other comments that he may wish to add of
2 work they have been doing that may or may not be ready to be
3 brought to the group yet. On the regulation side, Dr. Gutierrez
4 will present his regulations for information and the we'll move
5 into the project review recommendations and establishment
6 actions which Dr. Kalkut will be reporting on these, and
7 managing the council's review of these certificates.

8 Again, on the conflict side, members of the council and
9 most of our guests who attend regularly are aware of the need to
10 disclose interests and conflicts of interest and forms are
11 available for that. I think we have a roster of council members
12 who've done that. The reorganization of our work also includes
13 the batching of CON applications, and again, asking you to take
14 the time over the next while before we begin the review to make
15 sure that you don't have any particular applications you'd like
16 to pull out for individual consideration from those which will
17 be batched and I'll pause at the beginning of each of those
18 sections to give you the opportunity to do that. And then
19 following the council about 1:00, there will be a special
20 establishment and project review committee meeting, and Peter
21 Robinson will chair that. So just people are aware, it will
22 start at one as that was the public posted time, even if we
23 finish a little bit earlier than that.

1 So, if there are not any questions at that point, let me
2 move on to adoption of the minutes. Can I have a motion for
3 adoption of the April 6 minutes. Second, we have second. All in
4 favor?

5 [aye]

6 And I think we will start with Mr. Sheppard who is with us
7 here in New York City and then go to Mr. Hutton who is in
8 Albany.

9

10 DAN SHEPPARD: Thank you Dr. Boufford. This is on. The mic
11 is hot. That's great.

12 Good morning. And thank you. Happy to be here. Going to
13 cover a couple of topics from the activities of the office of
14 primary care and health systems management over the past few
15 months. First is that our office professional medical conduct
16 was asked by the urgent care association of America to speak at
17 it's annual conference about insuring quality care and patient
18 safety in the urgent care settings. The association reported
19 that New York is in the top five states with respect to the
20 number of urgent care centers that are operating, and most of
21 these are private physicians offices which obviously that makes
22 the presentation by the office of professional medical conduct
23 particularly important. OPMC Director, Keith Servis told the
24 association that since more than 85 percent of those urgent care

1 centers provide episodic care, that effective communication with
2 patients and delivery of appropriate and timely care as well as
3 coordination with other treating providers is critical to
4 insuring that patients are treated and managed safely.

5 Second topic, Dr. Zucker is going to be covering this in
6 more detail, but I just wanted to fill in a couple things that
7 may not be in his remarks about April organ donor awareness
8 month. So, some of you may know from the media, the governor
9 declared April New York State Donate Life month. Commissioner
10 Zucker sent a letter to all physicians asking them to be part of
11 this movement to strengthen organ donation in New York. And on
12 April 21 which was designated as blue and green day, meaning the
13 colors that you should wear to recognize donate life month, the
14 Department worked with broadcasters all across New York and had
15 on-air media talent wear blue and green as well as donate life
16 lapel pins. The Freedom Tower in New York City, the State
17 University of New York Central Administration building in
18 Albany, and the State Fairgrounds in Syracuse were all lit up
19 blue and green to emphasize the importance of organ donation.
20 Also on the 21, the Department was joined by Lauren Shields who
21 has a law named after her and is a well-known organ donor
22 recipient, as well as Ed Kranepool from 1969 New York Mets who
23 is as is publicly known needs a kidney. They gathered to help
24 kick off a new way to sign up to be an organ donor and that is

1 through the New York State of Health, the New York's health
2 insurance exchange. You can now register directly to be an organ
3 donor through that link.

4 On to another topic, the OPCHSM's division of nursing homes
5 won a national award for it's nursing home complaint processing,
6 and I think this is a direct result of the significant effort
7 that the Department as a whole has put into implementing lean
8 process improvement efforts. The nursing home division
9 implemented a series of efficiencies and complaint processing to
10 increase the time, to Decrease the time from the filing of a
11 complaint to when the response to that complaint is responded to
12 and in recognition of this work New York was one of only three
13 states nationally who got an award from CMS, centers for
14 medicare and Medicaid services, for innovative processes. And
15 it's the second year in a row that the Department's efficiency
16 processes have been recognized by CMS. Last year it was the
17 division of hospitals and diagnostic treatment centers that won
18 an award for their lean improvements to the facility pre-opening
19 survey process.

20 Finally, I'd like to talk a little bit about an update on
21 the Department's regulatory modernization efforts and although
22 the budget that was enacted in April didn't include the
23 department's proposal to establish a regulatory modernization
24 team, we're pushing ahead to achieve the goals of this effort.

1 As I mentioned to you in prior reports, in many instances our
2 policies and regulations that govern licensure and oversight of
3 healthcare facilities and services are becoming increasingly
4 misaligned with the goals for healthcare transformation. These
5 goals that were reflected in not only state and federal payment
6 policies but DSRIP and SHIP, and our prevention agenda. All of
7 which in some way, shape, or form, are pursuing the triple aim
8 of improving quality and satisfaction, health, and reducing per-
9 capita costs of care. All of these changes are from a planning
10 and health system planning standpoint are dramatically changing
11 how and where and by whom care is delivered.

12 So with respect to how we're going to move forward with
13 what I think we'll call the first wave of regulatory
14 monitorization and streamlining, in July, August, and September,
15 we're going to convene a series of policy development workshops.
16 Each workshop is going to focus on a specific topic or cluster
17 of related topics. The workshops will be open to the public and
18 webcast and archived. And they're going to engage a wide array
19 of stakeholders that are relevant to the topic and that's going
20 to include providers and payers and consumers as well as subject
21 matter experts. (who are providers, payers, and consumers.) The
22 expected areas of focus are going to be integrated primary
23 behavioral health services, basic primary care, telehealth,
24 community paramedicine, although I should note that there is a

1 bill moving through the legislature towards the end of session
2 that deals with this, though we may have a very focused agenda
3 on this particular topic depending on what happens. We're also
4 going to look at emerging care management models for post-acute
5 services that are being provided at home or other non-hospital
6 settings. This is an area that I think is increasingly on our
7 radar screen where you've got this very interesting blending
8 between what was traditionally viewed as homecare services, and
9 the services that hospitals are providing for patients
10 immediately after discharge to reduce unnecessary readmissions.
11 We're going to look at needs methodologies and licensing
12 requirements for cardiac services, freestanding emergency
13 departments, nursing home beds, homecare agencies, and assisted
14 living programs. We're going to look at requirements for the
15 establishment and governance of healthcare facilities given the
16 increasing prevalence of these large multi-system, multi-site
17 systems and separately licensed corporations with owners in
18 common. And in this context we'll be looking at issues like
19 character and competence, revenue sharing, and ways of
20 incorporating quality and performance into licensure. Also
21 another important area focus is going to be improving the CON
22 process with respect to communication, education, engagement of
23 communities when proposed projects or services are very
24 significant or impactful, along the lines of some of the

1 comments made by the public during the committee meeting, codes
2 committee meeting earlier today.

3 The template for these workshops, and again, just to give
4 you a general sense of the flow of them, like all good efforts,
5 the clear statement of what the problem is, what problem were we
6 trying to solve? An overview of previous efforts to address
7 this problem, what were the lessons learned and what are the
8 gaps remaining. A compendium, a presentation of compendium
9 materials that provide relevant background information, possible
10 solution options to frame the discussion and then most
11 importantly the discussion of those options and recommendations
12 for change. A really important part of this process and this
13 kind of gets to the identification of previous efforts or even
14 in some case parallel efforts to address the problem is that we
15 have to recognize and include in this the work that's already
16 done. Very few of these issues are new. And you can go back to
17 the 2012 PHHPC report, work related to that and separate from
18 that, that's been done by PHHPC and other groups since then, so
19 I think it's really important and I think a real pillar of this
20 effort is that we're not discovering fire here. We're going to
21 use this as a convening mechanism to bring to closure and bring
22 together in some cases parallel efforts. The flexible format of
23 this policy development workshop structure is going to allow us
24 to leverage not just previous and ongoing efforts, but do things

1 like for example, sitting to my right, so Dr. Rugge, as we all
2 know, he and his planning committee has been working for several
3 PHHPC cycles on integrated primary behavioral health services. I
4 think there's an awful lot of foundation material that's been
5 built there. And as in terms of the convening menu for that
6 workshop could very well be, again, work out some logistics.
7 But for example could very well be that committee meeting. That
8 committee cycle in July or August, during the July-August cycle,
9 could be perhaps the workshop could be the capstone of not just
10 the work that Dr. Rugge's committee has done, but the work that
11 is also being done in parallel but supporting by OASAS, OMH, and
12 DOH as well as other efforts. Similarly Scott Larue and Tom Holt
13 is here, we've been starting to have discussions about how to
14 better incorporate quality into the nursing home licensure
15 process, and also providing more holistic views of ownership and
16 operation of nursing homes, and again, another possibility is to
17 use an ad-hoc committee of PHHPC as the policy development
18 workshop for that and as a convening mechanism. And again, just
19 because we have a lot to accomplish in a short period of time,
20 we'll be also, policy workshops will be in other venues. PHHPC
21 members will be invited to all of them as we'll kind of cast the
22 net as wide as possible in terms of also relevant stakeholders,
23 and the goal is that late in calendar year '17 will produce
24 consolidated reported recommendations that are coming from each

1 workshop. They'll have action plans for policy changes to
2 policy, regs, and statute, and that report and our reports back
3 to PHHPC will wrap this effort in a cohesive way. And the
4 planned PHHPC retreat in early September might also serve as a
5 useful midpoint check-in on this effort scheduling allowing,
6 agenda allowing for that.

7 And then finally the policy and reg changes that would come
8 out of this workshop, we would begin implementing immediately in
9 late 2017, early 2018, and in statutory changes could be
10 considered in the 2018 legislative session. So thank you.
11 That's my report.

12

13 JO BOUFFORD: Any questions for Mr. Sheppard? Dr. Rugge,
14 you want to make any comments?

15

16 JOHN RUGGE: Clearly there's been an apparent fallow
17 period in terms of behavioral health integration, but I think
18 this - to see this workshop is a bit of a culmination of those
19 efforts sounds terrific.

20

21 JO BOUFFORD: Dr. Bennett has a question.

22

23 JOHN BENNETT: It's obviously a large effort, and you
24 mentioned a large number of things that you're going to cover

1 focusing on integration - can you hear me - one thing that I
2 didn't hear mentioned is the cost of integration and it's effect
3 on the total cost of care. Is that going to be looked at at
4 all?

5

6 DAN SHEPPARD: Yes, and again, our hope is that having the
7 payers as part of these workshops will bring that perspective to
8 the table, and make sure that it's considered and incorporated
9 in any recommendations.

10

11 JO BOUFFORD: Dr. Kalkut and then Dr. Brown.

12

13 GARY KALKUT: Dan, thanks for the report. Just a request
14 in the next cycle could you or perhaps Jason present on DSRIP
15 update?

16

17 DAN SHEPPARD: I'll certainly take that back.

18

19 JO BOUFFORD: I think especially important with the sort
20 of oversight committee sun setting and what the next...

21

22 DAN SHEPPARD: And I'll certainly coordinate with Jason. I
23 mean, and I certainly, he's been happy to come present before
24 and that would be great, and of course I'd be happy to fill in.

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LAWRENCE BROWN: I too want to salute you for a very good and comprehensive report, and like my colleague, Dr. Bennett, I'm also interested in the cost, but on the other side of the coin, particularly what is the cost of NOT integrating. What other costs are we incurring? (inaudible) don't have adequate integration across a number of levels.

JO BOUFFORD: Any other comments? Questions? Yes, Mr. Lawrence.

HARVEY LAWRENCE: There's an incredible expansion of urgent care centers in the state and I'm not certain whether how they fit in to the triple aims and integration and the cost equation, and exactly what is their, how does state perceive their role of, DOH perceive their role in the healthcare delivery system. So it would be helpful to get some overview of that.

DAN SHEPPARD: Thank you. I can work with, actually certainly can work with our colleagues in public health, public health as well as OPS as see what we can pull together for a subsequent report.

1 JO BOUFFORD: Now, I think we had one of Dan referred
2 previously I think before you joined the council, had previously
3 reviewed this whole area in the planning committee and had had a
4 set of recommendations which unfortunately were not able to go
5 forward for various reasons in terms of legislative,
6 administrative, regulatory, so I'm happy they're being brought
7 forward again, but we are starting from scratch on that one.
8 It's a really important issue.

9

10 PETER ROBINSON: Are these proposals that came from
11 PHHPC before going to be moving forward or are they dormant?

12

13 DAN SHEPPARD: Some are. So I think

14 [they're napping]

15 They're relevant, they're always relevant, so I think one
16 of the, as we tried to structure something in a reasonable
17 period of time can actually produce actionable results, and I
18 think clearly I think there are elements of the 2012 PHHPC
19 report have been implemented, and there are some for various
20 reasons have not. I mean, one of the things that we're
21 sensitive to in organizing this initial wave of effort is
22 bringing over the finish line things that are close and things
23 that are not just important, because there's lots of important
24 issues, but things that are urgent, things that we find just in

1 our, from OPCHM standpoint in a regulatory role that we spend an
2 incredible - we get proposals that where we say, you know, that
3 goal really makes sense. It's consistent with all the policies
4 that the state is advocating, but we've got to - my overused
5 word- pretzel twist to figure out a code path through the
6 regulations to make it happen. We burn a lot of energy and
7 create a lot of gray areas by doing that and I think there are
8 certain subset of things integrating primary and behavioral
9 health being one, telehealth being other, that are not just
10 important but they're urgent. They are things that we really
11 need to have a clear and efficient path forward with, and so I
12 think what we really want out of this first wave is not to bite
13 off more than we can chew, not to take on issues that may be
14 very very important, but that the solutions require a whole
15 different level of effort and have where there are a lot more
16 polarized positions. Not saying that we shouldn't take those up.
17 But I think this first wave, and that's why I sort of refer to
18 it as first wave is, so many things that are sort of so close
19 and where there's consensus out there and it's really just a
20 matter or marshalling the effort to get it over the finish line,
21 that I think we'd like to take up first and then revisit some of
22 the very, very important issues like the how large group
23 practice is, urgent care centers fit into, because they are an

1 increasingly important part of the healthcare landscape and how
2 they fit in in a way that makes sense.

3

4 JO BOUFFORD: Any other questions for Mr. Sheppard? Ok,
5 why don't we go to Albany then and Mr. Hutton will give a report
6 on the office of public health activities.

7

8 BRAD HUTTON: Good morning everyone. Maybe you can just
9 give me a thumbs up if you're able to hear me OK. Great. I'm
10 going to give you updates on three issues this morning. The
11 first is to give you an update on the status of some regulations
12 that we presented to you back in February for information on
13 public water systems. The second item relates to some exciting
14 legislation that was included in the enacted budget related to
15 emerging contaminants in a new drinking water quality council.
16 And then third, I'm going to give you an update on the status of
17 the Candida Auris outbreak in the downstate metropolitan region.

18 So, first on February 9 we presented amendment concerning
19 public water systems. A bill proposed amendments were ultimately
20 then published in the state register on February 15 starting off
21 a 45 day public comment period. And just as a reminder, those
22 amendments were primarily intended to conform state sanitary
23 code to several aspects of the federal regulations for public
24 water. And while the Department's already implementing these

1 federal regulations through a partnership agreement with the EPA
2 and counties are largely in compliance, these regulations are
3 needed to be adopted to formalize our compliance with the
4 federal regulations. We did receive three comments on the
5 regulations during the public comment period and we're currently
6 in the process of revising the proposed regulation to address
7 some of those comments. And so we intend in the near future to
8 finalize our assessment to public comment and then publish a
9 notice of revised regulations in the state register, which would
10 kick off a new 30 day public comment period. We'll then be
11 presenting the final proposed regulations and our assessment to
12 public comments in an upcoming PHHPC meeting. I'm hoping for
13 adoption in the fall.

14 The second item relates to those new aspects of public
15 health law. One relates to emerging contaminants. So public
16 health law was modified to require all water systems in the
17 state to monitor for emerging contaminants, and also to require
18 the department with the input of a newly established drinking
19 water quality council, to establish notification levels for each
20 of those contaminants that we require to be tested for. The
21 requirement pertains to both large and small public systems
22 including municipal water systems, and also water systems
23 serving schools, hospitals, office buildings, and other types of
24 buildings. Unlike the federal unregulated contaminant

1 monitoring rule which pertains to systems that serve 10,000
2 users or more, this will be, this will result in New York State
3 being the first state in the nation to require testing for
4 unregulated contaminants for systems that serve as few users as
5 25. The legislation specifically requires the department to
6 begin to require testing for PFOA and PFOS and also for 1-4
7 Dioxane, three specific emerging contaminants, and also requires
8 the department to promulgate regulations that identify and list
9 any additional emerging contaminants using specific criteria
10 that are set up in the law, and in consultation with this newly
11 established drinking water quality council. So that council
12 which was also newly established in public health law is
13 comprised of 12 members; 8 of which are appointed by the
14 Governor. Four of them are DOH and DEC officials, and four
15 others have expertise in different disciplines. Then there's
16 four members that are recommended by each, two from the senate
17 and two from the assembly also that meet specific criteria for
18 expertise. Department's been working very aggressively to
19 finalize the appointments for the eight members that are in the
20 Governor's authority, and we intend to convene the panel for a
21 first meeting as soon as early this summer with an initial
22 charge focusing on giving the Department recommendations on 1-4
23 dioxane.

1 Third update concern Candida Auris. I think we have
2 hopefully mentioned this in past meetings. This is a fungal
3 infection that has begun emerging in the United States with a
4 heavy focus on the New York City area. We've identified to date
5 57 clinical cases, 18 screening cases that we've identified
6 through additional point prevalent surveys, and we do have one
7 case - I should've mentioned that this fungal infection is a
8 concern primarily because of multidrug resistance among the
9 organisms. And we do have one instance of a patient where the
10 patients developed a resistance to one of the (oconocandins)
11 which is really the go-to drug for this kind of infection. We
12 had 52 involved facilities. Often times they're patients who
13 have initially were nursing home residents and then have passed
14 through other facilities including hospitals. As I mentioned,
15 it's primarily been in New York City with a focus in Brooklyn
16 and Queens. So, we really stepped up our activities beginning
17 in early May, issued a health advisory on May 5 that provided
18 lots of updated information for facilities including enhanced
19 recommendation for infection control, for environmental
20 cleaning, and also a requirement that all staff in hospitals and
21 nursing homes in New York City were required to participate in a
22 webinar on C.Auris that focused on some of those key infection
23 control and environmental cleaning principles. We held that
24 webinar on May 11. Had really strong attendance and are working

1 to follow up with those facilities that didn't have
2 representation will be continuing to provide additional training
3 opportunities for staff of varying disciplines in the coming
4 weeks and months. And we held a roundtable on May 9 in New York
5 City for leaders of different segments of healthcare to get
6 their input on additional strategies that we could implement in
7 order to address some of the specific challenges that this
8 organism presents. We sent out a self-assessment for facilities
9 in preparation for some on-site surveys that will begin with
10 each facility in Brooklyn and Queens, so all nursing homes and
11 hospitals in those two boroughs will receive reviews to check on
12 their progress and compliance with respect to infection control.
13 And those reviews are going to begin later this month. We've
14 been working in strong collaboration with the centers for
15 disease control in addressing this outbreak, and with a real
16 focus on slowing the geographic spread. To date, we did have
17 one case in Monroe County that happened to be a person who is
18 recently hospitalized and transferred from a facility in New
19 York City. No additional transmission in the Monroe County
20 area, and we do have two cases, one in each facility in Rockland
21 and a facility in Westchester county which to date had been
22 successful in limiting any further spread in those facilities
23 and further geographic spread.

1 Something we're spending a lot of time on, and we'll have
2 additional strategies that we're working on implementing in the
3 coming weeks and months. I'll pause there and see if anyone has
4 any questions. And I'll say it was difficult to hear all of you
5 earlier when you were asking Dan questions. So if you could
6 maybe speak into a microphone it'll be easier for me to hear
7 your question.

8

9 JO BOUFFORD: We think we are, but I think we need to lean
10 mouth closer to microphone. Dr. Berliner and then Dr. Palmer.

11

12 HOWARD BERLINER: Yes, thank you for the report. A
13 question about the water system testing. That will be done at
14 the level of the reservoir?

15

16 BRAD HUTTON: I'm sorry, I heard a question about the
17 water system testing, and I didn't hear the rest.

18

19 HOWARD BERLINER: The testing will be done at the level
20 of the reservoir?

21

22 [Maybe back away from the microphone a little.]

23

1 BRAD HUTTON: I could hear Jo pretty well. Maybe you
2 could repeat the question?

3

4 JO BOUFFORD: Yeah, he wants to know the level of testing?
5 Will it be at the level of the reservoir or some other level of
6 the water testing?

7

8 BRAD HUTTON: The level of testing?

9

10 JO BOUFFORD: At the reservoir level or at another level?

11

12 BRAD HUTTON: Thank you. Each regulated public water
13 system, and it will be finished water that they're required to
14 test. There are approximately 3600 covered water systems that
15 this will apply to. So it's not at the source level. It's at
16 the finished water level. Does that address your question?

17

18 HOWARD BERLINER: Only - so give me an example of a
19 finished water system that's different from the reservoir?

20

21 JO BOUFFORD: He'd like to have an example of a finished
22 water system that's different from a reservoir.

23

1 BRAD HUTTON: Alright, so, a normal city or municipal
2 system will have a source that feeds into their water system and
3 then it's treated in the water filtration plan. There are all
4 kinds of different filtration techniques that are used, but then
5 at the end of that process is where we'll test the finished
6 water to see whether or not the contaminant is present in the
7 finished water that's about to be served in the distribution
8 system to residents.

9

10 JO BOUFFORD: He wants to know if there's any connection
11 between this testing and the testing that has to go on in water
12 towers.

13

14 BRAD HUTTON: There's a series of tests for contaminants
15 that are already in existing regulations. And this expands to
16 create a new aspect of the state sanitary code for these
17 unregulated contaminants which then further down the process
18 once we establish a maximum contaminant level for them, they
19 will become regulated contaminants that are tested as part of
20 that standard set of contaminants.

21

22 JO BOUFFORD: He's happy. Thank you very much. Dr.
23 Palmer and then Dr. Brown. I'm sorry. He's satisfied with your
24 response. OK. Dr. Palmer.

1

2 JOHN PALMER: There aren't any specific casualties
3 associated with this particular outbreak?

4

5 JO BOUFFORD: Can you hear Dr. Palmer?

6

7 BRAD HUTTON: No, not at all.

8

9 JO BOUFFORD: He wanted to know have there been any
10 fatalities associated with the fungus outbreak that you talked
11 about.

12

13 BRAD HUTTON: Yes, there have. I'm trying to find a
14 specific number. It's been a approximately 30 percent case
15 fatalities so far among our cases. I will say that, I believe
16 every single patient has had serious underlying medical
17 conditions. C.Auris is a is an opportunistic infection that's
18 primarily infecting individuals that have indwelling devices and
19 so it's hard to tell whether or not the mortality is
20 contributable to C.Auris or just compendium of conditions that
21 are going on.

22

23 JO BOUFFORD: Thank you. Dr. Brown.

24

1 LAWRENCE BROWN: I'm sort of interested - can you hear
2 me clearly?

3

4 JO BOUFFORD: Sounds like I'm translating. Good thing
5 it's English to English. Go right ahead.

6

7 LAWRENCE BROWN: (inaudible)

8

9 JO BOUFFORD: He really would like to hear more about the
10 extended collaboration with the New York City Health Department
11 in regard to exploring investigating this outbreak. You
12 mentioned CDC but you didn't mention the city health department.
13 I think you going to be working even more closely
14 together after we've had examples of sometimes disconnects in
15 this relationship.

16

17 BRAD HUTTON: And so a representative New York City
18 Department of Health and Mental Hygiene were present and
19 participated in the roundtable that we held. I will point out
20 however that responsibility for infections and for
21 investigations for infections that occur in regulated facilities
22 is the responsibility of the State Health Department, and so
23 it's primarily been a focus that we've had. We've certainly
24 been keeping New York City in the loop but because there's been

1 limited impact to date at the community, New York City really
2 has not played a strong role at this point. But as we have,
3 patients who are discharged into the community who are
4 colonized, we're seeing that colonization can last for as long
5 as four months or more. We certainly could have additional
6 responsibilities and community control activities and we'll be
7 working with the city on those.

8

9 JO BOUFFORD: OK. Thank you so much. Any other questions
10 for Mr. Hutton? OK. Thank you very much. And I'm almost afraid
11 to move without speaking from this mic. I'm supposed to present
12 my own slides. Slides for the public health committee. Can we
13 do that and I'll just try to get my - since the commissioner is
14 not here I'll move over so the light isn't in my eyes.

15 I'm going to give you the report on the public health
16 committee meetings, and I'll start as we're sort of teeing up
17 the machine. Wanted to - this is really an update on the New
18 York State Prevention Agenda. We did have a meeting of the ad-
19 hoc committee to lead the prevention agenda, which of course,
20 includes members of the public health committee on May 17, and
21 the agenda covered a review of progress on local community
22 health improvement plans from 2016 to 2018. We had a really
23 interesting set of presentations from around the state on how
24 local prevention agenda coalitions are working together.

1 Cattaraugus County, the Capital District Initiative and
2 representatives from the New York City Department of Health and
3 Mental Hygiene. So it was an interesting mix and good
4 discussion. And then we had our sort of official launch of how
5 the ad-hoc leadership group of the council is going to be taking
6 forward it's charge from the Governor to sort of facilitate,
7 oversee, be involved in the implementation of the health across
8 all policies and age-friendly New York State initiative. And we
9 had our first, but not last ongoing visit. We hope will be
10 ongoing visits and presentations from Greg Olsen who is the
11 director of the New York State Office for the Aging, and Paul
12 Byer who is from the Department of State, and I'll talk about
13 what they talked about a little bit later. And finally we were
14 very pleased to have the 2017 health equity reports from this
15 state office, DOH office of Minority Health, which is think is
16 going to be incredibly helpful to the prevention agenda and this
17 council in really looking at the disparities issue which has
18 been one of the areas in the prevention agenda that I think we
19 have been probably least, feeling like we've advanced the least
20 in that area for lots of reasons and the data set that's
21 available is not only available across, at a state and county
22 level, but within cities. So it's going to be incredibly
23 useful. And then Sylvia Pirani sort of reported on the sort of

1 next steps for the prevention agenda. First slide then. No,
2 the next one.

3 So just as a reminder since we haven't talked about the
4 entire process for a while, there is cycle for local community
5 health improvement. The one we're now in is 2016-2018 and these
6 are the guidance for collaboration is issued by the commissioner
7 and really coalitions at a community level are anchored by local
8 health departments and hospitals, and in some instances health
9 systems representatives when there are multiple hospitals
10 involved. And they are charged to bring in other stakeholders.
11 They have begun using the same community health needs assessment
12 and this year were encouraged to also submit joint community
13 health plans as to how they would take forward their actions.
14 They're also been asked to talk about how many and what kinds of
15 stakeholders are at the table with them at the local level. And
16 then finally obviously identify the priorities within the
17 prevention agenda that they'll be addressing and the priority
18 they'll be addressing on health disparities.

19 We were very pleased at the report the Sylvia gave us that
20 of the 127 plans submitted, about 31 were joint. Let's see, ... 31
21 were joint and 33 local health department submitted their own
22 and 57 hospitals submitted their own. This is the biggest
23 number we've had of actually joint submissions. And the format
24 or these is so that it's consistent with what hospitals have to

1 submit to the IRS for their community benefit reporting. So
2 we're encouraged by the increasing collaboration in the planning
3 write up.

4 On the right-hand side if this slide is the 2013 choices
5 around the state. The cream colored, these are the five
6 prevention agenda priorities. Cream is the chronic disease
7 priority which was the most often chosen by these local
8 coalitions in 2013. Blue is the mental health, and substance
9 abuse priority which was the next most frequently cited, and
10 then the clearer circle, women, infants, and children health
11 darker environment, and the tiny little one at the bottom, HIV.
12 Sort of a usual infection disease program. I think the sense, as
13 we've mentioned before that the reason fewer departments
14 actually cited the women, infants, and children, and the bottom
15 infectious diseases because it's such a routine part of public
16 health functioning and funding. The environment area, we have
17 work to do and I think we saw some upticks there but it's an
18 area that will be, I think, facilitated in many ways by the
19 Governor's initiative. On the left-hand side are shifts from
20 2013 and the 2016 plan and I think the most obvious shift is the
21 considerable increase in attention to mental health and
22 substance abuse largely related to the opioid epidemic around
23 the state, and so you see many more blue dots on the left than
24 you do on the right. And the involvement of OASAS and OMH in

1 the ad-hoc leadership group over the past couple of years as
2 well as now, many of their local area offices are linked to the
3 prevention agenda coalitions is working. It takes a while, but
4 people are meeting each other, knowing each other, working
5 together increasingly which will be an important precedent for
6 the next step of expansion. Next slide.

7 One of the areas that we always focus on is how many
8 partners at the table and who are at the table and I think the
9 blue lines here are local health departments and partnerships.
10 The orange lines are hospital partnerships. I think you see
11 perhaps a historic tendency at least for the local health
12 departments to have more partners and hospitals, and I think
13 that's changing with the DSRIP requirements that hospitals
14 really engage with the sort of pre-hospital community-based
15 organizations and others. The most frequent partners are social
16 services areas and community health centers at the top, and
17 CHCANYs has been a very active member of the ad-hoc leadership
18 group. Three areas where we hope to increase engagement going
19 forward. Taking it from the top; one is business and the
20 community we have membership from the Northeast Business Group
21 on Health and the New York State Business Council on the ad-hoc
22 leadership group, but they're, we've not sort of activated their
23 membership at the local level in the ways that we hope to do
24 going forward. Health insurance plans; increasingly important

1 and this issue is raised each time we have a meeting. Some
 2 health plans are involved, we hope to involve more at least at
 3 the local level. And then finally philanthropic support.
 4 Philanthropy and business are going to be important we hope, and
 5 increasingly important sources of what are really small grants
 6 and small funding from many of the projects and the meetings and
 7 the facilitation, analysis that are necessary at the local
 8 level. Next.

9 This is a report on the disparities that have been selected
 10 by the local groups. You can see that the dominant one, again,
 11 the orange are local health departments. The darker color are
 12 hospitals. Socio-economic disparity is the largest one. I think
 13 this is especially true upstate and the clarity of the report of
 14 the office of minority health around racial and ethnic
 15 concentrations of populations. One can help to understand this
 16 better. It's an issue that needs to be dealt with, and I think
 17 we'll see sort of clearer engagement hopefully, with evidence-
 18 based interventions engagement of choice of race and ethnicity
 19 as a disparity in future reports. Yes. I'm sorry, go ahead.

20 Knew you were going to ask that. Sylvia, I sent her an email
 21 but didn't go out of the building. Sylvia, what's MEB? Sylvia
 22 Pirani?

23

24 SYLVIA PIRANI: Mental, Emotional, Behavior.

1

2 JO BOUFFORD: Thank you very much. There are - now the
3 mental health professionals are looking up to the sky and asking
4 what is that? Can you clarify what that is?

5

6 SYLVIA PIRANI: It's to focus really on well-being. It's
7 focusing on well-being as opposed to often when we talk about
8 mental health, we're talking about treatment. As Ellen
9 Rautenberg once said, focusing on the shallow end of the pool.
10 We need to focus on promotion and well-being, not just
11 treatment. So we're trying to get them to be on that side of
12 the page.

13

14 JO BOUFFORD: I remind you, these are all hopefully are
15 moving towards evidence-based interventions. All of them are.
16 But most of them are at this point. OK. Next slide then.

17 Speaking of interventions, you asked about this. We got MAB
18 early. Now we need to have ACES, but you may know what that is.
19 This is the areas on looking at the area of substance abuse.
20 Again, you can see the local health departments are in the
21 orange and the hospitals in the blue. One of the sort of,
22 preventing prescription drug abuse, underage drinking, and
23 suicide were some of the more heavily selected, and sort of
24 building healthy environments, another one. I don't know,

1 Sylvia, if you want to comment on these categories a little bit,
2 little more granularly.

3

4 SYLVIA PIRANI: Some of these are tied to what hospitals are
5 doing with their DSRIP funding, the PPS systems. So, we've seen
6 some more alignment, better alignment on that which we were
7 pleased. The ACES really is focusing on early childhood issues,
8 challenges, trauma, adverse childhood experiences and trauma
9 that people experience, and we're working closely with OMH on
10 that. So, happy to answer any specific questions. The focus of
11 prevention in the mental health area is still new. People have a
12 hard time with the language around it, but we're working closely
13 with Ann Sullivan on this.

14

15 JO BOUFFORD: Just a reminder, these initiatives are if
16 you will, pre-healthcare ideally. We want to encourage people
17 to get their preventive services, but largely these are
18 community-based interventions that are not dependent on the
19 healthcare system. Moving on then. The next one. Over all, I
20 think in the overall review on the strengths, just to bring out,
21 there was a better explanation of the priorities that were
22 selected than there have been in the past which was as you'll
23 see in the challenges there's still work to be done there, but
24 it was felt to be much better. The community health assessments

1 are much richer, much more granular, much more qualitative in
2 terms of engaging community voices. Increased use of
3 partnerships and in the planning and implementation and then the
4 health equity statements are getting richer and clearer.
5 There's more work to be done there. But those were improvements
6 from the last round. And then key challenges. Again, this is
7 moving from the sort of traditional interventions and community
8 that often have been popular and well received but may or may
9 not have sustainable impact, and when we talk about the idea of
10 evidence-based interventions which are available on the website
11 and the Department has been making more visible to people hoping
12 to shift from some of these one-off health fairs, education,
13 other activities into more sustainable interventions that really
14 show impact. And that's a process because there are people who
15 like those things and one of the issues would be how do you
16 integrate more evidence-based activities because they do attract
17 people to this conversation.

18 As not unexpectedly, I think we have been really gratified
19 with the 13-16 that because of the efforts of the Department in
20 putting up technical assistance advice, lots more information,
21 this accessible data, the accessible at the local level as well
22 as evidence-based interventions and the roles others can play,
23 the interventions are much stronger, the monitoring of the
24 interventions is now where we're having some difficulties and

1 also this issue of sustainability. They are the last two on kind
2 of the 20 yard line there, the ones that really really matter.
3 And again, I think resources are a limiting factor in many local
4 areas. Again, hopefully businesses, some of the hospitals I
5 know have stepped up and actually helped evaluate some of the
6 progress in local communities. So, that's an area that needs
7 more attention.

8 And then the next steps here, we are sort of wrapping up
9 and reporting on the 2013 -16, we will be getting ready for the
10 next cycle of the prevention agenda. I think we're now on a line
11 three year cycles for hospitals and local health departments so
12 they can be increasingly encouraged to submit joint plans over
13 the next months. Next steps, these are the things that will go
14 on over the summer, and one of the things that we're very
15 excited about is adding other state agencies, which I'll tell
16 you about in a minute, to the ad-hoc committee in order to begin
17 to take action on the Governor's Health Across all Policies and
18 Aging agenda, and in the summer and fall will be really helping,
19 working again with local health departments. And again,
20 hopefully to identify resources to help them not only evaluate
21 the effect and impact of what they've been doing, sort of beef
22 up the quality and spread of their work and especially focusing
23 on health disparities.

1 So, and one more on this. In the winter and spring the ad-
2 hoc committee will lead another - you may or may not recall when
3 the initial five priority areas was identified and we had over
4 350 organizations represented in the five workgroups that laid
5 out the agenda under each of those and so we'll be revisiting
6 those priorities as well as the specific goals and objectives
7 during early and mid-2018. Other plans will have to be
8 submitted. You'll review the plans with you and then start the
9 new cycle in January. So that's kind of the game plan. And then
10 the new policy context for this which is very exciting - next
11 slide - is we have presented this but just to highlight it is
12 the Governor's state of the state address where he did
13 articulate a health across all policies approach to really ask
14 all of the state agencies, especially the non-health agencies to
15 look at the impact of their decision making on health, and also
16 on supporting healthy aging in the state. And the long term
17 goal, obviously is to embed that mindset into the work of all of
18 the agencies and into the work of government.

19 Just a little bit of descriptor here the next on. This
20 health in all policies approach is pretty well known in public
21 health and the message is that as we have learned that
22 healthcare is a relatively small part of the factors that
23 influence individuals health, we know we have to change
24 conditions in communities to give them people better choices and

1 really sustain their ability to improve their own health outside
2 of the examining room, and so activities in housing and
3 transportation, ag and markets, and others can make a huge
4 difference in availability of healthy foods in schools, in mass
5 transit versus cars and various other choices that can be made
6 as some of these other issues go forward. And similarly on the
7 next slide we have the same sort of sensibility, if you will,
8 towards the needs of older persons, and these are healthy older
9 persons. This is some pretty stunning data from the New York
10 State Office of Aging. If you notice a difference over the next
11 decade, the proportion of counties with the percent of
12 population 60 and over will almost triple. Moving up to 30
13 percent. And 30 percent and over will go from two percent of
14 counties to 18 percent of counties. So this is an example of
15 this if you will, generations of older persons that, the good
16 news is this is a public health conquest and a medical conquest.
17 The challenging news is how do we manage this as a society? And
18 I think the key thing we have to remember is that while there
19 are important focuses on access to healthcare and social
20 supports, there's also a really important focus on making local
21 communities helping individuals stay active, both physically and
22 socially in their communities as long as they wish to do so.

23 And other slide, which I didn't show but I think was very,
24 had a big impact on a number of the agencies and others thinking

1 about this is as Greg Olsen said, older persons are not just a
2 cost. They're also a resource for communities and he cited he
3 has tens of thousands of hours of voluntarism by older people in
4 their communities in terms of caregiving and other activities,
5 and we know from our own work on age friendly New York City that
6 older people buy local which is a really important economic
7 development stimulus to local communities and they also vote
8 which gets the support of elected officials. So they're a
9 really great constituency and we're excited about them being
10 explicitly included. And next slide.

11 Another Department of State presentation by Paul Byer
12 really talked a lot about smart growth principles that are
13 already embedded in state policy so that as state agencies move
14 into repaving streets, dealing with public spaces, looking at
15 housing types and sizes, they are to take into account a lot of
16 these already approved principles, so these agencies will be
17 looking at these more closely. So lots going on. So, anyway, we
18 could add aging elements to that which will be important. And
19 then especially interesting to the members of the ad-hoc
20 leadership group and I think to the members going forward are
21 the opportunities in the economic development space where
22 Governor Cuomo has really committed to increasing the incentives
23 for initiatives that already exist like the downtown
24 revitalization grants programs which are like, \$10 million a

1 year to cities over a period of time to revitalize the inner
2 city, and similarly the regional economic development councils
3 to really raise awareness about these evidence-based health
4 options that they can take, even if they're not developing
5 investing explicitly in the health sector. And also putting in
6 the RFA materials, putting out incentives to weigh a little bit
7 heavily those and others that submit health related and
8 age related interventions. So, we're very pleased that that and
9 Paul has already followed up to get the health department on the
10 circuit with him as he goes around to meet with the (RDCs) So
11 he's extremely enthusiastic about this opportunity, and I think
12 the economic development potential as you saw one of the major
13 disparities being poverty is a really important link here. And
14 finally, and I don't know that we put it up, it gets the next
15 steps - this is the last one. Just briefly Paul Francis and
16 Commissioner Zucker did convene 12 agencies. They had some of
17 the same presentations that were presented to the ad-hoc
18 leadership group that I just went through with you. In early
19 March, they were really asked to identify what we call low cost,
20 no cost interventions they can make. What are they doing now and
21 what are they going to do anyway in terms of programming and
22 capital investments over the next three to five years, and how
23 might they tweak them or do them differently if they thought
24 about the health impact by virtue of technical assistance and

1 information they'll be given by the Department. And the impact
2 on older persons by virtue of the help they'll be getting from
3 the Department, the state department on the aging. And they are
4 putting their reports together. I think we already have some in
5 advance. They are, I think, coming hopefully due this month. I
6 was able to be at that meeting because of my sort of quasi
7 public status as the chair of the public health committee, and I
8 can tell you the enthusiasm was amazing. Many of the agency
9 heads, they already get this very seriously and we're really
10 presenting work that they're doing and I think it's a very
11 exciting opportunity. And our plan is once their proposed plans
12 are in that they will meet on a quarterly basis, be convened by
13 Mr. Francis to look at how at the state level their activities
14 can be better coordinated and will identifying from the plans
15 those entities that have local infrastructure or local impact
16 because all state agencies don't, but some do, and try to
17 connect them up at a community level. For example, there are 10
18 cities now having downtown revitalization efforts and connecting
19 them to the prevention agenda coalition in that city. So that's
20 the work of the next few months. And then, I don't know if you
21 have the picture. You have the picture of the website? I want
22 to thank Sally Dreslin explicitly for putting the prevention
23 agenda back up on a discoverable location in the Department of
24 Health website. You now get to see it right away and you can

1 find your way to it. And this becomes really important, because
2 we're hoping that all the data and technical material that has
3 been developed over time will now be available to communities
4 and their work. So thanks very much for that. Sally and her team
5 in the office of communications. So I'm happy to take any
6 questions.

7 No? Ok. And just let me say thank you to Sylvia Pirani as
8 always, and also it's a great staff team of Sylvia and
9 Department of State aging of Sylvia and Department of State
10 aging and Paul Francis, chief of staff who have been working
11 together really beautifully on taking the next steps on this, so
12 that's always the important part because we just visit from time
13 to time when meetings. So, Patsy? Dr. Yang.

14

15 PATSY YANG: I just wanted to acknowledge Sylvia and Jo
16 for your years of work. I remember when it was a struggle just
17 to even align the timing and process of health planning on the
18 part of the hospitals and local health departments and you've
19 not only done that, but in content and broadened the number and
20 disciplines of community partners forming sort of a really great
21 foundation for what the Governor's rolling out how.

22

23 JO BOUFFORD: Thanks. And just in time arrival to thank
24 the Commissioner because he's been sending love notes out to

1 everybody to invite them to participate in this process very
2 well, and they have responded. Any other comments? OK. Over to
3 you, Dr. Zucker.

4

5 HOWARD ZUCKER: thank you. I just want to say this health
6 across all policies initiative really is going to make a big
7 difference here and as Jo mentioned, I just think that there's
8 so many different parts of the state that address issues that
9 are really relevant to health and if we pull all this together
10 and we look at how to do this, I think it's really going to
11 improve the health of all New Yorkers. And we're really
12 optimistic. And Paul and I have spoken a lot about it. Sylvia
13 has been working tirelessly on this, and I think I'm going to
14 look back one day and say wow, we really made a big dent on this
15 and it really helped a lot of people.

16 So good morning. Wanted to - I have a lot of updates to
17 share but I wanted to start with Governor Cuomo's initiatives to
18 protect the healthcare in New York. So early this week, maybe
19 you've heard, Governor Cuomo took actions to safeguard access to
20 quality healthcare for all New Yorkers regardless of what
21 happens in Washington. The first in the nation regulations, is
22 that one better? ... So the first in the nation regulations that
23 ban health insurance providers from discriminating against New
24 Yorkers with preexisting conditions or based on their age or

1 gender. And these regulations also protect the 10 essential
2 health benefits that are guaranteed by the affordable care act.
3 Any insurer who discontinues offering qualified health plans on
4 the state health marketplace, the exchange, will be prohibited
5 from participating in Medicaid, in Child Health Plus, and the
6 essential plan. The Governor has also directed state agencies
7 and authorities to ban insurers who withdraw from the
8 marketplace from contracting with the state and regardless of
9 what the federal government does, the state has insured that
10 contraceptive drugs and devices as well as abortion services are
11 covered by commercial health insurers, insurance policies
12 without co-pays, without co-insurance or deductibles. So as the
13 Governor said, these aggressive actions will make certain, and
14 I'm quoting, "will make certain that no matter what happens in
15 congress, the people of New York will not have to worry about
16 losing access to high quality medical care they need and
17 deserve. And so we all applaud Governor Cuomo for his swift and
18 decisive actions on this issue and we will be watching obviously
19 what transpires in Washington as well.

20 The next issue is the New York State of Health and Organ
21 Donation issues. So we've also had some news from the New York
22 State of Health, our health exchange as we know. The latest
23 data shows that 18 percent of all New Yorkers are getting the
24 health insurance from the exchange. The success of the

1 marketplace has led to a significant decrease in the number of
2 uninsured people in New York. It's dropped down from 10 percent
3 which was in 2013 to five percent today. So literally cut in
4 half. The Department has taken advantage of the popularity of
5 the New York State of Health and linked it to another one of our
6 initiatives and that's the issue of increasing the number of
7 organ donors in the state. New York has launched an ambitious
8 effort to increase organ donation. We are in dire need of organ
9 donors in New York, and despite the uptick in supply in 2016,
10 the demands for organs and tissues continues to surpass the
11 supply. And more than 10,000 New Yorkers are on the waiting list
12 right now, and they're desperately hoping for a life saving
13 organ, and one is a cure for patients waiting for transplant
14 really is really a wait against time in some ways and a worry.
15 On April 20 New York State of Health made it possible for
16 individuals applying for health insurance coverage to also
17 enroll in New York State donate life registry and since this
18 option was made available there's about more than 24,000 New
19 Yorkers who have signed up via the exchange to donate. One
20 person can save up to eight lives by donating organs and can
21 improve the lives of many others with donated tissues and eyes
22 as well. Even so, there's still a shortage of organs for
23 transplant. 22 people a day in the United States die waiting
24 for an organ and making this a critical population health issue

1 that we have. And while over 10,000 New Yorkers as I mentioned
2 are waiting for an organ, less than 1/3 of New Yorkers are
3 signed up to donate. New York has made it it's priority to
4 address the critical needs to improve organ and tissue donation
5 rates. We're making it possible to enroll in the Donate Life
6 registry through the marketplace as an example of our
7 commitment, and we will keep moving forward on these issues.
8 Our latest efforts involved developing, promoting a more
9 modernized registry so it's a little easier and more easy to
10 navigate. The new registry which we expect to launch in the fall
11 will allow for a more seamless web-based enrollment experience
12 and it will be connected to social media and this will allow
13 those who are younger individuals who really manage everything
14 through the internet to manage their own accounts and to also
15 use social media to sign up. And so we expect more millenials
16 and others who have grown up in a high tech era. The launch of
17 the revamped registry will be supported by a new marketing
18 campaign designed to raise awareness of the need for organ
19 donation, and the availability of this new enrollment
20 opportunity as well. And we're optimistic on this as well.

21 The next issue is C.Auris. you've probably heard about
22 this. Last month the Department issued a health advisory asking
23 all healthcare facilities and nursing homes to be on alert for
24 Candida Auris. This is the third health advisory on C. Auris

1 that we've issued since last summer. C Auris is a fungus that's
2 becoming increasingly resistant to treatment. We've been
3 speaking with the CDC about this. It was first identified in
4 Japan in 2009 and it has turned up now in about a dozen
5 countries. It's also in six states including right here in New
6 York. We've had 58 cases so far, and most of the cases are
7 currently in hospital patients who are, as well as those in
8 nursing homes. And primarily in New York City. It's a serious
9 problem. It really is concerning for those who already sick or
10 hospitalized. It's less of a threat to the general public but
11 we've seen this before and we always need to keep an eye on
12 anything that surfaces. C. Auris is spread in healthcare
13 settings through contact with contaminated surfaces or equipment
14 or from one person to another. Interestingly it hangs around on
15 surfaces moreso than other infections. So this is something
16 we're tracking. Preventing the spread of C. Auris requires
17 really strict and stringent infection control measures and it
18 means obviously hand washing and good hand hygiene, the proper
19 use of protecting gowns and gloves, and regular cleaning of the
20 surfaces with the appropriate EPA hospital grade disinfectants
21 which work against clostridium difficile, it also works against
22 C. Auris. Patients who are infected are colonized need to be
23 placed in single rooms and they also need to be on contact
24 precautions and we'll continue to monitor the situation, keep

1 providers updated. As I said, we've been in contact with the
2 CDC about this on a regular basis. Another area is medical
3 marijuana. I've spoken about that before. Our program continues
4 to expand. We added chronic pain as a qualifying condition in
5 March and since we added, we have now certified an additional
6 3350 patients, and that brings us to a little over 21,000
7 patients who are certified for the use of medical marijuana. We
8 also added nurse practitioners and physicians assistants as
9 professions who can certify patients, and this has now raised a
10 total number of registered practitioners to 1043. And we've
11 published a list of registered practitioners who have consented
12 to be listed publicly. This was a concern by those in the
13 community, and in addition to the public list concern, because
14 they felt they didn't have a list and so we have it out there.
15 In addition to the public list, we have a list of practitioners
16 registered with the medical marijuana program on our health
17 commerce system which is obviously open to providers. Certified
18 patients simply need to speak with their healthcare providers to
19 find a registered practitioner and as of the other day, June 6,
20 61 percent of practitioners are listed through the health
21 commerce system while about 33 percent are listed publicly. And
22 with these measures we're doing what we set out to do. We're
23 making sure that the medical marijuana program successful to

1 those who need it most, and that it grows responsibly and we're
2 moving forward on that.

3 Another issue is the mandatory pain training. So I want to
4 talk about our mandatory training for prescribers. As you know,
5 we're working to improve prescribing practices for controlled
6 substances especially given this whole issue with opioids and
7 the opioid epidemic which is obviously frightening and a
8 concern. A new public health law now requires practitioners
9 licensed to prescribe controlled substances to undergo a
10 mandatory pain management training. The new law applies to
11 prescribers licensed to treat humans under title eight of the
12 education law in New York and also have a DA drug enforcement
13 administration registration number to prescribe controlled
14 substances. That also applies to medical residents. Obviously
15 a lot of residents are under the hospital DA registration
16 number, so medical residents who prescribe controlled substances
17 under a facility with the DA number also need to take the
18 course. Practitioners must complete at least three hours of
19 coursework or training in pain management, palliative care, and
20 addiction for an accredited organization by July 1 of 2017, so
21 that's less than a month away and it's good for three years. I
22 just did mine a couple weeks ago and went through. It's an
23 excellent course and it really covers a lot of information. I
24 think all health professionals should obviously see the benefit

1 of this. The training covers eight topics. New York State and
2 Federal requirements for prescribing controlled substances, pain
3 management, appropriate prescribing, managing acute pain,
4 palliative medicine, prevention, screening and signs of
5 addiction, responses to abuse and addiction as well as end of
6 life care. And there's feedback that people have about that,
7 I'd be happy to hear that. And then there's issues of flu,
8 ticks, and Zika. And so, end with the weather. Flu season is
9 over but you know, it's so funny, we go from one issue, then we
10 go to the next one, right. So with warmer climate comes the
11 return of ticks and mosquitoes and the potential for spread of
12 diseases that they carry. So once again, the Department will
13 monitor ticks and mosquito populations. We will encourage New
14 Yorkers to take steps to protect themselves from bites. Already
15 this morning I was on a couple calls about this issue about
16 ticks and some of the things that we can do to help the public
17 as well. To date, regarding Zika, the only Zika cases in New
18 York State are in people acquire the virus while travelling to
19 affected areas or through sexual transmission from someone who
20 actually travelled to those areas. Women who are pregnant or
21 trying to become pregnant are most at risk for the negative
22 consequences of Zika infection. We've read about this in the
23 paper and elsewhere. This year New York State Zika public
24 awareness campaign will focus on pregnant women travelling

1 through Zika affected countries. And we will continue our
2 aggressive six point Zika action plan which we put into place
3 last year.

4 And I'd like to end where we began with Governor Cuomo's
5 commitment to an issue on climate change. In response to the US
6 withdrawal from the Paris Climate Accord, Governor Cuomo joined
7 California Jerry Brown and Washington State Governor Jay Insly
8 to form the US Climate Alliance. the alliance brings together
9 states committed to achieving the US goal of reducing emissions
10 by 26 to 28 percent from 2005 and meeting or exceeding the
11 targets of the federal clean power plan. The alliance will also
12 act as a form to sustain strengthening existing climate
13 programs, promote the sharing of information and best practices,
14 and implement new programs to reduce carbon emissions from all
15 sectors of the economy. So we're pleased to see Governor Cuomo's
16 commitment to creating a cleaner environment which is essential
17 to good health, not just New Yorkers, but all across the globe,
18 and we are working on all the fronts to make sure New York is as
19 healthy as possible. So I thank you for your attention. I'm
20 happy to answer any questions that you may have about these
21 issues or other issues that surface, and as you know there's
22 always something that comes up for the Department. Thank you.

23

1 JOHN BENNETT: Commissioner, thank you for that report.
2 Since you asked for feedback on the course, I too just finished
3 it last week and it was excellent. I was not looking forward to
4 it but it was three hours very well spent. It really was very
5 well done.

6
7 HOWARD ZUCKER: And I know sometimes people feel like, more
8 courses to take, and we do, we have a lot of courses in the
9 profession to take, but I think that's it's really valuable.
10 You sit down, you focus on something for a period of time and
11 you realize how important some of the information that will help
12 you with your patients.

13
14 GLENN MARTIN: Thank you Commissioner. Quick question
15 about the medical marijuana. One of the issues that you know
16 has come up is that physicians are in the position where
17 evidence-based is more of a wish than a reality because there
18 isn't a great deal of evidence of what works and what doesn't.
19 Is the state in any way promoting research now that it's more
20 readily - now that product is more readily available? Is the
21 state in any way promoting research clinically that will allow
22 us (inaudible)

23

1 HOWARD ZUCKER: So, we've spoken, I've spoken to different
2 medical centers across the state who are very interested in this
3 and particularly some of the subspecialists in pain management
4 anesthesia about sort of how to address it. We're not funding,
5 obviously right now, research on it, but we're supporting those
6 who, in a sense that we support and encourage those to study
7 this. Several years back when we were looking into the program I
8 spoke to the FDA commissioner at that point which was Peggy
9 Hamburg and we had a long conversation about how do you look at
10 some of these issues and how to study it. So I'd like to get
11 more data out about it because every couple weeks we review the
12 literature to see what's new and try to figure this out, and I
13 suspect at some point we'll have more data on that, but I agree.

14

15 LAWRENCE BROWN: Commissioner, I also certainly agree it
16 was worthwhile with respect of training someone who specializes
17 in addiction medicine (inaudible)

18 I'm sort of curious as whether the Department has any
19 information about the uptake at this time, and would we possibly
20 be able to hear how well - because as you know, physicians are
21 not necessarily well known to say, comply, with things that are
22 in the best interest of public health even though we should. So
23 I'm sort of curious what the Department share with us about the
24 uptake...

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HOWARD ZUCKER: Uptake of...

LAWRENCE BROWN: The physicians enrolling among the positions who are licensed in the good state of New York.

HOWARD ZUCKER: So we're monitoring on the opioid issues and the course, and obviously we're monitoring with the state education department to make sure that those who are health professionals take the course and see where we are. And then we're also monitoring the number of prescriptions that are taken because we have such a strong prescription monitoring program that's in place that we can track this, and we're trying to figure out where we are. And we're also working very hard to try to control the whole opioid epidemic and to get education out. Yesterday I had a long conversation with one of the advocates on this issue for an hour talking about what are some of the things we can do both on education, both for the public and also for the practitioner to address this. And the stories I've heard over the course of the last year is really concerning about how people ended up addicted and what has happened.

LAWRENCE BROWN: (inaudible)

1 HOWARD ZUCKER: Well, that's why I have general counsel
2 always here.

3

4 JO BOUFFORD: I think we just found something else for
5 Dan's list.

6

7 [Let's look that up Dan.]

8

9 JO BOUFFORD: Any other questions for the Commissioner?
10 Alright, so let's, we'll now move ahead, and Dr. Ruggie for
11 report on health planning committee and you have an application
12 for request for stroke center designation and when we get to the
13 application I think Mr. Holt has recused himself.

14

15 JOHN RUGGE: Is this mic working?

16

17 JO BOUFFORD: It seems everything's fine in this room.
18 It's just a question of whether Albany can hear or not.

19

20 JOHN RUGGE: Just by way of a prefatory remark based on
21 what Dr. Bennett and Dr. Brown had to say, it certainly is
22 reassuring given all the pain and anxiety in the healthcare
23 system to know that Dr. Zucker will be certified to write
24 controlled prescriptions. We're likely to need them. It's also

1 heartening to hear about the workshops being planned for this
2 summer. I understand negotiations are going well for securing
3 Madison Square Garden as the venue. We may need them. But I
4 think in part is to bring across the finish line with new
5 urgency some of the proposals have been standing by for a long
6 time. Again, as Dan suggested in conjunction with strategic
7 retreat, this council is doing in September to rethink and
8 refresh PHHPC itself is really important. So much of our work
9 is based on reviews and a regulatory paradigm based on NYFRAM of
10 long belated memory and pulling back it's also based on a
11 hospital centric view where hospitals are the center of clinical
12 activity and the center of costs and the need for cost control
13 and now as we are merging into a system of health systems, I
14 think we need a new focus and a new understanding of how to
15 bring about change and improve healthcare. In all this
16 discussion about organ donation I think is an example of this.
17 We heard in our committee meetings three weeks ago how much
18 North Well is doing to promote, soliciting organ donations. And
19 the obvious question is why isn't everybody doing this? It's
20 not just hospitals, across this system. What can we do in
21 addition to T-shirts and bright colors and easy accessibility to
22 have active promotion by healthcare providers. I think that's
23 the kind of activities that we as a council can undertake and
24 consider in terms of what kind of expectations do we lay out for

1 healthcare providers, not just hospitals. And that's hopefully
2 part of our future.

3 In the meantime we also have a specific consideration for
4 stroke designation, and as preface to that, I wonder if somebody
5 from the Department could remind us, what's the significance of
6 receiving a designation to the health center? What benefit does
7 that convey and what does it imply. And also, is there any
8 consideration now that there are intervascular interventions
9 which can be very important for our stroke victims. There was a
10 comment some time ago about two levels of stroke centers. Level
11 I and level II depending on whether those intervascular
12 interventions are available. So somebody could address that.
13 We have, I know support from Tara (Copin) on the phone. Maybe
14 that's the best way to do it.

15

16 TARA COPE: Can somebody repeat his question? I
17 couldn't hear.

18

19 JO BOUFFORD: I think Dr. Rugge - I think he's like to
20 understand what facility gets being designated a stroke
21 center and doesn't include sort of new interventions more or
22 less.

23

1 JOHN RUGGE: Again, what is the significance, what's the
2 impact of receiving stroke center designation by a hospital
3 that's applying for same.

4
5 JO BOUFFORD: What's the significance and impact of
6 receiving a stroke center designation for the hospital who's
7 applying for it.

8
9 TARA COPE: Currently the stroke designation process in
10 New York State is a voluntary process. The biggest advantage
11 the hospital receives from going through the process to become
12 designated is that our current EMS protocols require that if
13 they have a suspected stroke patient that they bypass non-
14 designated facilities and that they take the patient to a New
15 York State Designated stroke center. Currently all of our
16 stroke centers are designated as primary stroke centers by the
17 Department based on the brain attack coalition guidelines
18 recommendations that came out in 2005 and were revised in 2011.
19 That is the biggest advantage to becoming designated.

20 In terms of addressing the more recent treatments for
21 stroke, the endovascular treatments prior to 2015 have not been
22 shown to increased outcome and improved outcomes. At the
23 international stroke conference in 2015 they presented clinical
24 trials that demonstrated that there was an advantage to

1 introducing the endovascular treatment which is the mechanical
2 retrieval of the bloodclot from the brain. As a result, the
3 American Heart Association released new standards in new
4 guidelines of treatment of stroke in 2015. Those guidelines have
5 become, are becoming rapidly the new standard of care. The
6 recommendation is still for TPA which is a clot busting drug as
7 the main line of treatment, however, the endovascular treatments
8 can be used for patients who are outside the TPA time window
9 which is up to 4.5 hours and the endovascular treatments can be
10 used for patients who are outside of that. In addition,
11 endovascular treatments can be used to treat patients who have
12 contraindications for TPA. To date, the Department of health has
13 not acted on the revised standards to make changes to our stroke
14 designation program. However, we are meeting with the stroke
15 advisory committee next Friday to begin those discussions as to
16 how the endovascular treatment fits into the stroke designation
17 program here and to discuss the comprehensive level of care
18 centers. In addition we're going to be discussing how to handle
19 the increase incident of telestroke and whether or not there
20 needs to be possibly a lower lever designation for hospitals who
21 can do the drip and ship models. So they can administer the TPA
22 and then they can ship their patients to a higher level of care
23 stroke center. Does that address your questions Dr. Rugge?

24

1 JOHN RUGGE: Very nice. Do we have an inventory of how
2 many hospitals in New York are undertaking vascular treatment?

3

4 TARA COPE: I did not hear that at all. I'm sorry.

5

6 JO BOUFFORD: He'd like to know do we have an inventory of
7 how many hospitals in New York State are undertaking the
8 endovascular treatment?

9

10 TARA COPE: Possibly 73 hospitals who are capable or
11 have been giving the endovascular treatment. Obviously there's
12 different levels. There are some that are giving over 100 a
13 year. There are some that did one in 2016. So that's based on
14 the 2016 data that I looked at.

15

16 JO BOUFFORD: Dr. Berliner has a question.

17

18 HOWARD BERLINER: One of the major medical systems
19 downstate has been running a TV ad featuring using telemedicine
20 in the ambulance with a potential stroke patient and I assume a
21 neurosurgeon on the other end doing tests while in the ambulance
22 to determine treatment. If this is actually - A, is this an
23 effective way of treating people? Does it save a lot of time?

1 And if so, can this become part of what we require stroke
2 centers to do moving forward.

3

4 JO BOUFFORD: Dr. Berliner is reflecting on an ad that
5 health system downstate New York - not downstate university, as
6 opposed to downstate is a running that shows using telemedicine
7 connection between the ambulance and presumably a neurosurgeon
8 in the hospital instructing EMTs about administering certain
9 medications and other things, and he's wondering if this is
10 becoming sort of state of care that is being included? And I
11 would add I think this is another area that's coming up in other
12 areas that we're increasing the amount of the interventions that
13 can be done in the ambulance on the way to the hospital and are
14 they reimbursable, etc. So this is not solely related to stroke
15 but perhaps you have a response. Is it also being looked at?
16 Might it be looked at by your committee that's meeting? Hold on
17 a minute, he's got another question.

18

19 HOWARD BERLINER: Well, and also I mean, if this is an
20 effective system, could the state set up, have in place a
21 neurosurgeon on call for places that aren't stroke centers,
22 above the thruway areas where they can then take advantage of
23 and do the actual procedure which is just the administration of
24 the drug.

1

2 JO BOUFFORD: and then the extension of his question is if
3 this is effective to give a signal about using telemedicine
4 about decision to administer the drug or not, could the state
5 get more involved in making neurosurgeon or other expert
6 available to centers that don't have access to ambulance, folks
7 who don't have access to a stroke center or such an expert. It's
8 another one for Mr. Sheppard's list I think. But anyway, perhaps
9 you can respond to any of those questions.

10

11 TARA COPE: Sure. I'm not familiar with the Ad to which
12 you are referring, however I am guessing that it's related to
13 the stroke ambulance that one of the systems in the city has
14 recently put into place. That was, I believe they just went
15 live with that last September so we don't have a lot of data
16 that we have seen at the state level and that investigates how
17 effective it is. That is actually, if it's district ambulance
18 that you're talking about, they're actually doing the imaging
19 right on the ambulance and they have a physician travelling with
20 them so they can administer the TPA right then and there. And I
21 believe that that was funded by a private entity and it's an
22 extremely expensive ambulance to purchase and to run. So at
23 this point I don't have any additional information of the
24 effectiveness of the program. That is something I can get in

1 touch with them about to determine. Obviously as we become more
2 proficient in endovascular treatment and as it becomes more
3 common, there will need to be ways to identify whether or not a
4 patient has large vessel occlusions and to determine the best
5 place to transport that patient. That's something that we
6 certainly can investigate the use of telemedicine for and it is
7 something that I can suggest as a topic for when we meet with
8 the advisory committee. Does that answer your question?

9

10 JO BOUFFORD: Given the difficulties, let's just make sure
11 we focus...

12

13 HOWARD BERLINER: Yes, and no. I don't, I mean the
14 commercial that I'm referring to does not say that it's a
15 special ambulance so it's a little misleading, if that's the
16 case, but also it seems to show a physician someplace else,
17 asking a patient to make certain movements and what seems to be
18 diagnosing rather than using any special equipment or tests.
19 That's a commercial.

20

21 JO BOUFFORD: Dr. Berliner is clarifying that what he saw
22 really was not a situation where it was a special ambulance or a
23 physician riding with the ambulance but was being done through a
24 telemedicine hookup. So, maybe it's a different, maybe you can

1 take a look at both of those and see if there's anything extent
2 or talk with the advisory committee about them. Dr. Bennett and
3 then Dr. Kalkut, then we'll wrap and turn it back to Dr. Rugge.
4 Because poor Mr. Holts been outside for no reason for a while.
5 He may have wished to hear this. May want to retrieve him for a
6 minute.

7

8 JOHN BENNETT: Thank you. I have a question about the
9 certification process. Is the certification process forever or
10 is there any recertification? And a corollary to that, do we
11 track outcomes at all of any of these 73 institutions, do we
12 report on the outcomes in a similar vein that we do with
13 coronary angioplasty in New York State, and if not, are there
14 any plans to do so.

15

16 JO BOUFFORD: Did you hear him?

17 [no]

18 He's asking about what the certification process is for
19 stroke centers and if there's, what the process is, the role of
20 the Department in that process, but also -

21 [Whether it's forever]

22 Once you're certified are you certified forever or is there
23 a time limit on the certification, and then finally is there any
24 effectiveness or impact reports due to this date?

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JOHN BENNETT: Do we track outcomes?

JO BOUFFORD: Track outcomes?

TARA COPE: Yeah, the application process for the Department is that we have the application for designation on line. It's paper application. They have to submit the application plus all supporting documentation to the Department of Health. Once the application is received it's reviewed by at least three people here at the Department that are associated with the stroke designation program, and then we have a number of conference calls with the facility that's applying going back and forth to make sure we have all their documentation in place. Once we believe that we have a completed application and that they've demonstrated that they meet the key elements of a stroke center, then we go ahead and schedule an on-site review. The on-site review is approximately four hours long. It consists of at least one MD and one RN from the Department of Health, go out and confirm everything that they've written in the application. The onsite review walks through the hospital as a stroke patient would walk through the hospital. So it starts in the ED. They have to tell us what they would do if a person arrives and they demonstrate how they would greet the patient or if it's a walk-

1 in or if the person arrives by ambulance, and then it goes
2 through the ED, goes through the imaging, the lab, goes to the
3 stroke unit, goes to rehab, and step down that they
4 would also visit that. Assuming that everything goes well with
5 the site visit and there are no contingencies, then we write the
6 staff report for PHHPC. We go to the committees and then the
7 full council, and once all that is successfully completed we
8 send a letter to the commissioner to issue designating the
9 hospital. In order to become designated the key elements they
10 have to show that they have a qualified stroke team. They have
11 to show that they're doing appropriate education of EMS. They
12 have to have a medical director who meets a number of training
13 criteria. They have to have eight hours of CME for their stroke
14 team initially to become designated, and that consists of
15 anybody in the ED, the ICU, the stroke unit, the step down unit,
16 in interact with stroke patients. People who are external such
17 as all the therapy staff have to have at least two trainings
18 through the year related to stroke. We have to show that
19 they're doing patient and family education and they're required
20 to do community education biannually. In addition, they have to
21 show that they have 24 hour a day, seven day a week capabilities
22 for neuroimaging, lab services, and neurosurgery within two
23 hours either on site or through transfer agreement. They also
24 have to have specific beds designated as a stroke unit, and then

1 they have to have a QA process in place where they're reviewing
2 stroke cases and they have to show how that process fits in to
3 the overall QA process at the hospital. They are also required
4 to invite EMS into their QA meetings at least on a quarterly
5 basis to review cases that EMS is dropping off. They have to
6 collect data on time targets and performance measures, and they
7 submit that data to us on an annual basis. Once they're
8 designated, it is continuing education as long as they can show
9 us that they're continuing to meet the key evidence of stroke
10 designation. We collect that through an annual survey that we
11 administer each year to the hospitals. It opens in February and
12 closes in April. As part of that they have to demonstrate that
13 they've met all of their education requirements, that they still
14 have their stroke unit in place, and all of the other key
15 elements we go through. In addition they have to submit
16 aggregate data to us for the previous calendar year on five
17 different time targets including things like door to MD time,
18 door to stroke team time, door to brain imaging, and door to TPA
19 administration. We have 12 performance measures that we track
20 and then we also have five EMS measures. And our target is for
21 all the performance measures, they have to have 85 percent or
22 higher clients on the performance measures, and for the time
23 targets we look for 75 percent or more compliance. If they fail
24 to meet that for four or more measures then they're required to

1 submit quality improvement plans to us and we track their
2 improvement over the next year. If they fail to meet on a number
3 of measures then we can also increase our data flexion and go to
4 quarterly or monthly data flexion if necessary.

5

6 JOHN BENNET: So I guess what you're telling me in short
7 is there are a lot of process measures, you look at them every
8 year, but the certification is a rolling sort of indefinite
9 certification - I'm trying to paraphrase what she said so I
10 understand it - but there are no hard outcome measures. So
11 there's no tracking or reporting of functional recovery or the
12 outcome of the endovascular procedure or the stroke?

13

14 JO BOUFFORD: He's asking, he's impressed I think with the
15 process measures, quality improvement process, is there any
16 tracking of patient outcome in any of the indicators.
17 Improvement, function, etc. Recovery. Whatever.

18

19 TARA COPE: The only outcome that we are looking at
20 right now isn't really an outcome. It's patient disposition. I
21 think that's something that we can look at implementing. The
22 American Heart Association is really focused right now on stroke
23 systems of care. So it's EMS through the hospital, through the
24 60 days post discharge. We just recently extended our focus to

1 include the EMS component back in 2015. I think as the
2 hospitals become comfortable with collecting that EMS data, then
3 that would be an appropriate time to consider moving forward
4 into the transitions of care component and that's where we can
5 get more at that outcomes piece that you're talking about. Does
6 that answer your question?

7

8 JOHN BENNETT: yeah, I would just encourage the committee
9 in general and the Department of Health that process is great.
10 If it's been demonstrated to lead to true outcome improvement,
11 but what patients really care about are outcomes.

12

13 JO BOUFFORD: Dr. Bennett's encouraging us to look at the
14 issues of outcomes across that board. I think that's a really
15 important point in general. Some shortage, we have a shortage
16 of outcome data on a lot of things that happen, and I think it's
17 an important one, especially with these new things being
18 introduced. We talked about marijuana, pain management and
19 other things as well, so thank you for that. Any other comments?
20 Questions? So we all know now in great depth that Women's
21 Christian Association Hospital has gone through to come to us
22 which is really helpful actually. It think it's really
23 educational. So, John, would you like to...

24

1 JOHN RUGGE: I will not repeat the background for this
2 application, but to say that the committee is moving the
3 approval of Women's Christian Association Hospital in Jamestown
4 to be a designated stroke center, I would make that motion.

5

6 JO BOUFFORD: Is a movement to approve the application?
7 Move Dr. Kalkut, Second, Dr. Berliner. Any questions?
8 Discussion? Further comments from committee members? No.
9 Alright. I'll call a vote. All in favor?

10

11 [Aye.

12 Opposed? No. Ok. Fine. Have Mr. Holt come back and the
13 motion is approved. Thank you John.

14

15 JOHN RUGGE: Thank you very much.

16

17 JO BOUFFORD: And thank you in Albany for your terrific
18 briefing, and we hope that you might take up the question of
19 stroke ambulance engagement from a telemedicine point of view
20 and stroke treatment from the point of view of evidence-base
21 with your committee and maybe the outcomes questions, because
22 you have a lot of good measures that might be something to put
23 on the agenda for a future meeting. So thank you very much.

1 OK. Dr. Gutierrez will give a report on codes, regulations,
2 and legislation.

3

4 ANGEL GUTIERREZ: Thank you very much. At today's meeting
5 of the committee on codes, regulations, and legislation the
6 committee reviewed two proposals for information. The first one
7 is for certificate of need review thresholds. This proposal
8 will amend section 710.1 of title 10 to increase the monetary
9 thresholds for review of construction projects proposed by
10 general hospitals. The proposal also would revise review
11 requirements for certain non-clinical projects and health
12 information technology projects. The proposal does not modify
13 the level of review required to add, reduce, or decertify
14 medical services. Since this proposal was for information only,
15 there was no vote from the committee and Lisa Ulman from the
16 Department is available to answer any questions from council
17 members. Any questions? I will proceed then.

18 For information also is laboratory business practices. The
19 proposed amendments to subpart 34-2 identifies circumstances
20 under which clinical pathologies and other laboratory physicians
21 may confer with patients regarding the meaning and
22 interpretation of test results and reports. Since this proposal
23 was also for information only, there was no vote from the
24 committee and Dr. Michael Ryan from the Department is available

1 in Albany to answer any questions from council members. Are
2 there any questions for Dr. Ryan? If not, I conclude my report
3 from the codes committee. Thank you very much.

4

5 JO BOUFFORD: Thank you very much. Dr. Kalkut, are you
6 going to need anyone in Albany to be able to hear what you're
7 saying?

8

9 GARY KALKUT: That's usually not an issue for me.

10

11 JO BOUFFORD: If so, we could trade mics.

12 GARY KALKUT: Can you hear me?

13 JO BOUFFORD: I think it's not a problem in this room. I
14 don't know -

15

16 GARY KALKUT: Albany, can you hear me through the mic, not
17 directly?

18

19 JO BOUFFORD: Can everybody in Albany hear Dr. Kalkut?

20

21 ALBANY: We can understand him.

22

1 JO BOUFFORD: So you hear a noise but... I'm going to call
2 on him to report on establishment and project review and I'm
3 going to hand him my microphone. Or as him to come over.

4
5 GARY KALKUT: Good morning. I'm going to present the
6 applications and recommendations for the establishment and
7 project review committee on May 18. As Dr. Boufford said, some
8 of these applications will be put together and batched. First
9 is 162554C, Memorial Hospital for Cancer and Allied Diseases in
10 New York County. This is to certify a new hospital division to
11 be located at 503 E. 74th St. which amends and supersedes CON
12 131326. Both the Department and the committee recommended
13 approval with conditions and contingencies, and I so move.
14 Second.

15 JO BOUFFORD: (inaudible)

16 All in favor?

17
18 [Aye]

19 Opposed?

20
21 GARY KALKUT: Second category is two applications,
22 141047C, Erie County Medical Center in Erie County. Ms.
23 Baumgartner has a conflict and is recused and leaving the room.
24 This is to construct a new 54,000 square foot emergency

1 department to be located at Erie County's campus adjacent to the
2 existing emergency department. The Department and the committee
3 recommend approval with conditions and contingencies. The second
4 application is 171075C, Eastern Niagara Hospital in Niagara
5 County. Again, Ms. Baumgartner has a conflict and is out of the
6 room. This is to convert an extension clinic located at 2600
7 Williams Street in Newfane to a division of the hospital and
8 relocate the existing 20 bed chemical dependency rehabilitation
9 unit from a Lockport site to the Newfane site and certify an
10 additional 10 chemical dependency beds. Again, the Department
11 and the committee recommend approval with conditions and
12 contingencies. And I so move.

13

14 JO BOUFFORD: Second. Dr. Gutierrez, second. Any
15 questions, concerns from the council members? All in favor?

16

17 [Aye]

18 Opposed? Motion passes.

19

20 GARY KALKUT: Ms. Baumgartner can come back into the room
21 please? Next is 171079C, Victoria Home in Westchester County.
22 Mr. LaRue has a conflict and is leaving the room. This is to
23 construct a 90 bed replacement facility in the Greenhouse model
24 style with 45 residential healthcare facility beds, and 45

1 neurodegenerative beds for a total of 41 net new beds. The
2 Department and the committee recommend approval with conditions
3 and contingencies, and I so move.

4

5 JO BOUFFORD: All in favor? I'm sorry. Any questions or
6 concerns about this applications? All in favor?

7 [Aye]

8 Opposed? Motion passes.

9

10 GARY KALKUT: I'm going to turn the chair over to Dr.
11 Gutierrez for the next category of applications.

12

13 ANGEL GUTIERREZ: Hello again. We have category four
14 applications recommended for approval for acute care transplant
15 services construction. Application 162381C, New York University
16 Hospital Center, New York County. Conflict, recusal Mr. Kraut
17 who is absent, Dr. Kalkut who is leaving the room. Mr. Lawrence
18 leaving the room, Dr. Martin leaving the room. And Mr. Robinson.
19 Certify..

20 JO BOUFFORD: Can I just ask if we still have a quorum?

21 [yes] We do.

22

23 ANGEL GUTIERREZ: Certify adult health transplant
24 services, the Department of Health approval with conditions and

1 contingencies is recommended and approval with conditions and
2 contingencies were recommended with one member abstaining at the
3 establishment RC committee. And I so move.

4

5 JO BOUFFORD: Is there a second? Ok. And there was
6 additional information as requested during the meeting that was
7 circulated to the council before him by Dr. Gutierrez. Any
8 questions for Dr. Gutierrez. Ms. Rautenberg.

9

10 ELLEN RAUTENBERG: I'm not going to oppose this but I
11 would think this was an excellent example of something we should
12 discuss at our retreat because it involves need, it involves
13 quality in terms of all things being equal. It would seem that
14 the number of transplants at the existing centers may decrease.
15 So while I'm not going to oppose it I think it's a great example
16 to talk about.

17

18 JO BOUFFORD: So noted. Any other comments, questions? All
19 in favor?

20 [Aye]

21 Opposed? Abstentions? Dr. Brown abstains. And moving on
22 then.

23

1 ANGEL GUTIERREZ: Next is application number 171167C,
2 North Shore University Hospital in Nassau County, conflicts
3 recusals by Mr. Kraut, Dr. Kalkut, Mr. Lawrence, Dr. Martin, and
4 Mr. Robinson. They're all out of the room or absent. Certify
5 adult heart transplant services. The Department of health
6 recommends approval with conditions and contingencies, and the
7 establishment review committee recommended approval with
8 conditions and contingencies recommended with one member
9 abstaining, and I so move.

10

11 JO BOUFFORD: Second from Dr. Berliner. Any discussion?
12 Questions? Noted Ms. Rautenberg's comment I'm sure would apply
13 to this as well. Any other comments? All in favor?

14 [Aye]

15 Opposed? Abstentions? Dr. Brown abstains. OK.

16

17 ANGEL GUTIERREZ: That concludes my part.

18

19 JO BOUFFORD: Thank you Dr. Gutierrez. We'll invite our
20 colleagues back into the room so we can move on to the next
21 batch.

22

23 GARY KALKUT: Application 171267C, FF Thompson Hospital in
24 Ontario County. There's a conflict and recusal by Mr. Robinson

1 who is out of the room. This is to certify a new extension
2 clinic by converting an existing private practice located at 335
3 Paris Street in Canandaigua and construct a replacement building
4 on the same parcel. The Department and the committee recommend
5 approval with conditions and contingencies. At the committee,
6 one member opposed this application, and I so move.

7

8 JO BOUFFORD: Second from Dr. Gutierrez. Questions? Dr.
9 Bennett.

10

11 JOHN BENNETT: Just to make clear my position on this has
12 been consistent that when article 28 facilities take over
13 private practices costs go up and I have an objection that
14 there's never any assessment of that.

15

16 JO BOUFFORD: OK, thank you. Any other comments questions?
17 All in favor?

18

19 [Aye]

20 Opposed? Dr. Bennett is opposed? Any abstentions? No
21 abstentions. Thank you very much. We can bring Mr. Robinson
22 back.

23

1 GARY KALKUT: Alright. To the next batch. There are
2 multiple applications here. 162556E, Progressive Surgery Center
3 LLC in Suffolk County. This is to transfer 82.473 ownership
4 from one current member to two new members and certify
5 lithotripsy services. The Department and the committee
6 recommend approval with conditions and contingencies.
7 171198B, Star Suites LLC, d/b/a Star Surgical Suites LLC in
8 Nassau County. This is to establish and construct a single
9 specialty ambulatory surgery center specializing in
10 gastroenterology located at 623 Stewart Avenue in Garden City.
11 This amends and supersedes previous CON application 161009. The
12 Department and the committee recommend approval with an
13 expiration of the operating certificate five years from the date
14 of its issuance with conditions and contingencies. 162112E,
15 Hudson Valley Center for Digestive Health in Westchester County.
16 Request for indefinite life of CON111502. Committee and the
17 Department recommends approval.
18 171110E, University Gastroenterology at Phillip Holtzapple
19 endoscopy center in Onondaga County. Request for indefinite life
20 of CON111362. The Department and the committee recommend
21 approval.
22 161355B, Freedom Center of Newark, d/b/a Fresenias Kidney Care
23 in Newark of Wayne County. This is to establish Freedom Center
24 of Newark, LLC as the new operator of the facility located at

1 305 Westshore Boulevard, Newark, currently operated by New York
2 Dialysis Services and increase the number of stations from 14 to
3 17. Department and committee recommend approval with conditions
4 and contingencies.

5 171122E, Freedom Center of Syosset in Nassau County. This is to
6 establish Freedom Center of Syosset as the new operator of the
7 14 station chronic renal dialysis facility located at 760
8 Broadway in Hicksville, currently operated by New York Dialysis
9 Services Inc. The Department and committee recommend approval
10 with conditions and contingencies.

11 162601B, the Roguson Institute at Methodist Home for Nursing and
12 Rehabilitation in Bronx County. This is to establish and
13 construct a 16 station chronic renal dialysis center to be
14 located at 4499 Manhattan College Parkway in the Bronx. The
15 site of the Methodist Home for Nursing and Rehabilitation.
16 Department and Committee recommend approval with conditions and
17 contingencies.

18 And I so move.

19

20 JO BOUFFORD: Second by Dr. Gutierrez. Any questions,
21 discussion? Any members of the council? All in favor?

22 [aye]

23 Opposed? Abstentions? Motion passes.

24

1 GARY KALKUT: Applications for certified home health
2 agencies. 162220E, Prime Home Health Services LLC in Dutchess
3 County. This is to acquire TLC and home care, a certified home
4 health agency located at 965 Dutchess Tnpk in Poughkpeesie and
5 add personal care services. Committee recommends approval with
6 condition and contingencies, and the application 171041E,
7 Shining Star Home Healthcare has been deferred. So, and I so
8 move.

9

10 JO BOUFFORD: Second Dr. Gutierrez. Any questions from the
11 council members? All in favor?

12

13 [Aye]

14 Opposed? Abstentions? Motion passes.

15

16 GARY KALKUT: following our certificates of dissolution,
17 Glens Falls Hospital Guild Incorporated, Mt. Loretto Nursing
18 home Inc., Resurrection Nursing Home Inc., Mt. St. Ursula Speech
19 Center. Both the Department and Committee recommend approval and
20 I so move.

21

22 JO BOUFFORD: Second, Dr. Gutierrez. I have a question
23 especially around Mt. Loretto and Resurrection which I don't
24 know anything about the details, but I just wondered if they are

1 for profit or not-for-profit nursing homes? Just in light of the
2 conversations we've been having about the challenges of not-for-
3 profit nursing homes in the State.

4 Or maybe they've been out of business for a while and this
5 is just an official act.

6

7 CHARLIE ABEL: We can take a look at that unless DLA our
8 colleagues in legal affairs know the answer immediately.

9

10 JO BOUFFORD: Anybody in Albany who could...

11

12 PETER ROBINSON: Is there anybody in Albany that can
13 answer the questions regarding the status of Mt. Loretto Nursing
14 home and Resurrection Nursing Home? Whether they were for
15 profit or not for profit, and are they currently not operating
16 and this is just a final formalization of that.

17

18 ALBANY: No, we don't have that information right in front
19 of us.

20

21 [UNIDENTIFIED]: We have some information that it's a
22 not-for-profit operations.

23

1 JO BOUFFORD: Yeah, I think this is another issue that we
2 need to look at. The never ending list. But I know a lot of
3 the not-for-profit nursing homes are having real problems in the
4 state and that's just a fact and whether the relevance is
5 important. So, any other comments or concerns? All in favor?

6
7 [Aye]

8 Opposed? Any abstentions? Motion passes.

9
10 GARY KALKUT: Certificate of Amendment of articles of
11 organization. LI Replacement LLC, this is a name change. The
12 Department and committee recommend approval and I so move.

13
14 JO BOUFFORD: Moved and seconded. Comments? All in
15 favor:

16
17 [Aye]

18 Opposed? Abstentions, Motion passes.

19
20 GARY KALKUT: Certificates of amendments of certification
21 of incorporation. At Home Care Inc., Orelia Osbourne Fox
22 Memorial Hospital Society, Asset Hospital of Schoharie County,
23 Friends of Bassett Inc., Little Falls Hospital, O'Connor
24 Hospital, and Mary Emma Jean Bassett Hospital, Tri-Town Regional

1 Healthcare, Valley Health Services Inc., Valley Residential
2 Services Inc., committee and Department recommend approval and I
3 so move.

4

5 JO BOUFFORD: Second Dr. Gutierrez. Any discussion?
6 Questions? All in favor?

7

8 [Aye]

9 Opposed? Abstention? Motion passes.

10

11 GARY KALKUT: Following is applications for hospice
12 services. 162451E, Hospice Care in Westchester and Putnam Inc.,
13 Westchester County. There's a conflict by Mr. Kraut who is not
14 in the room. This is to establish North Well Health Care as the
15 new active parent and sole member of Hospice Care in Westchester
16 and Putnam Inc., and is related to 162447 and 162459. And I so
17 move.

18

19 JO BOUFFORD: Any questions? Discussion? All in favor?

20

21 [aye]

22 Opposed? Abstention? Motion passes.

23

1 GARY KALKUT: Following application 162385E, Yonkers
2 Gardens LLC, d/b/a Yonkers Garden Center for Nursing and
3 Rehabilitation in Westchester County. There's an interest
4 declared by Mr. LaRue. This is to establish Yonkers Garden LLC
5 as the new operator of the St. Josephs Nursing Home of Yonkers.
6 Located at 115 South Broadway, Yonkers. The Department and
7 committee recommend approval with conditions and contingencies.
8 17107E, Massapequa Center d/b/a Massapequa Center for
9 rehabilitation in Suffolk County. Recusal by Mr. Kraut who is
10 not in the room. This is to establish Massapequa Center d/b/a
11 Massapequa Center for Rehabilitation and Nursing as the new
12 operator of the Broadlawn Manor for Nursing and Rehab Center
13 located at 399 County Line Road in Amityville. Department and
14 committee recommend approval with conditions and contingencies.
15 162447E, Visiting Nurse Association in Hudson Valley in
16 Westchester County. Again, a recusal by Mr. Kraut who is not in
17 the room. This to establish North Well Health Care as the new
18 active parent and sole member of Visiting Nurse Association of
19 Hudson Valley which is companion to 162451 and 162459. The
20 Department and committee recommend approval with conditions and
21 contingencies, and I so move.

22

23 JO BOUFFORD: Second by Dr. Gutierrez. Any questions?
24 Comments from council members?

1 [Aye]

2 Opposed? Abstentions? Motion passes.

3

4 PETER ROBINSON: I'm calling for certificates for
5 restated certificates of incorporations. These all relate to NYU
6 which is the reason that Dr. Kalkut has declared a conflict and
7 recused himself. NYU Hospital Center is a change in corporate
8 name. NYU Langone Hospital for Orthopedics, that's also a
9 change in corporate name. NYU Langone Hospital Brooklyn, another
10 change of corporate name. and NYU Langone Cobble Hill which is
11 also a change in corporate name. the Department has recommended
12 approval with condition—just approval—as does the committee and
13 I so move.

14

15 JO BOUFFORD: Second from Dr. Gutierrez. Any questions?
16 Comment? All in favor? I'm sorry... yes, Dr. Torres.

17

18 DR. TORRES: Can I just get clarification on the Cobble
19 Hill? You mentioned Cobble Hill at the nursing rehab?

20

21 PETER ROBINSON: This does not specify. Do you have the
22 answer to that.

23

1 CHARLIE ABEL: This is stump Mr. Abel day. I believe it's
2 the ambulatory and ED that NYU operates in Cobble Hill but I
3 will have to double check on that. The former Litch site. The
4 redeveloped Litch site.

5

6 JO BOUFFORD: Any other questions? All in favor? Opposed?
7 Any referrals? No. Motion passes.

8

9 GARY KALKUT: Thank you. 1711077B, CMSC LLC, d/b/a City
10 Med Surgery Center Queens County. This is to establish and
11 construct a multispecialty ambulatory surgery center to include
12 orthopedic surgery and pain management services located at 9212
13 165St. in Jamaica. The Department recommends approval of the
14 operating certificate five years from the date of it's issuance
15 with conditions and contingencies. The committee recommends the
16 same. One member of the committee abstain, and I so move.

17

18 JO BOUFFORD: Second from Dr. Gutierrez. Dr. Martin you
19 want to make any statement about this? No? No other comments?
20 All in favor?

21 [Aye]

22 Opposed? No opposed? No abstentions? Are you continuing to
23 abstain Dr. Martin? Dr. Martin abstains.

24

1 GARY KALKUT: We'll move to home health agency licensures.
2 I'll just read the application numbers. This is for changes in
3 ownership. 162459, 2072L, 162492, 162603, 171120, 171133, Both
4 the Department and committee recommend approval with a
5 contingency. I so move.

6

7 JO BOUFFORD: Second from Dr. Gutierrez. Any comments,
8 questions from council members? All in favor?

9 {aye}

10 Opposed? Abstention. Motion passes.

11

12 GARY KALKUT: Thank you. These are following batch is new
13 licensed home care agencies. And it is quite an extensive list.

14 23681, 24021, 24101, 24171, 24351, 24551, 24721, 24781,
15 25001, 25071, 25291, 25441, 25491, 25551, 25591, 25611, 25631,
16 25751, 25781, 25791, 25841, 2602L, 2614L, 2632L, 151286, 151306,
17 151318, 151346, 152037, 152087, 152088, 152097, 152102, 161135,
18 162108, Department and committee recommend approval with a
19 contingency and I so move.

20

21 JO BOUFFORD: Dr. Gutierrez Seconds. Any comments from
22 the members of the council? All in favor?

23

24 [Aye]

1 Opposed? Abstentions? Motion passes. Dr. Gutierrez
2 has a question.

3

4 ANGEL GUTIERREZ: I've never seen one of these moved
5 seconded and not approved. So if that's the case, why do we do
6 it?

7

8 JO BOUFFORD: I think because that's our job at the
9 moment. So, I think the question of the degree of time spent of
10 this council in CON review is certainly on the table for further
11 conversation. I think it's been raised several times.

12 Any other comments? Questions?

13

14 ELLEN RAUTENBERG: I would just add that to my set of
15 comments from the transplant project. Is, are we a regulatory
16 body, or is it really the market now and something to deal with.

17

18 JO BOUFFORD: I know Jeff has talked about that, and we've
19 had a little bit of conversation about it and at the retreat has
20 to be defined, but I think since we have a little bit of time we
21 might set aside some time at our next meeting here to do a
22 little brainstorming on these issues, or perhaps have a draft
23 agenda that the group could think about.

24

1 GARY KALKUT: Particularly seeming (rogue) approvals.

2

3 JO BOUFFORD: Yeah, exactly. I think that's absolutely
4 fair. Because again, a lot of boards, there is such a thing as
5 consent agenda that a lot of non-profit boards use to avoid a
6 discussion.

7

8 HOWARD BERLINER: Are we ready to have a discussion of
9 the logistics of the retreat?

10

11 JO BOUFFORD: I personally am not. I'm not aware. I don't
12 recall seeing dates out yet.

13

14 GARY KALKUT: The dates are out. September.

15

16 COLLEEN: The dates are September 6, 7, 8.
17 It's going to be at the Hilton Double Tree in Tarrytown. So the
18 first evening will be closed for the members, dinner and a
19 special speaker for educational center with Dr. Berliner. And
20 then we will have on the 7th will be beginning around 9:30. I
21 know the chair is working with the Department to come up with an
22 outline for discussions, and then that will probably conclude
23 around 4:00 and then again the next day we'll start around 9:30
24 and conclude around 12:00-12:30.

1

2 JO BOUFFORD: We had talked with Jeff perhaps about the
3 different committee chairs working with him to get a draft and I
4 think we can also review it at our August meeting.

5

6 COLLEEN: And the days are open to the public. So the 7th
7 and the 8th are an open meeting.

8

9 HOWARD BERLINER: So I guess my questions, do we
10 individually make reservations? Are they that kind of stuff?

11

12 JO BOUFFORD: Those kinds of logistics. Maybe you can send
13 a note out about that.

14

15 COLLEEN: We'll have blocks of rooms for you and then
16 you'll get a code and you'll be able to get the hotel.

17

18 JO BOUFFORD: So you can send out perhaps an invitation
19 that lays out the logistical arrangements and how they're
20 supposed to be made in time for people to do that.

21

22 GARY KALKUT: Will there be a draft agenda that will be
23 circulated for comment?

24

1 JO BOUFFORD: That's why I was suggesting that we do,
2 perhaps, take some time to review that in August, in our August
3 meeting, and then it could be finalized before the sessions, so
4 we have it in advance.

5

6 [UNIDENTIFIED]: Dr. Boufford, the Friday night session
7 is not a meeting, but it's not closed. It's open to the public.
8 Just a clarification.

9

10 JO BOUFFORD: Anybody want to come and watch us eat
11 dinner... at our own expense. Thank you for that clarification.
12 So obviously the usual postings will be made for individuals who
13 wish to observe and attend the meeting publicly.
14 Another questions? Concerns? I'm trying to finish. I know. Oh
15 you have to adjourn the committee.

16 [It's the Council]

17 Are there any other questions, concerns at all? OK, Fine. So
18 the meeting of the public health and health planning council now
19 stands adjourned. I believe at 1:00 a special meeting of the
20 establishment and project review committee will convene on the
21 subject of Mt. Sinai restructuring and we will break for those
22 that are coming back, we'll have a break. And the next committee
23 day is on July 20 in Albany and the full council will convene on

1 August 3 in Albany. Any other business? Council stands
2 adjourned.

3

4 PETER ROBINSON: So just for the members of the council,
5 even though this is a special meeting of the establishment and
6 project review committee, all members of the council are welcome
7 to attend the information session.

8

9 [END]

10

11

12

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2816 and section 206(18-a)(d) of the Public Health Law, Part 350 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon publication of a Notice of Adoption in the New York State Register, provided that section 350.2 shall be effective January 1, 2018, to read as follows:

A new Part 350 is added to read as follows:

Part 350

All Payer Database (APD)

Sec.

350.1 Definitions

350.2 APD submission

350.3 APD data release

350.4 APD advisory group

350.5 APD guidance

§ 350.1 Definitions. For the purposes of this Part, these terms shall have the following meanings:

(a) “All Payer Database” or “APD” means the health care database maintained by the Department or its contractor that contains APD data.

(b) “APD data” means covered person data, claims data, and any other such data contained within standard transactions for Electronic Data Interchange (EDI) of

health care data adopted by the X12 standards organization, the National Council for Prescription Drug Programs (NCPDP) standards organization, any other organizations designated by the federal Department and Human Services to develop and maintain standard transactions for EDI of health care data, as provided in section 1320d-2 of Title 42 of the United States Code (USC) or any other federal law, or any other format designated by the Department for the collection of such data.

(c) “claims data” means:

- (1) Benefits and coverage data – data specifying the benefits and coverage available to a covered person, such as cost-sharing provisions and coverage limitations and exceptions;
- (2) Health care provider network data – data related to the health care provider and service networks associated with third-party health care payer plans and products, such as the services offered, panel size, licensing/certification, National Provider Identifier(s), demographics, locations, accessibility, office hours, languages spoken, and contact information;
- (3) Post-adjudicated claims data – data related to health care claims, including payment data, that has been adjudicated by a third-party health care payer, such as the data included in the X12 Post Adjudicated Claims Data Reporting and the NCPDP Post Adjudication Standard transactions;
and
- (4) Other health care payment data, such as value based payment information, as determined by the Department.

(d) “covered person” means a person covered under a third-party health care payer contract, agreement, or arrangement that is licensed to operate in New York State by the New York State Department of Financial Services.

(e) “covered person data” means data related to covered persons, such as demographics, member identifiers, coverage periods, policy numbers, plan identifiers, premium amounts, and selected primary care providers.

(f) “data user” means any individual or organization that the Department has granted access to APD data, with or without identifying data elements.

(g) “health care provider” means a provider of “medical and other health services” as defined in 42 USC § 1395x(s), a “provider of services” as defined in 42 USC § 1395x(u), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. This includes a clinical laboratory, a pharmacy, an entity that is an integrated organization of health care providers, and an accountable care organization described in 42 USC § 1395jjj. The term also includes atypical providers that furnish nontraditional services that are indirectly health care-related, such as personal care, taxi, home and vehicle modifications, habilitation, and respite services.

(h) “identifying data elements” means those APD data elements that, if disclosed without restrictions on use or re-disclosure, would constitute an unwarranted invasion of personal privacy consistent with federal and state standards for de-identification of protected health information.

(i) “New York State agency” means any New York State department, board, bureau, division, commission, committee, public authority, public benefit corporation,

council, office, or other governmental entity performing a governmental or proprietary function for the State of New York.

(j) “submission specifications” means specifications determined by the Department for submitting covered person data and claims data to the APD, such as the data fields, circumstances, format, time, and method of reporting.

(k) “third-party health care payer” means an insurer, organization, or corporation licensed or certified pursuant to article thirty-two, forty-three, or forty-seven of the Insurance Law or article forty-four of the Public Health Law; or an entity, such as a pharmacy benefits manager, fiscal administrator, or administrative services provider that participates in the administration of a third-party health care payer system, including any health plan under 42 USC § 1320d. Unless permitted by federal law, the term does not include self-insured health plans regulated by the Employee Retirement Income Security Act of 1974, 29 USC Chapter 18, although such plans that operate in New York State may choose to participate as a third-party health care payer.

§ 350.2 APD data submission.

(a) Third-party health care payers shall submit complete, accurate, and timely APD data to the Department, pursuant to the submission specifications.

(b) The Department shall consult with the Department of Financial Services and third-party health care payers before issuing any submission specifications.

(c) The Department shall set a compliance date of at least 120 days from the date that new or revised submission specifications are issued.

(d) Third-party health care payers shall submit APD data in an electronic, computer-readable format through a secure electronic network of the Department or its

designated administrator on a monthly basis, or more frequently, as specified in the submission specifications.

(e) Third-party health care payers shall submit at least 95 percent of APD data within 60 days from the end of the month that the adjudicated claims were paid.

(f) Third-party health care payers shall submit 100 percent of APD data within 180 days from the end of the month of the adjudicated claims being submitted for payment.

(g) The Department may audit APD data submitted by third-party health care payers to evaluate the quality, timeliness, and completeness of the data. The Department may issue an audit report or statement of deficiencies listing any inadequacies or inconsistencies in the APD data submitted and requiring corrective actions. Any third-party health care payer that receives an audit report or statement of deficiencies shall submit a plan of correction to the Department within 30 days from the date of receipt of the audit report or statement of deficiencies. Third-party health care payers shall be in full compliance with APD data submission specifications and the plan of correction within 90 days from the date of submission of the plan of correction.

(h) A third-party health care payer may submit a written request to the Department for an extension, variance, or waiver of APD data submission specifications requirements. The written request shall include: the specific requirement to be extended, varied, or waived; an explanation of the reason or cause; the methodology proposed to eliminate the need for future extension, variance, or waiver; and the time frame required to come into compliance. The Department shall respond to such requests as soon as practicable.

(i) Any third-party health care payer that violates this section shall be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law, and applicable sections of New York State Insurance Law and regulations.

§ 350.3 APD data release.

(a) The Department shall implement quality control and validation processes to provide reasonable assurance that APD data released to the public is complete, accurate, and valid. The Department shall adhere to applicable State and federal laws, regulations, and policies on release of Medicare and Medicaid data.

(b) Upon reasonable assurance that subdivision (a) has been satisfied, the Department may release data in the following manner:

(1) De-identified and/or aggregated APD data of a public use nature may be posted to a consumer-facing website.

(2) APD data, including data with identifying data elements, may be released to a New York State agency or the federal government in a manner that appropriately safeguards the privacy, confidentiality, and security of the data.

(3) APD data, including data with identifying data elements, may be released to other data users that have met the Department's requirements for maintaining security, privacy, and confidentiality and have approved data use agreements with the Department.

(c) Data users shall adhere to security, confidentiality, and privacy guidelines established by the Department to prevent breaches or unauthorized disclosures of

personal information resulting from any data analysis or re-disclosure. Data users bear full responsibility for breaches or unauthorized disclosures of personal information resulting from use of APD data.

(d) (1) Where the Department grants data users access to APD data that does not include identifying data elements, such access shall be subject to terms and conditions established by the Department.

(2) Data users who wish to request APD data that includes identifying data elements shall submit an application for a proposed project in a form established by the Department, which shall include an explicit plan for preventing breaches or unauthorized disclosures of identifying data elements of any individual who is a subject of the information. The Department's review of the proposed project shall include, but not be limited to: (i) use of the specific identifying data elements; (ii) adherence to the Department's guidance on the appropriate and controlled release of data; and (iii) assurance on whether the release of identifying data elements reflects overall goals of confidentiality, privacy, security, and benefits to public and population health.

(e) Any data user that violates this section or any data use agreement executed under this section shall be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law.

(f) The Department may charge reasonable fees for access to APD data, which shall be based upon estimated costs incurred and recurring for data processing, operation of the platform/data center, and software. The Department shall establish a

policy describing any APD data that shall be available at no charge, the fees for access to APD data subject to charge, the process for fee payment, and under what circumstances fees may be reduced or waived.

§ 350.4 APD advisory group.

(a) The Department may establish an advisory group to provide recommendations on any or all of the following areas: submission specifications, patient privacy and confidentiality, data release, data aggregation, and security.

(b) The Department may accept, reject, or amend recommendations, in whole or in part, from the advisory group.

§ 350.5 APD guidance.

The Department shall make guidance available on its website that includes:

(a) APD submissions specifications, including the data standards used and the method for reporting to the Department. Submission specifications shall be developed with a goal of minimizing burden on health care providers and third-party health care payers, including utilization of nationally standardized file formats where available and feasible.

(b) APD data access and release policy, including security and usage requirements to become a data user; requirements for maintaining privacy, confidentiality, and security; and data release fee information. Data access and release requirements shall include restrictions on the release of any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information, as well as procedures for request of

identifying data elements, including the project application process established pursuant to subdivision (d) of section 350.3 of this Part.

(c) Program operations policy, including program purpose, scope and objectives, and general governance.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 2816 establishes the Statewide Planning and Research Cooperative System (SPARCS), which authorizes the New York State Department of Health to collect certain data relating to health care delivery in New York State. In particular, the statute authorizes the Department to collect data relating to insurance claims by persons covered by third-party insurers (hereinafter referred to as “payers”). The statute further provides: “Any component or components of the system may be operated under a different name or names, and may be structured as separate systems.”

Accordingly, PHL § 2816 authorizes NYSDOH to collect covered person data and claims data in its All Payer Database (APD). Additionally, under PHL § 206(18-a)(d), the Commissioner of Health has the authority to “make such rules and regulations” on statewide health information systems, such as the APD, as recommended by the Health Information Technology Workgroup established pursuant to PHL § 206(18-a)(b)(ii).

Legislative Objectives:

In 2011, PHL § 2816 was amended specifically to authorize NYSDOH to develop and implement an All Payer Database for New York State. The Legislature further authorized NYSDOH to develop regulations establishing the necessary parameters, guidance, and requirements for a functional APD. These regulations are critical to the

successful collection and use of covered person data and claims data from commercial health care payers, which have previously not been done in New York State.

Needs and Benefits:

Currently, New York State has fragmented, inconsistent, and incomplete information about how the state's health care system is performing. With an array of state agencies and offices carrying out health care planning, along with a myriad of private efforts, data currently collected are specific to the goals of the distinct organization and sub-populations served.

This approach is administratively inefficient and costly, as it requires the redundant collection, cleansing, and storage of duplicative information. The lack of linkages and interoperability of data assets hinders the ability of health care and policy experts to fully assess issues, such as the impact of disease burden and treatment trends, the ability to inform policy on innovative payment and care coordination models, and other targeted interventions.

Advancing health care transformation in New York State requires a broad view of population health and system performance, which current data resources do not permit. States that currently have All Payer Claims Databases (APCDs) have proven that they are important tools for filling gaps in health care information. By streamlining health care system data processing, an APD will enable policymakers to monitor efforts to reduce health care costs and improve population health.

The APD will provide a robust dataset that will support a variety of comparative analyses. Further, the APD will transform New York State's health care system by

evaluating care delivery and payment models, and identifying opportunities to avoid waste, over/under utilization, misuse of treatments, and conflicting plans of care.

The APD will also yield findings that can be used to inform health care and finance decisions for policy makers, payers, providers, and consumers. For example, the APD will facilitate assessments of health care resource needs. APD data can also be used to effectively plan for and improve disease prevention, and to help ensure effective diagnosis, treatment, and rehabilitation services. APD data will allow the State to establish policies for risk adjustment, including mandatory risk adjustment calculations under the Federal Patient Protection and Affordable Care Act. In addition, the APD will enhance and expedite the ability of health payers and regulators to prescribe and determine appropriateness of premium rates.

Costs:

Costs to Regulated Parties:

Many health care insurance payers are already required to submit claims and records of care encounters to New York State. These include payers that have plans included in Medicaid Managed Care and in the New York State of Health Official Health Plan Marketplace (NYSoH), both of which require data submission as part of contractual agreements to participate in their respective programs. In addition, many payers voluntarily participate with private regional claims database initiatives, or submit data to other state APCDs.

Many of these public insurance program participants are also payers of commercial insurance plans, which lack access to claims history, and which have no

other mechanisms to mandate data submission. As a result, many of the payers participate in both public and private programs that involve some form of data submission.

For this reason, much of the staffing and information technology (IT) infrastructure required for mandatory participation in New York State's APD is already in place. There may be some initial increased implementation costs for payers who only participate in the private commercial market. Payers that currently report data in a proprietary format may also be exposed to costs associated with transitioning to a national standardized reporting format. However, because so much of the IT infrastructure is already in place, it is anticipated that regulated parties' long term costs associated with a fully functional APD will be minimal.

Costs to the NYSDOH:

As referenced in the prior section, many health care insurance payers are already required to submit claims and records of care encounters to New York State. While there is some infrastructure currently in place within NYSDOH, there is still a NYSDOH cost for the design, development, and implementation of infrastructure to operate the APD.

Costs include major system components of data intake, data warehousing, and data analytics, with a current estimate of \$55 million for a three and a half-year development period. Following this development, the annual recurring operating costs for the system is estimated to be \$20 million, inclusive of annual recurring NYSDOH staff costs of approximately \$2 million. Total costs are covered by a combination of State appropriations, federal matching Medicaid and Child Health Plus funds, and federal Health Benefit Exchange grants.

Other systems in the NYSDOH, and the expenditures required to maintain them, will be partially reduced as the APD will assume some of the functions associated with them.

Costs to State and Local Governments:

There are no anticipated costs to local governments, as the APD will be fully developed and administered at the State level. There are minimal costs that may be incurred by the NYS Department of Financial Services to utilize the data and tools of the APD in the regulation of the commercial health insurance industry. These are not expected to be significant, however, and will be offset by the utility achieved through analysis of health insurance claims data.

Local Government Mandates:

The All Payer Database will be administered at the New York State level. This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

Payers will be required to submit registration forms and paperwork to NYSDOH or its designated administrator in order to submit claims data with protected information to the State. This paperwork is only required for initial registration with the APD, and subsequent communication is handled electronically. For this reason, the reporting requirements, forms, or other paperwork upon regulated parties are not expected to be a significant burden.

Duplication:

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

Alternatives:

There are no alternatives that could serve as a substitute for the All Payer Database. Although New York State currently collects Medicaid and NYSoH data, the collection of commercial claims data is unprecedented. The APD is a significant new initiative that will allow for a comprehensive and valuable analysis of the health care system in New York State.

Federal Standards:

The rule does not exceed any minimum standards of the federal government for the same or similar subject area as the federal government does not operate an All Payer Database.

Compliance Schedule:

Development of the APD data intake component is being executed in a phased manner. The first phase included NYSoH Qualified Health Plans, and data collection began in January 2015. The second phase encompasses Medicaid and Child Health Plus Managed Care Plans, which went into production September 2015.

The third phase addresses third-party health care payers and the design and development process has already begun. This information is critical to the success of the APD. It is expected that production will begin for commercial payers in early 2018, with substantial attention to testing and user support to ensure all payers have the necessary tools to successfully participate.

Accordingly, section 350.2, which requires submission of data to the APD, does not take effect until January 1, 2018. In the event that the Department does not have the infrastructure in place to accept submissions from third-party health care payers by this date, the Department will issue guidance indicating the anticipated implementation and compliance date.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments and it does not impose reporting, record keeping, or other compliance requirements on small businesses or local governments.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping, or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

JOB IMPACT STATEMENT

Nature of Impact:

The rule will have minimal impact on jobs and employment opportunities. The regulated payers are largely established. In many cases, they are national health insurance companies that have an existing and deep data reporting infrastructure per the nature of the industry.

Many payers already report certain claims data to NYS and, with the APD, will now be required to send a higher volume. There may be some increase in hiring and jobs to ensure compliance with APD requirements; however, this impact is not expected to be significant. Much of the infrastructure already exists and many payers already submit data to public health insurance programs, regional voluntary databases, and other state APCDs. There will be some impact on employment in the IT contracting field as there will be contracts with NYSDOH to design, develop, implement, and operate the APD at the state level, as well as potential IT development work with some of the payers. There are no anticipated job impacts in any other segments or sectors of the job market. With regard to adverse employment effects, there is no expectation of job losses as a result of the rule.

Categories and Numbers Affected:

The types of jobs impacted by the rule are in the areas of IT and data analysis. The number of expected job additions is not specifically known but is expected to be minimal as payers have much of the existing resources needed to comply with data submission requirements. Most new work on the part of payers will be in the initial stages

of implementation. Payers that do not currently submit data to NYS will need to establish processes and set up IT systems to submit claims data.

Certain payers will have some level of system modification to comply with national standards and submission specifications. Some payers will utilize contract vendors for these activities who may already be familiar with the required transaction and buildout processes. IT contractors at the state level will see a short term increase for the design, development, and implementation of the system build, but ongoing operations support will rely on less staffing.

Regions of Adverse Impact:

There is no expectation of adverse impact on jobs in any region of NYS as a result of the rule.

Minimizing Adverse Impact:

There is no expectation of adverse impact on jobs in any region of NYS as a result of the rule.

Self-Employment Opportunities:

There is no expectation of any self-employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council, subject to the approval of the Commissioner of Health, by section 2803(2)(a) of the Public Health Law, section 710.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective after publication of Notice of Adoption in the New York State Register, to read as follows:

Paragraph (3) of subdivision (b) of section 710.1 is amended to read as follows:

(3) [Reserved.] For purposes of this Part, “general hospital” means a general hospital as defined in subdivision 10 of section 2801 of the public health law.

Subparagraph (iii) of paragraph (1) of subdivision (c) of section 710.1 is amended to read as follows:

(iii) the initial acquisition or addition of any equipment, regardless of cost, utilized in the provision of a service listed in paragraph (2) of this subdivision, other than the acquisition or addition of equipment subject to paragraph ([7]6) of this subdivision. A proposal for the replacement of existing equipment, regardless of cost, which meets the criteria contained therein, shall not require an application but shall be processed pursuant to [subparagraph]paragraph (4)[(iii)]of this subdivision;

Subparagraph (vi) of paragraph (1) of subdivision (c) of section 710.1 is amended to read as follows:

(vi) any other construction, addition or replacement proposal involving a total project cost in excess of \$15,000,000 for a general hospital or \$6,000,000 for all other facilities, except non-clinical and health information technology projects subject to paragraph [5](4) of this subdivision.

Subclause (3) of clause (b) of subparagraph (i) of paragraph (2) of subdivision (c) of section 710.1 is amended to read as follows:

(3) cardiac catheterization, including the relocation of any Cardiac Catheterization Laboratory Center service within a network or to another site in a multi-site facility, as defined in Section 401.1 of this Title, and the addition of a PCI Capable Cardiac Catheterization Laboratory Center at a facility that is not already approved to provide cardiac catheterization services; provided however that the addition of a PCI Capable Cardiac Catheterization Laboratory Center or Cardiac EP Laboratory Program at a facility approved to provide cardiac catheterization services shall be reviewed pursuant to paragraph (3) of this subdivision, and the addition of a Cardiac EP Laboratory Program services at a facility approved to provide cardiac surgery shall be reviewed pursuant to paragraph ([7]6) of this subdivision;

Clause (c) of subparagraph (i) of paragraph (2) of subdivision (c) of section 710.1 is amended to read as follows:

(c) any proposal involving total project cost in excess of \$30,000,000 for a general hospital or \$15,000,000 for all other facilities, except as otherwise provided under paragraph (3) of this subdivision;

Clause (a) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 710.1 is amended to read as follows:

(a) The addition of equipment utilized in the provision of Cardiac Catheterization Laboratory Center services shall be eligible for limited review pursuant to paragraph ([7]6) of this subdivision, to the extent that it does not otherwise require an administrative or a full review under this Part;

The opening paragraph of subparagraph (i) of paragraph (3) of subdivision (c) of section 710.1 is amended to read as follows:

(i) [Except as otherwise stated in this paragraph, the]The commissioner may administratively approve applications submitted pursuant to Article 28 of the Public Health Law and this Part [but] without the recommendation of the [State Hospital Review]Public Health and Health

Planning Council[,] when an application has not been recommended for [approval]~~disapproval~~ by the health systems agency having jurisdiction, and where the total project cost does not exceed \$30,000,000 for a general hospital or \$15,000,000 for all other facilities. An application shall be eligible for administrative review even though total project costs exceed \$30,000,000 for a general hospital or \$15,000,000 for all other facilities, if: (a) total project costs do not exceed 10% of the total operating costs of the facility for the fiscal year ended two years prior to the submission of the application; and (b) total project costs do not exceed [~~\$50,000,000;~~]\$100,000,000 for a general hospital [as defined in section 2801 of the Public Health Law]or \$25,000,000 for all other facilities. Notwithstanding anything in this Part to the contrary, any cost increase of a project in excess of \$30,000,000 for general hospitals or \$15,000,000 for all other facilities that is administratively reviewed under the subparagraph, resulting in total project costs in excess of the [~~\$50,000,000~~]\$100,000,000 for general hospitals or \$25,000,000 for all other facilities, or in excess of 10% of the total operating costs of the facility for the fiscal year ended two years prior to the submission of the application, shall subject the application to full review. The following types of proposals are eligible for administrative review:

* * *

Clause (f) of subparagraph (i) of paragraph (3) of subdivision (c) of section 710.1 is amended to read as follows:

(f) [in] the addition, updating or modification of equipment utilized in the provision of a service listed in paragraph (2) of this subdivision, by a medical facility already approved to provide such service, except for the addition of equipment utilized in cardiac catheterization laboratory center services by a facility already approved to provide such service, which shall be subject to limited review pursuant to paragraph ([7]6) of this subdivision;

Clause (q) of subparagraph (i) of paragraph (3) of subdivision (c) of section 710.1 is amended to read as follows:

(q) [any proposal that relates to health information technology, provided that proposals with a total cost of up to \$15 million may be reviewed under paragraph (5) of this subdivision]Reserved;

Subclause (7) of clause (w) of subparagraph (i) of paragraph (3) of subdivision (c) of section 710.1 is amended to read as follows:

(7) neither the facility nor any part thereof, nor the project is currently or is proposed to be financed by bonds or other debt instruments insured, enhanced or guaranteed by any state or municipal agency or public benefit corporation. Notwithstanding anything in this Part to the contrary, any cost increase of a primary care services project resulting in total project costs in excess of the \$30,000,000 threshold for general hospitals or the \$15,000,000 threshold for all

other facilities shall subject the application or amendment, as the case may be, to full review.

Clause (e) of subparagraph (i) of paragraph (4) of subdivision (c) of section 710.1 is amended to read as follows:

(e) Subject to clause (d) of subparagraph (ii) of paragraph 5 of this subdivision, any proposal for a nonclinical infrastructure project with total project costs in excess of \$6,000,000 [, regardless of cost], including but not limited to replacement of heating, ventilating and air conditioning, fire alarm and call bell systems or components thereof, roofs, elevators, parking lots and garages, dietary, and solid waste and/or sewage disposal and upgrades of the exterior building envelope. The facility's written notice to the department shall include a written certification by a New York State licensed architect or engineer that the project meets the applicable statutes, codes and regulations; and shall include a plan to protect patient safety during construction consistent with section 711.2 of this part and other applicable standards, and as otherwise required by the department. Upon completion of the project, the facility shall, where applicable, submit written certification by a New York State licensed architect, engineer and/or physicist that the project as constructed or installed meets applicable statutes, codes and regulations; and such other close-out documents as may be specified by the department.

A new clause (g) is added to subparagraph (i) of paragraph (4) of subdivision (c) of section 710.1 to read as follows:

(g) Any proposal that relates to health information technology regardless of cost. For health information technology proposals involving the implementation of clinical information systems, electronic medical records, computerized physician order entry, radiology systems, lab ordering systems or other health information systems impacting patient care, the facility's written notice to the department shall include a certification of the technology's interoperability with other systems and conformance with state and federal guidelines and regulations governing the use and exchange of information, including privacy and security, that is acceptable to the department.

A new subparagraph (ii) is added to paragraph (4) of subdivision (c) of section 710.1 to read as follows:

(ii) Proposals for a nonclinical infrastructure project, including but not limited to replacement of heating, ventilating and air conditioning, fire alarm and call bell systems or components thereof, roofs, elevators, parking lots and garages, dietary, and solid waste and/or sewage disposal and upgrades of the exterior building envelope, where total project costs do not exceed \$6,000,000, shall not require prior approval or written notice to the department under this Part, except as required by clause (d) of subparagraph (ii) of paragraph (5) of this subdivision.

The opening sentence of paragraph (5) of subdivision (c) of section 710.1 is amended to read as follows:

(5) Proposals requiring a limited review. Proposals where total project cost does not exceed \$15,000,000 for a general hospital or \$6,000,000 for all other facilities, and for which a certificate of need is not otherwise required under this Part, shall be reviewed under this paragraph, except for proposals covered by paragraph (4) of this subdivision.

Clause (g) of subparagraph (iv) of paragraph (5) of subdivision (c) of section 710.1 is amended to read as follows:

[(g) Any proposal to acquire, install or modify health information technology; provided that, notwithstanding any inconsistent provision in this paragraph, the cost of the proposal does not exceed \$15 million. The applicant shall submit information, as requested by the department, including information concerning the technology's interoperability with other systems and conformance with state and federal guidelines and regulations governing the use and exchange of information, including privacy and security]Reserved.

Clause (b) of subparagraph (ii) of paragraph (6) of subdivision (c) of section 710.1 is amended to read as follows:

(b) Requests for approval of proposals described in this subparagraph shall be made [directly to the Director of the Division of Health Facility Planning. The applicant shall submit three (3)

copies of such request] through the electronic application submission process at the address posted on the department's website or any other means approved by the department, including information indicating the services to be provided, the facility areas to be utilized, and such other information as the Department may require. If construction is required, the request should include the cost of such construction and other information required by the Bureau of Architectural and Engineering Facility Planning under this Part. If the proposal involves the addition of Cardiac EP Laboratory Program Services, the applicant shall also submit a copy to the local health systems agency (HSA) having jurisdiction, if any. The HSA shall have 10 days to make a recommendation to the department.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 2803(2)(a) provides that the Public Health and Health Planning Council (PHHPC) shall adopt rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the purposes of PHL Article 28 with respect to hospitals.

Legislative Objectives:

PHL section 2800 declares that “[h]ospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health” and bestows upon the Department of Health the “central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services.”

The review of applications for hospital establishment and construction is referred to as the Certificate of Need (CON) process, the objectives of which are to align health care resources with community health needs, preserve and promote access to high quality health care, and control utilization to promote cost-effective health care.

PHL section 2801-a provides that hospitals, defined in PHL section 2801 to mean “general hospitals”, nursing homes and diagnostic and treatment centers, may not be established except as approved by PHHPC. PHHPC may not approve establishment unless it is satisfied as to the public need for and financial feasibility of the proposed project, the character and competence of the proposed owners and operators, and such other matters as it deems pertinent.

The construction of a hospital, defined by PHL section 2801 to mean the erection,

building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a hospital, including its equipment, requires the prior approval of the Commissioner under PHL section 2802. The Commissioner may approve a construction application only after affording PHHPC an opportunity to make a recommendation, except where regulations adopted by PHHPC and approved by the Commissioner provide that PHHPC review is not necessary, and only if the Commissioner is satisfied as to public need, financial feasibility and character and competence.

PHL section 2802 details procedures for approval of hospital construction projects and provides that certain types of hospital construction projects require written notice to the Department but not prior approval. These include the acquisition of minor equipment, non-clinical infrastructure projects (such as replacement of heating, ventilating and air conditioning systems, parking lots and elevators), the replacement of existing equipment, and other projects set forth in regulation.

Current Requirements:

Consistent with these provisions, Department regulations establish the parameters of the CON process for establishment and construction projects. Part 600, *et seq.*, of Title 10 of the Official Compilation of New York Codes, Rules and Regulations (NYCRR) pertains to establishment and 10 NYCRR Part 710, *et seq.*, relates to construction projects.

Part 710 of 10 NYCRR, *et seq.*, defines three levels of review for construction projects. Construction projects of greater complexity and higher costs undergo full review, requiring submission of a CON application that includes a series of forms and schedules and a detailed review for financial feasibility and public need. PHHPC must be afforded an opportunity to

make a recommendation on full review construction projects, while the ultimate determination of whether to approve such projects lies with the Commissioner.

Applications that undergo administrative or limited review may be approved by the Commissioner without the recommendation of PHHPC. Administrative review requires a CON application including forms and schedules which are less detailed than those needed for full review, and involves review for financial feasibility and public need. Limited review requires a narrative describing the construction activity to be undertaken, the cost of the construction and where applicable, architecture/engineering drawings or certification and does not include review for financial feasibility or public need.

Section 710.1(c)(1) specifies that CON applications are necessary for certain types of construction projects, generally including the addition, modification or decertification of licensed services, changes in the method of delivery of a licensed service, regardless of cost, or the acquisition or addition of equipment. Subsequent paragraphs delineate the criteria by which projects are assigned an appropriate level of review based on the type of action, the services and specific circumstances of a project as well as the project cost.

Section 710.1(c)(2) provides that “full review” is required for construction applications that involve the addition of beds, the addition or modification of a change in delivery for certain services, and proposals involving total project costs in excess of \$15 million. Section 710.1(c)(3) provides that projects eligible for “administrative review” generally include those with a total project cost that does not exceed \$15 million. However, an application shall be eligible for administrative review even though total project costs exceed \$15 million, if: (a) total project costs do not exceed 10 percent of the total operating costs of the facility for the fiscal year ended two years prior to the submission of the application; and (b) total project costs do not

exceed \$50 million for a general hospital or \$25 million for all other facilities. Further, under section 710.1(c)(3)(i)(q), administrative review also applies to proposals related to health information technology (HIT) with a total cost above \$15 million.

Section 710.1(c)(5) identifies construction projects subject to “limited review,” which generally includes projects with costs that do not exceed \$6 million. Pursuant to section 710.1(c)(5)(ii), limited review also applies to non-clinical projects involving heating, ventilating, air conditioning, plumbing, electrical, water supply and fire protection systems where such projects involve the modification or alteration of clinical space, services or equipment. Section 710.1(5)(iv)(g) further provides for limited review of any proposal to acquire, install or modify HIT that does not cost more than \$15 million.

Section 710.1(c)(4) provides that certain construction projects do not require review but require written notice to the Department. Such projects include non-clinical infrastructure projects (other than projects affecting clinical space, which would require limited review as noted above).

Needs and Benefits:

Over the last several years, the Department has refined the CON process to ensure that it continues to advance its objectives, is responsive to a changing health care environment, focuses Department and PHHPC resources on issues and projects with the greatest impact, and is as streamlined and expeditious as possible within the parameters of the statutory authority.

This proposal represents the next phase of CON streamlining measures and will: (1) raise the monetary thresholds impacting the level of review for “general hospital” construction projects; (2) eliminate the requirement that notice be provided for non-clinical infrastructure

projects that do not exceed \$6 million; (3) eliminate the requirement for Department approval of HIT projects, instead requiring notice which, for HIT projects impacting patient care, will include certification as to interoperability and compliance with other applicable requirements; (4) update language to require that construction applications be submitted electronically; and (5) correct several erroneous references within the regulation. The proposal does not modify the level of review required to add, reduce or decertify medical services in a community.

Section 710.1(c)(2)(i)(c) will be amended to subject “general hospital” construction projects to full review if they exceed \$30 million. Section 710.1(c)(3)(i) will be amended to require administrative review if costs are not more than \$30 million for “general hospitals” or, if in excess of \$30 million, no more than 10 percent of operating costs and no more than \$100 million. Section 710.1(c)(1)(vi) will be amended to raise the threshold for limited review of a general hospital construction project to \$15 million.

These increases recognize the overall upward movement in construction costs for large-scale projects undertaken by “general hospitals”. The relative size of operating budgets and accumulated financial resources of applicants other than “general hospitals” make the current dollar thresholds still appropriate for those facilities.

In addition, section 710.1(c)(4)(i)(e) will be amended to apply the notice requirement to non-clinical infrastructure projects costing over \$6 million. A new section 710.1(c)(4)(ii) will reflect that neither review nor notice is required for non-clinical infrastructure projects that do not exceed \$6 million. Both provisions will reflect, however, that non-clinical projects impacting clinical spaces, services or equipment will continue to be subject to limited review under section 710.1(c)(5)(ii)(d).

Section 710.1(c)(3)(i)(q), which subjects HIT projects to administrative review if they are over \$15 million, and section 710.1(c)(5)(iv)(g), which subjects HIT projects to limited review if they are no more than \$15 million, will be repealed. A new section 710.1(c)(4)(i)(g) will provide that Department review of HIT projects is not required, but a facility will be required to provide notice to the Department that it is undertaking such a project. For HIT projects involving systems that impact patient care, the notice will have to include certification as to the system's interoperability and conformance with state and federal guidelines governing the use and exchange of information.

Finally, this proposal will amend section 710.1(c)(6)(ii)(b), related to limited review cardiac catheterization proposals, to update language and clarify that applications must be submitted electronically, consistent with Department practice.

The measures included in this streamlining initiative will continue to reflect the overall objective of the statutory and regulatory framework, as set forth in 10 NYCRR section 710.1(a), to help ensure that medical facilities are planned to achieve efficiency and economy of operation and care of high quality. At the same time, it will help support regulated providers in meeting heightened demands to be increasingly agile given ongoing health system reform and evolving trends in medicine. Further, these changes are consistent with a broader effort being undertaken by the Department, in consultation with stakeholders, to fundamentally restructure health care statutes, regulations and policies to better align with changes in the health care system, affording opportunities to streamline requirements and promote flexibility that supports efficiency and innovation.

COSTS:

Costs to Private Regulated Parties:

The proposed amendments will not increase costs for private entities subject to the requirements of PHL Article 28 and in fact are expected to have a favorable fiscal impact. Some applicants either would no longer need to submit a CON application or would need to prepare a less complex application, meaning that they will pay less in application fees, which are required in higher amounts for applications requiring higher levels of review. These changes also should expedite the time for approval of projects and therefore minimize costs related to construction delays.

Costs to Local Government:

This proposal will not impact local governments unless they operate a general hospital, in which case they are likely to experience decreases in costs as noted above with respect to private entities.

Costs to the Department of Health:

This proposal is not anticipated to have a fiscal impact on the Department.

Costs to Other State Agencies:

The proposed regulatory changes will not result in additional costs to other State agencies.

Local Government Mandates:

The proposed regulatory amendments do not impose new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments will impose no new reporting requirements, forms or other paperwork. The amendments will reduce paperwork by shifting projects to lower levels of review or removing the requirement for the filing of a CON application.

Duplication:

This rule does not duplicate any other law, rule or regulation.

Alternatives:

The Department considered higher increases of the monetary thresholds but ultimately determined that the amounts included in the proposal reflect an appropriate balance between the recognition of increased construction costs for large-scale projects and the desire to maintain sufficient oversight for purposes of promoting high quality services aligned with community need.

Federal Standards:

The proposed amendments do not exceed any minimum standards of the Federal government. There are no Federal rules currently addressing the CON process.

Compliance Schedule:

These regulations will be effective upon publication of a Notice of Adoption in the New York State Register and would apply to all construction applications submitted thereafter. Consequently, regulated parties should be able to comply with the proposed regulation as of its effective date.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed rule will not have a substantial adverse impact on small businesses or local governments.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendments will not impose an adverse impact on facilities in rural areas, and will not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of this proposed regulation.

To Be Distributed Under Separate Cover

Amendments to Parts 400 and 405 of Title 10 NYCRR – Hospital Policies for
Individuals with Substance Use Disorders

To Be Distributed Under Separate Cover

Amendments to Parts 400 and 405 of Title 10 NYCRR – Hospital Policies for
Individuals with Substance Use Disorders



**Project # 171289-C
Albany County Nursing Home**

Program: Residential Health Care Facility
Purpose: Construction

County: Albany
Acknowledged: May 1, 2017

Executive Summary

Description

Albany County Nursing Home is a county operated, 250-bed, Article 28 residential health care facility (RHCF) located at 780 Albany-Shaker Road, Albany. The applicant seeks approval to perform renovations and construct multiple additions to upgrade and modernize the facility. This extensive redevelopment project is necessary to address pervasive physical plant deterioration and to provide residents a safe, supportive environment with the best quality of life possible. There will be no change in beds or services upon completion of this project.

The facility was constructed in 1971 as a 420-bed RHCF on a 27.6-acre parcel of land in the Town of Colonie. In 2008, 170 beds were decertified bringing the total beds down to 250. The physical plant of the building is original and well beyond its useful life. Many rooms are inadequate in size, utilize Packaged Terminal Air Conditioner units that are inefficient and/or leak, and no rooms are handicapped accessible. Consequently, the RHCF is only partially occupied.

The proposed renovation includes improvements to the site, the building configuration with six new resident wings, and resident rooms that will all be fully American Disability Act compliant. The internal building organization has been reconfigured for improved efficiency, isolation of individual nursing units, and ease of resident access to centralized services. Private rooms and elimination of all side-by-side double bedded rooms are also part of this renovation. In addition to the renovation

work, all existing physical plant deficiencies will be corrected.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

Albany County will be adding a 20-bed secure dedicated dementia unit which currently is difficult to find in the Albany area. The facility will also be getting referrals from "Solider On" a nonprofit organization dedicated to helping veterans find transitional housing. Through the renovations and the referral program, the applicant anticipates the facility will improve its utilization rate to the department's planning optimum of 97 percent.

Program Summary

The modernization and expansion of the Albany County Nursing Home will restore an aging and obsolete physical plant to functionality and create a contemporary and more homelike residential environment.

Financial Summary

The total project cost is \$61,450,000 to be met via the issuance of two separate Albany County Serial Bonds 2017, one for \$40,000,000 and one for \$21,450,000, each with a 20-year term and interest estimated at approximately 3.5% and 3.0%, respectively. The applicant has provided the executed Albany County Legislature Resolutions authorizing the use of Albany County Bond financing for this capital project, along with the debt service schedules for each bond issuance. The proposed budget is as follows:

Revenues	\$32,648,900
Expenses	<u>31,484,884</u>
Gain	\$1,164,016

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 and programmatic review and approval of the final floor plans. [LTC]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-04. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submissions 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 June 30, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The operator shall submit a plan to maintain resident services and safety during construction to the Northeastern Regional Office, and must receive approval for such plan prior to the commencement of construction. [LTC]
4. 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

August 3, 2017

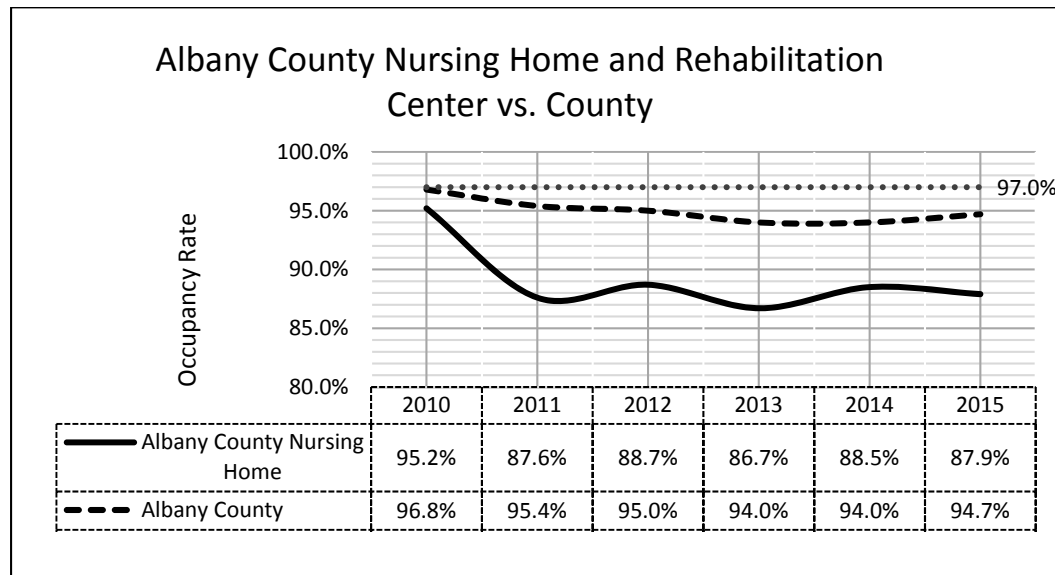
Need Analysis

Background

The current Need Methodology indicates a need for 25 additional beds in Albany County.

RHCF Need – Albany

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



Albany County Nursing Home's unaudited occupancy rate was 89.0% in 2016.

Analysis

According to the US Census, Albany County's population was 308,846 in 2016. In 2015, the 65 and older population made up 15.6 percent of the county's population which is slightly higher than the state average.

The applicant attributed the historically low utilization to physical deterioration of the facility. The facility was forced to close a 20 bed wing in 2014 due to unsafe conditions. Additionally, some double beds were converted to single bed units, resulting in an additional 10 beds being unavailable.

The applicant plans to improve utilization by:

- Creating a 20-bed dedicated secure dementia unit.
- Performing extensive renovations to the facility 10-bed rehabilitation unit, providing a viable option for residents requiring short term rehabilitation.
- Adding state of the art equipment that will benefit area residents.
- Obtaining referrals for short and long term stays from "Solider On" a nonprofit dedicated to helping veterans.

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.

Percent of New RHCF Admissions that are Medicaid	2013	2014	2015
Albany County 75% Threshold	11.33%	9.45%	13.13%
Albany County Nursing Home	59.60%	31.10%	29.00%

Albany County Nursing Home has far exceeded the Medicaid planning threshold for the last three years of operation.

Conclusion

There will be no change in certified beds as a result of this application. This is a renovation project with an expected increase in utilization for this facility.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Albany County Nursing Home	Same
Address	Albany-Shaker Road Albany, NY 12211	Same
RHCF Capacity	250	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Public	Same
Class of Operator	County	Same
Operator	County of Albany	Same

Program Review

Albany County Nursing Home is a 250-bed nursing home located at 780 Albany Shaker Road, Albany. The nursing home has undergone a series of bed reductions to maintain operations, but has been unable to undertake a modernization project to bring the building up to current standards. Consistent with the Berger Commission recommendation of January 1, 2007, Albany County closed the antiquated Ann Lee Home, a sister 175-bed nursing home, and relocated those residents into the Albany County Nursing Home with the total bed complement downsized to 250 beds. In 2010, the County submitted a project to replace the facility, but the project was disapproved by PHHPC on the basis of financial feasibility. Since that time the County has stabilized operations allowing them to turn their attention to renovating the antiquated building.

The current building consists of a four-story core tower with 40 beds per floor, connected to two outlying buildings with three wings of 40 beds each. Since the nursing home has reduced its bed complement, many of the wings are vacant. A first-floor Common Core contains administrative, dining and activity spaces. The residential floors do not reflect contemporary nursing home design, with the double-bedded

rooms undersized and not handicapped accessible. Many of the units suffer from inadequate dining and lounge space.

The physical plant infrastructure dates to 1971 and is well beyond its useful life. HVAC utilizes inefficient PTAC units in the resident rooms, and the boilers are in dire need of replacement. Similarly, the electrical system requires a major overhaul.

The redevelopment project will address these issues through the following components:

- Construction of six new residential units and the conversion of existing double bedrooms to singles;
- Construction of new lounge and dining areas and renovation of existing dining spaces to include country kitchens;
- Renovation of the central kitchen and replacement of all equipment;
- Replacement of the entire HVAC system and windows to enhance energy efficiency;
- Modernization of the electrical system including new switch gears and generator.
- Replacement of lighting with dimmable LED lighting.

Physical Environment

The proposed design intends to use a mix of new construction and renovation to the existing building retaining the existing 250-bed complement but changing the mix of beds to 130 singles and 60 doubles. Six new wings of 20 to 24 beds each will be constructed and attached to the existing nursing units creating hybrid new/old nursing units of 40 to 44 beds. The existing nursing units will be converted to all single bedded rooms to avoid an unfavorable have/have not comparison to the newly constructed rooms. To provide sufficient light into the interior units a courtyard will be created between the new construction and existing building. The courtyards will also provide outdoor space and a wandering loop for dementia residents.

The new units will be configured with nine, ten or eleven double-bedded rooms and two singles in a general linear alignment. The double-bedded rooms will all be constructed as the more desirable enhanced doubles with partitions separating the two beds. The units will resemble brackets with the new resident rooms located on the outside walls leading into the existing resident wings. Lounge and dining room with country kitchen, nursing office, clean and soiled utility rooms, and conference space is placed in the center of the unit.

The new residential units will incorporate the existing rooms to create large nursing units. The existing units include their own nursing station and clean and soiled utility rooms which will now serve all single bedrooms. Residents in the existing wings will be able to dine in four new large and appealing dining additions to be constructed off the existing connector between the core and existing wing buildings. The dining facilities will offer an array of dining rooms, including private dining, country kitchens and lounges.

All of the resident rooms in both the old and new building will include showers. The existing rooms contain tight 4' X 4' shower compartments, but a large tub room is located on the unit for use in assistive bathing. The new rooms will contain modified European type showers of 4' X 5' dimensions, and the wings will include a stretcher shower for residents who require assistance.

The nursing home will have a new entrance into an expanded lobby area. The renovated lobby will be flanked by the Administrator and DON office, and will lead into two main corridors containing administrative and clinical offices. The lower corridor continues past the renovated and expanded rehabilitation suite, and the upper corridor leads past the renovated barber shop to the large existing activities room. Opposite the rehabilitation area is the tower elevator bank and existing main dining room. The large dining area will undergo renovation to permit more informal dining options for residents and families and friends. Both corridors morph into the previously mentioned connectors leading to the resident wings. The core and entrance areas will undergo cosmetic upgrades to include floor coverings and wall finishes and installation of new plumbing fixtures.

Compliance and Quality Review

Albany County Nursing Home is currently in compliance with all applicable codes, rules and regulations.

Provider name	Overall	Health Inspection	Quality Measures	NYS Quintile
Albany County Nursing Home	*	*	***	5

Analysis and Conclusion

The project will transform an outmoded and decaying building. The residential environment will be enhanced, affording choice in dining and offering ample space for personal care needs and socialization.

The applicant has developed a decanting plan which will protect residents and allow the nursing home to continue to operate at full capacity. The tower nursing units will be utilized to house residents displaced by the construction project. While the space is less than ideal, it is acceptable for resident use for the limited period of occupancy. Once the new resident rooms are completed and occupied the existing double bedded rooms will undergo a modest cosmetic renovation and be converted into singles. Upon completion of construction the four-story tower building will be then be emptied and converted to other than nursing home uses. These areas will be segmented from the nursing home proper and will not impinge upon circulation or building operation.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs for construction and renovations are estimated at \$61,450,000 broken down as follows:

Renovation & Demolition	\$18,235,494
New Construction	20,074,299
Site Development	2,842,960
Temporary Utilities	139,107
Asbestos Abatement or Removal	1,104,305
Design Contingency	4,239,616
Construction Contingency	2,995,980
Planning Consultant Fees	85,000
Architect/Engineering Fees	4,500,000
Construction Manager Fees	1,537,104
Other Fees (Consultant, etc.)	810,210
Movable Equipment	1,632,820
Telecommunications	150,000
Interim Interest Expense	2,765,000
Application Fee	2,000
Processing Fee	<u>336,115</u>
Total Project Cost	\$61,450,000

Project costs are based on a construction start date of October 1, 2017, and a 21-month construction period.

The applicant's financing plan appears as follows:

Albany County Serial Bonds 2017 (3% interest, 20-year term)	\$21,450,000
Albany County Serial Bonds 2017 (3.5% interest, 20-year term)	<u>40,000,000</u>
Total	\$61,450,000

Based on the mid-point of construction in 2018, the Bureau of Architectural and Engineering Review has determined that the cost per bed exceeds the applicable RHCf bed cap limitation. Thus, total allowable reimbursable project costs will be limited to \$58,580,020 detailed as follows:

(New RHCf) 132 @ \$241,200 (90% of CAP)	\$31,838,400
Renovated Beds 118 @ 214,400 (80% of CAP)	25,299,200
Additional allowance for asbestos remediation	<u>1,104,305</u>
Total Project Cost without CON Fees	58,241,905
Con Application Fee	2,000
Total Processing Fee	<u>336,115</u>
Total Reimbursement Project Cost	\$58,580,020

The Department of Health has determined that reimbursement should be allowed at 90% for the 132 newly constructed beds and 80% for the 118 renovated beds. The proposal is more than the 75% allowance due to the nature and work of this project. As a public facility, the applicant can finance 100% of the total project cost of \$61,450,000. However, reimbursement will be limited to the bed cap amount of \$58,580,020.

Operating Budget

The applicant has provided their current year operations, and an operating budget for the first and third year in 2017 total dollars, after completion of the renovations. The budget is summarized below:

Revenues	Current Year (2015)		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid	\$165.22	\$11,264,915	\$294.17	\$16,925,300	\$294.17	16,925,300
Medicare	\$321.15	1,089,998	\$450.00	8,316,400	\$450.00	8,316,400
Commercial *	\$376.49	1,294,781	\$294.17	2,604,100	\$294.17	2,604,100
Private Pay	\$254.02	1,308,232	\$500.00	2,213,400	\$500.00	2,213,400
Assessment Rev.		<u>86,291</u>		<u>2,589,700</u>		<u>2,589,700</u>
Total Revenues		\$15,044,217		\$32,648,900		\$32,648,900
Expenses						
Operating	\$344.92	\$27,650,481	\$309.55	\$27,399,861	\$309.55	\$27,399,861
Interest	0	0	20.61	1,825,863	10.39	920,342
Depreciation/Rent	<u>3.18</u>	<u>305,686</u>	<u>32.30</u>	<u>2,858,995</u>	<u>32.20</u>	<u>2,858,995</u>
Total Expenses	\$348.10	\$27,956,167	\$362.46	\$32,390,405	\$352.14	\$31,484,884
Net Income		<u>(\$12,911,950)</u>		<u>\$258,495</u>		<u>\$1,164,016</u>
Total Patient Days		80,164		88,516		88,516
Occupancy		88%		97.00%		97.00%
Breakeven %				96.24%		93.55%

*Commercial Insurance is moving from Fee-for-Service to Managed Care in the First and Third Year. The facility used the Medicaid Managed Care rates for reimbursement purpose.

The following is noted with respect to the submitted budget:

- Revenues for the current year reflect the facility's current reimbursement rates by payor. The 2016 average rates of payment are not presently available due to audited financial statements not being completed.
- The projected Medicaid rates for the first and third year are based on the facility's actual 2017 Medicaid Pricing Rate, plus the additional \$59.47 Capital Add-On the facility expects to receive due

to this capital renovation project. The facility's CMI is currently at 1.02 (as updated January 2017), which is a significant increase from their .8815 CMI in 2015. This increased CMI has positively impacted the operating cost component of the facility's Medicaid Pricing Rate, helping to improve Medicaid revenue.

- Expenses are based on the facility's 2015 historical cost experience. Operating costs are expected to remain reasonably stable at the historical level. Staffing patterns for direct care staff will remain constant, and only a slight reduction in management/supervisory, clerical, housekeeping and food service personnel is anticipated.
- Break-even for Year One and Year Three budgets is 96.24% and 93.55%, respectively.
- Utilization is expected to increase to 97% in Years One and Three as a direct result of the applicant's significant capital investment in the physical plant and improved facility infrastructure, as well as the established referral program.
- Utilization by payor source is as follows:

	<u>Current Year</u>	<u>First Year</u>	<u>Third Year</u>
Medicaid	75%	65%	65%
Medicare	7%	20%	20%
Commercial	9%	10%	10%
Private/Other	9%	5%	5%

Capability and Feasibility

The total project cost is \$61,450,000 and will be financed via the issuance of two separate 20-year term Albany County Serial Bonds—one for \$40,000,000 at approximately 3.5% interest, and one for \$21,450,000 at approximately 3% interest. The County of Albany Office of The Executive has provided the Albany County Legislature Resolutions authorizing the bond issuances specific for this capital project and the debt service schedules.

The submitted budget indicates an excess of revenues over expenses of \$258,495 in Year One and \$1,164,016 in Year Three. Revenues are based on current reimbursement methodologies plus incremental capital reimbursement resulting from this project. BFA Attachment C is the budget sensitivity analysis based on current utilization of the facility as of June 30, 2017, which shows the budgeted revenues would decrease by \$6,623,904 resulting in a net operating loss in year one of \$6,365,409. The Medicaid case mix has increased from 0.8815 in 2015 and 2016 to 1.02 in 2017. The budget appears reasonable. The applicant has provided documentation from the Albany County Executive indicating that the County will continue to offset any losses it incurs as is the current practice. The Albany County Legislature believes this modernization project is imperative to enable the RHCF to remain competitive with other nursing homes in the geographic area.

Working capital is estimated at \$5,247,481 based on two months of the third-year expense. Albany County Nursing Home will fund the working capital requirement from operations based on \$1,844,654 in cash and a \$4,708,141 guaranteed inter-governmental transfer of equity currently with a balance to be received as shown in BFA Attachment B, Albany County Nursing Home 2016 Statement of Net Position.

BFA Attachment A is the financial summary for Albany County Nursing Home, which shows the facility had a negative working capital position, a negative net asset position and has experienced an average net operating loss of \$12,447,032. The reasons for the average net operating loss is due to the following:

- Excessive repairs and maintenance costs;
- The inability to attract residents compared to some of their competitors in the area that offer more newly designed facilities;
- Historically low case mix;
- Employee benefit packages that exceed those in the private sector due to union participation; and
- Inefficiencies built into and/or due to the infrastructure the facility.

The applicant's plan to create a modernized attractive facility is expected to increase efficiencies and improve occupancy levels. Additionally, Albany County will be adding a dedicated 20-bed secure dementia unit (though not a locked specialty neurobehavior unit) that is currently not widely available for residents needing such care in the Albany area. The facility will also get referrals from "Soldier On," a nonprofit organization dedicated to helping veterans find transitional housing. With the equipment

upgrades and renovations to be performed, plus their established referral program, the applicant anticipates the facility will improve utilization to the Department's optimum level of 97%.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A Financial Summary for Albany County Nursing Home
BFA Attachment B Albany County 2016 Statement of Net Position
BFA Attachment C Budget Sensitivity Analysis



**Project # 171326-C
St. Francis Hospital**

**Program: Hospital
Purpose: Construction**

**County: Nassau
Acknowledged: May 5, 2017**

Executive Summary

Description

St. Francis Hospital (SFH), a 364-bed, voluntary not-for-profit, Article 28 acute care hospital located at 100 Port Washington Boulevard, Roslyn (Nassau County), requests approval to expand their existing extension clinic located at 2200 Northern Boulevard, East Hills (Nassau County), and certify Radiology-Therapeutic service. The East Hills clinic currently provides infusion services to cancer patients. Through this project, SFH convert a radiation oncology private practice to Article 28 licensure. In addition to its currently certified Medical Services – Primary Care service, the expanded East Hills extension clinic will provide Medical Services – Other Medical Specialties and Radiology-Therapeutic services including: LINAC, CT simulation, 3D conformal radiation therapy, intensity modulated radiation therapy, stereotactic radiosurgery, stereotactic body radiation therapy, high dose rate brachytherapy and initial and follow-up visits. The expanded services will occupy approximately 10,255 rentable square feet of space on the first floor of the building.

The Cancer Center at St. Francis Hospital was created to serve a growing population of patients at risk for cancer. On September 23, 2013, the Board of Catholic Health Services of Long Island (CHSLI), SFH's active parent and co-operator, approved a recommendation to expand SFH's ambulatory oncology program and lease medical office space at the East Hills campus location. As a result, the Cancer Center established the

extension clinic at 2200 Northern Boulevard in East Hills and began to provide infusion services to cancer patients (CON 141148). SFH had

planned to develop an Article 28 radiation oncology unit as a component of their Cancer Center to be operated under one roof; hence, they entered into a lease at the East Hills site to include space for radiation oncology. The lease was executed on November 12, 2013, with a commencement date subject to completion of landlord work for Article 28 occupancy.

It is noted that NRAD Medical Associates, P.C. (NRAD), an 88-year old private medical practice, filed for Chapter 11 Bankruptcy in the U.S. Bankruptcy Court for the Eastern Division of New York (Case No. 8-15-72898-las) on July 7, 2015. The acquisition of NRAD's assets by SFH was done as part of the Bankruptcy Proceedings via an Asset Purchase Agreement executed September 3, 2015. On October 14, 2015, CHSLI concluded negotiations to acquire certain assets of NRAD free and clear of all liens. The acquired assets included NRAD's radiation oncology practice at 700 Stewart Avenue in Garden City. As part of the transaction, SFH was to continue to offer the private practice service at 700 Stewart Avenue pending completion of the radiation oncology service buildout at East Hills, and then move the private practice to the new space. SFH then decided to convert the private medical practice to Article 28 as an additional service for their existing extension clinic located in the same building.

The construction costs, including equipment acquisition, were funded entirely by the St. Francis Hospital Foundation, a non-Article 28 entity, in order for the private practice to be relocated and become operational. As a result, there are no capital costs associated with this

Article 28 clinic expansion and service certification project.

OPCHSM Recommendation
Contingent Approval

Need Summary

Currently there is a need for six additional LINAC machines in Nassau County. This project will allow St. Francis Hospital to expand their Oncology services in Nassau County. The completion of this project will result in the transfer of one LINAC from a private physicians practice to an article 28 extension clinic.

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. SFH acquired NRAD's assets for \$3,285,810 under the terms of the Bankruptcy

Proceedings. The purchase price for the assets and construction buildout for the expanded extension clinic at East Hills was funded by the St. Francis Hospital Foundation, an affiliated non-Article 28 entity.

<u>Incremental Budget:</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,923,575	\$5,381,685
Expenses	<u>\$5,378,752</u>	<u>\$5,452,375</u>
Net Income	(\$455,177)	(\$70,690)

<u>Enterprise Budget:</u>	<u>Current Year</u>	<u>Year One</u>
Revenues	\$737,480,000	\$742,403,575
Expenses	<u>\$680,898,000</u>	<u>\$686,276,755</u>
Net Income	\$56,582,000	\$56,126,820

The applicant acknowledged that the project is expected to operate at a loss for the first through third years. SFH believes the service is important to its mission and is committed to bear the incremental budgeted operating losses via the overall positive operations of SFH.

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 amendment to the existing lease agreement documenting the location and terms specific to the radiation oncology clinic space, acceptable to the Department of Health. [BFA]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]
3. The submission of Engineering (MEP) Drawings 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. 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]
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

August 3, 2017

Need Analysis

Background

The existing extension clinic currently provides infusion services to cancer patients. Through this project, SFH will convert an existing private Linear Accelerator practice. The expanded extension clinic will provide Radiology – Therapeutic services (Linear Accelerator and CT simulation). The extension clinic is located approximately 2.2 miles and six minutes' travel time from SFH.

Analysis

By Year Three the applicant expects to be at full operating capacity seeing approximately 425 patients or 8,500 visits.

Linear Accelerator	Year 1	Year3
Cases/Patients	410	425
Visits	8,200	8,500

The need methodology set forth in section 709.16 uses 5,000 to 6,000 treatments per year per linear accelerator, but it is not unreasonable to see higher projections due to differences in machines.

Based on 709.16, the public need for linear accelerators in Nassau County is:

1	Number of Cancer Cases per Year	8,664
2	60% will be Candidates for Radiation Therapy	5,198
3	50% of (2) will be Curative Patients	2,599
4	50% of (2) will be Palliative Patients	2599
5	Course of Treatment for Curative Patients is 35 Treatments	90,972
6	Course of Treatment for Palliative patients is 15 Treatments	38,988
7	The Total Number of Treatments [(5)+(6)]	129,960
8	Need for MEV Machines in Nassau (Each MEV Machine has Capacity for 6,500 Treatments)	19.99
9	Existing/Approved Resources	14
10	Remaining Need for MEV Machines	6

There is a remaining need for six linear Accelerators in Nassau County. To better serve a growing population of patients at risk for cancer, the Cancer Institute at St. Francis Hospital was created and underwent a historic expansion, including the existing extension clinic at 2200 Northern Boulevard in East Hills. The 189,000-square-foot facility – which includes Article 28 and non-Article 28 medical services, all of which are affiliates with SFH – places all the disciplines of oncology under one roof, and includes medical oncology, surgical oncology, imaging services and infusion therapy. Radiation oncology is the final component of the Cancer Institute at St. Francis Hospital.

Conclusion

This LINAC machine is currently operating in a physicians practice that will be converted to an Article 28 facility.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

St. Francis Hospital (SFH), an existing not-for-profit 364-bed hospital located at 100 Port Washington Boulevard in Roslyn (Nassau County), seeks approval to perform renovations to an existing extension clinic located at 2200 Northern Boulevard in East Hills (Nassau County) that currently provides infusion services to cancer patients. SFH also seeks to certify the following services: Medical Services – Other Medical Specialties and Radiology – Therapeutic.

Upon approval, the extension clinic's name will be changed to St. Francis Hospital, Cancer Institute.

Over the past several years, SFH has developed its oncology program with the objective of placing all disciplines of oncology under one roof. Through this project, SFH will convert and relocate an existing private Linear Accelerator practice which will aid in enhancing the hospital's oncology capabilities and better meet patient need through improved access and coordination of care.

Site	PFI	Approved Services
St. Francis Hospital, Cancer Institute 2200 Northern Boulevard East Hills, NY 11548	9812	Medical Services – Other Medical Specialties Radiology – Therapeutic

First year staffing will consist of 13.60 FTEs, including registered nurses, technicians, management and administrative personnel. It is expected to 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.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire certain assets of NRAD under the terms of the Chapter 11 Bankruptcy Proceedings, as approved by the U.S. Bankruptcy Court for the Eastern Division of New York, Case No. 8-15-72898-las. The terms are summarized below:

Date:	September 3, 2015
Seller:	NRAD Medical Associates, P.C.
Purchaser:	St. Francis Hospital
Asset Transferred:	All radiation therapy supplies, inventory and instruments and other medical goods and supplies, all office equipment, all radiation therapy equipment, furniture and fixtures, owned, leased, licensed or used by seller in or about the Business. All hardware, software, information systems and data, passwords assigned to purchaser, all warranties and manuals, all records and files pertaining to business operations, all property insurance benefits, all telephone and fax numbers, licenses, permits and accreditations relating to the business, all assumed and assigned leases and all goodwill.
Excluded Assets:	All cash and cash equivalents, bank accounts, security deposits and securities of seller, all accounts receivable and claims of seller, all insurance policies of seller and all rights to applicable claims and proceeds, all tax refunds of seller, all insurance policies owned by seller, all assets of seller not relating to the business.
Assumed Liabilities:	All obligations and liabilities assumed under the assumed and assigned contracts or the assumed and assigned leases that arise on or after the effective time.
Purchase Price:	\$3,285,810
Payment of the Purchase Price:	Equity - Paid at Closing

The purchase price for the operations was satisfied with funding from The St. Francis Hospital Foundation.

Lease Agreement

The applicant submitted an executed lease rental agreement, as summarized below:

Date:	November 12, 2013
Premises:	44,613 square ft. on the 2 nd floor of 2200 Northern Boulevard, East Hills, New York
Landlord:	2200 Northern Steel, LLC
Lessee:	St. Francis Hospital
Term:	15 years with two additional ten-year extensions
Rental:	Year One \$1,148,784.75 (\$95,732.06 monthly) with a 3% annual increase for years 2-35

The applicant provided an affidavit stating that the lease is an arm's length arrangement and submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

It is noted that the radiation oncology unit will be located on the first floor of the building. Article 15 of the lease detailed above provided that the radiation oncology unit would consist of approximately 10,000 square feet of space, but the specific location could not be designed and constructed until after the commencement date of the lease. Article 12 of the lease further provided that substituted space of approximately the same size on the first floor of the building could be used for the radiation oncology unit. The applicant indicated that the decision to locate the unit on the first floor does not impact the CON application budget, and has requested that the submission of an amendment to the lease reflecting the actual location of the radiation oncology unit on the first floor of the building be made a contingency of approval of this project.

Operating Budget

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

<u>Outpatient Service</u>	<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>				
Commercial - FFS	\$708.41	\$2,892,214	\$749.94	\$3,161,317
Medicare - FFS	\$472.12	\$1,707,007	\$497.69	\$1,865,835
Medicaid - MC	\$646.53	<u>\$324,354</u>	\$661.97	<u>\$354,533</u>
Total Revenue		\$4,923,575		\$5,381,685
<u>Expenses</u>				
Operating	\$526.31	\$4,315,753	\$514.27	\$4,371,329
Capital	\$129.63	<u>\$1,062,999</u>	<u>\$127.18</u>	<u>\$1,081,046</u>
Total	\$655.94	\$5,378,752	\$641.45	\$5,452,375
Net Income (Loss)		<u>(\$455,177)</u>		<u>(\$70,690)</u>
Visits		8,200		8,500

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

	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	49.79%	49.59%
Medicare - FFS	44.09%	44.11%
Medicaid - MC	6.12%	6.30%

The following is noted with respect to the submitted budget:

- Projected revenue by payor is based on the Medicare fee schedule and CHSLI's negotiated contracted rates with its managed care payors for Good Samaritan Hospital Medical Center for the specific services proposed in this application. Good Samaritan served as the basis for the projected revenue as it is one of six hospitals in CHSLI's system and has a radiation oncology department and provides LINAC services.
- Utilization assumptions are based upon the current volume from the private practice with a slight increase of 15 patients projected for the third year, which increases visit utilization by 300 visits.
- Expenses are based on business planning conducted by SFH, including an assessment of the overall demand and staffing needs for radiation oncology services, and depreciation and rent associated with adding the new service line.
- Breakeven utilization is projected at 8,959 visits for year one and 8,612 visits for Year Three.

The Enterprise Budget for the Current Year (2016) and Year One, inclusive of the incremental cost related to this application request, is as follows:

<u>Enterprise Budget</u>	<u>Current Year</u>	<u>Year One</u>
<u>Revenue</u>		
Inpatient	\$444,852,250	\$444,852,250
Outpatient	\$280,280,750	\$285,204,325
Non-Operating	<u>\$12,347,000</u>	<u>\$12,347,000</u>
Total Revenue	\$737,480,000	\$742,403,575
<u>Expenses</u>		
Operating	\$652,221,000	\$656,536,756
Capital	<u>\$28,677,000</u>	<u>\$29,739,999</u>
Total	\$680,898,000	\$686,276,755
Net Income	<u>\$56,582,000</u>	<u>\$56,126,820</u>

SFH will fund any losses through the ongoing operations of its main hospital site, which as shown above is projected to have positive net income of \$56,126,820 after the inclusion of the new cancer service line. As shown on BFA Attachment A, sufficient liquid assets exist to cover any losses that may arise due to the addition of this service.

Capability and Feasibility

There are no project costs associated with this application. SFH acquired the operations of NRAD through an asset purchase agreement for \$3,285,810, as approved by the U.S Bankruptcy Court for the Eastern Division of New York, Case No. 8-15-72898-las. The purchase price was funded by St. Francis Hospital Foundation, an affiliated non-Article 28 entity. BFA Attachment A is the consolidated 2015-2016 certified financial statements of CHSLI (including SFH), which shows sufficient liquid assets to meet equity requirements.

Working capital is estimated at \$908,729 based on two months of third year expenses. The applicant will provide the full amount from operations. BFA Attachment A shows that CHSLI and SFH have sufficient resources to fund working capital and to cover any operating losses during the start-up period.

The submitted incremental budget indicates a loss of \$455,177 and \$70,690 during the first and third years. Revenues are based on the Medicare fee schedule and CHSLI's negotiated contracted rates with its managed care payers for Good Samaritan Hospital Medical Center for the specific services proposed in this application. The budget is reasonable. The applicant stated that the budgeted operating losses for the new service will be covered by the profitable operations of SFH. As shown in the enterprise budget, the facility achieved a net income of \$56,582,000 in the current year and can cover the losses.

BFA Attachment A is the consolidated 2015-2016 certified financial statements of CHSLI, including SFH. As shown, the entities maintained positive working capital, positive net asset positions, and average net income of \$100,729,500 (CHSLI) and \$38,802,500 (SFH) for the period shown.

BFA Attachment B is the internal financial summary of SFH as of February 28, 2017, which shows SFH maintained positive working capital, positive net asset positions, and generated net income of \$31,949,000 for the period.

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 | Financial Summary, Consolidated 2015-2016 Certified Financial Statements of Catholic Health Services of Long Island and St. Francis Hospital. |
| BFA Attachment B | Financial Summary - Internal financial statement of St. Francis Hospital as of February 28, 2017 |



**Project # 171176-C
NYU Hospitals Center**

Program: Hospital
Purpose: Construction

County: New York
Acknowledged: March 20, 2017

Executive Summary

Description

NYU Hospitals Center (NYUHC), an 844-bed, voluntary not-for-profit, Article 28 acute care hospital located in Manhattan (New York County), proposes to certify and construct a new ambulatory care center in leased space located at 175 Delancey Street on Manhattan’s Lower East Side. The facility will be called the NYU Langone Ambulatory Care Center (ACC) at Essex Crossing and will include Article 28 and non-Article 28 programs. NYUHC requests approval to provide multi-specialty ambulatory surgery and physical therapy (PT) services.

The ACC will be in a mixed-use building containing a four-story commercial podium with a ten-story residential tower above. The PT program will be located on the first floor, while most of the ambulatory surgery program, including four Class C operating rooms, will be situated on the first and cellar floors, with a few administrative and utility spaces located on the second floor.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

The NYU Langone Ambulatory Care Center at Essex Crossing will provide an opportunity to

expand general and orthopedic ambulatory surgery and physical therapy capacity in the Lower East Side neighborhood of Manhattan. Currently, there is limited space at the Center for Musculoskeletal Care located on 38th Street, a high utilization of operating rooms at the NYU Hospital for Joint Diseases and a need for additional space to provide PT services. The ACC will complement NYUHC’s plans for the expansion of clinical orthopedic surgery services and provide additional needed services for the community. The number of projected visits is 7,700 in Year 1 and 10,150 in Year 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

Project costs of \$29,077,298 for the Article 28 space will be met with cash. The incremental budget will be as follows

Revenues	\$25,699,111
Expenses	<u>17,188,826</u>
Gain	\$8,510,285

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]

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 15, 2017 and construction must be completed by May 30, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

August 3, 2017

Need Analysis

Analysis

The service area includes the neighborhoods of Chinatown, the East Village, and the Lower East Side (part of Manhattan Community District 3) within New York County. The population of New York County in 2010 was 1,585,873. Per projection data from the Cornell Program on Applied Demographics (PAD), county population is estimated to grow to 1,615,772 by 2025, representing a 1.9% increase.

According to the hospital, during Fiscal Year 2016 the residents from Manhattan Community District 3 accounted for over 1,100 ambulatory surgery procedures and for over 10,000 physical therapy visits. The number of projected visits is 7,700 in Year 1 and 10,150 in Year 3. Approval of this project will allow NYU Hospital Center to provide services to their current patient population within their own neighborhood.

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

Conclusion

The proposed extension clinic will allow for improved access to ambulatory surgery services and physical therapy services for the population of Manhattan Community District 3 and the surrounding areas within New York County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

NYU Langone Medical Center, an existing not-for-profit hospital located at 550 First Avenue in Manhattan (New York County), requests approval to open a new ambulatory care center to be located at 175 Delancey Street on the Lower East Side of Manhattan. The Center will include multi-specialty ambulatory surgery, consisting of four Class C operating rooms, as well as physical therapy services. Upon approval, the Center will be known as NYU Langone Ambulatory Care Center at Essex Crossing.

It is expected that two of the Class C operating rooms will be dedicated to General Surgery procedures including ENT, GYN and endoscopies while the remaining two operating rooms will be dedicated to orthopedic surgery procedures. Staffing will consist of 28.2 FTEs in the first year upon completion and is expected to increase to 32.2 FTEs by 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.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

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

Date:	December 31, 2015
Premises:	Cellar, 1 st and 2 nd Floor space within the building at 175 Delancey Street, NY, NY
Landlord:	Site 6 Commercial LLC
Tenant:	NYU Hospitals Center
Term:	15 years with one five-year option to renew
Rent:	\$3,516,439.56 (\$293,036.63/month) year one; 2.25% increase each year thereafter.
Provisions:	Responsible for utilities, taxes, insurance and maintenance of occupied premise.

The applicant indicated that the lease will be an arm's length lease arrangement.

Total Project Cost

Total project cost for renovations and equipment related to the Article 28 space, is estimated at \$29,077,298, broken down as follows:

Renovations and Demolition	\$ 12,875,122
Design Contingency	1,287,512
Construction Contingency	1,287,512
Fixed Equipment	3,498,681
Architect/Engineering Fees	2,681,250
Construction Manager Fees	406,500
Other Fees	799,744
Moveable Equipment	4,649,905
Telecommunications	1,430,033
CON Application Fee	2,000
CON Additional Processing Fee	<u>159,039</u>
Total Project Cost	<u>\$29,077,298</u>

Costs are based on a construction start date of August 15, 2017, and a nine-and-a-half-month construction period.

NYUHC will fund the total project cost through \$29,077,298 in accumulated funds.

Incremental Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>		
Commercial Fee-for-Service	\$13,037,190	\$17,184,750
Medicare Fee-for-Service	1,999,524	2,635,736
Medicare Managed Care	975,363	1,274,978
Medicaid Fee-for-Service	167,269	211,400
Medicaid Managed Care	<u>3,316,532</u>	<u>4,392,247</u>
Total Revenues	\$19,495,887	\$25,699,111
<u>Expenses</u>		
Operating	\$7,193,183	\$9,542,003
Capital	<u>7,409,189</u>	<u>7,646,823</u>
Total Expenses	\$14,602,372	\$17,188,826
Gain	<u>\$4,893,515</u>	<u>\$8,510,285</u>

Utilization (Procedures/Visits)	7,700	10,150
Cost Per Procedure / Visit	\$ 1,896.41	\$1,693.48

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

Commercial Fee-for-Service	41.0%
Medicare Fee-for-Service	19.0%
Medicare Managed Care	9.0%
Medicaid Fee-for-Service	2.0%
Medicaid Managed Care	27.0%
Charity Care	2.0%

Expense and utilization assumptions are based on the hospital's experience in providing ambulatory surgery and PT services.

Capability and Feasibility

Total project cost of \$29,077,298 will be funded from the Hospital's equity. BFA Attachment A is a financial summary of NYUHC, which indicates the availability of sufficient resources for project costs and working capital needs.

The submitted incremental budget projects excess revenues over expenses of \$4,893,515 and \$8,510,285 during the first and third years, respectively. Revenues reflect current reimbursement methodologies for the proposed PT and ambulatory surgical services. The budget appears reasonable.

As shown on BFA Attachment A, NYUHC maintained positive working capital and net asset positions, and generated average annual excess revenues of \$278,390,000.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BHFP Attachment
BFA Attachment A

Map
Financial Summary, NYU Hospitals Center, August 31, 2016



Project # 162026-B
**Manhattan RSC, LLC d/b/a Manhattan Reproductive
Surgery Center**

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** July 15, 2016

Executive Summary

Description

Manhattan RSC, LLC d/b/a Manhattan Reproductive Surgery Center (MRSC), a New York limited liability company, requests approval to establish and construct a single-specialty Article 28 freestanding ambulatory surgery center (FASC) specializing in gynecological services. The facility will be housed in approximately 10,467 square feet of leased space on the 21st floor of a building located at 65 Broadway, New York (New York County). The proposed FASC will include two Class "C" operating rooms, pre-op and recovery areas with three pre-op bays and eight recovery bays, and the requisite support areas.

George D. Kofinas, M.D. is the sole member of MRSC and will serve as the facility's Medical Director. Dr. Kofinas is board-certified in Obstetrics and Gynecology (OB/GYN) and in Reproductive Endocrinology and Infertility. He will be a practicing physician at the facility along with a team of ten board-certified OB/GYN physicians. The Center will offer traditional gynecological services and reproductive endocrinology-infertility services, including In Vitro Fertilization. The FASC expects to perform 1,294 procedures in the first year and 1,400 procedures in the third year of operation. Each physician has provided a letter in support of their volume estimates for the select surgical procedures they intend to perform at MRSC. 69% of the projected procedures require a Class C operating room due to the provision of general anesthesia and cannot be performed in an office-based setting.

OPCHSM Recommendation

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

Need Summary

Across the New York City region, there are two active ASC's within New York County that provide the single specialty of gynecological services. These are PBGS, LLC, which opened in October 2014, and Surgery of Tomorrow, which opened in April 2016. The applicant projects 1,294 procedures in Year One with Medicaid at 2% and charity care at 2%.

Program Summary

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

Financial Summary

Total project costs of \$4,131,814 will be met through member's equity of \$651,459, \$680,355 in Landlord Allowances and a bank loan for \$2,800,000 at 5.75% interest for a five-year term. JP Morgan Chase Bank, N.A has provided a letter of interest.

The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$5,711,838	\$6,177,924
Expenses	\$3,999,204	\$4,111,218
Net Income/(Loss)	\$1,712,634	\$2,066,706

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
 - a. Actual utilization including procedures;
 - b. Breakdown of visits by payor source;
 - c. Percentage of charity care provided by visits;
 - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - e. Number of emergency transfers to a hospital;
 - f. Number of nosocomial infections recorded;
 - g. A brief list of all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans.[RNR]
5. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's amended Administrative Services Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Development Services Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended Billing Services Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Anti-Kickback Statement signed by the applicant's attorney, acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's lease agreement, acceptable to the Department. [CSL]
13. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before November 1, 2017 and construction must be completed by July 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

August 3, 2017

Need Analysis

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. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2015 & 2016.

ASC Type	Facility Name	Total Patient Visits	
		2015	2016
Single	Carnegie Hill Endo, LLC	11,898	12,201
Multi	East Side Endoscopy	9,302	9,839
Multi	Fifth Avenue Surgery Center	751	587
Multi	Gramercy Park Digestive Disease Center	12,613	13,288
Multi	Gramercy Surgery Center, Inc.	3,030	3,303
Single	Kips Bay Endoscopy Center, LLC	9,561	9,873
Single	Liberty Endoscopy Center (opened 1/13/17)	N/A	N/A
Single	Manhattan Endoscopy Center, LLC	12,773	16,063
Multi	Manhattan Surgery Center	5,087	5,856
Single	Mid-Manhattan Surgi-Center	3,360	3,597
Multi	Midtown Surgery Center	2,608	2,666
Single	Retinal Ambulatory Surgery Center of New York Inc.	2,963	3,787
Multi	SurgiCare of Manhattan, LLC	4,439	4,353
Single	West Side GI	14,608	15,341
Single	Yorkville Endoscopy Center	8,596	9,754
Total		101,589	110,589

(Source: SPARCS, 2017)

From 2015 to 2016, New York County experienced a 8.8% increase in ambulatory surgery center visits.

The applicant projects 1,294 procedures in Year One and 1,400 in Year Three. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years One and Three.

Projections - 162026	Year One		Year Three	
	Volume	%	Volume	%
Medicaid - MC	26	2.0%	28	2.0%
Medicare - MC	26	2.0%	28	2.0%
Commercial Ins - MC	1,022	79.0%	1,106	79.0%
Private pay	194	15.0%	210	15.0%
Charity Care	26	2.0%	28	2.0%
Total	1,294	100.00%	1,400	100.00%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis and Healthfirst. The applicant states that there are nine Federally Qualified Health Centers (FQHC) located within one mile of the proposed site. The center plans to reach out to the neighboring FQHCs to provide service to underinsured patients.

Conclusion

Approval of this project will provide increased access to gynecological surgery services for the communities of New York County.

Recommendation

From a need perspective, contingent approval is recommended for a limited period of five years.

Program Analysis

Project Proposal

Manhattan RSC, LLC seeks approval to establish and construct a single-specialty ambulatory surgery center that will provide gynecological services at 65 Broadway in Manhattan (New York County).

Proposed Operator	Manhattan RSC, LLC
Doing Business As	Manhattan Reproductive Surgery Center
Site Address	65 Broadway New York, NY (New York County)
Surgical Specialties	Single Specialty: Gynecological Services
Operating Rooms	2 (Class C)
Procedure Rooms	0
Hours of Operation	7 days a week, 6:00 am to 8:00 pm
Staffing (1 st / 3 rd Year)	12.0 FTEs / 12.0 FTEs
Medical Director	George D. Kofinas, M.D., FACOG
Emergency, In-Patient & Backup Support Services Agreement and Distance	Will be provided by: Mt Sinai Hospital West 5.6 miles / 29 minutes
On-call service	An answering service with access to the surgeon (or on-call physician) will be provided

Character and Competence

The sole member of Manhattan RSC, LLC is George D. Kofinas, M.D.

Dr. Kofinas is Board-certified in Obstetrics and Gynecology and holds sub-certification in Reproductive Endocrinology and Infertility. He has operated a private practice with a focus on reproductive medicine, surgery, and In Vitro Fertilization for over 20 years and has over 30 years of experience in the field of Reproductive Endocrinology and Infertility. From 1987 to 2000, while at the Brooklyn Hospital Center, Dr. Kofinas served in several positions including Chief of Reproductive Endocrinology and Infertility; Chairman of the Department of Obstetrics and Gynecology, and Director of the Residency Program. Since November 2000, he has served as New York Methodist Hospital's Chief of Reproductive Endocrinology and Infertility. Dr. Kofinas plans to perform procedures at the proposed Center as well as serve as the Center's Medical Director.

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

Dr. Kofinas disclosed three (3) open malpractices cases.

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

Integration with Community Resources

The Center will have a referral relationship with a local FQHC which, along with other neighboring diagnostic and treatment centers and outpatient clinics, will serve as primary care alternatives for those patients who do not have access to primary care services. The facility will also establish and maintain a

list of nearby primary care physicians who are accepting new patients. The Center will serve all patients without regard to personal characteristics or source of payment. A sliding fee scale and charity care will be available for those patients who are uninsured or underinsured and desire general gynecological surgical and reproductive endocrinology/infertility ambulatory surgical services.

The Center intends to utilize a state-of-the-art electronic medical record and will consider integrating into a Health Information Exchange. The Center also plans to explore possible participation in an Accountable Care Organization.

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.

<h2>Financial Analysis</h2>

Lease Rental Agreement

The applicant submitted an executed lease for the proposed site, summarized below:

Date:	September 22, 2016
Premises:	10,467 square feet on the 21 st floor of 65 Broadway New York
Landlord:	65 Broadway Owner LLC
Lessee:	Manhattan RSC, LLC
Term:	16 years with one five-year renewal option
Rental:	\$512,883 annually (\$42,740.25/month or \$49 per sq. ft.) with a 2.25% annual rate increase
Provisions:	Triple Net, lessee pays all fees associated with the leased asset

The applicant provided an affidavit stating that the lease is an arm's length arrangement. The applicant submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

Administrative Services Agreement

The applicant submitted an executed Administrative Services Agreement (ASA), as summarized below:

Date:	January 5, 2017
Facility/Operator:	Manhattan RSC, LLC
Administrator:	Frontier Healthcare Management Services, LLC
Service Provided:	Administrative services including: staffing/scheduling; accounting; purchasing; compliance with policies and procedures, and medical staff By-laws/rules; medical staff application and credentialing; accreditation; physical plant and materials management; nursing and administration.
Term:	Five years with two additional automatic two-year renewals
Fee/Compensation:	\$250,000 base fee per year, with a 1.5% cost of living increase per year; \$350,000 bonus compensation for every \$4 million operating profit the facility generates during any year of the contract.

While Frontier Healthcare Management Services, LLC will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

Billing Services Agreement

The applicant submitted an executed Billing Services Agreement (BSA), as summarized below:

Date:	January 5, 2017
Facility/Operator:	Manhattan RSC, LLC
Contractor:	Frontier Healthcare Billing Services, LLC
Service Provided:	All Billing services including obtaining/entering pre-authorization patient information into the scheduling system, verifying patients' eligibility and benefits, answering inquiries on claims on behalf of the facility, submitting bills, referring uncollectible bills to a collection agent and providing billing reports.
Term:	Five-years with two additional automatic two-year renewals
Billing Fee:	\$30 per technical and professional claim and a \$4,170 monthly fee per FTE required for benefit verification/authorization. A 3% per year cost of living increase shall be applied to the preceding years' fees at the beginning of each calendar year.

While Frontier Healthcare Billing Services, LLC. Will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

Per the Department's new Service Contract Policy for Article 28 Facilities implemented December 13, 2016, both the ASA and BSA include the mandatory Reserve Powers, Conflict and Notwithstanding Clauses now required to be included to insure against illegal delegations of authority. The applicant has also submitted the required respective Attestations acknowledging that there are statutory and regulatory requirements that cannot be delegated to a third party and that they will not engage in any such illegal delegations.

Total Project Cost and Financing

Total project costs, estimated at \$4,131,814, are broken down as follows:

Renovation & Demolition	\$2,512,080
Design Contingency	\$251,208
Construction Contingency	\$251,208
Movable Equipment	\$986,328
Interim Interest Expense	106,400
CON Application Fee	\$2,000
CON Processing Fee	<u>22,590</u>
Total Project Cost	\$4,131,814

Project costs are based on a start date of November 1, 2017, with an eight-month construction period. The applicant's financing plan appears as follows:

Cash	\$651,459
Landlord Improvement Allowance	\$680,355
Bank Loan (5.75% interest, 5-year term)	<u>\$2,800,000</u>
Total	\$4,131,814

JP Morgan Chase Bank, N.A. has provided a letter of interest for the loan at the stated terms.

Operating Budget

The applicant has submitted their first and third year operating budgets, in 2016 dollars, as summarized below:

	<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	\$942.08	\$24,494	\$946.14	\$26,492
Medicare	\$1,490.58	\$38,755	\$1,497.07	\$41,918
Commercial	\$5,242.59	\$5,357,924	\$5,239.72	\$5,795,131
Private Pay	\$1,498.27	<u>\$290,665</u>	\$1,497.00	<u>\$314,383</u>
Total Revenues		\$5,711,838		\$6,177,924
<u>Expenses</u>				
Operating	\$2,396.48	\$3,101,049	\$2,326.01	\$3,256,408
Capital	<u>\$694.09</u>	<u>\$898,155</u>	<u>\$610.58</u>	<u>\$854,810</u>
Total Expenses	\$3,090.57	\$3,999,204	\$2,936.58	\$4,111,218
Net Income or (Loss)		<u>\$1,712,634</u>		<u>\$2,066,706</u>
Utilization (procedures)		1,294		1,400

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

Medicaid	2.0%
Medicare	2.0%
Commercial	79.0%
Charity	2.0%
Private Pay	15.0%
Total	100.0%

The following is noted with respect to the submitted budget:

- Revenues are based on current and projected Federal and State government reimbursement rates, with commercial payor rates reflecting adjustments based on experience in the region.
- The applicant indicated they are committed to serving all persons in need of surgical care without regard to ability to pay or other personal characteristics. They have submitted their Charity Care Program documenting their intent to partner with local community agencies and various FQHCs to market the center's Charity Care Program, and to establish contracts with Medicaid Managed Care Plans.
- Expense assumptions are based upon staffing, operating and capital costs as determined based on the experience of the participating physicians, as well as the experience of other FASCs in New York State in providing similar service patient care.
- Utilization projections are based on current caseloads. The doctors intending to practice at MSRC have submitted letters in support of their utilization projections.
- Breakeven is approximately 73.80% of projected utilization or 955 procedures in Year One, and 70.14% of projected utilization or 982 procedures in Year Three.

The budgets are reasonable.

Capability and Feasibility

The total project cost of \$4,131,814 will be satisfied with \$651,459 equity from the proposed member, a \$680,355 landlord improvement allowance and a bank loan for \$2,800,000 at the above stated terms. JP Morgan Chase Bank, N.A. has provided a letter of interest.

The working capital requirement is estimated at \$685,203 based on two months of third year expenses. The applicant will provide \$435,203 from personal resources and will finance \$250,000 for a five-year term at approximately 6% interest. JP Morgan Chase Bank, N.A. has provided a letter of interest. BFA

Attachment A is the net worth statements of the applicant member, which indicates sufficient liquid resources to meet the equity and working capital requirements. BFA Attachment B is the pro-forma balance sheet that shows operations will start with \$1,482,408 in equity.

MSRC projects net income of \$1,712,634 and \$2,066,706 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected Federal and State government reimbursement rates, with commercial payor rates reflecting adjustments based on experience in the region. The budgets are reasonable.

The applicant recognizes the need to address the eventual change over to Managed Care Organizations (MCOs). They are not yet in a position to execute and negotiate contracts or letters of intent with MCOs but plan on establishing contracts upon approval of this application.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

The Department sent letters to area hospitals, listed below, asking for information on the impact of the proposed ambulatory surgery center in their service areas. No hospitals responded. In the absence of comments from hospitals in the area, 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.

New York-Presbyterian/Lower Manhattan -- No Response
170 Williams Street
New York, New York 10038

Mount Sinai Beth Israel -- No Response
Fist Avenue at 16th Street
New York, New York 10003

NY Eye & Ear Infirmary of Mount Sinai -- No Response
310 East 14th Street
New York, New York 10003

NYU Hospital for Joint Diseases -- No Response
301 East 17th Street
New York, New York 10003

New York Methodist Hospital -- No Response
506 Sixth Street
Brooklyn, New York 11215

Attachments

BFA Attachment A Personal Net Worth Statement of Proposed Member of Manhattan RSC, LLC
BFA Attachment B Pro Forma Balance Sheet of Manhattan RSC, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a freestanding single specialty ambulatory surgery center providing gynecological services to be located at 65 Broadway, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

162026 B

FACILITY/APPLICANT:

Manhattan RSC, LLC d/b/a Manhattan
Reproductive Surgery Center

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
 - a. Actual utilization including procedures;
 - b. Breakdown of visits by payor source;
 - c. Percentage of charity care provided by visits;
 - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - e. Number of emergency transfers to a hospital;
 - f. Number of nosocomial infections recorded;
 - g. A brief list of all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
5. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's amended Administrative Services Agreement, acceptable to the Department. [CSL]

8. Submission of a photocopy of the applicant's amended Development Services Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended Billing Services Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Anti-Kickback Statement signed by the applicant's attorney, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's lease agreement, acceptable to the Department. [CSL]
13. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before November 1, 2017 and construction must be completed by July 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

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



**Project # 162088-E
Day-OP Center of Long Island Inc.**

Program: Diagnostic and Treatment Center **County:** Nassau
Purpose: Establishment **Acknowledged:** August 3, 2016

Executive Summary

Description

Day-OP Center of Long Island, Inc. (the Center), a multi-specialty Article 28 freestanding ambulatory surgical center (FASC) located at 110 Willis Avenue, Mineola (Nassau), requests approval to transfer 100% ownership interest (1,000 shares) from the estate of the sole current member, Vincent DiGregorio, M.D., to a one new shareholder, David Cooper, M.D. Dr. DiGregorio passed away unexpectedly in December 2014, and the estate is now selling all assets and liabilities of the company through a Share Purchase Agreement. Dr. Cooper will purchase all 1,000 outstanding shares of stock for \$5,000 and become the sole member of the facility upon Public Health and Health Planning Council (PHHPC) approval.

The Center is housed in 11,347 square feet of leased space and has four operating rooms, as well as preoperative and recovery areas. Upon approval, the new shareholder will continue to operate the FASC under the terms of its existing sublease agreement with Day-Op Surgery Consulting Company, LLC (lessee) and KKT Realty III, LP (landlord). The approved 20-year sublease expires October 31, 2022, and is renewable for four additional five-year periods.

The Center provides General Surgery, Podiatry, Obstetrics and Gynecology, Ophthalmology, Orthopedics, Otolaryngology, Pain Management, and Plastic Surgery procedures. No change to the current services is being proposed in this application, and the existing transfer and affiliation agreements with Winthrop-University Hospital and Mercy Medical Center will remain in place. Michael Cohen,

M.D. will continue to serve as Medical Director of the Center.

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 applicant's character and competence or standing in the community.

Financial Summary
There are no project costs associated with this transaction. The applicant will fund the \$5,000 purchase price for the shares with existing liquid resources. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,231,797	\$8,658,093
Expenses	<u>\$5,261,267</u>	<u>\$6,125,535</u>
Net Income (Loss)	\$970,530	\$2,532,558

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an amended Certificate of Incorporation of Day-Op Center of Long Island, Inc., which is acceptable to the Department. [CSL]
3. Submission of a photocopy of amended By-laws of Day-Op Center of Long Island, Inc., which is acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended facility sub-lease between Day-Op Center of Long Island, Inc. and Day-Op Surgery Consulting Company, LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended facility lease between Day-Op Surgery Consulting Company, LLC and the landlord, KKT Realty III, LP, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a specimen stock certificate for Day-Op Center of Long Island, Inc., which is acceptable to the Department. [CSL]
7. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

August 3, 2017

Need Analysis

Background

Day-Op Center of Long Island, Inc. is an existing Article 28 ambulatory surgery center providing orthopedic, ophthalmology, otolaryngology, pain management, general surgery, podiatry, obstetrics and gynecology, and plastic surgery services. This facility has been providing multi-specialty surgery services to the residents of Nassau County since 1989. Upon approval of this application, 13 new physicians will begin performing surgeries at the center. The center served a total of 3,257 patients in 2014, and 2,514 patients in 2015, and 2,605 patients in 2016. (Source: SPARCS)

The table below shows reported Charity Care and Medicaid over the last three years.

Year	SPARCS		AHCF reports	
	Charity ¹	Medicaid	Charity	Medicaid
2014	2.4%	4.6%	0.0%	4.6%
2015	1.4%	9.6%	0.0%	8.7%
2016	1.6%	3.7%	N/A	N/A

¹ The category for charity care also includes self-pay patients and bad debt.

Conclusion

This application is for the transfer of shares and thus there will be no Need recommendation.

Program Analysis

Project Proposal

Day-Op Center of Long Island Inc., an existing Article 28 Diagnostic and Treatment Center located at 110 Willis Avenue in Mineola (Nassau County), requests approval to transfer a 100% ownership interest from the estate of the sole current member to one new sole shareholder of the Center. There are no programmatic changes as a result of this request; however, staffing is expected to increase by 3.2 FTEs by the end of the first year of operation and by 5.9 FTEs by the third year of operation.

In December 2014, the sole shareholder of the Center, Vincent DiGregorio, M.D., passed away unexpectedly. David Cooper, M.D. proposes to acquire the outstanding shares of stock from the estate of Dr. DiGregorio.

The table below details the proposed change in ownership:

Member Name	Current	Proposed
Vincent DiGregorio, MD	100%	-----
David Cooper, MD	-----	100%

Character and Competence

David Cooper, M.D. has experience in the operation of ambulatory surgery centers in New York State as he currently holds an ownership interest in Pro Health Ambulatory Surgery Center, Inc., located in Lake Success (Nassau County). Dr. Cooper also has relevant experience in the management of physician practices, as the Managing Partner of Pro Health Care Associates, LLP, a physician practice with over 800 physicians. He is also the CEO of Pro Health Medical Management, LLC, which owns Day-Op Surgery Consulting Company, LLC. Finally, Dr. Cooper owns Mobile Medical Services, P.C., the anesthesia group that will continue to provide anesthesia services to the Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health

care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

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.

<h2>Financial Analysis</h2>

Share Purchase Agreement

The applicant has submitted an executed Share Purchase Agreement to be effectuated upon PHHPC approval. The terms are summarized below:

Date:	June 24, 2016
Seller:	Estate of Vincent DiGregorio, MD
Buyer:	David Cooper, M.D.
Shares Acquired:	1,000 shares of stock (100%)
Asset Acquired:	All assets owned by the company which include: cash, accounts receivable, equipment, and other assets.
Assumption of Liabilities:	All liabilities incurred by the company which include: accounts payable, accrued expenses, long term debt, and other liabilities.
Purchase Price:	\$5,000
Payment of the Purchase Price:	Equity due at Closing

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

Administrative Service Agreement

The applicant has submitted a draft Consulting and Administrative Services Agreement (CASA), the terms of which are summarized below:

Facility:	Day-Op Center of Long Island, Inc.
Contractor:	Day-Op Surgery Consulting Company, LLC
Services Provided:	General business administration and supervision, which includes secretarial and other office personnel support services, IT systems support, and real estate management; Billing and Collection, establish and maintain bank accounts; procurement of premises, inventory and supplies, and furniture, fixtures, and equipment; Maintain files, reports and medical records; Service Contract Management; Center Administration which includes: financial planning, marketing, assistance, personnel, patient surveys, and accreditation; Risk Administrative Services; Computer Services; Fiscal Services which include: accounting, payroll, tax returns, compliance program, licenses, credentialing, membership eligibility and support, quality improvement and legal services.
Term:	15 years - renewable for an additional 5 years
Fee:	The Center shall pay all actual costs incurred to provide the Administrative Services, plus 10% of the Administrative Costs and any other costs related to office space of the Center. In no event shall the Center be obligated to pay the Fee if such payment would cause the Center to operate at a net loss in a given month.

The services provider, Day-Op Surgery Consulting Company, LLC, is owned by Pro Health Medical Management, LLC, which is related to the applicant through common ownership. The draft CASA provides that the licensed operator retains ultimate control in all the final decisions associated with the services provided.

Operating Budget

The applicant has submitted the current year (2016) and the first and third year projected operating budgets, in 2017 dollars, as summarized below:

<u>Revenues</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Commercial - FFS	\$1,329	\$2,544,389	\$1,358	\$4,292,219	\$1,369	\$5,890,235
Medicare - FFS	\$1,332	307,690	\$1,358	518,880	\$1,369	711,968
Medicaid - MC	\$1,328	405,005	\$1,355	682,835	\$1,368	936,851
Private Pay	\$1,325	46,364	\$1,349	78,214	\$1,359	107,334
Other	\$1,329	264,487	\$1,355	445,787	\$1,368	611,547
Revenue Subtotal		\$3,567,935		\$6,017,935		\$8,257,935
Other Op Rev *		<u>\$10,101</u>		<u>\$213,862</u>		<u>\$400,158</u>
Total Revenue		\$3,578,036		\$6,231,797		\$8,658,093
<u>Expenses</u>						
Operating	\$1,572	4,218,449	\$1,160	5,141,269	\$995	6,005,537
Capital	<u>\$45</u>	<u>119,998</u>	<u>\$27</u>	<u>119,998</u>	<u>\$20</u>	<u>119,998</u>
Total Expenses	\$1,616	\$4,338,447	\$1,187	\$5,261,267	\$1,015	\$6,125,535
Net Income (Loss)		<u>(\$760,411)</u>		<u>\$970,530</u>		<u>\$2,532,558</u>
Utilization		2,684		4,434		6,034
Cost/Procedure		\$1,616		\$1,187		\$1,015

* Other operating revenue consists of Anesthesia Services (Mobile Medical Contract).

Utilization by payor is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - FFS	71%	71%	71%
Medicare - FFS	9%	9%	9%
Medicaid - MC	11%	11%	11%
Private Pay	1%	1%	1%
Other	<u>7%</u>	<u>7%</u>	<u>7%</u>
Total	100%	100%	100%

The following is noted with respect to the submitted budget:

- The Ambulatory Patient Group reimbursement rates reflect current and projected Federal and State government rates, with commercial and private payors reflecting adjustments based on experience in the region.
- Revenue assumptions are based on the applicant's extensive business planning and a projected increase in the number of procedures due to the anticipated addition of 13 new physicians at the Center upon approval of this application (the facility currently has 5 physicians providing FASC services). The projected procedures are based on the current and new physicians' existing caseloads. The 13 new physicians have provided letters of intent in support of their respective caseloads. The applicant indicated that the new volume will not come from Hospitals.
- Expense assumptions are based upon the experience of the proposed member and the participating surgeons, as well as the experience of other FASCs in NYS.

Capability and Feasibility

There are no project costs associated with this transaction. The purchase price for the FASC is \$5,000 to be funded via equity from the proposed member. BFA Attachment A is the personal net worth statement of Dr. David Cooper, which shows the availability of sufficient liquid resources.

The working capital requirement is estimated at \$1,020,923 based on two months of third year expenses. All working capital needs will be provided by the sole member, Dr. David Cooper. Review of BFA Attachments A reveals sufficient resources to meet all the equity requirements.

BFA Attachment B, Financial Summary of Day-Op Center of Long Island, Inc., indicates that the facility has experienced negative working capital, negative equity position, and a net loss for the period shown. The loss is attributable in part to the death of the current owner in 2014, with ownership held in Estate, plus the facility experienced the death of a high-volume pain management surgeon that had a significant negative impact on volume. The decline in volume was the primary driver of decreased revenues. Volume is expected to turn around under new ownership as additional physicians begin to work at the Center.

BFA Attachment C is Day-Op Center of Long Island, Inc.'s pro forma balance sheet that shows operations will start with a deficit of \$127,786 due to the current operations transferring to the new owner with a negative net equity of approximately \$1,146,943 through the Share Purchase Agreement.

The FASC projects net income of \$970,530 and \$2,532,558 in the first and third years of operation after the change in ownership, respectively. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Net Worth Statement of Proposed Member
BFA Attachment B Financial Summary- Day-OP Center of Long Island, Inc.
BFA Attachment C Pro-Forma Statement

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 100% ownership interest from the estate of the sole current member to one (1) new sole shareholder of the Center , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162088 E

Day-Op Center of Long Island, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an amended Certificate of Incorporation of Day-Op Center of Long Island, Inc., which is acceptable to the Department. [CSL]
3. Submission of a photocopy of amended By-laws of Day-Op Center of Long Island, Inc., which is acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended facility sub-lease between Day-Op Center of Long Island, Inc. and Day-Op Surgery Consulting Company, LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended facility lease between Day-Op Surgery Consulting Company, LLC and the landlord, KKT Realty III, LP, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a specimen stock certificate for Day-Op Center of Long Island, Inc., which is acceptable to the Department. [CSL]
7. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



**Project # 171282-B
Dutchess Ambulatory Surgical Center**

Program: Diagnostic and Treatment Center **County:** Dutchess
Purpose: Establishment and Construction **Acknowledged:** May 3, 2017

Executive Summary

Description

Dutchess Ambulatory Surgery Center (DASC), a proprietary, multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) located at 23 Davies Avenue, Poughkeepsie (Dutchess County), requests approval to transfer 74.1% ownership interest from the four current members to ten new members, and to perform renovations to add two operating rooms. The purchase price for the ownership interest is \$40,000 for each new member. The proposed new members are Urologists practicing in the Poughkeepsie area.

DASC has been operating since October 1998, consisting of two operating rooms and one procedure room. The addition of two new operating rooms is necessary to accommodate the additional cases that will be coming from the new members. The funds obtained from the membership interest purchase price will be used to help finance the expansion project.

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

<u>Current Operator</u>	
Dutchess Ambulatory Surgery Center, LLC	
<u>Members</u>	
Satish Modi, M.D.	25%
Niraj Sharma, M.D.	25%
Andreas Wolter, M.D.	25%
Ameet Goyal, M.D.	25%

<u>Proposed Operator</u>	
Dutchess Ambulatory Surgery Center, LLC	
<u>Members</u>	
Satish Modi, M.D.	7.10%
Niraj Sharma, M.D.	7.10%
Andreas Wolter, M.D.	7.10%
Ameet Goyal, M.D.	7.10%
Evan Goldfischer, M.D.	7.10%
Scott Kahn, M.D.	7.10%
Daniel Katz, M.D.	7.10%
Jason Krumholtz, M.D.	7.10%
Walter Parker, M.D.	7.10%
Paul Pietrow, M.D.	7.10%
Jaspreet Singh, D.O.	7.10%
Michael Solliday, M.D.	7.10%
Naeem Rahman, M.D.	7.10%
Praneeth Vemulapalli, M.D.	7.10%

The applicant has noted that the membership percentages add to 99.4% due to rounding.

The building is owned by current member Satish Modi, M.D., who leases the clinic space to the FASC. The leasehold improvements will be financed by DASC.

OPCHSM Recommendation
Contingent Approval

Need Summary

The center currently offers Gastroenterology, Oculoplastic, Ophthalmology, Retina, Pain Management, and Podiatry procedures. The new members will add Urology procedures. The applicant projects 7,175 procedures in Year One with Medicaid at 6.9% and charity care at 1.0%.

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

The purchase price for the ownership interest is \$40,000 for each new member. Upon approval of this application request, each new member will provide their respective capital contribution for a total contribution of \$400,000. The funds will be used to help finance the expansion of DASC.

Total project cost related to the renovations is \$1,177,174, which will be financed by \$180,103 equity and a bank loan for \$1,000,000 at 4.5% interest for a five-year term. JP Morgan Chase Bank has provided a letter of interest. The incremental budget is as follows:

Revenues	\$6,008,282
Expenses	<u>\$3,032,466</u>
Net Income	\$2,965,816

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 for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for working capital, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the Operating Agreement, which is acceptable to the Department. [CSL]
5. The submission of Engineering (MEP) Drawings 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 October 1, 2017 and construction must be completed by December 31, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
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

August 3, 2017

Need Analysis

Analysis

The service area consists of Dutchess County. The population of Dutchess County in 2010 was 297,488 with 127,576 individuals (43.6%) age 45 and over. This is the primary population group utilizing ambulatory surgery services. Per Cornell Program on Applied Demographics (PAD) projection data, this population group is estimated to grow to 135,416 by 2025 and represent 42.8% of the projected population of 316,091.

Upon approval of this project, ten new physicians will practice at the center. The number of projected procedures is 7,175 in Years 1 and 7,601 in Year 3. The table below shows the projected payor source utilization for Dutchess Ambulatory Surgical center for Years 1 and 3 following approval of this project.

Projections-171282	Year 1		Year 3	
	Volume	%	Volume	%
Comm Ins- FFS	468	6.5%	496	6.5%
Comm Ins- MC	1,930	26.9%	2,044	26.9%
Medicare FFS	3,747	52.2%	3,969	52.2%
Medicare MC	370	5.2%	392	5.2%
Medicaid FFS	60	0.8%	64	0.8%
Medicaid MC	434	6.1%	460	6.1%
Charity Care	71	1.0%	76	1.0%
Workers Comp, No Fault	95	1.3%	100	1.3%
Total	7,175	100.0%	7,601	100.0%

The center served a total of 2,289 patients in 2015 and 2,321 patients in 2016. (Source: SPARCS). No Charity Care or Medicaid utilization has been reported through SPARCS for years 2015 and 2016. The applicant has confirmed that this is inaccurate and will be submitting data reflecting Medicaid utilization of 6.0% in 2015 and 6.8% in 2016. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Conclusion

Approval of this project will allow for continued access to ambulatory surgery services for the communities of Dutchess County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

Doctors Satish Modi, Niraj Sharma, Andreas Wolter and Ameet Goyal are current equal (25% each) members of Dutchess Ambulatory Surgery Center, LLC. This project proposes to bring in ten new members, all urologists practicing in the Poughkeepsie area.

Additionally, DASC proposes adding two additional ORs to accommodate the cases from the new members.

In addition to the construction of two additional ORs, staffing will increase by 11.55 FTEs in the first year after completion and remain at that level in Year Three.

Character and Competence

The proposed members and ownership are noted below:

Member	Current	Proposed
Satish Modi, MD, <i>Manager</i>	25%	7.143%
Niraj Sharma, MD, <i>Manager</i>	25%	7.143%
Andreas Wolter, MD, <i>Manager</i>	25%	7.143%
Ameet Goyal, MD	25%	7.143%
*Evan Goldfischer, MD	---	7.143%
*Scott Kahn, MD	---	7.143%
*Daniel Katz, MD	---	7.143%
*Jason Krumholtz, MD	---	7.143%
*Walter Parker, MD	---	7.143%
*Paul Pietrow, MD	---	7.143%
*Jaspreet Singh, DO	---	7.143%
*Michael Solliday, MD	---	7.143%
*Naeem Rahman, MD	---	7.143%
*Praneeth Vemulapalli, MD	---	7.143%

**Subject to Character and Competence review for this project.*

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.

Dr. Goldfischer disclosed two settled malpractice claims; one which fell within the 10 year lookback period and was settled in 2015 for \$2.9M (Negligent Care).

Dr. Kahn disclosed one settled malpractice claim in 2017 in the amount of \$12,000 related to a patient's allegation that he removed only one of two ureteral stents placed (by another physician).

Dr. Krumholtz disclosed that a malpractice case (alleging delay in diagnosis for prostate cancer) was filed in June of 2009 and subsequently settled for \$70,000.

Dr. Parker disclosed two settled malpractice claims with dates of incident in February 2012. One alleged negligent partial nephrectomy and the other alleged failure to remove a renal mass. Settlement amounts were \$400,000 and \$295,000, respectively.

Dr. Pietrow disclosed one open malpractice case, date of incident being January 2009, alleging improper treatment of renal stones resulting in death two months later.

Dr. Singh disclosed one open malpractice action with a date of incident of February 2013 alleging negligent follow-up care after a laparoscopic oophorectomy that resulted in bowel injury.

Dr. Rahman disclosed one settled malpractice action for \$450,000 related to an allegation of negligent robotic laparoscopic radical prostatectomy resulting in small bowel and rectal perforations and additional symptoms.

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

Lease Agreement and Lease Amendment

Facility occupancy is subject to the executed lease agreement. The terms are summarized as follows:

Date:	February 22, 2008
Premises:	5,000 square feet at 23 Davis Avenue, Poughkeepsie, New York 12603
Landlord:	Satish Modi, M.D.
Tenant:	Dutchess Ambulatory Surgical Center, LLC
Term:	10 years commencing from June 8, 2008 to June 7, 2018
Rental:	\$82,800 annually base rent (\$6,900 per month) plus a Consumer Price Index (CPI) increase calculated based on the month of April immediately preceding the rental increase date, as compared to the CPI for June 2007.
Provisions:	Triple net lease

The lease was subsequently amended to include additional space. The terms are summarized below:

Date:	March 23, 2009 (signatory date) commencing on March 1, 2009
Additional Premises:	1,400 square feet on the ground floor of the building contiguous to the 5,000 square feet occupied by tenant at 23 Davis Avenue, Poughkeepsie, New York 12603
Landlord:	Satish Modi, M.D.
Tenant:	Dutchess Ambulatory Surgical Center, LLC
Term:	Coincident term of original lease through to June 7, 2018
Rental:	\$19,600 annually (\$1,633.33 per month), plus CPI (calculated per terms of original lease).
Provisions:	Triple net lease

On June 8, 2017, the landlord and tenant executed a Lease Renewal Agreement whereby the lease term was extended an additional ten years through to June 7, 2028. The lease is non-arm's length in that the landlord is a member of the tenant. The applicant has provided letters from two NYS licensed realtors indicating that the rent is based on fair market value.

Total Project Costs and Financing

The total project cost is \$1,180,103 for construction, renovations and moveable equipment is as follows:

New Construction	\$300,000
Renovation & Demolition	90,000
Design Contingency	39,000
Construction Contingency	19,500
Architect/Engineering Fees	24,000
Movable Equipment	688,077
Interim Interest Expense	11,082
Application Fee	2,000
Processing Fee	6,444
Total Project Cost	\$1,180,103

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

The applicant's financing plan appears as follows:

Equity	\$180,103
Bank Loan (4.5% interest, 5-year term)	<u>\$1,000,000</u>
Total	\$1,180,103

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

Incremental Operating Budget

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

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Commercial – FFS	\$1,095	\$345,063	\$1,104	\$382,471
Commercial – MC	\$1,713	2,285,573	\$1,714	2,507,590
Medicare – FFS	\$865	2,185,078	\$864	2,398,057
Medicare – MC	\$889	221,333	\$898	245,812
Medicaid – FFS	\$1,160	47,571	\$1,144	52,001
Medicaid – MC	\$1,172	342,079	\$1,169	375,599
Workers Comp, No Fault	\$3,182	<u>95,447</u>	\$3,046	<u>46,752</u>
Total Revenue		\$5,522,144		\$6,008,282
 <u>Expenses</u>				
Operating	\$545.07	\$2,634,877	\$526.06	\$2,767,058
Interest	7.01	33,897	2.09	11,016
Depreciation and Rent	<u>50.12</u>	<u>242,287</u>	<u>48.36</u>	<u>254,372</u>
Total Expenses	\$602.21	\$2,911,061	\$576.51	\$3,042,466
Net Income		<u>\$2,611,083</u>		<u>\$2,965,816</u>
Total Procedures		4,834		5,260
Cost per Procedure		\$602.21		\$578.41

Projected outpatient utilization by payor source, for the first and third years, is as follows:

	<u>Year One</u>	<u>Year Three</u>
Commercial – FFS	6.5%	6.5%
Commercial – MC	27.6%	27.5%
Medicare – FFS	52.2%	52.2%
Medicare – MC	5.2%	5.2%
Medicaid – FFS	0.9%	0.9%
Medicaid – MC	6.0%	6.0%
Charity Care	1.0%	1.0%
Workers Comp, No Fault	<u>0.6%</u>	<u>0.7%</u>
Total	100%	100%

Capability and Feasibility

The total project cost for the renovations is \$1,180,103 to be financed via \$180,103 equity and a bank loan for \$1,000,000 at 4.5% interest over five years. The proposed new members will purchase their membership interest in Dutchess Ambulatory Surgery Center, LLC via equity, a portion of which will be used to fund the equity requirement for the construction. BFA Attachment A, proposed members net worth statement, shows sufficient equity levels necessary for their contributions.

Working capital is estimated at \$483,511 based on the first-year incremental budgeted expenses. The proposed ten new members will each contribute \$40,000 towards the ownership interest purchase for a total of \$400,000. Of this total, \$180,103 will be applied to the total project cost as their equity contribution and the remaining \$219,897 will be used to partially satisfy the equity portion of the working capital requirement. The remaining working capital balance of \$263,614 will be satisfied with a bank loan for \$241,756 and \$21,858 in additional proposed members' equity. JP Morgan Chase Bank has provided a letter of interest. BFA Attachment A, personal net worth of the members of Dutchess Ambulatory Surgery Center, LLC, shows sufficient equity.

BFA Attachment F is the pro-forma balance sheet as of the first day of operation with the additional membership adjustment, which indicates a positive members' equity of \$833,600.

BFA Attachment D is the 2016 certified financial statements of Dutchess Ambulatory Surgery Center, LLC, which shows positive working capital position, members' equity position and net operating income of \$86,788.

BFA Attachment E is the April 30, 2017 internal financial statements of Dutchess Ambulatory Surgery Center, LLC, which shows negative working capital position, positive members' equity position and net operating gain of \$40,330. The negative working capital is due to long term liabilities being shown as current on the balance sheet and DASC taking on additional expenses due to the preparation of onboarding the ten new physicians.

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 Members of Dutchess Ambulatory Surgery Center, LLC
BFA Attachment B	Pre- and post-membership interest
BFA Attachment C	Post-closing organizational chart
BFA Attachment D	2015-2016 Certified Financial Statements - Dutchess Ambulatory Surgery Center, LLC
BFA Attachment E	2017 Internal Financial Statements - Dutchess Ambulatory Surgery Center, LLC
BFA Attachment F	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 74.1% interest to ten new members and perform renovations to add two operating rooms, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171282 B

Dutchess Ambulatory Surgical Center

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 for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for working capital, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the Operating Agreement, which is acceptable to the Department. [CSL]
5. The submission of Engineering (MEP) Drawings 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 October 1, 2017 and construction must be completed by December 31, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
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]

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



**Project # 171310-E
Queens Boulevard ASC, LLC**

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment **Acknowledged:** April 27, 2017

Executive Summary

Description

Queens Boulevard ASC, LLC, an existing Article 28 freestanding ambulatory surgery center (FASC) located at 95-25 Queens Boulevard in Rego Park (Queens County), requests approval to add one new member, Chuansheng Wang, M.D., to the membership of the Center. The facility was established as a single-specialty FASC specializing in gastroenterology services and became operational with a five-year limited life certification effective March 25, 2013 (CON 111165). This membership purchase will result in the Center exceeding the five-year, 25% threshold under Public Health Law Section 2801-a(4)(b)(i), thus requiring the submission of this Certificate of Need application. No other members are joining or leaving the Center, and there will be no change in services provided. A positive effect on the Center's equity position is expected to result upon approval of this application request.

Dr. Wang, a Board-Certified gastroenterologist, has provided a letter demonstrating his commitment to perform a total of 1,400 procedures at the Center in the first year. The applicant indicated that the projected procedures are currently being performed at Dr. Wang's

private, office-based practice, which is within the Center's service area. It is expected that Dr. Wang will close his private practice and perform these cases at the Center.

OPCHSM Recommendation

Approval with no change to the expiration date of the operating certificate

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. Dr. Wang will purchase 9.0% membership interest in the FASC for \$225,000, which will be funded from his personal resources.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with no change to the expiration date of the operating certificate, 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

August 3, 2017

Program Analysis

Program Description

There are no programmatic changes anticipated by this change in membership, however, the center may consider increasing the number of days it is open each week to accommodate the additional procedures performed by adding a new member.

The table below shows what the center has reported for Charity Care and Medicaid over the last three years.

	SPARCS ¹	
Year	Charity	Medicaid
2014	1.7%	49.5%
2015	2.2%	48.7%
2016	2.0%	47.3%

¹ The category for charity care also includes self-pay patients and bad debt

Character and Competence

The table below details the proposed change in ownership:

Member Name	Current	Proposed
Azeem Khan, M.D.	38.450%	34.990%
Thomas Izquierdo, M.D.	38.450%	34.990%
Frontier Healthcare Associates, LLC	6.688%	6.084%
Albert Shalomov, M.D.	8.936%	8.132%
Padmanabh Paddu, M.D.	6.000%	5.460%
Carl Guilluame, M.D.	1.476%	1.344%
*Chuansheng Wang, M.D.	-----	9.000%
Total	100%	100%

*** Subject to Character and Competence Review**

Dr. Wang is a practicing physician, board-certified in Internal Medicine/ Gastroenterology. He owns and operates a private medical practice within the center's service area where he performs approximately 1,400 surgical procedures annually. Upon approval, it is expected that Dr. Wang will close his private practice and perform his cases at the Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the proposed member 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. The new member was checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Purchase Membership Agreement

The applicant has submitted an executed membership purchase agreement, which is summarized below:

Date:	March 31, 2017
Seller:	Queens Boulevard ASC, LLC
Purchaser:	Chuansheng Wang, M.D.
Purchase Interest:	9% membership interest in Queens Boulevard ASC, LLC
Purchase Price:	\$225,000
Payment of Purchase Price:	Cash at Closing

Dr. Wang will provide equity from his personal resources to meet the purchase price.

Administrative Services Agreement

The applicant has submitted the following amendment to the existing administrative services agreement (ASA), which is summarized below:

Date:	April 18, 2017
Company:	Queens Boulevard ASC, LLC
Contractor:	Frontier Healthcare Management Services, LLC
Reserved Powers:	The parties agree that: the LLC will retain direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the Facility's management level employees (including, but not limited to, the Facility/Service Administrative/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff; the LLC must retain the right to adopt and approve, at its sole discretion, the Facility's operating and capital budgets; the LLC must retain independent control over and physical possession of the Facility's operating and capital budgets; the LLC must retain independent control over and physical possession of the Facility's books and records; the LLC must retain independent control over and physical possession of the Facility's operating policies and procedures; the LLC must retain full authority and responsibility for, and control over, the operations and management of the Facility; the LLC must retain the right and authority to independently adopt and, approve and enforce, in its sole discretion, policies affecting the Facility's delivery of health care services; the LLC must retain the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts; the LLC must retain the right to approve, at its sole discretion, contracts for management and/or clinical services; the LLC must retain the right to approve, at its sole discretion, any facility debt; the LLC must retain the right to approve, at its sole discretion, settlements of administrative proceedings or litigation to which the Facility is a party and no powers specifically reserved to the LLC may be delegated, or shared, by FHBS or any other person.

The ASA fee will remain the same. This fee was initially established at \$150,00 per year with an annual cost of living increase equal to the lesser of the change in the Consumer Price Index for Urban Consumers or 1.5%.

Billing Services Agreement

The applicant has submitted the following amendment to the billing services agreement (BSA), which is summarized below:

Date:	April 18, 2017
Company:	Queens Boulevard ASC, LLC
Contractor:	Frontier Healthcare Management Services, LLC
Reserved Powers:	The parties agree that: the LLC will retain direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the Facility's management level employees (including, but not limited to, the Facility/Service Administrative/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff; the LLC must retain the right to adopt and approve, at its sole discretion, the Facility's operating and capital budgets; the LLC must retain independent control over and physical possession of the Facility's operating and capital budgets; the LLC must retain independent control over and physical possession of the Facility's books and records; the LLC must retain independent control over and physical possession of the Facility's operating policies and procedures; the LLC must retain full authority and responsibility for, and control over, the operations and management of the Facility; the LLC must retain the right and authority to independently adopt and, approve and enforce, at its sole discretion, policies affecting the Facility's delivery of health care services; the LLC must retain the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts; the LLC must retain the right to approve, at its sole discretion, contracts for management and/or clinical services; the LLC must retain the right to approve, at its sole discretion, any facility debt; the LLC must retain the right to approve, at its sole discretion, settlements of administrative proceedings or litigation to which the Facility is a party and no powers specifically reserved to the LLC may be delegated, or shared, by FHBS or any other person.

The BSA fee will remain the same. This fee was initially established at \$15 per claim with an annual cost of living increase equal to 3%.

Capability and Feasibility

The purchase price for the membership interest is \$225,000 and will be met via equity by Dr. Wang. BFA Attachment A is the personal net worth statement of Dr. Wang, which indicates the availability of sufficient funds for the equity contribution.

BFA Attachment B is the 2015 and 2016 certified financial statements of Queens Boulevard ASC, LLC. As shown, the entity had an average positive working capital position and an average positive net asset position from 2015 through 2016. Also, the entity achieved an average net income of \$3,443,516 from 2015 through 2016.

BFA Attachment C is the internal financial statements of Queens Boulevard ASC, LLC as of April 30, 2017. As shown, the entity had a positive working capital position and a positive net asset position through April 30, 2017. As shown, the entity achieved a net income of \$1,136,398.52 through April 30, 2017.

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 Personal net worth statement for proposed member
- BFA Attachment B Financial Summary- 2015 and 2016 certified financial statements of Queens Boulevard ASC, LLC
- BFA Attachment C Financial Summary- April 30, 2017 internal financial statements of Queens Boulevard ASC, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 9% ownership to one (1) new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171310 E

Queens Boulevard ASC, LLC

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

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



Project # 171227-E

104 Old Niagara Road Operating Company, LLC d/b/a
Elderwood at Lockport

Program: Residential Health Care Facility
Purpose: Establishment

County: Niagara
Acknowledged: March 29, 2017

Executive Summary

Description

104 Old Niagara Road Operating Company, LLC d/b/a Elderwood at Lockport, a New York limited liability company, requests approval to be established as the new operator of Odd Fellow & Rebekah Rehabilitation & Health Care Center, Inc. (Odd Fellow), a 126-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 104 Old Niagara Road, Lockport (Niagara County). The facility is also licensed for two-bed respite service. A separate entity, 104 Old Niagara Road, LLC, will acquire rights to the real property. There will be no change in beds or services provided.

On February 10, 2017, Post Acute Partners Acquisition, LLC (PAP), a Delaware limited liability company licensed to do business in New York State, entered an Asset Purchase Agreement (APA) with Odd Fellow, the current owner, to acquire the operating interests and real estate for \$10,000,000. PAP is equally owned by Warren Cole and Jeffery Rubin, D.D.S. Upon Public Health and Planning Council (PHHPC) approval, PAP will assign its rights and title to the operating interests and the purchased real property assets to 104 Old Niagara Road Operating Company, LLC and 104 Old Niagara Road, LLC, respectively. 104 Old Niagara Road, LLC will lease the premises to 104 Old Niagara Road Operating Company, LLC. There is a relationship between the proposed operating and realty entities in that they have common membership.

The seller indicated that the RHCF is a stand-alone independent facility and after many years

of operations, certain long-term trends have severely and negatively impacted the ability of the facility to remain economically viable. Such trends include: decreasing government reimbursement with the transition to managed care; New York State's Medicaid re-design and the need to coordinate with consolidate care providers; the need to diversify and expand capacity to maintain fiscal stability; and their increased vulnerability as an independent facility with depleted resources that could be better re-directed to other charitable purposes in conformity with the historical mission of Odd Fellows. The Board undertook a strategic assessment and determined that selling the facility afforded the greatest opportunity to preserve access to nursing home care in Lockport and the surrounding community. They engaged an appraiser to establish a fair market value of the enterprise and obtained bids from over eight prospective buyers. They evaluated the four best offers based on price/value, quality of the bidder's operations, and financial sustainability. The Board determined PAP was best suited to preserve quality nursing home care in the service area and most viable given the other facilities PAP operates in the Niagara County region. The sale proceeds will be used to liquidate the existing mortgage, capital lease obligations, accrued workers' compensation, employee salary and benefit accruals, accounts payable, and closing and wind-down costs, with the remainder being used to fund Odd Fellow's charitable section 501 (c) (3) purposes. There are no restrictions on the property with regard to its use or ownership.

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

<u>Current Operator</u>
Odd Fellow & Rebekah Rehabilitation & Health Care Center, Inc.

<u>Proposed Operator</u>	
104 Old Niagara Road Operating Company, LLC	
<u>Members</u>	<u>%</u>
104 Old Niagara Road Operating Holdco, LLC	100%
Warren Cole (50%)	
Jeffery Rubin (50%)	

Concurrently under review, the applicant members are seeking approval of CON 171342 to be established as the new operator of Adirondack Tri-County Nursing and Rehabilitation Center, Inc., an 82-bed, voluntary not-for-profit, RHCf that operates a ten-slot Adult Day Health Care Program located at 112 Ski Bowl Road, North Creek (Warren County).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Odd Fellow & Rebekah Rehabilitation & Health Care Center's occupancy was 93.8% in 2014, 90.8% in 2015 and 95.6% in 2016. Occupancy as of May 31, 2017, was 92.1%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. The applicant will enter an administrative services agreement with Elderwood Administrative Services, LLC. Elderwood Administrative is 100% owned by Post-Acute Partners Management, LLC jointly owned by Warren Cole and Jeffrey Rubin.

Financial Summary

PAP agreed to acquire the RHCf's assets for \$10,000,000. The purchase price will be met with members' equity of \$2,000,000 and a bank loan for \$8,000,000 at 6% interest for five years, with an option to extend for an additional five years. M&T Bank has provided a letter of interest for the loan at the stated terms. PAP will assign its rights and title to the RHCf's operations and real property to 104 Old Niagara Road Operating Company, LLC and 104 Old Niagara Road, LLC, respectively, for \$10. There are no project costs associated with this proposal. Applicant member Warren Cole has provided an affidavit attesting to fund the balloon payment if acceptable terms are not available at the time of refinancing. The budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$12,571,936	\$13,380,260
Expenses	<u>12,395,179</u>	<u>\$12,734,389</u>
Gain/(Loss)	\$176,757	\$645,871

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
6. Submission of executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's executed Assignment of Rights, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Administrative Services Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the Certificate of Dissolution or Certificate of Amendment to the Certificate of Incorporation of Odd Fellow & Rebekah Rehabilitation and Health Center, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Restated Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants executed Amended and Restated Single Member Operating Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
13. Submission of a photocopy of the Authority to Do Business in the State of New York by the New York Department of State for 104 Old Niagara Road Operating Holders, LLC, 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
August 3, 2017

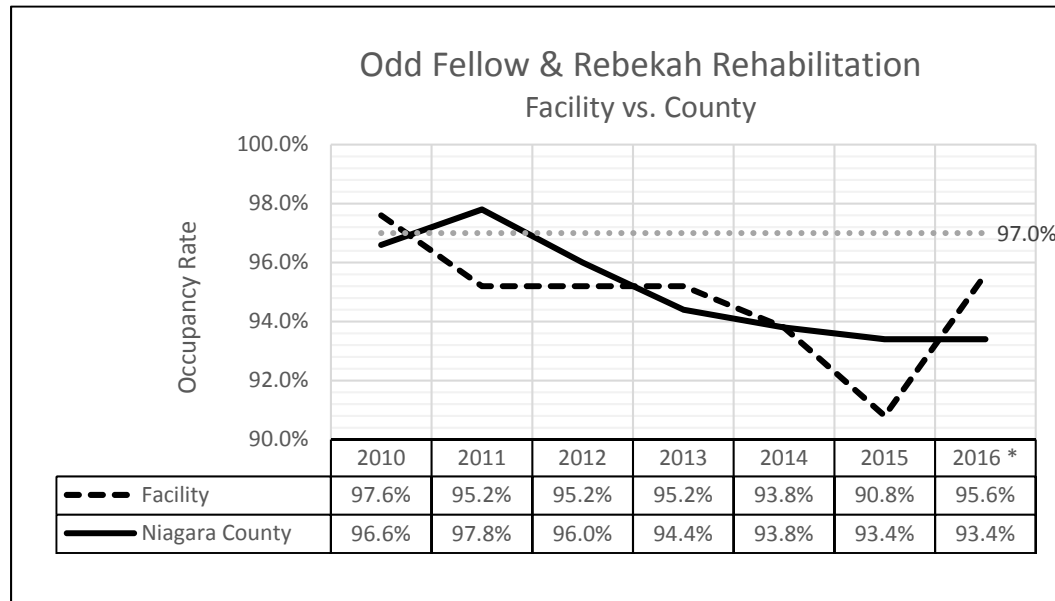
Need Analysis

Analysis

As calculated under the current Need methodology, there is a surplus of 12 beds in Niagara County.

RHCF Need – Niagara County

2016 Projected Need	1,377
Current Beds	1,389
Beds Under Construction	0
Total Resources	1,389
Unmet Need	12



* unaudited data; based upon facility reporting

Odd Fellow & Rebekah Rehabilitation & Health Care Center's occupancy as of May 31, 2017, was 92.1%. According to the current operator, the decreased occupancy for 2015 was due to lower short-term rehabilitation admissions during the summer months. The facility was able to increase the short-term rehabilitation admissions for 2016. The applicant plans to strengthen referral relationships with local physicians and hospitals to maintain strong occupancy at 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.

Odd Fellow & Rebekah Rehabilitation & Health Care Center's Medicaid admissions of 6.7% in 2014 and 6.2% in 2015 did not exceed Niagara County's 75% threshold rates in 2014 and 2015 of 15.3% and 12.5%, respectively.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Odd Fellow & Rebekah Rehabilitation & Health Care Center, Inc.	Elderwood at Lockport
Address	104 Old Niagara Road Lockport, NY 14094	Same
Beds	126	Same
ADHCP Capacity	N/A	N/A
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Odd Fellow & Rebekah Rehabilitation & Health Care Center, Inc.	104 Old Niagara Road Operating Company, LLC. – 100% Members Warren Cole (50%) Jeffrey Rubin (50%)

Character and Competence - Background

Facilities Reviewed

NYS Nursing Homes

Elderwood at Hamburg	07/2013 to present
Elderwood at Liverpool	07/2013 to present
Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Wheatfield	07/2013 to present
Elderwood at Hornell	04/12/16 to present
Elderwood at Uihlein at Lake Placid	10/04/16 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Williamsville	07/2013 to present
Elderwood Assisted Living at Wheatfield	07/2013 to present
Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present
Elderwood Assisted Living at Waverly	07/2013 to present
Tonawanda Manor	02/2016 to present
McCauley Manor at MercyCare	04/2016 to present

<u>NYS Licensed Home Care Agency</u>		
Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present
Elderwood Assisted Living at Tonawanda		04/2016 to present
Woodmark Pharmacy of New York, LLC		07/2013 to present

Alabama

Laurelton Rehabilitation and Nursing Center	SNF	7/2007-5/2008
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California

Care Alternatives of California	HOS	07/2007-10/2009
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Connecticut

Danbury Health Care Center	SNF	07/2007-10/2009
Darien Health Care Center	SNF	07/2007- 2007
Golden Hill Health Care Center	SNF	07/2007-10/2009
Long Ridge of Stamford	SNF	07/2007-10/2009
Newington Health Care Center	SNF	07/2007-10/2009
River Glen Health Care Center	SNF	07/2007-10/2009
The Highlands Health Care Center	SNF	07/2007-10/2009
West River Health Care Center	SNF	07/2007-10/2009
Westport Health Care Center	SNF	07/2007-10/2009
Wethersfield Health Care Center	SNF	07/2007-10/2009
Partners Pharmacy of Connecticut	RX	07/2007-10/2009

Kansas

Care Alternatives of Kansas	HOS	07/2007-10/2009
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Maryland

Montgomery Village Health Care Center	SNF	07/2007-10/2009
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Massachusetts

Brookline Health Care Center	SNF	07/2007-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	07/2007-10/2009
Cedar Hill Health Care Center	SNF	07/2007-10/2009
Concord Health Care Center	SNF	07/2007-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	07/2007-10/2009
Holyoke Health Care Center	SNF	07/2007-10/2009
Lexington Health Care Center	SNF	07/2007-10/2009
Lowell Health Care Center	SNF	07/2007-10/2009
Milbury Health Care Center	SNF	07/2007-10/2009
New Bedford Health Care Center	SNF	07/2007-10/2009
Newton Health Care Center	SNF	07/2007-10/2009
Peabody Glen Health Care Center	SNF	07/2007-10/2009
Redstone Health Care Center	SNF	07/2007-10/2009
Weymouth Health Care Center	SNF	07/2007-10/2009
Wilmington Health Care Center	SNF	07/2007-10/2009
Care Alternatives of Massachusetts	HOS	07/2007-10/2009
Partners Pharmacy of Massachusetts	SNF	07/2007-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2013- present

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2007-10/2009
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Missouri

Care Alternatives of Missouri	HOS	07/2007-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2007-05/2008
Partners Pharmacy of Missouri	RX	07/2007-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HHA	2007-10/2009
Care Alternatives of New Jersey	HOS	07/2007-10/2009
Care One at Dunroven	SNF	07/2007-10/2009
Care One at East Brunswick	SNF	07/2007-10/2009
Care One at Evesham	SNF	07/2007-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	07/2007-10/2009
Care One at Hamilton	SNF	07/2007-10/2009
Care One at Holmdel	SNF	07/2007-10/2009
Care One at Jackson	SNF	07/2007-10/2009
Care One at King James	SNF	07/2007-10/2009
Care One at Livingston	SNF	09/2007-10/2009
Care One at Livingston	ALF	09/2007-10/2009
Care One at Madison Avenue	SNF	07/2007-10/2009
Care One at Moorestown	SNF	07/2007-10/2009
Care One at Moorestown	ALF	07/2007-10/2009
Care One at Morris	SNF	07/2007-10/2009
Care One at Morris Assisted Living	ALF	07/2007-10/2009
Care One at Pine Rest	SNF	07/2007-10/2009
Care One at Raritan Bay MC	LTA	07/2007-10/2009
Care One Harmony Village at Moorestown	SNF	07/2007-10/2009
Care One at Teaneck	SNF	04/2007-10/2009
Care One at The Cupola	SNF	07/2007-10/2009
Care One at The Highlands	SNF	07/2007-10/2009
Care One at Valley	SNF	07/2007-10/2009
Care One at Wall	SNF	07/2007-10/2009
Care One at Wayne	SNF/ALF	07/2007-10/2009
Care One at Wellington	SNF	07/2007-10/2009
Ordell Health Care Center	SNF	07/2007-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2007-10/2009
South Jersey Health Care Center	SNF	07/2007-10/2009
Woodcrest Health Care Center	SNF	07/2007-10/2009
Care Alternatives of New Jersey	HOS	07/2007-10/2009
Partners Pharmacy of New Jersey	RX	07/2007-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	07/2007-10/2009
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Ohio

Bellbrook Health Care Center	SNF	07/2007-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2007-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2007-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2007-10/2009

Pennsylvania

Presque Isle Rehabilitation and Nursing Center	SNF	10/2007-10/2009
The Rehab and Nursing Center at Greater Pittsburgh	SNF	10/2007-10/2009
Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doyleston	SNF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Senior Living at Lancaster	HOM	02/2011-present
Care Alternatives of Pennsylvania	HOS	07/2007-10/2009

Puerto Rico

Medicare Y Mucho Mas	Medicare Advantage Plan	07/2007-11/2009
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Rhode Island

Elderwood at Riverside	SNF	02/2014-present
Elderwood at Scallop Shell at Wakefield	SNF	12/2010-present

Virginia

Colonial Heights Health Care Center	SNF	07/2007-10/2009
Glenburnie Rehabilitation	SNF	07/2007-10/2009
Hopewell Health Care Center	SNF	07/2007-10/2009
Valley Health Care Center	SNF/ALF	4/2007-10/2009
Westport Health Care Center	SNF	4/2007-10/2009
Care Alternatives of Virginia	HOS	4/2007-10/2009
Partners of Virginia, LLC	RX	4/2007-10/2009

ACU acute care/hospital	ICF intermediate care facility/group home
ALF assisted living facility	IRF intermediate rehab facility
HHA home health agency	LTA long term acute care hospital
HOM homecare	RX pharmacy
HOS hospice	SNF skilled nursing facility/nursing home

Individual Background Review

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole has had extensive health facility ownership interests, which are listed above.

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Before his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility ownership interests, which are listed above.

In the ten year period preceding the formation of Post Acute Partners early in 2010 both Dr. Rubin and Mr. Cole held minority ownership interests, and in some circumstances also held management positions in a group of affiliated, privately held companies which owned and operated various health care facilities and/or services in various states other than the State of New York. Upon separating from the companies in late 2009 they relinquished their management positions and since then have had no authority or ability to direct, influence or otherwise affect the operations of the companies' holdings.

A review of the facilities that Mr. Cole and Dr. Rubin held and relinquished prior to the formation of Post Acute Care Partners was undertaken at the time of their acquisition of Elderwood Senior Care, and revealed no issues of character and competence at that time.

Character and Competence - Analysis

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

A review of operations at Elderwood Assisted Living at Waverly for the period identified above revealed that the facility was fined \$2,800 pursuant to a Stipulation and Order. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services, identified in two inspection reports dated 7/27/2016 and 11/21/2016.

A review of operations for all other New York State health care facilities and agencies, for the periods identified above, reveals that there were no enforcements.

A review of operations for Chestnut Terrace Rehabilitation and Nursing (now Elderwood at Riverside), and Scallop Shell Nursing and Rehabilitation of Rhode Island (now Elderwood of Scallop Shell at Wakefield), Presque Isle Rehabilitation and Nursing Center and The Rehabilitation and Nursing Center at Greater Pittsburgh in Pennsylvania for the periods indicated above reveals that there were no enforcements. This information was obtained from an affidavit signed by the applicants, as well as the Medicare.gov Nursing Home Compare website.

A review of Woodmark Pharmacy of Massachusetts for the period indicated above reveals that there were no issues with licensing and certification, as provided by the State of Massachusetts website.

The applicants have submitted an affidavit regarding the six pediatric intermediate care facilities in which they attest to the provision of a substantially consistent high level of care.

An affiliate of the applicant (Niagara Advantage Health Plan, LLC dba Elderwood Health Plan MLTC) was approved for enrollment as a Managed Long Term Care Plan by NYSDOH on April 1, 2016.

	Overall	Health Inspection	Quality Measures	Quintile
NY				
Elderwood at Hamburg	****	***	*****	4
Elderwood at Liverpool	***	**	*****	1
Elderwood at Amherst	****	***	****	2
Elderwood at Grand Island	**	*	*****	1
Elderwood at Wheatfield	***	***	****	3
Elderwood at Lancaster	*****	****	*****	1
Elderwood at Cheektowaga	***	***	****	2
Elderwood at Williamsville	****	****	**	3
Elderwood at Waverly	***	***	***	2
Elderwood at Hornell	**	**	***	2
Elderwood at Lake Placid	**	**	***	2

	Overall	Health Inspection	Quality Measures	Quintile
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PA

Rehab & Nursing Ctr Greater Pittsburgh	*	*	****	
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RI

Elderwood Of Scallop Shell at Wakefield	*****	***	*****	
Elderwood at Riverside	*****	*****	**	

*Chestnut Terrace Nursing & Rehabilitation is listed in CMS report as Elderwood at Riverside, same address

*Elderwood at Lake Placid is listed on Quintile report as Uihlein Living Center, same PFI and address

*Elderwood at Hornell is listed on Quintile report as McCauley Manor at MercyCare, Same PFI and address

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCf operations and real estate. The agreement will be effectuated upon PHHPC approval of this application. The terms are summarized below:

Date:	February 10, 2017
Seller:	Odd Fellow & Rebekah Rehabilitation & Health Care Center, Inc.
Purchaser:	Post Acute Partners Acquisition, LLC
Asset Transferred:	All right, title and interest in: supplies, inventory, consumables and other medical goods; furniture, furnishings, equipment, computers, machinery; tangible personal property; books, records, documents, surveys, reports, related to Real Property; all assumed contracts; transferrable licenses; right to trademarks, trade names and variations thereof, The Real Property, including all buildings, fixtures, structures and improvements.
Excluded Assets:	Seller's cash and equivalents and securities, all prepaid expenses of sellers, all funds deposited into payroll or operating accounts as of the closing date, all accounts receivable, name of the seller and any related names (including "Odd Fellow and Rebekah Rehabilitation and Health Care Center, Inc." or any variations thereof). Rights to tax refunds or claims from periods prior to closing date.
Assumed Liabilities:	Assumed contracts and Admission Agreements as they relate to periods after the Effective Time.
Purchase Price:	\$10,000,000
Payment of the Purchase Price:	\$1,000,000 Deposit; \$9,000,000 at the Closing

The purchase price is proposed to be satisfied as follows:

Member's Equity	\$2,000,000
Mortgage loan (5 years, with possible 5-year extension, 6% interest)	\$8,000,000
Total	\$10,000,000

The applicant states that the allocation of the purchase price between operations and realty will not be finalized until Closing. BFA Attachment A is the net worth summaries for the proposed members of PAP, which shows sufficient liquid assets to meet equity requirements.

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

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

Assignment of Rights

The applicant submitted a draft Assignment of Rights for the assignment of the assets associated with the APA, shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee-Operating Assets:	104 Old Niagara Road Operating Company, LLC
Operating Assets Transferred:	Assets as defined by the Asset Purchase Agreement
Assignee-Leasehold Interest:	104 Old Niagara Road, LLC
Leasehold Assets Transferred:	Land, Buildings and Structures as defined by the Asset Purchase Agreement.
Considerations:	\$10

Health Care Facility Lease Agreement

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

Premises:	All the landlord's right, title and interest in and to the real property and facility at 104 Old Niagara Road, Lockport, New York
Landlord:	104 Old Niagara Road, LLC
Lessee:	104 Old Niagara Road Operating Company, LLC
Term:	10 years with four 5-year renewal options
Rent:	An amount not less than the amounts necessary to cover any debt service of the landlord, its affiliates, or parent, and related to the property.
Provisions:	Triple Net

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

Administrative Services Agreement

The applicant submitted a draft Administrative Service Agreement, summarized as follows:

Provider:	Elderwood Administrative Services, LLC
Company:	104 Old Niagara Road Operating Company, LLC d/b/a Elderwood at Lockport
Services Provided:	All functions related to: Accounts Receivable, Billing, Accounts Payable, Payroll (excluding responsibility, obligation or liability); and budgets; financial reporting; regulatory reports; bookkeeping; human resources; information technology; insurance and risk management; and corporate compliance.
Term:	From Effective Date until December 31, 2017, with automatic 1-year renewals.
Fee:	\$52,170 per month with periodic adjustments based on a consideration of the fees, the scope of operations, the changes in the purchasing power of money, the services being performed, the size of nonprofessional workforce and the expenses of the provider, reflecting the fair market value.

The members of the proposed operator, Warren Cole and Jeffrey Rubin, are also members of the administrative services provider. 104 Old Niagara Road Operating Company, LLC will maintain responsibility and authority over the daily management and operations of the facility.

Operating Budget

The applicant provided the current year, and first and third year operating budgets after the change in ownership, in 2017 dollars, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$237.48	\$6,971,971	\$211.32	\$6,480,717	\$211.50	\$6,152,467
Medicare FFS	\$375.74	2,907,480	\$622.06	2,270,527	\$641.26	2,340,593
Commercial FFS		0	\$361.74	1,320,343	\$463.11	1,690,343
Private Pay/Other	\$356.26	1,659,466	\$354.94	2,031,294	\$372.45	2,718,904
Other Rev		<u>0</u>		<u>469,055</u>		<u>477,953</u>
Total Revenues		\$11,538,917		\$12,571,936		\$13,380,260
<u>Expenses</u>						
Operating	\$241.38	\$10,078,566	\$256.15	\$11,191,531	\$264.28	\$11,546,573
Capital	<u>22.85</u>	<u>953,980</u>	<u>27.55</u>	<u>1,203,648</u>	<u>27.19</u>	<u>1,187,816</u>
Total Expenses	\$264.23	\$11,032,546	\$283.70	\$12,395,179	\$291.47	\$12,734,389
Net Income/(Loss)		<u>\$506,371</u>		<u>\$176,757</u>		<u>\$645,871</u>
Utilization (days)		41,754		43,691		43,690
% Occupancy		90.8%		95.0%		95.0%

The following is noted with respect to the submitted budget:

- The Current Year represents the facility's 2015 experience.
- Revenue assumptions are based on the applicant's experience, via affiliated entities, operating other NYS RHCFS.
- Budgeted All Other Revenue includes assessment revenue and gift shop revenue.
- Medicaid revenue is based on the facility's 2017 Medicaid Regional Pricing Rate. The Commercial rate is based on RUG distribution and acuity. PAP's business model is to develop a robust clinical program to care for higher acuity intensive nursing and rehab patients. They expect the number of such residents will increase by the third year. All other rates are based on the facility's most current (March 2017) average rates of payment.
- Utilization assumptions are based on the applicant's experience and projected need in the area.
- Expenses are based on current operations, the experience of applicant members and adjusted for anticipated increase in utilization, rent and payment for working capital loans.
- Breakeven utilization is estimated at 93.61% (43,053 patient days) and 90.24% (41,503 patient days) in Years One and Year Three, respectively.
- Overall utilization is 95% for both Years One and Three, while utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	70.31%	70.19%	66.58%
Medicare FFS	18.53%	8.35%	8.35%
Commercial FFS	0.00%	8.35%	8.35%
Private Pay/Other	11.16%	13.10%	16.71%

Capability and Feasibility

There are no project costs associated with this application. PAP has agreed to acquire the rights to the RHCF's real property and operating interests for \$10,000,000. The acquisition price will be met with \$2,000,000 in members' equity and a \$8,000,000 mortgage loan at the above stated terms. PAP will assign its rights to the RHCF operating interest to 104 Old Niagara Road Operating Company, LLC and its rights to the property to 104 Old Niagara Road, LLC for a total of \$10.

The working capital requirement of \$2,065,863 is based on two months of Year One expenses. Working capital will be met with \$1,032,932 in members' equity and a loan for \$1,032,931 at 4% interest for a five-year term. M&T Bank has provided a letter of interest for the working capital loan. BFA Attachment A, the proposed operating members' net worth, shows sufficient assets overall to meet equity requirements.

BFA Attachment C is 104 Old Niagara Road Operating Company, LLC's pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,032,932. Equity includes \$1,600,000 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, total net assets are \$1,432,932.

BFA Attachment D is 104 Old Niagara Road, LLC's pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$0.

The budget projects a \$176,757 in Year One and net income of \$645,871 in Year Three. The budgets appear reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment E, the 2013-2015 certified and the 2016 internal financial summary of Odd Fellow & Rebekah Rehabilitation & Health Care Center, indicates that the facility had a positive average net asset position, generated an annual average operating profit of \$414,556 for the period 2013-2015 and an operating deficit of \$241,354 for 2016, and maintained a positive average working capital position for 2013-2016. The 2016 loss was due to non-recurring transaction related legal expenses, increased liability insurance, nursing expenses due to engaging contract nursing in 2016, and increased worker's compensation expenses. To rectify the losses, the facility will eliminate contract nursing by bring all staff in-house and will utilize risk management processes and procedures to reduce worker's compensation expense.

BFA Attachment F, a financial summary of affiliated RHCFs, shows the facilities maintained positive net income from operations for 2015 and 2016, except for the following:

- Elderwood at Grand Island (2850 Grand Island Boulevard Operating Company, LLC) shows negative working capital for the period shown. The applicant attributes the negative working capital to the timing of short-term working capital needs (due to the timing of payroll and collections). The facility shows a nominal loss year-to-date 2016, which the applicant attributes to increased prescription drug costs. The applicant anticipates improved results as of the end of the calendar year.
- Elderwood at Cheektowaga (225 Bennett Road Operating Company, LLC) and Elderwood at Hamburg (5775 Maelou Drive Operating Company, LLC) show negative working capital as of December 31, 2015. The applicant attributes the negative working capital to the timing of short-term working capital needs (due to the timing of payroll and collections). While Elderwood at Cheektowaga demonstrates positive operating income through December 31, 2016, the facility experienced a net loss in 2015, which they attributed to a lower than normal census.
- Elderwood at Wheatfield (2600 Niagara Falls Boulevard Operating Company, LLC) shows positive net income and net assets. Working capital was negative due to reclassifying the mortgage from long term to current. This will correct itself in 2017 when the mortgage is scheduled to be refinanced.

The applicant notes the above referenced entities have access to revolving credit lines that cover temporary negative working capital balances.

Financial statements for Elderwood of Uihlein at Lake Placid (185 Old Military Road Operating Company, LLC), Elderwood of Lakeside at Brockport (170 West Avenue Operating Company, LLC) and Elderwood at Ticonderoga (1019 Wicker Street Operating Company, LLC) were not evaluated as the applicant was not established as the operator of the facilities until October 4, 2016 or later.

Subject to the noted contingencies, and dependent upon the proposed operator meeting their projections, 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	Net worth summary, members of Post Acute Partners Acquisition, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Pro Forma Balance Sheet, 104 Old Niagara Road Operating Company, LLC
BFA Attachment D	Pro Forma Balance Sheet, 104 Old Niagara Road, LLC
BFA Attachment E	Financial Summary, Odd Fellow & Rebekah Rehabilitation & Health Care Center
BFA Attachment F	Financial Summary, affiliated nursing home facilities

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 104 Old Niagara Road Operating Company, LLC as the new operator of the 126-bed residential health care facility located at 104 Old Niagara Road, Lockport that is currently operated as Odd Fellow & Rebekah Rehabilitation & Health Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171227 E

104 Old Niagara Road Operating Company,
LLC d/b/a Elderwood at Lockport

APPROVAL CONTINGENT UPON:

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

11. Submission of a photocopy of the applicants executed Amended and Restated Single Member Operating Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
13. Submission of a photocopy of the Authority to Do Business in the State of New York by the New York Department of State for 104 Old Niagara Road Operating Holders, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:


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

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



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel 

Date: June 13, 2017

Subject: Dissolution: Resurrection Ministries of New York

Resurrection Ministries of New York is established as an Article 28 Foundation supporting Resurrection Nursing Home, Inc. and Mount Loretto Nursing Home, Inc. Those nursing homes were sold and the applicant now seeks Attorney General approval to dissolve its non-profit corporation.

Pursuant to New York State Not-for-Profit Corporation Law section 1002, PHHPC approval of the dissolution must be received because PHHPC approval was required for the corporation to be formed. PHHPC approval is also required pursuant to 10 NYCRR Part 650. Please note that the corporation does not have any remaining assets or liabilities.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and Certificate of Dissolution, and they are in legally acceptable form.

Attachments



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585-263-1000

May 10, 2017

VIA FEDERAL EXPRESS

New York Department of Health
Division of Legal Affairs
Corning Tower, Room 2464
Empire State Plaza
Albany, New York 12237

**RE: Resurrection Ministries of New York
Dissolution**

Dear Sir or Madam:

We are writing to respectfully request the approval of the enclosed Certificate of Dissolution for **Resurrection Ministries of New York** (the "Corporation") by the Public Health and Health Planning Council ("PHHPC").

The Corporation incorporated in 1989 and amended its purposes in 2003 which your office approved in May 2002. A copy of the Corporation's original Certificate of Incorporation and its 2003 Certificate of Amendment are included as Exhibit A of the attached Verified Petition. The Corporation is no longer conducting activities.

At this time, the Corporation requests consent from PHHPC to dissolve. Enclosed are copies of the following proposed materials in support of the Corporation's application for approval to dissolve:

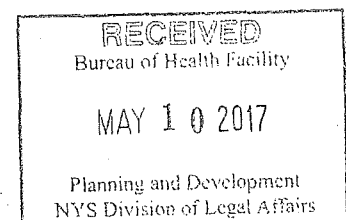
1. Verified Petition, with all available exhibits;
2. Plan of Dissolution and Distribution of Assets (Exhibit E of Petition); and
3. Certificate of Dissolution of the Corporation (Exhibit F of Petition).

Thank you for your time and attention to this matter. Should you require any additional information please do not hesitate to contact me.

Very truly yours,

Anita L. Pelletier

AP/lrr
Enclosures



Resurrection Ministries of New York
14-1720818

June 30, Year ended

2011	2012	2013	2014	2015	2016	2017
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STATEMENT OF REVENUES & EXPENSES

1 Beginning cash balance	0	0	0	0	0	0
2 Contributions received	0	0	0	0	0	0
3 Investment income (interest, dividends)	0	0	0	0	0	0
4 Rental income	0	0	0	0	0	0
5 Realized gains/(losses) from sale of securities	0	0	0	0	0	0
6 Net proceeds from sale of assets	0	0	0	0	0	0
7 Other income (itemize)	0	0	0	0	0	0
8 Total income (add lines 1-7)	0	0	0	0	0	0
9 Salaries	0	0	0	0	0	0
10 Legal fees	0	0	0	0	0	0
11 Accounting fees	0	0	0	0	0	0
12 Expenses of dissolution (other than liens 10 & 11)	0	0	0	0	0	0
13 Occupancy/Rent	0	0	0	0	0	0
14 Contributions paid (itemize)	0	0	0	0	0	0
15 Other expenses (itemize)	0	0	0	0	0	0
16 Total expenses (add lines 9-14)	0	0	0	0	0	0
17 Ending cash balance (Line 1 + Line 8 – Line 16)	0	0	0	0	0	0

BALANCE SHEETS

18 Cash, savings, investments	0	0	0	0	0	0
19 Other assets (itemize)	0	0	0	0	0	0
20 Total assets (Line 18 + Line 19)	0	0	0	0	0	0
21 Total liabilities (itemize)	0	0	0	0	0	0
22 Net assets or fund balances (Line 20 – Line 21)	0	0	0	0	0	0

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
The Capitol, Albany, New York 12224

-----X

In the Matter of the Application of

RESURRECTION MINISTRIES OF NEW YORK

VERIFIED PETITION

OAG #: _____

For Approval of Certificate of Dissolution
pursuant to Section 1002 of the Not-for-Profit
Corporation Law

-----X

Petitioner, Resurrection Ministries of New York, by its attorneys, Nixon Peabody LLP, Anita L. Pelletier, Esq., for its Petition herein respectfully alleges:

1. The name of the Corporation is Resurrection Ministries of New York ("Petitioner"). The principal office of Petitioner is located in Rensselaer County, New York. Petitioner was incorporated pursuant to Section 402 of the Not-for-Profit Corporation Law ("N-PCL") by a Certificate of Incorporation filed by the Department of State on March 29, 1989. A copy of the Certificate of Incorporation and all amendments thereto are attached as **Exhibit A**. A copy of Petitioner's By-laws are attached as **Exhibit B**.

2. Petitioner is a charitable corporation under Section 201 of the N-PCL.

3. The name, title and address of Petitioner's sole remaining director and officer is follows:

<u>Name & Address</u>	<u>Title</u>
Jeannie Frey, Esq. 200 South Wacker Dr. 11 th Floor Chicago, IL 60606	Secretary/ Director

4. The purposes in which Petitioner was formed, as set forth in its Certificate of Incorporation, as amended, is as follows:

The Corporation is organized for charitable, religious, scientific, and educational purposes, to be carried out consistently with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated from time to time by the local Bishop (the "Ethical and Religious Directives"). The purposes of the Corporation include but are not limited to:

- a. Supporting and strengthening the ministries of The Sisters of the Resurrection (Chicago and New York Provinces) and the Sisters of the Holy Family of

Nazareth (Sacred Heart Province), all of which are religious congregations of the Roman Catholic Church, and other ministries that are also supervised or controlled by or in connection with the Roman Catholic Church, in the management of their spiritual, material and financial resources in conformity with the ethical and moral teachings of the Roman Catholic Church, and promoting efficient governance and management, cooperative planning and the sharing of resources among such ministries.

- b. Supporting the functions and purposes of the Sisters of the Resurrection (Chicago and New York Provinces) and of the Sisters of the Holy Family of Nazareth (Sacred Heart Province), together with the corporations of which this Corporation is the sole corporate member and that are described in Section 501(c)(3) and either Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.
- c. Supporting and coordinating the activities of Catholic health care facilities of which the Corporation is a member or otherwise affiliated, and promoting such facilities' mission of healing, building Christian community and service.
- d. Supporting and coordinating programs for the accommodation, care diagnosis and treatment of individuals suffering from illness, injury, disease or other physical disability requiring medical, surgical, nursing care or other related professional services.
- e. Supporting residency and affiliated educational programs and activities of the Corporation's affiliated facilities consistent with such facilities' mission, philosophy and purposes.
- f. Promoting scientific research related to the care of the aged, sick and injured for the promotion of health.
- g. Promoting and supporting the provision of charitable care by the Corporation's affiliated facilities to those who require it.
- h. Promoting area-wide health planning and the delivery of health care and maintaining appropriate relationships with civic and religious organizations.
- i. Acting as a member of the integrated health care delivery system represented by the Corporation's Member, Resurrection Health Care, an Illinois not for profit corporation ("Resurrection Health Care"), and other corporations and entities affiliated with Resurrection health Care.

5. Petitioner was formed to support the charitable activities of Resurrection Nursing Home, Inc. and Mount Loretto Nursing Home, Inc. (the "Nursing Homes"), each of which operated skilled nursing facilities in Rensselaer and Montgomery Counties, respectively (the "Facilities").

6. In 2015, the Nursing Homes sold its respective Facilities in a joint sale upon the approval of the Rensselaer and Montgomery Count Supreme Courts, as applicable.

7. The Nursing Homes are currently winding up their affairs and dissolving, subject to separate petitions currently pending with the Attorney General's Office.

8. The charitable purpose for which Petitioner is formed has been achieved.

9. Petitioner's Board of Directors approved the Plan of Dissolution and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the N-PCL by unanimous written consent of Petitioner's sole remaining director on April 28, 2017. A copy of the written consent is attached hereto as **Exhibit C**.

10. Petitioner's corporate member, Presence Chicago Hospitals Network (f/k/a Resurrection Health Care) ("PCHN") has the designated authority to approve the dissolution of Petitioner pursuant to Article II, Section 4 of Petitioner's Bylaws. PCHN approved the Plan of Dissolution by unanimous written consent. A copy of the written consent is attached hereto as **Exhibit D**.

11. A certified copy of the Plan of Dissolution is attached hereto as **Exhibit E**

12. A copy of the Certificate of Dissolution is attached hereto as **Exhibit F**.

13. Petitioner has no assets or liabilities, and a copy of its final report showing zero assets has been filed with the Attorney General.


14. Approval of the dissolution of Petitioner is required to be obtained from the Department of Health, whose consent is attached hereto as **Exhibit G**.

15. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-For-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner prays that the Attorney General approve the filing of the Certificate of Dissolution of Resurrection Nursing Home, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: May 1, 2017

NIXON PEABODY LLP

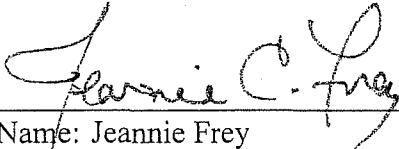
By: 
Anita L. Pelletier, Esq.
1300 Clinton Square
Rochester, New York 14604

VERIFICATION

STATE OF ILLINOIS)
) SS.:
COUNTY OF COOK)

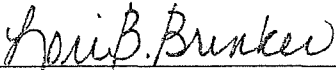
I, Jeannie Frey, being duly sworn deposes and says:

I am the Secretary of Resurrection Ministries of New York, the Petitioner named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof, and the same is true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.



Name: Jeannie Frey
Title: Secretary

Sworn to before me this 1st
day of May, 2017.



Notary Public



6030129000794

Certificate of Amendment

of

Certification of Incorporation

CSC 45

of

Resurrection Ministries of New York

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

The undersigned, being, respectively, the President and the Secretary of Resurrection Ministries of New York (the "Corporation"), do hereby certify that:

FIRST: The name of the Corporation is Resurrection Ministries of New York.

SECOND: The certificate of incorporation of the Corporation was filed by the Department of State on March 29, 1989.

THIRD: The Corporation was formed under the Not-for-Profit Corporation Law.

FOURTH: The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law.

FIFTH: The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law of the State of New York, and it shall continue to be a Type B corporation.

SIXTH: The statement of the Corporation's corporate purposes and powers of the Corporation set forth in Paragraph 4 of the Certificate of Incorporation (originally numbered as Paragraph 5), which currently reads as follows:

4. The purposes for which the corporation is formed are:

- a. to be operated and organized exclusively for the charitable purpose of supporting and strengthening the ministries of the Sisters of the Resurrection, Chicago Province, and the Sisters of the Resurrection, New York Province, which are religious congregations of the Roman Catholic Church, and other ministries which are also supervised or controlled by or in connection with the Roman Catholic Church; in the management of their spiritual, material and financial resources in conformity with the ethical and moral teachings of the Roman Catholic Church, and promoting

efficient governance and management, cooperative planning and the sharing of resources among such ministries. Specifically, the corporation is organized and shall be operated for the benefit of, and to perform the functions of, and to carry out the purposes of the Sisters of the Resurrection, New York Province, and the corporations of which the corporation is the sole corporate member and that are described in Section 501(c)(3), and either Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.

- b. to act only in accordance with the constitutions of the congregation of the Sisters of the Resurrection, New York Province, the principles of canon law applicable to the congregation and the province as from time to time adopted, approved and conferred by appropriate authority of the Roman Catholic Church and the ethical and religious directives for Catholic health care facilities.
- c. to support and coordinate the charitable activities of the Province and its sponsored Catholic facilities for the care and treatment of the aged and infirm.
- d. to establish, conduct, sponsor and develop such other entities and activities which are in furtherance of the corporation's general purposes.
- e. to have each and every general and special power which a not-for-profit corporation is now or may hereafter be permitted to exercise under Section 202 of the Not-For-Profit Corporation Law of the State of New York.

shall be amended to read in its entirety as follows:

- 4. The Corporation is organized for charitable, religious, scientific, and educational purposes, to be carried out consistently with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated from time to time by the local Bishop (the "Ethical and Religious Directives"). The purposes of the Corporation include:
 - a. Supporting and strengthening the ministries of The Sisters of the Resurrection (Chicago and New York Provinces) and the Sisters of the Holy Family of Nazareth (Sacred Heart Province), all of which are religious congregations of the Roman Catholic Church, and other ministries that are also supervised or controlled by or in connection with the Roman Catholic Church, in the management of their spiritual, material and financial resources in conformity

- with the ethical and moral teachings of the Roman Catholic Church, and promoting efficient governance and management, cooperative planning and the sharing of resources among such ministries.
- b. Supporting the functions and purposes of the Sisters of the Resurrection (Chicago and New York Provinces) and of the Sisters of the Holy Family of Nazareth (Sacred Heart Province), together with the corporations of which this Corporation is the sole corporate member and that are described in Section 501(c)(3) and either Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.
 - c. Supporting and coordinating the activities of Catholic health care facilities of which the Corporation is a member or otherwise affiliated, and promoting such facilities' mission of healing, building Christian community and service.
 - d. Supporting and coordinating programs for the accommodation, care, diagnosis and treatment of individuals suffering from illness, injury, disease or other physical disability requiring medical, surgical, nursing care or other related professional services.
 - e. Supporting residency and affiliated educational programs and activities of the Corporation's affiliated facilities consistent with such facilities' mission, philosophy and purposes.
 - f. Promoting scientific research related to the care of the aged, sick and injured for the promotion of health.
 - g. Promoting and supporting the provision of charitable care by the Corporation's affiliated facilities to those who require it.
 - h. Promoting area-wide health planning and the delivery of health care, and maintaining appropriate relationships with civic and religious organizations.
 - i. Acting as a member of the integrated health care delivery system represented by the Corporation's Member, Resurrection Health Care, an Illinois not for profit corporation ("Resurrection Health Care"), and other corporations and entities affiliated with Resurrection Health Care.
 - j. Having each and every general and special power which a not-for-profit corporation is now or may hereafter be permitted to exercise under Section 202 of the Not-For-Profit Corporation Law of the State of New York.

- k. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital service or health related service, or to operate a home care services agency, a hospice or a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 36, 40, and 44, respectively, of the Public Health Law, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants from any source for the establishment or operation of any hospital. In addition, the Corporation's purposes do not authorize the Corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose. The Corporation shall not at any time perform or engage in any activities described in Section 404 of the Not-for-Profit Corporation Law, or take any actions or render any services that would constitute the practice of medicine or any other profession requiring a professional license under applicable law.

SEVENTH: Paragraph 6 of the Certificate of Incorporation (originally numbered as Paragraph 7), which currently reads as follows:

6. The corporation shall have two members, a corporate member, which shall be Resurrection Health Care Corporation, an Illinois not-for-profit corporation, and a sponsoring member, which shall be Sisters of the Resurrection, New York Province.
- a. The members shall oversee the affairs of the corporation and assure that all the actions of the corporation are consistent with the purposes of the corporation and the ethical and religious principles of the Congregation of the Sisters of the Resurrection. The members shall have all rights which are vested in members of a corporation under the New York Not-For-Profit Corporation Law, including the powers specified in this certificate. The matters set forth in this Section as reserved powers of the members, after being reviewed and adopted by the Board, shall be submitted to the corporate member and/or sponsoring member for approval. These actions shall not be deemed authorized unless and until approved by the members in accordance with this certificate.
- b. The corporation member shall have the power to:
- (1) elect three of the directors of the corporation and remove, with or without cause, any director so elected.
 - (2) elect the President of the corporation.

- (3) approve any transfer, lease, sale or encumbrance of property in excess of the corporate limit (as established by the members from time to time).
 - (4) approve any borrowing which has a principal amount in excess of the corporate limit or a stated term in excess of one (1) year or which is secured by a mortgage of real property.
 - (5) approve the adoption, amendment or repeal of the certificate of incorporation or the bylaws of the corporation.
 - (6) approve any plan of merger, consolidation or dissolution of the corporation,
 - (7) approve annual capital and operating budgets.
- c. The corporate member shall act hereunder by duly authorized resolution of its Board and shall execute and deliver to the Chairperson or Secretary/Treasurer of the Corporation a written instrument signed by an officer or authorized agent of the corporate member setting forth the action taken and the authorization or directions.
- d. The sponsoring member shall have the power to:
- (1) elect four of the directors of the corporation and remove, with or without cause, any director so elected.
 - (2) oversee the spiritual and pastoral activities of the corporation.
 - (3) approve any transfer, sale, lease or encumbrance of property in excess of the corporate limit.
 - (4) approve any borrowing which has a principal amount in excess of the corporate limit or a stated term in excess of one (1) year or which is secured by a mortgage of real property.
 - (5) approve the adoption, amendment or repeal of the certificate of incorporation or the bylaws of the corporation.
 - (6) approve any plan of merger, consolidation or dissolution of the corporation.
 - (7) approve statements of mission and purpose.
 - (8) select the administrators of the nursing homes for Mt Loretto Nursing Home and Resurrection Rest Home.
 - (9) approve any alienation of ecclesiastical property or other extraordinary acts of administration.
- e. The sponsoring member shall act hereunder by duly authorized resolution of its Board and shall execute and deliver to the

Chairperson or Secretary/Treasurer of the corporation a written instrument signed by an officer or authorized agent of the sponsoring member setting forth the action taken and the authorization or directions.

shall be amended to read in its entirety as follows

6. The Corporation shall have two members, a Corporate Member Resurrection Health Care, an Illinois not-for-profit corporation, and a Sponsoring Member, which shall be Sisters of the Resurrection New York, Inc., a New York not-for-profit corporation.
 - a. The members shall oversee the affairs of the Corporation and assure that all the actions of the Corporation are consistent with the purposes of the corporation and the ethical and religious principles of the Congregations of the Sisters of the Resurrection (Chicago and New York Provinces) and the Sisters of the Holy Family of Nazareth (Sacred Heart Province). The members shall have all rights which are vested in members of a corporation under the New York Not-For-Profit Corporation Law and such powers as are specified in the bylaws of the Corporation.
 - b. The Corporate Member shall act hereunder by duly authorized resolution of its Board and shall execute and deliver to the Chairperson or Secretary/Treasurer of the Corporation a written instrument signed by an officer or authorized agent of the Corporate Member setting forth the action taken and the authorization or directions.
 - c. The Sponsoring Member shall act hereunder by duly authorized resolution of its Board and shall execute and deliver to the Chairperson or Secretary/Treasurer of the Corporation a written instrument signed by an officer or authorized agent of the Sponsoring Member setting forth the action taken and the authorization or directions.

EIGHTH: Paragraph 9 of the Certificate of Incorporation (originally numbered as Paragraph 10), which currently reads as follows:

9. In the event of the dissolution or liquidation of the corporation, and after payment of just debts and liabilities, all remaining assets shall be distributed to the Sisters of the Resurrection, New York Province, a New York not-for-profit corporation, or its successor, if then in existence and qualified as an organization exempt from tax pursuant to Section 501(c)(3) of the Code; or if not then in existence, then to such charitable and religious organization or organizations to which the assets of the Sisters of

the Resurrection, New York Province, were distributed pursuant to its dissolution and liquidation, provided that such organizations then qualify as exempt from tax under Section 501(c)(3) of the Code.

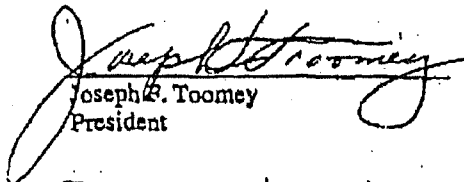
shall be amended to read as follows:

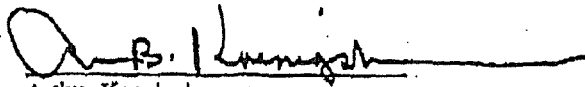
9. In the event of the dissolution or liquidation of the Corporation, and after payment of just debts and liabilities, all remaining assets shall be distributed to Resurrection Health Care, an Illinois not-for-profit corporation, or its successor, if then qualified as an organization exempt from tax pursuant to Section 501(c)(3) of the Code; or if Resurrection Health Care is not then so qualified, then to such charitable, religious, scientific or educational organization or organizations which would then qualify as exempt from tax under Section 501(c)(3) of the Code as the Board designates, with the approval of the Sisters of the Resurrection (Chicago and New York Provinces) and the Sisters of the Holy Family of Nazareth (Sacred Heart Province).

NINTH: The foregoing amendment of the certificate of incorporation of the Corporation was authorized by the consent of the Corporate Member of the Corporation, Resurrection Health Care, upon resolution of the Board of Directors of the Corporation, on May 16, 2002 and by the Sponsoring Member of the Corporation on May 12, 2002.


TENTH: The Secretary of State is designated as the agent of the Corporation upon whom process against the corporation may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the corporation served upon him is: Mt. St. Joseph, 35 Boltwood Avenue, Castleton, New York 12033.

Signed on Nov 12, 2002.


Joseph B. Toomey
President


Arthur Koenigsberger
Secretary

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE, SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 60 DAYS HEREAFTER.


ASSISTANT ATTORNEY GENERAL
DATE 11/27/02
Timothy B. Lennon

7

JAN-28-2003 13:15

McDERMOTT

212 5475435

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

May 8, 2002

Michele A. Masucci, Esq.
McDermott, Will & Emery
50 Rockefeller Plaza
New York, NY 10020-1605

Re: Resurrection Ministries of New York, Inc. ("RMNY"),
Certificate of Amendment to the Certificate of Incorporation

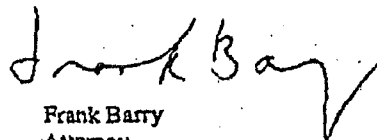
Dear Ms. Masucci:

This is in response to your April 22, 2002 letter concerning a proposed new version of the above referenced certificate of amendment. The changes reflected in the new version of the certificate appear acceptable.

As noted in my March 21, 2002 letter to you, once we receive photocopies of the final version of the bylaws of the two nursing home corporations and RMNY, with evidence that they have been duly adopted, and a photocopy of the final signed and dated certificate of amendment for RMNY, with evidence that it has been filed with the Department of State, the Department of Health will consider this matter resolved. Please submit photocopies of the adopted/ filed final version of the documents.

If you have any questions please call me at (518) 474-7076.

Sincerely,



Frank Barry
Attorney
Bureau of House Counsel

FB/mem



JUDICIAL CONSENT

FORREST T. KACZAS, J.C.C.

Justice of the Supreme Court of the State of New York,
Third Judicial Department, do hereby approved the foregoing Certificate of Amendment of the
Certificate of Incorporation of RESURRECTION MINISTRIES OF NEW YORK.


Justice, Supreme Court

Dated at Albany, New York, this 17
day of DECEMBER, 2002

808425v1 (37442-063)

F030129000 794

CSC 45

2003 JAN 29 PM 03

CERTIFICATE OF AMENDMENT

OF

RESURRECTION MINISTRIES OF NEW YORK

Under Section 803 of the Not-For-Profit Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 29 2003

TAX \$
BY:

Pharoselacr

FILED BY:

MCDERMOTT, WILL & EMERY
Floor 12th
50 Rockefeller Plaza
New York, NY 10020-1605

Cust. Ref#910157MPJ

EO

JAN 29 12 11 PM '03

RECEIVED

8/6

07/07/2005 15:14 #029 P.002/024

518 449 1332

From: ZAP COURIER

State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **July 6, 2005**



[Handwritten Signature]
Secretary of State

DOS-200 (Rev. 03/02)

CERTIFICATE OF INCORPORATION

OF

RESURRECTION MINISTRIES OF NEW YORK

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

The undersigned, the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law of the State of New York, hereby certifies:

8759724

- 1. The name of the corporation is Resurrection Ministries of New York.
- 2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law, and is a Type B corporation formed for charitable purposes.
- 3. The city and county in which the corporation's office is to be located are the Village of Castleton and County of Rensselaer.
- 4. The territory in which the corporation's activities are principally to be conducted is the State of New York.
- 5. The purposes for which the corporation is formed are:
 - a. to be operated and organized exclusively for the charitable purpose of supporting and strengthening the ministries of the Sisters of the Resurrection, Chicago Province, and the Sisters of the Resurrection, New York Province, which are religious congregations of the Roman Catholic Church, and other ministries which are also supervised or controlled by or in connection with the Roman Catholic Church, in the management of their spiritual, material and financial

resources in conformity with the ethical and moral teachings of the Roman Catholic Church, and promoting efficient governance and management, cooperative planning and the sharing of resources among such ministries. Specifically, the corporation is organized and shall be operated for the benefit of, and to perform the functions of, and to carry out the purposes of the Sisters of the Resurrection, New York Province, and the corporations of which the corporation is the sole corporate member and that are described in Section 801(c)(3), and either Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.

- b. to act only in accordance with the constitutions of the congregation of the Sisters of the Resurrection, New York Province, the principles of canon law applicable to the congregation and the province as from time to time adopted, approved and conferred by appropriate authority of the Roman Catholic Church and the ethical and religious directives for Catholic health care facilities.
- c. to support and coordinate the charitable activities of the Province and its sponsored Catholic facilities for the care and treatment of the aged and infirm.
- d. to establish, conduct, sponsor and develop such other entities and activities which are in furtherance of the corporation's general purposes.
- e. to have each and every general and special power which a not-for-profit corporation is now or may hereafter be permitted to exercise under Section 202 of the Not-For-Profit Corporation Law of the State of New York.

5. All of the assets and earnings of the corporation shall be used exclusively for charitable, religious,

scientific or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any subsequent Internal Revenue law (the "Code") in the course of which operation:

- a. no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, an individual, including the directors or officers of the corporation; provided that the corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.
- b. no substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office, except as authorized under the Code.
- c. notwithstanding any other provisions contained herein, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from tax under Section 501(c)(3) of the Code.

6. The corporation shall have two members, a corporate member, which shall be Resurrection Health Care Corporation, an Illinois not-for-profit corporation; and a sponsoring member, which shall be Sisters of the Resurrection, New York Province.

- a. The members shall oversee the affairs of the corporation and assure that all actions of the corporation are consistent with the purposes of the corporation and the ethical and religious principles of

the Congregation of the Sisters of the Resurrection. The members shall have all rights which are vested in members of a corporation under the New York Not-For-Profit Corporation Law, including the powers specified in this certificate. The matters set forth in this section as reserved powers of the members, after being reviewed and adopted by the Board, shall be submitted to the corporate member and/or sponsoring member for approval. These actions shall not be deemed authorized unless and until approved by the members in accordance with this certificate.

b. The corporation member shall have the power to:

- (1) elect three of the directors of the corporation and remove, with or without cause, any director so elected.
- (2) elect the President of the corporation.
- (3) approve any transfer, lease, sale or encumbrance of property in excess of the corporate limit (as established by the members from time to time).
- (4) approve any borrowing which has a principal amount in excess of the corporate limit or a stated term in excess of one (1) year or which is secured by a mortgage of real property.
- (5) approve the adoption, amendment or repeal of the certificate of incorporation or the bylaws of the corporation.
- (6) approve any plan of merger, consolidation or dissolution of the corporation.
- (7) approve annual capital and operating budgets.

c. The corporate member shall act hereunder by duly authorized resolution of its Board and shall execute and deliver to the chairperson or Secretary/Treasurer of the corporation a written instrument signed by an officer or authorized agent of the corporate member setting forth the action taken and the authorization or directions.

d. The sponsoring member shall have the power to:

- (1) elect four of the directors of the corporation and remove, with or without cause, any director so elected.
- (2) oversee the spiritual and pastoral activities of the corporation.
- (3) approve any transfer, sale, lease or encumbrance of property in excess of the corporate limit.
- (4) approve any borrowing which has a principal amount in excess of the corporate limit or a stated term in excess of one (1) year or which is secured by a mortgage of real property.
- (5) approve the adoption, amendment or repeal of the certificate of incorporation or the bylaws of the corporation.
- (6) approve any plan of merger, consolidation or dissolution of the corporation.
- (7) approve statements of mission and purpose.
- (8) select the administrators of nursing homes for Mt. Loretto Nursing Home and Resurrection Rest Home.

(9) approve any alienation of ecclesiastical property or other extraordinary acts of administration.

e. The sponsoring member shall act hereunder by duly authorized resolution of its Board and shall execute and deliver to the Chairperson or Secretary/Treasurer of the corporation a written instrument signed by an officer or authorized agent of the sponsoring member setting forth the action taken and the authorization or directions.

f. The names and addresses of the initial directors are as follows:

Sister Joan Walsh, C.R.
Mount St. Joseph
35 Boltwood Avenue
Castleton, NY 12033

Sister Christine Marie Bykowski, C.R.
Mount St. Joseph
35 Boltwood Avenue
Castleton, NY 12033

Sister Therese Marie Slonski, C.R.
Mount St. Joseph
35 Boltwood Avenue
Castleton, NY 12033

Sister Bonaventure Kusak, C.R.
7435 West Talcott Avenue
Chicago, IL 60631

Sister Mary Florence Schulte, C.R.
7432 West Talcott Avenue
Chicago, IL 60631

Ronald Dedic
7435 West Talcott Avenue
Chicago, IL 60631

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 any process against it served upon him, ~~or any~~
~~notice required by law~~ is Mt. St. Joseph, 35 Boltwood
Avenue, Castleton, New York, 12033.

⁹
10. In the event of the dissolution or liquidation of
the corporation, and after payment of just debts and
liabilities, all remaining assets shall be distributed to the
Sisters of the Resurrection, New York Province, a New York
not-for-profit corporation, or its successor, if then in
existence and qualified as an organization exempt from tax
pursuant to Section 501(c)(3) of the Code; or, if not then in
existence, then to such charitable and religious organization
or organizations to which the assets or the Sisters of the
Resurrection, New York Province, were distributed pursuant to
its dissolution and liquidation, provided that such
organizations then qualify as exempt from tax under Section
501(c)(3) of the Code.

¹⁰
11. Nothing herein shall authorize the corporation to
engage in the practice of the profession of medicine, or any
other profession required to be licensed by Title VIII of the
Education Law.

¹¹
12. Nothing herein shall authorize the corporation to
provide professional training in the profession of medicine
or any other profession required to be licensed by Title VIII
of the Education Law.

¹²
13. Nothing herein contained shall authorize the
corporation to establish or operate a hospital, or to provide

hospital service, or health related services, a drug maintenance program, a certified home health agency, a hospice, a health maintenance organization or a comprehensive health services plan, as provided for by Articles 28, 33, 36, 40 and 41 of the Public Health Law; or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital.

17. The subscriber is over the age of 18 years.

Robert H. Iseman
 Robert H. Iseman, Incorporator
 90 State Street
 Albany, NY 12207

STATE OF NEW YORK)
) ss.)
 COUNTY OF ALBANY)

On March 10, 1989, before me, the subscriber, personally appeared Robert H. Iseman, to me known and known to me to be the same person described in and who executed the within instrument, and he acknowledged to me that he executed the same.

Lynn M. Johnson
 Notary Public

LYNN M. JOHNSON
 Notary Public, State of New York
 Qualified in Albany County
 Commission Expires November 10, 1990

2001 2312



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

JAMES G. MCGARRON
DEPUTY FIRST ASSISTANT
ATTORNEY GENERAL

Telephone: (518) 473-3683

March 17, 1989

Robert H. Iseman
DeGraff, Foy, Conway,
Solt-Harris & Mealey
Attorneys & Counselors at Law
Ninety State Street
Albany, New York 12207-1780

Dear Mr. Iseman:

RE: RESURRECTION MINISTRIES OF NEW YORK

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS
Attorney General

RICHARD S. REDLO
Assistant Attorney General

7581 7324

JUDICIAL CONSENT

I, William F. McDermott, Justice of the
Supreme Court of the State of New York, Third Judicial
Department, do hereby approve the foregoing Certificate of
Incorporation for RESURRECTION MINISTRIES OF NEW YORK.

William F. McDermott
Justice, Supreme Court

Dated at Albany, New York, this 28th
day of March, 1989

From: ZAP COURIER

518 449 1332

07/07/2005 15:16 #029 P.013/024

8750721 //

CERTIFICATE OF INCORPORATION
OF
RESURRECTION MINISTRIES
OF NEW YORK

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

*Received
11:08 am
3/28/89*

DE GRAFF, FOY,
CONWAY, HOLT-HARRIS & MEALEY,
ATTORNEYS AND COUNSELLORS AT LAW
90 STATE STREET
ALBANY, N. Y. 12207

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 29 1989

AMT. OF CHECK \$ 120
FILING FEE \$ 10
TAX \$ _____
COUNTY FEE \$ _____
COPY \$ _____
CENT \$ _____
RETURN \$ 60
SPEC. HANDLES \$ 10

*P. Penular
type B*

370882

MAR 29 1989

**AMENDED AND RESTATED
CORPORATE BYLAWS
OF**

RESURRECTION MINISTRIES OF NEW YORK

EFFECTIVE AS OF MAY 16, 2002

**RESURRECTION MINISTRIES OF NEW YORK
BYLAWS**

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BYLAWS**

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**AMENDED AND RESTATED
CORPORATE BYLAWS
OF
RESURRECTION MINISTRIES OF NEW YORK
EFFECTIVE: MAY 16, 2002**

**ARTICLE I
CORPORATION**

SECTION 1. - Name

The name of the Corporation is Resurrection Ministries of New York, Inc., (the "Corporation" or "the Nursing Home"), and a New York not-for-profit corporation.

SECTION 2. - Office

The location of the principal office of the Corporation shall be located at 90 North Main Street, Castleton, New York 12033 and the Corporation may have other offices within or without the state as the Corporation's Board of Directors (the "Board") may from time to time determine.

SECTION 3. - Purposes

The Corporation is organized for charitable, religious, scientific, and educational purposes, to be carried out consistently with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated from time to time by the local Bishop (the "Ethical and Religious Directives"). The purposes of the Corporation include but are not limited to:

- a. Supporting and strengthening the ministries of The Sisters of the Resurrection (Chicago and New York Provinces) and the Sisters of the Holy Family of Nazareth (Sacred Heart Province), all of which are religious congregations of the Roman Catholic Church, and other ministries that are also supervised or controlled by or in connection with the Roman Catholic Church, in the management of their spiritual, material and financial resources in conformity with the ethical and moral teachings of the Roman Catholic Church, and promoting efficient governance and management, cooperative planning and the sharing of resources among such ministries.
- b. Supporting the functions and purposes of the Sisters of the Resurrection (Chicago and New York Provinces) and of the Sisters of the Holy Family of Nazareth (Sacred Heart Province), together with the corporations of which this Corporation is the sole corporate member and that are described in Section 501(c)(3) and either Section 509(a)(1) or Section 509(a)(2) of the

Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal tax law.

- c. Supporting and coordinating the activities of Catholic health care facilities of which the Corporation is a member or otherwise affiliated, and promoting such facilities' mission of healing, building Christian community and service.
- d. Supporting and coordinating programs for the accommodation, care, diagnosis and treatment of individuals suffering from illness, injury, disease or other physical disability requiring medical, surgical, nursing care or other related professional services.
- e. Supporting residency and affiliated educational programs and activities of the Corporation's affiliated facilities consistent with such facilities' mission, philosophy and purposes.
- f. Promoting scientific research related to the care of the aged, sick and injured for the promotion of health.
- g. Promoting and supporting the provision of charitable care by the Corporation's affiliated facilities to those who require it.
- h. Promoting area-wide health planning and the delivery of health care and maintaining appropriate relationships with civic and religious organizations.
- i. Acting as a member of the integrated health care delivery system represented by the Corporation's Member, Resurrection Health Care, an Illinois not for profit corporation ("Resurrection Health Care"), and other corporations and entities affiliated with Resurrection Health Care.

SECTION 4. - Not-For-Profit Organization

All of the assets and the earnings of the Corporation shall be used exclusively for charitable, religious, scientific or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any subsequent Internal Revenue law (the "Code"), in the course of which operation:

- a. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, an individual, including the directors or officers of the Corporation; provided, that the Corporation shall be empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.
- b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the

publication or distribution of statements) any political campaign on behalf of any candidate for public office except as authorized under the Code.

- c. The Corporation shall not engage in any business which would disqualify it from being exempt from taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code.

SECTION 5. - Corporate Dissolution

In the event of the dissolution or liquidation of the Corporation, and after payment of just debts and liabilities, all remaining assets shall be distributed to Resurrection Health Care, an Illinois not-for-profit corporation, or its successor, if then qualified as an organization exempt from tax pursuant to Section 501(c)(3) of the Code; or if the Resurrection Health Care is not then so qualified, then to such charitable, religious, scientific or educational organization or organizations which would then qualify as exempt from tax under Section 501(c)(3) of the Code as the Board designates, with the approval of the Sisters of the Resurrection (Chicago and New York Provinces) and the Sisters of the Holy Family of Nazareth (Sacred Heart Province).

SECTION 6. - Corporate Seal

The Corporation shall have a corporate seal which shall have inscribed thereon the name of the Corporation and the words "Corporate Seal".

ARTICLE II

MEMBERSHIP

SECTION 1. - Members

The Corporation shall have two members, a Corporate Member, which shall be Resurrection Health Care, an Illinois not-for-profit corporation, and a Sponsoring Member, which shall be Sisters of the Resurrection New York, Inc., a New York not-for-profit corporation.

SECTION 2. - Exclusive Powers of the Corporate Member (Resurrection Health Care)

In furtherance of the exercise of its general powers, the Corporate Member shall have the power to:

- a. Adopt, amend or repeal the Bylaws of the Corporation.
- b. Appoint and remove all Officers of the Corporation, other than the President, and all Directors of the Corporation.

- c. Approve capital and operating budgets, and long-term capital equipment plans for the Corporation.
- d. Approve unbudgeted expenditures in excess of the limit established by the Members from time to time.
- e. Approve purchases, sales, transfers, leases or encumbrances of property, except those made pursuant to approved budgets, or any other transaction not made pursuant to an approved budget and involving a material alienation of Roman Catholic Church stable patrimony under the law of the Roman Catholic Church.
- f. Approve execution of any deeds, mortgages, bonds or major equipment leases, except those entered into pursuant to approved budgets.
- g. Approve any borrowing, except a borrowing made pursuant to an approved budget, which has a principal amount in excess of the corporate limit determined by the Members from time to time, or a stated term of more than one (1) year.
- h. Direct and approve any contributions, donations or other asset transfers without consideration to the Members or any Affiliate.
- i. Approve changes in the type of services rendered.
- j. Approve all strategic plans of the Corporation.
- k. Approve contracts for the management of the Corporation's facilities.
- l. Approve any selection or modification of the business name or logo of the Corporation or any program or division of the Corporation.
- m. Approve material changes in insurance coverage, personnel policies (e.g., employee fringe benefits) or other material operating policies or practices of the Corporation.
- n. Approve the job description and duties of the President.
- o. Approve any material agreement or transaction with another affiliate.
- p. Approve acceptance of a contribution which imposes a material obligation.
- q. Select independent auditors for the Corporation upon the prior resolution of the Members' Finance Committee.
- r. Direct the Board and its Officers to act in accordance with the Members' policies, plans and procedures adopted by the Members, including with

respect to mission, philosophy and values, human resource management and financial plans.

SECTION 3. - Shared Powers of the Corporate Member (Resurrection Health Care) and the Sponsoring Member (Sisters of the Resurrection, New York, Inc.)

The Corporate Member and the Sponsoring Member shall have the following shared powers:

- a. Oversee the spiritual activities of the Corporation.
- b. Approve statements of mission and purpose.
- c. Promote the ethics and core values of the Corporation.
- d. Act as a liaison with the local ordinary.

SECTION 4. - Approval and Recommendation Powers of the Corporate Member (Resurrection Health Care)

None of the actions set forth below shall be deemed authorized unless and until approved by the Corporate Member. The Board shall adopt resolutions approving any such proposed action, prior to submitting the matter to the Corporate Member for its approval. The actions set forth below may also be initiated by the Corporate Member in the absence of a recommendation by the Board, subject to the Board's subsequent approval and the Corporate Member's final approval.

- a. Adoption, amendment or repeal of the Articles of Incorporation of the Corporation.
- b. Adoption of any plan of merger, consolidation or dissolution of the Corporation.

SECTION 5. - Annual Meeting of the Corporate Member: Quorum

The annual meeting of the Corporate Member, for the purpose of electing Directors of the Corporation and the transaction of such other business as shall properly come before the Corporate Member, shall be held during the fourth week of September of each year at such date, time and place as shall be determined by the Chairperson of the Corporate Member, or on such other date, and at such time and place, as is determined by resolution of the Corporate Member's Board of Directors.

SECTION 6. - Regular Meetings

Regular meetings of the Corporate Member shall be held at such time and place designated by the Chairperson of the Corporate Member's Board of Directors by announcement at the preceding Corporate Member's Board meeting, by written

notice to the Corporate Member's Board, or by resolution of the Corporate Member's Board prescribing the time and place for regular meetings.

SECTION 7. - Quorum

A majority of the Corporate Member's Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Corporate Member, provided that if less than a majority is present, the Corporate Member's Directors present may adjourn the meeting from time to time without further notice.

SECTION 8. - Manner of Acting

The Member shall act hereunder by duly authorized resolution of its Board. An authorized representative of the Member shall execute and deliver to the President or Secretary of the Corporation a written instrument setting forth the action taken by and the authorization or directions contained in each approved Member's resolution.

ARTICLE III

BOARD OF DIRECTORS

SECTION 1. - Number and Qualifications

The Board shall be composed of no more than five (5) Directors, including: the President; the senior executive officer; and the Secretary, Treasurer or other Officer of the Corporation. When vacancies on the Board occur by reason of death, resignation, or otherwise, the number shall be reduced by such vacancies until qualified replacements are appointed for the unexpired term. Directors shall be selected from among individuals who are able to participate effectively in the discharge of the Board's responsibilities and are mature and of sound mind and good moral character.

SECTION 2. - Term of Office

Each Director shall serve for one or more terms of one or more years, or until a successor has been duly appointed. All Board members are expected to attend Board meetings.

SECTION 3. - Resignation and Removal of Directors

Any Director may resign at any time by giving written notice to the President or Secretary of the Corporation. Such resignation shall take effect at the time specified therein. Any Director may be removed at any time by the Corporate Member in its sole discretion.

SECTION 4. - Vacancies

Any vacancy on the Board may be filled in the same manner as originally appointed for the unexpired portion of the term.

SECTION 5. - Annual Meeting

The annual meeting of the Board for the transaction of such business as may come before the Board shall be held in October of each year on such date, and at such time and place, as shall be determined by the President.

SECTION 6. - Special Meetings

Special meetings of the Board may be called by or at the request of the Members, the President, or a majority of the Directors then in office.

SECTION 7. - Notice

Notice of any annual or special meeting of Directors shall be given in writing by personal delivery or by mail to each Director, at least five (5) days before the day on which the meeting is to be held. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Director at the address as shown in the records of the corporation with postage thereon prepaid.

Notice may be waived in writing by any Director either before or after the meeting. Attendance at any meeting by a Director shall be deemed to be a waiver of notice unless the Director attends to object to the transaction of business because the meeting is not lawfully convened.

The purpose of any special meeting of the Board need not be specified in the Notice or Waiver of Notice of such meeting.

SECTION 8. - Quorum

A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board; however, if less than a majority of the Directors are present, those Directors present may adjourn the meeting from time to time without further notice.

SECTION 9. - Manner of Acting

The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board except where otherwise provided by law or by these Bylaws. There shall be no voting by proxy.

Directors may participate in any meeting of the Board by means of conference telephone or other communications equipment whereby all persons participating in

the meeting can communicate with one another. Participation in a meeting in this manner shall constitute attendance at the meeting.

SECTION 10. - Informal Action

Any action required to be taken at a meeting of the Board may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Directors then in office.

SECTION 11. - Compensation

Directors shall not receive compensation for their services as such, but may be reimbursed for bona fide expenses incurred arising out of services rendered. However, nothing herein shall prohibit payment of compensation to an individual serving as a Director who renders services to the Corporation in another capacity.

SECTION 12. - Conflict of Interest

Any Director, Officer or key employee who has an interest in a contract or other transaction presented to the Board or a committee thereof for authorization, approval, or ratification shall make a prompt and full disclosure of his interest to the Board or committee prior to the Board or committee's formal discussion of and action on such contract or transaction. Such disclosure shall include any relevant and material facts known to such person about the contract or transaction which might reasonably be construed to be adverse to the Corporation's interest.

The body to which such disclosure is made shall thereupon determine, by majority vote (at a meeting at which the person with the potential conflict is not present, except to the extent necessary to respond to questions regarding the potential conflict, and does not vote), whether the disclosure shows that a conflict of interest exists or can reasonably be construed to exist. If a conflict is deemed to exist (or is deemed to be reasonably construed to exist), such person shall not vote on, nor use his personal influence on, nor be present or otherwise participate in, the discussions or deliberations with respect to such contract or transaction. Such person shall not be counted in determining the existence of a quorum discussion. The minutes of the meeting shall reflect the disclosure made, any vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

For the purposes of this Section, a person shall be deemed to have an "interest" in a contract or other transaction if he (or an immediate family member) is the party (or one of the parties) contracting or dealing with the Corporation, or is a director, trustee or officer of, or has a significant financial or influential interest in, the entity contracting or dealing with the Corporation.

Each Director, officer and key employee of the Corporation shall complete such annual disclosure forms as may be adopted from time to time by the Board, for the purpose of disclosing any interest of such individual in any contract to which the

Corporation is a party or in any transaction or other matter in which the Corporation is involved.

ARTICLE IV

OFFICERS

SECTION 1. - Officers

The Officers of the Corporation shall be a President, the senior executive officer, a Secretary and a Treasurer. The Corporate Member may appoint additional Officers, including one or more Vice Presidents. Unless specifically provided in these Bylaws, an Officer need not be a Director. One person may hold two or more offices except that the same person shall not hold the offices of President and Secretary.

SECTION 2. - Appointment and Term of Office

The President of the Corporation shall at all times be the person then serving as President of the Corporate Member. All other Officers shall be appointed bi-annually by the Corporate Member, to serve for terms of two (2) years or until their successors are appointed, unless their service is sooner terminated due to death, resignation or removal.

SECTION 3. - Resignation and Removal of Officers

Any Officer may resign at any time by giving written notice to the President or Secretary of the Corporation. Such resignation shall take effect at the time specified therein. The President may be removed by the members of Resurrection Health Care. Any other appointed Officer may be removed by the Corporate Member in its sole discretion.

SECTION 4. - Vacancies

A vacancy in any office may be filled for the unexpired portion of the term in the same manner as provided for the original appointment.

SECTION 5. - President

The President shall: serve as the presiding officer at meetings of the Board; represent the Board in the management of the Corporation; and have all duties and authority that the position of the President customarily requires or which is otherwise delegated by resolution of the Board from time to time.

SECTION 6. - Senior Executive Officer

The senior executive officer shall be appointed from among qualified professional candidates to manage and/or direct the Administrators of the Nursing Homes, in

conjunction with their accountability to the Nursing Homes' Boards of Directors. Subject to these Bylaws and such orders as may be issued by the Board or the President, such senior executive officer shall have the responsibility to manage and direct the administration of the Nursing Homes. Specifically, the senior executive officer shall:

- a. Advise and make recommendations to the President relating to the operation of the Nursing Homes and long-range planning.
- b. Carry out all policies and directives of the Board.
- c. Prepare and submit to the President and the Board an annual operating budget for the Corporation and a long-term capital plan.
- d. Serve as an ex-officio, voting member on all Corporate committees.
- e. Sign with the Secretary or other proper officer of the Corporation authorized by the Board any contracts or other instruments authorized to be executed.
- f. Perform such other duties as may be prescribed by the Board or the President and all duties incident to the office of senior executive officer.

The senior executive officer shall be responsible for designating an appropriate officer to perform the duties of the senior executive officer in the event of such senior executive officer's absence or disability and for performing such other duties as may be delegated by the Board or the President.

SECTION 7. - Vice President(s)

Any Vice President (s) shall perform such duties as are established from time to time by the senior executive officer and shall report to such senior executive officer. In all other matters the Vice President(s) shall function in accordance with the specific authorities which have been delegated by the President and the senior executive officer.

SECTION 8. - Secretary

The Secretary shall send or have sent appropriate notices, and prepare or have prepared an agenda for all meetings of the Board and the Corporation, shall act as custodian of all records and reports and shall be responsible for keeping adequate records of all meetings of the Board and the Corporation. The Secretary shall have the authority to certify the Bylaws, resolutions of the Board and the Corporate Member, and other documents of the Corporation as true and correct copies thereof.

SECTION 9. - Treasurer

The Treasurer shall have charge of all funds of the Corporation and shall see that a true and accurate accounting of all financial transactions of the Corporation is made and that reports of such transactions be presented to the Board at each of its regular or special meetings. At least annually, the Treasurer shall provide a certified audited financial statement to the Board and the Members. The Treasurer shall provide monthly financial statements to the Finance Committee of the Members, as soon as such statements are available.

If required by the Board, the Treasurer shall give a bond for the faithful discharge of his/her duties in such sums and with such sureties as the Board shall determine.

SECTION 10. - Delegation

The Board may delegate temporarily the powers and duties of any Officer, in case of such Officer's absence or for any other reason, to any other Officer, and may authorize the delegation by an Officer of any such Officer's powers and duties to any agent or employee subject to the general supervision of such Officer.

ARTICLE V

COMMITTEES

SECTION 1. - Establishment of Committees

The Board, may, by resolution, create such committees, whether standing or special, as it shall deem desirable. Standing committees shall meet as needed and present their report and/or recommendations at the next scheduled Board meeting. A record of their proceedings shall be maintained. Special committees may be created for specific purposes and shall terminate when their purposes have been accomplished.

SECTION 2. - Committee Authority

The Board committees shall have the authority provided in these Bylaws and specified by resolution of the Board, but the designation of such committees and the delegation of authority thereto shall not relieve the Board or any individual Director of any responsibility imposed by law in connection with the operation and the activities of the Corporation. No Board committee shall have or may exercise any power or authority which is not exercisable by the Board, including any power or authority over matters delegated by the Corporate Member to a committee of the Member.

SECTION 3. - Appointments

Unless otherwise provided for in these Bylaws or by Board resolution, the President shall appoint all committee members and the chairperson of each

committee, subject to the approval of the Board. There shall be at least two (2) Directors appointed to each committee.

Additional persons who are not on the Board may be appointed to serve on the committees. Whenever a committee, whether standing or special, may deliberate issues affecting the discharge of Medical Staff responsibilities, the membership of such committee shall include representation from the Medical Staff.

SECTION 4. - Term of Office

Each member of a committee shall serve one or more terms of one or more years, and continue as a committee member until a successor is appointed, unless the committee shall be sooner terminated or unless such member shall be removed or shall resign from such Committee or shall cease to qualify as a member thereof.

SECTION 5. - Vacancies

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

SECTION 6. - Ex-Officio Member

The President shall serve as an ex-officio member, with full voting rights, on all committees.

SECTION 7. - Sub-Committees

Each committee chairperson, who shall be selected annually by vote of the committee members, may divide the committee into sub-committees and assign specific responsibility to each sub-committee.

SECTION 8. - Reports

Each committee shall submit its report and recommendations to the Board after each meeting and as requested by the President.

SECTION 9. - Procedures

Each committee may adopt rules for its own governance not inconsistent with these Bylaws or with rules adopted by the Board.

ARTICLE VI

FISCAL MATTERS

SECTION 1. - Fiscal Year

The fiscal year of the Corporation shall commence on the first day of July and end on the 30th day of June of each year.

SECTION 2. - Checks and Drafts

All checks, drafts, or other orders for the payment of money, and all notes or other evidences of indebtedness issued in the name of the Corporation or to the Corporation, shall be signed and endorsed by such Officer or Officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by the resolution of the Board.

SECTION 3. - Deposits

All funds of the Corporation, not otherwise employed, shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Corporate Member may select.

SECTION 4. - Books, Records and Accounts

The Corporation shall keep or cause to be kept correct and complete books and records of account and shall also keep minutes of the proceedings of the Board and its committees and records of the actions of the Corporate Member. In addition, the Corporate Member shall annually cause a certified audit of its accounts to be made and shall cause to be filed the necessary reports, tax returns or other documents as may be required by law on its behalf.

ARTICLE VII

INDEMNIFICATION

SECTION 1. - Indemnification by Corporation

To the fullest extent permitted by law, the Corporation shall indemnify its past or present Directors and Officers, and their heirs, executors, and administrators, against any and all expenses actually and necessarily incurred by them in the defense or settlement of any actual or threatened action, suit or proceeding in which they, or any of them, are made a party, by reason of their being or having been a Director or Officer of the Corporation.

SECTION 2. - Director and Officer Insurance

The Corporation shall purchase and maintain a Director and Officer Liability Policy insuring the Corporation and its individual Directors and Officers against the costs of defending a claim or paying a settlement or decision for which such Directors or Officers are eligible to be indemnified pursuant to Section 1 of this Article VII.

SECTION 3. - Right Not Exclusive

The right of a Director or Officer to indemnification by the Corporation pursuant to this Article VII shall be in addition to, and not exclusive of, all other rights to indemnification to which he otherwise may be entitled, including any rights to indemnification under the terms of the Director and Officer Liability Policy referenced in Section 2 of this Article VII.

ARTICLE VIII

LIMITED LIABILITY OF DIRECTORS

SECTION 1. - Limited Liability

For all periods during which the Corporation is exempt from taxation pursuant to Section 501(c) of the Internal Revenue Code of 1986, as amended, no Director of the Corporation who serves without compensation, other than reimbursement for actual expenses, shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such Director, unless the act or omission involved willful or wanton conduct.

SECTION 2. - Conduct Standard

As used in this Article VIII, "willful or wanton conduct" means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.

ARTICLE IX

AMENDMENTS

SECTION 1. - Articles of Incorporation

The Articles of Incorporation of the Corporation may be altered, amended, restated or repealed only upon the approval of the Corporate Member, upon the prior resolution of the Board of Directors.

SECTION 2. - Bylaws

These Bylaws may be altered, amended, restated or repealed solely by the action of the Corporate Member.

* * *

Previous Amendments:

4/2/89; 4/14/90; 9/21/2000

These Amended and Restated Bylaws were approved by the Corporate Member on May 16, 2002.

**WRITTEN CONSENT
OF THE
BOARD OF DIRECTORS
OF
RESURRECTION MINISTRIES OF NEW YORK**

I, the undersigned, being the sole remaining director of Resurrection Ministries of New York (the "Corporation"), hereby adopts the following resolutions by written consent in lieu of a meeting:

WHEREAS, the Corporation is a not-for-profit corporation organized under the laws of the State of New York; and

WHEREAS, the Corporation was formed to support the charitable activities of Resurrection Nursing Home, Inc. and Mount Loretto Nursing Home, Inc. (the "Nursing Homes"), each of which operated skilled nursing facilities in Rensselaer and Montgomery Counties, respectively (the "Facilities"); and

WHEREAS, in 2015 the Nursing Homes sold its respective Facilities in a joint sale upon the approval of the Rensselaer and Montgomery County Supreme Courts, as applicable; and

WHEREAS, the Nursing Homes are currently winding up its affairs and dissolving, subject to the consent of the Attorney General's Office; and

WHEREAS, the charitable purpose for which the Corporation is formed has been achieved; and

WHEREAS, the Corporation has no remaining assets or outstanding liabilities; and

WHEREAS the Board of Directors have considered the advisability of voluntarily dissolving the Corporation, subject to the approval of the Attorney General's Office; and

WHEREAS, the Board of Directors, after due consideration, have deemed it advisable and in the best interests of the Corporation to adopt and approve a plan of dissolution and to dissolve; and

WHEREAS, pursuant to Article II, Section 4 of the Corporation's Bylaws the Corporation's sole corporate member, Presence Chicago Hospitals Network (f/k/a Resurrection Health Care) ("PCHN") has the designated authority to approve the dissolution of the Corporation upon recommendation of the Corporation's Board.

NOW THEREFORE, it is

RESOLVED: that the Corporation shall dissolve voluntarily; and it is further

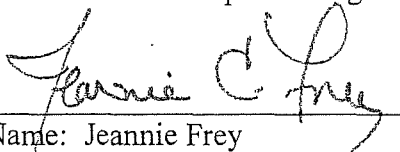
RESOLVED: that the Board of Directors does hereby adopt and approve the Plan of Dissolution, in the form attached hereto; and it is further

RESOLVED: that the Board of Directors hereby authorizes the filing of a Certificate of Dissolution with the New York Department of State, subject to the consent of the Attorney General's Office; and it is further

RESOLVED: that the Board of Directors hereby recommends approval of the Plan of Dissolution to PCHN; and it is further

RESOLVED: that the officers of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, non-material amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned has signed this Consent as of the 2nd day of April, 2017 and directs that it be filed with the minutes of the proceedings of the Corporation.


Name: Jeannie Frey
Title: Secretary

Attachment: Plan of Dissolution

DRAFT

**PLAN OF DISSOLUTION
OF
RESURRECTION MINISTRIES OF NEW YORK**

The Board of Directors of Resurrection Ministries of New York (the "Corporation"), by action of the Board of Directors, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, and the Board having adopted a Plan for a voluntary dissolution of the Corporation, does hereby resolve, that the Corporation be dissolved in accordance with the following Plan:

PROCEDURE FOR DISSOLUTION

- A. Following resolution of the Board of Directors adopting a Plan of Dissolution, the Board shall submit the Plan to a vote of its members for approval.
- B. Approval of the dissolution of the Corporation is required to be obtained from the New York State Department of Health.
- C. The Corporation has no assets and no known liabilities.
- D. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-For-Profit Corporation Law shall be attached thereto.

**WRITTEN CONSENT
OF
PRESENCE CHICAGO HOSPITALS NETWORK
(f/k/a Resurrection Health Care)**

*as sole corporate member of
Resurrection Ministries of New York*

The undersigned, Presence Chicago Hospitals Network (f/k/a Resurrection Health Care) (“PCHN”) being the sole corporate member of Resurrection Ministries of New York (the “Corporation”), hereby adopts the following resolutions by written consent in lieu of a meeting:

WHEREAS, on April 28, 2017 by unanimous written consent of the Corporation’s entire Board of Directors, the Corporation determined it to be in its best interests to wind up its affairs and dissolve pursuant to a Plan of Dissolution, a copy of which is attached hereto; and

WHEREAS, pursuant to Article II, Section 4 of the Corporation’s Bylaws PCHN has the designated authority to approve the dissolution of the Corporation upon recommendation of the Corporation’s Board; and

WHEREAS, the Corporation’s Board of Directors has recommended PCHN approve the dissolution of the Corporation pursuant the Plan of Dissolution; and

WHEREAS, it is the opinion of PCHN that it is in the best interests of this Corporation to dissolve.

NOW, THEREFORE, IT IS

RESOLVED: that the PCHN Board of Directors does hereby adopt and approve the Plan of Dissolution, in the form attached hereto; and it is further

RESOLVED: that the officers of PCHN are hereby directed and authorized to take the necessary steps to effectuate the foregoing resolution.

IN WITNESS WHEREOF, the undersigned have signed this Consent and directs that it be filed with the minutes of the proceedings of PCHN.

By Thomas R. Huberty
Thomas Huberty, M.D.

Date: 5/1/17

By _____
Thomas Russe

Date: _____

By _____
Mark Hanson

Date: _____

By _____
Gary Lipinski, M.D.

Date: _____

\\Senior Services\RMNY\Dissolution Docs\Written Consent of Corp Member (PCHN) approving Plan of Dissolution May 2017.doc

IN WITNESS WHEREOF, the undersigned have signed this Consent and directs that it be filed with the minutes of the proceedings of PCHN.

By _____
Thomas Huberty, M.D.

Date: _____

By  _____
Thomas Russe

Date: 5/1/2017

By _____
Mark Hanson

Date: _____

By _____
Gary Lipinski, M.D.

Date: _____

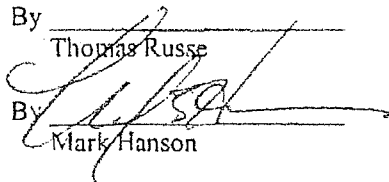
IN WITNESS WHEREOF, the undersigned have signed this Consent and directs that it be filed with the minutes of the proceedings of PCHN.

By _____
Thomas Huberty, M.D.

Date: _____

By _____
Thomas Russe

Date: _____

By  _____
Mark Hanson

Date: 5/2/17

By _____
Gary Lipinski, M.D.

Date: _____

IN WITNESS WHEREOF, the undersigned have signed this Consent and directs that it be filed with the minutes of the proceedings of PCHN.

By _____
Thomas Huberty, M.D.

Date: _____

By _____
Thomas Russe

Date: _____

By _____
Mark Hanson

Date: _____

By *Gary Lipinski*
Gary Lipinski, M.D.

Date: 5/2/2017

DRAFT

**PLAN OF DISSOLUTION
OF
RESURRECTION MINISTRIES OF NEW YORK**

The Board of Directors of Resurrection Ministries of New York (the "Corporation"), by action of the Board of Directors, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, and the Board having adopted a Plan for a voluntary dissolution of the Corporation, does hereby resolve, that the Corporation be dissolved in accordance with the following Plan:

PROCEDURE FOR DISSOLUTION

- A. Following resolution of the Board of Directors adopting a Plan of Dissolution, the Board shall submit the Plan to a vote of its members for approval.
- B. Approval of the dissolution of the Corporation is required to be obtained from the New York State Department of Health.
- C. The Corporation has no assets and no known liabilities.
- D. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-For-Profit Corporation Law shall be attached thereto.

**PLAN OF DISSOLUTION
OF
RESURRECTION MINISTRIES OF NEW YORK**

The Board of Directors of Resurrection Ministries of New York (the "Corporation"), by action of the Board of Directors, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, and the Board having adopted a Plan for a voluntary dissolution of the Corporation, does hereby resolve, that the Corporation be dissolved in accordance with the following Plan:

PROCEDURE FOR DISSOLUTION

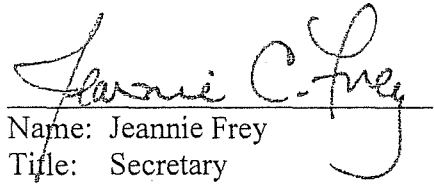
- A. Following resolution of the Board of Directors adopting a Plan of Dissolution, the Board shall submit the Plan to a vote of its members for approval.
- B. Approval of the dissolution of the Corporation is required to be obtained from the New York State Department of Health.
- C. The Corporation has no assets and no known liabilities.
- D. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-For-Profit Corporation Law shall be attached thereto.

CERTIFICATION

STATE OF ILLINOIS)
) SS.:
COUNTY OF CHICAGO)

I, Jeannie Frey, the Secretary of Resurrection Ministries of New York, hereby certify under penalties of perjury that the within Plan of Dissolution was authorized by the Board of Directors by unanimous written consent of the entire Board of Directors on April 28, 2017 and by unanimous written consent of the sole member.

Dated: May 1, 2017


Name: Jeannie Frey
Title: Secretary

**CERTIFICATE OF DISSOLUTION
OF
RESURRECTION MINISTRIES OF NEW YORK**

Under Section 1003 of the Not-for-Profit Corporation Law

THE UNDERSIGNED, being the Secretary of Resurrection Ministries of New York (the "Corporation"), does hereby certify:

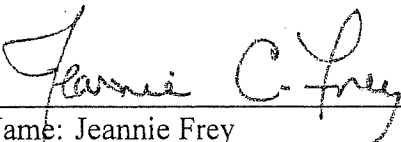
1. The name of this Corporation is Resurrection Ministries of New York.
2. The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of New York on March 29, 1989.
3. The name and address of the sole remaining director and officer of the Corporation is as follows:

<u>Name & Address</u>	<u>Title</u>
Jeannie Frey, Esq. 200 South Wacker Dr. 11 th Floor Chicago, IL 60606	Secretary/ Director

4. The dissolution of the Corporation was authorized by unanimous written consent of the entire Board of Directors and unanimous written consent the Corporation's members.
5. The Corporation elects to dissolve.
6. At the time of dissolution, the Corporation is a charitable corporation.
7. The Corporation will file with the Attorney General a petition for Approval of the Certificate of Dissolution with the original certified Plan of Dissolution.
8. When the Board authorized and the designated member approved the Plan of Dissolution, the Corporation had no assets and no liabilities and did not hold any assets required to be used for a restricted purpose.
9. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate this 1st day of

May, 2017.



Name: Jeannie Frey
Title: Secretary

**CERTIFICATE OF DISSOLUTION
OF
RESURRECTION MINISTRIES OF NEW YORK**

Under Section 1003 of the Not-for-Profit Corporation Law

FILED BY:

**Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604**


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of August, 2017, approves the filing of the Certificate of Dissolution of Resurrection Ministries of New York, dated May 1, 2017.



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel 

Date: June 15, 2017

Subject: Restated Certificate of Incorporation of Mercy Hospital Foundation, Inc.

Mercy Hospital Foundation, Inc. (the Foundation) is a non-profit corporation previously approved to raise funds to support an Article 28 facility, Mercy Hospital.

The Foundation now also desires to raise funds for WNY Catholic Long Term Care, Inc. (d/b/a Father Baker Manor), which is a licensed residential health care facility. As such, the Foundation seeks PHHPC approval of a proposed Restated Certificate of Incorporation of Mercy Hospital Foundation, Inc. that reflects their desire; said Restated Certificate also address changes made to new not-for-profit law related provisions.

Adding WNY Catholic Long Term Care, Inc. to the list of the Foundation's supported organizations requires the consent of PHHPC pursuant to NY N-PCL § 804(a)(i), NY N-PCL § 404(o) and (t), and NY PHL 2801-a(6).

The documents submitted by the corporation have been reviewed. There is no legal objection to the proposed Restated Certificate of Incorporation of Mercy Hospital Foundation, Inc. and it is in legally acceptable form.

Attachments



Phillips Lytle LLP

Via Email (eric.mantey@health.ny.gov)
Eric Mantey, Senior Attorney
Public Health and Health Planning Council
Empire State Plaza
Corning Tower, Room 1805
Albany, NY 10003

May 30, 2017

Re: Mercy Hospital Foundation, Inc.

Dear Mr. Mantey:

On behalf of Mercy Hospital Foundation, Inc. (the "Foundation"), we request your consent to the filing with the Department of State of the attached Restated Certificate of Incorporation. This Restated Certificate of Incorporation, which restates and amends the Certificate of Incorporation, is necessary to add WNY Catholic Long Term Care, Inc. (doing business as Father Banker Manor) as an organization which is supported by the Foundation and amend to address certain new not-for-profit law related provisions.

Thank you for your consideration.

Very truly yours,

Phillips Lytle LLP

By 

Sharon Prise Azurin

MKMsp
Doc #01-3042274.1
Attachment

ATTORNEYS AT LAW

SHARON PRISE AZURIN, PARTNER DIRECT 716 847 7088 SAZURIN@PHILLIPSLYTLLE.COM

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100

NEW YORK: ALBANY, BUFFALO, CHAUTAUGUA, GARDEN CITY, NEW YORK, ROCHESTER | WASHINGTON, DC | CANADA: WATERLOO REGION | PHILLIPSLYTLLE.COM

RESTATED CERTIFICATE OF INCORPORATION

OF

MERCY HOSPITAL FOUNDATION, INC.

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

The undersigned, the Secretary of Mercy Hospital Foundation, Inc., does hereby certify:

1. The name of the corporation is Mercy Hospital Foundation, Inc.
2. The corporation's Certificate of Incorporation was filed by the Department of State on March 9, 1978.
3. The Certificate of Incorporation as now in full force and effect is hereby amended to effect the following changes authorized in Section 801 of the Not-for-Profit Corporation Law:
 - (a) To renumber Paragraph 2. (regarding the corporation's type) as Paragraph 6. and to amend and restate such renumbered Paragraph in its entirety to provide that the corporation is a charitable corporation.
 - (b) To add a new Paragraph 2. (regarding the corporation's classification).
 - (c) To amend and restate Paragraph 3. (regarding the corporation's purposes).
 - (d) To delete in its entirety Paragraph 5. (regarding the location of the corporation's activities).

(e) To renumber Paragraph 4. (regarding the corporation's office location) as Paragraph 5, and to amend and restate such renumbered Paragraph in its entirety.

(f) To add a new Paragraph 4. (regarding various tax matters).

(g) To omit in its entirety Paragraph 6. (regarding the initial directors of the corporation).

(h) To delete in its entirety Paragraph 7. (regarding the duration of the corporation).

(i) To renumber Paragraph 8. (regarding service of process) as Paragraph 9, and to amend and restate such renumbered Paragraph in its entirety.

(j) To delete in its entirety Paragraph 9. (regarding approvals and consents).

(k) To renumber Paragraph 10. (regarding Board of Trustees) as Paragraph 7, and to amend and restate such renumbered Paragraph in its entirety.

(l) To delete in its entirety Paragraph 11. (regarding income of the corporation).

(m) To delete in its entirety Paragraph 12. (regarding propaganda).

(n) To add a new paragraph 10 (regarding restrictions related to the corporation's activities).

(o) To renumber Paragraph 13. (regarding distribution of the corporation's assets upon its dissolution) as Paragraph 8. and to amend and restate such renumbered Paragraph in its entirety.

(p) To delete in its entirety Paragraph 14. (regarding subscribers).

4. The Certificate of Incorporation is hereby restated to read in its entirety as follows:

1. The name of the corporation is Mercy Hospital Foundation, Inc.
2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.
3. The purpose or purposes for which the corporation is formed are as follows:

To conduct activities for charitable, educational, literary or scientific purposes for the benefit of Mercy Hospital of Buffalo ("Mercy Hospital") and WNY Catholic Long Term Care, Inc. doing business as Father Baker Manor ("Father Baker"). The object of the corporation shall be to effectuate in the following respects:

(a) To acquire, receive, solicit, hold, maintain, invest and reinvest, money and other property, real, personal, tangible or intangible and, from time to time, disburse the same and/or the income therefrom to Mercy Hospital and Father Baker, at either of their requests, to be used exclusively in furtherance of their non-profit, educational, scientific or charitable purposes which are set forth in their respective charters.

(b) To conduct or participate in any fundraising process or other activity that advances the purposes of the corporation.

~~(c) To assist in the financing of either of Mercy Hospital's or Father Baker's facilities, operations, buildings, or equipment which are employed in carrying out said scientific, educational or charitable purposes, but no such money or property shall be received, acquired or accepted if it be conditioned or limited in such manner as shall require the disposition of the income or its principal to any person or organization other than Mercy Hospital or Father Baker or for purposes other than those stated herein.~~

(d) To do all and everything necessary, suitable, and proper for the accomplishment of any of the purposes or the attainment of any of the powers hereinbefore set forth and to the same extent as natural persons might or could do, either alone or through the agency of other corporations, banks, organizations, foundations, funds, institutions, governmental bodies or individuals.

The corporation is formed to engage in an activity or for a purpose requiring consent or approval of a state official, department, board, agency or other body. Such consent or approval is attached.

4. The following provisions shall govern the regulation and conduct of the affairs of the corporation:

(a) No part of the net earnings of the corporation shall inure to the benefit of any trustee, director or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation) and no trustee, director or officer of

the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation; except the corporation may make payments, distributions or donations for charitable, religious, educational and scientific purposes to organizations that are exempt from Federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), described in Section 501(c)(3) of the Code and described in Section 509(a)(1) or 509(a)(2) of the Code.

(b) No substantial part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation; nor shall it in any manner participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of any candidate for public office.

(c) Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from taxation under Section 501(c)(3) of the Code and by an organization, contributions to which are deductible under such Section.

(d) Upon the dissolution or liquidation of the corporation or the winding up of its affairs, whether voluntary, involuntary or by operation of law, none of the income, property or assets of the corporation shall ever be distributed to, or divided among, any officer, director, trustee, creator, organizer or contributor to the corporation, nor ever be used for or inure to the benefit of any private individual within the meaning of Section 501(c)(3) of the Code.

(e) Notwithstanding any other provision of this Certificate of Incorporation, if at any time or times the corporation is a private foundation within the meaning of Section 509 of the Code, then during such time or times:

(i) The corporation shall distribute all of its income for each taxable year and, if necessary, so much of its

principal at such time and in such manner as not to subject the corporation to tax under Section 4942 of the Code;

(ii) The corporation shall not engage in any act of self-dealing, as defined in Section 4941(d) of the Code;

(iii) The corporation shall not retain any excess business holdings, as defined in Section 4943(c) of the Code;

(iv) The corporation shall not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; and

(v) The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

5. The office of the corporation is to be located in Erie County, New York.

6. The corporation shall be a charitable corporation under Section 201 of the Not-For-Profit Corporation Law.

7. The Board of Directors of the corporation shall consist of voting and non-voting members as designated in the By-laws of the corporation. The number, term, manner of election and method of removal of voting and non-voting Directors shall be as provided in such By-laws.

8. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to Mercy Hospital, Father Baker or their successors, provided that such distributee(s) shall then qualify under Section 501(c)(3) and Sections 509(a)(1) or 509(a)(2) of the Code, pursuant to a plan of distribution approved by the Board of Directors and subject to any

approvals, consents or proceedings required under applicable governing law regarding the dissolution of not-for-profit corporations. If none of the distributees shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) and Sections 509(a)(1) or 509(a)(2), pursuant to a plan of distribution approved by Mercy Hospital, and subject to any approvals, consents or proceedings required under applicable governing law regarding the dissolution of not-for-profit corporations.

9. The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against the corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any such process served upon him or her is c/o President, Catholic Health System, Inc., 144 Genesee Street, 6th Floor West, Buffalo, NY 14203.

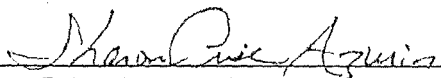
10. Nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (the "PHL"); (2) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a

residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL.

Additionally, nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

5. The amendments and restatement of the Certificate of Incorporation were authorized at a meeting of the Board of Directors by a vote of the majority of the Board of Directors followed by a meeting and vote of the sole member of the corporation.

IN WITNESS WHEREOF, the undersigned has made and signed this Certificate as of the 30th day of May, 2017.



Sharon Prise Azurin, Secretary

RESTATED CERTIFICATE OF INCORPORATION

OF

MERCY HOSPITAL FOUNDATION, INC.

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

Filer
Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, New York 14203

CT-07

1-040419000-15

CERTIFICATE OF AMENDMENT OF
THE CERTIFICATE OF INCORPORATION
OF
MERCY HOSPITAL FOUNDATION, INC.

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

The undersigned, for purposes of amending the Certificate of Incorporation of Mercy Hospital Foundation, Inc. hereby certifies that:

FIRST: The name of the corporation is MERCY HOSPITAL FOUNDATION, INC.

SECOND: The certificate of incorporation of the corporation was filed by the Department of State on March 9, 1978.

THIRD: The corporation was formed under the Not-for-Profit Corporation Law.

FOURTH: The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

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

SIXTH: The amendments of the certificate of incorporation of the corporation effected by this certificate of amendment are to (a) eliminate the designation of separate classes of Trustees of the corporation, and (b) revise the distribution of assets upon dissolution of the corporation.

SEVENTH: To accomplish the foregoing amendment:

a. Article 10 of the certificate of incorporation of the corporation, relating to the election of trustees, is hereby amended to read as follows:

The Board of Trustees of the corporation shall consist of voting and non-voting members as designated in the By Laws of the Corporation. The number, term, manner of election and method of removal of voting and non-voting Trustees shall be as provided in such By Laws.

and

b. Article 13 of the certificate of incorporation of the corporation, relating to the distribution of assets of the corporation upon dissolution is hereby amended to read as follows:

In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to the Mercy Hospital of Buffalo; provided however that if said Mercy Hospital shall not constitute an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or a corresponding provision of the then applicable internal revenue law of the United States of America) (an "Exempt Organization") at the time of such distribution, such assets and property shall be distributed to such Exempt Organization as determined by the Board of Trustees of the corporation and approved by order of a Justice of the State Supreme Court.

EIGHTH: The foregoing amendment of the certificate of incorporation of the corporation was authorized at a meeting of the Board of Directors at which a quorum was present, by the vote of at least a majority of the entire Board of Directors the corporation having no members entitled to vote on said amendment.

NINTH: The Secretary of State is designated as the agent of the corporation upon whom process against the corporation may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the corporation served upon him is:

565 Abbott Road, Buffalo, NY 14220.

Signed on ^{March 17th} ~~January 18~~ 2004


Lynn M. Bufalino, President

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CT CORPORATION

REG. 938 8343 P. 25

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CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION

OF

MERCY HOSPITAL FOUNDATION, INC.

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

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2004 APR 19 AM 10:10

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STATE OF NEW YORK
DEPARTMENT OF STATE

FILED APR 19 2004

TAX \$

BY: *JAL*

Eric

Filed By:

Hiscock & Barclay LLP
1100 M&T Center
Three Fountain Plaza
Buffalo, NY 14203
(716) 566-1408

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040419000215

CERTIFICATE OF INCORPORATION

OF

MERCY HOSPITAL 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:

1. The name of the corporation is
MERCY HOSPITAL FOUNDATION, INC.
2. The corporation is a Type B corporation.
3. The purposes for which the corporation is to be

formed are:

To carry on, conduct activities for charitable, educational, literary or scientific purposes for the benefit of the Mercy Hospital of Buffalo, 565 Abbott Road, Buffalo, New York 14220.

The object of the corporation shall be to effectuate in the following respects:

(a) To acquire, receive, solicit, hold, maintain, invest and reinvest, money and other property, real, personal, tangible or intangible and, from time to time, disburse the same and/or the income therefrom to Mercy Hospital, located at 565 Abbott Road, Buffalo, New York, at its request, to be used exclusively in furtherance of said hospital's non-profit, educational, scientific or charitable purposes which are set forth in its Charter.

(b) To assist in the financing of its hospital facilities, operations, buildings, or equipment which are employed in carrying out said scientific, educational or charitable purposes, but no such money or property shall be received, acquired or accepted if it be conditioned or limited in such manner as shall require the disposition of the income or its principal to any person or organization other than the said Mercy Hospital or for purposes other than those stated herein.

(c) To do all and everything necessary, suitable, and proper for the accomplishment of any of the purposes or the attainment of any of the powers hereinbefore set forth and to the same extent as natural persons might or could do, either alone or through the agency of other corporations, banks, organizations, foundations, funds, institutions, governmental bodies or individuals.

4. The office of the corporation shall be located in the City of Buffalo, County of Erie and State of New York.

5. The corporation's activities will be conducted primarily in the Eighth Judicial District of the State of New York.

6. The names and addresses of the initial Directors are:

Sister Mary Annunciata Kelleher
Our Lady of Mercy Generalate
S-5245 Murphy Road
Orchard Park, N. Y. 14127

2

Primo Casagrande
231 Pinewood Drive
West Seneca, N. Y. 14224

Ross J. Eckert
46 North Lane
Orchard Park, N. Y. 14127

Howard T. Ford
57 Meadowbrook Road
Orchard Park, N. Y. 14127

Joseph A. Prezio, M.D.
3814 Windover Drive
Hamburg, N. Y. 14075

Sister Sheila Marie Walsh
Mercy Hospital
565 Abbott Road
Buffalo, N. Y. 14220

Albert H. Schneider
60 H Oakbrook Drive
Williamsville, N. Y. 14221

Irving R. Zeman
50 Rolling Hills Drive
Buffalo, New York 14224

7. The duration of the corporation shall be perpetual.
8. The Post Office address to which the Secretary of State shall mail a copy of any notice required by law is: 565 Abbott Road, Buffalo, New York 14220.
9. All approvals or consents required to be obtained are endorsed upon or annexed to this Certificate.

10. There shall be two classes of Trustees of the Mercy Hospital Foundation, Inc. Class One shall consist of members of the Board of Directors of the Mercy Hospital of Buffalo. Their total representation on the Board of Trustees of Mercy Hospital Foundation, Inc. shall not exceed 25% of the total number of Trustees of the Mercy Hospital Foundation, Inc. Class Two shall consist of individuals from the community who are of good reputation and who are not members of the Board of Directors of the Mercy Hospital of Buffalo, Kenmore, Mercy Hospital or St. Jerome's Hospital, of Batavia.

11. No part of the income of the corporation shall inure to the benefit of any member, Trustee, Directors, officer of the corporation, or any private individual, and no member, Trustee, officer of the corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

12. No part of the activities of the corporation shall be carrying on propaganda or otherwise attempting to influence legislation, or participating in, or intervening in any political campaign on behalf of any candidate for public office.

13. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to such organizations which qualify under

Section 501(c)3 of the Internal Revenue Code of 1954, as amended,
subject to an Order of a Justice of the Supreme Court of the State
of New York.

14. That each of the subscribers is of the age of
19 years or over.

IN WITNESS WHEREOF, this Certificate has been signed
by each of the Subscribers, this 30 day of January, 1978.

Sister Mary Annunciata Kelleher RSM
SISTER MARY ANNUNCIATA KELLEHER

Primo Casagrande
PRIMO CASAGRANDE

Ross J. Eckert
ROSS J. ECKERT

Howard T. Ford
HOWARD T. FORD

Joseph C. Prezio, M.D.
JOSEPH C. PREZIO, M.D.

Sister Sheila Marie Walsh
SISTER SHEILA MARIE WALSH

Albert H. Schneider
ALBERT H. SCHNEIDER

Irving R. Zeman
IRVING R. ZEMAN

5

STATE OF NEW YORK :
: SS.
COUNTY OF ERIE :

On this 20th day of January, 1978, before me, the sub-
scriber, personally appeared SISTER MARY ANNUNCIATA KELLEHER, to me
known and known to me to be the same person described in and who
executed the foregoing Certificate, and she duly acknowledged to me
that she executed the same.

Sister Mary Kenneth
Notary Public

[REDACTED] 78

STATE OF NEW YORK :
: SS.
COUNTY OF ERIE :

On this 12 day of Jan, 1978, before me, the sub-
scriber personally appeared PRIMO CASAGRANDE, to me known and known
to me to be the same person described in and who executed the fore-
going Certificate, and he duly acknowledged to me that he executed
the same.

Marian C Lawless
Notary Public

MARIAN C. LAWLESS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 31, 1978

6

STATE OF NEW YORK :
COUNTY OF ERIE : SS.

On this 11 day of Jan 1978, before me the subscriber, personally appeared ROSS J. ECKERT, to me known and known to me to be the same person described in and who executed the foregoing Certificate, and she duly acknowledged to me that she executed the same.

MARION C. LAWLESS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 26, 1979

Marion C. Lawless

Notary Public

STATE OF NEW YORK :
COUNTY OF ERIE : SS.

On this 23 day of January 1978, before me the subscriber, personally appeared HOWARD T. FORD, to me known, and known to me to be the same person described in and who executed the foregoing Certificate, and he duly acknowledged to me that he executed the same.

Mary L. Brude

Notary Public

MARY L. BRUDE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1979

STATE OF NEW YORK :
COUNTY OF ERIE : SS.

On this 11 day of Jan 1978, before me the subscriber, personally appeared JOSEPH A. PREZIO, M.D., to me known, and known to me to be the same person described in and who executed the foregoing Certificate, and he duly acknowledged to me that he executed the same.

Marion C. Lawless

MARION C. LAWLESS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 20, 1978

Notary Public

STATE OF NEW YORK :
COUNTY OF ERIE : SS.

On this 11 day of Jan 1978, before me the subscriber, personally appeared ROSS J. ECKERT, to me known and known to me to be the same person described in and who executed the foregoing Certificate, and she duly acknowledged to me that she executed the same.

MARION C. LAWLESS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1979

Marion C. Lawless
Notary Public

STATE OF NEW YORK :
COUNTY OF ERIE : SS.

On this 23 day of January 1978, before me the subscriber, personally appeared HOWARD T. FORD, to me known, and known to me to be the same person described in and who executed the foregoing Certificate, and he duly acknowledged to me that he executed the same.

Mary L. Brude
Notary Public

MARY L. BRUDE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1979

STATE OF NEW YORK :
COUNTY OF ERIE : SS.

On this 11 day of Jan 1978, before me the subscriber, personally appeared JOSEPH A. PREZIO, M.D., to me known, and known to me to be the same person described in and who executed the foregoing Certificate, and he duly acknowledged to me that he executed the same.

Marion C. Lawless
Notary Public

MARION C. LAWLESS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1979

I, William J. Cotroneo a Justice of
the Supreme Court of the Eighth Judicial District, do hereby approve
the foregoing Certificate of Incorporation, and consent that the
same be filed.

Dated: February 27 1978.

William J. Cotroneo
JUSTICE OF THE SUPREME COURT

9

INCORPORATORS OF
MERCY HOSPITAL FOUNDATION, INC.

<u>NAMES</u>	<u>DATE OF BIRTH</u>
SISTER MARY ANNUNCIATA KELLEHER	April 4, 1926
PRIMO CASAGRANDE	October 22, 1913
ROSS ECKERT	February 3, 1948
HOWARD FORD	June 6, 1929
JOSEPH PREZIO, M.D.	December 30, 1933
SISTER SHEILA MARIE	June 15, 1938
ALBERT SCHNEIDER	March 22, 1936
IRVING ZEMAN	May 16, 1920

10

Kenneth J. Braun
Sheriff

Thomas F. Higgins
Undersheriff



Ten Delaware Avenue
Buffalo, New York 14202
(716) 846-7600

Sheriff of Erie County

Re: MERCY HOSPITAL FOUNDATION, INC.

Dear Sir:

The records of the Erie County Sheriff's Department disclose no reference identifiable with the following listed persons who executed a certificate of incorporation for the above-referenced corporation, dated January 30, 1978, nor with the persons listed therein as directors until the first annual meeting.

SISTER MARY ANNUNCIATA KELLEHER
PRIMO CASAGRANDE
ROSS ECKERT
HOWARD FORD
JOSEPH PREZIO, M.D.
SISTER SHEILA MARIE
ALBERT SCHNEIDER
IRVING ZEMAN

This identification is by name only, and is not to be construed as a positive identification. Please be advised that the files of the Sheriff's Department contain arrests only when made by our Department or where a person is or has been in the custody of the Sheriff of Erie County.

Very truly yours,

KENNETH J. BRAUN,
SHERIFF OF ERIE COUNTY

By: CHARLES P. FINK, CHIEF
IDENTIFICATION BUREAU

cc: Loretta Chrosniak, Clerk
Supreme Court, Special Term





STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N.Y. 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

Telephone: 474-7206

February 22, 1978

*Has read
Mercy Hospital of Buffalo NFP
2/1/57 Erie Co NFP*

William J. Cotter, Esq.
994 Ellicott Square Building
Buffalo, New York 14203

Dear Mr. Cotter:

Re: Mercy Hospital Foundation, Inc. *3/7 2*

Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By *[Signature]*
JOHN E. LYNCH
Assistant Attorney General

*we also have
Mercy Hospital of Auburn
8/13/77 Cayuga NFP
et al*

RECEIVED
FEB 27 1978
W. J. COTTER

12

RESOLUTION

WHEREAS, there is a proposed formation of a new corporation pursuant to the Laws of the State of New York, with the name of MERCY HOSPITAL FOUNDATION, INC.; and

WHEREAS, the Secretary of State of the State of New York has requested the expression of an opinion by this Board concerning the similarity of the name of the proposed corporation with the name of this corporation; and

WHEREAS, this corporation has considered the matter, be it

RESOLVED, that the name of the new corporation does not so nearly resemble the name of this corporation as to be calculated to deceive and, therefore, this corporation consents to the use of the name of the MERCY HOSPITAL FOUNDATION, INC.

Sister Mary Alexander Kelleher

PRESIDENT, MERCY HOSPITAL OF BUFFALO

Sister Mary Edward Ryan

SECRETARY, MERCY HOSPITAL OF BUFFALO

13

THIS IS TO CERTIFY that the foregoing is a true copy
of the Resolution duly adopted by the Board of Directors of the
MERCY HOSPITAL OF BUFFALO, on January 31, 1978, at 565 Abbott Road,
Buffalo, New York.

Edward Ryan
Secretary

14

CERTIFICATE OF INCORPORATION

-OF-

MERCY HOSPITAL
FOUNDATION, INC.

3/2/78
Dated: _____ 1978

WILLIAM J. COTTER, P.C.
Attorney at Law

994 Ellicott Square Bldg.
Buffalo, New York 14203

15

15
STATE OF NEW YORK
DEPARTMENT OF STATE
TAX : *None*
FILING FEE : *50*

FILED MAR 9 - 1978

Handwritten
Secretary of State

Erie
Type B


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of August, 2017, approves the filing of the Restated Certificate of Incorporation of Mercy Hospital Foundation, dated May 30, 2017.



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter,
General Counsel 

Date: June 29, 2017

Subject: Proposed Change of Assumed Names of Hudson Valley Regional Community Health Centers, Inc.

Project 161431 involved the establishment of Hudson Valley Regional Community Health Centers, Inc. as the new operator of a diagnostic and treatment center located at 15 Mount Ebo Road South, Brewster, New York. The project also involved the addition of an extension clinic at 301 Manchester Road, Poughkeepsie, New York. The PHHPC final approval letter for this project was sent to the applicant on March 31, 2017.

Two documents included for approval within the application were two certificates of assumed name for Hudson Valley Regional Community Health Centers, Inc. to use the names, Hudson Valley Regional Community Health Centers, Inc. – Dutchess, and Hudson Valley Regional Community Health Centers, Inc. – Putnam.

While these assumed names were acceptable to the Department, the New York State Department of State objected to the use of "Inc." in the assumed names.

The applicant has chosen to remove the indicator, "Inc." from both certificates of assumed name so as to comply with the Department of State's filing requirements. Therefore, in accordance with 10 NYCRR § 600.11(a)(3), the applicant submits to PHHPC for its approval of two certificates of assumed name so that Hudson Valley Regional Community Health Centers, Inc. may use the following assumed names:

1. Hudson Valley Regional Community Health Centers – Dutchess
2. Hudson Valley Regional Community Health Centers – Putnam.

There is no legal objection to the proposed assumed name changes, and the proposed Certificates of Assumed Name are in legally acceptable form.

Attachments.



Division of Corporations, State Records and Uniform Commercial Code

New York State Department of State Division of Corporations, State Records and Uniform Commercial Code One Commerce Plaza 99 Washington Avenue Albany, NY 12231 www.dos.ny.gov

Certificate of Assumed Name

(Pursuant to General Business Law §130)

1. REAL NAME OF ENTITY:

Hudson Valley Regional Community Health Centers, Inc.

1a. FICTITIOUS NAME, IF ANY, OF FOREIGN ENTITY (Not Assumed Name):

2. THE ENTITY WAS FORMED OR AUTHORIZED UNDER THE FOLLOWING NEW YORK LAW (Check one):

- Business Corporation Law, Limited Liability Company Law, Religious Corporations Law, Education Law, Not-for-Profit Corporation Law, Revised Limited Partnership Act, Other (specify law):

3. ASSUMED NAME OF ENTITY:

Hudson Valley Regional Community Health Centers - Dutchess

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST INCLUDE NUMBER AND STREET). IF NONE, CHECK THIS BOX AND PROVIDE OUT-OF- STATE ADDRESS:

15 Mt. Ebo Road South, Brewster, New York 10509

5. COUNTY(IES) IN WHICH ENTITY DOES OR INTENDS TO DO BUSINESS:

- ALL COUNTIES (or check applicable county(ies) below) Albany, Cattaraugus, Chenango, Delaware, Franklin, Hamilton, Lewis, Montgomery, Allegany, Cayuga, Clinton, Dutchess, Fulton, Herkimer, Livingston, Nassau, Bronx, Chautauqua, Columbia, Erie, Genesee, Jefferson, Madison, New York, Broome, Chemung, Cortland, Essex, Greene, Kings, Monroe, Niagara, Oneida, Orleans, Queens, St. Lawrence, Schuyler, Sullivan, Warren, Wyoming, Onondaga, Oswego, Rensselaer, Saratoga, Seneca, Tioga, Washington, Yates, Ontario, Otsego, Richmond, Schenectady, Steuben, Tompkins, Wayne, Orange, Putnam, Rockland, Schoharie, Suffolk, Ulster, Westchester

6. ADDRESS OF EACH LOCATION, INCLUDING NUMBER AND STREET, IF ANY, OF EACH PLACE WHERE THE ENTITY CARRIES ON, CONDUCTS OR TRANSACTS BUSINESS IN NEW YORK STATE. (Use page 2 if needed. The address(es) must be a number and street, city, state and zip code. The address(es) must be within the county(ies) indicated in paragraph 5.) If none, check this box: No New York State Business Location.

301 Manchester Road, Poughkeepsie, New York 12603

Print or Type Name of Signer: Steven H. Mosenson

Signature:

Capacity of Signer (Check one): Authorized Person, Officer of the Corporation, General Partner of the Limited Partnership, Member of the Limited Liability Company, Manager of the Limited Liability Company

Steven H. Mosenson
Attorney at Law
114 Coleman Road
Walden, New York 12586
845-707-1523
Steven.mosenson@gmail.com

June 20, 2017

New York State Department of Health
Public Health and Planning Council
Center for Health Care Facility Planning, Licensure and Finance
Attn: Colleen M. Leonard, Executive Secretary
Corning Tower
Albany, New York 12237

Re: Hudson Valley Regional Community Health Centers, Inc.
CON 161431 E. Approved December 8, 2016

Dear Sir / Madam:

I am the Attorney and Incorporator of the above-referenced Diagnostic and Treatment Center, whose Certificate of Need for establishment was approved by the Public Health and Planning Council on December 8, 2016. I am writing to seek revised letters approving the new corporation's Certificates of Assumed Name, in order to satisfy requirements of the New York Department of State for such assumed names.

Accompanying the establishment approval was the Council's approval for the new corporation to file two Assumed Name Certificates with the New York State Department of State. Those two letters, copies of which are attached, approved the filing of assumed names as follows:

Hudson Valley Regional Community Health Centers, Inc. – Putnam

Hudson Valley Regional Community Health Centers, Inc. – Dutchess

Upon filing the Certificates of Assumed Name with the New York State Department of State for approval, I was informed by the Department that New York law prohibited the use of the corporate indicator ("Inc.") in the assumed name. I was directed to obtain revised letters of approval from the Department of Health, approving the two Assumed Name Certificates without the "Inc." included in the assumed name.

I have attached the two revised, executed Certificates of Assumed Name for the corporation that do not include the "Inc.", reflecting the following names:

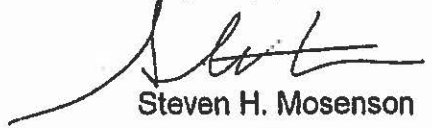
Hudson Valley Regional Community Health Centers – Putnam

Hudson Valley Regional Community Health Centers – Dutchess

Accordingly, please issue new approval letters so that these Certificates of Assumed Name can be filed and approved by the Department of State.

Please contact me if you require additional information. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Mosenson', written over a horizontal line.

Steven H. Mosenson
Attorney / Incorporator

Cc: Hudson Valley Regional Community Health Centers, Inc.

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

March 31, 2017

Howard Yager
Chairman-Designate
Hudson Valley Regional Community Health Centers, Inc.
15 Mount Ebo Road, South
Brewster, New York 10509

Re: Certificate of Assumed of Name Hudson Valley Regional Community Health Centers,
Inc. - Putnam

Dear Mr. Yager:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 8th day of December, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Assumed Name of Hudson Valley Regional Community Health Centers, Inc., dated as attached.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl

22



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

March 31, 2017

Howard Yager
Chairman-Designate
Hudson Valley Regional Community Health Centers, Inc.
15 Mount Ebo Road, South
Brewster, New York 10509

Re: Certificate of Assumed of Name Hudson Valley Regional Community Health Centers,
Inc. - Dutchess

Dear Mr. Yager:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 8th day of December, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Assumed Name of Hudson Valley Regional Community Health Centers, Inc., dated as attached.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of August, 2017, approves the filing of the Certificate of Assumed Name of Hudson Valley Regional Community Health Center, Inc., Hudson Valley Regional Community Health Centers – Dutchess hereafter to be known as dated as attached.



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter,
General Counsel 

Date: June 29, 2017

Subject: Proposed Change of Assumed Names of Hudson Valley Regional Community Health Centers, Inc.

Project 161431 involved the establishment of Hudson Valley Regional Community Health Centers, Inc. as the new operator of a diagnostic and treatment center located at 15 Mount Ebo Road South, Brewster, New York. The project also involved the addition of an extension clinic at 301 Manchester Road, Poughkeepsie, New York. The PHHPC final approval letter for this project was sent to the applicant on March 31, 2017.

Two documents included for approval within the application were two certificates of assumed name for Hudson Valley Regional Community Health Centers, Inc. to use the names, Hudson Valley Regional Community Health Centers, Inc. – Dutchess, and Hudson Valley Regional Community Health Centers, Inc. – Putnam.

While these assumed names were acceptable to the Department, the New York State Department of State objected to the use of "Inc." in the assumed names.

The applicant has chosen to remove the indicator, "Inc." from both certificates of assumed name so as to comply with the Department of State's filing requirements. Therefore, in accordance with 10 NYCRR § 600.11(a)(3), the applicant submits to PHHPC for its approval of two certificates of assumed name so that Hudson Valley Regional Community Health Centers, Inc. may use the following assumed names:

1. Hudson Valley Regional Community Health Centers – Dutchess
2. Hudson Valley Regional Community Health Centers – Putnam.

There is no legal objection to the proposed assumed name changes, and the proposed Certificates of Assumed Name are in legally acceptable form.

Attachments.



Division of Corporations, State Records and Uniform Commercial Code

New York State Department of State Division of Corporations, State Records and Uniform Commercial Code One Commerce Plaza 99 Washington Avenue Albany, NY 12231 www.dos.ny.gov

Certificate of Assumed Name

(Pursuant to General Business Law §130)

1. REAL NAME OF ENTITY:

Hudson Valley Regional Community Health Centers, Inc.

1a. FICTITIOUS NAME, IF ANY, OF FOREIGN ENTITY (Not Assumed Name):

2. THE ENTITY WAS FORMED OR AUTHORIZED UNDER THE FOLLOWING NEW YORK LAW (Check one):

- Business Corporation Law, Limited Liability Company Law, Religious Corporations Law, Education Law, Not-for-Profit Corporation Law, Revised Limited Partnership Act, Other (specify law):

3. ASSUMED NAME OF ENTITY:

Hudson Valley Regional Community Health Centers - Putnam

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST INCLUDE NUMBER AND STREET). IF NONE, CHECK THIS BOX AND PROVIDE OUT-OF- STATE ADDRESS:

15 Mt. Ebo Road South, Brewster, New York 10509

5. COUNTY(IES) IN WHICH ENTITY DOES OR INTENDS TO DO BUSINESS:

- ALL COUNTIES (or check applicable county(ies) below) Albany, Cattaraugus, Chenango, Delaware, Franklin, Hamilton, Lewis, Montgomery, Allegany, Cayuga, Clinton, Dutchess, Fulton, Herkimer, Livingston, Nassau, Bronx, Chautauqua, Columbia, Erie, Genesee, Jefferson, Madison, New York, Broome, Chemung, Cortland, Essex, Greene, Kings, Monroe, Niagara, Oneida, Orleans, Queens, St. Lawrence, Schuyler, Sullivan, Warren, Wyoming, Onondaga, Oswego, Rensselaer, Saratoga, Seneca, Tioga, Washington, Yates, Ontario, Otsego, Richmond, Schenectady, Steuben, Tompkins, Wayne, Orange, Putnam, Rockland, Schoharie, Suffolk, Ulster, Westchester

6. ADDRESS OF EACH LOCATION, INCLUDING NUMBER AND STREET, IF ANY, OF EACH PLACE WHERE THE ENTITY CARRIES ON, CONDUCTS OR TRANSACTS BUSINESS IN NEW YORK STATE. (Use page 2 if needed. The address(es) must be a number and street, city, state and zip code. The address(es) must be within the county(ies) indicated in paragraph 5.) If none, check this box: No New York State Business Location.

15 Mt. Ebo Road South, Brewster, New York 10509

Print or Type Name of Signer: Steven H. Mosenson

Signature: [Handwritten Signature]

- Capacity of Signer (Check one): Authorized Person, Officer of the Corporation, General Partner of the Limited Partnership, Member of the Limited Liability Company, Manager of the Limited Liability Company

Steven H. Mosenson
Attorney at Law
114 Coleman Road
Walden, New York 12586
845-707-1523
Steven.mosenson@gmail.com

June 20, 2017

New York State Department of Health
Public Health and Planning Council
Center for Health Care Facility Planning, Licensure and Finance
Attn: Colleen M. Leonard, Executive Secretary
Corning Tower
Albany, New York 12237

Re: Hudson Valley Regional Community Health Centers, Inc.
CON 161431 E, Approved December 8, 2016

Dear Sir / Madam:

I am the Attorney and Incorporator of the above-referenced Diagnostic and Treatment Center, whose Certificate of Need for establishment was approved by the Public Health and Planning Council on December 8, 2016. I am writing to seek revised letters approving the new corporation's Certificates of Assumed Name, in order to satisfy requirements of the New York Department of State for such assumed names.

Accompanying the establishment approval was the Council's approval for the new corporation to file two Assumed Name Certificates with the New York State Department of State. Those two letters, copies of which are attached, approved the filing of assumed names as follows:

Hudson Valley Regional Community Health Centers, Inc. – Putnam

Hudson Valley Regional Community Health Centers, Inc. – Dutchess

Upon filing the Certificates of Assumed Name with the New York State Department of State for approval, I was informed by the Department that New York law prohibited the use of the corporate indicator ("Inc.") in the assume name. I was directed to obtain revised letters of approval from the Department of Health, approving the two Assumed Name Certificates without the "Inc." included in the assumed name.

I have attached the two revised, executed Certificates of Assumed Name for the corporation that do not include the "Inc.", reflecting the following names:

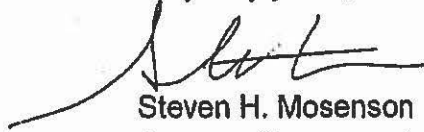
Hudson Valley Regional Community Health Centers – Putnam

Hudson Valley Regional Community Health Centers – Dutchess

Accordingly, please issue new approval letters so that these Certificates of Assumed Name can be filed and approved by the Department of State.

Please contact me if you require additional information. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Mosenson', with a long horizontal flourish extending to the left.

Steven H. Mosenson
Attorney / Incorporator

Cc: Hudson Valley Regional Community Health Centers, Inc.

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

March 31, 2017

Howard Yager
Chairman-Designate
Hudson Valley Regional Community Health Centers, Inc.
15 Mount Ebo Road, South
Brewster, New York 10509

Re: Certificate of Assumed of Name Hudson Valley Regional Community Health Centers,
Inc. - Putnam

Dear Mr. Yager:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 8th day of December, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Assumed Name of Hudson Valley Regional Community Health Centers, Inc., dated as attached.

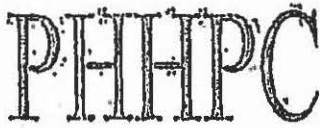
Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary

/cl

22



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

March 31, 2017

Howard Yager
Chairman-Designate
Hudson Valley Regional Community Health Centers, Inc.
15 Mount Ebo Road, South
Brewster, New York 10509

Re: Certificate of Assumed of Name Hudson Valley Regional Community Health Centers,
Inc. - Dutchess

Dear Mr. Yager:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 8th day of December, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Assumed Name of Hudson Valley Regional Community Health Centers, Inc., dated as attached.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl

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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of August 2017, approves the filing of the Certificate of Assumed Name of Hudson Valley Regional Community Health Centers, Inc., hereafter to be known as Hudson Valley Regional Community Health Centers - Putnam, dated as attached.



**Department
of Health**

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: June 15, 2017

Subject: Certificate of Amendment of the Certificate of Incorporation of Chase Memorial Nursing Home Company, Inc.

The applicant seeks approval over their proposed Certificate of Amendment of the Certificate of Incorporation of Chase Memorial Nursing Home Company, Inc.

The corporation's purposes are not changing, and therefore, consent is not required pursuant to Not for Profit Corporation Law. However, since the corporation operates an Article 28-A Nursing Home Company, NY PHL 2854 and 2855 require that amendments to a Nursing Home Company's certificate of incorporation require Commissioner and PHHPC approval for filing.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation of Chase Memorial Nursing Home Company, Inc. and it is in legally acceptable form.

Attachments

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
CHASE MEMORIAL NURSING HOME COMPANY, INC.

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

1. The name of the Corporation is Chase Memorial Nursing Home Company, Inc.
2. The Certificate of Incorporation of the Corporation was filed with the Department of State on January 19, 1968 and the law under which the Corporation was formed is the Membership Corporations Law of the State of New York and the Public Health Law of the State of New York.
3. The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The Corporation is a Type B corporation under Section 201 of the New York Not-for-Profit Corporation Law.
4. The Certificate of Incorporation is hereby amended as follows:

Paragraph V of the Certificate of Incorporation, as amended, which sets for the number of directors of the Corporation, shall be amended to read as follows:

"V. The number of directors of the corporation shall be set forth in the Bylaws of the Corporation. The directors shall be elected as set forth in the Bylaws of the Corporation."
5. This Certificate of Incorporation was authorized by the unanimous consent of the board of directors of the Corporation at a meeting of board of directors held on ~~March 19~~ April, 2017.
6. The Secretary of the State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process so served is:

One Terrace Heights
P.O. Box 250
New Berlin, New York 13411
Attention: Administrator

IN WITNESS WHEREOF, the undersigned have subscribed this amended and restated Certificate of Incorporation on this 19th day of April, 2017.

J. J. Rogue
Name:
Title: President

Barry D. Strong
Name:
Title: Secretary

4823-1244-7812, v. 1

HINMAN
STRAUB

ATTORNEYS AT LAW

121 STATE STREET
ALBANY, NEW YORK 12207-1693
TEL: 518-436-0751
FAX: 518-436-4751

May 12, 2017

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Rm 1805
Empire State Plaza
Albany, New York 12237
Email: PHHPC@health.ny.gov

Re: Certificate of Amendment – Chase Memorial Nursing Home Company, Inc.

Dear Ms. Leonard:

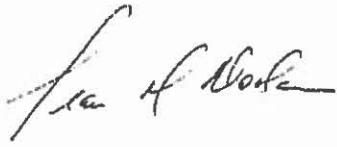
I am writing to request the written consent of the New York State Public Health and Health Planning Council (PHHPC) to the filing with the New York Secretary of State of the proposed Certificate of Amendment to the Certificate of Incorporation of Chase Memorial Nursing Home Company, Inc., enclosed as Exhibit 1.

The consent of the Commissioner of Health and PHHPC is required for the filing of the Certificate of Amendment as Chase Memorial Nursing Home Company, Inc. operates an Article 28-A nursing home company. Pursuant to sections 2854 and 2855 of the Public Health Law, amendments to the certificate of incorporation require the written approval of the PHHPC as well as the Commissioner of Health. Our request for written consent has also been sent to the NYSDOH.

We respectfully request that the Certificate of Amendment be reviewed as quickly as possible as the amendments are necessary to facilitate the affiliation between Chase Memorial Nursing Home and Good Shepherd Communities (GSC), a New York Not-For-Profit Corporation that serves as the member of another Not-For-Profit nursing home in New York.

Thank you for your assistance. Please contact me at (518) 436-0751 if you have any questions or require additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean M. Doolan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sean M. Doolan
SMD:
4846-5677-9336, v. 1


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of August, 2017, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Chase Memorial Nursing Home Company, Inc., dated April 19, 2017.



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel 

Date: June 19, 2017

Subject: The Center for Discovery, Inc.: Name Change from SDTC – The Center for Discovery, Inc.

In response to a contingency respective to application #062287, the applicant submitted a Certificate of Amendment of the Certificate of Incorporation of The Center for Discovery, Inc. signed by Beverly Oles and dated March 16, 2017.

The response to the contingency was acceptable in terms of the contingency request; however, the new amendment indicates that the corporation has a new name, "The Center for Discovery, Inc.". Therefore, PHHPC approval of the name change is required.

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

There is no objection to the name change and the Certificate of Amendment of the Certificate of Incorporation of The Center for Discovery, Inc. is in legally acceptable form.

Attachments.

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE CENTER FOR DISCOVERY, INC.

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

The undersigned, being a duly elected officer of THE CENTER FOR DISCOVERY, INC., does hereby certify:

1. The Certificate of Incorporation of THE CENTER FOR DISCOVERY, INC. (the "Corporation") was filed by the Department of State on October 26, 1950, under the original name The Sullivan County Cerebral Palsy Association, Inc.

2. The Corporation was filed under and pursuant to the Membership Corporations Law. The Corporation is a corporation as defined in Section 102(a)(5) of the New York Not-for-Profit Corporation Law.

3. Subparagraph (13) of Paragraph SECOND of the Certificate of Incorporation of the Corporation, which sets forth the purposes of the Corporation, is hereby amended to read as follows:

(13) To establish, operate and maintain a diagnostic and treatment center or clinic under Article 28 of the Public Health Law.

4. This amendment to the Certificate of Incorporation was authorized by unanimous vote of the Board of Directors of the Corporation at a meeting duly called and held, at which a quorum was present.

5. The Secretary of State of New York is hereby the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent is 641 Old Route 17, Monticello, New York 12701.

IN WITNESS WHEREOF, the undersigned has executed, signed and verified this Certificate of Amendment the 16th day of March, 2017, and hereby affirms that the statements made herein are true and accurate.

Beverly Oles
Name of Officer: Beverly Oles
Title of Officer: Secretary of the
Board of Directors

STATE OF NEW YORK

SS.:

COUNTY OF NEW YORK

Beverly Oles, being duly sworn, deposes and says: I am the Secretary of THE CENTER FOR DISCOVERY, INC. I have read the foregoing CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF THE CENTER FOR DISCOVERY, INC. I know the contents thereof and the same are true to our knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Beverly Oles
Beverly Oles

Sworn to before me this
8 day of March, 2017

[Signature]
Notary Public of the State of New York

STEVEN H. MOGENSEN
Notary Public, State of New York
Qualified in Westchester County
Commission Expires August 30, 2018

CONSENT TO FILING BY
ATTORNEY GENERAL OF THE STATE OF NEW YORK

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

ATTORNEY GENERAL OF THE STATE OF NEW YORK

by: _____

Date: _____, 2016

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE CENTER FOR DISCOVERY, INC.

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

Filed by: Moritt Hock & Hamroff LLP
400 Garden City Plaza
Suite 202
Garden City, NY 11530
(516) 873-2000

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
May 4, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

170125000 SCJ

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE CENTER FOR DISCOVERY, INC.
UNDER SECTION 803 OF THE NOT-FOR-PROFIT
CORPORATION LAW

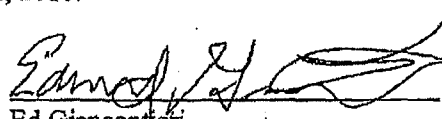
I, the undersigned, being the Vice-Chairperson of THE CENTER FOR DISCOVERY, INC., do hereby certify:

1. The Certificate of Incorporation of THE CENTER FOR DISCOVERY, INC., was filed by the Department of State on October 26, 1950, under the original name of The Sullivan County Cerebral Palsy Association, Inc.
2. The Corporation was filed under and pursuant to the Membership Corporations Law. The Corporation is a corporation as defined in Section 102(a)(5) of the New York Not-for-Profit Corporation Law.
3. Paragraph SECOND of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is hereby amended by adding a new section 14 to read as follows:

(14) To establish, operate and maintain a specialty hospital certified by the Office for People with Developmental Disabilities pursuant to Part 680 of Title 14 of New York Codes, Rules and Regulations.
4. This amendment to the Certificate of Incorporation was authorized pursuant to NFPCL §712(a) by unanimous vote of the Executive Committee of the Board of Directors of the Corporation at a meeting duly called and held.
5. The Secretary of State of New York is hereby the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent

is 641 Old Route 17, Monticello, New York 12701.

IN WITNESS WHEREOF, the undersigned have executed, signed and verified this certificate this 21ST day of November, 2016.

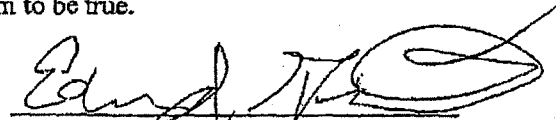

Ed Giancontieri
Vice-Chairperson

STATE OF NEW YORK


SS.:

COUNTY OF SULLIVAN

Ed Giancontieri, being duly sworn, deposes and says: I am the Vice-Chairperson of THE CENTER FOR DISCOVERY, INC. I have read the foregoing CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF THE CENTER FOR DISCOVERY, INC. I know the contents thereof and the same are true to our knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

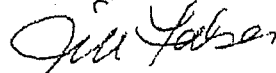

Ed Giancontieri

Sworn to before me this
21ST day of November, 2016


Notary Public of the State of New York

CHERYL L. CONLEY
Notary Public, State of New York
Sullivan County Clerk's #2163
Commission Expires August 19, 2017

THE ATTORNEY GENERAL HEREBY APPROVES ^{amendment}
THE FOREGOING CERTIFICATE OF DISSOLUTION
FOR FILING WITH THE DEPARTMENT OF STATE

 1/3/17
ASSISTANT ATTORNEY GENERAL DATE
JILL F. FABER

JSF

CERTIFICATE OF AMENDMENT
 OF THE
 CERTIFICATE OF INCORPORATION
 OF
 THE CENTER FOR DISCOVERY, INC.
 UNDER SECTION 803 OF THE NOT-FOR-PROFIT
 CORPORATION LAW

BIU-39
DOWNDOWN

Filed by: Moritt Hock & Hamroff LLP
 400 Garden City Plaza
 Suite 202
 Garden City, NY 11530
 (516) 873-2000

lcc
 STATE OF NEW YORK
 DEPARTMENT OF STATE
 FILED JAN 25 2017
 DKS

 _____ *one*

OK
RD

RECEIVED
 2017 JAN -5 PM 3:33

RECEIVED
 2017 JAN 10 PM 12:03

JSF

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
May 4, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

070814000830

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION

OF

SDTC- THE CENTER FOR DISCOVERY, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT
CORPORATION LAW

We, the undersigned, being the Vice President and Secretary of SDTC - THE CENTER FOR DISCOVERY, INC., do hereby certify:

1. The certificate of incorporation of SDTC - THE CENTER FOR DISCOVERY, INC., was filed by the Department of State on October 26, 1950 under the original name of The Sullivan County Cerebral Palsy Association, Inc. A certificate of amendment of the certificate of incorporation was filed on September June 20, 1952; a certificate of amendment of the certificate of incorporation changing the name to The United Cerebral Palsy Association of Sullivan County, Inc., was filed February 15, 1954; a certificate of amendment of the certificate of incorporation was filed on August 31, 1959; a certificate of amendment of the certificate of incorporation was filed on November 2, 1981; a certificate of amendment of the certificate of incorporation was filed on August 26, 1982; a certificate of amendment of the certificate of incorporation was filed on June 16, 1987; a certificate of amendment of the certificate of incorporation was filed on October 24, 1988, a certificate of amendment of the certificate of incorporation was filed on March 5, 1991; a certificate of amendment of the certificate of incorporation changing the name to SDTC - The Center for Discovery, Inc., was filed on September 27, 1999; and a certificate of amendment of the certificate of incorporation was filed on April 15, 2002.

3. SDTC - THE CENTER FOR DISCOVERY, INC., is a corporation as defined in subparagraph (a)(5) of the section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under section 201 of said law. The corporation shall continue to be a Type B corporation under section 201 of the Not-For-Profit Corporation Law.

4. Paragraph FIRST of the certificate of incorporation setting forth the name of corporation is hereby amended to read as follows:

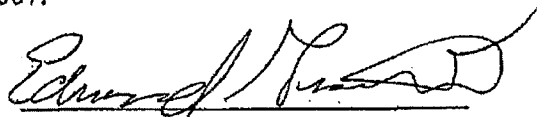
FIRST: The name of the corporation is THE CENTER FOR DISCOVERY, INC.

5. This amendment to the certificate of incorporation, was authorized by a two-thirds

February 28, 2007, at which a quorum was present and the affirmative vote was at least equal to the quorum.

6. The Secretary of State of New York is hereby the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent is P.O. Box 840, Benmosche Road, Harris, New York 12742.

IN WITNESS WHEREOF, the undersigned have executed, signed and verified this certificate this 10th day of March, 2007.



Ed Giancontieri
Vice President



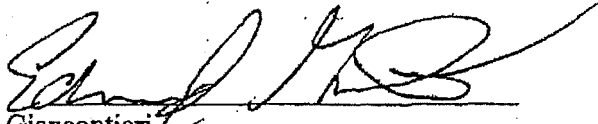
Beverly Oles
Secretary

STATE OF NEW YORK

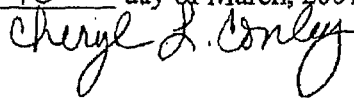
SS.:

COUNTY OF SULLIVAN

Ed Giancontieri, being duly sworn, deposes and says: I am the Vice President of SDTC-The Center For Discovery, Inc. I have read the foregoing CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF SDTC-The Center For Discovery, Inc. I know the contents thereof and the same are true to our knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.


Ed Giancontieri

Sworn to before me this
10th day of March, 2007



CHERYL L. CONLEY
Notary Public, State of New York
Sullivan County Clerk's #2163
Commission Expires August 19, 2009

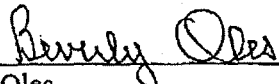
Notary Public

STATE OF NEW YORK

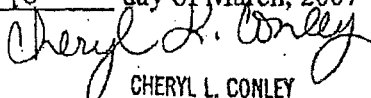
SS.:

COUNTY OF SULLIVAN

Beverly Oles, being duly sworn, deposes and says: I am the Secretary of SDTC-The Center For Discovery, Inc. I have read the foregoing CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF SDTC-The Center For Discovery, Inc. I know the contents thereof and the same are true to our knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.


Beverly Oles

Sworn to before me this
10th day of March, 2007



CHERYL L. CONLEY
Notary Public, State of New York
Sullivan County Clerk's #2163
Commission Expires August 19, 2009

Eliot Spitzer
Governor



Diana Jones Ritter
Commissioner

STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
(518) 473-1997 • TDD (518) 474-3694
www.omr.state.ny.us

KNOW ALL PERSONS BY THESE PRESENTS:

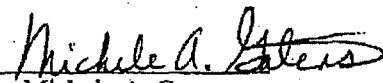
Pursuant to the provisions of Section 16.07 of the Mental Hygiene Law and subdivision (q) of Section 404 of the Not-for-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Amendment for:

SDTC-The Center for Discovery, Inc.

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 16 of the Mental Hygiene Law require an Operating Certificate to be issued by the Office of Mental Retardation and Developmental Disabilities nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 16 of the Mental Hygiene Law and the regulations promulgated there under for the issuance of said Operating Certificate.

IN WITNESS WHERE OF this instrument is executed this 25th day of July in the year 2007.

Diana Jones Ritter
Commissioner

BY: 
Michele A. Gatens
Associate Commissioner
Office of Mental Retardation
and Developmental Disabilities



Providing supports and services for people with developmental disabilities and their families.



OMR 26.04 (3/07)

070814000830

Certificate of Amendment

of

Certificate of Incorporation

of

SDTC- THE CENTER FOR DISCOVERY, INC.

Pursuant to Section 803 of the Not-For-Profit Corporation Law

DRAWDOWN
BLU-39

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED AUG 14 2007
TAXS _____
BY: [Signature]
Svll

Filed By:

Seth P. Stein, Esq.
Moritt Hock Hamroff & Horowitz LLP
400 Garden City Plaza
Garden City, NY 11530

2007 AUG 14 AM 10:04

RECEIVED

893

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
May 4, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
SDTC - THE CENTER FOR DISCOVERY, INC.

F020415000563

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, being the President and Secretary of SDTC-The Center for Discovery, Inc., do hereby certify:

1. The Certificate of Incorporation of SDTC-The Center for Discovery, Inc. was filed by the Department of State of October 26, 1950 under the original name of The Sullivan County Cerebral Palsy Association, Inc. The corporation was formed under the Membership Corporation Law.

2. The corporation was incorporated under the name of The Sullivan County Cerebral Palsy Association, Inc. A Certificate of Amendment was filed on June 20, 1952; a Certificate of Amendment to change the name to The United Cerebral Palsy Association of Sullivan County, Inc. was filed on February 15, 1954; a Certificate of Amendment was filed on August 31, 1959; a certificate of Amendment was filed on November 2, 1981; a Certificate of Amendment was filed on August 26, 1982; a Certificate of Amendment was filed on June 16, 1987; a Certificate of Amendment was filed on October 24, 1988; a Certificate of Amendment was filed on March 5, 1991; a Certificate of Amendment to change the name to SDTC-The Center for Discovery, Inc. was filed on September 27, 1999.

3. SDTC-The Center for Discovery, Inc. is a corporation as defined in subparagraph (a)(5) of the section 102 of the Not-For-Profit Corporation Law and is a

Type B corporation under section 201 of said law. The corporation shall continue to be a Type B corporation under section 201 of the Not-For-Profit Corporation Law.


4. The Certificate of Incorporation is amended to add an additional purpose (as subparagraph thirteen) to the FIFTH paragraph of the Certificate of Incorporation, to wit:


(13) "To establish, operate and maintain a diagnostic and treatment center or clinic under Article 28 of the Public Health Law until July 27, 2003."

5. The amendment to the Certificate of Incorporation of SDTC-The Center for Discovery, Inc. was authorized by unanimous written consent of the members entitled to vote thereon.

6. The Secretary of State of New York is hereby the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent is 840 Benmosche Road, Harris, New York 12742.

In witness whereof, the undersigned have executed, signed and verified this certificate this 1st day of November, 2001.


Elizabeth L. Berman
President

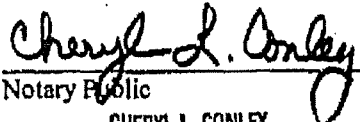

Beverly Ofes
Secretary

STATE OF NEW YORK
SS:
COUNTY OF SULLIVAN

Elizabeth L. Berman and Beverly Oles, being duly sworn, depose and say: We are respectively the President and Secretary of SDTC-The Center for Discovery, Inc. We have read the foregoing CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF SDTC-THE CENTER FOR DISCOVER, INC. We know the contents thereof and the same are true to our knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters we believe them to be true.



Elizabeth L. Berman

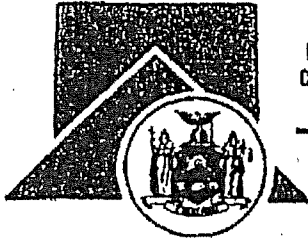
Sworn to before me this
7th day of November, 2001


Notary Public
CHERYL L. CONLEY
Notary Public, State of New York
Sullivan County Clerk's #2163
Commission Expires August 19, 2005


Beverly Oles

Sworn to before me this
14th day of November, 2001


Notary Public
CHERYL L. CONLEY
Notary Public, State of New York
Sullivan County Clerk's #2163
Commission Expires August 19, 2005



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

December 21, 2001

Mr. Roy Hogeboom
Consultant
SDTC - The Center for Discovery
P.O. Box 281
Voorheesville, New York 12186

Re: Certificate of Amendment of the Certificate of Incorporation of SDTC - The Center for Discovery, Inc.

Dear Mr. Hogeboom:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 27th day of July, 2001, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of SDTC - The Center for Discovery, Inc., dated November 1, 2001, to establish, operate and maintain a diagnostic and treatment center or clinic under Article 28 of the Public Health Law for a limited life duration of two years expiring on July 27, 2003.

Sincerely,

Karen S. Westervelt
Executive Secretary

CONSENT TO FILING BY
ATTORNEY GENERAL OF THE STATE OF NEW YORK

The undersigned has no objection to the granting of
Judicial approval hereon and waives statutory notice.

THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
HEREON, ACKNOWLEDGES RECEIPT OF
STATUTORY NOTICE AND DEMANDS SERVICE
OF THE FILED CERTIFICATE, SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

ATTORNEY GENERAL
STATE OF NEW YORK

by: *[Signature]*
[Signature]
ASSISTANT ATTORNEY GENERAL DATE

Date: March 6, 2002

CONSENT TO FILING BY A JUSTICE OF THE
SUPREME COURT OF THE STATE OF NEW YORK

I, ANTHONY KANE, a Justice of the Supreme
Court of the State of New York for the 2nd Judicial District do
hereby approve the foregoing Certificate of Amendment of the
Certificate of Incorporation of SDTC THE CENTER FOR DISCOVERY, INC., and
consent that the same be filed.

[Signature]
Justice of the Supreme Court

Date: 3/28/02

f020415000563

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
SDTC - THE CENTER FOR DISCOVERY, INC.
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

MAO

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STATE OF NEW YORK
DEPARTMENT OF STATE

APR 15 2002

FILED
TAXS
BY: MAO
SLI

**BLU-39
DRAWDOWN**

Filed By: Stein & Schonfeld
100 Quentin Roosevelt Blvd.
Garden City, New York 11530
516 542-0088

020415000605

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CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC
UNDER SECTION 803 OF THE NOT-FOR-PROFIT
CORPORATION LAW

We, the undersigned, being the President and Vice-President of THE
UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC., do
hereby certify:

1. The certificate of incorporation of THE UNITED CEREBRAL PALSY
ASSOCIATION OF SULLIVAN COUNTY, INC., was filed by the Department of State
on October 26, 1950 under the original name of THE SULLIVAN COUNTY
CEREBRAL PALSY ASSOCIATION, INC. The corporation was formed under the Not-
For-Profit Corporation Law.

2. The corporation was incorporated under the name of THE SULLIVAN
COUNTY CEREBRAL PALSY ASSOCIATION, INC. A certificate of Amendment was
filed on June 20, 1952, a certificate of Amendment to change the name to THE UNITED
CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC. was filed on
February 15, 1954; a certificate of Amendment was filed on August 31, 1959, a certificate
of Amendment was filed on November 2, 1981; a certificate of Amendment was filed on
August 26, 1982; a certificate of Amendment was filed on June 16, 1987, a certificate of
Amendment was filed on October 24, 1988; a certificate of Amendment was filed on
March 5, 1991

3. THE UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC., is a corporation as defined in subparagraph (a) (5) of the section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under section 201 of said law. The corporation shall continue to be a Type B corporation under section 201 of the Not-For-Profit Corporation Law.


4. Paragraph "FIRST" of the certificate of incorporation which sets forth the name of the corporation, is hereby amended to read as follows:

"First": The name of the corporation is SDTC- THE CENTER FOR DISCOVERY, INC.

5. This amendment to the certificate of incorporation of THE UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC., was authorized by the affirmative vote of a majority of the members entitled to vote thereon at a meeting of the members duly called and held on December 22, 1998, the affirmative vote being at least equal to the quorum.

6. The Secretary of State of New York is hereby the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent is 840 Benmosche Road, Harris, New York 12742.

In Witness Whereof, the undersigned have executed, signed and verified this certificate this 9th day of February, 1999


Elizabeth L. Berman
President


Elizabeth Hamilton
Vice-President

STATE OF NEW YORK

SS.:

COUNTY OF SULLIVAN

Elizabeth L. Berman, being duly sworn, depose and say: She is the President of THE UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC. I have read the foregoing CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF THE UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC. I know the contents thereof and the same are true to our knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Elizabeth L. Berman

Elizabeth L. Berman
President

Sworn to before me this

9th day of February, 1999

Rudolph Gallo

Notary Public

NOTARY PUBLIC
Sullivan County, State of New York
Sullivan County Clerk's Office #1014
Commission Expires March 21, 2001

STATE OF NEW YORK

SS.:

COUNTY OF SULLIVAN

Elizabeth Hamilton, being duly sworn, depose and say: She is the Vice-President of THE UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC. I have read the foregoing CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF THE UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY, INC. I know the contents thereof and the same are true to our knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Elizabeth Hamilton

Elizabeth Hamilton
Vice President

Sworn to before me this

9th day of February, 1999.

Rudolph Gallo

Notary Public

3

NOTARY PUBLIC
Sullivan County, State of New York
Sullivan County Clerk's Office #1014
Commission Expires March 21, 2001

George E. Pataki
Governor



Thomas A. Maul
Commissioner

STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
(518) 473-1997 • TDD (518) 474-3694

KNOW TO ALL PERSONS BY THESE PRESENTS:

Pursuant to the provisions of Section 16.07 of the Mental Hygiene Law and subdivision (q) of Section 404 of the Not-for-Profit Corporation Law, approval is hereby given to the filing of the annexed Certificate of Amendment of the Change of Name from:

The United Cerebral Palsy Association of Sullivan County, Inc.

to

SDTC The Center for Discovery, Inc.

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 16 of the Mental Hygiene Law require an Operating Certificate to be issued by the Office of Mental Retardation and Developmental Disabilities unless said corporation has been issued such Operating Certificate nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 16 of the Mental Hygiene Law and the regulations promulgated thereunder for the issuance of said Operating Certificate.

In Witness Whereof this instrument is executed this 14th day of September in the year 1999.

Thomas A. Maul
Commissioner

By: 

Peter F. Pezzolla
Assistant Commissioner
Office of Mental Retardation and
Developmental Disabilities



4
Providing supports and services to people with developmental disabilities and their families

OMRDD 9/99

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Certificate of Amendment

of

Certificate of Incorporation

of

ice
STATE OF NEW YORK
DEPARTMENT OF STATE

SEP 27 1999

FILED
TAXS

BY:

~~MARK~~
Sullivan

THE UNITED CEREBRAL PALSY ASSOCIATION OF SULLIVAN COUNTY,
INC

Pursuant to Section 803 of the Not-For-Profit Corporation Law

DRAW DOWN
BLU-39

RECEIVED

SEP 21 11 02 AM '99

Filed By:

SETH P. STEIN
STEIN & SCHÖNFELD
100 QUENTIN ROOSEVELT BLVD

SEP 9 11 24 AM '99

RECEIVED

BLVD

11530

SUITE 509
GARDEN CITY, NEW YORK 11530

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990927000 752

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of August, 2017, approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Center for Discovery, Inc., dated March 16, 2017.



Project # 171342-E
112 Ski Bowl Road Operating Company, LLC d/b/a
Elderwood at North Creek

Program: Residential Health Care Facility
Purpose: Establishment

County: Warren
Acknowledged: May 15, 2017

Executive Summary

Description

112 Ski Bowl Road Operating Company, LLC d/b/a Elderwood at North Creek, a New York limited liability company, requests approval to be established as the new operator of Adirondack Tri-County Nursing and Rehabilitation Center, Inc., an 82-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 112 Ski Bowl Road, North Creek (Warren County). The RHCF operates a ten-slot Adult Day Health Care Program (ADHCP) onsite, which is included in this application request. A separate entity, 112 Ski Bowl Road, LLC, will acquire the real property. There will be no change in beds or services provided.

On May 5, 2017, Post Acute Partners Acquisition, LLC (PAP), a Delaware limited liability company licensed to do business in New York State, entered into an Asset Purchase Agreement (APA) with Adirondack Tri-County Nursing and Rehabilitation Center, Inc., the current owner, for the sale and acquisition of the operating interests and real property for \$180,000 plus assumption of certain liabilities. The assumed liabilities are not anticipated to exceed \$699,410 for the operations and \$2,185,857 for the real property, as shown on their respective pro forma balance sheets (BFA Attachments D and E). PAP is equally owned by Warren Cole and Jeffery Rubin, D.D.S. Upon Public Health and Planning Council (PHHPC) approval, PAP will assign its rights under the APA to 112 Ski Bowl Road Operating Company, LLC and 112 Ski Bowl Road, LLC. 112 Ski Bowl Road, LLC will lease the real property to 112 Ski Bowl Road Operating Company, LLC. There is

a relationship between the proposed operating and realty LLCs in that the entities have common membership.

The seller indicated that the facility had been experiencing losses over the prior years, and projections for the future were not better. The Board believed that selling the RHCF offered the greatest opportunity to preserve access to nursing home care in the North Creek community, thus they decided to obtain bids from prospective buyers. They received solicited and unsolicited offers from five potential buyers, evaluated all of the offers, and decided to move forward with PAP, which the Board believed was the best offer taking into consideration the preservation of quality nursing home services in their service area, the relative certainty of the transaction given the other facilities operated and under contract by affiliates of PAP in the North Country region, and the overall ability to achieve Tri-County's economic objectives. The sale proceeds will be used to pay amounts owed on the existing mortgage, employee salary and benefit accruals, various accounts payable, NYSDOH cash receipts assessments, and closing cost.

The current and proposed operator of the RHCF are as follows:

<u>Current Operator</u> Adirondack Tri-County Nursing and Rehabilitation Center, Inc (nfp)
--

<u>Proposed Operator</u> 112 Ski Bowl Road Operating Company, LLC	
<u>Members</u>	<u>%</u>
112 Ski Bowl Road Operating Holdco, LLC	100%
Warren Cole (50%)	
Jeffery Rubin D.D.S (50%)	

Concurrently under review, the applicant members are seeking approval to be established as the new operator of Odd Fellow and Rebekah Rehabilitation and Health Care Center, Inc., a 126-bed RHCF located in Lockport, New York (CON 171227).

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Adirondack Tri-County Nursing & Rehabilitation Center's occupancy was 93.6% in 2014, 85.5% in 2015 and 85.4% in 2016. Occupancy, as of May 31, 2017, was 84.1%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. The applicant will enter an administrative services agreement with Elderwood Administrative Services, LLC. Elderwood Administrative is 100% owned by Post-Acute Partners Management, LLC jointly owned by Warren Cole and Jeffrey Rubin.

Financial Summary

PAP agreed to acquire the operating interest and real property for \$180,000 plus the assumption of certain liabilities estimated at a combined total of \$2,885,267. The purchase price will be met with members' equity. PAP will assign its rights and title to the RHCF operations and real property to 112 Ski Bowl Road Operating Company, LLC and 112 Ski Bowl Road, LLC, respectively, for \$10. There are no project costs associated with this proposal. The proposed budget is as follows:

	<u>First Year</u>	<u>Third Year</u>
Revenues	\$6,545,625	\$7,628,641
Expensed	<u>8,236,209</u>	<u>8,892,324</u>
Gain/(Loss)	(\$1,690,584)	(\$1,263,683)
	<u>Fourth Year</u>	<u>Fifth Year</u>
Revenues	\$9,244,828	\$9,326,254
Expensed	<u>\$9,230,596</u>	<u>\$9,320,754</u>
Gain/(Loss)	\$14,232	\$5,500

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:

Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;

 - a. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - b. 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.
 - c. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - d. Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
7. Submission of documentation of M&T Bank's approval for the applicant to assume the nursing home's outstanding M&T Bank debt obligations, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's executed Restated Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Assignment of Rights, acceptable to the Department. [CSL]
13. Submission of a photocopy of 112 Ski Bowl Road Operating Holdco, LLC's Certificate of Authority to Do Business in the State of New York, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. 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

August 3, 2017

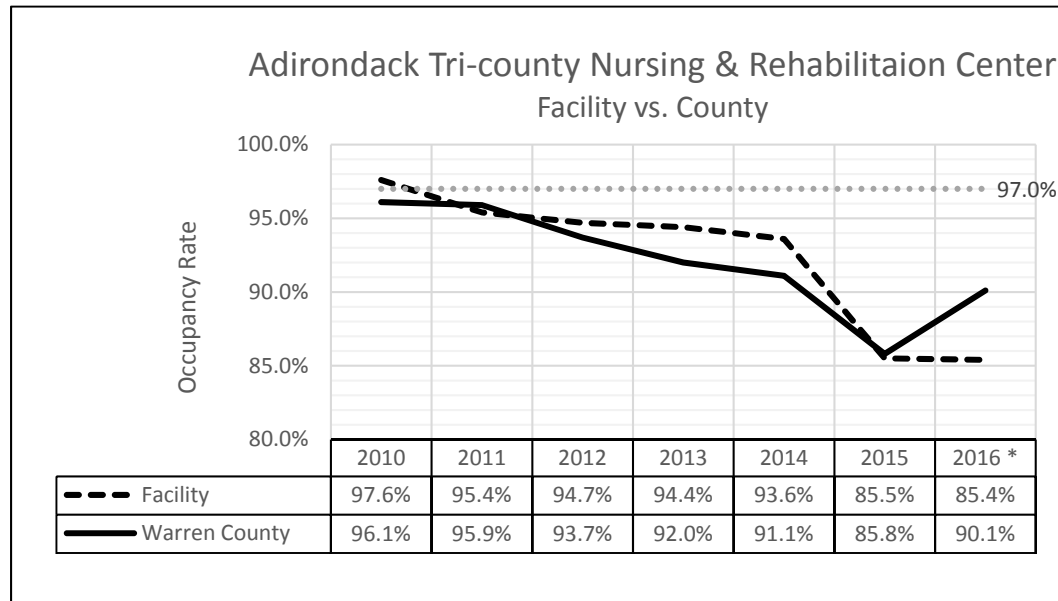
Need Analysis

Analysis

The current Need methodology shows a need for 15 additional beds in Warren County.

RHCF Need – Warren County

2016 Projected Need	417
Current Beds	402
Beds Under Construction	0
Total Resources	402
Unmet Need	15



* unaudited data; based upon facility reporting

Adirondack Tri-County Nursing & Rehabilitation Center's occupancy as of May 31, 2017, was 84.1%. The applicant plans to enhance staffing, augment clinical programs and capacity, cultivate relationships with local referral sources, and enter into a Managed Long-Term Care Plan (MLTCP) to improve occupancy at 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.

Adirondack Tri-County Nursing & Rehabilitation Center's Medicaid admissions of 29.8% in 2014 and 41.5% in 2015 did exceed Warren County's 75% threshold rates in 2014 and 2015 of 10.4% and 17.7%, respectively.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Adirondack Tri- County Nursing & Rehabilitation Center, Inc.	Elderwood at North Creek
Address	112 Ski Bowl Road North Creek, NY 12853	Same
Beds	82	Same
ADHCP Capacity	10	Same
Type of Operator	Inc.	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Adirondack Tri- County Nursing & Rehabilitation Ctr., Inc.	112 Ski Bowl Road Operating Co.,LLC Members: Warren Cole 50.00% Jeffrey Rubin 50.00% 100.00%

Character and Competence - Background

Facilities Reviewed

NYS Nursing Homes

Elderwood at Hamburg	07/2013 to present
Elderwood at Liverpool	07/2013 to present
Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Wheatfield	07/2013 to present
Elderwood at Hornell	04/12/16 to present
Elderwood at Uihlein at Lake Placid	10/04/16 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Williamsville	07/2013 to present
Elderwood Assisted Living at Wheatfield	07/2013 to present
Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present
Elderwood Assisted Living at Waverly	07/2013 to present
Tonawanda Manor	02/2016 to present
McCauley Manor at MercyCare	04/2016 to present

NYS Licensed Home Care Agency

Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present

Elderwood Assisted Living at Waverly	07/2013 to present
Elderwood Assisted Living at Tonawanda	04/2016 to present
Woodmark Pharmacy of New York, LLC	07/2013 to present

Alabama

Laurelton Rehabilitation and Nursing Center	SNF	7/2007-5/2008
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California

Care Alternatives of California	HOS	07/2007-10/2009
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Connecticut

Danbury Health Care Center	SNF	07/2007-10/2009
Darien Health Care Center	SNF	07/2007- 2007
Golden Hill Health Care Center	SNF	07/2007-10/2009
Long Ridge of Stamford	SNF	07/2007-10/2009
Newington Health Care Center	SNF	07/2007-10/2009
River Glen Health Care Center	SNF	07/2007-10/2009
The Highlands Health Care Center	SNF	07/2007-10/2009
West River Health Care Center	SNF	07/2007-10/2009
Westport Health Care Center	SNF	07/2007-10/2009
Wethersfield Health Care Center	SNF	07/2007-10/2009
Partners Pharmacy of Connecticut	RX	07/2007-10/2009

Kansas

Care Alternatives of Kansas	HOS	07/2007-10/2009
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Maryland

Montgomery Village Health Care Center	SNF	07/2007-10/2009
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Massachusetts

Brookline Health Care Center	SNF	07/2007-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	07/2007-10/2009
Cedar Hill Health Care Center	SNF	07/2007-10/2009
Concord Health Care Center	SNF	07/2007-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	07/2007-10/2009
Holyoke Health Care Center	SNF	07/2007-10/2009
Lexington Health Care Center	SNF	07/2007-10/2009
Lowell Health Care Center	SNF	07/2007-10/2009
Milbury Health Care Center	SNF	07/2007-10/2009
New Bedford Health Care Center	SNF	07/2007-10/2009
Newton Health Care Center	SNF	07/2007-10/2009
Peabody Glen Health Care Center	SNF	07/2007-10/2009
Redstone Health Care Center	SNF	07/2007-10/2009
Weymouth Health Care Center	SNF	07/2007-10/2009
Wilmington Health Care Center	SNF	07/2007-10/2009
Care Alternatives of Massachusetts	HOS	07/2007-10/2009
Partners Pharmacy of Massachusetts	SNF	07/2007-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2013- present

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2007-10/2009
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Missouri

Care Alternatives of Missouri	HOS	07/2007-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2007-05/2008
Partners Pharmacy of Missouri	RX	07/2007-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HHA	2007-10/2009
Care Alternatives of New Jersey	HOS	07/2007-10/2009
Care One at Dunroven	SNF	07/2007-10/2009
Care One at East Brunswick	SNF	07/2007-10/2009
Care One at Evesham	SNF	07/2007-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009

Care One at Ewing	SNF	07/2007-10/2009
Care One at Hamilton	SNF	07/2007-10/2009
Care One at Holmdel	SNF	07/2007-10/2009
Care One at Jackson	SNF	07/2007-10/2009
Care One at King James	SNF	07/2007-10/2009
Care One at Livingston	SNF	09/2007-10/2009
Care One at Livingston	ALF	09/2007-10/2009
Care One at Madison Avenue	SNF	07/2007-10/2009
Care One at Moorestown	SNF	07/2007-10/2009
Care One at Moorestown	ALF	07/2007-10/2009
Care One at Morris	SNF	07/2007-10/2009
Care One at Morris Assisted Living	ALF	07/2007-10/2009
Care One at Pine Rest	SNF	07/2007-10/2009
Care One at Raritan Bay MC	LTA	07/2007-10/2009
Care One Harmony Village at Moorestown	SNF	07/2007-10/2009
Care One at Teaneck	SNF	04/2007-10/2009
Care One at The Cupola	SNF	07/2007-10/2009
Care One at The Highlands	SNF	07/2007-10/2009
Care One at Valley	SNF	07/2007-10/2009
Care One at Wall	SNF	07/2007-10/2009
Care One at Wayne	SNF/ALF	07/2007-10/2009
Care One at Wellington	SNF	07/2007-10/2009
Ordell Health Care Center	SNF	07/2007-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2007-10/2009
South Jersey Health Care Center	SNF	07/2007-10/2009
Woodcrest Health Care Center	SNF	07/2007-10/2009
Care Alternatives of New Jersey	HOS	07/2007-10/2009
Partners Pharmacy of New Jersey	RX	07/2007-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	07/2007-10/2009
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Ohio

Bellbrook Health Care Center	SNF	07/2007-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2007-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2007-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2007-10/2009

Pennsylvania

Presque Isle Rehabilitation and Nursing Center	SNF	10/2007-10/2009
The Rehab and Nursing Center at Greater Pittsburg	SNF	10/2007-10/2009
Pediatric Specialty Care at Point Pleasant	ICF	02/2011-present
Pediatric Specialty Care at Doylestown	SNF	02/2011-present
Pediatric Specialty Care at Quakertown	ICF	02/2011-present
Pediatric Specialty Care at Lancaster	ICF	02/2011-present
Pediatric Specialty Care at Hopewell	ICF	02/2011-present
Pediatric Specialty Care at Philadelphia	ICF	02/2011-present
Senior Living at Lancaster	HOM	02/2011-present
Care Alternatives of Pennsylvania	HOS	07/2007-10/2009

Puerto Rico

Medicare Y Mucho Mas	Medicare Advantage Plan	07/2007-11/2009
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Rhode Island

Elderwood at Riverside	SNF	02/2014-present
Elderwood at Scallop Shell at Wakefield	SNF	12/2010-present

Virginia

Colonial Heights Health Care Center	SNF	07/2007-10/2009
Glenburnie Rehabilitation	SNF	07/2007-10/2009
Hopewell Health Care Center	SNF	07/2007-10/2009
Valley Health Care Center	SNF/ALF	4/2007-10/2009
Westport Health Care Center	SNF	4/2007-10/2009
Care Alternatives of Virginia	HOS	4/2007-10/2009
Partners of Virginia, LLC	RX	4/2007-10/2009

ACU acute care/hospital	ICF intermediate care facility/group home
ALF assisted living facility	IRF intermediate rehab facility
HHA home health agency	LTA long term acute care hospital
HOM homecare	RX pharmacy
HOS hospice	SNF skilled nursing facility/nursing home

Individual Background Review

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole has had extensive health facility ownership interests, which are listed above.

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Before his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility ownership interests, which are listed above.

In the ten year period preceding the formation of Post Acute Partners early in 2010 both Dr. Rubin and Mr. Cole held minority ownership interests, and in some circumstances also held management positions in a group of affiliated, privately held companies which owned and operated various health care facilities and/or services in various states other than the State of New York. Upon separating from the companies in late 2009 they relinquished their management positions and since then have had no authority or ability to direct, influence or otherwise affect the operations of the companies' holdings.

A review of the facilities that Mr. Cole and Dr. Rubin held and relinquished prior to the formation of Post Acute Care Partners was undertaken at the time of their acquisition of Elderwood Senior Care, and revealed no issues of character and competence at that time.

Character and Competence - Analysis

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

A review of operations at Elderwood Assisted Living at Waverly for the period identified above revealed that the facility was fined \$2,800 pursuant to a Stipulation and Order. A deficiency was found under 18 NYCRR 487.7(f)(5), Resident Services, identified in two inspection reports dated 7/27/2016 and 11/21/2016.

A review of operations for all other New York State health care facilities and agencies, for the periods identified above, reveals that there were no enforcements.

A review of operations for Chestnut Terrace Rehabilitation and Nursing (now Elderwood at Riverside), and Scallop Shell Nursing and Rehabilitation of Rhode Island (now Elderwood of Scallop Shell at

Wakefield), Presque Isle Rehabilitation and Nursing Center and The Rehabilitation and Nursing Center at Greater Pittsburgh in Pennsylvania for the periods indicated above reveals that there were no enforcements. This information was obtained from an affidavit signed by the applicants, as well as the Medicare.gov Nursing Home Compare website.

A review of Woodmark Pharmacy of Massachusetts for the period indicated above reveals that there were no issues with licensing and certification, as provided by the State of Massachusetts website.

The applicants have submitted an affidavit regarding the six pediatric intermediate care facilities in which they attest to the provision of a substantially consistent high level of care.

An affiliate of the applicant (Niagara Advantage Health Plan, LLC dba Elderwood Health Plan MLTC) was approved for enrollment as a Managed Long Term Care Plan by NYSDOH on April 1, 2016.

	Overall	Health Inspection	Quality Measures	NYS Quintile
NY				
Elderwood at Hamburg	****	***	*****	4
Elderwood at Liverpool	***	**	*****	1
Elderwood at Amherst	****	***	*****	2
Elderwood at Grand Island	**	*	*****	1
Elderwood at Wheatfield	***	***	****	3
Elderwood at Lancaster	*****	****	*****	1
Elderwood at Cheektowaga	***	***	****	2
Elderwood at Williamsville	****	****	**	3
Elderwood at Waverly	***	***	***	2
Elderwood at Hornell	**	**	***	2
Elderwood at Lake Placid	**	**	***	2

PA

Rehab & Nursing Ctr Greater Pittsburgh	*	*	****
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RI

Elderwood Of Scallop Shell at Wakefield	*****	***	*****
Elderwood at Riverside	*****	*****	**

**Chestnut Terrace Nursing & Rehabilitation is listed in CMS report as Elderwood at Riverside, same address*

**Elderwood at Lake Placid is listed on Quintile report as Uihlein Living Center, same PFI and address*

**Elderwood at Hornell is listed on Quintile report as McCauley Manor at Mercycare, Same PFI and address*

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHC operating interests, to be effectuated upon PHPC approval of this application. The terms of the agreement are summarized below:

Date:	May 5, 2017
Purchaser:	Post Acute Partners Acquisition, LLC
Seller:	Adirondack Tri-County Nursing Home and Rehabilitation Center, Inc.
Assets Transferred:	Inventory; right, title and interest of Seller to all furniture, furnishings, equipment, computers, machinery, mechanical systems, security systems, vehicles and office equipment; real property records; assumed contracts and all assumed admission agreements; licenses in connection with the facility; trademarks, trade names, service marks, trade dress used in connection with operation of the facility; patient records, books and records; DOH settlement payments; all items of tangible and intangible personal property used in connection with operation and maintenance of the facility.
Excluded Assets:	Sellers bank accounts, cash, cash equivalents and securities, financial investments; prepaid expenses, deposits; accounts receivable; refunds or reimbursements; funds held for Adirondack Community Trust; claims, disputes, litigation, insurance proceeds; employee benefit plans and assets; non-transferrable or non-assignable permits and licenses; and seller's financial books and records.
Assumed Liabilities:	Liabilities incurred after closing. The following assumed liabilities: M&T Debt; vehicle debt; program reimbursements; cash receipts or cash receipts assessment; obligation to transitioned employees.
Purchase Price:	\$180,000 plus assumed liabilities estimated at \$2,885,267 (operation \$699,410 and real property \$2,185,857)
Payment of Purchase Price:	\$180,000 deposit held in escrow to be applied to the purchase price at closing.

BFA Attachment A is the net worth summaries for members of Post Acute Partners, Acquisition, LLC which shows sufficient liquid assets to meet equity requirements.

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 June 7, 2017, the facility had \$101,201 in outstanding Medicaid overpayment liabilities.

Assignment of Rights

The applicant has submitted a proposed Assignment of Rights for the assignment of the assets associated with the APA, as shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee/Operator:	112 Ski Bowl Road Operating Company, LLC
Assignee/Real Property:	112 Ski Bowl Road, LLC
Skilled Nursing Operating Assets Transferred:	Assets associated with the operation of the skilled nursing facility of Adirondack Tri-County Nursing and Rehabilitation Center
Real Estate Assets Transferred:	Assets associated with the real property with respect to the facility located at 112 Ski Bowl Road, North Creek, NY 12853.
Assignment Fee:	\$10

Health Care Facility Lease Agreement

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

Premises:	112 Ski Bowl Road, North Creek, New York 12853 upon which an 82-bed skilled nursing facility is located.
Landlord:	112 Ski Bowl Road, LLC
Tenant:	112 Ski Bowl Operating Company, LLC
Term:	10 years with four (4) extension terms of five (5) years each at the tenant's discretion.
Rent:	An amount not less than the amounts necessary to cover any debt service of landlord, its affiliates, or parent, and related to the property, estimated at \$530,568 per year.
Provisions:	Triple Net

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

Administrative Services Agreement

The applicant has submitted a draft Administrative Service Agreement, summarized as follows:

Provider:	Elderwood Administrative Services, LLC
Company:	112 Ski Bowl Road Operating Company, LLC
Services Provided:	Assistance including: accounts receivable; billing; accounts payable; payroll; budgets; financial reporting; regulatory reports; bookkeeping; human resources; information technology; marketing and business development; reimbursement; ancillary and other services; insurance and risk management; and corporate compliance.
Term:	From Effective Date until December 31, 2017, with automatic 1-year renewals.
Fee:	\$27,572 per month with periodic adjustments based on a consideration of the fees, scope of operations, changes in purchasing power, services being performed, size of non-professional workforce and the expenses of the provider, reflecting the fair market value.

Elderwood Administrative Services, LLC is owned by Warren Cole and Jeffrey Rubin, each at 50%. The administrative services provider has provided an attestation acknowledging that there are statutory and regulatory requirements that cannot be delegated and that 112 Ski Bowl Road Operating Company, LLC will maintain responsibility and authority over the daily management and operations of the facility.

Operating Budget

The applicant has provided the current year (2015), and first and third year operating budgets after the change in ownership, in 2017 dollars, summarized as follows:

	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
<u>Inpatient Revenue</u>						
Medicaid	\$159.34	\$3,293,468	\$159.20	\$2,775,237	\$186.34	\$2,268,750
Medicaid-MC		0	\$159.20	916,946	\$186.34	1,872,158
Medicare	\$410.83	700,058	\$418.39	864,090	\$463.93	1,098,180
Private	\$368.24	1,183,906	\$341.86	\$1,452,896	\$368.34	1,875,570
Assessment		0		189,437		150,525
Subtotal Inpt Rev		\$5,177,432		\$6,198,606		\$7,265,183
<u>Outpatient Revenue</u>						
ADHCP		\$183,272		\$191,594		\$203,279
Other Outpatient		143,537		117,390		117,580
Subtotal Outpt Rev		\$326,809		\$308,984		\$320,859
Total Operating Rev		\$5,504,241		\$6,507,590		\$7,586,042

<u>Expense</u>						
Operating	\$220.74	\$5,648,421	\$263.26	\$7,643,103	\$285.86	\$8,299,218
Capital	<u>\$19.24</u>	<u>492,236</u>	<u>\$20.43</u>	<u>593,106</u>	<u>\$20.43</u>	<u>593,106</u>
Total Expense	\$239.98	\$6,140,657	\$283.69	\$8,236,209	\$306.29	\$8,892,324
Oper. Income (Loss)		<u>(\$636,416)</u>		<u>(\$1,728,619)</u>		<u>(\$1,306,282)</u>
<u>Other Revenue</u>						
Investment Income		\$1,812		\$0		\$0
NYS VAP Grant		808,902		0		0
Debt Forgiveness		314,607		0		0
All Other Revenue		<u>80,647</u>		<u>38,035</u>		<u>42,599</u>
Total Other Rev.		\$1,205,968		\$38,035		\$42,599
Net Income (Loss)		<u>\$569,552</u>		<u>(\$1,690,584)</u>		<u>(\$1,263,683)</u>
Pt Days & Occup %	25,588	85.5%	29,032	97.0%	97.3%	29,127
ADHCP Visits	1,466	56%	3,445	85%	3,445	85%

	<u>Fourth Year</u>		<u>Fifth Year</u>	
<u>Inpatient Revenue</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid	\$196.33	\$1,332,293	\$196.34	\$1,328,652
Medicaid-MC	\$202.23	2,442,536	\$202.23	2,435,863
Medicare	\$596.22	1,745,721	\$605.47	1,767,971
Private/Comm.	\$399.19	2,922,077	\$412.77	3,013,246
Assessment		<u>269,567</u>		<u>249,410</u>
Subtotal Inpt Rev		\$8,712,194		\$8,795,142
<u>Outpatient Revenue</u>				
Adult Day Care		\$284,387		\$283,301
Other Outpatient		<u>248,247</u>		<u>247,811</u>
Subtotal Outpt Rev		\$532,634		\$531,112
Total Revenue		\$9,244,828		\$9,326,254
<u>Expense</u>				
Operating	\$296.70	\$8,637,491	\$300.62	\$8,727,648
Capital	<u>\$20.37</u>	<u>593,105</u>	<u>\$20.43</u>	<u>593,106</u>
Total Expenses	\$317.07	\$9,230,596	\$321.05	\$9,320,754
Net Income		<u>\$14,232</u>		<u>\$5,500</u>
Pt Days & Occup %	29,112	97.26%	29,032	97%
ADHCP Visits	4,289	100%	4,201	98%

The following is noted with respect to the submitted budget:

- The Current Year represents the facility's 2015 experience.
- Revenue assumptions are based on the applicant's experience, via affiliated entities, operating other NYS RHCFS.
- Budgeted All Other Revenue includes rental income.
- The first-year budget eliminates revenues associated with the prior period that may not continue after the change of ownership including: Vital Access Provider funding, vendor debt forgiveness, contributions, interest and investment income, and vending machine income.

- Medicaid revenue is based on the facility's 2017 Medicaid Regional Pricing rate, adjusted for a case mix increase going from .8705 to 1.1733 in year three. All other rates are based on the facility's most current (March 2017) average rates of payment.
- The applicant projected staffing based on Department specific staffing models by position and shift.
- Expenses are based on current operations, the experience of applicant members and adjusted for anticipated increases in utilization, rent and working capital.
- Noted in relation to the projected utilization, the applicant states occupancy rates were 94.4% in 2013, 93.5% in 2014, 85.5% in 2015, 85.7% in 2016 and 85.4% as of March 15, 2017. Per the applicant and the operator, declining occupancy is likely attributable to low number of hospital referrals stemming from inadequate clinical capabilities and understaffing. The applicant plans to improve occupancy by:
 - Enhancing staffing, augmenting clinical programs and capacity, and cultivating relationships with local sources to meet the needs of higher acuity residents; and
 - Entering into a Managed Long-Term Care Plan (MLTCP).
- Utilization by payor source is as follows:

	<u>Current</u>	<u>First Year</u>	<u>Third Year</u>	<u>Fourth Year</u>	<u>Fifth Year</u>
Medicaid	80.78%	60.04%	41.94%	23.31%	23.31%
Medicaid-MC	0%	19.84%	34.60%	41.49%	41.49%
Medicare	6.66%	5.48%	5.92%	10.06%	10.06%
Private/Comm.	<u>12.56%</u>	<u>14.64%</u>	<u>17.54%</u>	<u>25.14%</u>	<u>25.14%</u>
	100%	100%	100%	100%	100%

- Warren Cole and Jeffrey Rubin have signed letters personally committing to fund operations until the organization is financially profitable in providing quality services that meet the community's long-term care needs.
- Post Acute Partners (PAP) recently acquired the operations of two other North Country RHCFS (CON 162229 Elderwood at Ticonderoga, 82-beds f/k/a Heritage Commons, and CON 151252 Elderwood of Uihlein at Lake Placid, 156-beds f/k/a Uihlien Living Center). PAP's objective is to develop a network of efficient and economically run North Country RHCFS capable of meeting the long-term healthcare needs of the residents of this rural area, while providing quality services closer to home. In SFY 2016-17, New York State (NYS) provided financial assistance through the Vital Access Provider (VAP) program to Heritage Commons and Uihlein at Lake Placid to support a restructuring of their operations prior to finalization of the change in ownership by PAP.
- In SFY 2016-17, NYS also provided VAP funding to Adirondack Tri-County Nursing and Rehabilitation Center, Inc. to support their restructuring efforts, which are now culminating in this change of ownership application request. The State will continue to monitor this RHCF's operations throughout the transition period to try to preserve the availability of skilled nursing facility services to the residents of this rural community, until the RHCF can attain financial stability under ownership by PAP.

Capability and Feasibility

Post Acute Partners Acquisition, LLC agreed to acquire the operating interest and real property for \$180,000 plus the assumption of certain liabilities estimated at \$2,885,267. The purchase price will be met with members' equity. PAP will assign its rights and title to the RHCF operations and real property to 112 Ski Bowl Road Operating Company, LLC and 112 Ski Bowl Road, LLC, respectively, for \$10. There are no project costs associated with this proposal.

The working capital requirement is estimated at \$1,372,702 based on two months of first year expenses. The members are adding \$2,627,298 bringing the total working capital to \$4,000,000, to be met by the members. Review of BFA Attachment A, the members' net worth, shows sufficient assets to meet all the equity requirements.

The submitted budget projects a net loss of \$1,690,584 and \$1,263,683 the first and third years, respectively. Overall revenues in the first year are estimated to decline by \$164,584, primarily from a \$1,003,349 increase in operating revenues, offset by the \$1,167,933 elimination in grants and debt

forgiveness. Overall expenses are expected to increase by \$2,095,552, coming from a \$1,994,682 increase in operating expenses and a \$100,870 net increase in capital expenses. The increase in operating expenses is due primarily to a \$1,330,048 increase in wages and fringe benefits (realignment of staffing model) and a \$524,279 increase in medical supplies with the balance spread among multiple categories. The increase in capital expense is from a \$283,373 increase in rent offset by \$182,503 reduction in interest expense.

BFA Attachment D is 112 Ski Bowl Road Operating Company, LLC d/b/a Elderwood at North Creek's pro forma balance sheet, which shows the entity will start with \$4,213,211 in equity. Assets included goodwill of \$392,621, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is excluded, the total net assets are a positive \$3,820,590. The budget was created taking into consideration the changes in utilization. The applicant projects to breakeven by February 2020 and plans to take several steps to achieve this including:

- Bringing all staffing in-house and reducing outside services and other expensive third-party contracts.
- Enhancing the therapy and clinical programs of the RHC.

The year four and year five budgets project a breakeven operation and financial stability going forward, which appears reasonable given this applicant's experience operating other rural and North Country community nursing home facilities.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment F, the 2014-2016 financial summary of Adirondack Tri-County Nursing and Rehabilitation Center, Inc. indicates the facility had a net asset deficit, generated an annual operating deficit and achieved a positive working capital position as the result of receiving VAP grant.

BFA Attachment G, a financial summary of affiliated RHCs, shows the facilities maintained positive net income from operations for 2015 and 2016, except for the following:

- Elderwood at Grand Island (2850 Grand Island Boulevard Operating Company, LLC) demonstrates negative working capital for the period shown. The applicant attributes the negative working capital to the timing of short-term working capital needs (due to the timing of payroll and collections). The facility shows a nominal loss year-to-date 2016, which the applicant attributes to increased prescription drug costs. The applicant anticipates improved results as of the end of the calendar year.
- Elderwood at Cheektowaga (225 Bennett Road Operating Company, LLC) and Elderwood at Hamburg (5775 Maelou Drive Operating Company, LLC) show negative working capital as of December 31, 2015. The applicant attributes the negative working capital to the timing of short-term working capital needs (due to the timing of payroll and collections). While Elderwood at Cheektowaga demonstrates positive operating income through December 31, 2016, the facility experienced a net loss in 2015 which they attributed to a lower than normal census.
- Elderwood at Wheatfield (2600 Niagara Falls Boulevard Operating Company, LLC) shows positive net income and net assets. Working capital was negative from reclassifying the mortgage from long term to current, this will correct itself in 2017 when the mortgage is scheduled to be refinanced.

The applicant notes the above referenced entities have access to revolving credit lines that cover temporary negative working capital balances.

Financial statements for Elderwood of Uihlein at Lake Placid (185 Old Military Road Operating Company, LLC), Elderwood of Lakeside at Brockport (170 West Avenue Operating Company, LLC) and Elderwood

at Ticonderoga (1019 Wicker Street Operating Company, LLC) were not evaluated as the applicant was not established as the operator of the facilities until October 4, 2016 or later.

Subject to the noted contingencies, and dependent upon the proposed operator meeting their projections, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net worth summary, members of Post Acute Partners Acquisition, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Real Property Members
BFA Attachment D	Pro Forma Balance Sheet, 112 Ski Bowl Road Operating Company, LLC
BFA Attachment E	Pro Forma Balance Sheet, 112 Ski Bowl Road, LLC
BFA Attachment F	Financial Summary, Adirondack Tri-County Nursing Home and Rehabilitation Center, Inc.
BFA Attachment G	Financial Summary, affiliated nursing home facilities

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish 112 Ski Bowl Road Operating Company, LLC as the new operator of Adirondack Tri-County Nursing and Rehabilitation Center, Inc., an existing 82-bed residential health care facility located at 112 Ski Bowl Road, North Creek, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171342 E

112 Ski Bowl Road Operating Company, LLC
d/b/a Elderwood at North Creek

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:

Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;

 - a. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - b. 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.
 - c. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - d. Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission of an executed Assignment of Rights, acceptable to the Department of Health. [BFA]
5. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
7. Submission of documentation of M&T Bank's approval for the applicant to assume the nursing home's outstanding M&T Bank debt obligations, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of the applicant's executed Restated Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]

10. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicants amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Assignment of Rights, acceptable to the Department. [CSL]
13. Submission of a photocopy of 112 Ski Bowl Road Operating Holdco, LLC's Certificate of Authority to Do Business in the State of New York, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 171239-E
Somers Operating, LLC d/b/a Somers Rehabilitation & Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: April 4, 2017

Executive Summary

Description

Somers Operating, LLC d/b/a Somers Rehabilitation and Nursing Center, a New York limited liability company, is requesting to be established as the new operator of Somers Manor Rehabilitation and Nursing Center, a 300-bed, proprietary, Article 28 residential health care facility (RHCF) located at 189 Route 100, Somers (Westchester County). There will be no change in beds or services provided. Upon approval, the entity will do business as Somers Rehabilitation and Nursing Center.

On February 21, 2017, Somers Manor Nursing Home, Inc., the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Somers Operating, LLC for the sale and acquisition of the RHCF's operating interests for \$50,000. Concurrently, Somers Manor Nursing Home, Inc., entered into a Real Estate Purchase Agreement (REPA) with Somers Property, LLC for the sale and acquisition of the real property for \$46,950,000.

The APA and REPA will close simultaneously upon approval of this application by the Public Health and Health Planning Council (PHHPC). There is a relationship between Somers Operating, LLC and Somers Property, LLC in that the entities have several members in common. The applicant will lease the premises from Somers Property, LLC.

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

<u>Current Operator</u>	
Somers Manor Nursing Home, Inc.	
<u>Members</u>	
Arnold Putterman	40%
David Putterman	30%
Judith Lewis	30%

<u>Proposed Operator</u>	
Somers Operating, LLC.	
<u>Members</u>	
Devorah Friedman (Manager)	42.5%
Sharon Einhorn (Manager)	42.5%
Yossie Zucker	5.0%
Steven Sax	4.0%
Akiva Rudner	4.0%
Eliezer Schwartz	2.0%

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this project. Facility reported occupancy, as of June 7, 2017, was 93.7%.

Program Summary

No administrative services or consulting agreements are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicants. All affiliated health care facilities are in current compliance with all rules and regulations.

Financial Summary

There are no project costs associated with this application. Somers Operating, LLC will acquire the RHCF's operating assets for \$50,000, which will be funded from members' equity. Somers Property, LLC will purchase the real property for \$46,950,000 to be funded as follows: \$4,695,000 in members' equity; a \$5,250,000

Promissory Note for a three-year term at 7.5% interest (interest only during term, principal due at the end); and a \$37,005,000 loan at 6% interest for a five-year term with a borrower's option for an additional five years, amortized over 25 years. Greystone Funding has provided a letter of interest for the loan at the stated terms. The applicant intends to pursue U.S. Department of Housing and Urban Development (HUD) financing in the third year. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$36,890,500
Expenses	<u>32,353,737</u>
Net Income	\$ 4,536,763

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 an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed Promissory Note, acceptable to the Department of Health. [BFA]
6. Submission of an executed Consulting Service Agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of a Lease Agreement, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Promissory Note, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Bill of Sale, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed Escrow Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed Guaranty, 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

August 3, 2017

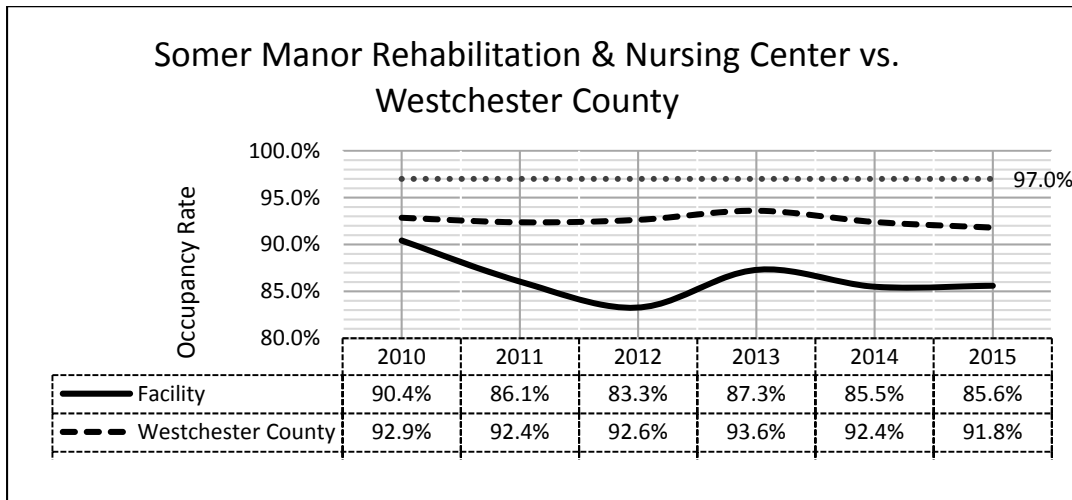
Need Analysis

Analysis

The current Need methodology indicates a need for 721 additional beds in Westchester County.

RHCF Need – Westchester

2016 Projected Need	6,716
Current Beds	6,062
Beds Under Construction	-67
Total Resources	5995
Unmet Need	721



In 2016, the facility's self-reported average utilization was 90.3%, and self-reported occupancy as of June 7, 2017 is 93.7%.

Population

In 2016, Westchester County's overall population is 974,542 per the US Census. In 2015, the 65 and older population made up 15.8 percent of the county's population which is 1.1 percent higher than the state average.

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.

Somers Manor Rehabilitation & Nursing Center's Medicaid admissions for 2014 (25.1%) exceeded Westchester counties threshold of 18.8%. In 2015 Somers saw 61.9% Medicaid admissions which exceeded the counties threshold of 21.2%.

Conclusion

There will be no change in beds in Westchester County. This change in ownership will not impact need or utilization in this area of Westchester County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Somers Manor Rehabilitation and Nursing Center	Somers Rehabilitation and Nursing Center
Address	Route 100 Somers, NY 10589	Same
RHCF Capacity	300	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Somers Manor Nursing Home, Inc.	Somers Operating LLC <u>Members</u> Devorah Friedman* 43.0% Sharon Einhorn* 42.5% Yossie Zucker 5.0% Akiva Rudner 4.0% Steven Sax 4.0% Eliezer Schwartz 2.0% *Managing Member

Character and Competence - Background

Facilities Reviewed

New York Nursing Homes

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Dumont Center for Rehabilitation	08/2010 to present
The Willows at Ramapo Rehabilitation and Nursing Center	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation and Nursing at Rockville Ctr	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present
The Emerald Peek Rehab & Nursing Center	03/2016 to present
Crown Park Rehabilitation and Nursing Center	06/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Center	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center	02/2017 to present

New Jersey Nursing Home

Chatham Hills Subacute Care Center (NJ)	2/2015 to present
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Florida Nursing Home

The Rehabilitation Center at Jupiter Gardens, LLC	10/2016 to present
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Ohio Nursing Homes

Beeghly Oaks Center for Rehabilitation and Healing	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care	10/2016 to present
Oasis Center for Rehabilitation and Healing	10/2016 to present

Tennessee Nursing Homes

Bethany Center for Rehabilitation and Healing, LLC	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC	10/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC	10/2016 to present

Individual Background Review

Devorah Friedman holds a New York State speech language pathologist license and is considered to be in good standing. She has a Masters Degree from Brooklyn College and lists her current employment as the owner/operator of Bellhaven Center for Rehabilitation and Nursing. Ms. Friedman discloses the following ownership interests in health facilities:

Sans Souci Rehabilitation & Nursing Center (2.0%)	10/2009 to present
Bellhaven Center for Rehabilitation and Nursing Center (14.0%)	03/2010 to present
Dumont Center for Rehabilitation (11.0%)	08/2010 to present
The Willows at Ramapo Rehabilitation and Nursing Center (8.50%)	07/2012 to present
St. James Rehabilitation & Healthcare Center (25.0%)	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center (35.0%)	08/2012 to present
The Riverside (9.50%)	08/2013 to present
Cortlandt Healthcare (36.5%)	03/2014 to present
The Phoenix Rehabilitation and Nursing Center (40.0%)	01/2015 to present
Crown Park Rehabilitation and Nursing Center (2.50%)	06/2016 to present
The Emerald Peek Rehab & Nursing Center (42.5%)	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (44.0%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (43.0%)	02/2017 to present

Sharon Einhorn discloses no employment history over the last 10 years. Ms. Einhorn holds a BA from Touro College and discloses the following ownership interests in health facilities:

Bellhaven Center for Rehabilitation and Nursing Center (13.0%)	03/2010 to present
Dumont Center for Rehabilitation (9.9%)	08/2010 to present
The Willows at Ramapo Rehabilitation and Nursing Center (8.50%)	07/2012 to present
St. James Rehabilitation & Healthcare Center (25.0%)	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center (35.0%)	08/2012 to present
The Riverside (9.50%)	08/2013 to present
Cortlandt Healthcare (36.5%)	03/2014 to present
The Phoenix Rehabilitation and Nursing Center (40.0%)	01/2015 to present
The Emerald Peek Rehab & Nursing Center (42.5%)	03/2016 to present
Crown Park Rehabilitation and Nursing Center (2.50%)	06/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (44.0%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (43.0%)	02/2017 to present

Eliezer Schwartz is a sales executive at Qualmed Supplies, a janitorial supply company in Linden, New Jersey. He also lists current employment as acquisition for Care Rite Centers, a health care company in Englewood Cliffs, NJ. Mr. Schwartz discloses the following health facility ownership interests:

Cortlandt Healthcare (2.0%)	03/2014 to present
Chatham Hills Subacute Care Center (NJ) (5%)	02/2015 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (5.0%)	07/2016 to present
The Rehabilitation Center at Jupiter Gardens, LLC (FL) (7.0%)	10/2016 to present
Bethany Center for Rehabilitation and Healing, LLC (TN) (7.0%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC (TN) (7.0%)	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (7.0%)	10/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN) (7.0%)	10/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (5.0%)	02/2017 to present

Yossie Zucker is a New York State certified public accountant with license currently inactive. Mr. Zucker holds a BS degree from Touro College, and is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker discloses the following ownership interests in health facilities:

The Willows at Ramapo Rehabilitation and Nursing Center (2.0%)	07/2012 to present
St. James Rehabilitation and Healthcare Center (3.0%)	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Ctr (5.0%)	08/2012 to present
The Riverside (2.0%)	08/2013 to present
Cortlandt Healthcare (2.0%)	03/2014 to present
The Emerald Peek Rehab & Nursing Center (2.0%)	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2.0%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2.0%)	02/2017 to present

Akiva Rudner is a licensed New York State nursing home administrator with license currently inactive. He holds an MPA from Wagner College and is employed as Chief Operating Officer at CareRite LLC, a nursing home consulting service located in Englewood Cliffs, NJ. Mr. Rudner discloses the following ownership interests in health facilities:

St. James Rehabilitation & Healthcare Center (1.0%)	08/2012 to present
Crown Park Rehabilitation and Nursing Center (2.50%)	06/2016 to present
The Emerald Peek Rehab & Nursing Center (2.0%)	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2.0%)	07/2016 to present
Beeghly Oaks Center for Rehabilitation and Healing (OH) (2.0%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (OH) (2.0%)	10/2016 to present
Oasis Center for Rehabilitation and Healing (OH) (2.0%)	10/2016 to present
The Rehabilitation Center at Jupiter Gardens, LLC (FL) (4.0%)	10/2016 to present
Bethany Center for Rehabilitation and Healing, LLC (TN) (4.0%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC (TN) (4.0%)	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (4.0%)	10/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN) (4.0%)	10/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2.0%)	02/2017 to present

Steven Sax has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Mr. Sax holds a Bachelor's Degree from Israel Torah Research Institute in Jerusalem, Israel and discloses the following ownership interests in health facilities:

St. James Rehabilitation and Healthcare Center (3.0%)	08/2012 to present
Cortlandt Healthcare (1.0%)	03/2014 to present
The Emerald Peek Rehab & Nursing Center (2.0%)	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2.0%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2.0%)	02/2017 to present

Character and Competence - Analysis

A review of Sans Souci Nursing Home for the period reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-12-015 for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.
- Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of Dumont Center for Rehabilitation and Nursing Care for the period reveals the following:

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-061 for surveillance findings on April 13, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Resident Rights: Advance Directives, 415.5(g) Quality of Life: Social Service, 415.12 Quality of Care: Highest Practical Potential, 415.26 Administration: 490 Administration, and 415.15(a) Administration: Medical Director.
- A federal CMP of \$45,070 was issued for the Immediate Jeopardy on 4/13/15 and is pending appeal.

- An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of The Willows at Ramapo Rehabilitation and Nursing Center for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$1,300 for Surveys on September 28, 2011. A deficiency was found under F-tag 314-D Pressure Sores.

A review of Beeghly Oaks Center for Rehabilitation and Healing for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$9,500 for a Survey on February 17, 2017. A deficiency was found under F-tag 315 No Catheter, Prevent UTI, Restore Bladder.

A review of Oasis Center for Rehabilitation and Healing for the period reveals the following:

- The facility incurred a Civil Money Penalty of \$4,945 for a Survey on December 8, 2016. A deficiency was found under F-tag 314 Treatment Services to Prevent, Heal Pressure Sores.

A review of all other affiliated health care facilities for the time periods identified above reveals that there were no enforcements related to those facilities.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	NYS Quintile
Sans Souci Rehabilitation and Nursing Center	****	***	*****	3
Dumont Center for Rehabilitation and Nursing	**	*	*****	4
The Willows at Ramapo Rehab and Nursing Center	****	***	*****	5
Bellhaven Nursing & Rehab Center	**	**	*****	3
St James Rehab & Health Care Center	***	***	****	4
The Grand Pavilion for R & N at Rockville Centre	***	**	*****	5
The Riverside	***	**	*****	4
Cortlandt Healthcare LLC	***	***	****	4
The Phoenix Rehabilitation and Nursing Center	*****	****	*****	2
The Emerald Peek Rehab and Nursing Center	*****	****	*****	3
The Chateau at Brooklyn Rehab & Nursing Ctr	****	***	*****	2
The Enclave at Port Chester Rehab and Nursing Ctr	****	****	**	4

FL

Rehabilitation Center at Jupiter Gardens LLC	*****	***	*****
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NJ

Chatham Hills Subacute Care Center	****	***	*****
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Provider Name	Overall	Health Inspection	Quality Measures	NYS Quintile
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OH

Beeghly Oaks Center for Rehabilitation & Healing	*	*	**	
Heritage Center for Rehab and Specialty Care	****	*****	**	
Oasis Center for Rehab and Healing	**	*	*	

TN

Bethany Health Care Center	*****	****	*****	
Gallatin Health Care Center, LLC	*****	*****	***	
Quality Care Health Center	*****	*****	****	
Trevecca Health Care Center	*****	*****	*****	

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in current compliance with all rules and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCF's operating interest. The agreement will be effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	February 21, 2017
Seller:	Somers Manor Nursing Home, Inc.
Buyer:	Somers Operating, LLC
Asset Acquired:	Rights, 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 trade name), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds and goodwill, policy and procedures, all telephone numbers, telefax numbers plus agreed to accounts receivables.
Excluded Assets	Sellers' cash, deposits, receivables not purchased, refunds, NAMI Credits, Universal Settlement, real estate which is the subject of the real estate contract.
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the closing date plus agreed to accounts payable.
Purchase Price:	\$50,000
Payment of Purchase Price:	\$50,000 due at closing

The purchase price of the operations will be satisfied as follows:

Equity – Somers Operating, LLC Members \$50,000

The purchase price is subject to adjustments including the difference between assumed accounts receivables and accounts payables. BFA Attachment A is the net worth summary of the members of Somers Operating, 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. The facility has no outstanding Medicaid liabilities as of February 20, 2017.

On April 1, 2017, Somers Manor Nursing Home, Inc., the current operator, entered into an employment agreement and various service provider agreements, all of which terminate upon the earlier of the APA termination or the closing of the APA. The details are as follows:

- Employment Agreement with Neal Einhorn (a proposed real property member) for an annual aggregate salary of \$189,000 to serve as the RHCF's Chief Operating Officer;
- Account Management Agreement (AMA) with CareRite Services, LLC (proposed operating member Yossie Zucker is CareRite's Owner and President) for a fee of \$16,400 per month, to assist with accounts payable, cash management, payroll and financial statements;
- Administrative Service Agreement (ASA) with CareRite Centers, LLC to assist with administrative services, compliance, credentialing and re-credentialing (fee based reimbursement to reflect actual costs incurred in providing the services); and
- Billing and Support Services Agreement (BSSA) with Comprehensive Healthcare Solutions, LLC to assist with billing functions for a fee of \$17,800 per month.

Regarding the service agreements (AMA, ASA and BSSA), the agreements stipulate that the Client retains solely and exclusive control of all services provided.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA 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:	February 21, 2017
Seller:	Somers Manor Nursing Home, Inc.
Buyer:	Somers Property, LLC
Asset Transferred:	Real property located at 189 Route 100, Somers, NY
Purchase Price:	\$46,950,000
Payment of Purchase Price:	\$500,000 upon signing the contract, \$637,500 2 nd Escrow deposit \$5,250,000 Promissory note from purchaser to seller \$40,562,500 at closing.

Included in the above \$46,950,000 is the sale of 44 acres of vacant land at an approximate value of \$1,500,000 from AL Development Properties, LLC (an affiliate of the seller) to Plum Brook Realty, LLC (affiliate of the purchaser).

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

Equity-Somers Property, LLC Members	\$ 4,695,000
Promissory Note (3 years, 7.5% interest paid monthly, principal due at term end)	5,250,000
Loan (5 years plus a 5-year borrower's option, 25-year amortization, 6% interest)	<u>37,005,000</u>
Total	\$46,950,000

Greystone Funding has provided a letter of interest at the stated terms. The applicant intends to pursue HUD financing in the third year.

BFA Attachment B is the net worth summaries for the proposed members of Somers Property, LLC, which reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. Sharon Einhorn and Devorah Friedman, members of the Somers Operating LLC, have submitted affidavits stating they are willing to contribute resources disproportionate to their membership interest to cover the purchase price and working capital. Neal Einhorn and Mark Friedman, members of Somers Property, LLC, have submitted affidavits stating they are willing to contribute resources disproportionate to their membership interest in the realty entity to cover the purchase price and to fund the balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

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

Premises:	300-bed RHCF located at 189, Route 100, Somers, NY 10589
Landlord:	Somers Property LLC
Lessee:	Somers Operating, LLC
Term:	5 years with two (2) 5-year renewal options
Rental:	\$3,600,000 per year (\$300,000 per month) for the 1 st three years
Provisions:	Triple Net

The applicant has submitted an affidavit attesting that the lease will be a non-arm's length agreement, as the landlord and operating entity have several members in common.

Consulting Service Agreement

The applicant has submitted a draft consulting services agreement, with terms as summarized below:

Provider:	Arnold L. Putterman
Company/Facility:	Somers Operating, LLC
Services Provided:	Consult with Facility's medical, nursing and administrative leadership and provide non-professional functions and transition and other services as needed.
Term:	5 years from the closing date unless terminated for cause by either party.
Fee:	\$10,416.66 per month.

Arnold L. Putterman is one of the current RHCF owners. Somers Operating, LLC retains ultimate authority, responsibility and control in all of the final decisions associated with the consulting services.

Operating Budget

The applicant has provided an operating budget, in 2017 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

	<u>Current Year (2016)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenue</u>				
Medicaid-FFS	\$300.63	\$22,326,454	\$0.00	\$0
Medicaid-MC	\$0.00	\$0	\$296.05	\$23,583,800
Medicare-FFS	\$637.96	\$9,016,320	\$0.00	\$0
Medicare-MC	\$0.00	\$0	\$600.01	\$9,559,400
Commercial-FFS	\$372.45	\$1,435,806	\$350.06	\$1,115,300
Private Pay	\$356.36	\$2,400,474	\$349.99	\$2,602,200
Other Revenue *		<u>\$269,430</u>		<u>\$29,800</u>
Total Revenue		\$35,448,484		\$36,890,500

<u>Expenses</u>				
Operating	\$340.00	\$33,657,082	\$269.45	\$28,619,399
Capital	<u>\$23.96</u>	<u>\$2,371,496</u>	<u>\$35.16</u>	<u>\$3,734,338</u>
Total Expenses	\$363.96	\$36,028,578	\$304.61	\$32,353,737
Net Income		<u>(\$580,094)</u>	<u>\$4,536,763</u>	
Utilization (Patient Days)		98,990		106,215
Occupancy		90.4%		97%

**Other Revenue consists of miscellaneous nominal amounts for cafeteria, medical records, barber/beauty shop and interest income. Other Revenue for the Current Year also includes \$177,468 in reimbursement for the usage of the facility's Sewage Treatment Plant by non-related entities.*

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

- The current year reflects the facility's 2016 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 2016 and adjusted for managed care for Year One and Year Three. Private Pay and other rates are the actual daily rates of Somers Manor Rehabilitation and Nursing for the year 2016, adjusted based on a comparison to facilities in the immediate services area.
- Expense assumptions are based on the current operator's model and then adjusted for inflation by 2% per annum based on the applicant's experience. The applicant expects to reduce operating expenses by utilizing a network of consolidated support services including centralized back office functions and renegotiating group purchasing contracts to realize volume discounts. The applicant plans to renegotiate worker's compensation and group health insurance designed to ensure better employee benefits at lower costs.
- The breakeven utilization is projected at 85.07% or 93,152 patient days in year one.
- The projected utilization for the facility is 97% in Year One and Year Three. It is noted that utilization for the past three years has averaged 87.11% while occupancy was 93.7% as of June 7, 2017. The applicant plans to increase utilization by implementing a number of measures including:
 - Outreach to all relevant stakeholders including: community leaders, local hospitals, and local physicians to identify additional services to attract new residents;
 - The proposed operator has an internal corporate clinical team to help implement needed specialties and assist with systems and procedures.
- Utilization by payor source for the first year after the change in ownership is summarized below:

Payors:	<u>Current Year</u>	<u>Year One</u>
Medicaid-FFS	75%	0%
Medicaid-MC	0%	75%
Medicare-FFS	14%	0%
Medicare-MC	0%	15%
Commercial-FFS	4%	3%
Private Pay	<u>7%</u>	<u>7%</u>
Total	100%	100%

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF's operating interest is \$50,000 to be funded from members' equity. Somers Property, LLC will purchase the real property for \$46,950,000 to be funded as follows: \$4,695,000 in members' equity; a \$5,250,000 Promissory Note for a three-year term at 7.5% interest (interest only during term, principal due at the end); and a \$37,005,000 loan at 6% interest for a five-year term with a borrower's option for an additional five years, amortized over 25 years. Greystone Funding has provided a letter of interest for the loan. It is the applicant's intent to pursue U.S. Department of Housing and Urban Development (HUD) financing in the third year. BFA Attachment A is the members' net worth summary, which shows sufficient assets to complete the transactions.

The working capital requirement, estimated at \$1,992,912, is based on two months of first year expenses of \$5,392,290 plus \$3,112,551 in assumed liabilities offset by \$6,511,929 in assumed accounts receivables. Funding will be as follows: \$996,456 from the members' equity with the remaining \$996,456 satisfied through a five-year loan at 7% interest. Greystone Funding has provided a letter of interest. BFA Attachment A, proposed operating and realty members' net worth summaries, reveals sufficient resources to meet the equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest. Sharon Einhorn and Devorah Friedman, members of the Somers Operating, LLC, have submitted affidavits stating they are willing to contribute resources disproportionate to their membership interest to cover the purchase price, working capital, and if necessary additional working capital to cover changes in assumed accounts receivables and accounts payables. Neal Einhorn and Mark Friedman, members of Somers Property, LLC, have submitted affidavits stating they are willing to contribute resources disproportionate to their membership interest in the realty entity to cover the purchase price and to fund the balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects a net profit of \$4,536,763 in Year One after the change in ownership. Revenues are estimated to increase by approximately \$1,442,016 or 4% based on the increase in occupancy (going from 90.4% to 97%). Overall expenses are expected to decrease by \$3,674,841 based on a \$5,037,683 decrease in operating expenses and a \$1,362,842 increase in interest and rent expense. The decrease in operating expenses comes from a \$1,001,802 decrease in wages and fringes (% of fringes to wages drops slightly going from 40.5% to 37%). Professional fees dropped \$382,257 primarily in the ancillary service area and the remaining \$3,653,624 comes from other direct expenses and non-medical supplies. The budget was created taking into consideration the proposed new owners' experience in operating similar sized facilities. BFA Attachment E is the pro forma balance sheets of Somers Operating, LLC and Somers Property, LLC, which shows the operation entity will start with \$5,095,059 in member's equity and the realty entity will start with \$4,696,000 in members' equity. The budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is the 2014-2016 Financial Summary of Somers Manor Nursing Home, Inc. As shown, the entity had an average positive working capital position of \$1,112,615, average negative net assets of \$2,516,089 an average negative income of \$390,041 for the period. During this period, the facility's average occupancy was 87.11%. BFA Attachment D is the certified financial statement of Somers Manor Nursing Home, Inc. for 2016, which shows that the RHCf had a positive working capital position of \$1,059,416, a negative net assets position of \$2,867,552, and a \$580,095 loss.

BFA Attachments F and G are the proposed members' ownership interest and a financial summary, respectively, in the proposed members affiliated RHCf's. The affiliated RHCf's show an average positive net asset, average positive working capital position and an average positive net income position for the period shown with the exception of the following:

- The Grand Pavilion for Rehab & Nursing's 2014 negative working capital was due to the construction in progress during the year 2014 to make the building more appealing. In 2015, the facility increased their census and revenue went up by \$2 million.
- Dumont Center for Rehab had a negative working capital position in 2014. The facility declared a dividend in 2013 to be paid over three years. There was a balance of \$1.9 million in 2014, which was paid by end of 2015. The facility has maintained positive working capital position in year 2015.
- The Phoenix Rehab and Nursing Center and its real property were acquired on January 1, 2015. The RHCf had a negative working capital position during the year 2015 and 2016. However, the consolidated financial statement of both entities for 2015 and 2016 shows a positive working capital position.

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, Somers Operating, LLC/Somers Property, LLC
BFA Attachment B	Current & Proposed Owners of the Real Property
BFA Attachment C	Financial Summary of Somers Manor Rehabilitation & Nursing Center
BFA Attachment D	2016 Certified Financial Statement of Somers Manor Nursing Home, Inc.
BFA Attachment E	Pro Forma Balance Sheet, Somers Operating, LLC and Somers Property, LLC
BFA Attachment F	Proposed Members' ownership Interest in affiliated RHCfs
BFA Attachment G	Proposed Members' Affiliated RHCfs' Financial Summary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Somers Operating, LLC as the new operator of the 300-bed residential health care facility located at 189 Route 100, Somers currently operated as Somers Manor Rehabilitation & Nursing Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171239 E

Somers Operating, LLC
d/b/a Somers Rehabilitation & Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed Promissory Note, acceptable to the Department of Health. [BFA]
6. Submission of an executed Consulting Service Agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of a Lease Agreement, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Promissory Note, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Bill of Sale, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed Escrow Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed Guaranty, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 171315-E
**Jamaica Acquisition III, LLC d/b/a Hillside Certified Home
Health Agency**

Program: Certified Home Health Agency
Purpose: Establishment

County: Queens
Acknowledged: May 1, 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 the Article 36 certified home health agency (CHHA) known as Hillside Manor Certified Home Health Agency located at 188-11 Hillside Avenue, Hollis (Queens County). 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.

The CHHA is certified to serve the five boroughs of New York City and is licensed to provide Home Health Aide, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, and Speech-Language Pathology services. As part of this application, Jamaica Acquisition III, LLC is requesting approval to add Homemaker, Housekeeper and Personal Care services. Upon termination of the current lease, the applicant will seek approval from the Regional Office to relocate the CHHA operations.

On July 5, 2016, the applicant entered into a Purchase and Sale Agreement (PSA) with the current operator to acquire the assets used in connection with the Seller's CHHA business, contingent upon obtaining all necessary approvals, including the approval of the Public Health and Health Planning Council (PHHPC).

The purchase price for the CHHA assets is \$500,000 subject to adjustments for pre-paid expenses or arrears due, in accordance with Section 2.02 of the PSA.

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

<u>Current Operator</u>	
Hillside Manor Rehabilitation and Extended Care Center, LLC	
<u>Members</u>	<u>%</u>
Judith Dicker	37.505%
Meryl Dicker	26.748%
Marcia Trupin	26.748%
Douglas 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%
Leopold Friedman	30%
Joseph F. Carillo III	5%
Solomon Rutenberg	5%

The applicant indicated that in anticipation of PHHPC approval, the parties entered into a Management Agreement whereby the applicant assumed day-to-day management of the CHHA until approval of this application is finalized. The Management Agreement between the entities was approved by the Department on October 11, 2016.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no Need recommendation of this application.

Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the 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

The purchase price of \$500,000 will be met via equity. The proposed budget is as follows:

Revenues	\$17,628,371
Expenses	<u>16,722,564</u>
Net Income	\$905,807

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 an executed facility lease agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicants amended and completed operating agreement, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's certificate of assumed name which was filed and received by the New York State Department of State, acceptable to the Department. [CSL]
5. Submission of an executed copy of the asset purchase 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

August 3, 2017

Program Analysis

Program Description

Jamaica Acquisition III, LLC d/b/a Hillside Certified Home Care Agency (Hillside CHHA) proposes to purchase and become the new owner / operator of the Article 36 Certified Home Health Agency (CHHA) currently owned and operated by Hillside Manor Rehabilitation and Extended Care Center, LLC d/b/a Hillside Manor Certified Home Health Agency (Hillside Manor CHHA). Hillside CHHA is also requesting to add Homemaker, Housekeeper, and Personal Care to the CHHA's approved services.

Hillside Manor CHHA is currently approved to serve Bronx, Kings, New York, Queens, and Richmond Counties, and its sole practice location is in Queens County at 188-11 Hillside Avenue, Hollis, New York 11423. Hillside CHHA will continue to be authorized to serve Bronx, Kings, New York, Queens, and Richmond Counties, and its sole practice location will remain at 188-11 Hillside Avenue, Hollis, New York 11423.

With approval of the additional services, Hillside CHHA will provide the following home health care services: Home Health Aide; Medical Social Services; Medical Supplies, Equipment and Appliances; Nursing; Nutritional; Occupational Therapy; Physical Therapy; Speech Language Pathology; Homemaker; Housekeeper; and Personal Care services.

Hillside CHHA has no parent, sibling, or child entities or organizations in its corporate organizational structure. However, as disclosed below, the members of Hillside CHHA are also the members and stockholders of several other legal entities that operate New York State and out-of-state health care providers and facilities.

Nursing Homes / Adult Day Health Care Programs Reviewed

- 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 and ADHCPs)
- 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)
- Providence Care, Inc. d/b/a Brooklyn Gardens Nursing and Rehabilitation (RHCF)
- 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)
- Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (RHCF)
- SBNH Acquisition, LLC d/b/a Bronx Gardens Rehabilitation and Nursing Center (RHCF)
- 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)
- Carillon Nursing and Rehabilitation Center, LLC (RHCF)
- 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)
- Norwalk Acquisition I, LLC d/b/a Cassena Care at Norwalk (RHCF in CT)

Diagnostic and Treatment Centers Reviewed

- 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)
- Carillon Dialysis, LLC (D&TC/ESRD)

Long Term Home Health Care Programs Reviewed

- Morningside Acquisition I, LLC d/b/a Morningside Nursing and Rehabilitation Center (LTHHCP)
- Highland View Care Center Operating Company, LLC d/b/a Citadel Home Care (LTHHCP)

Licensed Home Care Services Agencies Reviewed

- Ultimate Care, LLC (LHCSA)

Additional Affiliated Providers Pending Approval / Licensure / Not Yet Operational

- Morningside Acquisition III, LLC (ACF/ALP and LHCSA - pending)
- Morningside Dialysis Center, LLC (D&TC/ESRD - pending)
- Brooklyn Gardens Dialysis Center, LLC (D&TC/ESRD - pending)

The members and managers of Hillside CHHA, and the percentage of LLC membership / ownership for each, are as follows:

Pasquale DeBenedictis, 30% Member, Manager, is a Certified Public Accountant who lists current employment as Managing Member of Cassena Care, LLC (Financial Consulting), Chief Financial Officer at Center for Nursing and Rehabilitation (RHCF), and Controller at Hillside Manor Certified Home Health Agency (CHHA). Mr. DeBenedictis discloses the following 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, ADHCPs, 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)
- 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)
- Norwalk Acquisition I, LLC d/b/a Cassena Care at Norwalk (RHCF in CT)

Alex Solovey, 30% Member, Manager, is a Registered Physical Therapist who lists current employment as Director of Rehabilitation at Theradynamics (Outpatient Physical Rehabilitation), Chief Operating Officer at Center for Nursing and Rehabilitation (RHCF), and Director of Operations at Hillside Manor Certified Home Health Agency (CHHA). Mr. Solovey discloses the following 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, ADHCPs, 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)
- 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)
- Norwalk Acquisition I, LLC d/b/a Cassena Care at Norwalk (RHCF in CT)

Leopold Friedman, 30% LLC Member, lists current employment as Operator of Peninsula Nursing and Rehabilitation Center (RHCF), Chief Executive Officer at Advanced Care Staffing (Nurse Staffing/Employment Agency), and 33.3% Owner/Operator of Ultimate Care, Inc. (LHCSA). Mr Friedman discloses the following affiliations:

- Cardiff Bay Center, LLC d/b/a Peninsula Nursing and Rehabilitation Center (RHCF)
- 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)
- 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)
- SBNH Acquisition, LLC d/b/a Bronx Gardens Rehabilitation and Nursing Center (RHCF)
- 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)

Soloman Rutenberg, 5% LLC Member, lists current employment as Chief Executive Officer at Workmen's Circle MultiCare Center (RHCF). Mr. Rutenberg discloses the following affiliations:

- JOPAL at St. James, LLC d/b/a Mills Pond Nursing and Rehabilitation (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, ADHCPs, and LTHHCP)
- Morningside Acquisition III, LLC (ACF/ALP and LHCSA - pending)
- 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)
- Workmen's Circle Dialysis Management, LLC d/b/a Workmen's Circle Dialysis Center (D&TC/ESRD)
- 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)
- Norwalk Acquisition I, LLC d/b/a Cassena Care at Norwalk (RHCF in CT)

Joseph F. Carillo, 5% LLC Member, is a Licensed Nursing Home Administrator who lists current employment as Administrator at Carillon Nursing and Rehabilitation Center, LLC (RHCF). Mr. Carillo discloses the following 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, LLC 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)
- Morningside Acquisition I, LLC d/b/a Morningside Nursing and Rehabilitation Center (RHCF, ADHCPs, and LTHHCP)
- Morningside Acquisition III, LLC (ACF/ALP and LHCSA - pending)
- DeWitt Rehabilitation and Nursing Center, Inc. d/b/a Upper East Side Rehabilitation and Nursing Center (RHCF)
- Morningside Dialysis Center, LLC (D&TC/ESRD - pending)
- Carillon Nursing and Rehabilitation Center, LLC (RHCF)
- Carillon Dialysis, LLC (D&TC/ESRD)

A search of all 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.

Facility Compliance / Enforcement

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 DTCs 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 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 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 CHHAs, LTHHCPs, and LHCSAs 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.

Out-of-state compliance information was provided by both the State of Connecticut, and the applicant via the signed and notarized Schedule 2As.

Stamford Acquisition I, LLC d/b/a Cassena Care at Stamford (CT) 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 (CT) is currently in compliance, but was subject to the following enforcement action during the time-period 2010 through 2017:

- An enforcement action was taken against Cassena Care at New Britain based on a 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 state civil penalty of \$1730 was imposed and paid, 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.

Norwalk Acquisition I, LLC d/b/a Cassena Care at Norwalk (CT) is currently in compliance, but was subject to the following enforcement actions during the time-period 2010 through 2017:

- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in September, 2013, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; and Quality of Care: Accidents / Hazards / Environment /

Supervision / Devices. A state civil penalty of \$1020 was imposed and paid, and a federal Civil Monetary Penalty of \$7850 was imposed and paid.

- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in October, 2013, citing violations in Quality of Care: Accidents / Hazards / Environment / Supervision / Devices. A state civil penalty of \$360 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in December, 2013, citing violations in Quality of Care: Accidents / Hazards / Environment / Supervision / Devices. A state civil penalty of \$1160 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in February 2014, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; and Quality of Care: Pressure Sores. A state civil penalty of \$1370 was imposed and paid, and a federal Civil Monetary Penalty of \$13,650 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in January, 2016, citing violations in Quality of Care: Accidents / Hazards / Environment / Supervision / Devices; and Resident Behavior and Facility Practice: Resident Abuse. A state civil penalty of \$3000 was imposed and paid, and a federal Civil Monetary Penalty of \$6500 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in March, 2016, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; and Resident Behavior and Facility Practice: Staff Treatment of Residents. Two separate state civil penalties of \$3000 and \$2370 were imposed and paid, and a federal Civil Monetary Penalty of \$8750 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in September, 2016, citing violations in Quality of Care: Significant Medication Errors. A federal Civil Monetary Penalty of \$2315.95 was imposed and paid.

CHHA Quality of Patient Care Star Ratings	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Hillside Manor Certified Home Health Agency	2.5 out of 5 stars

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Purchase and Sale Agreement

The applicant has submitted an executed purchase and sale agreement for the purchase of the CHHA, summarized below:

Date:	July 5, 2016
Purpose:	Buyer desires to purchase all rights of the Seller to own and operate the CHHA, and all CHHA's assets.
Seller:	Hillside Manor Rehabilitation and Extended Care Center, LLC
Buyer:	Jamaica Acquisition III, LLC
Assets Acquired:	All of Seller's accounts receivable related to the CHHA for services rendered by Seller on and after the Effective Date, all cash, deposits and cash equivalents on the New Operating Account as of the Closing Date; all retroactive rate increases to the CHHA relating to services rendered by the CHHA on or after the Effective Date; all assets, inventory, supplies and/or other personal property located or principally used in the operation of the CHHA; copies of all of the records relating to and used in the operation of the CHHA; all of the clinical protocols, policies and procedures, review tools and forms, intellectual property, and information technology and trademarks, which are used in and integral to the operation of the CHHA; all computers, computer applications, operating, security or programmatic software used in the operation of the CHHA; all security deposits and prepayments, held by Seller with respect to the CHHA for services provided on or after the Effective Date; all the goodwill in or arising from the CHHA, and after the Closing, Seller shall transfer custody of its Business Records to Buyer pursuant to a records custodial agreement.
Excluded Assets:	All accounts receivable related to services rendered by the CHHA, all bank accounts in the name of Seller, any investments, marketable securities and accrued interest and divided thereon to the extent owned by Seller as of the Effective Date.
Assumed Liabilities:	At the Closing, Buyer shall assume from Seller thereafter perform and pay in accordance with the terms thereof the claims, obligations and liabilities incurred in the conduct of the CHHA or the use of the Designated Assets on or after the Effective Date, including under the Assigned Contracts.
Purchase Price:	\$500,000
Payment of the Purchase Price:	\$250,000 deposit on execution, held in escrow \$250,000 due at the Closing (met via equity).

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. Currently, the facility has no outstanding Medicaid liabilities.

Lease Rental Agreement

The applicant has submitted a draft lease for the site that they will occupy, which is summarized below:

Date:	July 5, 2016 (not fully executed by landlord)
Premises:	2,400 sq. ft. located at 188-11 Hillside Avenue, Hollis, New York 11423
Landlord:	Hudson Valley Real Estate Holding Corp.
Lessee:	Jamaica Acquisition III, LLC
Term:	The term of the lease shall commence upon the Effective Date and shall end no later than four months after the date of the Closing of the transaction contemplated by the APA.
Rent:	\$9,500 per month, including utilities, taxes and 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 homes transactions. Upon termination of the current lease, the applicant will seek to relocate the CHHA operations to a new location and will seek approval from the appropriate Regional Area Office prior to any location.

Operating Budget

The applicant has submitted the CHHA's current results for 2016, 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 Managed Care	\$95,692	\$2,320,350	\$7,458,600
Medicaid Managed Care	719,999	1,396,585	4,489,224
Private/Other	123,932	1,871,250	6,015,000
Charity Care	0	(118,054)	(334,453)
Total Revenues	\$939,623	\$5,470,131	\$17,628,371
<u>Expenses</u>			
Operating	\$920,413	\$5,773,648	\$16,592,650
Capital	0	129,000	129,914
Total Expenses	\$920,413	\$5,902,648	\$16,722,564
Net Income (Loss)	<u>\$19,210</u>	<u>(\$432,517)</u>	<u>\$905,807</u>
Utilization (Visits)*	3,982	41,236	130,002
Utilization (Hours)**	2,836	38,062	120,000

* Nursing, PT, OT, SP, and Medical Social Service visits

**Home Health Aid hours

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

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Medicare Managed Care	32.32%	24.44%	24.44%
Medicaid Managed Care	54.01%	48.90%	48.90%
Private/Other	13.67%	24.44%	24.44%
Charity Care	0%	2.22%	2.22%

Charity care is expected to be 2%. The applicant states 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.

As explanation of the substantial increase in utilization projected for Year One forward, the applicant indicated that for the first six months of 2016, the existing operator had minimal case volume and the core business was more focused on the nursing home operations, rather than the CHHA or LTHHCP. In July 2016, the proposed operator entered into a Management Agreement and an interim administrative consulting services arrangement and oversaw the operation of the CHHA, which resulted in an uptick in case volume. New staff was recruited and trained and case volume continued to increase in the fourth quarter of 2016. The proposed operator has a significant healthcare footprint in the NYC area, including 11 skilled nursing facility operations (3,945 beds) in the CHHA's service area. They plan to leverage continuity of care and a vertical integration of patients released from nursing home care to increase CHHA services. Expense assumptions are based on current historical experience of the CHHA, accounting for the increase in visits from historical.

Capability and Feasibility

Jamaica Acquisition III, LLC will acquire the CHHA's operations for \$500,000 funded by members' equity. The working capital requirement is estimated at \$2,787,094 based on two months of third year expenses. The \$2,787,094 will be funded from the members' equity. BFA Attachment A is the net worth statements for the proposed members of Jamaica Acquisition III, LLC, which reveals sufficient resources to meet the equity requirements. BFA Attachment C is the pro forma balance sheet, which shows the entity will start with \$3,412,094 in equity.

The submitted budget projects a loss of \$432,517 in the first year and a gain of \$905,807 in the third year. The first-year loss will be offset via working capital funds. The submitted budget appears reasonable.

BFA Attachment B is the 2016 income statement of Hillside Manor Rehab and Extended Care Center, LLC CHHA. The entity achieved a net income from operations of \$19,210.64 in 2016. The applicant has indicated that there is no separate balance sheet for the CHHA.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

- BFA Attachment A Personal Net Worth Statement- Proposed Members of Jamaica Acquisition III, LLC
- BFA Attachment B 2016 income statement for Hillside Manor Rehab and Extended Care Center, LLC CHHA
- BFA Attachment C Pro Forma Balance Sheet of Jamaica Acquisition III, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 3th day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Jamaica Acquisition III, LLC as the new operator of the certified home health agency located at 188-11 Hillside Avenue, Queens, currently operated as Hillside Manor Certified Home Care Agency, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

171315 E

Jamaica Acquisition III, LLC
d/b/a Hillside Certified Home Health Agency

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an executed facility lease agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicants amended and completed operating agreement, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's certificate of assumed name which was filed and received by the New York State Department of State, acceptable to the Department. [CSL]
5. Submission of an executed copy of the asset purchase agreement of the applicant, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

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

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



Project # 162581-E
SCOB, LLC d/b/a SurgiCare of Brooklyn

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

Executive Summary

Description

SCOB, LLC d/b/a SurgiCare of Brooklyn, a New York limited liability company, requests approval to be established as the new operator of the ambulatory surgery component of New York Center for Specialty Surgery, located at 313 43rd Street, Brooklyn (Kings County). The facility currently operates as both a D&TC and Ambulatory Surgery Center (ASC) and is licensed for Ambulatory Surgery-Multi Specialty and Lithotripsy services, as well as D&TC services including Medical Services-Primary Care and Medical Services-Other Medical Specialties. The applicant is acquiring only the ASC component of the operation, which is in separate space from the D&TC operations. The D&TC component will remain with the current operator and will change its assumed name to no longer indicate surgery services are being provided. Upon approval of this application, the applicant will contract with Surgem Management, LLC, a related entity through common ownership, for the provision of administrative and billing related services.

Ownership, per Department records, of the ASC before and after the requested change is as follows:

<u>Current</u>	
Ambulatory Surgery Center of Brooklyn, LLC	
<u>Members</u>	
Terry Lazar	99.3775%
Medical Forefronts of Brooklyn, LLC	0.6225%
Glen K. Lau, MD (100%)	

<u>Proposed SCOB, LLC</u>	
<u>Members</u>	
Boro Ventures, LLC	100%
John Hajjar, M.D. (81.0%)	
Omin Feingold (11.5%)	
Philip Yachmetz (7.5%)	

OPCHSM Recommendation
Contingent Approval

Need Summary
The applicant commits to providing charity care that is at a minimum of 2% of total.

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

Financial Summary
The purchase price for the ASC operations is \$2,200,000. To meet the purchase price, SCOB, LLC purchased a Loan and Judgment in the amount of approximately \$2,200,000 (including principal and interest) from a third party commercial bank lender who had provided a loan to the current operator, which was also personally guaranteed by its existing member, Terry Lazar. Per Section 2a of the APA, payment to the seller will be a credit or forgiveness of debt of the existing loan.

The projected budget is as follows:

Revenues	\$10,173,571
Expenses	<u>8,766,836</u>
Net Income	\$1,406,735

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the Operating Agreement of SCOB, LLC, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the Articles of Organization of SCOB, LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the Administrative Services Agreement between Surgem Management, LLC and SCOB, LLC, which is acceptable to the Department. [CSL]
6. Submission of an Attestation for Service Agreements, which is acceptable the Department. [CSL]
7. Submission of a photocopy of a Sub-lease between Regent Medical Properties, LLC and SCOB, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of a master lease between Regent Medical Properties, LLC and Sunset Park Debt, LLC, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed purchase agreement between Sunset Park Debt, LLC and Regent Medical Properties, LLC, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed Certificate of Assumed Name for SCOB, LLC to use the assumed name, SurgiCare of Brooklyn, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of an Application for Authority to do business in New York for Soro Ventures, LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of an Operating Agreement of Soro Ventures, LLC. [CSL]
13. Submission of a photocopy of an Asset Purchase Agreement between Ambulatory Surgery Center of Brooklyn, LLC, Terry Lazar, and SCOB, LLC, which is acceptable to the department. [CSL]

Approval conditional upon:

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

Council Action Date

August 3, 2017

Need Analysis

Analysis

New York Center for Specialty Surgery has been providing multi-specialty surgery services, primarily orthopedic and pain management, to the residents of Kings County since 1994. The center currently operates as both a diagnostic and treatment center and as an ambulatory surgery center. The new operator is purchasing only the ambulatory surgery center. The non-ambulatory surgery services will remain with the seller.

The center served a total of 294 patients in 2014, 864 patients in 2015, and 1,143 patients in 2016 (Source: SPARCS). The table below shows the SPARCS reported Charity Care and Medicaid over the last three years.

Year	SPARCS ¹	
	Charity	Medicaid
2014	0.0%	39.8%
2015	1.7%	0.0%
2016	1.7%	0.1%

¹ The category for charity care also includes self-pay patients and bad debt.

The applicant's charity care plan and commits to providing charity care at a minimum of 2% of total.

Conclusion

Approval of this project will provide for continued access to multi-specialty surgery services for the residents of Kings County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Character and Competence

The proposed members of SCOB, LLC and membership interest is noted below:

<u>Name</u>	<u>Interest</u>
Boro Ventures, LLC	100.00%
John Hajjar, M.D.	81.00%
Orrin Feingold	11.50%
Philip Yachmetz	7.50%

Dr. John Hajjar, who has been identified as the proposed Medical Director, has over three decades of experience in health care. He earned his medical degree from Georgetown University School of Medicine and completed surgical training at New York University Medical Center. He is board-certified in urology and has extensive experience in the ownership and operations of multi-specialty ambulatory surgery centers in New Jersey and Florida.

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. Hajjar disclosed that a suit filed by the Delaware Professional Insurance Company in October 2013 alleging breach of fiduciary duty and other claims was a countersuit filed in response to litigation previously filed by Dr. Hajjar. In December 2014, both matters were settled through arbitration.

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

Dr. Hajjar has disclosed affiliation with numerous healthcare-related businesses, among those, 15 ambulatory surgery centers located in New Jersey and Florida.

- On October 24, 2011, Surgicare of Boca (located in Boca Raton, Florida) paid a \$5,000 fine to the Florida Department of Health (FLDOH) to settle deficiencies related to licensure requirements that were noted on an unannounced survey conducted on March 7, 2011.
- On November 17, 2015, Surgicare of Boca was fined \$400 by the FLDOH due to not paying a survey fee timely.

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, which is summarized below:

Date:	December 12, 2016
Seller:	Ambulatory Surgery Center of Brooklyn, LLC (BASC) (Operator) and Terry Lazar (Owner)
Buyer:	SCOB, LLC
Assets Acquired:	Equipment, furniture, fixtures, instruments and other tangible assets related to the operation of the ASC, all inventory and supplies, all telephone and fax numbers used by the ASC, all intangible personal property of BASC relating to or in connection with the ASC, assignment of any trade names, all books, manuals, records, billing information, promotional and advertising materials and such other materials relating to the ASC, all accounts receivable to BASC existing as of the Closing Date, all cash and cash equivalents of BASC existing as of the Closing Date and all goodwill and all other tangible and intangible assets and property of BASC used or held for use relating to or in connection with the ASC.
Assumption of Liabilities:	SCOB shall not assume or be responsible for any debts, claims, commitments, liabilities or obligations of any nature whatsoever, express or implied, fixed or contingent, of BASC, the Owner and/or the ASC.
Purchase Price:	\$2,200,000
Payment of Purchase Price:	SCOB, LLC purchased a Loan and Judgment in the amount of approximately \$2,200,000 (including principal and interest) from a third party commercial bank lender who had provided a loan to BASC, which was also personally guaranteed by its existing sole member, Terry Lazare.

Per Section 2a of the APA, payment to BASC will be a credit or forgiveness of debt of the existing Loan and Judgement purchased by SCOB, LLC. As such, the purchase price has already been met by the proposed new 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. As of May 5, 2017, the facility had an outstanding Medicaid overpayment liability totaling \$766,369.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Operator:	SCOB, LLC
Contractor:	Surgem Management, LLC (Surgem)
Term:	5 years
Services Provided:	Assist the Operator in the following: facility maintenance; acquiring certain equipment, facilities and supplies necessary on a regular basis for the operation of the Center; screening, training and evaluating any employees or contractors; manage scheduling needs as well as support of the Operator's community outreach and education programs; assist and supervise development of the annual budget for the Center with an estimate of the operating revenues and expenses and capital expenditures for the year; assist in the preparation and submit to the Operator monthly financial statements for the Center; assist in the operating financial and accounting systems for the Center; and assist the Operator in that management of the accounts payable functions.
Fee:	\$1,500,000 year one, with a 5% increase each year thereafter.

The applicant indicated that the Operator will retain ultimate authority, responsibility and control in all final decisions associated with the services. In accordance with the Department's ASA and Contract standardization policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions ensuring that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes and regulations. In addition, the applicant must submit an executed attestation acknowledging understanding of reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Lease Rental Agreement

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

Dates:	September 15, 2016 (lease); September 16, 2016 (sublease)
Premises:	A portion of the premises located at 313 43 rd Street Brooklyn, New York, representing approximately 10,000 square feet of the leased premises.
Landlord:	Sunset Park Debt LLC
Lessor/Sublessor:	Regent Medical Properties, LLC
Subtenant:	SCOB, LLC
Term:	Fifteen (15) years and automatically renew for two (2), five year periods.
Rental:	\$525,000 (\$52 per sq. ft.) year one with a 2% annual increase thereafter.
Provisions:	Subtenant is responsible for maintenance, utilities, insurance and repairs.

The applicant has confirmed that the lease agreement is an arm's length arrangement as there is no relationship between the landlord, Sunset Park Debt LLC, and the tenant, Regent Medical Properties, LLC. However, the sublease is non-arm's length as there is a relationship between tenant and sub-tenant, SCOB, LLC, in that they have common membership interest.

Operating Budget

The applicant has submitted an operating budget for the ASC, in 2017 dollars, during the first year after the change in operator, 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>				
Commercial	\$2,833.96	\$2,442,877	\$4,073.02	\$7,836,496
Medicaid MC		0	\$1,453.57	213,675
Medicare MC		0	\$1,583.16	1,396,350
Private Pay		0	\$2,811.93	81,546
Other		<u>0</u>	\$5,470.37	<u>645,504</u>
Total Revenues		\$2,442,877		\$10,173,571
<u>Expenses</u>				
Operating	\$3,555.37	\$3,064,731	\$2,530.07	\$7,994,306
Capital	<u>153.38</u>	<u>132,216</u>	<u>244.39</u>	<u>772,030</u>
Total Expenses	\$3,708.75	\$3,196,947	\$2,774.46	\$8,766,336
Net Income		<u>(\$754,070)</u>		<u>\$1,407,235</u>
Procedures		862		3,159
Cost Per Procedure		\$3,708.76		\$2,775.04

Utilization by payor for the ASC operation during the current year and the first year after the change in operator is as follows:

	<u>Current Year</u>	<u>Year One</u>
Commercial	100%	60.9%
Medicaid MC	0%	4.7%
Medicare MC	0%	27.9%
Private Pay	0%	.9%
Other	0%	3.7%
Charity Care	0%	1.9%

Revenue, expense and utilization assumptions are based on the proposed members' historical experience in operating ambulatory surgery centers. The applicant provided letters from physicians in support of utilization assumptions.

The applicant has provided their Charity Care Policy, which attests to their commitment to provide charity care that is at a minimum not less than 2% of total. The Policy provides for service at no charge for patients with household incomes of less than 200% of the Federal poverty level. The Billing Manager will ensure compliance for patient completion of the Financial Data Form and for providing a recommendation to the Administrator for review and approval of charity care service.

Capability and Feasibility

The purchase price for the operations is \$2,200,000. To meet the purchase price, the proposed operator purchased a Loan and Judgment in the amount of approximately \$2,200,000 (including principal and interest) from a third party commercial bank lender who had provided a loan to BASC, which was also personally guaranteed by its existing sole member, Terry Lazar. Per Section 2a of the APA, payment to BASC will be a credit or forgiveness of debt of the existing loan.

Working capital requirements are estimated at \$1,461,064, which is equivalent to two months of first year expenses. The applicant will provide equity to meet the working capital requirement. BFA Attachment A is the personal net worth statements for the proposed members of SCOB, LLC, which indicates the availability of sufficient funds for the equity contribution. BFA Attachment B is the pro forma balance sheet of SCOB, LLC, which indicates a positive net asset position of \$1,711,064 as of the first day after the change in operator.

The submitted budget indicates a net income of \$1,407,235 during the first year after the change in operator. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment C is the 2015 certified financial statements of Ambulatory Surgery Center of Brooklyn. As shown, the entity had a negative working capital position and a positive net asset position. The applicant indicated that the reason for the negative working capital position is prior historical losses. Also, the entity incurred a net loss of \$672,722 in 2015. The applicant has indicated that the reason for the losses were a decrease in volume.

BFA Attachment D is the 2016 certified financial statements of Ambulatory Surgery Center of Brooklyn. As shown, the entity had a negative working capital position and a negative net asset position in 2016. The reason for the negative positions is because of prior historical losses. Also, the entity incurred a loss of \$1,109,319 in 2016. The reason for the loss in 2016 was the result of decrease in volume.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements- Proposed Members
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Financial Summary- 2015 certified financial statements of Ambulatory Surgery Center of Brooklyn
BFA Attachment D	Financial Summary- 2016 certified financial statements of Ambulatory Surgery Center of Brooklyn

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish SCOB, LLC as the new operator of the ambulatory surgery center services located at 313 43rd Street, Brooklyn; New York Center for Specialty Surgery will continue to operate the other services at the site in separate space, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162581 E

SCOB, LLC d/b/a SurgiCare of Brooklyn

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the Operating Agreement of SCOB, LLC, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the Articles of Organization of SCOB, LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the Administrative Services Agreement between Surgem Management, LLC and SCOB, LLC, which is acceptable to the Department. [CSL]
6. Submission of an Attestation for Service Agreements, which is acceptable the Department. [CSL]
7. Submission of a photocopy of a Sub-lease between Regent Medical Properties, LLC and SCOB, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of a master lease between Regent Medical Properties, LLC and Sunset Park Debt, LLC, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed purchase agreement between Sunset Park Debt, LLC and Regent Medical Properties, LLC, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed Certificate of Assumed Name for SCOB, LLC to use the assumed name, SurgiCare of Brooklyn, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of an Application for Authority to do business in New York for Soro Ventures, LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of an Operating Agreement of Soro Ventures, LLC. [CSL]
13. Submission of a photocopy of an Asset Purchase Agreement between Ambulatory Surgery Center of Brooklyn, LLC, Terry Lazar, and SCOB, LLC, which is acceptable to the department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



**Project # 162541-E
Nyack Operating LLC d/b/a
Nyack Ridge Rehabilitation and Nursing Center**

Program: Residential Health Care Facility
Purpose: Establishment

County: Rockland
Acknowledged: December 29, 2016

Executive Summary

Description

Nyack Operating, LLC d/b/a Nyack Ridge Rehabilitation and Nursing Center, a New York limited liability company, requests approval to be established as the new operator of Nyack Manor Nursing Home, a 160-bed Article 28 Residential Health Care Facility (RHCF) located at 476 Christian Herald Road, Valley Cottage (Rockland County). Nyack Manor Nursing Home, a proprietary partnership, is the current operator of the facility. There will be no change in beds or services provided. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the applicant will operate the facility under the name Nyack Ridge Rehabilitation and Nursing Center.

The applicant has provided a draft asset purchase agreement (APA) between Nyack Manor Nursing Home (Seller) and MBA Healthcare Group LLC (Buyer) for the sale and acquisition of the operating interest of the RHCF for a purchase price of \$2,125,000. Upon PHHPC approval and subsequent closure of the APA, MBA Healthcare Group, LLC will assign all rights, title and interest in the RHCF under the APA to Nyack Operating, LLC. MBA Healthcare Group LLC and Nyack Operating, LLC are related in that there are common members. Ownership of the real property consist of the Estate of Benjamin Lee (25%), the Estate of William Iser (25%), the Estate of Harold Bassler (25%) and Sigmund Rolat (25%). The realty ownership will not change as a result of this application. Upon PHHPC approval of the change in operator, and with consent of the property owner/landlord, the current

operator/lessor, Nyack Manor Nursing Home, will assign all rights, title and interests under the lease to Nyack Operating LLC as lessee for site control of the facility.

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

<u>Current Operator</u>	
Nyack Manor Nursing Home	
<u>Partners</u>	<u>%</u>
Aaron Seligson	50%
Martin Rothman	50%

<u>Proposed Operator via Assignment</u>	
Nyack Operating, LLC	
<u>Members</u>	<u>%</u>
Benjamin Einhorn	26.66%
Michael Braunstein	26.67%
Edward Braunstein	26.67%
Cheryl Gellis	5.0%
Daniel Hirsch	5.0%
Jessica Diamond	5.0%
Israel Zyskind, M.D.	5.0%

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Nyack Manor Nursing Home's utilization was 83.5% in 2013, 87.7% in 2014, and 88.6% in 2015. Overall occupancy for 2016 was 90.8%. Current utilization, as of May 31, 2017, is 88.1%.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs associated with this application. The purchase price for the RHCF's operating interest is \$2,125,000 to be funded via \$1,125,000 equity from the proposed members and a promissory note with the current owner for \$1,000,000 at 6% interest with a three-year maturity date and three annual installment payments. The budget is as follows:

	<u>Year One</u>
Revenues	\$16,301,200
Expenses	<u>16,136,348</u>
Net Income	\$164,852

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 asset purchase agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed assignment and assumption agreement for the operating interests in the RHCF, acceptable to the Department of Health. [BFA]
6. Submission of an executed assignment and assumption agreement for the lease of the facility, acceptable to the Department of Health. [BFA]
7. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of the applicants amended and executed Lease Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicants amended and executed Operating Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Asset Purchase Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within 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

August 3, 2017

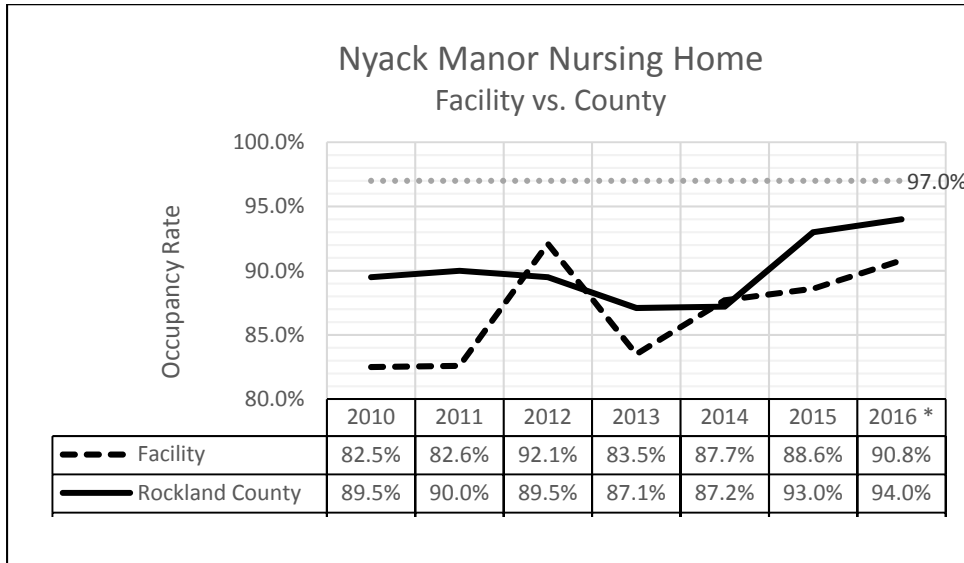
Need Analysis

Analysis

The current Need Methodology indicates a need for 320 beds in Rockland County.

RHCF Need – Rockland County

2016 Projected Need	1,635
Current Beds	1,315
Beds Under Construction	0
Total Resources	1,315
Unmet Need	320



* Unaudited data; based on facility reporting

The occupancy rate for Rockland County in 2015 was 93.0%. Nyack Manor Nursing Home's certified utilization was 83.5% in 2013, 87.7% in 2014, and 88.6% in 2015. Self-reported 2016 occupancy was 90.8% and current self-reported occupancy, as of May 31, 2017, is 88.1%.

The applicant attributes the low occupancy to the current operator having contracts with only one managed long term care (MLTC) provider, Fidelis Care at Home. In order to increase occupancy going forward, the applicant plans to:

- Develop partnerships with local hospital to implement programs to reduce avoidable hospitalizations in the local service area;
- Reach out to other MLTC providers such as: Centerlight, Home First, Evercare, Prime Health Choice and Wellcare;
- Implement the following programs: Palliative Care, Congestive Heart Failure program, Transfusion & IV therapy and Pulmonary rehabilitation programs.

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.

Nyack Manor Nursing Home's Medicaid admissions of 11.1% in 2014 and 20.7% in 2015 have not exceeded Rockland County's 75% threshold rates in 2014 and 2015 of 28.7% and 31.9%, respectively.

Conclusion

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

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Nyack Manor Nursing Home	Nyack Ridge Rehabilitation and Nursing Center
Address	476 Christian Herald Road Valley Cottage, NY 10989	Same
RHCF Capacity	160	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Proprietary
Class of Operator	Partnership	Limited Liability Company
Operator		Nyack Operating LLC *Benjamin Einhorn 26.66% *Michael Braunstein 26.67% Edward Braunstein 26.67% Cheryl Gellis 5.00% Daniel Hirsch 5.00% Jessica Diamond 5.00% Israel Zyskind 5.00% *Managing Members

Character and Competence

Facilities Reviewed

Nursing Homes

The Grand Pavilion for Rehab and Nursing at Rockville Center	08/2012 to present
River Ridge Living Center	03/2014 to present
Cortlandt Healthcare	03/2014 to present

Individual Background Review

Benjamin Einhorn is a New York State certified public accountant with his license currently inactive. He is employed as a consultant at MBA Healthcare Group. He also is currently the vice president of the Romerovski Corporation, a clothing exporter in Roselle Park, New Jersey. Mr. Einhorn discloses the following ownership interests:

The Grand Pavilion for Rehabilitation at Rockville Center 7%	08/2012 to present
River Ridge Living Center 25%	04/2014 to present
Cortlandt Healthcare 5%	03/2014 to present

Michael Braunstein is currently a member of MBA Healthcare Group, which is a consulting firm. He is also a senior vice president of the Romerovski Corporation, a clothing exporter in Roselle Park, New Jersey. Michael Braunstein is also a licensed notary public in the state of New Jersey and is considered to be in good standing. Michael Braunstein discloses the following ownership interest:

River Ridge Living Center 25% 03/2014 to present

Edward Braunstein is currently a member of MBA Healthcare, which is a consulting firm. He is also a senior vice president of the Romerovski Corporation, a clothing exporter in Roselle Park, New Jersey. Edward Braunstein discloses the following ownership interest:

River Ridge Living Center 25% 03/2014 to present

Cheryl Gellis discloses that she is retired, and has not worked in the last 10 years. Ms. Gellis discloses the following ownership interest:

River Ridge Living Center 5% 03/2014 to present

Daniel Hirsch is a CPA in the state of Delaware. He is currently employed as the Vice President of Agistar Meat and Poultry, a food production & sales company. Daniel Hirsch discloses the following ownership interest:

River Ridge Living Center 9.9% 03/2014 to present

Jessica Diamond is currently employed at Suda Management Corp., which is a real estate management company. She discloses no ownership interests.

Israel Zyskind has a licensed MD in the state of NY with license in good standing. He is currently the Managing Partner at Boro Park Pediatric Association. Mr. Zyskind discloses no ownership interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants. It is noted that the applicant meets the minimum experience requirement of five years nursing home related management experience at the time of the August 3, 2017 PHHPC meeting. The requirement is satisfied by Benjamin Einhorn's 7% ownership of The Grand Pavilion for Rehabilitation and Nursing at Rockville Center since August 2012.

A review of operations for The Grand Pavilion for Rehabilitation and Nursing at Rockville Center, River Ridge Living Center and Cortlandt Healthcare reveals there were no enforcements nor Civil Money Penalties for the periods identified above.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	NYS Quintile
The Grand Pavilion for Rehab & Nursing at Rockville Centre	***	**	*****	5
River Ridge Living Center	**	**	****	1
Cortlandt Healthcare LLC	***	***	****	4

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted a draft Asset Purchase Agreement for the operating interests of the RHCF. The terms of the agreement are summarized below:

Seller:	Nyack Manor Nursing Home
Buyer:	MBA Healthcare Group, LLC
Asset Acquired:	NH business and operations, all equipment, leasehold improvements, tools, furniture and office equipment and all fixtures, all assignable contracts, leases and other arrangements, goodwill, supplies, policies and procedure manuals, resident medical records, payroll records, assignable warranties, Medicare/Medicaid provider agreements and provider numbers, all licenses held, all computer applications, insurance policies, prepaid expenses, resident funds, any leased equipment
Excluded Assets:	Cash, accounts receivable, non-transferable licenses, unassigned insurance policies, name/assets of Nyack Manor Investments
Purchase Price:	\$2,125,000
Payment of the Purchase Price:	\$1,125,000 cash due at closing; \$1,000,000 via promissory note, post-closing installments due over three years

The purchase price will be paid as follows:

Members' Equity	\$1,125,000
Promissory Note with the current owner*	\$1,000,000
Total	\$2,125,000

* The principal sum of \$1,000,000 will be paid in three annual installments with interest at 6% and a maturity date of three years. The first installment will be \$250,000 plus interest, the second Installment will be \$250,000 plus interest, and the third installment will be \$500,000 plus interest.

Assignment and Assumption Agreement - Operations

A draft Assignment and Assumption Agreement has been submitted for assignment of the operations related to the Nyack Manor as follows:

Assignor:	MBA Healthcare Group, LLC
Assignee:	Nyack Operating, LLC
Rights assigned:	All rights, title and interests in the RHCF under the asset purchase agreement.

Assignment and Assumption Agreement - Lease

A draft Assignment and Assumption Agreement has been submitted for the current lease related to the Nyack Manor as follows:

Assignor:	Nyack Manor Nursing Home
Assignee:	Nyack Operating, LLC
Rights assigned:	All rights assigned under the lease agreement noted below.
Consideration:	\$10

Lease Agreement

The original lease is dated August 23, 1969, and has been amended to extend the terms. The current executed lease terms, which are being assigned to Nyack Operating, LLC are summarized as follows:

Premises:	A 160-bed RHCF located at 476 Christian Herald Road, Valley Cottage
Landlord:	Peninsula Mill Corporation and Serofel Realty Corp
Tenant:	Nyack Manor Nursing Home
Terms:	23 years starting from October 31, 2011
Amount:	\$256,000 per annum

The lease arrangement is an arm's length agreement. The applicant has submitted an affidavit attesting that there is no relationship between the landlord and the operating entity.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of June 13, 2017, the facility has no outstanding Medicaid overpayment liabilities.

Operating Budget

The applicant has provided an operating budget, in 2017 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

<u>Revenue</u>	<u>Current Year (2015)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Commercial - FFS	\$277.41	\$545,670	\$424.96	\$2,283,300
Medicare - FFS	\$634.82	4,406,309	\$0.00	0
Medicare - MC	\$0.00	0	\$650.02	3,841,600
Medicaid - FFS	\$234.25	9,863,802	\$0.00	0
Medicaid - MC	\$0.00	0	\$227.58	9,292,600
Private Pay	\$277.41	208,337	\$325.12	524,100
Other Operating		<u>11,050</u>		<u>359,600</u>
Total Revenue		\$15,035,168		\$16,301,200
<u>Expenses</u>				
Operating	\$282.38	\$14,618,087	\$291.50	\$15,661,300
Capital	<u>\$8.74</u>	<u>452,506</u>	<u>\$8.84</u>	<u>475,048</u>
Total Expenses	\$291.12	\$15,070,593	\$300.34	\$16,136,348
Net Income		<u>(\$35,425)</u>		<u>\$164,852</u>
Utilization (Patient Days)		51,767		53,727
Occupancy		88.6%		92.0%

The following is noted with respect to the submitted budget:

- Other Operating Revenue increase is primarily due to Medicare Part B Revenue, which the operator did not break out in their 2015 RHCF-4 Medicaid Cost Report.
- Per the applicant, the increase in private and commercial rates were projected based on an analysis of comparable facilities. These rates also include an inflation adjustment to 2018 (Year One)
- Medicaid and Medicare rates are based on the current year rates, which are the average per diems experienced during 2015.
- Operating expenses are based on the current year and the average per diems experienced during 2015.
- Breakeven utilization is 91.07% for the first year.
- Utilization by payor source is as follows:

	<u>Year One</u>
Commercial - FFS	10.0%
Medicare - MC	11.0%
Medicaid - MC	76.0%
Private Pay	3.0%

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF's operating interest is \$2,125,000 to be funded via equity of \$1,125,000 from the proposed members and a promissory note with the current owner for \$1,000,000 at 6% interest with a three-year maturity date and

three annual installment payments. BFA Attachment A, Proposed Members' Net Worth of Nyack Operating, LLC, reveals sufficient resources for stated levels of equity.

The working capital requirement of \$2,689,391, based on two months of the first year's expenses, will be satisfied with \$1,389,391 equity from the proposed members and a bank loan of \$1,300,000 at 6% for a five-year term. M&T Bank has provided a letter of interest. BFA Attachment A, Proposed Members' Net Worth of Nyack Operating, LLC, reveals sufficient resources for stated levels of equity. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates positive members' equity of \$2,743,200.

The submitted budget indicates that net income of \$164,852 will be generated for the first year after the change in ownership. Revenues are estimated to increase from the current year by approximately \$1,300,000 based on the increase in occupancy (going from 89% to 92%) and a 2.5% increase per annum for inflation to reflect 2018 dollars. Overall expenses are expected to increase from the current year by \$1,100,000 due mostly to a 2.5% increase per annum for inflation to reflect 2018 dollars and an increase in occupancy related costs. This includes an increase in salaries and benefits of \$640,000 to meet the needs of an increase in occupancy. BFA Attachment D is the pro forma balance sheet of Nyack Operating, LLC, which shows the operation has a positive net asset position of \$2,742,200 as of the first day of operations.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C, Financial Summary of Nyack Manor Nursing Home, indicates that the facility has experienced positive working capital and equity position for the period shown. The facility showed a positive net income in 2014, but had a net operating loss of \$35,425 in 2015 and \$17,273 in 2016, which the applicant stated was due to the operator seeking to sell their operations and concentrating their efforts to that matter. The operations turned around in the first three months of 2017 as the nursing home has shown a profit in the period provided.

BFA Attachments B, Financial Summary of the proposed members affiliated RHCs, shows the facilities have maintained positive working capital, net equity, and 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	Nyack Operating LLC, Proposed Members Net Worth
BFA Attachment B	Proposed Owners' Affiliated Residential Health Care Facilities
BFA Attachment C	Financial Summary, Nyack Manor Nursing Home
BFA Attachment D	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Nyack Operating LLC as the new operator of Nyack Manor Nursing Home, a 160-bed residential health care facility located at 476 Christian Herald Road, Valley Cottage, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162541 E

Nyack Operating LLC d/b/a Nyack Ridge
Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

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

11. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Asset Purchase Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Project # 171229-E
ILF Operating, LLC d/b/a
Elm Manor Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Ontario
Acknowledged: March 31, 2017

Executive Summary

Description

ILF Operating, LLC d/b/a Elm Manor Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of Elm Manor Nursing Home, a 46-bed, proprietary, Article 28 residential health care facility (RHCF) located at 210 North Main Street, Canandaigua (Ontario County). Elm Manor Nursing Home, Inc. is the current operator of the facility. A separate entity, ILF Realty, LLC, will acquire the real property. There will be no change in beds or services provided.

On November 17, 2016, Elm Manor Nursing Home, Inc. entered into an Asset Purchase Agreement (APA) with ILF Operating, LLC for the sale and acquisition of the RHCF operating interests for \$900,000. Concurrently, the current real property owners, Robert W. Hurlbut (50%) and Jay B. Birnbaum (50%), entered into a Real Estate Purchase Agreement (REPA) with ILF Realty, LLC for the sale and acquisition of the real property for \$1,350,000. The APA and REPA will close at the same time upon approval by the Public Health and Health Planning Council (PHHPC). There is a relationship between ILF Operating, LLC and ILF Realty, LLC in that there are common members in both entities. The applicant will lease the premises from ILF Realty, LLC.

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

Table with 3 columns: Shareholders, Shares, % for Current Operator Elm Manor Nursing Home, Inc.

Table with 2 columns: Members, % for Proposed Operator ILF Operating, LLC.

Concurrently under review, the applicant members of ILF Operating, LLC and the realty members of ILF Realty, LLC are seeking approval to acquire the operating and realty interests, respectively, in Wedgewood Care and Rehabilitation Center (CON 171231).

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no change in beds or services as a result of this change in ownership. Facility self-reported occupancy was 93.5% as of June 7, 2017.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicants do not intend to use any staffing agencies upon their assumption of ownership.

Financial Summary

There are no project costs associated with this application. ILF Operating, LLC will acquire the RHCF's operations for \$900,000 funded via \$225,000 in members' equity and a 30-year loan at 5% interest. ILF Realty, LLC will purchase the real property for \$1,350,000 funded by a 30-year loan at 5% interest. Harborview Capital Partners has provided letters of interest for both loans at the stated terms. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$4,564,773
Expenses	<u>4,462,835</u>
Net Income	\$101,938

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency, known as Common Ground Health, recommends approval.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

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
August 3, 2017

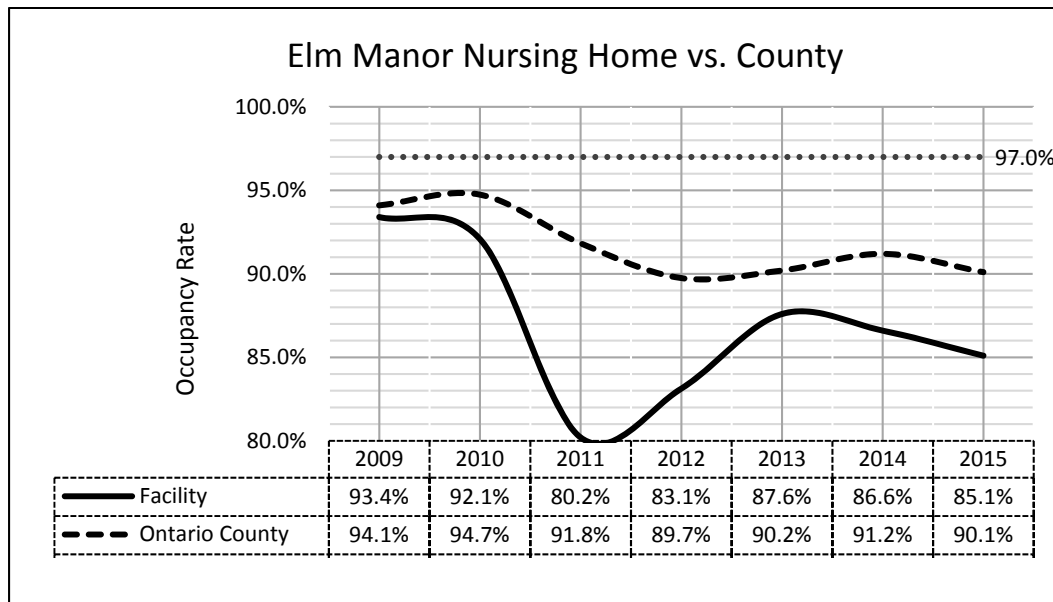
Need Analysis

Background

There current Need methodology calculates no need for additional RHCf beds in Ontario County. This project will not result in a change in the number of RHCf beds in the county.

RHCf Need – Ontario County

2016 Projected Need	533
Current Beds	605
Beds Under Construction	0
Total Resources	605
Unmet Need	0



The self-reported occupancy as of June 7, 2017 was 93.5%

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.

Elm Manor Nursing Home's Medicaid admissions rate has not consistently exceeded the threshold of 75% of the Ontario County rate, as demonstrated in the table below. Therefore, the applicant will be required to continue to improve access to care for Medicaid residents, as well as commit to maintaining the County threshold within two years of approval, as outlined in the contingencies and conditions.

Percent of New RHCf Admissions that are Medicaid	2013	2014	2015
Ontario County 75% Threshold	14.0%	10.9%	8.2%
Elm Manor Nursing Home	10.1%	13.0%	12.3%

Conclusion

This change in ownership will not impact access and will enable the new owners to implement plans to increase utilization of the beds.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Elm Manor Nursing Home	Elm Manor Nursing and Rehabilitation Center
Address	210 North Main Street Canandaigua, NY 14424	Same
RHCf Capacity	46	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	Corporation	Same
Operator	Elm Manor Nursing Home, Inc.	ILF Operating LLC Giorgio Mayer* 75.0% Aryeh Grinspan 15.0% Abraham Mayer 10.0% *Managing Member

Character and Competence - Background

Facilities Reviewed

1226 Gold Crest Care Center	07/2007 to present
0664 Sunnyside Care Center	07/2007 to present
2589 Wellsville Manor Care Center	07/2007 to present
0131 Valley View Manor Nursing Home	07/2007 to present
0594 Bethany Gardens Skilled Living Center	07/2007 to present
1233 Fieldston Lodge Care Center	07/2007 to present
6460 Affinity Skilled Living and Rehabilitation	07/2007 to present
Whitney Rehabilitation Care Center (CT)	03/2015 to present

Individual Background Review

Giorgio Mayer is the President of GM Management 1 in Brooklyn, a residential and commercial real estate company. He is a licensed Real Estate Broker and Notary in the State of New York and has a Rabbinical degree from Rabbinical College of Canada. Mr. Mayer discloses the following nursing home ownership interests:

Gold Crest Care Center	01/1996 to present
Sunnyside Care Center	05/1998 to present
Wellsville Manor Care Center	12/1999 to present
Valley View Manor Nursing Home	07/2002 to present
Bethany Gardens Skilled Living Center	01/2003 to present
Fieldston Lodge Care Center	02/2004 to present
Affinity Skilled Living and Rehabilitation	11/2005 to present

Aryeh Grinspan is a licensed nursing home administrator with license in good standing. He is currently employed as the Administrator of Record at Sans Souci Rehabilitation and Nursing Center. Mr. Grinspan has a degree from Brooklyn College and discloses no nursing home ownership interests.

Abraham Mayer is the owner of AJ Vision, Inc. and Medelite, LLC, which are medical staffing agencies located in Brooklyn. Mr. Mayer has a Social degree from Yeshivath Meor Enaim in Jerusalem, Israel and discloses no nursing home ownership interests.

Character and Competence – Analysis

A review of operations of Gold Crest Center for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-09-038 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility incurred a Civil Money Penalty of \$18,712.50 on September 17, 2008.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations for Sunnyside Care Center for the periods identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order NH 12-023 for surveillance findings on January 31, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care- Accidents, 415.14(d)(3) Food in Form to Meet Residents' Needs, 415.26 Administration and 15.27(a-c)- Quality Assurance.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH 16-166 for surveillance findings on September 18, 2014. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care- Accident Free Environment and 415.29(b) Physical Environment Space/Equipment.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations at Wellsville Manor Care Center for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order NH 10-061 for surveillance findings on August 6, 2009. Deficiencies were found under 10 NYCRR 415.5(a) Dignity and Respect of Individuality, 415.12 Provide Care/Services for Highest well-being, 415.12(h)(1)(2) Free of Accident Hazards/Supervision/Devices and 415.26 Administration.
- The facility incurred a Civil Money Penalty of \$4,550 on August 6, 2009.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations at Valley View Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 10-061 for surveillance findings on September 27, 2007. Deficiencies were found under 10 NYCRR 415.5(a) Dignity and Respect of Individuality, 415.12 Provide Care/Services for Highest well-being, 415.12(h)(1)(2) Free of Accident Hazards/Supervision/Devices and 415.26 Administration.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-132 for surveillance findings on September 18, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations at Bethany Gardens Skilled Living Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-027 for surveillance findings on January 16, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care Accidents.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations at Fieldston Lodge Care Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH 11-040 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.3(a)(1)(iii) Residents Rights, 415.4(b) Staff Treatment of Residents, 415.12(h)(2) Quality of Care Accidents and Supervision, 415.26 Administrator and 415.15(a) Medical Director.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH 12-019 for surveillance findings on January 11, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Free from Abuse and 415.12 Quality of Care Highest Practicable Potential.
- The facility incurred a Civil Money Penalty of \$22,652 on September 18, 2008.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations at Affinity Skilled Living and Rehabilitation Center for the period identified above reveals that there were no enforcements.

A review of operations at Whitney Rehabilitation Care Center for the period identified above reveals the following:

- The facility was fined \$1,090 by the State of Connecticut for a Survey on July 23, 2015 for F-tag 223 Free from Abuse.
- The facility was fined \$ by the State of Connecticut for a Survey on July 13, 2016 for F-tag 323 Free of Accidents Hazards/Supervision/Devices.
- The facility incurred a Civil Money Penalty of \$ 7,053 for a Survey on July 13, 2016 under F-tag 323- Free of Accidents Hazards/Supervision/Devices.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	NYS Quintile
Gold Crest Care Center	***	****	****	4
Sunnyside Care Center	*	*	***	5
Wellsville Manor Care Center	**	**	*****	1
Valley View Manor Nursing Home	*	*	****	5
Bethany Gardens Skilled Living Center	*	*	***	5
Fieldston Lodge Care Center	**	***	****	2

CT

Whitney Rehabilitation Care Center	**	*	*****
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Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

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:	November 17, 2016
Seller:	Elm Manor Nursing Home, Inc.
Purchaser:	ILF Operating, LLC
Assets Transferred:	Right, title and interest in business assets clear of liens including: tangible assets, inventory, copy of books & records, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "Elm Manor"), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, and goodwill.
Excluded Assets:	Sellers' insurance policies, pension plans, tax refunds, 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:	\$900,000
Payment of the Purchase Price:	\$50,000 paid upon execution; \$850,000 due at Closing

The purchase price of the operations will be satisfied as follows:

Equity – ILF Operating, LLC Members	\$225,000
Loan 30-year term, 5% interest	<u>675,000</u>
Total	\$900,000

Harborview Capital Partners has provided a letter of interest at the stated terms.

BFA Attachment A is the net worth summary of the members of ILF Operating, LLC, which shows sufficient resources overall to meet the equity requirement. Giorgio Meyer has provided a letter of interest for a \$600,000 personal loan from his company, Damitz Prop, Inc., with a 20-year term at 5% interest. As the result of a potential equity shortfall for select members, Giorgio Meyer has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interest in the operating entity to make up any member's equity shortfall. BFA Attachment F is Damitz Prop, Inc.'s 2016 Balance Sheet as of December 31, 2016, the 2015-2016 Income Statement and the company's bank statement as of May 24, 2017, which supports the ability to make the personal loan.

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 May 15, 2017, 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:	November 17, 2016
Seller:	Robert W. Hurlbut and Jay B. Birnbaum as individuals
Purchaser:	ILF Realty, LLC,
Asset Transferred Realty:	Real Property located at 210 North Main Street, Canandaigua, NY (tax map 83.08-2-46)
Purchase Price:	\$1,350,000
Payment of the Purchase Price:	\$50,000 paid upon execution; \$1,300,000 due at Closing

The \$1,350,000 real property purchase price is expected to be funded by a 30-year loan at 5% interest. Harborview Capital Partners has provided a letter of interest at the stated terms.

Master Lease Agreement

The applicant submitted an executed master lease agreement, the terms of which are summarized below:

Date:	March 15, 2017
Premises:	46-bed RHCF located at 210 North Main Street, Canandaigua, New York 14424
Owner/Landlord:	ILF Realty, LLC (upon acquisition at closure of REPA)
Lessee:	ILF Operating, LLC
Term:	20 years with two (2) 5-year renewal options
Rent:	\$276,000 (\$23,000 monthly Base Rent*) with a 1% increase annually *subject to Base Rent Floor of 110% of the aggregate principal and interest due that same month under the Term Loan and Security Agreement
Provisions:	Triple Net

In addition, at time of signing, ILF Operating LLC (Lessee) was required to make a non-refundable \$200,000 deposit to be released to the Lessor on the Commencement Date.

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 results and the first and third year operating budgets after the change in ownership, in 2017 dollars, summarized as follows:

Revenues	Current Year		First Year		Third Year	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid FFS	\$247.84	\$2,240,245	\$194.70	\$1,699,608	\$194.70	\$1,752,595
Medicaid MC	\$247.84	\$30,237	\$184.94	\$502,124	\$184.96	\$517,707
Medicare FFS	\$776.96	\$867,088	\$776.96	\$867,088	\$776.96	\$867,088
Medicare MC	\$485.01	\$783,298	\$485.01	\$783,298	\$485.01	\$783,298
Private Pay	\$295.15	\$709,545	\$295.15	\$709,545	\$295.15	\$709,545
All Other		\$3,110		\$3,110		\$3,110
Total		\$4,633,523		\$4,564,773		\$4,633,343

<u>Expenses</u>						
Operating	\$264.86	\$3,786,430	\$250.53	\$4,007,000	\$244.88	\$3,999,060
Capital	<u>\$17.54</u>	<u>\$250,703</u>	<u>\$28.50</u>	<u>\$455,835</u>	<u>\$27.91</u>	<u>\$455,835</u>
Total Expenses	\$282.40	\$4,037,133	\$279.03	\$4,462,835	\$272.79	\$4,454,895
Net Income		\$596,390		\$101,938		\$178,448
RHCF Patient Days		14,296		15,994		16,331
Utilization %		85.15%		95.26%		97.27%

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 Medicaid Managed Care rate is estimated at 95% of the Medicaid FFS rate, which the applicant believes is a reasonable estimate.
- Expense and staffing assumptions were based on the current operator's cost report and then adjusted for an increase in expenses.
- The facility's projected utilization for Year One and Year Three is 95.26% and 97.27%, respectively. It is noted that utilization for the past four years has averaged around 85.6% and current occupancy was 87% as of March 15, 2017, but on February 15, 2017 occupancy was at 93.48%. The applicant plans on increasing utilization by implementing a number of measures including:
 - Increase the number of Medicaid residents by reaching out to local hospital, senior centers and assisted living facilities.
 - Raise nursing department skill level to handle more complex cases.
 - Reach out to local physicians to bring added patients in need of cardiac and tracheotomy care.
 - Host education programs for local seniors on cardiac and diabetes health topics.
 - Develop an advertising campaign to promote the new ownership.
- The breakeven utilization is projected at 93.1% for the first year
- Utilization by payer source for the first and third year after the change in ownership is:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid-FFS	63.22%	50.91%	51.42%
Medicaid-MC	0.85%	16.98%	17.14%
Medicare-FFS	7.81%	6.98%	6.83%
Medicare-MC	11.30%	10.10%	9.89%
Private Pay	<u>16.82%</u>	<u>15.03%</u>	<u>14.72%</u>
	100%	100%	100%

Capability and Feasibility

There are no project costs associated with this application. ILF Operating, LLC will acquire the RHCF's operations for \$900,000 funded via \$225,000 in members' equity and a 30-year loan at 5% interest. ILF Realty, LLC will acquire the real property for \$1,350,000 funded by 30-year loan at 5% interest. Harborview Capital Partners has provided letters of interest for both loans at the stated terms.

The working capital requirement is estimated at \$743,806 based on two months of year one expenses. Funding will be as follows: \$371,903 from members' equity with the remaining \$371,903 satisfied through a five-year loan at 5% interest. Harborview Capital Partners has provided a letter of interest.

BFA Attachment A, proposed members' net worth summary, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest for the two RHCFs (this application and CON 171231 concurrently under review). As the result of potential equity shortfall, Giorgio Meyer has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interest in the operating entity to make up any member's equity shortfall. Giorgio Meyer has provided a letter of interest for a \$600,000 personal loan at the above state terms.

The submitted budget projects \$101,938 and \$178,448 of net income in the first and third years, respectively. First year revenues are estimated to decrease \$68,750 as the facility moves towards Medicaid Managed Care. Overall, first year expenses are expected to increase \$425,702 or 6%, coming from a \$220,570 increase in operating expense and \$205,132 increase in depreciation and rent. The change in operating expenses is primarily due to a \$150,960 increase in wages and fringe benefits. The remaining \$69,610 increase in expenses was spread among multiple categories. BFA Attachment C is ILF Operating, LLC's pro forma balance sheet, which shows the entity will start with \$596,903 in equity. The budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is a Financial Summary of Elm Manor Nursing Home, Inc. for 2014 through 2016, which shows the RHCf had average positive working capital and average positive net assets and generate an average positive net income of \$362,039.

BFA Attachment E, financial summary of the proposed member's affiliated RHCfs, shows the facilities have maintained positive net income, working capital and net assets for the periods shown, or have been corrected by 2016 except for the following:

- Gold Crest Center shows positive net assets, positive operating income and negative working capital. The negative working capital is the result of a higher-than-expected level of accounts payable and a balloon payment included in the current portion of long-term debt. The applicant expects these liabilities will be paid down by the end of 2017 bringing working capital into positive territory.
- Fieldston Lodge Care Center shows positive net assets, positive operating income and negative working capital during 2015. In 2016, the facility shows positive net assets, positive operating income and positive working capital.
- Oakwood Operating Co, LLC d/b/a Affinity Skilled Living & Rehabilitation shows positive net assets, positive operating income and negative working capital through September 30, 2016. The negative working capital is the result of a higher-than-expected level in accounts payable. The applicant expects these liabilities will be paid down by the end of 2017 bringing working capital into positive territory.

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	ILF Operating, LLC, Proposed Members Net Worth
BFA Attachment B	Current and Proposed Owners of the Real Property
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary, Elm Manor Nursing Home, Inc.
BFA Attachment E	Proposed member's ownership interest in Affiliated RHCfs and their Financial Summary
BFA Attachment F	Damitz Prop Inc. Financial Statement and May 24, 2017 bank statement

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish ILF Operating, LLC d/b/a Elm Manor Nursing and Rehabilitation Center, as the new operator of Elm Manor Nursing Home, a 46-bed proprietary residential health care facility located at 210 North Main Street, Canandaigua, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171229 E

ILF Operating, LLC d/b/a Elm Manor Nursing
and Rehabilitation Center

APPROVAL CONTINGENT UPON:

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

11. Submission of the applicant's Medicaid Affidavit, acceptable to the Department.

APPROVAL CONDITIONAL UPON:

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

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



Project # 171231-E
LFG Operating, LLC d/b/a
Wedgewood Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: March 31, 2017

Executive Summary

Description

LFG Operating, LLC d/b/a Wedgewood Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of Wedgewood Nursing Home, a 29-bed, proprietary, Article 28 residential health care facility (RHCF) located at 5 Church Street, Spencerport (Monroe County). Wedgewood Nursing Home, Inc. is the current operator of the facility. A separate entity, LFG Realty, LLC, will acquire the real property and assign it to LFG II Realty, LLC. There will be no change in beds or services provided.

On November 17, 2016, Wedgewood Nursing Home, Inc. entered an Asset Purchase Agreement (APA) with LFG Operating, LLC for the sale and acquisition of the RHCF operating interests for \$400,000. Concurrently, the current real property owner, Robert W. Hurlbut (50%) and Jay B. Birnbaum (50%), entered into a Real Estate Purchase Agreement (REPA) with LFG Realty, LLC for the sale and acquisition of the real property for \$600,000. The APA and REPA will close simultaneously upon approval by the Public Health and Health Planning Council (PHHPC). Upon closure of the REPA, LFG Realty, LLC will assign all rights and obligations under the purchase agreement to LFG II Realty, LLC, a related entity through common membership. There is a relationship between LFG Operating, LLC, LFG Realty, LLC and LFG II Realty, LLC in that there are common members in the three entities. The applicant will lease the premises from LFG II Realty, LLC.

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

Table with 3 columns: Shareholders, Shares, % for Current Operator Wedgewood Nursing Home, Inc.

Table with 2 columns: Members, % for Proposed Operator ILF Operating, LLC

Concurrently under review, the applicant members of LFG Operating, LLC and the realty members of LFG II Realty, LLC are seeking approval to acquire the operating and realty interests, respectively, in Elm Manor and Rehabilitation Center (CON 171229).

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no change in beds or services as a result of this change in ownership. Facility self-reported occupancy was 89.7% as of June 14, 2017.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

Financial Summary

There are no project costs associated with this application. LFG Operating, LLC will acquire the RHCF's operations for \$400,000 funded via \$100,000 in members' equity and a 30-year loan at 5% interest. LFG Realty, LLC will purchase the real property for \$600,000 funded by a 30-year loan at 5% interest. Harborview Capital Partners has provided letters of interest for both loans at the stated terms. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,616,574	\$2,623,655
Expenses	<u>2,589,958</u>	<u>2,588,989</u>
Net Income	\$26,616	\$34,666

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency, known as Common Ground Health, recommends approval.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed personal loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment for the purchase of the operations, 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 assignment of agreement for sale of real property, acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of a Lease Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of a Certificate of Amendment of Articles of Organization, 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
August 3, 2017

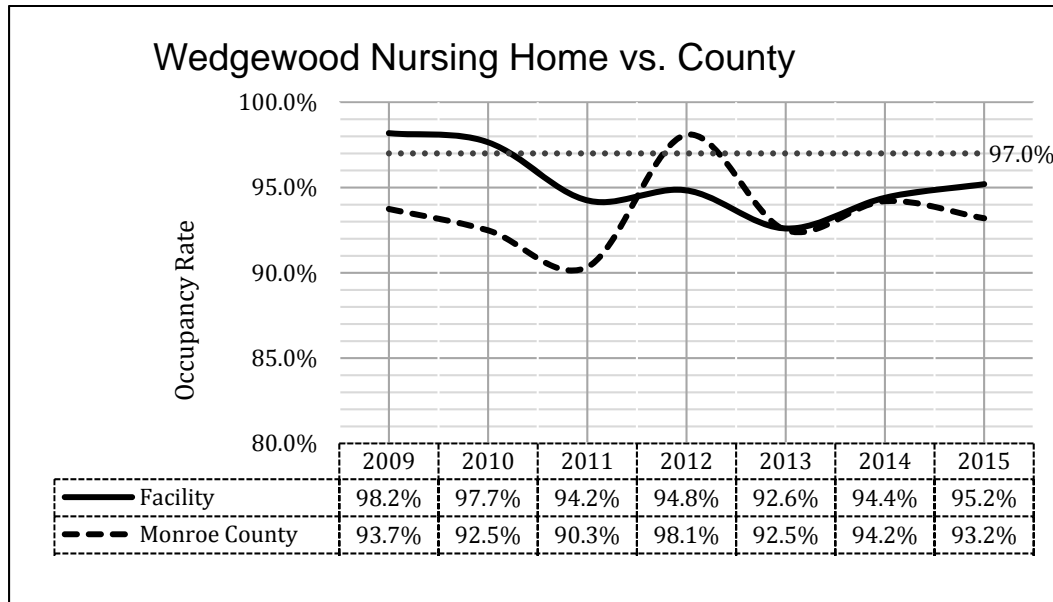
Need Analysis

Background

The current Need methodology shows no unmet need for RHCf beds in Monroe County. This project will not result in a change in the number of RHCf beds in the county.

RHCf Need – Monroe County

2016 Projected Need	4,167
Current Beds	5,142
Beds Under Construction	-34
Total Resources	5,108
Unmet Need	0



The self-reported occupancy as of June 14, 2017 was 89.7%.

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.

Wedgewood Nursing Home's Medicaid admissions rate has not exceeded the threshold of 75% of the Kings County rate, as demonstrated in the table below. Therefore, the applicant will be required to improve access to care for Medicaid residents, as well as commit to meeting the County threshold within two years of approval, as outlined in the contingencies and conditions below.

Percent of New RHCFC Admissions that are Medicaid	2013	2014	2015
Monroe County 75% Threshold	12.8%	15.5%	10.2%
Wedgewood Nursing Home	9.9%	5.1%	6.7%

Conclusion

This change in ownership will not impact access and will enable the new owners to implement plans to increase Medicaid utilization of the beds.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Wedgewood Nursing Home	Wedgewood Nursing and Rehabilitation Center
Address	5 Church Street Spencerport, NY 14559	Same
RHCFC Capacity	29	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	Corporation	Same
Operator	Wedgewood Nursing Home, Inc.	LFG Operating LLC Giorgio Mayer* 75.0% Aryeh Grinspan 15.0% Abraham Mayer 10.0% *Managing Member

Character and Competence - Background

Facilities Reviewed

1226 Gold Crest Care Center	07/2007 to present
0664 Sunnyside Care Center	07/2007 to present
2589 Wellsville Manor Care Center	07/2007 to present
0131 Valley View Manor Nursing Home	07/2007 to present
0594 Bethany Gardens Skilled Living Center	07/2007 to present
1233 Fieldston Lodge Care Center	07/2007 to present
6460 Affinity Skilled Living and Rehabilitation	07/2007 to present
Whitney Rehabilitation Care Center (CT)	03/2015 to present

Individual Background Review

Giorgio Mayer is the President of GM Management 1 in Brooklyn, a residential and commercial real estate company. He is a licensed Real Estate Broker and Notary in the State of New York and has a Rabbinical degree from Rabbinical College of Canada. Mr. Mayer discloses the following nursing home ownership interests:

Gold Crest Care Center	01/1996 to present
Sunnyside Care Center	05/1998 to present
Wellsville Manor Care Center	12/1999 to present
Valley View Manor Nursing Home	07/2002 to present
Bethany Gardens Skilled Living Center	01/2003 to present
Fieldston Lodge Care Center	02/2004 to present
Affinity Skilled Living and Rehabilitation	11/2005 to present
Whitney Rehabilitation Care Center (CT)	03/2015 to present

Aryeh Grinspan is a licensed nursing home administrator with license in good standing. He is currently employed as the Administrator of Record at Sans Souci Rehabilitation and Nursing Center. Mr. Grinspan has a degree from Brooklyn College and discloses no nursing home ownership interests.

Abraham Mayer is the owner of AJ Vision, Inc. and Medelite, LLC, which are medical staffing agencies located in Brooklyn. Mr. Mayer has a Social degree from Yeshivath Meor Enaim in Jerusalem, Israel and discloses no nursing home ownership interests.

Character and Competence – Analysis

A review of operations of Gold Crest Center for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-09-038 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility incurred a Civil Money Penalty of \$18,712.50 on September 17, 2008.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations for Sunnyside Care Center for the periods identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order NH 12-023 for surveillance findings on January 31, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care- Accidents, 415.14(d)(3) Food in Form to Meet Residents' Needs, 415.26 Administration and 15.27(a-c)- Quality Assurance.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH 16-166 for surveillance findings on September 18, 2014. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care- Accident Free Environment and 415.29(b) Physical Environment Space/Equipment.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations at Wellsville Manor Care Center for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order NH 10-061 for surveillance findings on August 6, 2009. Deficiencies were found under 10 NYCRR 415.5(a) Dignity and Respect of Individuality, 415.12 Provide Care/Services for Highest well-being, 415.12(h)(1)(2) Free of Accident Hazards/Supervision/Devices and 415.26 Administration.
- The facility incurred a Civil Money Penalty of \$4,550 on August 6, 2009.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations at Valley View Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 10-061 for surveillance findings on September 27, 2007. Deficiencies were found under 10 NYCRR 415.5(a) Dignity and Respect of Individuality, 415.12 Provide Care/Services for Highest well-being, 415.12(h)(1)(2) Free of Accident Hazards/Supervision/Devices and 415.26 Administration.
- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-132 for surveillance findings on September 18, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations at Bethany Gardens Skilled Living Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-027 for surveillance findings on January 16, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care Accidents.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations at Fieldston Lodge Care Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH 11-040 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.3(a)(1)(iii) Residents Rights, 415.4(b) Staff Treatment of Residents, 415.12(h)(2) Quality of Care Accidents and Supervision, 415.26 Administrator and 415.15(a) Medical Director.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH 12-019 for surveillance findings on January 11, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Free from Abuse and 415.12 Quality of Care Highest Practicable Potential.
- The facility incurred a Civil Money Penalty of \$22,652 on September 18, 2008.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations at Affinity Skilled Living and Rehabilitation Center for the period identified above reveals that there were no enforcements.

A review of operations at Whitney Rehabilitation Care Center for the period identified above reveals the following:

- The facility was fined \$1,090 by the State of Connecticut for a Survey on July 23, 2015 for F-tag 223 Free from Abuse.
- The facility was fined \$ by the State of Connecticut for a Survey on July 13, 2016 for F-tag 323 Free of Accidents Hazards/Supervision/Devices.
- The facility incurred a Civil Money Penalty of \$ 7,053 for a Survey on July 13, 2016 under F-tag 323- Free of Accidents Hazards/Supervision/Devices.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	NYS Quintile
Gold Crest Care Center	***	****	****	4
Sunnyside Care Center	*	*	***	5
Wellsville Manor Care Center	**	**	*****	1
Valley View Manor Nursing Home	*	*	****	5
Bethany Gardens Skilled Living Center	*	*	***	5
Fieldston Lodge Care Center	**	***	****	2

CT

Whitney Rehabilitation Care Center	**	*	*****
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Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

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:	November 17, 2016
Seller:	Wedgewood Nursing Home, Inc.
Purchaser:	LFG Operating, LLC
Assets Transferred:	Right, title and interest in business assets clear of liens including: tangible assets, inventory, copy of books & records, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "Elm Manor"), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, and goodwill.
Excluded Assets:	Sellers' insurance policies, pension plans, tax refunds, 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:	\$400,000
Payment of the Purchase Price:	\$50,000 paid upon execution; \$350,000 due at Closing

The purchase price of the operations will be satisfied as follows:

Equity – LFG Operating, LLC Members	\$100,000
Loan (30-year term, 5% interest)	<u>300,000</u>
Total	\$400,000

Harborview Capital Partners has provided a letter of interest at the stated terms.

BFA Attachment A is the net worth summary of the members of LFG Operating, LLC, which shows sufficient resources to meet the equity requirement. Giorgio Meyer has provided a letter of interest for a \$320,000 personal loan from his company, Gykem Realty, Inc., with a 20-year term at 5% interest. As the result of a potential equity short fall for select members, Giorgio Meyer has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interest in the operating entity to make up any member's equity shortfall. BFA Attachment F is Gykem Realty, Inc.'s 2016 Balance Sheet as of December 31, 2016, the 2015-2016 Income Statement and the company's bank statement as of May 22, 2017, which supports the ability to make the personal loan.

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 May 15, 2017, 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:	November 17, 2016
Seller:	Robert W. Hurlbut and Jay B. Birnbaum as individuals
Purchaser:	LFG Realty, LLC,
Asset Transferred Realty:	Real Property located at 5 Church Street, Spencerport, NY (tax map 087.09-9-3)
Purchase Price:	\$600,000
Payment of the Purchase Price:	\$50,000 paid upon execution; \$550,000 due at Closing

The \$600,000 real property purchase price is expected to be funded by a 30-year loan at 5% interest. Harborview Capital Partners has provided a letter of interest at the stated terms.

Assignment of Agreement for Sale of Real Property

The applicant submitted a draft assignment of agreement for sale of real property, the terms of which are summarized below:

Assignor:	LFG Realty, LLC
Assignee:	LFG II Realty, LLC
Assignment:	All of buyer's rights and obligations under the Purchase Agreement dated November 17, 2016

Master Lease Agreement

The applicant submitted an executed master lease agreement, the terms of which are summarized below:

Date:	June 5, 2017 (execution date, effective on final CON approval)
Premises:	46-bed RHCf located at 210 North Main Street, Canandaigua, New York 14424
Owner/Landlord:	LFG II Realty, LLC
Lessee:	LFG Operating, LLC
Term:	20 years with two (2) 5-year renewal options
Rent:	\$174,000 (\$14,500 monthly Base Rent*) with a 1% increase annually *subject to Base Rent Floor of 110% of the aggregate principal and interest due that same month under the Term Loan and Security Agreement
Provisions:	Triple Net

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

Operating Budget

The applicant has provided the current year results and the first and third year operating budgets after the change in ownership, in 2017 dollars, summarized as follows:

	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
<u>Revenues</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid FFS	\$197.70	\$1,192,751	\$180.35	\$948,901	\$180.37	\$954,606
Medicaid MC		0	\$171.33	263,681	\$171.33	263,681
Medicare FFS	\$590.41	215,498	\$590.88	219,808	\$589.88	220,024
Medicare MC	\$383.63	336,442	\$383.43	343,171	\$383.81	343,507
Private Pay	\$294.38	823,970	\$294.38	840,750	\$294.36	841,574
All Other		263		263		263
Total		\$2,568,924		\$2,616,574		\$2,623,655
<u>Expenses</u>						
Operating	\$246.54	\$2,483,621	\$228.59	\$2,349,673	\$228.41	\$2,349,673
Capital	\$6.90	69,493	\$23.38	240,285	\$23.26	239,316
Total Expenses	\$253.44	\$2,553,114	\$251.97	\$2,589,958	\$251.67	\$2,588,989
Net Income		\$15,810		\$26,616		\$34,666
RHCf Patient Days		10,074		10,279		10,287
Utilization %		95.17%		97.11%		97.18%

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 Medicaid Managed Care rate is estimated at 95% of the Medicaid FFS rate, which the applicant believes is a reasonable estimate.
- Expense and staffing assumptions were based on the current operator's cost report and then adjusted for an increase in expenses.
- The facility's projected utilization for year one and year three is 97.11% and 97.18%, respectively. It is noted that utilization for the past four years has averaged around 94.3% and current occupancy was 89.7% (three vacant beds) as of March 22, 2017.
- The breakeven utilization is projected at 96.1% for the first year.

- Utilization by payer source for the first and third year after the change in ownership is summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid-FFS	59.89%	44.92%	44.92%
Medicaid-MC	0%	14.97%	14.96%
Medicare-FFS	3.62%	3.62%	3.63%
Medicare-MC	8.71%	8.71%	8.70%
Private Pay	<u>27.78%</u>	<u>27.78%</u>	<u>27.79%</u>
	100%	100%	100%

Capability and Feasibility

LFG Operating, LLC will acquire the RHCf's operations for \$400,000 funded via \$100,000 in members' equity and a 30-year loan at 5% interest. LFG Realty, LLC will purchase the real property for \$600,000 funded by 30-year loan at the above stated value and assign it rights to LFG II Realty, LLC. Harborview Capital Partners has provided letters of interest for both loans at the stated terms. There are no project costs associated with this application.

The working capital requirement is estimated at \$431,660 based on two months of year one expenses. Funding will be as follows: \$215,830 from members' equity with the remaining \$215,830 satisfied through a five-year loan at 5% interest. Harborview Capital Partners has provided a letter of interest.

BFA Attachment A, proposed members' net worth summary, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to the proposed ownership interest for the two RHCf's (this application and CON 171229 concurrently under review). As the result of potential equity shortfall, Giorgio Meyer has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interest in the operating entity to make up any member's equity shortfall. Giorgio Meyer has provided a letter of interest for a \$320,000 personal loan at the above state terms.

The submitted budget projects \$26,616 and \$34,666 of net income in the first and third years, respectively. First year revenues are estimated to increase \$47,650 over the current year (2015) due to a slight increase in utilization. Overall, first year expenses are expected to increase \$36,844, coming from a \$170,792 increase in depreciation and rent offset by a \$133,948 reduction in operating expenses. The change in operating expenses is primarily due to a \$77,106 increase in wages and fringe benefits offset by a reduction in administrative expenses. BFA Attachment C presents LFG Operating, LLC's pro forma balance sheet, which shows the entity will start with \$315,830 in equity. The budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is a Financial Summary Wedgewood Nursing Home, Inc. for 2014 through 2016, which shows the RHCf had average positive working capital and average positive net assets and generate a small average loss of \$11,667.

BFA Attachment E, financial summary of the proposed member's affiliated RHCf's, shows the facilities have maintained positive net income, working capital and net assets for the periods shown, or have been corrected by 2016 except for the following:

- Gold Crest Center shows positive net assets, positive operating income and negative working capital. The negative working capital is the result of a higher-than-expected level of accounts payable and a balloon payment included in the current portion of long-term debt. The applicant expects these liabilities will be paid down by the end of 2017 bringing working capital into positive territory.

- Fieldston Lodge Care Center shows positive net assets, positive operating income and negative working capital during 2015. In 2016, the facility shows positive net assets, positive operating income and positive working capital.
- Oakwood Operating Co, LLC d/b/a Affinity Skilled Living & Rehabilitation shows positive net assets, positive operating income and negative working capital through September 30, 2016. The negative working capital is the result of a higher-than-expected level in accounts payable. The applicant expects these liabilities will be paid down by the end of 2017 bringing working capital into positive territory.

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	LFG Operating, LLC, Proposed Members Net Worth
BFA Attachment B	Current and Proposed Owners of the Real Property
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary, Wedgewood Nursing Home, Inc.
BFA Attachment E	Proposed member's ownership interest in Affiliated RHCs and their Financial Summary
BFA Attachment F	Gykem Realty, Inc. Financial Statement and May 22, 2017 bank statement

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish LFG Operating, LLC d/b/a Wedgewood Nursing and Rehabilitation Center, as the new operator of Wedgewood Nursing Home, a 29-bed proprietary residential health care facility located at 5 Church Street, Spencerport, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171231 E

LMF Operating, LLC d/b/a Wedgewood
Nursing and Rehabilitation Center

APPROVAL CONTINGENT UPON:

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

10. Submission of a photocopy of a Certificate of Amendment of Articles of Organization, 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]

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

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Divine Home Care Agency, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2198L

Description of Project:

Divine Home Care Agency, 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: Stella Obidigbo owns 50 shares and Moyosore Tom King Bayo-Yusuf owns 50 shares. The remaining 100 shares are unissued.

The Board of Directors of Divine Home Care Agency, Inc. comprises the following individuals:

Stella Obidigbo, RN, President/Secretary
Director of Nursing, Divine Healthcare Services

Affiliations:

Divine Tec Institute (New Jersey, 2013 – Present)

Moyosore Tom King Bayo-Yusuf, Vice President/Treasurer
Office Manager, Divine Healthcare Services

The State of New Jersey Department of Law & Public Safety, Division of Consumer Affairs indicates no issues with the licenses 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 150 Crown Street C8, Brooklyn, New York 11225:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Divine Tec Institute (2013 – Present)

The State of New Jersey Department of Education and Department of Labor and Workforce Development granted a Certificate of Approval for the operation of the above-named entity. The

state indicated that this entity is currently in compliance with no enforcement actions taken against them during the period reviewed.

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: May 23, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: You First Home Care LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2214L

Description of Project:

You First 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 You First Home Care LLC comprises the following individuals:

Lung Nin (Jonathan) Yuen – 99%
Building Management/Operations, Middle Broadway Mgmt Corp.

Jeffrey Castano, RN, BSN – 1%
Surgical ICU Staff Nurse, NYU Langone Medical Center

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1235 Broadway, Apartment 1, Brooklyn, New York 11221:

Kings	Queens	Richmond
New York	Bronx	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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: June 8, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Miracle Home Care Agency Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2326L

Description of Project:

Miracle Home Care Agency 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 solely owned by Gina Charles, RN.

The Board of Directors of Miracle Home Care Agency Inc. comprises the following individuals:

Gina Charles, RN, Board Chairperson
Staff Nurse (ICU), Brookdale University Hospital

Jean Etienne Thibaud, MD, Compliance Officer
Staff Physician/Clinical Care, AdvantageCare Physicians

Fritzner Montalmant, FNP, APNP, RN, Compliance Officer
Psychiatric Nurse Practitioner, Woodhull Medical Center
Head Nurse, Interfaith Medical Center

Carl Charles, Secretary
Permanent Substitute/Operations Associate, Fahari Academy Charter School
Para-Professional, Execu-Search Group

Barbara Fonrose, Treasurer
Student Advocate, Harlem Children Zone

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 licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 9214 Skidmore Avenue, Brooklyn, New York 11236:

Kings	Queens	New York
Richmond	Bronx	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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 the proceeding with the proposal is appropriate.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 19, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Seaside Home Care, Inc
Address: Bronx
County: Bronx
Structure: For-Profit Corporation
Application Number: 2346L

Description of Project:

Seaside Home Care, Inc, an inactive 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 authorize 200 shares of stock, which will be owned as follows: Murry Englard, 100 shares and Lisa Grossman, 100 shares.

The proposed Board of Directors of Seaside Home Care, Inc comprises the following individuals:

Murry Englard, CPA, President/Treasurer
Accountant, Englard CPA, PC
CEO/Shareholder, New York Health Care, Inc.

Affiliations:

New York Health Care, Inc. (LHCSA, 2007 – Present)

Lisa Grossman, Vice President/Secretary
NY State Licensed Insurance Agent
Accounts Receivable Manager, New York Health Care, Inc.

Affiliations:

New York Health Care, Inc. (LHCSA, 2013 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the accounting professional associated with this application.

The New York State Department of Financial Services indicates no issues with the license of the insurance professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 369 East 149th Street, 2nd Floor, Bronx, New York 10455:

Bronx	New York	Kings
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Homemaker	Housekeeper	

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review:

New York Health Care, Inc.

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.

Murry England and New York Health Care, Inc. are named in a lawsuit that is active and currently pending in the Supreme Court of the State of New York, County of Kings. Case Index Number 14309-2011 is a wage and hour lawsuit.

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: May 5, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Care One Licensed Home Care Agency, Inc.
Address: Bronx
County: Kings
Structure: For-Profit Corporation
Application Number: 2379L

Description of Project:

Care One Licensed Home Care Agency, 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:

Ralph D. Fleurantin – 200 Shares

The Board of Directors of Care One Licensed Home Care Agency, Inc. is comprised of the following individual:

Ralph D. Fleurantin – Chairman/Treasure/Secretary/Director
President/CEO, The Fleurantin Corp. d/b/a TFC Service Bureau

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 814 East 233rd Street, 2nd Floor, Suite 2, Bronx, New York 10466:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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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: May 10, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Silver Home Care Services, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit Corporation
Application Number: 2416L

Description of Project:

Silver Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Silver Home Care Services, Inc. has authorized 200 shares of stock which are owned as follows: Olabisi Osinuga owns 100 shares and Adetola Osinuga owns 100 shares.

The Board of Directors of Silver Home Care Services, Inc. is comprised of the following individuals:

Olabisi Osinuga – President
Case Worker – NYC Department
of Social Services

Adetola Osinuga – Treasurer
Dental Hygienist – New York Dental Group, LLP

Adetayo Osinuga – Board Member
Building Porter, Halstead Management
Leighton House Condominium

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 265 Regis Drive, Staten Island, New York 10314:

Richmond
Queens

New York
Bronx

Kings
Westchester

The applicant proposes to provide the following health care services:

Nursing
Physical Therapy
Speech-Language Pathology
Nutrition

Home Health Aide
Respiratory Therapy
Audiology
Homemaker

Personal Care
Occupational Therapy
Medical Social Services
Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 25, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Good Shepherd Personal Care Inc.
Address: East Meadow
County: Nassau
Structure: For-Profit Corporation
Application Number: 2440L

Description of Project:

Good Shepherd Personal 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 1,000 shares of stock which are owned as follows: Thomas Kurian owns 250 shares, Susan Thomas owns 250 shares, Chacko Pappy owns 250 shares and Mary Pappy owns 250 shares.

The Board of Directors of Good Shepherd Personal Care Inc. comprises the following individuals:

Thomas Kurian, President
Electronic Specialist, NYCT

Susan Thomas, LPN (fka Susamma Thomas), Vice President
Dialysis Nurse, Winthrop University Hospital

Chacko Pappy, Treasurer
Owner, C & M Window Fashion

Mary Pappy, RN, Secretary
Staff Nurse, The Brooklyn Hospital Center

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1418 Willow Lane, East Meadow, New York 11554:

Nassau	Suffolk	Queens
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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: June 2, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Focus Care Group Inc.
Address: Yonkers
County: Westchester
Structure: For-Profit Corporation
Application Number: 2446L

Description of Project:

Focus Care Group 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 3 shares of stock, which are owned as follows:

Katie Ngbodi, RN – 1 Share CEO, Focus Care Group Inc.	Innoh N. Ngbodi, RN – 1 Share RN, Vassar Brothers Medical Center
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Eliada O. Ngbodi – 0.5 Share Management and Designer, Elite Landscaping	Elihu E. Ngbodi - 0.5 Share Student
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The Board of Directors of Focus Care Group Inc. comprises the following individuals:

Mathias Oni-Eseleh – Chairman Executive Director, Taconic Innovations	Joseph A. Yamaoh – Vice Chairman Retired
Edgar Ashong – Treasurer Senior Sales Associate/Customer Service Safety Captain, Amaranda Hess Express	Roxanne G. Wright, RN – Secretary Public Health Nurse, Visiting Nurse of New York

Katie Ngbodi, RN – Director
(Previously Disclosed)

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professionals associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 230 Stone Avenue, Yonkers, New York 10701:

Westchester Bronx

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Physical Therapy	Occupational Therapy	Respiratory Therapy	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: June 7, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Kind Loyal Service RN Healthcare Services PLLC
Address: Mamaroneck
County: Westchester
Structure: Professional Service Limited Liability Company
Application Number: 2502L

Description of Project:

Kind Loyal Service RN Healthcare Services PLLC, a professional service limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Kind Loyal Service RN Healthcare Services PLLC is the following individual:

Patrice Johnson, RN, President/Chief Executive Officer
Registered Nurse, Adult ER, New York Presbyterian Hospital/Columbia University Medical Center

A search of the individual 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 Westchester County from an office located at 1214 West Boston Post Road, #450, Mamaroneck, New York 10543.

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: May 9, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Kingsbridge Home Healthcare Services Corp.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2513L

Description of Project:

Kingsbridge Home Healthcare Services Corp., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Kingsbridge Home Healthcare Services Corp. has authorized 200 shares of stock which are owned as follows: Laurel King owns 160 shares and Megan Wedderburn owns 40 shares.

The Board of Directors of Kingsbridge Home Healthcare Services Corp. is comprised of the following individuals:

Laurel King – President/Treasurer Owner, Kings Family Day Care	Megan Wedderburn, RN – Vice-President/Secretary Senior Staff Nurse, Maimonides Medical Center
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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 licensure 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 187 East 96th Street, Brooklyn, New York 11212:

Kings New York	Queens Richmond	Bronx Westchester
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The applicant proposes to provide the following health care services:

Nursing Housekeeper	Home Health Aide Homemaker	Personal Care
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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: May 8, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Lavena Home Health Inc.
Address: Queens Village
County: Queens
Structure: For-Profit Corporation
Application Number: 2518L

Description of Project:

Lavena Home Health 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 solely by Zorena Jagnandan.

The Board of Directors of Lavena Home Health Inc. comprises the following individuals:

Zorena Jagnandan, LPN, President/Treasurer
Owner, Jasmin Jewelry
LPN/Patient Management, Pleasant Valley Manor

David Jagnandan, Vice President/Secretary
Owner, Jasmin Jewelry

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Pennsylvania Department of State indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 90-13 215th Street, Queens Village, New York 11428:

Queens	Kings	New York
Bronx	Richmond	Nassau

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: May 2, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Greater New York Home Health Care, Inc. d/b/a Loving Home Care
Address: Hewlett
County: Nassau
Structure: For-Profit Corporation
Application Number: 2520L

Description of Project:

Greater New York Home Health Care, Inc. d/b/a Loving Home Care, 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: Murry England owns 100 shares and Lisa Grossman owns 100 shares.

The Board of Directors of Greater New York Home Health Care, Inc. d/b/a Loving Home Care comprises the following individuals:

Murry England, CPA, President/Treasurer
Accountant, England CPA, PC
Owner/CEO, New York Health Care, Inc. (LHCSA)

Affiliations:

New York Health Care, Inc. (2007 – Present)

Lisa Grossman, Vice President/Secretary
State of NY Insurance Department
Accounts Receivable Manager, New York Health Care, Inc.

Affiliations:

New York Health Care, Inc. (2013 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 218 Woodside Drive, Hewlett, New York 11557:

Nassau	Suffolk	Rockland
Orange	Putnam	Dutchess
Westchester	Queens	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Homemaker	Housekeeper	

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review:

New York Health Care, Inc.

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.

Murry England and New York Health Care, Inc. are named in a lawsuit that is active and currently pending in the Supreme Court of the State of New York, County of Kings. Case Index Number 14309-2011 is a wage and hour lawsuit.

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: May 5, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Alastar Family & Senior In-Home Care, LLC
Address: White Plains
County: Westchester
Structure: Limited Liability Company
Application Number: 2522L

Description of Project:

Alastar Family & Senior In-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 sole member of Alastar Family & Senior In-Home Care, LLC is the following individual:

Kathleen M. Guglielmo, HHA
Certified Aging-In-Place Specialist
Owner/Director, Alastar Family & Senior In-Home Care, LLC (companion care agency)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Home Care Registry indicates no issues with the certification of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 333 Church Street, White Plains, New York 10603:

Westchester Bronx

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 2, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Diva Multicare Services Inc.
Address: Rosedale
County: Queens
Structure: For-Profit Corporation
Application Number: 2524L

Description of Project:

Diva Multicare Services 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 solely owned by Omowumi Susan Awelewa-Odigie.

The Board of Directors of Diva Multicare Services Inc. comprises the following individual:

Omowumi Susan Awelewa-Odigie, RN, MSN, Chief Executive Officer
Labor and Delivery Nurse, Maimonides Medical Center

A search of the individual 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 licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 257-21 145th Avenue, Rosedale, New York 11422:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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: May 11, 2017

The applicant proposes to provide the following health care services:

Nursing
Physical Therapy

Home Health Aide
Occupational Therapy

Personal Care
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: May 10, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Choose Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2536L

Description of Project:

Choose Home 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 which are solely owned by Kuan Ping Chiu, MD.

The Board of Directors of Choose Home Care, Inc. comprises the following individual:

Kuan Ping Chiu, MD, President/Owner
Retired

The Office of the Professions of the State Education Department of the State of New York indicates no issues with the license of the healthcare professional associated with this application.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 590 Madison Avenue, 21st Floor, New York, New York 10022:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Equipment, Supplies & Appliances		

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.

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: May 15, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: ATD Home Health Agency Inc.
Address: Whitestone
County: Queens
Structure: For-Profit Corporation
Application Number: 2550L

Description of Project:

ATD Home Health Agency 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 50 shares of stock which are owned as follows: Yijia Zhang owns 25 shares and Bing Hu, MD owns 25 shares.

The Board of Directors of ATD Home Health Agency Inc. comprises the following individuals:

Yijia Zhang, President/Treasurer
Retired ARDMS Sonographer
President/Administrator/Coordinator, Eva Homecare Agency Inc.

Affiliation

Eva Homecare Agency, Inc.

Bing Hu (aka Beulah Hu), MD, Vice President/Secretary
California Licensed Physician and Surgeon A
Musculoskeletal Radiology Fellow, University of California San Diego

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 California, Department of Consumer Affairs indicates no issues with the license of the healthcare professional associated with this application.

Bing Hu, MD self-disclosed that she was named as a co-defendant in a malpractice claim that was filed on November 21, 2016 in the State of Pennsylvania. This claim alleges failure to identify misplacement of endotracheal tube resulting in failed intubation and death. This claim is still open with an unknown case value.

The applicant proposes to serve the residents of the following counties from an office located at 143-09 14th Avenue, Whitestone, New York 11357:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

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 review of the operations of Eva Homecare Agency, Inc (August 2015-present) was performed as part of this review.

Eva Homecare Agency, Inc. was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated May 8, 2017 for violations of 10 NYCRR Sections 766.12(c); Failure to submit to the Department information and materials relating to the 2015 Licensed Home Care Statistical Report.

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: June 5, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Divine Mercy Tender Loving Care (DMTLC), LLC
d/b/a Acti-Kare Responsive In-Home Care
Address: South Richmond Hill
County: Queens
Structure: Limited Liability Company
Application Number: 2551L

Description of Project:

Divine Mercy Tender Loving Care (DMTLC), LLC d/b/a Acti-Kare Responsive In-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.

Divine Mercy Tender Loving Care (DMTLC), LLC has proposed to operate as a Franchisee of Acti-Kare, Inc.

The membership of Divine Mercy Tender Loving Care (DMTLC), LLC d/b/a Acti-Kare Responsive In-Home Care comprises the following individual:

Sr. Nkem Beatrice Chukwumezie, DMMM, PhD – 100%
Owner/Operator, Divine Mercy Tender Loving Care (DMTLC), LLC d/b/a Acti-Kare Responsive In-Home Care

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 Queens County from an office located at 107-52 131st Street, South Richmond Hill, New York 11419:

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: May 12, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: MDB Home Care, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2553L

Description of Project:

MDB 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 members of MDB Home Care, LLC comprise the following individuals:

Raquel Lerner – 50% Licensed Home Care Services Agency Patient Representative, Edison Home Care LHCSA	Beata Rezak – 50% Licensed Home Care Services Agency Patient Representative, Edison Home Care LHCSA
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The Board of Directors of MDB Home Care, LLC comprises the following individuals:

Raquel Lerner – Chief Executive Officer (Previously Disclosed)	Beata Rezak – Chief Operating Officer (Previously Disclosed)
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2940 West 5th Street, #5G, Brooklyn, New York 11224:

Bronx Queens	Kings Richmond	New York Westchester
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 10, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: No One Left Out Services Inc.
Address: West Babylon
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2565L

Description of Project:

No One Left Out Services 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:

Jason M. Smith – 180 Shares CEO, No One Left Out Services Inc. (non-emergency medical transportation company)	Claretha L. Smith, RN – 20 Shares Retired
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The following individual is the sole member of the Board of Directors of No One Left Out Services Inc.:

Jason M. Smith – President/CEO
(Previously Disclosed)

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 search of the individuals named above (an entity as appropriate) 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 52 Court Street, West Babylon, New York 11704:

Suffolk	Nassau	Westchester	Putnam	Rockland
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker	Housekeeper
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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: May 10, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: CarePark Home Care LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2570L

Description of Project:

CarePark 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 sole member of CarePark Home Care LLC is the following individual:

Rivka Ehrman
Program Director, Park Ave Adult Day Care Center

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 1382 East 19 Street, Brooklyn, New York 11230:

Bronx Kings New York Queens

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Medical Social Services
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: May 10, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Autumn Hills Home Care, LLC
Address: East Meadow
County: Nassau
Structure: Limited Liability Company
Application Number: 2593L

Description of Project:

Autumn Hills 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 members of Autumn Hills Home Care LLC comprise the following individuals:

Sonia D. Jones-Uline, LPN (CT, PA, NJ, NY) – Manager – 50% Licensed Practical Nurse, Senior Bridge Home Care	Lawrence J. Uline – Manager – 50% Technician, Bailey Refrigeration Air Conditioning and Heating
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The State of Connecticut E-License Lookup indicates no issues with the licensure of the health professional associated with this application.

The Bureau of Professional and Occupational Affairs for the State of Pennsylvania indicates no issues with the licensure of the health professional associated with this application.

The Department of Law & Public Safety, Division of Consumer Affairs for the State of New Jersey indicates no issues with the licensure of the health professional associated with this application.

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 search of the individuals (and entity as appropriate) 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 90 Merrick Avenue, Suite 400, East Meadow, New York 11554:

Nassau	Suffolk	Westchester	Queens
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Physical Therapy	Nutrition		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 10, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Seniors First Inc. d/b/a Home Instead Senior Care
Address: Melville
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2603L

Description of Project:

Seniors First Inc. d/b/a Home Instead Senior Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Seniors First Inc. has proposed to operate as a franchisee of Home Instead, Inc.

The applicant has authorized 200 shares of stock which, are owned solely owned by Gregory Altfest.

The Board of Directors of Seniors First Inc. d/b/a Home Instead Senior Care comprises the following individual:

Gregory Altfest, President
Owner, Seniors First Inc. d/b/a Home Instead Senior Care (Companion Care, 2012 – Present)
Consultant, Gregory Altfest Medical Consulting, Corporate Contracts

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 Suffolk County from an office located at 150 Broadhollow Road, Melville, New York 11747:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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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: May 12, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: 1st Help HomeCare Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2619L

Description of Project:

1st Help 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 solely owned by Sharon Halfon.

The Board of Directors of 1st Help HomeCare Inc. comprises the following individual:

Sharon Halfon, RN, CEO/CFO/President
Intake Nurse Supervisor, 24/7 NY Aides

A search of the individual 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 2034 East 65th Street, Brooklyn, New York 11234:

Kings	Queens	Bronx
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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: May 2, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Medi One Home Care Inc
Address: Congers
County: Rockland
Structure: For-Profit Corporation
Application Number: 2622L

Description of Project:

Medi One Home 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 300 shares of stock which are owned as follows: Abygail Thomas owns 100 shares, Lipsy Mathews owns 100 shares and Gogi George owns 100 shares.

The Board of Directors of Medi One Home Care Inc comprises the following individuals:

Abygail Thomas (FKA Achamma Abraham), RN, BSN, President
Registered Nurse, New York Presbyterian Lawrence Hospital

Lipsy Mathews, RN, BSN, Secretary
MDS Coordinator, Isabella Geriatric Center

Gogi George, RPh, Treasurer
New York and New Jersey Registered Pharmacist
Owner/Pharmacist, Wakefield Drugs, 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 licenses of the health care professionals associated with this application.

The State of New Jersey Department of Law & Public Safety, Division of Consumer Affairs 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 82 Foltim Way, Congers, New York 10920:

Rockland	Westchester	Orange
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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: May 9, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Argent Home Care Inc.
Address: Rye Brook
County: Westchester
Structure: For-Profit Corporation
Application Number: 2627L

Description of Project:

Argent Home 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 which, are owned as follows: Peter Gentile owns 4.5 shares, Christopher Kloepfer owns 4.5 shares and Kim A. McKenna owns 1 share. The remaining 190 shares are unissued.

The Board of Directors of Argent Home Care Inc. comprises the following individuals:

Christopher Kloepfer, President
Certified Senior Care Manager
Senior Sales Consultant, Bayer Healthcare, Inc.

Peter Gentile, Vice President
Certified Senior Care Manager
Financial Consultant/Registered Representative, Oldham Resource Group

Kim A. McKenna, PCA, HHA, Secretary
Private Duty HHA

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Home Care Registry indicates no issues with the certification 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 800 Westchester Avenue, Suite 641N, Rye Brook, New York 10573:

Westchester	Rockland	Putnam
Nassau	Suffolk	Bronx

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: May 12, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Luba's Homecare Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2629L

Description of Project:

Luba's 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 solely owned by Liubov Brizhatiuk De Forero.

The Board of Directors of Luba's Homecare Inc. comprises the following individual:

Liubov Brizhatiuk De Forero, HHA, President
Unemployed

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Home Care Registry indicates no issues with the certification 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 35 Seacoast Terrace, Suite 21U, Brooklyn, New York 11235:

Kings	Queens	New York
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Equipment, Supplies & 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: May 5, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: NoLimits NYC, Corp.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2637L

Description of Project:

NoLimits NYC, Corp., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

NoLimits NYC, Corp. has authorized 200 shares of stock which are owned solely by Edward Morgenshteyn.

The Board of Directors of NoLimits NYC, Corp. is comprised of the following individual:

Edward Morgenshteyn, HHA - President
Home Care Coordinator, Home Instead Senior Care
Inspector, NYC Transit Authority

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, currently employed as a HHA, and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 2717 East 28th Street, Suite 2C, Brooklyn, New York 11235:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 4, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Baychester Services LLC d/b/a Regeis@Home
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 2641L

Description of Project:

Baychester Services LLC d/b/a Regeis@Home, 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 Baychester Services LLC d/b/a Regeis@Home comprises the following individuals:

Abraham Sieger, LNHA – 50%
Administrator, Regeis Care Center

Affiliations:

Premier Health Services (NY Dialysis Clinic, 2011 – 2012)
Genesis Health Services (NY Dialysis Clinic, 2014 – Present)

Naftali (AKA Nathan) Brachfeld, LNHA – 50%
Administrator, New York Center for Rehabilitation and Nursing

Affiliations:

Genesis Health Services (NY Dialysis Clinic, 2014 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that the NHA licenses associated with this application are in good standing and the Board of Examiners of Nursing Home Administrators has never taken any disciplinary actions against these individuals or their licenses.

The applicant proposes to serve the residents of the following counties from an office located at 3200 Baychester Avenue, Bronx, New York 10475:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Premier Health Services (2011 – 2012)
Genesis Health Services (2014 – Present)

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: May 23, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Spring Home Health Services, LLC
Address: Flushing
County: Queens
Structure: Limited Liability Company
Application Number: 2646L

Description of Project:

Spring Home Health Services, 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 Spring Home Health Services, LLC comprises the following individuals:

Yan Yan, MBA – 50%
Unemployed

Guanyu Chen, HHA, PCA – 50%
Manager, Heart to Heart Home Care

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Home Care Registry indicates no issues with the certifications of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 43-15 Saull Street, Apartment 2C, Flushing, New York 11355:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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: May 9, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Senior Assist Home Care LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2647L

Description of Project:

Senior Assist 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 Senior Assist Home Care LLC comprises the following individual:

Heather L. Baptiste, LPN – 100%
Private Duty Home Health Aide

A search of the individual 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 321 East 93rd Street, Brooklyn, New York 11212:

Kings	Queens	New York
Richmond	Bronx	Nassau

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: May 12, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Chai Homecare LLC
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 151341

Description of Project:

Chai Homecare 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 Chai Homecare LLC comprises the following individuals:

Abraham Lichtschein – 47.50%
Chief Executive Officer, Future Care Health Services (LHCSA)
Assistant Administrator, Chai Home (Adult Home)

Affiliations

Chai Home (2008-present, Adult Home)
Future Care Health Services (LHCSA)

Moshe Webster – 23.75%
Assistant Administrator, Fort Tryon Center for Rehabilitation & Nursing (SNF)

Affiliations

New Franklin Center for Rehabilitation and Nursing, LLC (SNF, 2009-present)
Fort Tryon Center for Rehabilitation and Nursing, LLC (SNF, 2009-present)
Split Rock Rehabilitation and Health Care Center, LLC (SNF, 2009-present)

Yechezkel Webster – 23.75%
Unemployed

Affiliations

New Franklin Center for Rehabilitation and Nursing, LLC (SNF, 2009-present)
Fort Tryon Center for Rehabilitation and Nursing, LLC (SNF, 2009-present)
Split Rock Rehabilitation and Health Care Center, LLC (SNF, 2009-present)

Aharon Weiss – 5%
Controller, Tri-Care, LLC

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 391 East 149th Street, Suite 207, Bronx, New York 10455:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Chai Home (2008-present, Adult Home)
Future Care Health Services (LHCSA)
New Franklin Center for Rehabilitation and Nursing, LLC (SNF, 2009-present)
Fort Tryon Center for Rehabilitation and Nursing, LLC (SNF, 2009-present)
Split Rock Rehabilitation and Health Care Center, LLC (SNF, 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.

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 Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety, and welfare of residents and to prevent recurrent code violations.

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: May 2, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: All Purpose Care LLC
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 152066

Description of Project:

All Purpose 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 following individual is the sole member of All Purpose Care LLC:

Nana Ogyiri, RN
Registered Nurse, Montefiore Medical Center

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 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 667 East 232 Street, Apt. 6F, Bronx, NY 10466:

Bronx New York Queens Westchester

The applicant proposes to provide the following health care services:

Nursing Home Health Aide

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 13, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review]

Name of Agency: GWS Home Care LLC d/b/a Right at Home
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 152179

Description of Project:

GWS Home Care LLC d/b/a Right 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.

GWS Home Care LLC has proposed to operate as a Franchisee of Right at Home, Inc.

The following individual is the sole member of GWS Home Care LLC d/b/a Right at Home:

Gregory W. Simons – Sole Member/Manager
Owner, GWS Home Care LLC d/b/a Right at Home (Companion Care)

A search of the individual (and entity where appropriate) 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 New York County from an office located at 180 West 80th Street, Chesterfield Suites #203, New York, NY 10024.

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 22, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Trustees of the Eastern Star Hall and Home of the State of New York
d/b/a Eastern Star Home Care
Address: Oriskany
County: Oneida
Structure: Not-For-Profit Corporation
Application Number: 162319

Description of Project:

Trustees of the Eastern Star Hall and Home of the State of New York d/b/a Eastern Star Home Care, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program (ALP) to be operated by Trustees of the Eastern Star Hall and Home of the State of New York. The LHCSA and the ALP will have identical membership.

The Board of Directors of Trustees of the Eastern Star Hall and Home of the State of New York d/b/a Eastern Star Home Care is comprised of the following individuals:

Jodelle Fletcher – Chairman Retired <u>Affiliation</u> Eastern Star Home (2006-2013)	Keri Rhebergen – Secretary Retired <u>Affiliation</u> Eastern Star Home (2011-present)
Lynne Schmitt – Board Member Typist II, Erie 2 Chautauqua - Cattaraugus BOCES <u>Affiliation</u> Eastern Star Home (2016-present)	Leland Barnes – Board Member Court Officer, New York State Unified Court System <u>Affiliation</u> Eastern Star Home (2016-present)
Bonnie Blanchard, LPN – Board Member Retired <u>Affiliation</u> Eastern Star Home (2013-present)	Ronald Myers – Board Member Town Justice, Town of Hastings <u>Affiliation</u> Eastern Star Home (2015-present)
George Walter – Board Member Retired <u>Affiliation</u> Eastern Star Home (2012-present)	Nathan Herendeen – Board Member Retired <u>Affiliation</u> Eastern Star Home (2014-present)
Jacqueline Howlett – Board Member Retired <u>Affiliation</u> Eastern Star Home (2014-present)	Sylvia Moravia – Board Member Retired <u>Affiliation</u> Eastern Star Home (2012-present)
Bruce Whitmore – Board Member Retired <u>Affiliation</u> Eastern Star Home (2013-present)	David Colbert – Board Member Retired <u>Affiliation</u> Eastern Star Home (2015-present)

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: The Church Aid of the Protestant Episcopal Church in the Town of
Saratoga Springs, Inc. d/b/a Home of the Good Shepherd Licensed
Home Care
Address: Saratoga Springs
County: Saratoga
Structure: Not-for-Profit Corporation
Application Number: 162327

Description of Project:

The Church Aid of the Protestant Episcopal Church in the Town of Saratoga Springs, Inc. d/b/a Home of the Good Shepherd Licensed Home Care, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with an Assisted Living Program to be operated by The Church Aid of the Protestant Episcopal Church in the Town of Saratoga Springs, Inc. The LHCSA and the ALP will have identical ownership.

The Board of Directors of The Church Aid of the Protestant Episcopal Church in the Town of Saratoga Springs, Inc. d/b/a Home of the Good Shepherd Licensed Home Care comprises the following individuals:

Mary M. Withington, JD, President
Supervising Attorney, Legal Aid Society of NENY, Inc.

John S. VanderVeer, Vice President
Retired

Michael T. Penfold, Treasurer
Corporate Account Executive, RoadRunner Transportation Services

Allison M. St. Pierre, Secretary
Interim Branch Director/Health Wellness Director, Saratoga Regional YMCA

Canon Kay C. Hotaling, PhD, Board Member
Canon to the Ordinary and Diocesan Deployment Officer, The Episcopal Diocese of Albany

Geneva K. Henderson, Board Member
Paralegal/Closing Coordinator/Receptionist, Casey and Casey, Esq.

Pamela L. Houde, LPN, Board Member
Retired

Sherryl J. Moore, Board Member
Retired

A search of the individuals and entity 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 all attorneys.

The Office of the Professions of the State Education Department indicate no issues with the licensure of the health professional associated with this application.

The applicant proposes to serve the residents of Saratoga County from an office located at 400 Church Street, Saratoga Springs, New York 12866.

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	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: May 8, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Mavencare (NY) Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 162065

Description of Project:

Mavencare (NY) Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

First Baana Corp. d/b/a Mavencare was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 4, 2014 meeting and subsequently licensed as 2230L001 effective August 5, 2015. At that time the sole shareholder was Sue Monroe.

First Baana Corp. and Mavencare (NY) Inc. entered into a management agreement which was approved by the Department on August 31, 2016.

Mavencare (NY) Inc. has authorized 200 shares of stock, which are solely owned by Mavencare (US) Inc.

Mavencare (US) Inc., a Delaware Corporation, has authorized 100 shares of stock, which are solely owned by Mavencare Inc.

Mavencare Inc., a Canadian Corporation, has authorized 191,200,846 common shares of stock, which are owned as follows: 2234256 Ontario Inc. (a Canadian Corporation) owns 89,699,569 shares; Nukul Bhasin owns 55,390,164 shares; JVNL Trust (a Canadian Trust) owns 33,333,333 shares; GYZ Trust (a Canadian Trust) owns 12,777,780 shares.

2234256 Ontario Inc. has authorized 100 shares of stock, which are solely owned by Adam Blackman. JVNL Trust and GYZ Trust are owned by a sole trustee, James Cohen.

The Board of Directors of Mavencare (NY) Inc. and Mavencare (US) Inc. are comprised of the following individuals:

Adam Blackman, MD, FRCPC, CEO/Secretary Independent Medical Practice License (Canada) Diplomate of the American Board of Sleep Medicine Diplomate of the American Board of Psychiatry and Neurology President/Director, Mavencare (NY) Inc. President/Director, Mavencare (US) Inc. CEO/Director, Mavencare Inc. President/Chief Medical Director, MedSleep Inc.	Nukul Bhasin, CFO/Treasurer CFO/Treasurer, Mavencare (NY) Inc. CFO/Treasurer, Mavencare (US) Inc. President/CTO, Mavencare Inc.
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Mavencare Inc. and 2234256 Ontario Inc are exempt from review due to the fact that they are foreign corporations formed outside of the United States of America.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The College of Physicians and Surgeons of Ontario (Canada) 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 79 Madison Avenue, Suite 424, New York, New York 10016:

New York
Queens

Bronx
Richmond

Kings
Nassau

The applicant proposes to provide the following health care services:

Nursing

Physical Therapy

Speech-Language Pathology

Nutrition

Home Health Aide

Occupational Therapy

Audiology

Homemaker

Personal Care

Respiratory Therapy

Medical Social Services

Housekeeper

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.

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: May 24, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Eva Homecare Agency, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 162509

Description of Project:

Eva 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.

Eva Homecare Agency, Inc. was previously approved as a home care services agency by the Public Health Council at its December 4, 2014 meeting and was subsequently licensed as 2164L001 effective August 20, 2015. At that time, Yijia Zhang was the sole shareholder.

The purpose of this application is to seek approval for a 49% transfer of stock through a Stock Purchase Agreement.

The applicant has authorized 200 shares of stock which will be owned as follows:

Yijia Zhang, RDMS, RVT – 102 Shares
(Previously approved by PHHPC for this operator)

Bing Hu, M.D. – 98 Shares
California Licensed Physician and Surgeon A
Musculoskeletal Radiology Fellow, University of
California, San Diego

The proposed Board of Directors of Eva Homecare Agency, Inc. comprises the following individuals:

Yijia Zhang, RDMS, RVT – President
(Previously approved by PHHPC for this operator)

Bing Hu, M.D. – Vice President

Yijia Zhang is exempt from character and competence review due to the fact that they were previously approved by the Public Health and Health Planning Council for this operator.

A search of the individual (and entity 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, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professional associated with this application.

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 State of California, Department of Consumer Affairs indicates no issues with the license of the healthcare professional associated with this application.

Bing Hu, MD self-disclosed that she was named as a co-defendant in a malpractice claim that was filed on November 21, 2016 in the State of Pennsylvania. This claim alleges failure to identify misplacement of endotracheal tube resulting in failed intubation and death. This claim is still open with an unknown case value.

The applicant proposes to continue to serve the residents of the following counties from an office located at 104-70 Queens Boulevard, Suite 503, Forest Hills, New York 11375:

Bronx
Queens

Kings
Richmond

New York
Nassau

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	Medical Supplies, Equipment & Appliances	
Homemaker	Housekeeper		

A review of the operations of Eva Homecare Agency, Inc (August 2015-present) was performed as part of this review.

Eva Homecare Agency, Inc. was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated May 8, 2017 for violations of 10 NYCRR Sections 766.12(c); Failure to submit to the Department information and materials relating to the 2015 Licensed Home Care Statistical Report.

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: June 20, 2017

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: BE Home Care, LLC d/b/a Central Home Care
Address: Far Rockaway
County: Queens
Structure: Limited Liability Company
Application Number: 171256

Description of Project:

BE Home Care, LLC d/b/a Central Home Care, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Central Assisted Living, LLC d/b/a Central Home Care was approved for by the Public Health Council at its January 21, 2005 meeting and subsequently licensed as 1344L001, effective February 4, 2005.

At that time the membership of Central Assisted Living, LLC d/b/a Central Home Care consisted of Boris Mendel (85%) and Eric Mendel (15%). A notification of change in membership was approved by the Department in October 2012 in which Boris Mendel transferred 36% of his membership to Eric Mendel, resulting in the following ownership: Eric Mendel (51%) and Boris Mendel (49%). The purpose of this application is to transfer the ownership of the LHCSA from Central Assisted Living, LLC to BE Home Care, LLC.

This LHCSA will be associated with the Assisted Living Program, to be operated by Central Assisted Living, LLC. The LHCSA and the ALP will have identical ownership.

The membership of BE Home Care, LLC d/b/a Central Home Care comprises the following individuals:

Eric Mendel, Managing Member – 51%
Operator, Central Assisted Living, LLC
Operator, Central Assisted Living, LLC d/b/a Central Home Care
Operator, Prime Health Choice, LLC
Operator, Prime Home Health Services, LLC
Operator, Assisted Home Care, LLC d/b/a Prime Assisted Home Care
Operator, Metrostar Home Care, LLC

Affiliations:

Prime Health Choice, LLC	(MLTC, 2015-present)
Prime Home Health Services, LLC	(CHHA, 2007-present)
Central Assisted Living, LLC	(ALP, 2008-present)
Central Assisted Living, LLC d/b/a Central Home Care	(LHCSA, 2008-present)
Assisted Home Care, LLC d/b/a Prime Assisted Home Care	(LHCSA, 2016-present)
Metrostar Home Care, LLC	(LHCSA, 2015-present)

Boris Mendel, Member – 49%
Administrator, Central Assisted Living, LLC
Administrator, Central Assisted Living, LLC d/b/a Central Home Care

Affiliations:

Prime Health Choice, LLC	(MLTC, 2015-present)
Prime Home Health Services, LLC	(CHHA, 2007-present)
Central Assisted Living, LLC	(ALP, 2005-present)
Central Assisted Living, LLC d/b/a Central Home Care	(LHCSA, 2005-present)

Assisted Home Care, LLC d/b/a Prime (LHCSA, 2016-present)
 Assisted Home Care
 Metrostar Home Care, LLC (LHCSA, 2015-present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1509 Central Avenue, Far Rockaway, New York 11691:

Bronx	Kings	Nassau
New York	Queens	Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Equipment, Supplies and Appliances		

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Prime Health Choice, LLC	(MLTC, 2015-present)
Prime Home Health Services, LLC	(CHHA)
Central Assisted Living, LLC	(ALP)
Central Assisted Living, LLC d/b/a Central Home Care	(LHCSA)
Assisted Home Care, LLC d/b/a Prime Assisted Home Care	(LHCSA, 2016-present)
Metrostar Home Care, LLC	(LHCSA, 2015-present)

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 Office of Managed Care has indicated that the MLTC plan 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.

CHHA Quality of Patient Care Star Ratings	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Prime Home Health Services, LLC	3.5 out of 5 stars

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
 Date: June 19, 2017

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 3rd day of August, 2017, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<u>NUMBER:</u>	<u>FACILITY:</u>
2100 L	Sterling Care Homecare Services LLC (Bronx and Westchester Counties)
2198 L	Divine Home Care Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2214 L	You First Home Care LLC (Kings, New York, Queens, Bronx, and Richmond Counties)
2326 L	Miracle Home Care Agency Inc. (Kings, Richmond, Queens, Bronx, New York and Nassau Counties)

- 2346 L Seaside Home Care, Inc.
(Bronx, Queens, New York, Richmond, Kings and Westchester Counties)
- 2364 L One Caring Place Plus, Inc.
(Oneida and Herkimer Counties)
- 2379 L Care One Licensed Home Care Agency, Inc.
(Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
- 2416 L Silver Home Care Services, Inc.
(Richmond, Queens, New York, Bronx, Kings, and Westchester Counties)
- 2440 L Good Shepherd Personal Care Inc.
(Nassau, Suffolk and Queens Counties)
- 2446 L Focus Care Group, Inc.
(Westchester and Bronx Counties)
- 2494 L Sequoia Home Care, Inc. d/b/a Senior Helpers
(Nassau and Suffolk Counties)
- 2498 L Aldon Magloire and Tami N. Johnson
d/b/a Precious Pearls Home Health Care
(Nassau, Suffolk and Queens Counties)
- 2502 L Kind Loyal Service RN Healthcare Services PLLC
(Westchester County)
- 2513 L Kingsbridge Home Healthcare Services Corp.
(Kings, New York, Queens, Richmond, Bronx and Westchester Counties)
- 2518 L Lavena Home Health Inc.
(Queens, Bronx, Kings, Richmond, New York, and Nassau Counties)
- 2520 L Greater New York Health Care, Inc.
d/b/a Loving Home Care Hewlett
(Nassau, Orange, Westchester, Suffolk, Putnam, Queens, Rockland and Dutchess Counties)

- 2522 L Alastar Family & Senior In-Home Care, LLC
(Westchester and Bronx Counties)
- 2524 L Diva Multicare Services, Inc.
(Queens, Bronx, Kings, Richmond, New York and Nassau Counties)
- 2526 L ACME Home Care, Inc.
(Bronx, Kings, New York, Richmond, and Queens Counties)
- 2536 L Choose Home Care, Inc.
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)
- 2550 L ATD Home Health Agency Inc.
(Queens, Bronx, Kings, Richmond, New York and Nassau Counties)
- 2551 L Divine Mercy Tender Loving Care (DMTLC), LLC
d/b/a Acti-Kare Responsive In-Home Care
(Queens Counties)
- 2553 L MDB Home Care, LLC
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)
- 2565 L No One Left Out Services Inc.
(Suffolk, Nassau, Westchester, Putnam, and Rockland Counties)
- 2570 L CarePark Home Care LLC
(Bronx, Kings, New York and Queens Counties)
- 2593 L Autumn Hills Home Care, LLC
(Nassau, Suffolk, Westchester and Queens)
- 2603 L Seniors First Inc. d/b/a Home Instead Senior Care
(Suffolk County)
- 2619 L 1st Help HomeCare Inc.
(Kings, New York, Queens, Richmond, Bronx, and Nassau Counties)
- 2622 L Medi One Home Care Inc
(Rockland, Westchester and Orange Counties)

2627 L Argent Home Care Inc.
(Westchester, Nassau, Rockland, Suffolk, Putnam and
Bronx Counties)

2629 L Luba's Homecare Inc.
(Kings, Bronx, Queens, Richmond, New York and
Westchester Counties)

2637 L NoLimits NYC, Corp.
(Bronx, Queens, Kings, Richmond, New York and
Westchester Counties)

2641 L Baychester Services LLC d/b/a Regeis@Home
(Bronx, Queens, Kings, Richmond, New York and
Westchester Counties)

2642 L Surrogate Family Care, LLC
(Nassau, Suffolk, and Queens Counties)

2646 L Spring Home Health Services, LLC
(Queens, Bronx, Kings, Richmond, New York and
Nassau Counties)

2647 L Senior Assist Home Care LLC
(Kings, Richmond, Queens, Bronx, New York and
Nassau Counties)

151341 Chai Homecare LLC
(Bronx, Queens, Kings, Richmond, New York, and
Nassau Counties)

152066 All Purpose Care LLC
(Bronx, New York, Queens, and Westchester Counties)

152179 GWS Home Care LLC d/b/a Right at Home
(New York County)

162319 Trustees of the Eastern Star Hall and Home of the State
of New York d/b/a Easter Star Home Care
(Oneida and Herkimer Counties)

162327 The Church Aid of the Protestant Episcopal Church in
the Town of Saratoga Springs, Inc. d/b/a Home of the
Good Shepherd Licensed Home Care
(Saratoga County)

162065	Mavencare (NY) Inc. (New York, Queens, Bronx, Richmond, Kings and Nassau Counties)
162244	Seniorcare HHA Inc. (Nassau and Queens Counties)
162509	Eva Homecare Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
171256	BE Home Care, LLC d/b/a Central Home Care (Bronx, New York, Kings, Queens, Nassau and Richmond Counties)