

**STATE OF NEW YORK**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

**AGENDA**

*October 11, 2017*

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

*MAIN MEETING SITE: Empire State Plaza, Concourse Level, Meeting Room 6, Albany*

*VIDEO CONFERENCE SITE: 90 Church Street 4th Floor, Room 4A & 4B, New York City*

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chair

**II. APPROVAL OF MINUTES**

August 3, 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

Ambulatory Surgery Center Report

**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**

Thomas Holt, Vice Chair of the Committee on Codes, Regulations and Legislation

**For Adoption**

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

**For Information**

13-22 Amendment of Parts 405 and 708 of Title 10 NYCRR  
(Trauma Centers)

**V. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**Report of the Committee on Establishment and Project Review**

Gary Kalkut, M.D., 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 Transplant Services - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	171344 C	Women and Children's Hospital Of Buffalo (Erie County)	Contingent Approval

**Ambulatory Surgery Centers - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	171438 C	Advanced Surgery Center (Rockland County)	Contingent Approval

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Diagnostic and Treatment Center - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	171142 C	Joseph P. Addabbo - Family Health Center (Queens County) Dr. Kalkut – 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 HSA

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**NO APPLICATIONS**

**B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Acute Care Services – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	172071 E	Brooks Memorial Hospital (Chautauqua County)	Contingent Approval

**Ambulatory Surgery Centers – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	171220 E	Fifth Avenue Surgery Center (New York County)	Contingent Approval
2.	171432 E	Sheepshead Bay Surgery Center (Kings County)	Approval
3.	171477 B	Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites (Saratoga County)	Contingent Approval

**Residential Health Care Facilities – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	172125 E	Utica Operations Associates LLC d/b/a Utica Center for Rehabilitation and Nursing (Oneida County)	Contingent Approval

## Certificates

### Certificate of Dissolution

**Applicant**

Mercy Health-Care Center, Inc.

The Uihlein Mercy Center, Inc.

**E.P.R.C. Recommendation**

Approval

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**

#### **Ambulatory Surgery Center – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	172004 E	The Endoscopy Center of New York (New York County) Dr. Berliner- Recusal Dr. Martin - Recusal	Contingent Approval

#### **Dialysis Services – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	171304 E	FSNR Dialysis, LLC d/b/a Four Seasons Dialysis Center (Kings County) Ms. Carver–Cheney – Recusal	Contingent Approval

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

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	171302 E	Hampton NH Operating, LLC d/b/a Westhampton Care Center (Suffolk County) Ms. Carver-Cheney – Recusal	Contingent Approval
2.	171128 E	Barnwell Operations Associates LLC d/b/a The Grand Rehabilitation and Nursing at Barnwell (Columbia County) Mr. La Rue – Recusal	Contingent Approval

- |    |          |  |                     |
|----|----------|--|---------------------|
| 3. | 171450 E | S & J Operational LLC d/b/a Mills Pond Nursing and Rehabilitation Center<br>(Suffolk County)<br>Mr. La Rue - Recusal | Contingent Approval |
| 4. | 171451 E | L & A Operational LLC d/b/a Sayville Nursing and Rehabilitation Center<br>(Suffolk County)<br>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**

**Residential Health Care Facilities – Establish/Construct**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171180 E RTRNC, LLC d/b/a Robinson Terrace Rehabilitation and Nursing Center (Delaware County) Mr. La Rue – Opposed at EPRC Dr. Berliner – Abstained at EPRC Dr. Brown – 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

**CON Applications**

**Residential Health Care Facilities – Establish/Construct**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	162532 E Highland Nursing Home, Inc. (St. Lawrence County) Ms. Carver-Cheney – Recusal Dr. Torres – Opposed at EPRC	Contingent Approval

- |    |          |  |                     |
|----|----------|--|---------------------|
| 2. | 171109 E | FSNR SNF, LLC d/b/a Four Seasons Nursing and Rehabilitation Center (Kings County)<br>Ms. Carver-Cheney – Recusal<br>Dr. Torres – Opposed 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

**CON Applications**

**Residential Health Care Facilities – Establish/Construct**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171186 E Prospect Acquisition I, LLC d/b/a Center for Nursing & Rehabilitation (Kings County)	Presented at the 10/11/17 Special Establishment/Project Review Committee No Recommendation

**HOME HEALTH AGENCY LICENSURES**

**New LHCSAs**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2149L	Behdokht Kangarlu d/b/a Hopewell Health Home Care (Duchess, Westchester, Orange, Ulster, Putnam Counties)	Contingent Approval
2334L	EZ Living Home Care of NY, Inc. (Kings, Queens, Richmond, Bronx, Nassau, New York Counties)	Contingent Approval
2335L	ProHealth Homecare, Inc. (Kings, Queens, New York, Richmond, Bronx, Nassau Counties)	Contingent Approval
2339L	OnSite LifeCare, Inc. (New York, Bronx, Kings, Queens, Richmond, Nassau Counties)	Contingent Approval

2340L	Healthy Aging Homecare, Inc. (Kings, Queens, Bronx, Richmond, New York, Westchester Counties)	Contingent Approval
2539L	Galaxy Home Care Inc. (Queens, Kings, Bronx, New York Richmond, Nassau Counties)	Contingent Approval
2581L	Apple Best Home Care Agency Inc. (Kings, Queens, New York, Bronx, Richmond, Nassau Counties)	Contingent Approval
2623L	DMV Home Care, Inc. (Richmond, New York, Kings, Queens, Bronx, Westchester Counties)	Contingent Approval
2625L	C.A.R.E. Mavens Home Health Agency, LLC (Kings, New York, Bronx, Queens, Richmond, Westchester Counties)	Contingent Approval
2631L	Key To Life Homecare, Inc. (New York, Kings, Queens, Richmond, Bronx, Westchester Counties)	Contingent Approval
2633L	Help From The Heart LLC (Kings, Queens, Bronx, New York, Richmond, Westchester Counties)	Contingent Approval
2636L	L & G Enterprises USA LLC d/b/a L & G Home Care Agency (Queens, Kings, New York, Richmond, Bronx, Nassau Counties)	Contingent Approval
2640L	Amelia Home Care, Inc. (Queens, Kings, New York, Richmond, Bronx, Westchester Counties)	Contingent Approval
151254	Shalom Home Care Agency, Inc. (Bronx, Kings, New York, Queens, Richmond, Nassau Counties)	Contingent Approval

152053	AAA HealthSource, Inc. (Bronx, Kings, Nassau, New York, Queens, Richmond Counties)	Contingent Approval
152103	Blue Ridge Home Care, Inc. (New York, Bronx, Kings, Queens, Richmond, Nassau Counties)	Contingent Approval
152107	Fidelity Home Care, Inc. (Bronx, Kings, New York, Richmond, Queens, Westchester Counties)	Contingent Approval
152159	Regal Home Care, Inc. (Bronx, Kings, Nassau, New York, Queens, Richmond Counties)	Contingent Approval
152344	Home Care of Northern New York, LLC (Jefferson, Lewis, St. Lawrence Counties)	Contingent Approval
161375	Capital District Home Care Agency, LLC (Albany, Schenectady, Saratoga, Rensselaer, Columbia Counties)	Contingent Approval
162341	Embrace Care, LLC (Monroe, Livingston, Genesee Counties) Mr. Robinson - Interest	Contingent Approval

**New LHCSAs – Affiliated with Assisted Living Programs (ALPs)**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
2320L	New York Resort for Seniors, LLC d/b/a Oasis Home Care (Delaware, Orange, Sullivan, Ulster Counties)	Contingent Approval

**Changes of Ownership**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
162538	Sanford Home Care Agency, LLC d/b/a Sanford Home Care Agency (Bronx, Kings, New York, Queens, Richmond Counties)	Contingent Approval



171031	The W Group at New Broadview, LLC d/b/a New Broadview Manor Home for Adults LHCSA (Richmond County)	Contingent Approval
171394	New Haven Manor Home Care Agency, LLC (Bronx, Kings, Nassau, New York, Queens, Richmond Counties)	Contingent Approval
171401	RTACF, LLC d/b/a The Pavilion at Robinson Terrace (Delaware, Greene, Schoharie Counties)	Contingent Approval
171402	Hamaspik Care, Inc. (Bronx, Kings, Nassau, New York, Queens, Richmond Counties)	Contingent Approval
172030	Magic Home Care, LLC (Bronx, Kings, New York, Queens, Richmond Counties)	Contingent Approval
152373	Infusion Options, Inc. (Bronx, Kings, Nassau, New York, Queens, Richmond Counties) Mr. Kraut – Interest/Abstaining	Contingent Approval
162326	R.A.I.N. Home Attendant Services, Inc. (Bronx, Kings, Queens, New York, Richmond, Westchester Counties) Dr. Torres – Recusal	Contingent Approval

**VI. NEXT MEETING**

November 16, 2017 – Albany  
December 7, 2017 – NYC

**VII. ADJOURNMENT**

**State of New York**  
**Public Health and Health Planning Council**

**Minutes**  
**August 3, 2017**

The meeting of the Public Health and Health Planning Council was held on Thursday, August 3, 2017 at the Empire State Plaza, Concourse Meeting Room 6, Albany. Chairman, Mr. Jeffrey Kraut presided.

**COUNCIL MEMBERS PRESENT**

Dr. John Bennett	Dr. Glenn Martin
Dr. Howard Berliner	Mr. Peter Robinson
Dr. Jo Ivey Boufford	Dr. John Ruge
Dr. Lawrence Brown	Dr. Theodore Strange
Ms. Kathleen Carver-Cheney	Dr. Kevin Watkins
Dr. Angel Gutierrez	Commissioner Zucker – Ex-officio
Mr. Thomas Holt	
Mr. Jeffrey Kraut	
Mr. Scott La Rue	

**DEPARTMENT OF HEALTH STAFF PRESENT**

Ms. Trisha Allen	Ms. Colleen Leonard
Mr. Udo Ammon	Mr. George Macko
Mr. Charles Abel	Ms. Lisa McMurdo
Ms. Mary Beth Conroy	Mr. Mark Noe
Ms. Carmelita Cruz	Ms. Sylvia Pirani
Ms. Barbara DelCogliano	Ms. Tracy Raleigh
Ms. Alejandra Diaz	Mr. Daniel Sheppard
Ms. Sally Dreslin	Ms. Lisa Thomson
Mr. Mark Furnish	Ms. Lisa Ullman
Mr. Jonathan Karmel	Mr. Richard Zahnleuter
Ms. Yvonne Lavoie	

**INTRODUCTION**

Mr. Kraut called the meeting to order and welcomed Commissioner Zucker who was participating from NYC via video, Council members, meeting participants and observers.

**DR. PALMER RESOLUTION OF APPRECIATION**

Mr. Kraut announced that Dr. Palmer had resigned from the Council and thanked him for serving as a dedicated member on the Council and noted that on behalf of the Council Dr. Boufford and himself signed a Resolution of Appreciation.

## **APPROVAL OF THE MINUTES OF JUNE 8, 2017**

Mr. Kraut asked for a motion to approve the June 8, 2017 Minutes of the Public Health and Health Planning Council meeting. Dr. Brown motioned for approval which was seconded by Mr. Robinson. The minutes were unanimously adopted. Please refer to page 4 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.

### **Medical Marijuana Program**

Dr. Zucker stated that the Department has streamlined the registration process for practitioners making it easier to certify patients that are medical marijuana program. The practitioners can now register online with the Department and certified patients the same day. The goal is to help patients find participating practitioners. The Department has also approved the addition of the second line online course on medical marijuana. As of August 1, 2017, there were 1,139 registered practitioners in New York's medical marijuana program. The Department also now permits home delivery and published a list of registered practitioners.

### **Peer Worker Certification**

Dr. Zucker noted that HIV AIDS the End the Epidemic Initiative has achieved another milestone, the latest data shows a 10 percent decrease in new diagnosis in HIV among men who have sex with men in 2015. This is the first decrease in over a decade. 45 people graduated from the New York State Peer Worker Certification Program in HIV, Hepatitis C, and Harm Reduction in July. These trained individuals will provide support, education assistance to New Yorkers who are living with HIV, Hepatitis C as well as persons who use drugs. These certified care workers work in community-based organizations and healthcare facilities in both clinical and non-clinical. Research shows that care workers who share the life experiences can help people in similar situations achieve better health outcomes.

### **Empire Clinical Research Investigator Program**

Dr. Zucker stated that through the Empire Clinical Research Investigator Program (ECRIP), the State has awarded \$13.8 million to 26 academic medical institutions across the state to train physician researchers. The two year awards will support research projects in areas of cancer, diabetes, epilepsy, and pain management. The awards will help train at least 62 physician researchers over the next two years as they work to advance and improve our health.

Dr. Zucker concluded his report. To read the complete report, please see pages 4 through 8 of the attached transcript.

## **REGULATION**

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

### **Report of the Committee on Codes, Regulation and Legislation**

#### **For Adoption**

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

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

Dr. Gutiérrez described the proposed Amendment of Section 710.1 of Title 10 NYCRR (Updating Certificate of Need Thresholds and motioned to adopt. Dr. Strange seconded the motion. The motion to adopt carried. Please see pages 9 and 10 of the transcript.

Dr. Gutiérrez described the proposed Addition of Part 350 to Title 10 NYCRR (All Payer Database) and motioned for adoption. Dr. Strange seconded the motion. The motion carried with one member opposing. Please see pages 10 and 11 of the transcript

#### **For Emergency Adoption**

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

Dr. Gutiérrez introduced the proposed Amendments to Parts 400 and 405 of Title 10 NYCRR – (Hospital Policies for Individuals with Substance Use Disorders) and motioned for emergency adoption. Dr. Strange seconded the motion. The motion failed. A second motion was made to table the proposed regulation to the next meeting. After discussion Mr. Kraut asked for a motion to withdraw the motion to table, Dr. Strange seconded the motion. The motion to remove the motion to table carried. A third motion was made by Dr. Gutiérrez for emergency adoption that requires hospitals to establish policies and procedures for the identification, assessment, and referral of individuals with substance use disorder be tabled until the next meeting. Dr. Gutiérrez also added to the motion that in addition, the authorization to use of a “voluntary non-opioid directive” which individuals could use to communicate to their healthcare providers that they do not want to use opioid pain medications. Dr. Watkins seconded the motion, the motion carried. Please see pages 11 through 21 of the attached transcript.

Mr. Kraut announced that he has resigned from the Codes Committee in order to maintain quorum. He also announced that Mr. Holt has been appointed to serve as Vice Chair of the Codes Committee.

Mr. Kraut then moved to the next item on the agenda and introduced Dr. Gutiérrez 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. Gutiérrez, Member, Establishment and Project Review Committee

**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**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	171326 C	St. Francis Hospital (Nassau County)	Contingent Approval

Dr. Gutiérrez introduced application 171326 and motioned for approval. Dr. Berliner seconded the motion. The motion carried with one member opposing. Please see pages 22 and 23 of the transcript.

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

### **CON Applications**

#### **Acute Care Services- Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	171176 C	NYU Hospitals Center (New York County) Dr. Kalkut – Recusal	Contingent Approval

Dr. Gutiérrez introduced application 171176 and noted for the record that Dr. Kalkut declared a conflict however was not present at the meeting. Dr. Gutiérrez motioned for approval, Dr. Berliner seconded the motion. The motion carried with one member opposing. Please see pages 23 through 25 of the transcript.

## **B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES**

**CON 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**

**Ambulatory Surgery Centers – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	162581 E	SCOB, LLC d/b/a SurgiCare of Brooklyn (Kings County)	Contingent Approval

Dr. Gutiérrez called application 162581 and motioned for approval, Dr. Berliner seconded the motion. The motion carried. Please see pages 25 and 26 of the transcript.

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**CON Applications**

**Residential Health Care Facilities – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	171229 E	ILF Operating, LLC d/b/a Elm Manor Nursing and Rehabilitation Center (Ontario County)	Contingent Approval

Dr. Gutiérrez introduced application 171229 and motioned for approval. Dr. Berliner seconded the motion. The motion carried with Ms. Carver-Cheney declaring an interest and abstaining. Please see pages 26 through 28 of the transcript

2.	171231 E	LFG Operating, LLC d/b/a Wedgewood Nursing and Rehabilitation Center (Monroe County)	Contingent Approval
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Dr. Gutiérrez introduced application 171231 and motioned for approval. Dr. Berliner seconded the motion. The motion carried with Ms. Carver-Cheney declaring an interest and abstaining. Please see pages 28 and 29 of the transcript

## **REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

### **Office of Primary Care and Health Systems Management Activities**

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

Mr. Sheppard began his report by announcing the awards from the Statewide Healthcare Facility Transformation Program. On July 18, 2017, the Governor, the Commissioner and the President of the Dormitory Authority of New York announced 92 capital awards totaling \$491 million. Recipients included hospitals, community-based outpatient and long term care providers and nursing homes. The Department received over 369 applications totaling \$2.16 billion which significantly exceeded available funds, but importantly just because an applicant was not funded it did not mean that the project was not highly rated.

Mr. Sheppard advised that the Department hold their first three Regulatory Modernization Initiative, policy development workshops over the next month. On August 9, 2017, a meeting will be held on the topic of post-acute care management models. August 17, 2017, integrated primary and behavioral healthcare services and on September 5, 2017 a meeting on telehealth. The Department has a goal of holding another 5 of the workshops by the end of the year and will use these workshops to develop and implement policy regulatory and if warranted, statutory changes.

Mr. Sheppard concluded his report. To view the complete report and questions from the members, please see pages 29 through 33 of the attached transcript.

## **PUBLIC HEALTH SERVICES**

### **Report on the Activities of the Public Health Committee**

Mr. Kraut introduced Dr. Boufford to give a report on the activities of the Public Health Committee.

Dr. Boufford updated the Council on the ongoing progress on the Health Across All Policies that was established by the Governor in the State of the State message. The initial meeting of 13 state agencies that Mr. Frances convened in early March. Those agencies were asked to submit to identify activities potential purchasing activities, regulatory, capital investments over the next year, three to five years that they were going to do anyway, and how might that be different if they were really focused more on evidence-based impact on health and/or on an age-friendly New York State. This technical advice and evidence was provided to them in this exercise by the Department of Health and by New York State Office for the Aging. A report was put in a reporting matrix against criteria for an age-friendly state and other, the five goals of the prevention agenda, and they are now being analyzed with a very effectively collaborative working team from NYSOFA, the Department and Mr. Frances' office. The group met in August and the thought was when these projects are identified as a mapping exercise to see what all the agencies are doing, in particular geographic spaces, because one of the

geographic parts of the state because one of the powerful parts of the prevention agenda is knowing which counties are trying to take on which issues, and there may be economic development opportunities, transportation, housing, purchasing, ag and markets, other things that are going on in that very same community and people, the dots are not connected. One of the goals is to connect the dots in terms of more effective implementation and linkage to the prevention agenda coalitions that already exist. The goal is also to have the Ad Hoc Leadership Group meet again in the fall and to look at the agency operations at state level with Mr. Frances convening which will be about a quarterly if not six times a year basis, and then adding members to the Prevention Agenda Group that can work more locally that have a local infrastructure or an ability to reach into local communities.

Dr. Boufford next spoke on the topic of maternal mortality and announced that there will be a New York State summit on maternal mortality probably in November. The planning group consists of the State Health Department, the City Health Department, HANYS, Greater New York Hospital Association and New York State ACOG, as well as adding a representative of the state nursing association and midwifery organizations to the planning group. The group is going to take a look back to 2010 and see what has been accomplished. She noted that an update will be provided to the Council.

Dr. Boufford concluded her report. Please see pages 39 through 41 of the attached transcript.

**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**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	171289 C	Albany County Nursing Home (Albany County)	Contingent Approval

Dr. Gutiérrez called application 171289 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. Please pages 42 and 43 of the attached transcript.

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**



**CATEGORY 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**

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

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

**Certificate of Dissolution**

**Applicant**

Resurrection Ministries of New York

**Council Action**

Approval

**Restated Certificate of Incorporation**

**Applicant**

Mercy Hospital Foundation, Inc.

**Council Action**

Approval

**Certificate of Assumed Name**

**Applicant**

Hudson Valley Regional Community Health Centers –  
Dutchess

**Council Action**

Approval

Hudson Valley Regional Community Health Centers –  
Putnam

Approval

**Certificate of Amendment of the Certificate of Incorporation**

**Applicant**

Chase Memorial Nursing Home Company, Inc.

**Council Action**

Approval

The Center for Discovery, Inc.

Approval

Dr. Gutiérrez called all applications in Category One listed above and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. Please pages 43 through 46 of the attached transcript.

**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Residential Health Care Facilities – Establish/Construct**

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

Dr. Gutiérrez called application 171342 and noted for the record that Dr. Ruge has a conflict and has exited the room and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried with Dr. Ruge’s recusal. Dr. Ruge returned to the meeting room. Please pages 46 and 47 of the attached transcript.

2.	171239 E	Somers Operating, LLC d/b/a Somers Rehabilitation & Nursing Center (Westchester County) Mr. La Rue – Recusal	Contingent Approval
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Dr. Gutiérrez called application 171239 and noted for the record that Mr. La Rue had a conflict and has exited the meeting room. Dr. Berliner seconded the motion. The motion to approve carried with Mr. La Rue’s recusal. Please pages 47 and 48 of the attached transcript.

**Certified Home Health Agency – Establish/Construct**

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

Dr. Gutiérrez called application 171315 and noted that Mr. La Rue has declared a conflict and remains outside the meeting room. Dr. Gutiérrez motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried with Mr. La Rue’s recusal. Mr. La Rue returned to the meeting room. Please pages 48 and 49 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

**CON Applications**

**Residential Health Care Facility – Establish/Construct**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	162541 E Nyack Operating LLC d/b/a Nyack Ridge Rehabilitation and Nursing Center (Rockland County)	Contingent Approval

Dr. Gutiérrez introduced application 162541 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 49 and 50 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**

**New LHCSA's**

2100 L	Sterling Care Homecare Services LLC (Bronx and Westchester Counties)	Contingent Approval
2198 L	Divine Home Care Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2214 L	You First Home Care LLC (Kings, New York, Queens, Bronx, and Richmond Counties)	Contingent Approval
2326 L	Miracle Home Care Agency Inc. (Kings, Richmond, Queens, Bronx, New York and Nassau Counties)	Contingent Approval
2346 L	Seaside Home Care, Inc. (Bronx, Queens, New York, Richmond, Kings and Westchester Counties)	Contingent Approval

2364 L	One Caring Place Plus, Inc. (Oneida and Herkimer Counties)	Contingent Approval
2379 L	Care One Licensed Home Care Agency, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2416 L	Silver Home Care Services, Inc. (Richmond, Queens, New York, Bronx, Kings, and Westchester Counties)	Contingent Approval
2440 L	Good Shepherd Personal Care Inc. (Nassau, Suffolk and Queens Counties)	Contingent Approval
2446 L	Focus Care Group, Inc. (Westchester and Bronx Counties)	Contingent Approval
2494 L	Sequoia Home Care, Inc. d/b/a Senior Helpers (Nassau and Suffolk Counties)	Contingent Approval
2498 L	Aldon Magloire and Tami N. Johnson d/b/a Precious Pearls Home Health Care (Nassau, Suffolk and Queens Counties)	Contingent Approval
2502 L	Kind Loyal Service RN Healthcare Services PLLC (Westchester County)	Contingent Approval
2513 L	Kingsbridge Home Healthcare Services Corp. (Kings, New York, Queens, Richmond, Bronx and Westchester Counties)	Contingent Approval

2518 L	Lavena Home Health Inc. (Queens, Bronx, Kings, Richmond, New York, and Nassau Counties)	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)	Contingent Approval
2522 L	Alastar Family & Senior In-Home Care, LLC (Westchester and Bronx Counties)	Contingent Approval
2524 L	Diva Multicare Services, Inc. (Queens, Bronx, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2526 L	ACME Home Care, Inc. (Bronx, Kings, New York, Richmond, and Queens Counties)	Contingent Approval
2536 L	Choose Home Care, Inc. (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval
2550 L	ATD Home Health Agency Inc. (Queens, Bronx, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2551 L	Divine Mercy Tender Loving Care (DMTLC), LLC d/b/a Acti-Kare Responsive In-Home Care (Queens Counties)	Contingent Approval
2553 L	MDB Home Care, LLC (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval

2565 L	No One Left Out Services Inc. (Suffolk, Nassau, Westchester, Putnam, and Rockland Counties)	Contingent Approval
2570 L	CarePark Home Care LLC (Bronx, Kings, New York and Queens Counties)	Contingent Approval
2593 L	Autumn Hills Home Care, LLC (Nassau, Suffolk, Westchester and Queens)	Contingent Approval
2603 L	Seniors First Inc. d/b/a Home Instead Senior Care (Suffolk County)	Contingent Approval
2619 L	1 <sup>st</sup> Help HomeCare Inc. (Kings, New York, Queens, Richmond, Bronx, and Nassau Counties)	Contingent Approval
2622 L	Medi One Home Care Inc (Rockland, Westchester and Orange Counties)	Contingent Approval
2627 L	Argent Home Care Inc. (Westchester, Nassau, Rockland, Suffolk, Putnam and Bronx Counties)	Contingent Approval
2629 L	Luba's Homecare Inc. (Kings, Bronx, Queens, Richmond, New York and Westchester Counties)	Contingent Approval
2637 L	NoLimits NYC, Corp. (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval
2641 L	Baychester Services LLC d/b/a Regeis@Home (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval

2642 L	Surrogate Family Care, LLC (Nassau, Suffolk, and Queens Counties)	Contingent Approval
2646 L	Spring Home Health Services, LLC (Queens, Bronx, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2647 L	Senior Assist Home Care LLC (Kings, Richmond, Queens, Bronx, New York and Nassau Counties)	Contingent Approval
151341	Chai Homecare LLC (Bronx, Queens, Kings, Richmond, New York, and Nassau Counties)	Contingent Approval
152066	All Purpose Care LLC (Bronx, New York, Queens, and Westchester Counties)	Contingent Approval
152179	GWS Home Care LLC d/b/a Right at Home (New York County)	Contingent Approval

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

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



**Change in Ownership**

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

Dr. Gutiérrez called all the licensed home care services application in Category 6 and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 50 through 53 of the attached transcript.

**ADJOURNMENT:**

Mr. Kraut announced the upcoming PHHPC meetings and adjourned the meeting.

1                                   **NEW YORK STATE DEPARTMENT OF HEALTH**  
2                                   **PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
3                                   **FULL COUNCIL MEETING TRANSCRIPT**  
4                                   **AUGUST 3, 2017**  
5                                   **ALBANY, NEW YORK**

7           JEFF KRAUT: Hi, I am Jeff Kraut and I now have the  
8 privilege to call to order the August 3, 2107 meeting of the  
9 Public Health and Health Planning Council. Welcome the members.  
10 Dr. Zucker who is going to join us via video... no, telephone,  
11 from his office... he's on the video, sorry, and observers and I'd  
12 like to remind council members and staff that this meeting is  
13 subject to the open meeting law broadcast over the internet. The  
14 webcast can be accessible at the Department of Health's website  
15 at NYHealth.gov. These on-demand webcasts will be available no  
16 later than seven days after the meeting for a minimum of 30  
17 days, and then a copy will be retained in the Department for up  
18 to four months. Just to remind everybody, we're doing  
19 synchronized caption. Please don't talk over each other. We  
20 obviously can't do that well when two people speak at the same  
21 time. When you do speak for the first time, please identify  
22 yourself or I will identify you as a council member or DOH  
23 staff. This could be helpful to us and obviously the mics are  
24 hot when the lights are on. They pick up every sound so please,

1 try not to avoid rustling papers or any side conversations that  
2 are occurring in the vicinity of the mic. They will pick that  
3 up. As a reminder for our audience, there's a form that needs to  
4 be filled out before you enter the meeting room which records  
5 your attendance here today at this meeting. It's required at the  
6 joint - by the Joint Commission on Public Ethics in accordance  
7 with executive law section 166, and that form is also posted on  
8 the Department's website, NYHealth.gov under certificate of  
9 need. So in the future you could fill out the form prior to  
10 coming into the room. Thank you so much for helping us to  
11 comply with our duties under the law.

12 We're going to have a report from Commissioner Zucker. I am  
13 then going to probably start the Project Review Committee  
14 meeting because we have some resignations and I'm afraid of  
15 losing quorums on some things. We have Ms. Dreslin here, and I  
16 need to do certain things by a certain time. And then we'll call  
17 the Codes Committee and then we'll return to the report out for  
18 Dr. Sheppard, Mr. Sheppard. Dr. Gutierrez will probably do that  
19 before Mr. Sheppard talks. So, under the Establishment and  
20 Project Review, when that report is given, Dr. Gutierrez will be  
21 reporting on a number of CON applications that were reviewed at  
22 the previous meeting at the committee on establishment. Remember  
23 that if we have a conflict, members of the council and most of  
24 our guests probably are aware that we are organizing our agenda

1 by topics or categories that capture the roles and  
2 responsibilities of the council including the batching of CONs.  
3 And members, you have the agenda in front of you. Please take a  
4 look at the batched applications and thought whether or not  
5 you'd like to remove them to a different category, and if you do  
6 so please let Lisa or Tracy know at the front of the room.

7       You may be aware or you may have notices that Dr. John  
8 Palmer who has been a member of this council for several years  
9 has made a difficult decision to resign from the council. Dr.  
10 Boufford and I have signed a resolution of appreciation for him.  
11 He has, this resolution - I'm not going to read the whole thing,  
12 but just to be aware, Dr. Palmer joined us in May 2011, and he  
13 served as vice chair of the Codes Committee and legislation and  
14 as a member of Establishment and Project Review and the  
15 committee on health planning, and he has, as many of you are in  
16 the room, has been a dedicated member of the council who's  
17 really felt passionate about the healthcare delivery system and  
18 improving health for the residents of New York, and we are very  
19 grateful to Dr. Palmer for his service and admiration and  
20 appreciation for his role in fulfilling the responsibilities and  
21 the mission of the council. And on behalf of the council we are  
22 extending him thanks and gratitude of the State, the Council,  
23 and the members here for his best wishes of health, happiness,  
24 and professional achievement. We're going to have an important

1 announcement pertaining on the September 20 committee day.  
2 Because of the renovations that are occurring in 90 Church,  
3 we've had to relocate the New York City meeting for the  
4 committee day which is Wednesday, September 20, is now going to  
5 be held - and remember it's a Wednesday, not a Thursday -  
6 Wednesday, September 20, we're going to move that to OASAS's  
7 office building which is located at 501 7<sup>th</sup> Avenue which is  
8 between 38<sup>th</sup> and 37<sup>th</sup> Street. It's about four to five blocks north  
9 of Penn Station. So it's quite accessible. And that space is  
10 going to be a little tighter than what we're used to. We're  
11 going to be a little closer together, which could be a positive,  
12 could be a negative. But as soon as the committee day agenda  
13 we'll encourage you to advise us of your attendance, and we'll  
14 make accommodations, obviously to comply with the open meeting  
15 law. Not only will be webcasted, but the public will also be  
16 invited in.

17 Our first agenda item is the adoption of the minutes. May  
18 I have a motion for the adoption of the June 8, 2017 minutes?

19 [so moved]

20 I have a motion, a second? A second. All those in favor,  
21 aye?

22

23 [Aye]

24 Opposed? Abstention? Motion carries.

1           It's now my pleasure, I'll turn it over to Dr. Zucker who  
2 will update the council about the Department's activity since  
3 our last meeting.

4  
5           HOWARD ZUCKER: Thank you Jeffry. Good morning. I've had an  
6 opportunity to sit and listen to part of the opioid...

7           (inaudible)

8           Another issue which is the medical marijuana program...

9  
10          [Dr. Zucker, could you speak a little closer to the phone  
11 please? They're having a difficult time picking it up on the  
12 webcast and in the room.]

13  
14          I'm hearing a little feedback. Is that better? We're at  
15 maximum volume.

16          So speaking of pain management issues, this week the  
17 Department announced the addition of                    manufacture  
18 medical marijuana in New York State. This addition will increase  
19 patient access and improve the geographic distribution

20          ... last March, the additional of certified patients  
21 continues to rise and additional 10,744 patients have become  
22 certified for the program, and that represents about a 72  
23 percent increase. As of this past Tuesday, we have 75,736  
24 patients certified in the program. With that in mind, we have

1 streamlined the registration process for practitioners making it  
2 easier to certify patients that are medical marijuana program.  
3 The practitioners can now register online with the Department  
4 and certified patients the same day. Before we had an automated  
5 process, but it just settled in to the practitioners to complete  
6 the registration process. So all practitioners who now register  
7 with the Department will be listed online, unless they opt out  
8 during the registration process. And the goal here is to help  
9 patients find participating practitioners. The Department has  
10 also approved the addition of the second line online course on  
11 medical marijuana

12 And the four hour course will be offered by the medical  
13 Also called TMCI

14 The first course was approved in October 2015 and that one  
15 is survived by

16 ... continuing medical education as well. And as of this  
17 past Tuesday there are 1139 registered practitioners in New  
18 York's medical marijuana program. And as you probably recall, we  
19 began allowing nurse practitioners, physician assistants,  
20 certified patient I spoke at the last meeting  
21 about this.

22 ... make up about 10 percent of the nurse practitioners in  
23 the program.

1 We also now permit home delivery and published a list of  
2 registered practitioners

3 And as we predicted from the start, the medical marijuana  
4 program continues to evolve as certain events change. I'll keep  
5 you updated

6 On the issue of HIV AIDS the end the epidemic initiative  
7 has achieved another milestone. The latest data shows a 10  
8 percent decrease in new diagnosis in HIV among men who have sex  
9 with men in 2015. This is the first decrease

10 ...in over a decade, and a significant indication that our  
11 efforts are getting results. And I am pleased to announce that  
12 45 people graduated from

13 HIV, Hepatitis C, and reduction last month.  
14 Now with these trained individuals will provide support,  
15 education assistance to New Yorkers who are living with HIV,  
16 Hepatitis C as well as persons who use drugs. These certified  
17 care workers work in community-based organizations and  
18 healthcare facilities in both clinical and non-clinical

19 Research shows that care workers who share the life  
20 experiences can help people in similar situations achieve better  
21 health outcomes. Healthcare workers will help with  
22 navigating the healthcare system, getting appointments, support  
23 groups, struggling with the diagnosis, ending the stigma and  
24 discrimination



1           Certify the care worker, the person must have  
2           They must complete at least 90 hours of training  
3           And up to a 500 hour  
4           They must agree to a code of ethics and complete 10 hours  
5           And we are looking forward to more care workers joining  
6 this group. Already there are 375 people actively engaged

7  
8           Also some good news about the empire clinical resource  
9 program which is known as ECRP. ECRP is

10          The two year awards will support research project will  
11          ... cancer, epilepsy, pain management,

12          The awards will help train at least 52 physicians  
13          (inaudible)

14

15          JEFF KRAUT:       Thank you Dr. Zucker, and please extend our  
16 congratulations as well to those members at Wadsworth for those  
17 great honors.

18          Are there any questions for the Commissioner? Thank you Dr.  
19 Zucker. We appreciate that comprehensive report, and we look  
20 forward to seeing you next time. Which will be probably in  
21 September.

22          This is what I'm going to do now; I am going to go to Dr.  
23 Gutierrez to open the Codes Committee because we're going to  
24 lose—we need to maintain a quorum. I'm going to ask Dr.

1 Gutierrez to report on the Codes Committee vote and to take a  
2 vote. Then after that's over I will ask Dr. Gutierrez to open  
3 the Project Review Committee and take into account, I think we  
4 have three or four projects where we're very likely to lose a  
5 quorum if we don't vote because of conflicts or abstentions or  
6 no votes from previous votes. Then I will suspend the Project  
7 Review Committee. Then I'll turn it over the Dan Sheppard to  
8 continue with the Department's reports. Then we're going to go  
9 to Dr. Boufford to provide an update on health across all  
10 policies, and then we'll resume the Project Review Committee for  
11 the balance of the applications. So I'm just trying to manage,  
12 given the number of members we're down and maintaining quorum  
13 and trying to get. So Dr. Gutierrez, if you would please open  
14 the Codes Committee and provide a report.

15

16 ANGEL GUTIERREZ: Good afternoon again. At today's  
17 meeting of the Committee on Codes, Regulation, and Legislation,  
18 the committee reviewed four proposals; two for adoption, one for  
19 emergency adoption, and one for discussion. For adoption was a  
20 certificate of need review threshold. This proposal will amend  
21 section 710.1 of title 10 to increase the monetary thresholds  
22 for review of construction projects proposed by general  
23 hospitals. The proposal also would revise review requirements  
24 for certain non-clinical projects and health information

1 technology projects. The proposal does not modify the level of  
2 review required to add, reduce, or decertify medical services.  
3 The committee voted to recommend adoption with one negative vote  
4 to the Full Council, and I so move.

5

6 JEFF KRAUT: I have a motion. May I have a second?  
7 Second, Dr. Strange. Any discussion? Hearing none, I'll call  
8 for a vote. All those in favor, aye?

9

10 [Aye]

11 Opposed? Abstention? The motion carries.

12

13 ANGEL GUTIERREZ: For adoption also, all-payer database.  
14 This proposal will create a new part 350 of title 10 pertaining  
15 to the all-payer database referred to as the APD. The APD will  
16 collect and contain public and private healthcare claims and  
17 encounter data. The committee voted unanimously to recommend  
18 adoption to the Full Council, and I so move.

19

20 JEFF KRAUT: I have a motion, may I have a second?  
21 Second, Dr. Strange. Any discussion? Yes, Dr. Martin.

22

23 GLENN MARTIN: I'm going to vote no, and I'm probably the  
24 only person who is, so I want to just explain it. It has to do

1 with the issues that I raised earlier about I'm still concerned  
2 about the security, I'm still concerned about public  
3 notification, and I'm still concerned about the centralization  
4 of data in ways that make it excruciatingly simple to find that  
5 information about people that really shouldn't be available,  
6 other than to themselves. So I understand the great benefit of  
7 this, but I do want to be on the record as saying I still don't  
8 really think it's at the point where it should be. I imagine it  
9 will work in that direction, so I remain optimistic.

10

11 JEFF KRAUT: Thank you for explaining. Dr. Gutierrez. So  
12 you have a motion. We have a motion and a second. All those in  
13 favor, aye?

14

15 [Aye]

16 Opposed? The motion carries.

17

18 ANGEL GUTIERREZ: For emergency adoption and discussion  
19 is a hospital policies for individuals with substance use  
20 disorder. During the process of discussing this, we split the  
21 motions in two parts. The first part will require hospitals to  
22 establish policies and procedures for the identification,  
23 assessment, and referral of individuals with substance use

1 disorder. This regulation was passed with one abstention, and I  
2 so move.

3

4 JEFF KRAUT: And that was for emergency adoption.

5

6 ANGEL GUTIERREZ: For emergency adoption. Correct. So it  
7 will come back for further.

8

9 JEFF KRAUT: So I have a motion. May I have a second. I  
10 have a second. Any discussion? Dr. Strange.

11

12 DR. STRANGE: Hearing the discussion as part of not being  
13 on the committee -- I'm on I don't know why it's not coming on.

14

15 JEFF KRAUT: Just pull it a little closer. These are  
16 more sensitive.

17

18 DR. STRANGE: Yeah, I think so. In my mouth. There you go.  
19 Nobody touch this. It's an infection control issue now. Again,  
20 my concern, although I agree with, I understand the whole  
21 epidemic, Staten Island is an epicenter of this epidemic, what  
22 the discussion I heard at the initial meeting was the issue or  
23 layering this with bureaucracy. I mean, we have done a  
24 tremendous job in this state with some of the previous

1 regulations including the ISTOP program, including the course  
2 which we're all now mandated to take. But this situation and  
3 this epidemic is not going to be resolved by continuing to  
4 laying bureaucracy on top of bureaucracy. This is now a  
5 healthcare issue and more than a healthcare issue, it's an  
6 educational issue. This needs to start in the homes. This needs  
7 to start in the school systems at an early age, and to just  
8 think that this is going to be about healthcare providers and  
9 safety net areas that are going to be the ways to someone  
10 continue prevent this I think is just a short sighted way of  
11 thinking this. Now, again, I understand education at a hospital  
12 level where we have a captive audience may help but I think Dr.  
13 Boufford was clear; this is a small piece of the pie. This is  
14 much bigger issue on the ambulatory side. And I think we all  
15 need to put our hats on and rethink what it is that we need to  
16 do. I mean, we have regulated this down for us, the providers,  
17 to prescribe especially in the emergent levels where we can only  
18 give a weeks worth of medication even if we wanted to prescribe  
19 more, so that you know, we can advise patients that they, and  
20 ask them if they want to get more involved in care. I just don't  
21 know that we're really hitting on now the right way to resolve  
22 this issue. This is much bigger than just a healthcare forum.  
23 So again, I'm concerned that we just keep laying this with  
24 bureaucracy on bureaucracy and one day we're going to wake up

1 with this big pile of paper and still have this problem  
2 underlying our society here. So that's my concern.

3

4 JO BOUFFORD: I just to comment as well, I think I would  
5 encourage the many exciting things you talked about in terms of  
6 making these connections and having these resources available,  
7 it seems to me is really about change in the culture and the  
8 hospital and could proceed regardless of any delay in the  
9 mandate that has been discussed here, whether it passes or  
10 doesn't pass. I mean those things really could start happening  
11 and should start happening right away, and I think when people  
12 are, the Commissioner for example, sent a letter out a while ago  
13 talking about the issue of importance of prenatal care relative  
14 to maternal mortality and asked people to really deal with the  
15 asking the single question in the ambulatory care setting, and  
16 it seems to me there would be quite powerful for him to some  
17 him with the OASAS commissioner to send out a joint letter  
18 outlining the services available, the other things you're  
19 proposing to do, and encouraging institutions to get going. I  
20 mean, these paths you're going to go through a formal process.  
21 I would not delay what the connections that you're talking about  
22 because of a formal process making it's way through the  
23 regulatory review.

24

1           LISA ULMAN:     If I could just raise one point in response  
2 to actually both your comments which we very much appreciate, of  
3 course we were necessarily very focused on the provisions of the  
4 regulations, focused on what hospitals need to do. All the new  
5 community resources we pointed to, I think we are collectively  
6 working to make sure people are aware of them. We thought that  
7 it would help for hospitals to be aware of them. But yeah, we  
8 are moving forward and making the world aware of it. I think  
9 that OASAS has a lot of materials and resources on their  
10 website. There's also the combat addiction website, right, but  
11 there's also the combat heroin website. So there is a wealth of  
12 information out there and the efforts do address other aspects  
13 of this crisis. Certainly there's a lot of effort on prevention.  
14 There's certainly a lot of law enforcement efforts. So this is a  
15 multipronged approach, and this was just the one aspect that we  
16 focused on. So, very much appreciate your comments.

17

18           JEFF KRAUT:     Go ahead Dr. Bennet.

19

20           JOHN BENNET:    I'm going to riff off of Dr. Boufford's  
21 comments and say that while I fully support education and  
22 awareness and think that's very important, I agree strongly with  
23 Dr. Strange that I don't think we need, I don't see this  
24 regulation as being helpful. I see it as another layer, and I



1 would argue Dr. Strange, that one day where we see the pile of  
2 papers, I think that one day was about 15 years ago.

3

4 JEFF KRAUT: We will try to address that in another  
5 venue, and I can't agree with you more. And you're hearing,  
6 you've obviously heard the comments that you've heard today. I  
7 think you have to come back to us during the course of the year  
8 where we'll engage in a conversation and a more directive and  
9 deliberative way if you expect these regs to pass this council.  
10 You've heard the concerns of this council about your approach,  
11 and we just ask that we'll work with you to figure that out.

12 Having said that I'd like to call for a vote, all those in  
13 favor? This is emergency adoption of the discharge planning reg.

14

15 ANGEL GUTIERREZ: I think the motion is "requires  
16 hospitals to establish policies and procedures for the  
17 identification, assessment, and referral of individuals with  
18 substance use disorder."

19

20 JEFF KRAUT: All those in favor Aye?

21

22 [Aye]

23 Opposed? One opposition. Wait a minute... Dr. Rugge is  
24 opposed. Dr. Bennet is opposed. And Dr. Boufford. Alright. We

1 have 15 members. I need 13 affirmative votes and we do not have  
2 them.

3 If you're abstaining it's worse. Abstaining doesn't help.

4

5 JO BOUFFORD: Point of information. Can you describe the  
6 process if these are adopted what is next over what time period,  
7 just to clarify that? I think it would help us.

8

9 JEFF KRAUT: Who would like to respond? If these are  
10 adopted, what happens next? Remember, we just made a motion for  
11 emergency adoption. What in fact happens if it's approved with  
12 respect to that? When does it come back to the council?

13

14 LISA ULMAN: So of course we'll do the mechanical work to  
15 separate the pieces out, remove the directive provision, proceed  
16 with the other components, and we would file that with the  
17 secretary of state because it's an emergency filing. It would  
18 take effect immediately upon that filing and that would be valid  
19 for another 90 days. We would have to come back to the council  
20 prior to that in order to authorize another emergency. In the  
21 interim we would proceed with the proposed regs as well and move  
22 them to the state register and obtain public comment on that,  
23 and of course we would come back to the council for adoption  
24 before finalizing those.

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JEFF KRAUT: Does that effect anybody's thinking? As far as voting affirmatively for this??

JOHN RUGGE: Just to say, as a basis for my vote, I think regulation arguably may be of value. I see no value in emergency declaration. I think we can wait until we go through the process.

JEFF KRAUT: It would change your vote? Then I have a different motion, but go ahead.

GLENN MARTIN: Can I ask it on the flip side, if we don't approve it now, they'll still put it through for regular adoption. When would it come back and when would it come...

JEFF KRAUT: Not on this motion. If you...

GLENN MARTIN: No, I understand. If you worked on the emergency motion, you asked if it's emergency and we passed, it's good for 90 days and would have to come back again unless we passed permanent, has been in place. I'm just asking the other way. If we were to vote this down, when would the

1 permanent thing come back up for review? How long are we  
2 delaying implementation of something similar?

3

4       JEFF KRAUT:     Lisa, my guess is we'll bring it back to the  
5 next council, but I don't think it's appropriate to vote this  
6 down. What I'm going to suggest otherwise is I'd like to  
7 withdraw, I'd like a vote to withdraw the motion and I want to  
8 propose another motion to table the matter until the next  
9 meeting. I'm just going to table the matter until the next  
10 meeting. I would tell you I do not believe a no vote is in the  
11 best interest given the topic. What I do believe is instead of  
12 waiting 90 days on emergency adoption I'd rather have it come  
13 back on September 20.

14

15       DR. STRANGE:    So Jeff, just a comment, so understanding  
16 the political ramifications and the practicality of this, I get  
17 that, but I think Dr. Rugge's point is a valid one so I do see  
18 tabling this as being something reasonable. But again, I think  
19 we need to go back to the whole concept of just continuing to  
20 layer the bureaucracy here with what the issue is.

21

22       JEFF KRAUT:     I think if you have to be thick not to have  
23 picked up on the tenor of the conversation. I think the  
24 Department and OASAS has heard what we've said. I think they get

1 the message. But again, I would suggest to you I'd like to now  
2 have a motion to, I'd like a motion, I'd like the chair to make  
3 a motion to withdraw the motion. I'd like to... I can do that?  
4 Or he does? Could you please withdraw the first motion?

5

6 ANGEL GUTIERREZ: Ok, but clarify this for me. As chair  
7 of the Codes Committee a presented, I so move.

8

9 JEFF KRAUT: And I'm asking you as the Chair to withdraw  
10 your motion. Only you can withdraw your motion. Recall the  
11 motion.

12

13 ANGEL GUTIERREZ: OK. I hereby recall the motion.

14 JEFF KRAUT: I have a motion to recall the motion. Have a  
15 second. All those in favor,

16 [Aye]

17 Opposed? The motion is withdrawn. Would you like to make a  
18 second motion to table the matter until the September 20  
19 committee.

20

21 ANGEL GUTIERREZ: I move that the motion to require  
22 hospitals to establish policies and procedures for the  
23 identification, assessment, and referral of individuals with  
24 substance use disorder be tabled until the next meeting.

1

2           JEFF KRAUT:        You want to add the second item as well?  
3 Which we know is related?

4

5           ANGEL GUTIERREZ:    In addition, the authorization to use  
6 of a "voluntary non-opioid directive" which individuals could  
7 use to communicate to their healthcare providers that they do  
8 not want to use opioid pain medications also be added to that  
9 motion.

10

11           JEFF KRAUT:        I have a motion. I have a second. Any other  
12 discussion? All those in favor, Aye.

13

14 [Aye]

15           Opposed? The motion carries. This matter will be tabled  
16 until the September 20 meeting of the Codes Committee when it  
17 will come back up for discussion.

18

19           ANGEL GUTIERREZ:    This concludes my report.

20

21           JEFF KRAUT:        Thank you Dr. Gutierrez. Inhale. Exhale. And  
22 would you please - oh before we do that I just want to  
23 acknowledge that I have, Jeff Kraut, has resigned from the Codes  
24 Committee in light of the resignation of Dr. Palmer to maintain

1 quorum and Mr. Holt has agreed to serve as vice chair of the  
2 Codes Committee which we are appointing him today. That  
3 concludes the Codes Committee. I'd like now to turn to Dr.  
4 Gutierrez, over to you to present Project Review for a select  
5 few applications, so we try not to avoid losing a quorum later  
6 in the day.

7  
8 ANGEL GUTIERREZ: Application for acute care services  
9 construction number 171326C, St. Francis Hospital, Nassau  
10 County. Certify additional space at existing extension clinic  
11 and recertify radiology, therapeutics and medical services,  
12 other medical specialty services. The Department recommended  
13 approval with conditions and contingencies and I so move.

14  
15 JEFF KRAUT: I have a motion. May I have a second?  
16 Second, Dr. Berliner. Department want to comment? Any questions?  
17 Dr. Bennet.

18  
19 JOHN BENNET: More of a comment just to clarify and make  
20 my position clear. I voted against this at the committee. I will  
21 be voting against it again. Again, this is an acquisition of a  
22 private practice by an article 28 facility and I continue to be  
23 concerned that there is no process for evaluating the economic  
24 impact upon consumers when this occurs.

1           JEFF KRAUT:       Thank you Dr. Bennet.

2           Any other questions or comments? Hearing none, I'll call  
3 for a vote. All in favor, Aye?

4

5 [Aye]

6           Opposed? Dr. Bennet. The motion carries.

7

8           ANGEL GUTIERREZ:       Application number 171176C, NYU  
9 Hospital Center, New York County. Conflict and recusal Dr.  
10 Kalkut. Certify and construct a new extension clinic to be  
11 located at 175 Delancy Street, New York for the provision of  
12 multispecialty ambulatory services and physical therapy. The  
13 Department recommended approval with conditions and  
14 contingencies. The committee approved with conditions and  
15 contingencies was recommended with one member abstaining, and I  
16 so move.

17

18           JEFF KRAUT:       I have a motion. May I have a second? Dr.  
19 Berliner. Department want to make any comments?

20

21           CHARLIE ABEL:       Just for questions.

22

23           JEFF KRAUT:       Any comments from the council? Dr. Berliner.

24



1           HOWARD BERLINER:       Yes, I'm going to vote against this  
2 application. I want to explain why to the other council members.  
3 When PHHPC and it's predecessor agencies were set up, going back  
4 to the days of comprehensive health planning and HSAs and things  
5 like that, one of the purposes was to give communities a change  
6 to apply some influence on providers, on large, on hospitals  
7 primarily to do things that the community wanted and not just  
8 say to hospitals, oh, add this equipment, build this new  
9 building, do whatever you want. In this particular case, I have  
10 nothing against this application except that when it was first  
11 announced to the public through press releases from NYU it  
12 included an urgent care center which from my understanding from  
13 some healthcare advocates, was something that the community  
14 actually was very desirous of. That urgent care center is no  
15 longer part of the application, was not part of the application,  
16 and when I asked the representatives from the applicant at the  
17 committee meeting two weeks ago they said it had never been  
18 intended to be part of the application. And I think that just is  
19 not good for the community. So I'm going to vote against it, but  
20 for those reasons.

21

22           JEFF KRAUT:           Any other comments? Hearing none, all those  
23 in favor, Aye.

24

1 [Aye]

2 Opposed? Dr. Berliner. Motion carries.

3 ANGEL GUTIERREZ: Application 162581E, SCOB LLC, d/b/a  
4 SurgiCare of Brooklyn, Kings County. Establish SCOB LLC as the  
5 new operator of the ambulatory surgery center services located  
6 at 313 43<sup>rd</sup> Street, Brooklyn. New York Center for Specialized  
7 Surgery will continue to operate the other services at this site  
8 in separate space. The Department recommended approval with a  
9 condition and contingencies, and the committee approved with a  
10 condition and contingencies recommended with two members  
11 opposing and one member abstaining. And I so move.

12

13 JEFF KRAUT: I have a motion. May I have a second? Dr.  
14 Berliner. Department want to make any comments regarding ...

15

16 CHARLIE ABEL: Available for questions.

17

18 JEFF KRAUT: And I think there were no supplemental  
19 materials sent to us, right?

20

21 CHARLIE ABEL: Not on this project.

22

23 JEFF KRAUT: Any questions from the council members?  
24 Hearing none, I'll call for a vote. All those in favor, aye?

1 [Aye]

2 Opposed? The motion carries.

3

4 ANGEL GUTIERREZ: Application 171229E, ILF Operating LLC,  
5 d/b/a Elmwood Manor Nursing and Rehabilitation Center in Ontario  
6 County. I have an interest and abstention from Ms. Carver-  
7 Cheney. To establish ILF Operating LLC d/b/a Elm Manor Nursing  
8 home and Rehabilitation Center as the new operator of Elm Manor  
9 Nursing Home, a 46 bed proprietary residential healthcare  
10 facility located at 210 North Main St., Canandaigua. Please note  
11 for the record that the establishment and project review  
12 committee requires eight affirmative votes to pass the motion.  
13 The motion to contingently approve this application failed due  
14 to one member opposing and four members abstaining. The  
15 application is now before the council with no committee  
16 recommendation. The Department of Health continues to recommend  
17 approval with conditions and contingencies. The committee has no  
18 recommendation.

19

20 JEFF KRAUT: I have no recommendation from the committee.  
21 We have a recommendation from the Department. We have a motion  
22 to consider the project. Do I have a second? Dr. Berliner. Mr.  
23 Abel.

24

1 CHARLIE ABEL: Thank you. So this project and a related  
2 project which have the same applicant members associated with  
3 the project, 171231 which is yet to be discussed, LFG operating  
4 LLC, the questions came up, same questions on both facilities.  
5 One question had to do with a desire to get more detailed  
6 information, resident days specifically in order to give a  
7 clearer picture of the applicants proposal to comply with our  
8 Medicaid access criteria. Medicaid access regulation. Second  
9 issue revolved around the more information about the applicant's  
10 quality improvement plan for this facility and the other  
11 facility. That material was distributed yesterday. A detailed  
12 response from the applicant on the quality improvement plan as  
13 well as responding to the Medicaid access plan. And then the  
14 department also prepared a more detailed budget showing patient  
15 days and how that comports. The department reviewed the  
16 material. It is consistent with our review prior to EPRC and  
17 does demonstrate a plan to comply with Medicaid access. So the  
18 Department continues to recommend approval.

19

20 JEFF KRAUT: Is there any questions for the Department or  
21 discussion? Hearing none, I'll call for a vote. All those in  
22 favor, aye?

23

24 [Aye]

1           Opposed? One opposed? Oh, ok. The motion carries. Don't  
2 exhale.

3

4           ANGEL GUTIERREZ:       Application 171231E, LFG Operating LLC,  
5 d/b/a Wedgewood Nursing and Rehabilitation Center in Monroe  
6 County. Interest and abstention from Ms. Carver-Cheney.  
7 Establish LFG Operating LLC, d/b/a Wedgewood Nursing and  
8 Rehabilitation Center as a new operator, Wedgewood Nursing Home,  
9 a 29 bed proprietary residential healthcare facility located at  
10 5 Church Street in Spencerport. Please note for the record  
11 again, please be reminded the committee requires eight  
12 affirmative votes to pass the motion. The motion to contingently  
13 approve this motion passed since we had the required votes with  
14 one member opposing and two members abstaining. The Department  
15 of Health recommends approval with conditions and contingencies  
16 and the committee approved with conditions and contingencies  
17 also, and I so move.

18

19           JEFF KRAUT:       So I have a motion. May I have a second. Dr.  
20 Berliner. The Department? Any comments?

21

22           CHARLIE ABEL:       Same comments that I had on the previous  
23 project. This is the related project I referenced.

24

1           JEFF KRAUT:     Any other questions from the council? All  
2 those in favor, aye?

3

4 [Aye]

5           Opposed? The motion carries.

6           I think we'll suspend - those were the ones that were at  
7 high risk given the opposition and the abstentions, and we'll go  
8 back, I'll suspend the Project Review Committee and I'll now  
9 turn it over to Mr. Sheppard for the report of the Department  
10 followed by Dr. Boufford, and then we'll resume the project  
11 review committee meeting. Mr. Sheppard.

12

13           DAN SHEPPARD: Thank you very much. I'd like to report on  
14 several items. First is the announcement of awards from the  
15 statewide healthcare facility transformation program. On July  
16 18, the Governor, the Commissioner and the President of the  
17 Dormitory Authority of New York announced 92 capital awards  
18 totaling \$491 million. These were for healthcare facility  
19 transformation projects. Recipients included hospitals,  
20 community-based outpatient and long term care providers and  
21 nursing homes. Funding for these awards came from both last  
22 year's and this year's state budgets. Just couple notable  
23 evaluation criteria that the Department used in selecting these  
24 awards. Basically the impact of the project on the financial

1 sustainability of the applicant, the extent to which the project  
2 preserved essential healthcare services, and whether the project  
3 had been submitted but not funded under two previous capital  
4 programs that were awarded in 2016. These were all criteria in  
5 statute authorizing program. Another significant criteria also  
6 statutory was achieving a fair, geographic distribution of funds  
7 and this played into certainly the award process.

8 We received over 369 applications totaling \$2.16 billion.  
9 That's Billion, with a B. This significantly exceeded available  
10 funds, but importantly just because an applicant wasn't funded  
11 it didn't mean that the project wasn't highly rated. It's just  
12 the multiple factors that I had described before, how they  
13 interplayed right off and decided whether a particular project  
14 in a particular region could be reached with available funding.

15 Just in general broad terms the project types that were  
16 worded could be categorized as follows. The first project type  
17 were improvements to community-based or hospital-based to allow  
18 for the integration of physical and behavioral health services  
19 there were literally dozens of projects that fit into that  
20 category. Another category were the construction of medical  
21 village model facilities. These are typically multispecialty  
22 usually hospital-based or hospital affiliated facilities that  
23 often sometimes freestanding emergency department and then a  
24 wide array of primary care services as well as specialty

1 ambulatory care services. Another category was the expansion or  
2 preservation of inpatient and outpatient substance use disorder  
3 services. I guess in some ways connected to our earlier  
4 conversation and the multifaceted efforts of the state to  
5 address that or a series of large and small projects that either  
6 established, preserved, or expanded substance use disorder  
7 services, facilities, both inpatient and outpatient. Another  
8 category of projects were debt retirement or capital  
9 construction projects that were associated with the  
10 consolidation and regionalization of healthcare services, and  
11 often this was with the goal of insuring the financial  
12 sustainability of a rural or isolate community hospital. And  
13 finally general category were projects that leveraged technology  
14 in the area of post-acute and long term care to reduce  
15 unnecessary emergency department and inpatient readmissions.

16       Generally we received positive feedback from the hospitals  
17 and community-based healthcare provider industries, and that's  
18 obviously not counting successful, feedback from successful and  
19 unsuccessful applicants. The concerns we have received were  
20 largely from the nursing home and long term care providers who  
21 felt if they weren't adequately represented in the final award  
22 list. Apropos to that and any other comments that the  
23 Department, folks who want the Department to hear about the  
24 program and the award results from the last round that we're



1 accepting comments and any specific recommendations for  
2 consideration as we develop the next request for applications  
3 for this program which we expect to issue early this fall and  
4 the total amount available should be in the neighborhood of  
5 about \$200 million. So those importantly those groups, both  
6 applicants as well as healthcare sectors that felt that the  
7 current process for awarding the awards I just mentioned didn't  
8 adequately address priorities than we would certainly be  
9 interested in hearing their concerns in detail and considering  
10 them as we develop the RFA.

11 Next area I just want to touch on is that we will be  
12 holding the first three regulatory modernization initiative,  
13 policy development workshops over the next month. I went into  
14 some detail on this initiative during my remarks at the last  
15 PHHPC meeting. So the three that we'll be doing in August and  
16 very early September are post-acute care management models which  
17 will be held on August 9, integrated primary and behavioral  
18 healthcare services which will be held on August 17, and will be  
19 an extension of Dr. Ruge's ad-hoc committee that's been looking  
20 into this area, and then also telehealth on September 5. Our  
21 goal is to hold about another five of these workshops before the  
22 end of the calendar year and use the results of those workshops  
23 to develop and implement policy regulatory and if warranted,  
24 statutory changes. And then we'll also, we'll be delving much

1 deeper into the whole regulatory modernization initiative and  
2 all the planned workforce topics at the PHHPC retreat scheduled  
3 for September 6, 7, 8, and I guess in some ways that's a segue  
4 to a couple remarks on the retreat and then handing back off to  
5 Jeff to give a little bit more detail on the agenda for the  
6 retreat.

7       So I think personally and certainly on behalf of all my  
8 colleagues in the Department, we're looking forward to the  
9 opportunity to engage the council at length on so many of the  
10 critical policy issues that underlie a lot of the discussions  
11 that often happen when a particular CON application comes up.  
12 We've had a number of vigorous discussions over the past several  
13 years, and I think we're really looking forward to be able to  
14 talk about the policy outside the context of a particular  
15 transaction. Really importantly, and Jeff will emphasize this  
16 certainly I'm sure, is the goal of the retreat will be to walk  
17 away with concrete input from the council and actual  
18 recommendations to address what I think we all will come to  
19 consensus or certain pressing regulatory and policy challenges  
20 and when I say concrete and actionable, we're talking about in  
21 2017 and into 2018. And so with that I'm going to hand it back  
22 to Jeff to talk about the specific agenda.

23

1           JEFF KRAUT:       So, we'll hopefully issue this agenda in  
2 probably the next week or so once it is just tweaked a little.  
3 But this is really about redefining the role of PHHPC. And you  
4 saw examples of it in this meeting today and last meeting about  
5 the interest and the focus on certain things that are very meaty  
6 issues from CON regulatory reform, and as you heard Dan say, the  
7 workgroups that are being held from the 9<sup>th</sup> and 17<sup>th</sup> of August and  
8 the 5<sup>th</sup> of September. This is going to complement that process in  
9 addition. It might have a little overlap of trying to minimize  
10 that. That's the intent. But essentially what we're going to do  
11 over the three days is we're going to look at, we're going to  
12 start in the evening on Wednesday. This is going to be open to  
13 the public which means it'll be able to be observed and  
14 webcasted, but the public will not be permitted to speak other  
15 than invited guests that were coming in here. People can't sign  
16 up to speak. We will have a time for the public to speak about  
17 the issues we're addressing at a subsequent time. But we're  
18 going to start with framing the retreat that evening in the open  
19 meeting and I'm going to talk a little about the history of the  
20 council looking backwards and some of the issues that it's  
21 addressed since it's formation and talking about I think what  
22 the objectives and the challenges we have to confront in the  
23 next two days, in the years ahead. In the morning we will  
24 gather again, reconfirm the objectives. Dr. Berliner will

1 provide an overview of the changing nature of the organization  
2 and healthcare delivery and essentially the retreat is broken  
3 into three major pieces. A section on public health and the  
4 prevention agenda. What are those key public health challenges,  
5 health in all policies, and how does health reform and the  
6 public health agenda converge and some of the policies and  
7 things that we're able to do. That's going to be followed, every  
8 session will be followed by a 45 minute to an hour discussion  
9 among ourselves about trying to identify and focus in on those  
10 critical issues that need to form the agenda for recommendations  
11 and for actionable items. The second part will be focused on  
12 post-acute and long term care priorities. That'll be led by Mark  
13 Kissinger, and he will either bring in a panel discussion of  
14 individuals and other things dealing with post-acute models of  
15 care, redefining the standards of need, long term care beds,  
16 homecare agencies, age-friendly policies and the like. We will  
17 spend time again in a discussion among ourselves. And then the  
18 third part is dealing with the balance of the healthcare  
19 delivery system, kind of looking at both the primary care,  
20 integration with mental health, the acute care part of the  
21 continuum and looking at provider consolidation, the networks of  
22 care, and public awareness and engagement regarding  
23 transformation efforts. And then at dinner it will be purely a  
24 social event. We will not have a speaker that evening. We will

1 just have dinner. And enjoy each other's company. And then the  
2 balance of Friday will be focused really on our discussion among  
3 ourselves for a few hours and will structure it based on those  
4 three pieces; prevention, post-acute long term care and the  
5 balance of the continuum to see if we can look at  
6 recommendations focusing on health reform, the regulatory  
7 framework, CON, the role of character and quality in character  
8 and competence, the issues about cost and how that comes into  
9 the equation. The issues that we've been struggling with as part  
10 of certain CONs and we keep saying we don't want to burden the  
11 CON with a discussion of that item, this is the place we want to  
12 take the time to talk it through, and hopefully come out there  
13 with a series of recommendations that will form the basis of the  
14 work of both the department and some of the committees for the  
15 balance of 2017 and going into 2018, and also as part of this to  
16 look at how we are structured and what our operations are, and  
17 maybe how we could restructure and maybe even change our bylaws  
18 with respect to the functions and the activities of the council.  
19 And what all of that has to kind of make it's way into a  
20 document that we basically put the learning and insights and  
21 recommendations in, then we do have to hold public discussion  
22 and invite others to comment. I would expect as part of this  
23 you will receive homework prior to the meeting of reading some  
24 background pages. We have done a lot of work when you look at

1 the history on a lot of these items. We want to bring everybody  
2 up to a common knowledge base. Particularly those members who  
3 maybe joined us the last three or four years where we've done  
4 work five years ago. I think we are also going to, we'll leave  
5 it up to the Department, the people who are working on these  
6 segments to invite in other representatives of industry, the  
7 associations to be part of a panel conversation where we can  
8 engage in a two-way discussion where individuals have already  
9 done white papers on these subjects and to help us form our  
10 perspective. But it should come into a document that comes out  
11 of here that then we would hold probably in the planning, maybe  
12 in the public health, but we would invite comment on different  
13 sections of those documents through our committees. That's the  
14 intent, and I hope we will have that finalized, at least a final  
15 draft agenda. Every agenda is drafted until you walk into the  
16 room. And I want to just acknowledge the assistance we've  
17 received. Dr. Boufford has been helping us crystalize our  
18 thinking as a sounding board, and I do appreciate the thing. And  
19 then I'll lead.

20

21 JO BOUFFORD: I do just want to add one comment, so  
22 people can be thinking about it, I think, in the context of all  
23 of this sort of important operational action item. One of  
24 things we also hope we will talk about is the way we use our

1 time in these meetings. I sort of presented the analogy of a  
2 non-profit board or board of an organization where there's  
3 certain legal responsibilities that that entity has, and then  
4 the other activities could be more strategic and advisory and I  
5 think the question we'd like to explore during these  
6 conversations is how we might use the time in our own meetings  
7 to think more in terms, moving almost worth toward what one  
8 might called a consent agenda in terms of a lot of the CON  
9 activities and how we might carve the time out so that becomes  
10 an explicit portion of the meeting rather than other parts of  
11 the meeting only being reports to us, there might be slots of  
12 time where we could further discuss some issues as an advisory  
13 role for the Department and/or think strategically with  
14 colleagues, not to necessarily put anybody on the spot, but also  
15 play a role. There's a lot of people who were selected because  
16 of their expertise and their representation of different  
17 interests in the system around this table and to really use that  
18 expertise in a more effective way. So we're hoping to kind of  
19 balance the use of time, so when we come out, we'll have a sense  
20 also of our process as well as the specifics of our work.

21

22 JEFF KRAUT: So, and if we know if we've made the  
23 Department's lawyer's anxious we're on the right track. Because  
24 I know, there's a lot of rules we gotta follow. So that just

1 kinda gives you kind of a broad overview and a sense and I hope  
2 that agenda is responsive to the things that you've been asking  
3 and discussing over the years. So I put it out there. There's  
4 any comments? I don't know if we have to take a lot of time  
5 now, but give me a call if they have any issues or additions,  
6 particularly once you get the agenda, because we'll be able to  
7 modify that to a great degree.

8 OK, let me now turn it back to Dr. Gutierrez to continue  
9 resume the Project Review Committee report. OH, I'm sorry, I'm  
10 sorry, wait a minute. Before we do that I'm going to turn it  
11 over to Dr. Boufford to give us an update. Brad Hutton wasn't  
12 able to join us. And I'm going to ask Dr. Boufford to give kind  
13 of a primary care prevention update.

14

15 JO BOUFFORD: Thanks. I will not give whatever Brad  
16 would've said. I just wanted people to be aware of the ongoing  
17 progress on the health across all agenda that was established by  
18 the Governor in the State of the State message. The initial  
19 meeting of 13 state agencies Paul Frances convened in early  
20 march. Those agencies were asked to submit to identify  
21 activities potential purchasing activities, regulatory thinking,  
22 capital investments over the next year, three to five years that  
23 they were going to do anyway, and how might that be different if  
24 they were really focused more on evidence-based impact on health



1 and/or on an age-friendly New York State. And this technical  
2 advice and evidence was provided to them in this exercise by the  
3 Department of Health and by New York State Office for the Aging.  
4 Those reports were supposed to be in in June. They were. They  
5 were all in. They're quite detailed. Quite interesting. They've  
6 been put in a matrix, a reporting matrix against criteria for an  
7 age-friendly state and other, the five goals of the prevention  
8 agenda, and they're now being analyzed with a very effectively  
9 collaborative working team from NYSOFA and DOH and Paul  
10 Frances's office. Our goal, the other... this group met last week  
11 for an extended period and I was part of that in my public  
12 health council hat, and one of the thoughts that came out was  
13 when these projects are identified as a mapping exercise to see  
14 what all the agencies are doing, in particular geographic  
15 spaces, because one of the geographic parts of the state because  
16 one of the powerful parts of the prevention agenda is knowing  
17 which counties are trying to take on which issues, and there may  
18 be economic development opportunities, transportation, housing,  
19 purchasing, ag and markets, other things that are going on in  
20 that very same community and people, the dots are not connected.  
21 So that's one of our real goals is to connect the dots in terms  
22 of more effective implementation and linkage to the prevention  
23 agenda coalitions that already exist. Our goal is to have an ad-  
24 hoc leadership group to meet again in the fall and to really

1 look at the agency operations at state level with Paul convening  
2 which will be about a quarterly if not six times a year basis,  
3 and then adding members to the prevention agenda group that can  
4 work more locally that have a local infrastructure or an ability  
5 to reach into local communities. So that's that part.

6 Secondly we will be having a New York State summit on  
7 maternal mortality probably in November. The planning group  
8 consists of the State Health Department, the City Health  
9 Department, HANYS, Greater New York, now health and hospitals  
10 and New York State ACOG and we'll be adding a representative of  
11 the state nursing association and midwifery organizations to the  
12 planning group. We were able to get funding from this from a  
13 private source and what we'll be doing is a look back from 2010  
14 going forward what's occurred. There was a summit in 2010 that  
15 was held at the New York Academy of Medicine with the same  
16 essential planning group with a set of action steps. We're going  
17 to take a look back and see what's been accomplished. A lot of  
18 work has been done since then and also look at what the  
19 unfinished agenda is so that we will have a, that will include  
20 the reports that have been made to this council as well as the  
21 recommendations still pending from the report, the white paper  
22 that the council approved a year ago January. So, we'll give you  
23 more input on that in the fall. Thank you.

24

1           JEFF KRAUT:       Any questions for Dr. Boufford? Thank you so  
2 much. Now I'll turn to Dr. Gutierrez who will resume the  
3 Project Review Committee. Call that back to order. Why would  
4 you wait? Don't wait.

5

6           ANGEL GUTIERREZ:    Thank you. I want to point out that  
7 this new microphones are even more fastidiously directional than  
8 the other ones we talked about before, because if you do this,  
9 people stop hearing you.

10

11          JEFF KRAUT:        Yeah, you literally have to talk right over  
12 it.

13

14          ANGEL GUTIERREZ:    Number 171289C, Albany County Nursing  
15 Home, Albany County. Perform renovations and construct multiple  
16 additions to upgrade and modernize the facility. DOH recommends  
17 approval with conditions and contingencies. The committee  
18 recommends approval with conditions and contingencies and I so  
19 move.

20

21          JEFF KRAUT:        I have a motion, I have a second by Dr.  
22 Berliner. Does the Department wish to comment?

23

24          CHARLIE ABEL:       Just for questions.

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JEFF KRAUT: Any questions for the Department? Hearing none, all those in favor, Aye?

[Aye]

Opposed? Motion carries.

ANGEL GUTIERREZ: Application 162026B, Manhattan RSC, LLC, d/b/a Manhattan Reproductive Surgery Centers, New York County. Establish and construct a freestanding single specialty ambulatory surgery center providing gynecological services to be located at 65 Broadway, New York. The Department recommended approval with an expiration of the operating certificate five years from the date of it's issuance with conditions and contingencies, was recommended. The committee recommended approval with an expiration of the operating certificate five years from the date of it's issuance with conditions and contingencies, and I so move.

JEFF KRAUT: Are we moving the entire batch? The entire batch please.

ANGEL GUTIERREZ: 162088E, Daeop Center of Long Island Inc., Nassau County. Transfer 100 percent ownership interest

1 from the estate of the sole current member to one new sole  
2 shareholder of the center. Department recommends approval with  
3 conditions and contingencies and so did the committee and I so  
4 move.

5 171282B, Dutchess Ambulatory Surgical Center, Dutchess  
6 County transfers 74.1 percent interest to 10 new members and  
7 performs renovations to add two operating rooms. The Department  
8 and committee recommend approval with conditions and  
9 contingencies.

10 171310E, Queens Boulevard LLC, Queens County. Transfer 9  
11 percent ownership to one new member. Department recommends  
12 approval with a no change to the expiration date of the  
13 operation certificate and with a condition, so recommended. And  
14 so did the committee.

15 Following applications for residential healthcare  
16 facilities. 171227E, 104 Old Niagara Road Operating Company,  
17 LLC, d/b/a Elderwood at Lockport, Niagara County. Establishes  
18 104 old Niagara Road Operating Company LLC as a new operator of  
19 the 126 bed residential healthcare facility located at 104 Old  
20 Niagara Rd., Lockport that is currently operated by Art Fellow  
21 and Rebecca Rehabilitation and Healthcare Center. The Department  
22 recommended approval with conditions and contingencies, and so  
23 did the committee.

1           Certificates of dissolution. Resurrection Ministries of New  
2 York. The Department recommended approval and so did the  
3 committee. Mercy Hospital Foundation fund raising department  
4 recommended approval and so did the committee. Certificate of  
5 assumed name, Hudson Valley Regional Community Health Centers,  
6 Dutchess Removed "Inc.," from the certificate of assumed name to  
7 comply with the Department of State filing requirements. Hudson  
8 Valley Regional Community Health Centers at Putnam removed  
9 "Inc.," from the certificate of assumed name to comply with the  
10 Department of State filing requirements. The Department  
11 recommends approval and so did the committee.

12           Certificate of amendment, certificate of incorporation  
13 Chase Memorial Nursing Home Company Inc., Commissioner PHHPC  
14 approval required for amendment to an article 28 nursing home  
15 and the Center for Discovery Inc., name change. The Department  
16 recommends approval and so did the committee.

17

18           JEFF KRAUT:       So I have a motion on all of those  
19 applications. I have a second, Dr. Berliner. Is there any  
20 comments Mr. Abel, on the batch or any item in the batch.

21

22           CHARLIE ABEL:   No comments. I'm here for questions.

23

1           JEFF KRAUT:     Is any member wishes to discuss any item in  
2 this batch or any questions they have? Hearing none, I'll call  
3 for a vote. All those in favor, aye?

4

5 [Aye]

6           Opposed? Motion carries.

7           Now go category.

8

9           ANGEL GUTIERREZ:     Obligation number 171342E, 112 Ski Bowl  
10 Road Operating Company LLC d/b/a Elderwood at Northcreek, Warren  
11 County. Conflict recusal Dr. Rugge who is leaving the room. Mr.  
12 LaRue can get ready to leave the room for the next. `

13

14          JEFF KRAUT:     He's near the door.

15

16          ANGEL GUTIERREZ:     Establish 112 Ski Bowl Road Operating  
17 Company LLC as the one new operator of Adirondack Tri-County  
18 Nursing and Rehabilitation Center, Inc., an existing 82 bed  
19 residential healthcare facility located at 112 Ski Bowl Road  
20 Northcreek. Department recommends approval with conditions and  
21 contingencies and so did the committee and I so move.

22

23          JEFF KRAUT:     So I have a motion, I have a second Dr.

24 Berliner. Any comment from the Department?

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CHARLIE ABEL: No comments.

JEFF KRAUT: Any questions from the Council? All those in favor, Aye?

[aye]

Opposed? Abstention? The motion carries. Could you please ask Dr. Ruge to return.

ANGEL GUTIERREZ: And Mr. LaRue has left the room.

JEFF KRAUT: You can call it while he comes back.

ANGEL GUTIERREZ: 171239E, Somers Operating LLC d/b/a Somers Rehabilitation And Nursing Center in Westchester County. Conflict recusal Mr. LaRue. Establish Somers Operating LLC as the new operator of the 300 bed residential healthcare facility located at 189 Rt. 100 Somers, Currently operated as Somers Manor Rehabilitation and Nursing Center. The Department recommended approval with a condition and contingencies and so did the committee, and I so move.

JEFF KRAUT: I have a motion, Dr. Berliner. And I'm just waiting for Dr. Ruge to return to the room. Can somebody find



1 Dr. Rugge. He better not be snacking yet. So, Department have  
2 any issues?

3

4 CHARLIE ABEL: No comment on this one.

5

6 JEFF KRAUT: Dr. Rugge is in the room. Any members of the  
7 council have any questions? Hearing none, I'll call for a vote.  
8 All those in favor, aye?

9

10 [Aye]

11 Opposed? Motion carries.

12

13 ANGEL GUTIERREZ: With Mr. LARue still out of the room,  
14 Jamaica Acquisition III, LLC, d/b/a Hillside Certified Home  
15 Health Agency in Queens County. Establish Jamaica Acquisition  
16 III LLC as the new operator of the certified home health agency  
17 located at 188-11 Hillside Avenue, Queens, currently operated as  
18 Hillside Manor Certified Homecare Agency. Department recommends  
19 approval with contingencies and conditions and so did the  
20 committee, and I so move.

21

22 JEFF KRAUT: I have a motion, a second by Dr. Berliner.  
23 Any comments by the Department?

24

1 CHARLIE ABEL: No sir.

2

3 JEFF KRAUT: Does any member of the council have a  
4 question? All those in favor, aye?

5

6 [Aye]

7 Opposed? Motion carries.

8

9 ANGEL GUTIERREZ: Application number ... Mr. LaRue back?

10

11 JEFF KRAUT: Mr. LaRue should come back in.

12

13 ANGEL GUTIERREZ: Application 162541E, Nyack Operating  
14 LLC, d/b/a Nyack Rehabilitation and Nursing Center in Rockland  
15 County. Establish Nyack Operating LLC as the new operator of  
16 Nyack Manor Nursing Home, a 160 bed residential healthcare  
17 facility located at 476 Christian Herald Road,

18 Department recommended approval with conditions and  
19 contingencies. The committee approved with conditions and  
20 contingencies with one member abstaining, and I so move.

21

22 JEFF KRAUT: Have a motion. Have a second Dr. Berliner.  
23 Any comments by the Department?

24

1 CHARLIE ABEL: No comments.

2

3 JEFF KRAUT: Any questions from the council? All those  
4 in favor, aye?

5

6 [Aye]

7 Opposed? Motion carries.

8

9 ANGEL GUTIERREZ: The next will be home health agency  
10 licensures. And I will not read the L letter in any of them.

11 2100,2198, 2214, 2326, 2346, 234, 2379, 2416, 2440, 2446,  
12 2494, 2498, 2502, 2513, 2518, 2520, 2522, 2524, 2526, 2536,  
13 2550, 2551, 2553, 2565, 2570, 2593, 2603, 2613, I'm sorry, 2619,  
14 2622, 2627, 2629, 2637, 2641, 2642, 2646, 2647, 151341, 152606,  
15 152179, 162319, 162327, 162065, 162244, 162509, 171256, and I so  
16 move.

17

18 JEFF KRAUT: I have a motion and a second by Dr.  
19 Berliner. Does the Department want to make any comments?

20

21 CHARLIE ABEL: Available for questions.

22

23 JEFF KRAUT: Any questions? Dr. Boufford.

24

1           JO BOUFFORD:    I'd just like a clarification from Ms.  
2 Baumgartner's opposition to a whole set of these just for the  
3 record so we would be aware.

4  
5           JEFF KRAUT:       The basis for Ms. Baumgartner's comments at  
6 the Project Review Committee, if my memory serves me right it  
7 was concern about the number that are being approved, the  
8 oversight of these facilities as to assuring that they're  
9 complying, and does the Department have adequate staff to carry  
10 out these activities. That was the issues I believed she  
11 raised. If anybody has a different recollection, please chime  
12 in. And the concerns that we have.

13  
14          CHARLIE ABEL:    So I think the Department had a few people  
15 respond on this issue. But in general I can reiterate some of  
16 the initiatives that the Department has employed and is still in  
17 the process of employing to ensure that we have a better process  
18 for not only processing LHHCSA applications but also resulting  
19 freeing up resources for the end of the certification process in  
20 terms of site visits and then ultimately surveillance. So, we  
21 have focused, refocused, some central office resources to  
22 prioritize assistance with not only application work but also  
23 the development of a policy and procedures manuals that were  
24 acceptable which to the Department which had been a regional

1 office function. Significant workload has been redirected to  
2 central office staff as well as providing guidance on developing  
3 an acceptable policies and procedure manual. That has been  
4 employed. It is working very well and is freeing up necessary  
5 resources at the regional office for surveillance activities. We  
6 have hired contract employees to assist regional office staff I  
7 conducting surveillance activities and other regional office  
8 activities, so the resources continue to be refocused. And then  
9 we are looking at streamlining every aspect of LHHCSA  
10 certification and surveillance in an effort to be more efficient  
11 and that includes a number of things which may lead to changes  
12 in how we certify, perhaps recertify LHHCSA programs so that we  
13 have better information coming to us from the LHHCSA providers  
14 it would alleviate the need to gather that information at a  
15 surveillance opportunity, making the surveillance process more  
16 efficient, having a better handle on what LHHCSAs are operating  
17 to what extent in terms of number of counties served because we  
18 have seen contractions of LHHCSAs over time. They've been  
19 certified for so many counties. They're not serving all of those  
20 counties. So we think that a better way of handling LHHCSAs,  
21 start to finish, in terms of application and recertification is  
22 going to free up the necessary resources to improve the  
23 surveillance function. So I hope that helps.

24

1           JEFF KRAUT:       Thank you very much. Any questions? Hearing  
2 none, I'll call for a vote. All those in favor, aye.

3

4 [Aye]

5           Opposed? The motion carries. And I believe...

6

7           ANGEL GUTIERREZ:       That concludes my report.

8

9           JEFF KRAUT:       So let's give it up for Dr. Gutierrez today!  
10 Thank you so much, and I hope in a subsequent meeting we could  
11 provide at least a bottle of water for the yeoman's job that you  
12 did today. We really do appreciate that.

13

14           ANGEL GUTIERREZ:       We'll see each other again in  
15 September. And I think it bears reminding everybody that the  
16 meeting in New York City next time is on Wednesday, and not  
17 Thursday.

18

19           JEFF KRAUT:       Yes, and I'm going to repeat that. The next  
20 committee day is on Wednesday, not Thursday, September 20, and  
21 we will be meeting in the OASAS Offices that I had described  
22 earlier. So we will send out that notice two or three times I  
23 guess just to make sure you're reminded.

24

1           ANGEL GUTIERREZ:     Is it also true that the October  
2 meeting will be in Albany?

3

4           JEFF KRAUT:        I'm told possibly. We are trying to avoid  
5 that, just so you can do your scheduling. We're having problems  
6 with rooms. That's the challenge that we're having. Because  
7 we're under renovation at 90 church.

8

9           [How bout your house?]

10

11           I would love to have you at my house. I really would. But  
12 we also need to make sure its accessible to the public. And  
13 that's one of the key requirements. So we have a limited number  
14 of places because we can't use places that come before the  
15 council either. That would be inappropriate. So we're figuring  
16 it out.

17           Thanks so much everybody. Thank you for spending the time  
18 and all the work and the conversation today was very good. Thank  
19 you.

20           [end of audio]

21

# Ambulatory Surgery Centers - Limited Life Report

October 2017

<b>Original Limited Life Projects</b>																		
<b>Reports required - Annually</b>																		
CON #	Facility Name	County	OpCert Start Date	OpCert Exp Date	Specialty Type	Approved Target % for Charity Care	Approved Target % for Medicaid	Yr 2 - visits	Yr 2 - Actual Charity Care	Yr 2 - Actual Medicaid	Yr 3 - visits	Yr 3 - Actual Charity Care	Yr 3-Actual Medicaid	Yr 4- visits	Yr 4- Actual Charity care	Yr 4- Actual Medicaid		
111196	Syracuse Surgery Center <sup>1,2</sup>	Onondaga	6/1/2012	5/31/2017	Ophthalmology	4.0%	2.0%	1,423	0.0%	0.2%	1,416	0.0%	0.1%	1,482	0.0%	0.2%		
111488	The Endoscopy Center of New York <sup>2</sup>	New York	2/22/2013	2/21/2018	Gastroenterology	2.0%	2.6%	10,685	0.7%	0.2%	8,956	0.4%	0.6%	9,914	0.7%	2.5%		
111165	Queens Boulevard GI, LLC <sup>2</sup>	Queens	3/25/2013	3/24/2018	Gastroenterology	2.5%	25.9%	8,492	1.6%	33.5%	9,436	2.0%	48.2%	9,698	0.4%	47.0%		
101134	Manhattan Surgery Center	New York	4/1/2013	3/31/2018	Multi	2.0%	5.0%	2,502	1.1%	2.9%	5,173	1.3%	8.3%	5,870	N/A	5.1%		
092069	WNY Medical Management, LLC <sup>2</sup>	Erie	4/10/2013	4/10/2018	Pain Management	2.0%	2.0%	902	0.0%	5.9%	794	1.9%	9.4%	1,736	N/A	7.1%		
111076	Queens Endoscopy ASC, LLC <sup>2</sup>	Queens	4/23/2013	4/22/2018	Gastroenterology	2.5%	15.9%	14,736	0.2%	4.9%	13,003	0.8%	34.3%	12,652	1.5%	29.7%		
111409	Flushing Endoscopy Center, LLC <sup>2</sup>	Queens	5/1/2013	4/30/2018	Gastroenterology	2.5%	15.9%	14,723	0.0%	48.7%	16,917	0.8%	48.8%	14,814	1.6%	47.4%		
112179	Mohawk Valley Eye Surgery <sup>2</sup>	Montgomery	6/11/2013	6/11/2018	Ophthalmology	2.0%	22.0%	1,242	0.1%	18.8%	1,392	3.7%	23.6%	1,271	N/A	18.6%		
112382	New York Eye Surgical (North Country)	Saratoga	7/31/2013	7/31/2018	Ophthalmology	2.0%	2.0%	1,855	0.0%	4.9%	2,457	0.0%	3.9%	3,380	0.0%	0.7%		
121346	White Plains Ambulatory Surgery, LLC <sup>1,2</sup>	Westchester	8/6/2013	8/5/2018	Multi	2.0%	15.0%	983	0.0%	0.0%	855	0.0%	0.0%	737	N/A	2.6%		
112379	Surgery Ctr at Orthopedic Associates, LLC <sup>2</sup>	Dutchess	8/16/2013	8/15/2018	Multi	2.2%	15.5%	2,790	0.3%	6.8%	4,322	0.0%	1.7%	5,116	0.1%	8.2%		
112222	Brooklyn SC, LLC <sup>2</sup>	Kings	11/1/2013	10/31/2018	Multi	2.0%	6.0%	5,340	0.2%	10.7%	10,503	0.3%	13.1%	10,199	N/A	19.1%		
121140	Endoscopy Center of Niagara	Niagara	2/24/2014	2/23/2019	Gastroenterology	2.0%	4.8%	3,159	0.1%	9.0%	4,046	0.0%	8.2%					
121393	Island Digestive Health Center	Suffolk	5/22/2014	5/21/2019	Gastroenterology	2.0%	7.0%	5,043	1.2%	18.9%	5,467	1.0%	18.0%					
121412	Advanced Surgery Center of Long island <sup>2</sup>	Suffolk	6/4/2014	6/4/2019	Gastro/Pain Mgmt	2.0%	5.0%	6,774	0.3%	3.2%	7,289	0.5%	4.7%					
131308	Great South Bay Endoscopy	Suffolk	8/5/2014	8/4/2019	Gastroenterology	2.5%	10.4%	4,565	0.0%	1.3%	5,337	0.1%	7.9%					
112032	PBGS, LLC	Kings	10/2/2014	10/1/2019	Gynecology	2.0%	55.5%	5,910	0.0%	55.2%	6,165	1.6%	52.0%					
122280	Cortland Surgical Center <sup>2</sup>	Cortland	10/6/2014	10/5/2019	Otolaryngology(ENT)	2.0%	22.1%	773	0.0%	33.2%	209	N/A	0.0%					
111439	Empire State Ambulatory	Bronx	2/19/2015	2/18/2020	Multi	2.0%	10.2%	3,748	N/A	18.5%								
111552	North Queens Surgical Center	Queens	3/5/2015	3/4/2020	Multi	2.0%	5.0%	4,593	N/A	22.0%								
111277	Avicenna ASC, Inc.	Bronx	3/18/2015	3/17/2020	Multi	4.0%	65.0%	No information located in SPARCS										
122164	Mason Eye Surgery Center	Queens	3/25/2015	3/24/2020	Ophthalmology	2.0%	49.9%	1,233	2.2%	50.6%								
102452	Fromer LLC Eye Center of New York	Bronx	4/7/2015	4/6/2020	Ophthalmology	0.0%	40.0%	2,323	N/A	14.4%								
122265	Island Ambulatory Surgery	Kings	4/21/2015	4/20/2020	Multi	2.0%	16.0%	5,082	N/A	17.8%								
131296	Apex Surgical Center	Oneida	7/10/2015	7/9/2020	Multi	2.0%	5.8%	3,468	0.6%	8.0%								
122104	GoldStep Ambulatory Surgery	Kings	7/17/2015	7/16/2020	Multi	2.0%	60.0%	772	1.8%	4.5%								
132346	The Northway Surgery & Pain Center	Saratoga	10/19/2015	10/18/2020	Pain Management	3.0%	3.3%	6,403	0.0%	7.6%								
132281	Northern GI endoscopy	Warren	10/23/2015	10/22/2020	Gastroenterology	2.0%	7.0%	No information located in SPARCS										
131026	OMNI Surgery Center	Oneida	12/8/2015	12/7/2020	Pain Management	2.0%	5.2%	2,486	N/A	0.0%								
132108	Ambulatory Surgery Center of Niagara	Niagara	3/10/2016	3/9/2021	Ophthalmogy	2.0%	4.0%	Year 2 data not yet due										
131056	Endoscopy Center of Queens	Queens	3/21/2016	3/20/2021	Gastroenterology	2.0%	5.0%	Year 2 data not yet due										
121017	Surgery of Tomorrow	Kings	4/25/2016	4/24/2021	Gynecology	2.5%	29.2%	Year 2 data not yet due										
131347	Southtowns Surgery Center	Erie	7/26/2016	7/25/2021	Multi	2.0%	1.2%	Year 2 data not yet due										
132340	Richmond Pain Management ASC	Richmond	8/5/2016	8/4/2021	Pain Management	2.0%	5.0%	Year 2 data not yet due										
121104	AMSC, LLC	Bronx	12/5/2016	12/4/2021	Multi	2.2%	50.8%	Year 2 data not yet due										
	<sup>1</sup> New information for 2014 from Cost/Annual Repoprt																	
	<sup>2</sup> New information for 2015 from Cost/Annual Repoprt																	
						<b>Data Sources (based on OpCert Start Year in table below, except for footnoted facilities):</b>												
						<b>OpCert start year 2012 - Yr 2, Yr 3, and Yr4 data from Cost or Annual Reports</b>												
						<b>OPCert start year 2013- Yr 2, Yr 3 data from Cost or Annual Report; Yr 4 data from Annual report if submitted, else data is from SPARCS</b>												
						<b>OpCert start year after 2013 - Data is from Annual reports if submitted, else data is from SPARCS</b>												
						<b>2016 SPARCS Data is now complete for the year</b>												



# Ambulatory Surgery Centers - Limited Life Report

October 2017

DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS

Submitted AHCF cost reports may inconsistently display Medicaid Managed Care

OpCert Start

Year	Year 2	Year 3	Year 4
2012	2013	2014	2015
2013	2014	2015	2016
2014	2015	2016	2017
2015	2016	2017	2018
2016	2017	2018	2019

**Ambulatory Surgery Centers - Limited Life Report**

October 2017

**Limited Life Extension Projects**

**Reports required - Quarterly**

CON #	Facility Name	County	Opcert Start Date	Opcert Exp Date	Specialty Type	Approved Target % for Charity Care	Approved Target % for Medicaid	2015-Actual Visits	2015 - Actual Charity care	2015 -Actual Medicaid	2016-Actual visits	2016- Actual charity care	2016-Actual Medicaid
151309	The Rye ASC, LLC <sup>2</sup>	Westchester	12/10/2015	12/10/2017	Multi	2.0%	3.3%	4,837	0.0%	3.6%	4,676	0.8%	3.4%
151227	SurgiCare of Manhattan, LLC <sup>2</sup>	New York	2/12/2016	2/16/2018	Multi	2.0%	2.0%	4,705	0.0%	0.4%	4,353	N/A	2.1%
152356	Advanced Surgery Center	Rockland	4/15/2016	4/15/2018	Plastic & Ophthalmology	3.2%	2.2%	428	4.4%	0.5%	456	N/A	0.9%
162212	Griffiss Eye Center, LLC	Oneida	4/14/2017	3/9/2019	Multi	1.1%	7.0%	3,611	0.1%	5.8%	3,781	N/A	6.0%
<sup>2</sup> New information for 2015 from Cost/Annual Repoprt													
Data Source for 2015 from Annual or Cost Report													
Data Source for 2016 from Annual Report if filed; otherwise from SPARCS													
2016 SPARCS Data is now complete for the year													
DOH staff has confirmed that facilities are unable to accurately reflect charity care through SPARCS													
Submitted AHCF cost reports may inconsistently display Medicaid Managed Care													

## Ambulatory Surgery Centers - Permanent Life Report

October 2017

**Permanent Life Projects**  
*Annual Reports no longer required after approval*

CON #	Facility Name	County	Date Permanent Life Granted	Specialty Type	Approved Target % for Charity Care	Approved Target % for Medicaid	2015 - Actual visits	2015 - Actual Charity care	2015 -Actual Medicaid	2016-Actual visits	2016- Charity care	2016- Medicaid
122223	Hudson Valley Endoscopy Center	Dutchess	12/20/2013	Gastroenterology	0.0%	8.1%	7,207	0.3%	13.3%	7,813	0.6%	13.8%
141069	Greater NY Endoscopy Surgical Center	Kings	9/5/2014	Gastroenterology	8.5%	25.7%	15,182	0.0%	3.9%	8,062	N/A	39.7%
151201	Crystal Run ASC of Middletown	Orange	12/4/2015	Multi	2.0%	15.4%	10,618	0.0%	17.1%	10,944	N/A	16.5%
152036	Endoscopy Center of Central NY	Onondaga	12/4/2015	Gastroenterology	0.9%	4.5%	4,613	0.9%	4.8%	4,141	N/A	0.4%
152002	Upstate Orthopedics ASC	Onondaga	9/28/2015	Multi	2.0%	13.0%	5,438	1.4%	15.5%	5,216	N/A	15.7%
152327	East Side Endoscopy	New York	2/5/2016	Gastroenterology / Pain Management	2.8%	10.7%	10,891	2.4%	11.0%	9,839	N/A	10.7%
161116	New York Endoscopy Center	Westchester	3/30/2016	Gastroenterology	5.4%	12.2%	1,745	1.3%	12.3%	2,117	N/A	8.4%
161083	Gastroenterology Care, LLP <sup>2</sup>	Kings	6/9/2016	Gastroenterology	1.6%	35.5%	4,320	0.6%	39.4%	3,248	N/A	45.6%
161307	Meadowbrook Endoscopy <sup>2</sup>	Nassau	6/28/2016	Gastroenterology	2.0%	20.0%	8,074	1.6%	20.7%	8,581	N/A	19.1%
161220	Surgical Specialty Care of Westchester	Westchester	8/5/2016	Multi	4.1%	7.4%	3,256	4.1%	7.4%	2,902	N/A	3.3%
161175	Mohawk Valley Endoscopy Center <sup>2</sup>	Oneida	8/5/2016	Gastroenterology	1.2%	9.5%	9,391	0.0%	9.6%	9,320	0.5%	9.6%
161456	Manhattan Endo, LLC	New York	10/6/2016	Gastroenterology	1.9%	3.5%	13,218	1.1%	3.5%	16,063	N/A	3.9%
161415	Carnegie Hill Endo, LLC	New York	10/6/2016	Gastroenterology	2.3%	3.1%	11,897	2.3%	2.1%	12,201	N/A	2.3%
162428	Heritage One Day Surgery, LLC	Onondaga	4/7/2017	Pain Management	0.4%	14.8%	14,829	1.0%	14.3%	15,517	N/A	14.2%
162445	Putnam Endoscopy ASC, LLC <sup>2</sup>	Putnam	4/7/2017	Gastroenterology	3.6%	4.8%	2,445	3.4%	4.1%	2,615	N/A	4.8%
171020	West Side GI, LLC <sup>2</sup>	New York	5/10/2017	Gastroenterology	1.3%	20.7%	15,417	0.3%	22.3%	15,590	1.2%	21.1%
162112	Hudson Valley Center, LLC	Westchester	6/16/2017	Gastroenterology	1.4%	10.2%	2,805	1.5%	5.7%	2,776	N/A	11.9%
171110	Upstate Gastroenterology, LLC <sup>2</sup>	Onondaga	6/16/2017	Gastroenterology	0.0%	23.0%	1,660	0.0%	16.0%	2,000	N/A	26.8%
171407	South Brooklyn Endoscopy <sup>2</sup>	Kings	7/11/2017	Gastroenterology	1.3%	35.1%	12,520	0.9%	31.9%	14,748	1.1%	35.1%
172082	South Shore Surgery Center	Suffolk	9/7/2017	Multi	1.5%	11.8%	4,089	0.3%	10.4%	4,531	0.2%	14.7%

<sup>2</sup> New information for 2015 from Cost/Annual Report

Data Source for 2015 from Annual or Cost Report

Data Source for 2016 from Annual Report if filed; otherwise from SPARCS

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Submitted AHCF cost reports may inconsistently display Medicaid Managed Care

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 586 and 587 of the Public Health Law, Section 34-2.11(b) of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended, to be effective upon publication of a Notice of Adoption in the State Register, to read as follows:

§ 34-2.11 Recall letters and reporting of test results.

(b) A clinical laboratory shall not communicate to a patient of a referring health services purveyor the results of a clinical laboratory test, including, but not limited to, a Pap smear. A clinical laboratory shall not prepare such communication for the health services purveyor to send, or otherwise facilitate the preparation or sending of such communication by the health services purveyor. Such communication or its facilitation shall be deemed consideration given for referral of specimens for performance of clinical laboratory services and is prohibited, except that:

\* \* \*

(2) nothing in this subdivision shall prohibit a licensed physician from communicating with a patient:

(i) when requested by the referring health services purveyor;

(ii) when requested by the patient; or

(iii) when the referring health services purveyor, or other health services purveyor responsible for using the test results, cannot be reached and a critical value needs to be communicated to the patient.

## **Regulatory Impact Statement**

### **Statutory Authority:**

Public Health Law (PHL) sections 586 and 587 set forth the duties and powers of the department related to clinical laboratory business practices. PHL sections 586(3) and 587(6) specifically authorize the Department to adopt regulations pertaining to clinical laboratory business practices.

### **Legislative Objectives:**

The legislature enacted PHL sections 586 and 587 to prevent health services purveyors from splitting fees with clinical laboratories and to prevent payment for referrals. The Public Health and Health Planning Council and the Commissioner of Health are authorized to adopt and amend regulations necessary to effectuate the provisions and purpose of PHL sections 586 and 587.

This proposed regulation is consistent with the legislative objective, as it will clarify for physicians and clinical laboratories allowable business practices.

### **Needs and Benefits:**

Subpart 34-2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) regulates the business practices of clinical laboratories. These regulations prohibit certain practices by clinical laboratories and health services purveyors. The intent of these regulations is to mitigate improper business practices that could, among other things, result in kickbacks to laboratories from hospitals, physicians, and other health services purveyors for the referral of patients or specimens.

Section 34-2.11 prohibits certain communications between a clinical laboratory and a patient of a referring health services purveyor to prevent kickbacks or other payments from being given for the referral of laboratory services. To prevent such kickbacks, section 34-2.11(b)(1)(iv) requires clinical laboratories to direct a patient's inquiries regarding the meaning or interpretation of test results to the referring health services purveyor.

Direct communication between pathologists and patients regarding test results is not always needed but in some instances, direct communication is crucial to providing safe, high quality, patient centered care. Traditionally, pathologists communicate with health care providers to help interpret test results or to guide further management of a patient. However, there are instances when patients may wish to obtain information from a pathologist concerning their test results. Pathologists may also need to communicate test results to a patient when a critical value is obtained by the testing laboratory, especially if the pathologist cannot reach the ordering physician, or other health services purveyor responsible for using the test results. Under these circumstances, a licensed physician working at the laboratory should be able to reach out to the patient to ensure that a critical value is communicated. The proposed regulation will add affirmative language to Section 34-2.11 to provide that, under specific circumstances, a licensed physician employed by a clinical laboratory may discuss the meaning and interpretation of test results directly with patients.

**Costs:**

**Costs to Regulated Parties:**

The new language allows, but does not require, licensed physicians to discuss the meaning and interpretation of test results with patients. The proposed regulation will not impose costs on regulated parties.

**Costs to the Agency, State and Local Governments:**

The proposed regulation will not impose additional costs on the New York State Department of Health or local governments.

**Local Government Mandates:**

The proposed regulation imposes no new mandates on any county, city, town or village government.

**Paperwork:**

The proposed regulation does not mandate new paperwork requirements. However, laboratory physicians should document all communications with patients.

**Duplication:**

These rules do not duplicate any other law, rule or regulation.

**Alternative Approaches:**

One alternative is to not amend the regulation. However, this would prevent clinical laboratory physicians from communicating with their patients the meaning or interpretation of test results.

The Department recognizes the importance of a pathologist-patient relationship as part of the spectrum of physician-patient relationships and its role in ensuring the delivery of safe, high quality, patient centered health care. Therefore, the Department rejected this alternative.

**Federal Standards:**

The proposed regulation does not exceed any minimum standards of the federal government.

**Compliance Schedule:**

The proposed regulation is permissive. Accordingly, regulated parties do not need to take any action to come into compliance.

**Contact Person:**

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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.

## **Rural Area Flexibility Analysis**

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

## **Statement in Lieu of Job Impact Statement**

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

## **SUMMARY OF EXPRESS TERMS**

These regulations establish a new regulatory framework for the operation of trauma centers at hospitals in New York State, by adding a new 10 NYCRR section 405.45. Subdivision (a) defines terms relating to trauma centers, including but not limited to trauma patient, trauma care, Levels I-IV trauma centers, pediatric trauma center, and Regional Trauma Center. Subdivision (a) also defines the transfer agreements that must exist between hospitals, and the trauma affiliation agreement that each hospital must have with the Regional Trauma Center.

Subdivision (b) establishes certain general provisions relating to trauma care. More specifically, the regulation states that the Department has authority to determine whether a hospital meets the legal requirements for designation by the Department as a trauma center. Only trauma centers designated by the Department may admit and provide care to trauma patients, except in certain emergency situations. Any hospital not designated as a trauma center must transfer a trauma patient to the most appropriate trauma center pursuant to a transfer agreement. A hospital may not state that it has trauma center status unless it is designated by the Department.

Subdivision (c) establishes the process for obtaining trauma center designation. A hospital seeking designation as a trauma center must receive verification by the American College of Surgeons, Committee on Trauma (ACS-COT), or other entity determined by the Department. To receive verification, the hospital must undergo a consultation site visit and verification site visit. The regulation provides details on what must occur during consultation and verification site visits.

Subdivision (d) establishes certain requirements for operating a trauma center, including but not limited to complying with ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* (2014), maintaining appropriate equipment, maintaining transfer agreements, participating in a performance improvement process, submitting notices of noncompliance to the Department, and notifying the Department immediately of any inability to meet trauma care capabilities.

Subdivision (e) sets forth the conditions under which the Department may withdraw trauma center designation. Subdivision (f) requires trauma centers to submit information to the New York State Trauma Registry. Subdivision (g) requires trauma centers to participate with the coordinating Regional Trauma Center and other hospitals and healthcare facilities, EMS agencies and governmental disaster preparedness programs in regional trauma performance improvement activities. The regulation provides additional details concerning the trauma performance improvement program.

Two provisions in existing regulation relating to trauma centers are repealed as no longer needed, in light of the proposed regulations.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by sections 2800, 2803, 3063, 3064, 3066, 3074 and 3075 of the Public Health Law, Part 405 and Part 708 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

Paragraph (8) of subdivision (b) of section 708.2 is hereby repealed.

Subdivision (i) of section 708.5 is hereby repealed.

A new section 405.45 is proposed to read as follows:

#### 405.45 Trauma Centers

(a) *Definitions.* The following terms when used in this section shall have the following meanings:

(1) “Trauma patient” means a patient at high risk of death or disability from multiple and severe injuries.

(2) “Trauma care” means health care provided to a trauma patient.

(3) “Level I trauma center” means a facility verified by the American College of Surgeons Committee on Trauma (ACS-COT), or other entity determined by the Department, and designated by the Department as a facility that is capable of providing the full range of services required of trauma patients; conducts trauma research; and provides training to surgical residents that comports with the ACS-COT’s publication entitled *Resources for Optimal Care of the Injured Patient* (2014). The standards set forth in the ACS-COT’s publication entitled *Resources*

*for Optimal Care of the Injured Patient* (2014) are hereby incorporated by reference with the same force and effect as if fully set forth herein. A copy of *Resources for Optimal Care of the Injured Patient* (2014) is available for inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. Copies are also available from the American College of Surgeons Committee on Trauma, 633 North Saint Clair Street, Chicago, Illinois 60611. A Level I trauma center shall have a transfer agreement with at least one pediatric trauma center for trauma patients whose needs exceed the clinical capabilities of the facility.

(4) “Level II trauma center” means a facility verified by the ACS-COT, or other entity determined by the Department, and designated by the Department as a facility that is capable of providing comprehensive trauma care. A Level II trauma center shall have a transfer agreement with at least one Level I trauma center and, unless otherwise designated, at least one pediatric trauma center for trauma patients whose needs exceed the clinical capabilities of the facility.

(5) “Level III trauma center” means a facility verified by the ACS-COT, or other entity determined by the Department, and designated by the Department to serve communities that do not have immediate access to a Level I or II trauma center that is capable of providing prompt assessment, resuscitation, emergency operations and stabilization of trauma patients. A Level III trauma center shall have a transfer agreement with at least one Level I or Level II trauma center, whichever is the most appropriate trauma center, and at least one pediatric trauma center for trauma patients whose needs exceed the clinical capabilities of the facility.

(6) “Level IV trauma center” means a facility located in a rural area verified by the ACS-COT, or other entity determined by the Department, and designated by the Department as a

facility that is capable of providing initial evaluation and stabilization of trauma patients prior to transfer to a higher level trauma center. A Level IV trauma center shall have a transfer agreement with at least one Level I, Level II, or Level III trauma center, whichever is the most appropriate trauma center, and at least one pediatric trauma center for trauma patients whose needs exceed the clinical capabilities of the facility.

(7) “Pediatric trauma center” means a facility verified by the ACS-COT, or other entity determined by the Department, and designated by the Department as a level I or level II trauma center and as a facility that is capable of providing comprehensive pediatric trauma care to pediatric trauma patients. A pediatric trauma center shall have a transfer agreement with at least one Level I or Level II trauma center, whichever is the most appropriate trauma center.

(8) “Region” means a defined geographic area of the state where a regional trauma advisory committee has been established pursuant to PHL § 3065.

(9) “Regional Trauma Center” means a Level I or Level II trauma center selected by the Department to coordinate regional trauma performance improvement activities in its region. The Regional Trauma Center will be selected from facilities in a region that have been successfully verified by ACS-COT, or other entity determined by the Department, and designated as a trauma center by the Department, with a history of leadership and commitment to the region.

(10) “Transfer agreement” means a written and fully executed agreement between a hospital that has limited capability to receive and treat trauma patients in need of specialized emergency care and a designated trauma center that is capable of providing such care, for the transfer of such patients, that is consistent with the criteria, policies and procedures set forth in the hospitals’ trauma affiliation agreement with the Regional Trauma Center.



(11) “Trauma affiliation agreement” means a written and fully executed agreement between the Regional Trauma Center and each of the Level I, Level II, Level III, and Level IV trauma centers and non-designated hospitals in the Regional Trauma Center’s region. A trauma affiliation agreement shall include provisions for:

(i) criteria, policies and procedures for the transfer of trauma patients to trauma centers and between levels of trauma center;

(ii) participation in the New York State Trauma Registry including the maintenance of confidentiality and protection of all data provided to the Registry;

(iii) cooperation in outreach, education, training and data collection activities; and

(iv) authority for a representative or representatives of the Regional Trauma Center to participate in and receive information from the affiliate hospital’s quality assurance committee, participate in other reviews of the quality of trauma care provided by the affiliate, and provide recommendations for quality improvement of trauma care.

(b) *General Provisions.*

(1) The Department may designate a hospital as a designated trauma center if the hospital demonstrates that it has met the requirements of section 3066 of the Public Health Law and this Part, to the Department’s satisfaction.

(2) Only those hospitals designated as trauma centers by the Department shall admit and provide trauma care to trauma patients; provided, however, that if the existing designated trauma centers have exceeded their capacity during a state-declared disaster or an emergency surge, an

undesigned hospital, upon approval by the commissioner, may temporarily provide trauma care.

(3) Any hospital not designated as a trauma center that receives a trauma patient shall transfer such patient to the most appropriate trauma center pursuant to a transfer agreement as required under section 405.19 of this Part. Trauma centers shall be consulted prior to transfer. Trauma patients requiring trauma care shall be transported to the most appropriate trauma centers in accordance with State Emergency Medical Advisory Committee (SEMAC) approved Emergency Medical Services (EMS) protocols developed and adopted pursuant to subdivision two of section 3002-a of the Public Health Law.

(4) No hospital shall state that it has trauma center status unless so designated by the Department.

*(c) Trauma Center Designation*

(1) A hospital seeking designation as a trauma center must receive verification by the American College of Surgeons, Committee on Trauma (ACS-COT), or other entity determined by the Department. To receive verification, the hospital must undergo a consultation site visit and verification site visit by the ACS-COT, or other entity determined by the Department. During the verification site visit, the hospital must exhibit that it is capable of providing Level I, Level II, Level III, Level IV or pediatric trauma care in accordance with the trauma care standards set forth in ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* (2014).

(i) Consultation site visits.

A hospital seeking designation as a trauma center shall request a consultation site visit by the ACS-COT, or other entity determined by the Department, for the purpose of providing recommendations and assistance in preparation for verification.

(a) The cost of the consultation site visit shall be at the facility's own expense.

(b) A hospital shall provide 30 days' notice to the Department prior to any and all consultation site visits.

(c) The Department may participate in any consultation site visits.

(ii) Verification site visit.

A hospital seeking designation as a trauma center shall request an official verification site visit by the ACS-COT, or other entity determined by the Department, no later than two years following a hospital's receipt of its consultation site visit report. The hospital must receive confirmation from the ACS-COT, or other entity determined by the Department, that the hospital meets the criteria for trauma center verification in accordance with the criteria outlined in the ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* (2014).

(a) The cost of any verification site visit shall be at the hospital's own expense.

(b) A hospital shall provide 30 days' notice to the Department prior to any and all verification site visits.

(c) The Department may participate in any verification site visits.

(d) A hospital seeking Level I, Level II, or Level III trauma center designation shall require that any verification review team, as provided by ACS-COT, or other entity determined by the Department, include a nurse reviewer. The hospital shall submit to the

Department documentation confirming that a nurse reviewer was a member of the verification review team.

(e) A hospital shall submit to the Department a copy of all verification site visit reports and verification certificates issued by the ACS-COT, or other entity determined by the Department, within ten business days of receipt.

(f) A hospital shall submit to the Department immediately upon receipt any statement of deficiencies found or interim reports of focused surveys issued by the ACS-COT, or other entity determined by the Department, during a verification review.

(g) A hospital shall notify the Department immediately upon receipt of notice of failure to be verified by the ACS-COT, or other entity determined by the Department. Such notification must be made in writing to the Department by the hospital's chief administrative official.

(2) A hospital seeking designation as a trauma center must provide to the Department any additional materials received by the hospital from the ACS-COT, or other entity determined by the Department, upon the Department's request.

(3) A verified trauma center must be re-verified every three years by the ACS-COT, or other entity determined by the Department, and in accordance with subparagraph (ii) of paragraph (1) of subdivision (c) this section.

(d) *Requirements for Operating a Trauma Center.*

(1) Upon designation, a hospital operating a trauma center shall:

- (i) remain subject to the provisions of this Part and all other applicable requirements of this Title and of the Public Health Law related to general hospitals;
- (ii) comply with the trauma care standards set forth in ACS-COT's publication entitled *Resources for Optimal Care of the Injured Patient* (2014);
- (iii) have age and size appropriate resuscitation equipment consistent with section 405.19(b) and this Part;
- (iv) participate and submit information to the New York State Trauma Registry as set forth in subdivision (f) of this section;
- (v) maintain transfer agreements with non-designated hospitals and the nearest designated Level I, Level II, Level III and pediatric trauma center, as appropriate for the region, to assure the timely transfer of trauma patients to the appropriate level of trauma care;
- (vi) participate in the performance improvement process as set forth in subdivision (g) of this section;
- (vii) submit to the Department any notices of noncompliance issued by the ACS-COT, or other entity determined by the Department, within one business day of receipt;
- (viii) provide to the Department any additional materials received by the hospital from the ACS-COT, or other entity determine by the Department, upon the Department's request; and

(ix) notify the Department immediately of any inability to meet the capabilities required by its current designation. Such notification must be made in writing to the Department by the hospital's chief administrative official.

(e) *Withdrawal of Designation*

(1) The Department may withdraw designation from a hospital if:

(i) the hospital's trauma center verification certificate lapses;

(ii) the hospital is not issued a certificate of trauma center verification after a reverification site visit; or

(iii) the hospital fails to comply with paragraph (1) of subdivision (d) of this section.

(2) Upon withdrawal of a trauma care designation, the hospital shall immediately take measures to notify affected parties and divert trauma patients to designated trauma centers, and within 30 days, provide to the Department a written plan describing the specific measures it has taken to notify affected parties and its process for diversion of trauma patients to designated trauma centers. In addition, the hospital shall ensure that it has a transfer agreement with at least one designated Level I, Level II or Level III trauma center, whichever is the most appropriate trauma center available, and at least one pediatric trauma center to assure the timely transfer of trauma patients in need of specialized emergency care, consistent with section 405.19 of this Part.

(f) *New York State Trauma Registry.*

Each designated trauma center, and every hospital that treats trauma patients prior to transferring them to a designated trauma center, shall submit information to the New York State Trauma Registry. The data elements that are required to be reported to the New York State Trauma Registry are set forth in the New York State Trauma Registry's data dictionary. Hospitals must submit data to the New York State Trauma Registry at least quarterly and at such other times as the Department may require. The hospital shall have in place appropriate measures to ensure the confidentiality of all information provided to the Registry.

*(g) Performance improvement.*

(1) Each designated trauma center shall participate with the coordinating Regional Trauma Center and other hospitals and healthcare facilities, EMS agencies and governmental disaster preparedness programs in regional trauma performance improvement activities that shall include:

(i) evaluation of the quality and appropriateness of care provided, including providing referring hospitals with information on trauma patient outcome;

(ii) analysis of data from the New York State Trauma Registry, Patient Care Report database and other sources to identify opportunities for improvement. The Regional Trauma Center shall have in place appropriate measures to ensure the confidentiality of all data utilized to conduct this analysis;

(iii) development of trauma protocols, procedures, guidelines and policies;

(iv) assessment of the regional trauma system;

(v) utilization of trauma and EMS data sources to guide public education and injury prevention efforts;

(vi) provision of trauma-related/injury prevention education to allied healthcare providers; and

(vii) participation in emergency and disaster planning including incorporation of resources and capabilities into plans to address mass casualty and other disaster events.

(2) The Regional Trauma Center in each region will coordinate with each hospital within its region to participate in regional trauma performance improvement activities.

(i) Each Regional Trauma Center shall enter into and comply with a trauma affiliation agreement with each hospital in its region. A representative of the Regional Trauma Center may participate in and receive information from the affiliate hospital's quality assurance committee, and may review other reviews of the quality of trauma care provided by the affiliate hospital, in order to make informed recommendations about improving trauma care and about the performance improvement process. Each Regional Trauma Center and each affiliate hospital shall take actions necessary, including but not limited to, incorporating necessary provisions in the trauma affiliation agreement, to authorize such participation. For purposes of such participation, the Regional Trauma Center's representative(s) shall be deemed a member(s) of the affiliate hospital's quality assurance committee. The Regional Trauma Center's representative(s) shall only access confidential patient information for purposes of quality improvement of trauma care. Members of an affiliate hospital's quality assurance committee shall maintain the confidentiality of patient information and are subject to all applicable



confidentiality laws and regulations, including subdivision three of section 3006 of the Public Health Law.

(ii) The Regional Trauma Center shall participate in the review of information and data for quality improvement purposes as described in the affiliation agreement, which shall include:

(a) a quarterly review of all pediatric trauma deaths, delays of three hours or more in transferring trauma patients to a higher level of trauma care, and any transport and/or admission of trauma patients to a non-trauma center;

(b) making quality improvement recommendations for trauma care for the hospitals in its region; and

(c) periodic review, at the Department's request, of potential issues with trauma care in its region identified by the Department during routine analysis of regional data in the New York State Trauma Registry; and

(d) any other activities required by the Department for quality improvement purposes.

(iii) The Regional Trauma Center shall submit to the Department on a quarterly basis a report, in a format determined by the Department, describing its quality improvement reviews of all pediatric trauma deaths, delays of three hours or more in transferring trauma patients to a higher level of trauma care, any transport and/or admission of trauma patients to a non-trauma center and any additional information requested by the Department, and a report, in a

format determined by the Department, describing any quality improvement recommendations made to the hospitals in its region.

(iv) The Regional Trauma Center shall cooperate with the Department in regular reviews by the Department of the Regional Trauma Center's quality improvement activities, including providing medical records and other relevant documents and information on a timely basis when requested.

## REGULATORY IMPACT STATEMENT

### **Statutory Authority:**

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 2800, 2803(2), 3063, 3064, 3066, 3074 and 3075. Section 2800 provides that “the Department of Health shall have the central, comprehensive responsibility for the development and administration of the state’s policy with respect to hospital and related services.” PHL § 2803(2) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28 and to establish minimum standards governing the operation of health care facilities.

PHL §§ 3063 and 3064 establish the State Emergency Medical Advisory Committee (SEMAC) and the State Trauma Advisory Committee (STAC), respectively, to advise the Commissioner and the Department on emergency medical care and trauma care within the state. PHL § 3066 authorizes the Department to develop standards for trauma care and to categorize hospitals as trauma centers appropriate for providing trauma care. PHL § 3074 establishes the State Emergency Medical Services for Children Advisory Committee to advise the Commissioner and the Department on all aspects of emergency medical services for children, including trauma care. PHL § 3075 authorizes the Department to develop and maintain, with the advice of the State Emergency Medical Services for Children Advisory Committee, the State Emergency Medical Advisory Committee and the State Trauma Advisory Committee, a statewide system for recognition of facilities able to provide pediatric trauma care.

**Legislative Objectives:**

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost. The legislative objective of PHL Articles 30-B and 30-C includes the protection of public health and safety through the development of systems for adult and pediatric trauma care.

**Needs and Benefits:**

After a traumatic event, the complexity of injuries sustained, the health of the patient at the time of the event, and the trauma care available to that patient will determine the risk of death, loss of limb, disability and/or other permanent harm. Because hospitals vary in the scope of resources they can provide to treat trauma patients, the state's network of healthcare providers works to ensure that trauma patients receive high quality care at those hospitals that have the resources to maximize chances for good outcomes. Since 1984, several research studies, including more than 15 published articles, have concluded that a patient's chances of survival following significant trauma improve when he or she is cared for in a specialized trauma center.

These proposed regulations repeal certain provisions of Part 708 that define trauma care and trauma centers. These provisions were originally promulgated in 1990 and were modeled after the national trauma care standards at that time. The proposed regulations update and modernize these standards.

The State Trauma Advisory Committee (STAC), as established by PHL Article 30-B, advises the Department and Commissioner regarding trauma and disaster care. In collaboration with STAC, the Department determined that, to strengthen the provision of trauma care in New

York State, and to improve access to trauma care and improve patient care, the Department should require hospitals seeking trauma center designation to comply with the current national trauma care standards published by the American College of Surgeons Committee on Trauma (ACS-COT) in *Resources for Optimal Care of the Injured Patient* (2014).

Consistent with STAC's recommendation, the Department advised the 40 hospitals designated as trauma centers that the Department intended to make compliance with ACS-COT standards a requirement of designation, and the Department advised those hospitals to contact the ACS-COT to schedule a consultation site visit. To date, twenty-nine (29) hospitals have received verification from the American College of Surgeons, and the remaining hospitals are in the process of scheduling their verification survey visits. While completing the ACS-COT verification site visit process, all currently designated trauma centers retain their designation and continue to receive trauma patients.

In March 2013, the Department advised that those hospitals seeking trauma center designation for the *first* time should contact the ACS-COT by May 2015 to schedule a consultation site visit, and that within two years of a final consultation site visit, request a verification site visit. This initial timeline was established to facilitate advance compliance with the regulations now being proposed. The Department advised those facilities seeking trauma care designation for the first time that, prior to their consultation site visit, the facility must have in place: a trauma service, a trauma medical director, a trauma program manager, a hospital-based trauma registry, 9-12 months of trauma data, and a performance improvement process of some kind. To date, four (4) hospitals have been provisionally designated in anticipation of receiving verification. One of the provisional hospitals completed the verification survey and has been verified as a Level III trauma center and has received its designation from the

Commissioner. Trauma care requires significant resources and highly trained staff with expertise in caring for severely injured patients. The ACS-COT has set the standard for caring for trauma patients since 1922 when the ACS-COT was created. The ACS-COT standards are national standards which are updated regularly to reflect current trends and evidence-based practice. The current ACS-COT publication entitled *Resources for the Optimal Care of the Injured Patient* was published in 2014 and is the edition which is being incorporated by reference in these regulations. The ACS-COT conducts surveillance of trauma centers in three-year cycles to verify that a facility is still capable of providing its verified level of trauma care.

The Department's current regulations allow for only two levels of trauma center: Regional and Area trauma centers. In keeping with the ACS-COT standards, the proposed regulations would allow the Department to designate four levels of trauma centers. The addition of two more levels of trauma centers will strengthen the state's trauma system and include facilities in underserved area of the state.

These regulations will not preclude non-designated hospitals from caring for patients with minor trauma. It is expected, however, that those hospitals will transfer all seriously injured trauma patients – those patients at high risk of death or disability from multiple and severe injuries – to designated trauma centers. Emergency Medical Services (EMS) protocols already dictate that trauma patients be transported to the highest level of care within a region's trauma system.

**Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:**

Costs incurred by those hospitals voluntarily seeking trauma center designation would include the cost of a consultation site visit and verification site visit. The cost for a consultation site visit is approximately \$15,000, while the cost for a verification site visit, including a nurse reviewer, is approximately \$16,000. Verification must be completed every three years. Hospitals may also incur costs associated with the hiring of additional trauma surgeons, trauma registrars and an injury prevention coordinator. The average salary of a board-certified trauma surgeon is approximately \$304,500. The average salary of a nurse manager is \$62,840. The average salary for an injury prevention coordinator (or “health educator”) is \$47,812.

The total costs per institution will vary depending on the resources already at hand. For current trauma hospitals, review and update of a hospital’s trauma policies and procedures could be accomplished with existing staff, imposing little or no additional cost. Those hospitals seeking trauma designation for the first time may need to create a full-time position for a trauma program manager. For those facilities seeking a new Level II designation, this new trauma program manager may also co-ordinate injury prevention activities. This position may be filled by someone currently employed by the hospital, or the hospital could choose to hire a new employee. Level I facilities must also have an injury prevention coordinator.

Designated trauma centers are already required to maintain a hospital-based trauma registry which captures information pertaining to the patient’s injury, pre-hospital care, Emergency Department care, hospital care and outcome information so that the hospital can submit information to the New York State Trauma Registry. ACS-COT standards require trauma data submission to the National Trauma Data Bank (NTDB) (a minimum of 80% of cases

entered within 60 days of discharge) and the periodic monitoring of data validity. The New York State Trauma Registry “data dictionary” already incorporates the ACS-COT National Trauma Data Bank (NTDB) data elements along with 22 data elements specific to New York. At the state level, each record receives a unique identifier to protect patient confidentiality. Registry information is stored on a protected server with highly limited access.

The ACS-COT currently recommends one registrar for every 750-1,000 patients entered into the registry. Currently designated trauma centers, which already maintain a hospital-based trauma registry, may need to hire an additional registrar to meet these registry standards. The “average” salary for a “registrar” is \$37,828. According to one of the vendors currently supporting the New York State Trauma Registry, for those facilities pursuing designation as a trauma center for the first time, the average cost of purchasing the software necessary to begin a hospital-based trauma registry is approximately \$5,000 - 10,000, and the annual cost for maintaining such registry is approximately \$2,000 - 3,000.

The goal of the New York State Trauma Registry is to capture all data for trauma patients cared for in the state. For those non-designated hospitals that occasionally receive trauma patients, there will be a mechanism for capturing an abbreviated set of data elements. The mechanism for submitting an abbreviated subset of trauma data is expected to be offered free of charge. For the small numbers of trauma patients expected at these facilities, entry of trauma data can be accomplished by existing staff and should not require additional hiring.

Those hospitals that will be caring for pediatric trauma patients must also ensure that their equipment is age and size appropriate.



**Cost to State and Local Government:**

There are no additional costs to State and local governments to implement this regulation. Existing staff will be utilized to conduct surveillance of the regulated parties and monitor compliance with these provisions.

**Cost to the Department of Health:**

There are no additional costs to the Department of Health to implement this regulation. Existing staff will be utilized to conduct surveillance of the regulated parties and monitor compliance with these provisions.

**Local Government Mandates:**

There are no additional programs, services, duties or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district.

**Paperwork:**

Hospitals may need to develop or revise written trauma policies and procedures, including trauma activation criteria and procedures, a massive transfusion protocol, a difficult airway management policy, trauma diversion policy, performance improvement processes and activities, transfer agreements and trauma data analysis. Hospitals seeking trauma center designation will need to complete an application for their consultation and verification site visits, along with a pre-review questionnaire.

**Duplication:**

This regulation will not duplicate any state or federal rules.

**Alternative Approaches:**

ACS-COT sets the national standard of care for trauma patients. Adopting any other standards would be contrary to good medical practice. Moreover, leaving the regulations unchanged would subject trauma centers, and their patients, to outdated standards that would also be contrary to good medical practice. These regulatory changes ensure that trauma centers are subject to the most up-to-date standards.

**Federal Requirements:**

This regulation will not conflict with any federal rules.

**Compliance Schedule:**

This proposal will go into effect upon a Notice of Adoption in the *New York State Register*.

**Contact Person:**

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**REGULATORY FLEXIBILITY ANALYSIS**  
**FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

**Effect of Rule:**

This regulation will apply to the 228 general hospitals in New York State that either have or would seek trauma center designation. Currently, there are 40 designated trauma centers in New York State, four of which are operated by local government.

**Compliance Requirements:**

There are no additional programs, services, duties or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district. Hospitals would only need to comply with these regulations if they choose to become trauma centers.

**Professional Services:**

Most currently designated trauma centers already employ an adequate number of trauma surgeons, a trauma program manager and a registrar, and several hospitals already employ an injury prevention coordinator. Some currently designated trauma centers may need to hire additional trauma registrars to comply with the ACS-COT standards regarding data submission. Some facilities may need to hire additional surgeons. Newly designated trauma centers will likely need to hire a trauma program manager and trauma registrar.

**Compliance Costs:**

Costs incurred by those hospitals voluntarily seeking trauma center designation would include the cost of a consultation site visit and verification site visit. The cost for a consultation site visit is approximately \$15,000, while the cost for a verification site visit, including a nurse reviewer, is approximately \$16,000. Verification must be completed every three years. Hospitals may also incur costs associated with the hiring of additional trauma surgeons, trauma registrars and an injury prevention coordinator.

The total costs per institution will vary depending on the resources already at hand. For current trauma hospitals, review and update of a hospital's trauma policies and procedures could be accomplished with existing staff, imposing little or no additional cost. Those hospitals seeking trauma designation for the first time may need to create a full-time position for a trauma program manager. For those facilities seeking a new Level II designation, this new trauma program manager may also co-ordinate injury prevention activities. This position may be filled by someone currently employed by the hospital, or the hospital could choose to hire a new employee. Level I facilities must also have an injury prevention coordinator.

Designated trauma centers are already required to maintain a hospital-based trauma registry which captures information pertaining to the patient's injury, pre-hospital care, Emergency Department care, hospital care and outcome information so that the hospital can submit information to the New York State Trauma Registry. ACS-COT standards require trauma data submission to the National Trauma Data Bank (NTDB) (a minimum of 80% of cases entered within 60 days of discharge) and the periodic monitoring of data validity. The New York State Trauma Registry "data dictionary" already incorporates the ACS-COT National Trauma Data Bank (NTDB) data elements along with 22 data elements specific to New York.

At the state level, each record receives a unique identifier to protect patient confidentiality. Registry information is stored on a protected server with highly limited access.

The ACS-COT currently recommends one registrar for every 750-1,000 patients entered into the registry. Currently designated trauma centers, which already maintain a hospital-based trauma registry, may need to hire an additional registrar to meet these registry standards. According to one of the vendors currently supporting the New York State Trauma Registry, for those facilities pursuing designation as a trauma center for the first time, the average cost of purchasing the software necessary to begin a hospital-based trauma registry is approximately \$5,000 - 10,000, and the annual cost for maintaining such registry is approximately \$2,000 - 3,000.

The goal of the New York State Trauma Registry is to capture all data for trauma patients cared for in the state. For those non-designated hospitals that occasionally receive trauma patients, there will be a mechanism for capturing an abbreviated set of data elements. The mechanism for submitting an abbreviated subset of trauma data is expected to be offered free of charge. For the small numbers of trauma patients expected at these facilities, entry of trauma data can be accomplished by existing staff and should not require additional hiring.

Those hospitals that will be caring for pediatric trauma patients must also ensure that their equipment is age and size appropriate.

**Economic and Technological Feasibility:**

This proposal is economically and technically feasible.

**Minimizing Adverse Impact:**

Trauma center designation is voluntary. Those hospitals that do not wish to care for trauma patients will not need to comply with this regulation.

In May 2012, the Department advised currently designated trauma centers that it intended to make compliance with ACS-COT standards a requirement of designation and advised those hospitals to contact the ACS-COT to schedule a consultation site visit by May 2013. Following receipt of their final consultation site visit report, those centers have two years in which to schedule a verification site visit. In March 2013, the Department advised those hospitals seeking trauma center designation for the first time that they should contact the ACS-COT by May 2015 to schedule a consultation site visit and within two years following receipt of their final consultation site visit report to request a verification site visit. The Department has also advised these hospitals that, prior to having a consultation site visit, they should have in place: a trauma service, a trauma medical director, a trauma program manager, a hospital-based trauma registry, 9-12 months of trauma data and a performance improvement process of some kind. In this way, the Department has sought to facilitate compliance with these regulations in advance of their proposal.

**Small Business and Local Government Participation:**

The Department has conducted outreach to the affected parties. The State Trauma Advisory Committee (STAC) has discussed and reviewed this proposal during open, webcast meetings, and the Department has shared this proposal with the Greater New York Hospital

Association (GNYHA) and the Healthcare Association of New York State (HANYYS).

Organizations that represent the affected parties are also given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council (PHHPC). This agenda and the proposal will be posted on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

**Cure Period:**

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

## **RURAL AREA FLEXIBILITY ANALYSIS**

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



## **JOB IMPACT STATEMENT**

These provisions will not have a significant impact on jobs. Currently designated trauma centers have been required to have a trauma program director, trauma program manager, trauma registrar and an injury prevention coordinator. Many may be required to hire an additional trauma registrar to maintain ACS-COT standards regarding data abstraction and submission, and some will need to hire additional trauma surgeons to manage their current trauma census and performance improvement responsibilities.



**Project # 171344-C**  
**Women And Children's Hospital Of Buffalo**

**Program:** Hospital  
**Purpose:** Construction

**County:** Erie  
**Acknowledged:** June 5, 2017

**Executive Summary**

**Description**

Kaleida Health's Women and Children's Hospital of Buffalo (WCHOB), a voluntary not for profit, Article 28 specialty pediatric and women's health hospital located in Buffalo (Erie County), requests approval to certify Bone Marrow Transplant service and add two Bone Marrow Transplant beds to the new John R. Oishei Children's Hospital (OCH) upon its opening in November 2017. OCH is a replacement facility for WCHOB that was approved under CON 132313. The new facility, located at 818 Ellicott Street in Buffalo, was to be certified for 183 beds representing a 17-bed reduction from WCHOB's current 200-bed capacity. Kaleida intended to transfer the 17 beds to other Kaleida facilities, via separate CON applications, rather than decertify the beds. This CON proposes to convert two of the 17 beds to Bone Marrow Transplant beds, leaving 15 beds to be transferred to other Kaleida facilities. It is noted that WHCOB has been granted a DSRIP waiver to NYCRR Title 10 Section 709.8 (b)(4) allowing the addition of only two bone marrow transplant beds.

Upon approval of this application, the new OCH replacement facility will have a final bed count of 185 beds as follows:

<u>Category</u>	<u>Current</u>	<u>Final</u>
Maternity	30	30
Neonatal Continuing Care	18	18
Neonatal Intensive Care	28	28
Neonatal Intermediate Care	18	18
Pediatric	69	69
Pediatric ICU	20	20
Bone Marrow Transplant	0	2
<b>Total Beds</b>	<b>183</b>	<b>185</b>

Currently, WCHOB is the center for pediatric oncology in Western New York (WNY) and provides these services in partnership with Roswell Park Cancer Institute (RPCI) and the University at Buffalo's Division of Pediatric Hematology/Oncology. The hospital provides care for non-malignant blood disorders, oncology patients under the age of five, surgical patients, and children requiring emergency room or PICU care. RPCI provides care for children with cancer five years of age and older, is the center for hematopoietic stem cell transplants, and provides all radiation therapy and most of the ambulatory care services for pediatric oncology patients. Over the course of their treatment, many children, their parents and physicians must navigate between two inpatient units and two outpatient centers. Also, RPCI cannot perform blood and marrow transplants on children younger than four years of age due to lack of appropriate pediatric medical support services at the Institute. Such patients are referred out-of-area (often out of state) for treatment. Through collaborative physician and quality committee input, it was decided that WCHOB/OCH will take care of all pediatric inpatient care and all outpatient care will be handled by RPCI.

Kaleida Health is an integrated healthcare delivery system that includes: Buffalo General Medical Center, DeGraff Memorial Hospital, Gates Vascular Institute, Millard Fillmore Suburban Hospital, Women and Children's Hospital of Buffalo, two long term care facilities, Visiting Nurse Association of WNY, and several other subsidiaries along with two charitable foundations.

OPCHSM Recommendation  
Contingent Approval

Need Summary

The proposed project will create a dedicated bone marrow transplant unit that will enable the new John R. Oishei Children's Hospital (OCH) to provide access to comprehensive care for patients needing transplants by consolidating inpatient services in one place.

Program Summary

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

Financial Summary

Total project cost is estimated at \$60,712 and will be met with equity.

<u>Incremental Budget</u>	<u>Year Three</u>
Revenues	\$1,406,628
Expenses	<u>1,414,384</u>
Gain/Loss	(\$7,756)

<u>Enterprise Budget</u>	<u>Year Three</u>
Revenues	\$1,498,051,628
Expenses	<u>1,467,792,384</u>
Gain/Loss	\$30,259,244

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

Council Action Date

**October 11, 2017**

## Need Analysis

### Background

Kaleida Health's Women and Children's Hospital of Buffalo (WCHOB) is seeking approval to add the service of Bone Marrow Transplant and two new Bone Marrow Transplant beds to the new John R. Oishei Children's Hospital (OCH) (approved through CON 132313) upon its opening in November 2017. The facility will be located at 818 Ellicott Street Buffalo, NY 14203. John R. Oishei Children's Hospital (OCH) will be certified as follows, upon completion of this project.

<b>Category</b>	<b>Current</b>	<b>Final</b>
Maternity	30	30
Neonatal Continuing Care	18	18
Neonatal Intensive Care	28	28
Neonatal Intermediate Care	18	18
Pediatric	69	69
Pediatric ICU	20	20
Bone Marrow Transplant	<u>0</u>	<u>2</u>
<b>Total Beds</b>	<b>183</b>	<b>185</b>

Currently, over the course of their treatment, many children and their parents must navigate between two inpatient units and two outpatient centers. The physicians travel between two hospitals located more than a mile apart, often several times a day, and must deal with the complexities of providing care in two hospitals and two outpatient clinics with two sets of medical records and two very similar but different sets of policies and procedures.

Consolidation of Children's inpatient treatment at OCH will alleviate much of the complexity currently experienced by the children and their families and physicians.

### Analysis

The data below show that the incidence, mortality, or both, of one or more of the selected cancers with which bone marrow transplants are often associated, are mostly higher for in the service area than for New York State, as a whole.

<b>Incidence - New York State 2010 – 2014</b>	<b>Incidence</b>					
	<b>Males</b>			<b>Females</b>		
	Average Annual Cases	Rate per 100,000 Males	95% CI (+/-)	Average Annual Cases	Rate per 100,000 Females	95% CI (+/-)
Hodgkin lymphoma	358	3.7	0.2	299.4	2.9	0.1
Non-Hodgkin lymphoma	2551.6	26.3	0.5	2190.8	17.8	0.3
All Myeloma	966	9.8	0.3	824	6.6	0.2
All Leukemia	2014.6	21.1	0.4	1512.6	12.5	0.3

<b>Incidence – Erie County 2010 – 2014</b>	<b>Incidence</b>					
	<b>Males</b>			<b>Females</b>		
	Average Annual Cases	Rate per 100,000 Males	95% CI (+/-)	Average Annual Cases	Rate per 100,000 Females	95% CI (+/-)
Hodgkin lymphoma	18	4	0.8	15.4	3.1	0.7
Non-Hodgkin lymphomas	129.4	25.9	2	116	18.1	1.5
All Myeloma	46	9.2	1.2	40.8	6.1	0.9
All Leukemia	113.4	23.3	2	79.4	12.6	1.3

<b>Mortality - New York State 2010 – 2014</b>	<b>Mortality</b>					
	<b>Males</b>			<b>Females</b>		
	Average Annual Deaths	Rate per 100,000 Males	95% CI (+/-)	Average Annual Deaths	Rate per 100,000 Females	95% CI (+/-)
Hodgkin lymphoma	39.2	0.4	0.1	34.8	0.3	0
Non-Hodgkin lymphoma	664.8	7.1	0.2	572.2	4.3	0.2
All Myeloma	350.2	3.7	0.2	334.8	2.6	0.1
All Leukemia	792.8	8.6	0.3	605.2	4.7	0.2

<b>Mortality – Erie County 2010 – 2014</b>	<b>Mortality</b>					
	<b>Males</b>			<b>Females</b>		
	Average Annual Deaths	Rate per 100,000 Males	95% CI (+/-)	Average Annual Deaths	Rate per 100,000 Females	95% CI (+/-)
Hodgkin lymphoma	2.4	0.5	0.3	2.8	0.5	0.3
Non-Hodgkin lymphomas	38.2	7.9	1.1	37.2	5.2	0.8
All Myeloma	21.4	4.3	0.8	22.6	3.1	0.6
All Leukemia	45.2	9.5	1.3	36.8	5.1	0.8

Local Incidence and Mortality Source: NYS Cancer Registry Updated November 2016.

#### Conclusion

WCHOB/OCH's dedicated Bone Marrow Transplant Unit will provide comprehensive care to pediatric patients and eliminate the need to transition between hospitals.

#### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

#### Program Description

Women and Children's Hospital of Buffalo, in partnership with Roswell Park Cancer Institute (RPCI) and the University at Buffalo's Division of Pediatric Hematology/Oncology, serve Western New York's pediatric oncology needs.

WCHOB provides care to children with non-malignant blood disorders, oncology patients under five years old, surgical patients, and children requiring emergency room or PICU care. RPCI provides care for children with cancer who are age five and older, or those needing hematopoietic stem cell transplantation or those pediatric oncology patients who require radiation therapy and/or ambulatory care services.

Over the course of their treatment, many children and their parents must navigate two inpatient units and two outpatient centers. Likewise, the physicians treating these young patients are often required to travel between the two hospitals (more than a mile apart) and be proficient with two sets of medical records and two different but similar sets of policies and procedures. In addition, RPCI cannot perform life-saving blood and marrow transplants on children younger than four years of age. Those patients must be referred out-of-area (often out-of-state) for treatment which may create a hardship for parents and families.

The Applicant indicated that, through collaborative physician and quality committees, it was decided that WCHOB/OCH would take care of all pediatric inpatient care (and RCPI would handle all outpatient care).

Staffing is expected to increase to 9.02 FTEs in the first year of operation and remain at that level through the third year.

#### Compliance with Applicable Codes, Rules and Regulations

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for Bone Marrow Transplant and have assured the Department that their program will meet all of the requirements of 709.8 (Bone marrow transplantation (BMT) services) and 712-2.5 (Allogeneic bone marrow transplant units). WCHOB has been granted a DSRIP Waiver to Title X: Section 709.8 (b)(4) allowing for the addition of just two (2) Bone Marrow Transplant beds.

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

*On January 13, 2016, the Department issued a Stipulation and Order (S&O) and a \$16,000 fine to the Kaleida-affiliated HighPointe on Michigan Health Care Facility. The S&O resulted from a complaint investigation/partial extended survey completed on April 17, 2015 where Immediate Jeopardy with Actual Harm and Substandard Quality of Care was determined in the following areas: 10 NYCRR 415.12 (h)(i) Quality of Care (Accident-free environment); 415.4 (b)(2)(3)(4) Staff Treatment of Residents (Investigate/Report Allegations); 415.12(k)(6) Quality of Care (Special Needs- Respiratory Care); and 415.26(b)(2)(3) Administration. It was determined that the facility failed to ensure the residents' environment remained as free of accident hazards as possible; failed to provide adequate supervision for the residents dependent on the facility's Patient Safety Net monitoring system while alone in their rooms; failed to have system to ensure that the pagers were in good repair and functioning; and the governing body failed to develop and implement policies and procedures to ensure the facility was managed in a manner that protected the health and safety of its residents.*

#### Conclusion

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

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

#### Total Project Cost

Total project cost for fixed equipment and moveable equipment is estimated at \$60,712 broken down as follows:

Fixed Equipment	\$19,203
Moveable Equipment	29,210
Telecommunications	9,978
CON Fee	2,000
Additional Processing Fee	<u>321</u>
Total Project Cost	<u>\$60,712</u>

Kaleida Health will provide equity via operations to meet the total project cost

## Operating Budget

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

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Medicaid FFS	\$175,830	\$35,166	\$175,830	\$35,166
Medicaid MC	\$246,160	\$246,160	\$246,160	\$246,160
Commercial FFS	\$225,060	\$112,530	\$225,060	\$112,530
Commercial MC	\$235,528	<u>\$1,012,772</u>	\$235,528	<u>\$1,012,772</u>
Total Revenues		\$1,406,628		\$1,406,628
 <u>Expenses</u>				
Operating	\$234,438	\$1,406,628	\$234,438	\$1,406,626
Capital	<u>646</u>	<u>3,878</u>	<u>1,293</u>	<u>7,756</u>
Total Expenses	\$235,084	\$1,410,506	\$235,731	\$1,414,384
Gain/(Loss)		<u>(\$3,878)</u>		<u>(\$7,756)</u>
Utilization (Disch.)		6		6
(Patient Days)		174		174

Revenue, expense and utilization assumptions are based on historical experience for bone marrow transplant services.

Utilization by payor source for the bone marrow transplant beds is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	3.33%	3.33%
Medicaid MC	16.66%	16.66%
Commercial FFS	8.33%	8.33%
Commercial MC	71.68%	71.68%

## Capability and Feasibility

Project cost will be met via equity from the operations of Kaleida Health. BFA Attachment A is the 2015 and 2016 certified financial statements of Kaleida Health, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of (\$3,878) and (\$7,756) during the first and third years, respectively. The applicant indicated that the incremental losses will be offset via Kaleida Health operations. Revenues are based on current reimbursement methodologies for bone marrow transplant services. The submitted budget appears reasonable.

As shown on BFA Attachment A, the hospital had an average working capital position and an average positive net asset position from 2015 through 2016. Also, the hospital achieved an average income from operations of \$26,756,500 from 2015 through 2016.

BFA Attachment B is the internal financial statements of Kaleida Health as of March 31, 2017. As shown, the entity had a positive working capital position, a positive net asset position and achieved an income from operations of \$7,316,000 through March 31, 2017.

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

## Recommendation

**From a financial perspective, approval is recommended.**



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## Attachments

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BFA Attachment A    Financial Summary: 2015-2016 certified financial statements of Kaleida Health  
BFA Attachment B    Financial Summary: March 31, 2017 internal financials of Kaleida Health



**Project # 171438-C  
Advanced Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Rockland  
**Purpose:** Construction    **Acknowledged:** July 6, 2017

**Executive Summary**

**Description**

Advanced Surgery Center, LLC d/b/a Advanced Surgery Center, an existing, proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 150 South Pearl Street, Pearl River (Rockland County), requests approval to be certified as a multi-specialty FASC. The Center is currently certified as a dual single-specialty FASC specializing in plastic surgery and ophthalmology services and request certification as a multi-specialty FASC to accommodate the addition of general surgery services. The Center has an approved Class C operating room, and no construction is needed to accommodate the addition of general surgery.

The Center was approved by the Public Health Council with a five-year limited life under CON 091059 and began operating effective June 14, 2010. A two-year extension to their limited life, which expires on April 15, 2018, was granted under CON 152356 to provide the facility with additional time to address their commitment to providing care to underserved populations. It is noted that under CON 131150 and effective February 11, 2014, the facility added ophthalmology services to enhance their ability to attract Medicaid and Charity Care patients. The applicant believes that becoming a multi-specialty FASC will enable the Center to offer a broader range of surgical services to the community, further enhancing their ability to meet their commitment to provide care to Medicaid and underserved Rockland County residents.

Four new non-member surgeons (all Board-Certified general surgeons) will be added as practicing physicians at the Center. The new surgeons will perform vascular, general, and plastic surgery services, which are currently being performed in their private office-based medical practices.

**OPCHSM Recommendation**  
Approval, with no change to the expiration date of the operating certificate.

**Need Summary**  
The projected number of procedures is 561 in the first year following approval and 569 in the third year, with Medicaid approaching 3% and charity care approximately 6.7%.

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

**Financial Summary**  
There are no project costs associated with this application.

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$1,267,207	\$1,441,965
Expenses	1,013,095	1,034,566
Net Income	\$254,112	\$407,399

## 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

**October 11, 2017**

## Need Analysis

### Analysis

The service area consists of Rockland County. The population of Rockland County in 2010 was 311,687 with 123,151 individuals (39.5%) who are 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 133,122 by 2025 and represent 39.5% of the projected population of 337,392. Advanced Surgery Center is the only ASC in Rockland County.

The table below shows what the center has reported for Charity Care and Medicaid over the last three years.

Year	SPARCS	AHCF COST	
	Medicaid	Charity	Medicaid
2014	0.0%	0.0%	0.0%
2015	0.2%	4.4%	0.0%
2016	0.9%	N/A	N/A

Upon approval of this project, four new physicians will practice at the center. The new surgeons will perform vascular, general, and plastic surgery cases at the center, all of which are currently being performed in the surgeons' office-based practice. The applicant believes that becoming a multi-specialty ASC will enhance their ability to provide care to the Medicaid and under-insured residents of Rockland County. It is anticipated that approximately 25% of the new procedures will be for Medicaid or Charity Care patients. The center's current hours of operation are Monday through Friday from 8 am until 4 pm. Weekend and/or evening surgery is available, if needed, to accommodate scheduling issues.

The number of projected procedures is 561 in Year One and 569 in Year Three, following approval. The table below shows the projected payor sources.

Projections-171438	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	16	2.85%	17	2.99%
Medicare MC	47	8.38%	47	8.26%
Comm Ins - FFS	214	38.15%	220	38.66%
Charity Care	37	6.60%	38	6.68%
Other (includes Self Pay)	247	44.03%	247	41.41%
<b>Total</b>	<b>561</b>	<b>100.0%</b>	<b>569</b>	<b>100.0%</b>

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 may assist the facility with meeting their Medicaid and charity care obligations.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Dr. Michael Fiorillo will continue as the Medical Director and the existing transfer and affiliation agreement with Good Samaritan Hospital will remain in effect. No construction or increase in staffing is required to accommodate the additional general and plastic surgery procedures projected.

### Compliance with Applicable Codes, Rules and Regulations

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

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

### Conclusion

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

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Operating Budget

The applicant has submitted their current year (2016) and their first-year operating budgets, in 2017 dollars, as shown below:

<u>Revenue</u>	<u>Current Year (2016)</u>		<u>Year One</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial - FFS	\$7,719.73	\$1,157,959	\$6,168.00	\$1,319,952
Medicare - MC	\$534.47	25,120	\$534.47	25,120
Medicaid - MC	\$965.80	4,829	\$1,099.56	17,593
Private Pay/Other	\$290.47	<u>79,299</u>	\$279.22	<u>79,299</u>
<b>Total Revenue</b>		<b>\$1,267,207</b>		<b>\$1,441,964</b>
<u>Expenses</u>				
Operating	\$1,738.44	\$825,758	\$1,510.21	\$847,229
Capital	<u>394.39</u>	<u>187,337</u>	<u>333.93</u>	<u>187,337</u>
<b>Total Expenses</b>	<b>\$2,132.83</b>	<b>\$1,013,095</b>	<b>\$1,844.14</b>	<b>\$1,034,566</b>
 <b>Net Income</b>		 <b><u>\$254,112</u></b>		 <b><u>\$407,398</u></b>
 Utilization (Procedures)		 475		 561

The following is noted with respect to the submitted budget:

- The Medicaid and Medicare reimbursement rates are based on the current respective Fee Schedule rates, which are the average rates experienced during 2016.
- The Commercial rate for the current year is the actual revenue realized by the Center in 2016, and reflects reimbursement for procedures that were plastic surgery (including breast implants) and reconstructive in nature. The Year One Commercial rate is a conservative approach that incorporates anticipated commercial rates related to the incremental volume from the new physicians (estimated at \$2,531 on average per procedure).
- The increase in procedures is based on the four new surgeons committing to perform 86 procedures at the FASC. The procedures are currently being performed in an office-based surgery (OBS) setting.
- Operating expenses are based on the current year, which are the average experienced during 2016.

Utilization by payor related to the submitted operating budget is as follows:

	<u>Current Year</u>	<u>Year One</u>
Commercial - FFS	31.58%	38.15%
Medicare - MC	9.89%	8.38%
Medicaid - MC	1.05%	2.85%
Charity Care	5.47%	6.60%
Private Pay/Other	<u>52.00%</u>	<u>44.03%</u>
	100.00%	100.00%

Per the FASC's establishment CON, Medicaid and Charity Care utilization were projected to be 2% and 3%, respectively, of total procedures in the first and third years of operation. The applicant indicated the facility struggled for three years to secure a Medicaid provider number, which significantly hampered its ability to provide care to Medicaid patients. This resulted in a subsequent CON being submitted and approved for a two-year extension of its limited life.

The applicant indicated that becoming a multi-specialty FASC will enable the Center it to offer a broader range of surgical services to the community, and be able it to provide care to the underserved residents of Rockland county. They believe this will help them to achieve the Medicaid and Charity commitments made in their establishment application.

### Capability and Feasibility

There are no project costs associated with this application.

The submitted budgets indicate a net income of \$254,112 and \$407,398 during the first and third years following approval, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is a financial summary of Advanced Surgery Center's 2015-2016 certified financial statements and their internal financial as of the April 30, 2017. As shown, the entity had a positive net asset position and achieved a net income in all periods shown. The entity had a positive working capital position in 2015 and 2016, but as of April 30, 2017, they had a negative working capital position due to distributions made to owners, which reduced available cash.

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 – Advanced Surgery Center's 2015-2016 certified and internal financial statements as of April 30, 2017,



**Project # 171142-C**  
**Joseph P. Addabbo - Family Health Center**

**Program:** Diagnostic and Treatment Center    **County:** Queens  
**Purpose:** Construction    **Acknowledged:** March 2, 2017

**Executive Summary**

**Description**

Joseph P. Addabbo Family Health Center, Inc. (Addabbo), a voluntary not-for-profit, Article 28 diagnostic and treatment center (D&TC) located at 6200 Beach Channel Drive, Arverne (Queens County), requests approval to construct a 20,689-square-foot, three-story addition and perform renovations within the existing main clinic structure. The addition will be built on property purchased by Addabbo that is adjacent to the Center's main site. The expansion will provide 21 new exam rooms and clinical support spaces, including a new physical therapy suite, and increased capacity for adult medicine, OB/GYN, pediatrics, and HIV programming. Addabbo is certified as a Federally Qualified Health Center (FQHC) and provides family care services at five locations in Queens County and one location in Kings County. Expanding the current main clinic location will enable the FQHC to accommodate growing demand in the Far Rockaway neighborhood of Queens.

Joseph P. Addabbo Family Health Center, Inc. will create and control Addabbo Center Future Home, Inc., a Qualified Active Low-Income Community Business (QALICB) whose purpose will be limited solely to acquiring, financing, owning and holding the Project (i.e., a single purpose business entity).

**OPCHSM Recommendation**  
**Contingent Approval**

**Need Summary**

The volume of visits at this location was 62,793 in 2015 and is projected to grow to 87,393 in the third year following completion of the project.

**Program Summary**

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

**Financial Summary**

The total project cost of \$22,848,778 will be met with \$1,508,444 in sponsor equity (including land purchase), \$4,850,334 through a commercial loan (Bank of America), plus four facilities totaling \$16,490,000 from New Markets Tax Credit (NMTC) enhanced financing supported by Primary Care Development Corporation (PCDC), Building America CDE (a subsidiary of AFL-CIO), and Bank of America Community Development Corporation.

The \$4,850,334 Bank of America commercial loan provides for a term of seven and a half years, 24 months interest only at Libor +2.75%, and a 25-year amortization period. The \$16,490,000 NMTC enhanced financing terms, separated into four facilities, carry seven and a half years of interest only payments estimated at 2.21%, with a 30-year amortization. Approximately \$5,822,689 of the NMTC enhanced financing will be capitalized with bridge financing from PCDC to Addabbo until government grant funding (projected to be \$7,500,000) is received. Approximately \$5,250,000 will be capitalized by a Bank of America source loan. Lastly, approximately \$5,211,850 will be capitalized with NMTC subsidy capitalized by Bank of America



Community Development Corporation as tax credit investor. Addabbo will contribute

\$205,461 to finalize the capitalization of the NMTC enhanced financing.

The loan structure and flow of funds were designed to take advantage of the NMTC program. As a benefit of the NMTC enhanced financing, approximately \$5,211,850 of the \$16,490,000 facility (capitalized by Bank of America Community Development Corporation as investor) will unwind and convert to the applicant's equity upon the end of the seven-year compliance period. Assuming the grants are received and pay off the PCDC bridge capital, only \$5,250,000 of the \$16,490,000 NMTC financing will remain to be paid at the end of the seven-year compliance period.

In addition, the applicant is refinancing a PCDC mortgage, which was collateralized by 1288 Central Avenue, Far Rockaway, and 6200 Beach Channel Drive, Arverne, New York, for \$2,296,362 with a seven and a half year term, at 3.49% interest and a 25-year amortization period. The refinancing was necessary for the overall project financing in order to release 6200 Beach Channel Drive for PCDC collateral position. Furthermore, the new Bank of America facility will save the applicant approximately \$144,000 in interest due to the lower rate over the same seven-year period.

The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$42,650,021	\$45,786,815
Expenses	<u>41,270,619</u>	<u>43,192,460</u>
Gain	\$1,379,402	\$2,594,355

## 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 forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
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]
4. Submission of an executed PCDC Grant Bridge Loan commitment (to capitalize the NMTC Loan A2), acceptable to the Department of Health. [BFA]
5. Submission of an executed Bank of America, N.A. NMTC Loan A1 (leverage loan) commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed PCDC refinancing loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed Bank of America, N.A. Senior Commercial Loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of an executed Banc of America CDC NMTC loan commitment (investor subsidy to capitalize Loan B1 and B2), acceptable to the Department of Health. [BFA]
9. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
10. Submission of an executed building sublease, acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before November 1, 2017 and construction must be completed by April 30, 2020, 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

**October 11, 2017**

# Need Analysis

## Background and Analysis

The primary service area of the facility encompasses the following areas of Queens County: Breezy Point, Broad Channel, Rockaway Park and Far Rockaway, which includes the zip codes 11691, 11692, 11693, 11694, and 11697.

HRSA has designated Rockaway as a Health Professional Shortage Area for Medicaid Eligible.

## Prevention Quality Indicators (PQIs)

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the PQI rates for the overall PQI conditions for the service area and for all of New York State in 2014. It shows that the rate is higher for the service area than for New York State.

### Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates-2014	Service Area <sup>1</sup>	New York State
All PQI's	1,670	1,387

Source: DOH Health Data, 2016

<sup>1</sup> Includes zip codes: 11691, 11692, 11693, 11964, and 11697

The applicant is looking to improve and expand their main site to support their mission of providing comprehensive health services to the underserved residents of Queens County. The current facility has three floors. With this project, the applicant is looking to provide interior improvements within has existing building and construct a new three story addition. The applicant will be relocating some services and adding a new physical therapy suite with five open treatment bays. The hours of operation for the center will be Monday through Friday from 8:30 am until 7 pm, and Saturday from 9 am until 2 pm. Additional evening hours may be added as need indicates.

This location had 62,793 visits in 2015. After the improvements are completed, the applicant is projecting the number of visits for this location to increase to 73,393 for Year 1 and 87,393 for Year 3.

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

## Conclusion

Approval of this project will provide additional access to primary care and specialty medical services to the residents of the Breezy Point, Beach Channel, Rockaway Park, and Far Rockaway sections and their surrounding communities within Queens County.

## Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

Currently, the Addabbo Health Center has six Article 28 Diagnostic and Treatment Centers (five located in Queens County and one in Kings County). The principal focus of the centers is to provide a wide range of family health care services. Expanding the center in Arverne will provide additional space to treat patients, as well as additional space for family members, equipment, and storage. This enhanced space will better support the Addabbo Family Health Center's mission of providing comprehensive, quality health services to the community it serves.

There are no proposed changes in certified services. Staffing is anticipated to increase by 18.0 FTEs in the first year after completion and by an additional 31.0 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.

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

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Lease Agreement

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

Premises:	D&TC located at 6200 Beach Channel Drive, Queens, NY 11692
Landlord:	Joseph P. Addabbo Family Health Center, Inc.
Lessee:	Addabbo Center Future Home, Inc.
Term:	75 years unless terminated sooner
Rent:	\$1 for full term – paid in advance.
Provisions:	All operating expenses, construction improvements
Note:	It is the intent of Lessor and Lessee that this lease be treated as a sale for Federal income tax purposes.

### Sublease Agreement

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

Premises:	D&TC located at 6200 Beach Channel Drive, Queens, NY 11692
Lessor:	Addabbo Center Future Home, Inc.
Lessee:	Joseph P. Addabbo Family Health Center, Inc.
Term:	30 years unless terminated sooner – 1 (5 year) renewal option
Rent:	Paid quarterly, initially \$226,160 and increasing 3% per annum during the compliance period.
Provisions:	All operating expenses, maintenance, utilities, etc.
Note:	It is the intent of Lessor and Lessee that this sublease be treated as a lease for Federal income tax purposes. Lessor shall be the owner of the property, including the improvements.

## Total Project Cost and Financing

Total project costs for new construction and renovations is estimated at \$22,848,778, broken down as follows:

Land Acquisition *	\$692,978
New Construction	11,858,209
Renovation & Demolition	1,383,040
Design Contingency	1,370,532
Construction Contingency	622,969
Architect/Engineering Fees	1,683,503
Other Fees	1,244,399
Movable Equipment	542,880
Telecommunications	145,220
Financing Costs	2,606,378
Interim Interest Expense	595,067
CON Application Fee	1,250
CON Processing Fee	<u>102,353</u>
Total Project Cost	\$22,848,778

\* The land value is stated at cost, which is lower than the MAI appraised market value of \$1,065,000.

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

The applicant's financing plan appears as follows:

Equity – including land	\$1,508,444
Senior Commercial Loan (Bank of America) - term of seven and a half years, 24 months interest only at Libor +2.75% and a 25-year amortization period <i>Bank of America, N.A. has provided a term sheet</i>	4,850,334
NMTC Loan A1 - 7½ years interest only, estimated rate 2.21%, 30-year amortization (capitalized by Bank of America) <i>Bank of America, N.A. has provided a term sheet</i>	5,250,000
NMTC Loan A2 - 7½ years interest only, estimated rate 2.21%, 30-year amortization (capitalized by \$5,822,689 PCDC Grant Bridge financing <sup>1</sup> and \$205,461 of Addabbo Equity) <i>PCDC has provided a term sheet</i>	6,028,150
NMTC Loan B1 and B2 - 7½ years interest only, estimated rate 2.21%, 30-year amortization (capitalized by Bank of America NMTC investor subsidy). Subject to "Put Option" <i>Banc of America CDC has provided letter of interest</i>	5,211,850
<b>Total</b>	<b>\$22,848,778</b>

<sup>1</sup> The total grant award is \$7,500,000 summarized below. Once received, the grant funds will first pay off the PCDC debt, and then the difference may be used to reduce the principal of borrowing, depending upon circumstances as project contingencies are met, financing is negotiated and grant funding is realized.

Grant - NYS Statewide Health Care Facility Transformation	\$2,500,000
Grant - Health Resources Services Administration	1,000,000
Grant - New York City 2017 Capital Grant	1,000,000
Grant - New York City 2017 Capital Grant Award	3,000,000

Addabbo will obtain bridge financing from PCDC in the amount of \$5,822,689 to capitalize the NMTC financing and assist with project expenditures until the grant funding outlined above is received. PCDC has provided a letter of interest with terms as follows: interest only for 24 months at prime plus 2.25% or 6.50%, 20-year amortization plus additional principal payments made at receipt of grant funds.

The subject financing contemplates \$17,000,000 of NMTC allocation as follows:

- Building America CDE, Inc. (BACDE) has provided a reservation letter to sub-allocate \$8 million of NMTC investment authority awarded to BACDE in support of the project.
- Primary Care Development Corporation (PCDC) has provide a reservation letter to sub-allocate \$9 million of NMTC investment authority awarded to PCDC in support of the project.

In addition, the applicant is refinancing PCDC mortgages for approximately \$2,296,362 with a seven and a half year term, at 3.49% interest and a 25-year amortization period. Bank of America has provided a letter of interest at the stated terms. The new facility will save the applicant approximately \$144,000 in interest due to the lower rate. The applicant has demonstrated the capability of paying off the estimated \$1,837,241 balloon payment at the end of the seven and a half (7,5) year term, as evidenced by cash of \$8,183,776 as shown on BFA Attachment B, June 30, 2017 internal financial statement balance sheet.

The New Markets Tax Credit program created by the U.S. Federal Government in 2000 has been extended through 2019. The program encourages investment in low-income communities (LICs). Rather than being directly involved in how the benefits of this subsidy program are allocated, the U.S. Department of Treasury, through the Community Development Financial Institutions Fund (CDFI Fund), essentially deputizes this decision-making process to Community Development Entities (CDEs). Through a competitive process, the CDFI awards designated CDEs NMTC allocations. NMTCs provides a 39% credit against Federal income taxes over seven years for investors that make investments into CDEs by purchasing the tax credits. In turn, CDEs use the proceeds of these investments to create a subsidy for qualified investments in low-income communities (\$1.00 of credits produces approximately \$0.34 of subsidy before transaction cost).

The following is a general description of the NMTC process as it related to Addabbo:

- \$17 million of NMTC allocation is being provided to the Addabbo project by PCDC and Building America (the "CDEs"). It is required by the CDFI Fund to "monetize" at least 85% of a NMTC allocation into a qualified investment. The CDEs, through Allocation Agreements with the CDFI Fund, hold to a 97% requirement.
- For the purposes of the Addabbo project, the CDEs monetized the \$17,000,000 allocation and created \$16,490,000 of NMTC enhanced financing representing 97% of the NMTC allocation.
- Banc of America ("BOA"), as the NMTC investor who is typically a bank or financial institution, made a \$5,211,850 equity investment (net of transaction CDE fees) in exchange for the NMTCs (\$17 million in allocation equates to a tax credit of \$6,630,000). The \$5,211,850 capitalized the CDEs' NMTC Loans B1 and B2 summarized in the financing plan above.
- Additionally, Bank of America "leveraged" their equity investment with the \$5,250,000, which capitalized CDEs' NMTC Loan A1 summarized in the financing plan above.
- Lastly, Addabbo "leveraged" the remaining \$6,028,150, which capitalized the CDEs' NMTC Loan A2 summarized in the financing plan above with the PCDC Bridge loan of \$5,822,689 and \$205,461 of equity.
- At the end of seven years, and provided the facility continues operations within the economically distressed area, through a "put/call option", the health center buys back the investor's interest (Loan B) for a to-be-determined nominal amount. The assumption in NMTC transactions is that the investor will exercise its "put" for approximately \$1,000 because minimal benefits exist after the seven-year compliance period concludes.
- Following the "put" exercise, Joseph P. Addabbo or its affiliate will owe the Loan B to itself, which can be forgiven, adding the residual to its equity.
- Ultimately, at the end of the seven-year compliance period, and the payoff of the PCDC Bridge loan, the applicant will only need to pay off the remaining principal on the \$5,250,000 NMTC Loan A1 from the \$16,490,000 NMTC enhanced financing.

The applicant states that they qualify for the NMTC program as a Qualified Active Low-Income Community Business (QALICB). LIC qualifications include the following criteria:

- Poverty at least 20%: The applicant's poverty level in census tract #36081096400 is 23%.
- Unemployment 1.25 times the national average: The applicant area's unemployment is 1.27 times national average.
- Project site located within economically distressed community: The project site located within NY Rising Community Reconstruction Plan Area and Dept. of City Planning Rockaway Neighborhoods Rezoning Plan Area is economically distressed.

Also, the applicant meets the qualifications as a Food Desert by the U.S. Department of Agriculture Economic Research Service (USDA/ERS) and has qualified low-income community investment activities that support increased access to healthy foods.

### Operating Budget

The applicant has submitted their enterprise-level current year (2015) and projected operating budgets for the first and third years, in 2017 dollars, summarized below:

Revenues	Per Visit	Current Year	Per Visit	First Year	Per Visit	Third Year
Medicaid FFS	\$181.00	\$2,471,374	\$180.88	\$2,805,083	\$180.76	\$3,245,831
Medicaid MC	\$76.91	\$10,926,044	\$80.69	\$12,021,531	\$85.16	\$13,468,400
Medicare FFS	\$124.45	\$2,439,203	\$124.95	\$2,496,825	\$125.59	\$2,572,929
Commercial FFS	\$134.30	\$4,135,395	\$130.80	\$4,116,135	\$126.41	\$4,090,757
Private Pay	\$134.95	\$1,715,274	\$128.33	\$1,727,916	\$120.63	\$1,744,612
Other Oper. Income *		\$13,488,407		\$14,381,407		\$15,563,162
Non-Oper. Income **		<u>\$5,101,124</u>		<u>\$5,101,124</u>		<u>\$5,101,124</u>
Total Revenue		\$40,276,821		\$42,650,021		\$45,786,815

### Expenses

Operating	\$168.61	\$36,894,151	\$169.88	\$38,972,121	\$168.00	\$40,893,840
Capital	<u>\$10.18</u>	<u>\$2,226,550</u>	<u>\$10.02</u>	<u>\$2,298,498</u>	<u>\$9.44</u>	<u>\$2,298,620</u>
Total Expenses	\$178.79	\$38,308,200	\$179.90	\$41,270,619	\$177.44	\$43,192,460
Net Income		<u>\$1,156,120</u>		<u>\$1,379,402</u>		<u>\$2,594,355</u>

Patient Visits 218,811 229,411 243,412

\* Other Income: Indigent Care for \$401,625 and FQHC Managed Care Wrap payments for \$13,086,782.

\*\* Non-Operating Income: Community Health Center-Section 330 grant of \$2,773,461, WIC Administrative Funds of \$1,101,107, Residency Program of \$433,689, Rental Space and supplies sold of \$94,913, Ryan White Program funding for \$581,180, and Other grants \$116,774.

The following is noted with respect to the submitted D&TC budget:

- The current year reflects the facility's 2015 revenue and expenses.
- Reimbursement rates are based on the FQHC's historical experience.
- Expenses are based upon historical experience adjusted for volume, investment and rising costs. Additionally, staffing levels are expected to increase by 18 and 31 FTEs in the first and third years, respectively. Nurses, Aides, Physicians, and Therapists represents 44.4% of the increased FTEs in year one, and 39% of the increase in year three.
- Enterprise-level utilization by payor for the first and third years is summarized below:

Utilization	Current Year		First Year		Third Year	
	Visits	%	Visits	%	Visits	%
Medicaid-FFS	13,654	6.24%	15,508	6.76%	17,957	7.38%
Medicaid-MC	142,055	64.92%	148,988	64.94%	158,146	64.97%
Medicare-FFS	19,600	8.96%	19,982	8.71%	20,486	8.42%
Commercial-FFS	30,792	14.07%	31,468	13.72%	32,361	13.29%
Private Pay	<u>12,710</u>	<u>5.81%</u>	<u>13,465</u>	<u>5.87%</u>	<u>14,462</u>	<u>5.94%</u>
Total	218,811	100%	229,411	100%	243,412	100%

- Breakeven is approximately 221,992 visits or 96.8% of first year's projection

### Capability and Feasibility

The total project cost of \$22,848,778 will be met with \$1,508,444 in sponsor equity (including land purchase), \$4,850,334 through a commercial loan (Bank of America), plus four facilities totaling \$16,490,000 from NMTC enhanced financing supported by PCDC, BACDE (a subsidiary of AFL-CIO), and Bank of America Community Development Corporation. The \$4,850,334 Bank of America commercial loan provides for a term of seven and a half years, 24 months interest only at Libor +2.75% and a 25-year amortization period. The \$16,490,000 NMTC enhanced financing terms, separated into four facilities, carry seven and a half years of interest only estimated at 2.21%, with a 30-year amortization. Approximately \$5,822,689 of the NMTC enhanced financing will be capitalized with bridge financing from PCDC to Addabbo until government grant funding (projected to be \$7,500,000) is received. Approximately \$5,250,000 will be capitalized by a Bank of America of source loan. Lastly, approximately \$5,211,850 will be capitalized with NMTC subsidy capitalized by Bank of America Community Development Corporation as tax credit investor. The loan structure and flow of funds were designed to take advantage of the NMTC program. As a benefit of the NMTC enhanced financing, the approximately \$5,211,850 of the \$16,490,000 facility (capitalized by Bank of America Community Development Corporation as investor) will unwind and convert to the applicant's equity upon the end of a seven-year compliance period. Assuming the grants are received and pay off the PCDC bridge capital, only \$5,250,000 of the \$16,490,000 NMTC financing will remain to be paid at the end of the seven-year compliance period.

In addition, the applicant is refinancing a PCDC mortgage, which was collateralized by 1288 Central Avenue, Far Rockaway, and 6200 Beach Channel Drive, Arverne, New York, for \$2,296,362 with a seven and a half year term, at 3.49% interest and a 25-year amortization period. The refinancing was necessary for the overall project financing in order to release 6200 Beach Channel Drive for PCDC collateral position. Furthermore, the new Bank of America facility will save the applicant approximately \$144,000 in interest due to the lower rate over the same seven-year period. As noted above, the applicant has the ability to pay off the estimated \$1,837,241 balloon payment.

Working capital requirements are estimated at \$814,043 based on two months of third year incremental expenses. Working capital will be funded from operations. BFA Attachment A is Joseph P. Addabbo Family Health Center, Inc.'s 2015 and 2016 certified financial statements, which indicates the availability of sufficient funds for the project.

The applicant projects a net income of \$1,379,402 and \$2,594,355 in the first and third years, respectively. The budget appears reasonable.

Review of BFA Attachment A, 2015 and 2016 financial statement shows the facility had positive positions in working capital, net assets, and generated an average net income of \$2,973,660.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A Financial Summary, Joseph P. Addabbo Family Health Center, Inc. 2015 and 2016 certified financial statement.

BFA Attachment B Financial Summary, Joseph P. Addabbo Family Health Center, Inc. June 30, 2017 internal financial statement





**Project # 172071-E  
Brooks Memorial Hospital**

**Program:** Hospital  
**Purpose:** Establishment

**County:** Chautauqua  
**Acknowledged:** August 2, 2017

**Executive Summary**

**Description**

Brooks Memorial Hospital, Inc. (Brooks) is a 65-bed, voluntary not-for-profit, Article 28 acute care hospital currently located at 529 Central Avenue, Dunkirk (Chautauqua County). Brooks requests approval to merge with TLC Health Network (TLC), a not for profit health system located in Irving (Chautauqua County), and Lake Erie Regional Health System of New York (LERHSNY). TLC includes a 45-bed Article 28 hospital (Lake Shore Health Care Center), a hospital-based Article 28 residential health care facility (currently with 60 certified beds), an Article 36 home health care agency, two primary care hospital extension clinic sites and two outpatient Chemical Dependency clinic sites. The Brooks/TLC facilities are located approximately 13 miles apart, share similar service areas (Chautauqua, Cattaraugus, and Southern Erie counties), and provide similar services.

On December 16, 2013, TLC filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of New York (Case No. 1-13-13294). It is estimated that they will emerge from bankruptcy with final approval by January 2018. Prior to the bankruptcy filing, LERHSNY was the active parent of both BMH and TLC. LERHSNY currently serves as the active parent of Brooks and upon approval of this application, LERHSNY and TLC would be merged into Brooks Memorial Hospital. With the approval of this transaction, Brooks will become the operator of TLC facilities and services.

Brooks recently entered into a management agreement with Kaleida Health, an integrated healthcare delivery system in Western New York, to provide a Chief Executive Officer (CEO) to operate the facility. The management agreement was reviewed and approved by the Department of Health, and a CEO was appointed in April 2016. TLC is currently in the process of entering into a management agreement with Kaleida Health to provide a CEO, contingent upon approval by the Department and the Bankruptcy Court, and it is expected to be the same CEO serving Brooks. in anticipation of TLC merging with Brooks.

Currently, both Brooks and TLC are receiving State assistance through the Vital Access Provider Assurance Program (VAPAP) to maintain operations and implement their transformation plan to merge TLC into Brooks and redevelop into a sustainable two-campus hospital with Brooks offering all acute care services through a newly constructed 25-bed hospital and TLC providing emergency, other inpatient specialty services including chemical dependency, and expanded ambulatory services. Brooks is also the recipient of a \$57,000,000 Essential Health Care Provider Support Program grant to decertify 40 beds and construct a new 25-bed hospital. Of the total award, \$3,000,000 is to be made available for TLC to transform into an Ambulatory Destination Center. Additionally, Brooks was recently awarded \$13,000,000 from the Statewide Health Care Transformation Program grant through Kaleida Health's application to complete the new 25-bed hospital project. A Certificate of Need

has not yet been submitted for the new hospital construction.

Kaleida Health has been involved throughout the process in bringing TLC and Brooks together, as the ultimate goal is to create an affiliation between Kaleida Health and Brooks subsequent to Brooks' merger with TLC. Kaleida Health received a Vital Access Provider (VAP) award of \$8,000,000 to create a sustainable system with Brooks and TLC through improving business operations and creating operational efficiencies.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

This merger is part of a strategic sustainability plan to preserve and enhance the availability of essential healthcare services in the Chautauqua, Cattaraugus, and Southern Erie county area.

#### Program Summary

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

#### Financial Summary

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

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$76,736,754	\$73,122,209
Expenses	<u>76,548,070</u>	<u>71,223,051</u>
Gain/Loss	\$188,684	\$1,899,158

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]
3. Submission of an executed Management Agreement, acceptable to the Department. [HSP]
4. Submission of document from the United States Bankruptcy Court for the Western District of New York indicating TLC Health Network has emerged from Chapter 11 Bankruptcy. [BFA]
5. Submission of an executed Statutory Merger Agreement, acceptable to the Department of Health. [BFA]
6. Submission of a Certificate of Merger for TLC Health Network, which is acceptable to the Department. [CSL]
7. Submission of a Certificate of Merger for Lake Erie Regional Health System of New York, which is acceptable to the Department. [CSL]
8. Submission of a Plan of Merger for Brooks Memorial Hospital, which is acceptable to the Department. [CSL]
9. Submission of a Plan of Merger for TLC Health Network, which is acceptable to the Department. [CSL]
10. Submission of a Plan of Merger for Lake Erie Regional Health System of New York, which is acceptable to the Department. [CSL]
11. Submission of a Certificate of Amendment to the Certificate of Incorporation of Brooks Memorial Hospital, which is acceptable to the Department. [CSL]
12. Submission of a signed statement stating that the merger is compliant with federal and state law, which is acceptable to the Department. [CSL]
13. Submission of evidence of site control, which is acceptable to the Department. [CSL]
14. Submission of an amended Hospital Management Agreement, which is acceptable to the Department. [CSL]
15. Submission of an Attestation for Service Agreements, 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]

Council Action Date

**October 11, 2017**

## Need Analysis

### Background

Brooks Memorial Hospital (BMH) is an article 28 facility located in Dunkirk, NY serving parts of Chautauqua, Cattaraugus, and Erie Counties. TLC Health Network (TLC) includes an article 28 Hospital (Lake Shore Health Care Center), an article 28 Residential Health Care Facility, an article 36 Home Health Agency (LTHHC/CHHA), as well as two primary care site locations and two outpatient Chemical Dependency clinics. This merger is part of a strategic plan to ensure the future of healthcare and availability of services in the area. The plan is expected to redevelop the two hospitals into a sustainable two-campus hospital with Brooks offering all acute care services through a newly constructed 25-bed hospital, and TLC providing emergency, other inpatient specialty services including chemical dependency services, and expanded ambulatory services. This plan will help both systems overcome financial difficulties while expanding their reach to patients of the area and improving care through better collaboration and communication. There are expected reductions in expenses as a result of right sizing staffs to eliminate duplications of services.

A comprehensive EZ-PAR application will be filed with the Office of Mental Health (OMH) as well as an application with the Office of Alcohol and Substance Abuse Services (OASAS) for the establishment of Brooks Memorial Hospital as the owner, operator and provider of TLC.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Program Description

The purpose of this transaction is to strengthen rural healthcare in the communities that Brooks and TLC serve by allowing for a more efficient and effective management of services through reduction of duplication between the two sites. Some staffing reductions (-20.60 FTEs in Year 1 and -40.30 FTEs by Year 3) are expected due to "right sizing" and elimination of duplicative services.

Upon approval of this project, Brooks Memorial Hospital will become the operator of the following entities currently in the TLC Health Network:

<b>TLC Health Network Lake Shore Hospital</b> 845 Routes 5 & 20 Irving, NY 14081 <i>Hospital – PFI 114</i>	<b>Forestville Primary Care Center</b> 10988 Bennett State Road Forestville, NY 14062 <i>Hospital Extension Clinic - PFI 6794</i>
<b>TLC Health Network – Lake Shore Hospital Nursing Facility</b> 845 Routes 5 & 20 Irving, NY 14081 <i>Residential Health Care Facility – PFI 1053</i>	<b>Charles Cannon Clinic</b> 7020 Erie Road Derby, NY 14047 <i>Hospital Extension Clinic – PFI 8531</i>
<b>TLC Health Network - Lake Shore Hospital</b> 845 Routes 5 & 20 Irving, NY 14081 <i>Long Term Home Health Care Program – PFI 3769</i>	<b>TCH Chemical Dependency Clinic</b> 33 North Main Street Cassadaga, NY 14718 <i>Hospital Extension Clinic – PFI 5719</i>
<b>TLC Health Network Home Health Services</b> 45 Routes 5 & 20 Irving, NY 14081 <i>Certified Home Health Agency – PFI 3769</i>	<b>Gowanda Urgent Care and Gowanda Medical Center</b> 34 Commercial Street Gowanda, NY 14070 <i>Hospital Extension Clinic – PFI 9376</i>

## Character and Competence

The proposed Board of Directors of Brooks Memorial Hospital is comprised of the following members:

Christopher Lanski  
Mark A. Burr  
Steven P. Przybyla  
Dana Anderson, M.D.  
Christina Jimerson

Louis DiPalma  
Virginia S. Horvath, Ph.D.  
Gerald J. Bishop, M.D.  
James Wild, M.D.

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

There were no personal disclosures that fell within the ten-year look-back period.

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 that resulted in an enforcement. The review found that any citations were properly corrected with appropriate remedial action.

*TLC Health Network Lake Shore Hospital Nursing Facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-031 issued on September 13, 2010 for surveillance findings of July 17, 2009. Deficiencies were cited under 10 NYCRR 415.12(h)(1) Quality of Care-Accidents; and 415.26 Administration.*

## 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, contingent approval is recommended.**

## Financial Analysis

### Merger Agreement

The applicant has submitted a draft Merger Agreement between TLC Health Network and Brooks Memorial Hospital. The terms of the agreement are summarized below:

Merging Entities:	TLC Health Network and Brooks Memorial Hospital
Surviving Entity:	Brooks Memorial Hospital
Asset Acquired:	All remaining assets after TLC emerges from bankruptcy.
Liabilities Acquired:	All remaining liabilities after TLC emerges from bankruptcy.
Purchase Price:	\$-0-

### Operating Budget

The applicant has submitted their current year (2016) and their first-year operating, in 2017 dollars, as shown below:

<b><u>2016 – Current Year</u></b>	<b><u>Brooks</u></b>	<b><u>TLC</u></b>	<b><u>Combined</u></b>
Operating Revenue	\$41,677,312	\$24,292,505	\$65,969,817
Operating Expenses	<u>46,885,064</u>	<u>29,663,006</u>	<u>76,548,070</u>
Loss from operations	(\$5,207,752)	(\$5,370,501)	(\$10,578,253)
Government Grants/Assistance	\$3,773,908	\$4,455,460	\$8,229,368
All Other Revenue	<u>95,514</u>	<u>2,442,055</u>	<u>2,537,569</u>
Total Net Income (Loss)	(\$1,338,330)	\$1,527,014	\$188,684

<b><u>Merged Entity – Brooks (2017 dollars)</u></b>	<b><u>Current year</u></b>	<b><u>Year One</u></b>
Operating Revenue	\$65,969,817	\$64,636,648
Operating Expenses	<u>76,548,070</u>	<u>71,223,051</u>
Loss from operations	(\$10,578,253)	(\$6,586,403)
Government Grants/Assistance *	\$8,229,368	\$8,351,335
All other Revenue/Expense	<u>2,537,569</u>	<u>134,226</u>
Total Net Income (Loss)	\$188,684	\$1,899,158

\* Year One Government Assistance is estimated.

### Capability and Feasibility

The submitted budgets indicate a net income of \$1,899,158 during the first year after the merger with a slight increase of \$121,967 in government assistance needed to support the transition. Revenues are based on current reimbursement methodologies. Expenses are based on current year operations with deductions in areas where operational efficiencies can be achieved, such as certain salaries and wages, employee benefits, medical and surgical supplies, and purchased services. [The budget assumes that inpatient medical/surgical services will be consolidated at the Brooks campus and that new specialty services including chemical dependency will be operated at the TLC campus while the skilled nursing and acute care services will close]. The budgets are reasonable.

BFA Attachment A is a summary of the 2016 certified financial statements for Brooks Memorial Hospital and TLC Health Network. BFA Attachment B is the internal financial statements of Brooks Memorial Hospital and TLC Health Network as of June 30, 2017. As shown, both entities are currently showing significant losses from operations and government assistance is needed to maintain operations.

Since State Fiscal Year 2014-15, Brooks and TLC have received State assistance (Interim Access Assurance Fund for TLC, and VAPAP funding for both hospitals) in order to maintain operations and

implement their transformation to financially stable entities. BFA Attachment C provides a summary of the State assistance funding provided to both hospitals since 2014.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

- |                  |  |
|------------------|--|
| BFA Attachment A | Financial Summary - 2016 certified financial statements for Brooks Memorial Hospital and TLC Health Network              |
| BFA Attachment B | Financial Summary - Internal financial statements of Brooks Memorial Hospital and TLC Health Network as of June 30, 2017 |
| BFA Attachment C | Summary of State Assistance  |

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 11th day of October 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 merge TLC Health Network (including a hospital, extension clinics, a residential health care facility, a certified home health agency and a long term home health care program) and Lake Erie Regional Health System of New York into Brooks Memorial Hosp., Inc , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172071 E

Brooks Memorial Hospital



APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]
3. Submission of an executed Management Agreement, acceptable to the Department. [HSP]
4. Submission of document from the United States Bankruptcy Court for the Western District of New York indicating TLC Health Network has emerged from Chapter 11 Bankruptcy. [BFA]
5. Submission of an executed Statutory Merger Agreement, acceptable to the Department of Health. [BFA]
6. Submission of a Certificate of Merger for TLC Health Network, which is acceptable to the Department. [CSL]
7. Submission of a Certificate of Merger for Lake Erie Regional Health System of New York, which is acceptable to the Department. [CSL]
8. Submission of a Plan of Merger for Brooks Memorial Hospital, which is acceptable to the Department. [CSL]
9. Submission of a Plan of Merger for TLC Health Network, which is acceptable to the Department. [CSL]
10. Submission of a Plan of Merger for Lake Erie Regional Health System of New York, which is acceptable to the Department. [CSL]
11. Submission of a Certificate of Amendment to the Certificate of Incorporation of Brooks Memorial Hospital, which is acceptable to the Department. [CSL]
12. Submission of a signed statement stating that the merger is compliant with federal and state law, which is acceptable to the Department. [CSL]
13. Submission of evidence of site control, which is acceptable to the Department. [CSL]
14. Submission of an amended Hospital Management Agreement, which is acceptable to the Department. [CSL]
15. Submission of an Attestation for Service Agreements, 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]

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 # 171220-E  
Fifth Avenue Surgery Center

**Program:** Diagnostic and Treatment Center      **County:** New York  
**Purpose:** Establishment      **Acknowledged:** March 27, 2017

**Executive Summary**

**Description**

Fifth Avenue Surgery Center, LLC, a proprietary, multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) located in leased space at 1049 Fifth Avenue, New York (New York County), requests approval to transfer 60% membership interest from nine withdrawing members and three remaining members to one new member, Surgicore 5th Avenue, LLC. The purchase price for the membership interest is \$3,000,000. Upon approval of this application, the FASC will continue to be owned and operated by Fifth Avenue Surgery Center, LLC, and the existing lease, which extends through 2027 per renewal options, will continue unchanged.

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

<u>Current Ownership</u>	
Members	%
Fifth Avenue Surgery Center, LLC	
Charles Raab	10%
Gregg Rock, D.P.M.	31%
Igor Amigud, M.D.	10%
Oliver Zong, D.P.M.	15%
Steven Abramow, D.P.M.	8%
John Mancuso, D.P.M.	8%
Mark Landsman, D.P.M.	4%
Paul Greenberg, D.P.M.	4%
Michael Loshigian, D.P.M.	4%
Rick Delmonte, D.P.M.	4%
Richard Goldstein, D.P.M.	1%
Robert Maccabee, D.P.M.	1%
<b>Total</b>	<b>100%</b>

<u>Proposed Ownership</u>	
Fifth Avenue Surgery Center, LLC	
Members	%
Charles Raab	8%
Gregg Rock, D.P.M.	24%
Igor Amigud, M.D.	8%
Surgicore 5th Avenue, LLC	60%
Feliks Kogan (25%)	
Anthony Degradi (25%)	
Wayne Hatami (25%)	
Leonid Tylman (25%)	
<b>Total</b>	<b>100%</b>

The FASC currently performs podiatric, shoulder, ACL, rotator cuff and arthroscopic surgeries, as well as pain management procedures. The Center has two Class C operating rooms that have been under-utilized in the past few years. Upon the change in ownership, the applicant intends to add four new orthopedic physicians (non-members) to practice at the Center. The proposed new physicians have provided letters of intent to perform arthroscopic surgery procedures, which is expected to significantly increase utilization at the FASC.

OPCHSM Recommendation  
Contingent Approval

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

#### Program Summary

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

#### Financial Summary

There are no project costs associated with this application. The purchase price for the 60% membership interest, payable via equity, is \$3,000,000 to be adjusted to exclude certain liabilities currently totaling approximately \$322,097. A \$300,000 deposit (held in escrow) has been paid by Surgicore, resulting in an approximate balance due at closing of \$2,377,903.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the executed Operating Agreement for Surgicore 5th Avenue LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Second Amended and Restated Operating Agreement of Fifth Avenue Surgery Center, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2017**

## Program Analysis

### Project Proposal

Staffing is anticipated to increase by 4.0 FTEs in the first year and remain at that level through the third year. Other than the proposed changes in membership (and membership percentages), there are no programmatic changes as a result of this request.

### Character and Competence

The following table details the proposed change in ownership:

Member Name	Original	Proposed
Charles J. Raab	10.0%	8.0%
Gregg Rock, D.P.M.	31.0%	24.0%
Igor Amigud, M.D.	10.0%	8.0%
Oliver Zong, D.P.M.	15.0%	-----
Steven Abramow, D.P.M.	8.0%	-----
John Mancuso, D.P.M.	8.0%	-----
Mark Landsman, D.P.M.	4.0%	-----
Paul Greenberg, D.P.M.	4.0%	-----
Michael Loshigian, D.P.M.	4.0%	-----
Rick Delmonte, D.P.M.	4.0%	-----
Richard Goldstein, D.P.M.	1.0%	-----
Robert Maccabee, D.P.M.	1.0%	-----
<b>*Surgicore Fifth Avenue LLC</b>	-----	<b>60.0%</b>
<b>*Anthony DeGradi</b>	<b>(25%)</b>	
<b>*Wayne Hatami</b>	<b>(25%)</b>	
<b>*Feliks Kogan</b>	<b>(25%)</b>	
<b>*Leonid Tylman</b>	<b>(25%)</b>	
TOTAL		100.0%

*\* Members Subject to Character & Competence Review*

The new proposed member, Surgicore Fifth Avenue, LLC is comprised of four individuals who have a variety of experience in the healthcare sector, owning interests in other ambulatory surgical facilities, healthcare management companies and other healthcare operations.

Mr. DeGradi has five years of experience as the owner/administrator of a surgical center located in New Jersey where he has handled responsibilities such as billing, accounting, payroll, and scheduling. Mr. Hatami is a licensed physical therapist who has nearly 20 years of experience treating patients in an out-patient capacity, operating a private physical therapy practice (with 5 sites) and managing the daily operations of his business. Messrs. Kogan and Tylman each have several years of experience owning and operating surgical centers in New Jersey, working with medical staff to improve patient care and ensuring compliance with applicable regulations.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included 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.

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

Recommendation

**From a programmatic perspective, approval is recommended.**

<h2>Financial Analysis</h2>
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Company Interest Purchase Agreement

An executed company interest purchase agreement has been submitted as follows:

Date:	November 22, 2016
Description	Purchase 60% Membership Interest
Seller:	Current Members of Fifth Avenue Surgery Center, LLC
Buyer:	Surgicore 5th Avenue, LLC
Purchase Price:	\$3,000,000
Payment of the Purchase Price:	\$300,000 deposit held in escrow; less excluded liabilities; for an estimated \$2,570,801 balance, due at closing.

The balance due will be paid via equity upon approval by the Public Health and Health Planning Council.

As of March 31, 2017, excluded liabilities consisted of an outstanding Medicaid Liability (\$129,199), outstanding 2016 City of New York property taxes (\$75,744), employee wage deductions due AXA Retirement Fund (\$87,104), and CON related legal fees (\$30,050). The applicant's attorney has provided documentation confirming that as of July 31, 2017, all but the Medicaid liability has been satisfied. The applicant indicated that they have reached out to the Department's Division of Finance and Rate Setting to discuss resolution of the liability due Medicaid.

A \$150,000 Buyer Initial Loan was provided to the Seller solely to fund the FASC's business operations. The loan will be repaid separately after closing and will not be deducted from the membership interest purchase price. No portion of this loan has been repaid to date.

Operating Budget

The applicant has provided an operating budget, in 2017 dollars, for the first year subsequent the change of ownership. The budget is summarized below:

	<u>Current Year</u>	<u>Year One</u>
<u>Revenues</u>		
Commercial FFS	\$4,748,117	\$8,507,229
Medicare FFS	206,685	206,685
Medicaid FFS	210	50,436
WC, Private Pay, No-Fault	264,345	4,440,717
Total Revenues	\$5,219,357	\$13,205,067
<u>Expenses</u>		
Operating	\$4,249,826	\$4,667,641
Interest	73,956	73,956
Depreciation and Rent	650,874	650,874
Total Expenses	\$4,974,656	\$5,392,471
Net Income	\$244,701	\$7,812,596

Total Patient Procedures	806	1,936
Cost per Procedure	\$6,172	\$2,785

Utilization by payor source is as follows:

	<u>Current Year</u>	<u>First Year</u>
Commercial FFS	83.4%	62.2%
Medicare FFS	9.3%	3.9%
Medicaid FFS	0.2%	1.2%
Charity Care	0.0%	0.6%
WC, Private Pay, No-Fault	<u>7.1%</u>	<u>32.1%</u>
	100.0%	100.0%

An increase in utilization, expenses and revenues is expected based on historical performance and the proposed addition of four physicians to the Center. Each of the four new non-member physicians have submitted a letter regarding the number surgical procedures they estimate they will perform annually at the Center, which totals 1,130 additional procedures in the first year.

The table below shows the SPARCS-reported Medicaid for the last three years. It should be noted that facilities have no ability to report Charity Care through SPARCS.

Year	Medicaid
2014	0.1%
2015	0.4%
2016	0.5%

The applicant indicated that the FASC has a small percentage of Medicare, Medicaid, and Charity Care patients due to the existing practicing member surgeons not acquiring many of these patients. Following PHHPC approval of this application, the facility will implement a policy to reflect its commitment to bring in greater numbers of Medicaid and charity care patients.

#### Capability and Feasibility

There are no project costs associated with this application. Surgicore 5th Avenue, LLC will acquire 60% membership interest in Fifth Avenue Surgery Center, LLC for \$3,000,000 to be funded via equity of the members. A deposit of \$300,000 has been paid to date. The balance due at closing will be adjusted to exclude certain liabilities, currently estimated at \$322,097, resulting in an approximate \$2,377,903 balance at closing. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,117,761.

BFA Attachment D is the 2015 certified financial statements of Fifth Avenue Surgery Center, LLC, which shows positive working capital position, members' equity position and net operating income of \$310,669.

BFA Attachment E is the internal financial statements of Fifth Avenue Surgery Center, LLC as of December 31, 2016, which shows negative working capital position, positive members' equity position and net operating loss of \$1,180,740. The negative working capital and the net operating loss was due to loss of patient volume in 2016 relating to the unexpected departure of several of the Center's surgeons. To address this loss of volume, the partners determined to seek new partners for the long range fiscal health of the Center.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

BFA Attachment A	Net Worth Statement of Proposed New Members of Surgicore 5th Avenue, LLC
BFA Attachment B	Pre-and post-membership interest
BFA Attachment C	Post-closing organizational chart
BFA Attachment D	2015 Certified Financial Statements - Fifth Avenue Surgery Center, LLC
BFA Attachment E	2016 Internal Financial Statements - Fifth Avenue Surgery Center, LLC
BFA Attachment F	Pro Forma Balance



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 11th day of October 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 60% ownership interest to one new member from nine (9) withdrawing members and three (3) remaining members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171220 E

Fifth Avenue Surgery Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the executed Operating Agreement for Surgicore 5th Avenue LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Second Amended and Restated Operating Agreement of Fifth Avenue Surgery Center, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 # 171432-E  
Sheepshead Bay Surgery Center

**Program:** Diagnostic and Treatment Center      **County:** Kings  
**Purpose:** Establishment                              **Acknowledged:** June 20, 2017

Executive Summary

**Description**

Sheepshead Bay Surgery Center, Inc. (the Center), an existing Article 28 freestanding ambulatory surgery center, requests approval to transfer 31.4% ownership interest (62.8 shares of the Center's stock) from one existing shareholder, Mark Jofe, M.D., to four existing shareholders. The purchase price per share is \$12,000 for a total purchase price of \$753,600. Three existing shareholders will each purchase 20 shares for \$240,000 apiece, and the fourth shareholder will purchase 2.8 shares for \$33,600.

In accordance with statute, several physicians became less-than-10% shareholders via notice. However, Drs. Chang, Pinhas, Kung and Rosenbaum will each increase their ownership interest to greater than 9.9%, requiring PHHPC approval of the transaction.

Ownership interest in the Center before and after this requested change is as follows:

<u>Member</u>	<u>Current</u>	<u>Proposed</u>
Mark Jofe, M.D.	41.4%	10.0%
David Pinhas, M.D.	9.9%	19.9%
John Kung, M.D.	9.9%	19.9%
Keith Chang, M.D.	9.9%	19.9%
Raphael Rosenbaum, M.D.	9.9%	11.3%
Deborah Silberman, M.D.	9.9%	9.9%
Wilson Ko, M.D.	4.0%	4.0%
William Kestin, M.D.	1.1%	1.1%
Rumei Yuan, M.D.	1.0%	1.0%
Thomas Aiello, M.D.	1.0%	1.0%
Mehryar Sadeghi, M.D.	1.0%	1.0%
Natalie Borodoker, M.D.	1.0%	1.0%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>

The Seller has executed a Membership Redemption Agreement and the Purchasers have each executed a Membership Subscription Agreement for the purchase of the shares. No other shareholders are joining or leaving the Center, and there will be no negative effect on the Center's equity position because of this transaction. There will be no change in services or operation of the Center.

OPCHSM Recommendation  
Approval

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

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

Financial Summary  
There are no project costs associated with this application. The total purchase price for the 31.4% ownership interest (62.8 shares) is \$753,600 funded via the respective shareholder's personal equity. No budget analysis was necessary as this is a transfer of 31.4% ownership among existing shareholders, the shareholders subject to the transaction are remaining in the ownership structure with majority interest, and the Center is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval**

Council Action Date

**October 11, 2017**

# Program Analysis

## Project Proposal

Other than the proposed changes in membership percentages, there are no programmatic changes as a result of this request, however, staffing is anticipated to increase by 1.5 FTEs in the first year and remain at that level through the third year.

The table below details the proposed change in membership interest:

<u>Member Name</u>	<u>Current Membership Interest</u>	<u>Proposed Membership Interest</u>
Mark Jofe, M.D.	41.4%	10.0%
*David Pinhas, M.D.	9.9%	19.9%
*John Kung, M.D.	9.9%	19.9%
*Keith Chang, M.D.	9.9%	19.9%
*Raphael Rosenbaum, M.D.	9.9%	11.3%
Deborah Silberman, M.D.	9.9%	9.9%
Wilson Ko, M.D.	4.0%	4.0%
William Kestin, M.D.	1.1%	1.1%
Rumei Yuan, M.D.	1.0%	1.0%
Thomas Aiello, M.D.	1.0%	1.0%
Mehryar Sadeghi, M.D.	1.0%	1.0%
Natalie Borodoker, M.D.	1.0%	1.0%
<b>Total</b>	<b>100%</b>	<b>100%</b>

**\* Subject to Character and Competence Review**

## Character and Competence

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted (for the four physicians subject to increasing membership interest) 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.

Drs. Chang, Kung and Pinhas each disclosed one open malpractice case.

## Conclusion

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

## Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Membership Redemption Agreement

The applicant has submitted an executed membership redemption agreement, summarized as follows:

Effective Date:	April 1, 2017
Seller:	Mark Jofe, M.D.
Purchaser:	Sheepshead Bay Surgery Center
Acquired Interest:	31.4% Interest, 62.80 shares
Purchase Price:	\$753,600 (\$12,000 per share)

### Membership Subscription Agreements

The applicant has submitted executed membership subscription agreements, which are summarized as follows:

Effective Date:	April 1, 2017
Seller:	Sheepshead Bay Surgery Center
Purchasers:	David Pinhas, M.D., John Kung, M.D. and Keith Chang, M.D (a separate agreement was provided for each purchaser)
Acquired Interest:	10% interest, 20 shares (each)
Purchase Price:	\$240,000 (each – paid)

Effective Date:	April 1, 2017
Seller:	Sheepshead Bay Surgery Center
Purchaser:	Raphael Rosenbaum, M.D.
Acquired Interest:	1.4% interest, 2.8 shares
Purchase Price:	\$33,600 (paid)

The respective shareholder purchase prices have been paid. Final approval of the above transactions is subject to PHHPC approval.

### Capability and Feasibility

The total purchase price for the 31.4% ownership interest (62.8 shares) is \$753,600 funded via the respective shareholder's personal equity (paid). BFA Attachment A is the personal net worth statements of the shareholders acquiring additional ownership interests, which indicates the availability of sufficient funds for the equity contribution.

No budget analysis was necessary as this is a transfer of 31.4% ownership among existing shareholders, the shareholders subject to the transaction are remaining in the ownership structure with majority interest, and the Center is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

BFA Attachment B is the 2016 certified financial statements of Sheepshead Bay Surgery Center. As shown, the facility had a positive working capital position, a positive net asset position, and achieved a net income of \$1,113,561 in 2016.

BFA Attachment C is the internal financial statements of Sheepshead Bay Surgery Center as of May 30, 2017. As shown, the facility had a positive working capital position, a positive net asset position, and achieved a net income of \$648,347 through May 30, 2017.

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

### Recommendation

**From a financial perspective, approval is recommended.**

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## Attachments

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- BFA Attachment A Members net worth statements
- BFA Attachment B 2016 certified financial statements of Sheepshead Bay Surgery Center
- BFA Attachment C May 30, 2017 internal financials of Sheepshead Bay Surgery Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 interest from one (1) existing shareholder to four (4) existing shareholders increasing their shares to over ten percent each , 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:

171432 E

Sheepshead Bay Surgery Center



APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

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



**Project # 171477-B**  
**Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites**

**Program:** Diagnostic and Treatment Center      **County:** Saratoga  
**Purpose:** Establishment and Construction      **Acknowledged:** July 11, 2017

**Executive Summary**

**Description**

Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites, an existing New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 Freestanding Ambulatory Surgery Center (FASC). The FASC will initially specialize in orthopedic surgery and pain management services, but requests multi-specialty certification to provide greater flexibility in the future. The Center will be housed in 12,260 gross square feet of leased space on the ground level of an existing building located at 15 Park Avenue, Clifton Park (Saratoga County). The FASC will include four Class C operating rooms, 18 patient pre-op/recovery beds, and requisite support areas.

The applicant physician members will be practicing physicians at the Center and have provided letters of commitment to performing procedures at the proposed Center. The majority of the procedures are currently performed at area hospitals or hospital extension clinics.

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

**Need Summary**  
The number of projected procedures is 3,162 in Year One and 3,320 in Year Three, with Medicaid at 10.72% and Charity Care at 2.00%.

**Ownership is as follows:**

Proposed Operator Clifton Park ASC, LLC	
Members	%
George Silver, M.D.	7.1429%
Daniel Bowman, M.D.	7.1429%
Matthew Stein, M.D.	7.1429%
Joseph LaRosa, M.D.	7.1429%
Kevin Rosas, M.D.	7.1429%
Thomas Jackson, M.D.	7.1429%
Eric Aronowitz, M.D.	7.1429%
Justin Ferrara, M. D.	7.1429%
Daniil Polishchuk, M.D.	7.1428%
Laura Scordino, M.D.	7.1428%
James Boler, M.D.	7.1428%
Jonathan Gainor, M.D.	7.1428%
William O'Connor, M.D.	7.1428%
Lawrence Fein, M.D.	7.1428%
<b>Total</b>	<b>100.00%</b>

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

**Financial Summary**  
Total project costs of \$5,631,097 will be funded via \$790,917 in members' equity, a seven-year equipment loan for \$1,764,000 at 3.95%, and a ten-year loan for \$3,076,180 at 3.95% interest. Adirondack Trust Company has provided a letter of interest. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$5,876,544	\$6,170,553
Expenses	<u>4,046,360</u>	<u>4,200,630</u>
Gain/(Loss)	\$1,830,184	\$1,969,923

## 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. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]
3. Submission of an executed project loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. 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]
8. 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]
9. 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]
10. Submission of a photocopy of the applicant's amended and executed lease agreement, acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
12. Submission of the applicant's Anti Kickback Statement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 1, 2018 and construction must be completed by December 31, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
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]
8. 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]

Council Action Date

**October 11, 2017**

## Need Analysis

### Analysis

The service area consists of Saratoga County which currently has three freestanding ambulatory surgery centers, all of which are single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in Saratoga County for 2015 and 2016.

ASC Type	Facility Name	Total Patient Visits	
		2015	2016
Single	The New York Eye Surgical Center	2,450	3,401
Single	The Northway Surgery and Pain Center (opened 10/19/15)	N/A	6,360
Single	Saratoga-Schenectady Endoscopy Center, LLC	9,840	10,581
<b>Total Visits</b>		<b>12,290</b>	<b>20,342</b>

Source: SPARCS-2017

For the ambulatory surgery centers in Saratoga County, the total number of patient visits was 12,290 in 2015 and 20,342 in 2016, a 65.5% year-to-year increase.

The population of Saratoga County in 2010 was 219,607 with 95,762 individuals (43.6%) aged 45 and older. This is the primary population group utilizing ambulatory surgery services. Per Cornell Program on Applied Demographics (PAD) projection data, this population group is estimated to grow to 110,089 by 2025 and represent 46.5% of the projected population of 236,894.

The number of projected procedures is 3,162 in Year One and 3,320 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.

	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	339	10.72%	356	10.72%
Medicare FFS	608	19.23%	638	19.22%
Comm FFS	1,802	56.99%	1,893	57.02%
Other (WC & no fault)	350	11.06%	367	11.04%
Charity Care	63	2.00%	66	2.00%
<b>Total</b>	<b>3,162</b>	<b>100.00%</b>	<b>3,320</b>	<b>100.00%</b>

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: CDPHP Medicaid, MVP, Wellcare, Fidelis and UHC. The applicant plans to reach out to the Whitney M. Young Jr. Health Center and the Hudson Headwaters Health Network, both FQHC's, to develop referral relationships in order to serve the under-insured in the community. The center has developed a financial assistance policy with a sliding fee scale to be utilized once the center is operational.

### Conclusion

Approval of this project will provide increased choice for multi-specialty surgery services in Saratoga County.

### Recommendation

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

## Program Analysis

### Project Proposal

<b>Proposed Operator</b>	Clifton Park ASC, LLC
<b>Doing Business As</b>	OrthoNY Surgical Suites
<b>Site Address</b>	15 Park Avenue, Clifton Park, NY 12065 (Saratoga County)
<b>Surgical Specialties</b>	Multi-Specialty
<b>Operating Rooms</b>	4 (Class C)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am - 3:00 pm; Weekend and/or evening surgery will be available, if needed.
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	23.0 FTEs / 23.0 FTEs
<b>Medical Director</b>	Eric R. Aronowitz, M.D.
<b>Emergency, In-Patient, and Backup Support Services Agreement And Distance</b>	Expected to be provided by Saratoga Hospital and Ellis Hospital 17.6 miles/26 min. and 10.6 miles/21 minutes
<b>After-hours access</b>	Patients will call the surgeon's service and either be directed to the surgeon or an on-call surgeon.

### Character and Competence

The proposed members and their ownership interests are detailed in the chart below:

<u>Name</u>	<u>Percentage</u>
Eric R. Aronowitz, M.D., <i>Medical Director</i>	7.1429%
James M. Boler, M.D.	7.1428%
Daniel J. Bowman, M.D.	7.1429%
Lawrence H. Fein, M.D.	7.1428%
Justin M. Ferrara, M.D.	7.1429%
Jonathan P. Gainor, M.D.	7.1428%
Thomas R. Jackson, M.D.	7.1429%
Joseph M. LaRosa, M.D.	7.1429%
William O'Connor, M.D.	7.1428%
Kevin E. Rosas, M.D.	7.1429%
Laura W. Scordino, M.D.	7.1428%
George E. Silver Jr., M.D.	7.1429%
Matthew I. Stein, M.D.	7.1429%
Daniil Polishchuk, M.D.	7.1428%
<b>Total</b>	<b>100.0000%</b>

A full Character and Competence Review was conducted on all proposed member physicians. Dr. Jackson is board-certified in Physical Medicine and Rehabilitation. The remaining physician members are practicing board-certified or board-eligible orthopedic surgeons.

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. Boler disclosed two pending malpractice cases (June 2014 and September 2014) in the early discovery phase for alleged negligent treatment of a patient with a leg fracture and a patient with loose elbow prosthesis, respectively.*

*Dr. Bowman disclosed a conviction in November 2015 for Aggravated Driving While Intoxicated (DWI). Pursuant to the conviction, he was required to install and use an ignition interlock device, pay a monetary fine, complete an impaired driver program, submit to monthly random toxicology screens, his license was revoked (conditional license) for one year and he was sentenced to three years' probation. Dr. Bowman has satisfied all conditions thus far (with an exception to probation which remains ongoing). On November 16, 2016, the Office of Professional Misconduct and Physician Discipline (OPMC) issued a censure and reprimand with a \$1,500 fine for committing professional misconduct (related to the DWI). On April 7, 2017, Dr. Bowman satisfied the terms of the OPMC conditions. In addition to the aforementioned matters, Dr. Bowman also disclosed one pending malpractice case (for which he has not yet been deposed).*

*Dr. Fein disclosed one "compromise settlement" malpractice case in the ten-year look-back period. The case alleged failure to diagnose a synovial sarcoma for a young patient who subsequently died.*

*Dr. O'Connor disclosed one malpractice case that was settled before trial. The case involved an elderly knee replacement patient who had a vascular injury to her operated knee and later elected a below knee amputation.*

*Dr. Rosas disclosed one pending malpractice case. The case alleges negligence, deviation from standard of care, and failure to provide informed consent for surgery that resulted in a partial loss of the patient's left second toe and chronic pain from a fusion of a joint in the left great toe.*

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

When patients do not have a relationship with a primary care provider, the members of the center will encourage, and facilitate where possible, the establishment of one. The center plans to reach out to primary care physicians and physician groups in the service area to inform them of the facility and its capabilities. The Applicant is committed to treating all patients without discrimination. No patient will be excluded based on ability to pay and charity care, reduced compensation, and uncompensated care will be offered. In addition, the Applicant will participate with Medicaid managed care plans and the two local federally qualified health centers (FQHCs) in the service area.

An electronic medical record (EMR) system will be used. The Center would strongly consider participating in an Accountable Care Organization or Medical Home as well as integrating into a Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE).

#### Conclusion

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

#### Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Lease Rental Agreement

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

Date:	August 2, 2017
Premises:	12,260 sq. ft. on ground floor at 15 Park Avenue, Clifton Park, NY 12065
Owner/Landlord:	Northside Partnership, LLC
Lessee/Tenant:	Clifton Park ASC, LLC d/b/a OrthoNY Surgical Suites
Term:	10 years plus (3) 5-year renewal terms
Payment:	\$110,340 (\$9.00 per sq. ft.) with 10% increase in 6 <sup>th</sup> , 11 <sup>th</sup> , 16 <sup>th</sup> & 21 <sup>st</sup> year
Provisions:	Taxes, insurance, utilities, and maintenance

The applicant has provided an affidavit stating the lease is an arms-length agreement. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

### Administrative Service and Billing Agreement

The applicant has submitted an executed administrative services and billing agreement (ASBA), the terms of which are summarized below:

Date:	July 1, 2017
Facility:	Clifton Park ASA, LLC d/b/a OrthoNY Surgical Suites
Contractor:	OrthoNY, LLP
Services Provided:	Administrative: assist with financial management services, monthly reporting of revenue/expenses with budget variance, assist in negotiating payer contracts and credentialing, generate required reports, and provide computer support and human resource management services. Billing: based on facility's provided data code & bill for services, collect claims & resolutions follow-up, track accounts receivables and provide reports.
Term:	3 years – automatic renewal for one (1) year
Fee:	Actual costs incurred by OrthoNY, LLC in providing the services to the Facility.

The applicant members are partners in OrthoNY, LLP. The ASBA provides that Clifton Park ASA, LLC d/b/a OrthoNY Surgical Suites retains ultimate control in all the final decisions associated with the services. The applicant has provided an Attestation for Services Agreements acknowledging their understanding of the reserve powers of the operator that cannot be delegated per statutory and regulatory requirements.

### Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment is estimated at \$5,631,097, broken down as follows:

Renovation & Demolition	\$2,852,888
Design Contingency	285,505
Construction Contingency	152,113
Architect/Engineering Fees	247,800
Other Fees	100,000
Movable Equipment	1,900,000
Telecommunications	60,000
CON Application Fee	2,000
CON Processing Fee	<u>30,791</u>
Total Project Cost	\$5,631,097



Project costs are based on a construction start date of March 1, 2018, with a ten-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (members)	\$790,917
Equipment loan (3.95% interest, 7-year term)	1,764,000
Bank Loan (3.95% interest, 10-year term)	<u>3,076,180</u>
Total	<u>\$5,631,097</u>

Adirondack Trust Company has provided a letter of interest.

BFA Attachment A is the members' net worth summaries, which shows sufficient resources to meet the equity requirement.

### Operating Budget

The applicant has submitted the first and third year projected operating budgets, in 2017 dollars, as summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid - MC	\$1,562	\$529,518	\$1,562	\$556,072
Medicare - FFS	\$1,758	\$1,069,136	\$1,758	\$1,121,846
Commercial - FFS	\$1,975	\$3,558,950	\$1,975	\$3,738,675
Workers Comp.	\$2,054	<u>\$718,940</u>	\$2,060	<u>\$753,960</u>
Total Revenues		\$5,876,544		\$6,170,553
 <u>Expenses</u>				
Operating	\$1,020.81	\$3,227,800	\$1,033.64	\$3,431,686
Capital	<u>\$258.87</u>	<u>\$818,560</u>	<u>\$231.61</u>	<u>\$768,944</u>
Total Expenses	\$1,279.68	\$4,046,360	\$1,265.25	\$4,200,630
Net Income (Loss)		<u>\$1,830,184</u>		<u>\$1,969,923</u>
Procedures		3,162		3,320
Cost Per Visit		\$1,279.68		\$1,265.25

Utilization by payor source for years one and three are summarized below:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid - MC	339	10.72%	356	10.72%
Medicare - FFS	608	19.23%	638	19.22%
Commercial - FFS	1,802	56.99%	1,893	57.02%
Workers Comp.	350	11.06%	367	11.04%
Charity	<u>63</u>	<u>2.00%</u>	<u>66</u>	<u>2.00%</u>
Total	3,162	100%	3,320	100%

The following is noted with respect to the submitted FASC budget:

- The Ambulatory Patient Group reimbursement rates reflect current and projected Federal and State government rates, with commercial and private payors reflecting adjustments based on experience in the region.
- Expense assumptions are based upon a five-day work week, along with the experience of the proposed members.
- Utilization assumptions are supported by letters from fourteen physicians who are board-certified in their respective fields. The proposed operator is committed to providing 2% to charity care patients and 10.72% to Medicaid patients. Utilization by payor is based on the existing payor mix experienced by the participating surgeons.
- Breakeven is approximately 69% in Year One.

The applicant intends to adopt a Financial Assistance Program for the FASC that includes a sliding fee schedule. They will inform patients of the availability of financial aid via their website and through information packets made available in their medical practice, and intend to do outreach to FQHCs located in their service area. They note that the Medical Practice and the members of the FASC's medical staff currently participate in the following Medicaid managed care plans: CDPHP, MVP, Wellcare, Fidelis and UHC. The Medical Practice will be a source of cases for the FASC.

#### Capability and Feasibility

Total project costs of \$5,631,097 will be funded via \$790,917 in members' equity, a seven-year equipment loan for \$1,764,000 and a loan for \$3,076,180 at stated terms. Adirondack Trust Company has provided a letter of interest.

The working capital requirement is estimated at \$700,105 based on two months of third year expenses. Funding will be as follows: \$375,105 from the members' equity with the remaining \$325,000 satisfied through a five-year loan at 3.95% interest. Adirondack Trust Company has provided a letter of interest. Review of BFA Attachment A reveals sufficient resources to meet all the equity requirements. BFA Attachment B is Clifton Park ASC, LLC pro forma balance sheet that shows operations will start with \$1,167,402 in equity.

Clifton Park ASC, LLC projects an operating surplus of \$1,830,184 and \$1,969,923 in the first and third years of operation, respectively. The budget appears reasonable.

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

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Supplemental Information

#### Surrounding Hospital Responses

Below are summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

#### **Ellis Hospital - No Response**

1101 Nott Street  
Schenectady, New York 12308

#### **St. Mary's Hospital - No Response**

1300 Massachusetts Avenue  
Troy, New York 12180

#### **Samaritan Hospital - No Response**

2215 Burdett Avenue  
Troy, New York 12180

#### **Saratoga Hospital – See below**

211 Church Street  
Saratoga Springs, New York 12866

Saratoga Hospital			
Current OR Use (% of capacity)	Surgery Cases (Main Site and Off-site Combined)	Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
Main site: 73% Off-site: 61%	Ambulatory: 66% Inpatient: 34%	2,781	Yes

Saratoga Hospital indicated neither support nor opposition to this project. In 2015, operating expenses totaled \$261.9 million and revenue was \$274.7, for a gain of 12.8 million. In 2016, Saratoga had operating expenses of \$283.5 million on revenue of \$297.7 million, for a gain of \$14.2 million. In its fiscal year 2015, Saratoga incurred bad debt of \$737,000 and provided charity care in the amount of \$2,109,000. In fiscal year 2016, the hospital incurred \$590,000 in bad debt and provided \$1,972,000 in charity care.

Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that patients of the proposed facility are patients of member physicians who would otherwise receive surgical services in area hospitals or other ambulatory surgery centers. The new center will be a convenient and state-of-the-art facility which will not only enhance the patient experience, but also result in a high level of physician satisfaction due to better accommodation of schedule, equipment selection and staffing preferences.

**Staff Recruitment and Retention:** Staff will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. The center plans to offer competitive salary and benefits and will provide a positive work environment and flexible hours.

**Office-Based Cases:** The applicant states that none of the projected procedures are currently performed in an office-based setting.

DOH Comment

The comments from the responding hospital do not describe a specific adverse impact of the proposed ASC. As such, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

## Attachments

BHFP Attachment Map  
 BFA Attachment A Clifton Park ASC, LLC members net worth summary  
 BFA Attachment B Pro Forma Balance Sheet of Clifton Park 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 11th day of October 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 multi-specialty ambulatory surgery center to be located at 15 Park Avenue, Clifton Park, 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:

171477 B

FACILITY/APPLICANT:

Clifton Park ASC, LLC  
d/b/a OrthoNY Surgical Suites

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. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. [AER]
3. Submission of an executed project loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. 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]
8. 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]
9. 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]
10. Submission of a photocopy of the applicant's amended and executed lease agreement, acceptable to the Department. [CSL]
  11. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
  12. Submission of the applicant's Anti Kickback Statement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 1, 2018 and construction must be completed by December 31, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
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]
8. 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]

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 # 172125-E**  
**Utica Operations Associates LLC d/b/a Utica Center for  
Rehabilitation and Nursing**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Oneida  
**Acknowledged:** August 29, 2017

**Executive Summary**

**Description**

Utica Operations Associates LLC d/b/a Utica Center for Rehabilitation and Nursing, a New York limited liability company, is requesting to be established as the new operator of Focus Rehabilitation and Nursing Center at Utica (f/k/a Loretto-Utica Nursing Residential Health Care Facility), a 120-bed, Article 28 residential health care facility (RHCF) located at 1445 Kemble Street, Utica (Oneida County). The facility also operates a 30-slot adult day health care program (ADHCP) on site. There will be no change in beds or services provided.

On September 20, 2011, Joseph Zupnik, as a member of UCRN, LLC, entered into a receivership agreement with Loretto-Utica Nursing Residential Health Care Facility and the New York State Department of Health to operate the RHCF. The receivership became effective November 1, 2011. Concurrent with the receivership agreement, the nursing home owner and UCRN LLC entered into an Asset Purchase Agreement (APA) for the sale and acquisition of the operating interest of facility. The transaction for the sale and acquisition of the operating interest was never completed.

In June 2017, Kenneth Rozenberg submitted an application seeking to be established as the substitute receiver of the facility. The documentation submitted in support of the receivership change was reviewed by Department staff and is currently pending final approval by the Division of Legal Affairs. On June 30, 2017, in contemplation of the change in

receiver and this related change of ownership application, the parties to the APA and Utica Operations Associates LLC entered into an Assignment and Amendment Agreement to the APA. The purchase price for the operations is \$10 with the assumption of certain liabilities. Upon approval of this CON application, the members of Utica Operations Associates LLC will be Utica KR Holding LLC and Kenneth Rozenberg.

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

<u>Current Operator</u>	
Focus Rehabilitation and Nursing Center at Utica	
UCRN, LLC as receiver	

<u>Proposed Operator</u>	
Utica Operations Associates LLC	
<u>Members</u>	<u>%</u>
Kenneth Rozenberg	1.0%
Utica KR Holding LLC	99.0%
Kenneth Rozenberg (95%)	
Beth Rozenberg (5.0%)	

There will be no change in ownership of the RHCF's real property as a result of this application. Kemble Street Realty LLC, as owner/landlord, and Utica Operations Associates LLC, as tenant, have entered into a lease agreement for site control of the facility. There is a relationship between the members of Kemble Street Realty, LLC and Utica Operations Associates LLC in that the members of each company have previous business relationships

involving real estate transactions of nursing homes. Kemble Street Realty is owned by Daryl Hagler.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Focus Rehabilitation and Nursing Center at Utica's occupancy was 97.2% in 2013, 96.1% in 2014 and 94.9% in 2015. Overall occupancy for 2016 was 97.5%, and occupancy, as of June 28, 2017, was 96.7%.

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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care is a related party with Ken Rozenberg as CEO and holding a 50% ownership interest.

Financial Summary

There are no project costs associated with this application. The purchase price for the assets is \$10 with the assumption by Utica Operations Associates LLC of certain liabilities relating to Office of the Medicaid Inspector General audits prior to closing, estimated at \$877,973 as of August 29, 2017. The projected budget is as follows:

Revenues	\$10,140,643
Expenses	<u>\$9,682,824</u>
Net Income	\$457,819



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of the executed consulting services agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of the Consulting and Administrative Services Agreement, acceptable to the Department. [LTC]
4. Submission of a photocopy of a fully executed Consulting Services Agreement between Utica Operations Associates LLC and Centers for Care LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended Articles of Organization of Utica KR Holding LLC, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended Operating Agreement of Utica KR Holding LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an Assignment and Amendment Agreement between UCRN, LLC, Utica Operations Associates LLC, Loretto-Utica Residential Health Care Facility, Loretto-Utica Adult Residence, UCSSL, LLC, and Utica AH Operations Associates LLC, which is acceptable to the Department. [CSL]
8. Submission of an assumed name, acceptable to the Department, that is not similar with other area health care facilities. [LTC]

**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. 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]

Council Action Date

**October 11, 2017**

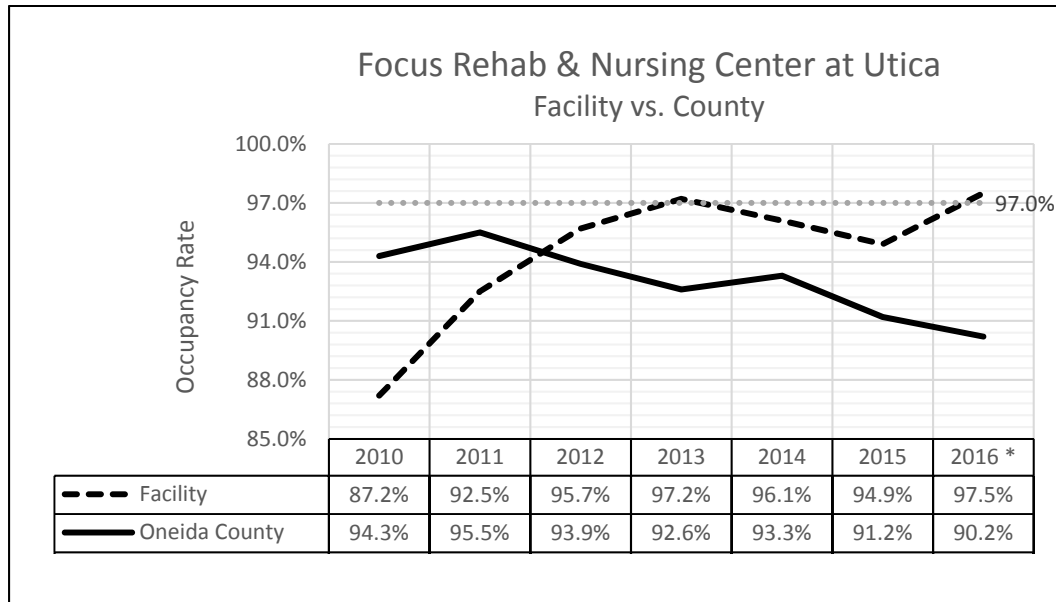
# Need Analysis

## Background and Analysis

The current need methodology shows a surplus of 362 beds in Oneida County.

### RHCF Need – Oneida County

<b>2016 Projected Need</b>	2,276
<b>Current Beds</b>	2,638
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	2,638
<b>Need Surplus</b>	362



\* unaudited data; based upon facility reporting

Current occupancy, as of June 28, 2017, was 96.7%. The overall occupancy for Oneida County was 91.2% for 2015. Focus Rehabilitation and Nursing Center at Utica's occupancy was 97.2% in 2013, 96.1% in 2014, and 94.9% in 2015. Over the past five years, the facility has a history of maintaining high RHCF occupancy at or near the Department's planning optimum, which is expected to continue going forward.

### 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.

Focus Rehabilitation and Nursing Center at Utica's Medicaid admissions of 73.1% in 2014 and 68.2% in 2015 exceeded Oneida County's 75% threshold rates in 2014 and 2015 of 21.8% and 18.6%, respectively.

**Conclusion**

Approval of this application will maintain a resource to meet the needs of residents of Oneida County.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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**Facility Information**

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Focus Rehabilitation and Nursing Center at Utica	Utica Center for Rehabilitation and Nursing
Address	1445 Kemble Street Utica NY 13501	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Voluntary	Same
Operator	URNC, LLC as Receiver	Utica AH Operations Associates, LLC  Kenneth Rozenberg                   1% Utica KR Holding LLC               99% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

**Character and Competence - Background**

**Facilities Reviewed**

Nursing Homes

Beth Abraham Center for Rehabilitation and Nursing	03/2017 to present
Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	09/2007 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Buffalo Center for Rehabilitation and Nursing	12/2015 to present
Bushwick Center for Rehabilitation and Health Care	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Far Rockaway Center for Rehabilitation and Nursing	04/2017 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare 2	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Martine Center for Rehabilitation and Nursing	03/2017 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango	07/2008 to 07/2016
The Grand Rehabilitation and Nursing at Pawling	08/2004 to 03/2016

The Grand Rehabilitation and Nursing at Queens	10/2004 to 03/2016
The Grand Rehabilitation and Nursing at Rome	07/2008 to 08/2016
Triboro Center for Rehabilitation and Nursing	09/2015 to present
University Nursing Home	09/2017 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	01/2013 to present
Williamsbridge Manor Nursing Home	09/2007 to present
<u>Rhode Island Nursing Homes</u>	
Bannister Center for Rehab	02/2016 to present
Kingston Center for Rehab	10/2016 to present
Park View Center for Rehab	05/2016 to present
<u>Dialysis Centers</u>	
Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present
<u>Adult Homes</u>	
Argyle Center for Independent Living	02/2014 to present
<u>Certified Home Health Agencies</u>	
Centers Home Health Revival-Bronx	07/2008 to present
Centers Home Health Revival-Buffalo	09/2016 to present
<u>Licensed Home Care Services Agency</u>	
Amazing Home Care (LHCSA)	05/2006 to present
<u>Ambulance Company</u>	
Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
<u>Managed Long Term Care Company</u>	
Centers Plan for Health Living (MLTC)	01/2013 to present

### **Individual Background Review**

**Kenneth Rozenberg** is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He is employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998, and the CEO of Centers Health Care since 2005. Mr. Rozenberg discloses the following health facility interests:

Beth Abraham Center for Rehabilitation and Nursing (95%)	03/2017 to present
Boro Park Center for Rehabilitation and Healthcare (98%)	05/2011 to present
Bronx Center for Rehabilitation and Health Care (95%)	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care(95%)	05/2007 to present
Buffalo Center for Rehabilitation and Nursing (90%)	12/2015 to present
Bushwick Center for Rehabilitation and Health Care (98%)	05/2011 to present
Corning Center for Rehabilitation (58%)	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare (30%)	08/2004 to present
Essex Center for Rehabilitation and Health Care (90%)	03/2014 to present
Far Rockaway Center for Rehabilitation and Nursing (98.98%)	04/2017 to present
Fulton Center for Rehabilitation and Healthcare (81%)	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare (85.5%)	04/2013 to present
Hope Center for HIV and Nursing Care (95%)	04/2015 to present
Indian River Rehabilitation and Nursing Center (9%)	12/2014 to present
Martine Center for Rehabilitation and Nursing (95%)	03/2017 to present
Northwoods Rehabilitation and Nursing Center at Moravia (10%)	11/2014 to 03/2016
Richmond Center for Rehabilitation and Specialty Healthcare (95%)	04/2012 to present
Steuben Center for Rehabilitation and Healthcare (92%)	07/2014 to present

The Grand Rehabilitation and Nursing at Chittenango	05/2011 to 07/2016
The Grand Rehabilitation and Nursing at Pawling	08/2004 to 03/2016
The Grand Rehabilitation and Nursing at Queens	10/2004 to 03/2016
The Grand Rehabilitation and Nursing at Rome	05/2011 to 03/2017
Triboro Center for Rehabilitation and Nursing (98%)	09/2015 to present
University Nursing Home (95%)	08/2001 to present
Washington Center for Rehabilitation and Healthcare (90%)	02/2014 to present
Waterfront Center for Rehabilitation (81%)	12/2012 to present
Williamsbridge Manor Nursing Home (95%)	11/1996 to present
Bannister Center for Rehab (RI) (5%)	02/2016 to present
Holliswood Center for Rehabilitation (RECeivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (REC)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (REC)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (REC)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (REC)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (REC)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (REC)	08/2013 to 09/2015
Kingston Center for Rehab [RI] (5%)	10/2016 to present
Park View Center for Rehab [RI] (5%)	05/2016 to present
Bronx Center for Renal Dialysis (70%)	1/2011 to present
Argyle Center for Independent Living (60%)	02/2014 to present
Centers Plan for Health Living (60%)	01/2013 to present
Centers Home Health Revival-Bronx (100%)	07/2008 to present
Centers Home Health Revival-Buffalo	09/2016 to present
Amazing Home Care (33%)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (40%]	06/2005 to present
Nanuet Center for Rehabilitation and Nursing	Pending
Haverstraw Center for Rehabilitation and Nursing	Pending
Monsey Center for Rehabilitation and Nursing	Pending

**Beth Rozenberg** retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Beth Abraham Center for Rehabilitation and Nursing (95%)	03/2017 to present
Boro Park Center for Rehabilitation and Healthcare (98%)	04/2016 to present
Bronx Center for Rehabilitation and Health Care (5%)	09/2013 to present
Hope Center for HIV and Nursing Care (5%)	04/2015 to present
Martine Center for Rehabilitation and Nursing (5%)	03/2017 to present
Northwoods Rehabilitation and Nursing Center at Moravia (9%)	03/2016 to present
University Nursing Home (5%)	11/2002 to present
Williamsbridge Manor (5%)	12/2004 to present
Banister Center for Rehab (RI) (5%)	02/2016 to present
Kingston Center for Rehab (5%)	10/2016 to present
Park View Center for Rehab (5%)	05/2016 to present
Nanuet Center for Rehabilitation and Nursing	Pending
Haverstraw Center for Rehabilitation and Nursing	Pending
Monsey Center for Rehabilitation and Nursing	Pending

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
- A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

*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 of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2013, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
- A federal CMP of \$975 was assessed for the June 11, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.*

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12 and 415.12(b)(2)(iii) Quality of Care: Accidents.
- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 9, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(2) Resident Assessment.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.*

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
- A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

*An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.*

A review of the operations of The Grand Rehabilitation and Nursing at Rome for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
- A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-046 issued August 16, 2017 for surveillance findings on May 11, 2017. 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. The most recent enforcement action of August 16, 2017 resulted from a delay in treatment with the Ophthalmologist for a resident following cataract surgery, which resulted in loss of vision. The November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.*

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements. Information provided by the Bureau of Emergency Services indicates there have been issues involving motor vehicle accidents and vehicle maintenance.

Reviews of all other affiliated facilities reveal no enforcements for the periods identified above.



Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Quintile
Beth Abraham Center for Rehabilitation and Nursing	****	****	*****	2
Boro Park Center for Nursing and Rehab Center	*****	*****	*****	4
Bronx Center for Rehab Health	***	**	*****	3
Brooklyn Center for Rehab and Residential Health Care	***	****	***	3
Buffalo Center for Rehabilitation and Nursing	**	*	*****	N/A
Bushwick Center for Rehab and Health Care	****	***	*****	3
Corning Center for Rehabilitation and Healthcare	*	*	***	4
Triboro Center for Rehabilitation and Nursing	***	**	*****	5
The Grand Rehabilitation & Nursing at Pawling	****	****	****	4
Essex Center for Rehabilitation and Healthcare	*	*	***	4
Far Rockaway Center for Rehabilitation and Nursing	*	*	****	5
Fulton Center for Rehabilitation and Healthcare	***	**	****	4
Holliswood Center for Rehabilitation & Healthcare	***	***	****	5
Hope Center for H I V and Nursing Care	*****	****	*****	N/A
Indian River Rehab and Nursing Center	*	**	***	N/A
Martine Center for Rehabilitation and Nursing	*****	*****	*****	N/A
Northwoods Rehab and E C F at Moravia	**	*	*****	5
Richmond Center for Rehab and Specialty H C	***	**	***	5
Steuben Center for Rehabilitation and Healthcare	***	***	**	5
The Grand Rehabilitation & Nursing at Chittenango	**	**	***	3
The Grand Rehabilitation & Nursing at Queens	*****	****	*****	4
The Grand Rehabilitation & Nursing at Rome	**	*	*****	3
University Nursing Home	*****	*****	*****	1
Washington Center for Rehabilitation & Healthcare	*	*	**	5
Waterfront Center for Rehabilitation & Healthcare	**	*	*****	5
Williamsbridge Manor N H	*****	*****	*****	2

**RI**

Bannister Center for Rehabilitation and Health Care	*	*	***	
Kingston Center for Rehabilitation and Health Care	**	*	**	
Park View Center for Rehabilitation and Health Care	****	**	*****	

*Indian River recently graduated from Special Focus, therefore there is no current Quintile rating. The Quintile Report does not include a listing for Buffalo Center for Rehabilitation and Nursing Hope Center for HIV and Nursing Care, Martine Center for Rehabilitation and Nursing.*

## Project Review

Kenneth Rozenberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers. Centers utilizes a regional office type approach with central corporate and local resources to provide timely services and regionally knowledgeable clinical staff to their clients.

## Conclusion

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

## Recommendation

**From a programmatic perspective, contingent approval is recommended.**

# Financial Analysis

## Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interest. The agreement will become effectuated upon Public Health and Health Planning Council approval of this CON. The terms are summarized below:

Date:	September 20, 2011
Seller:	Loretto-Utica Residential Health Care Facility, Inc.
Buyer:	UCRN, LLC
Asset Acquired:	Transfer, assign, convey all title and interest in the purchased assets used exclusively in the business including: real property leases; furniture and equipment, inventory, all other tangible personal property; intellectual property license; assigned contracts; documents relating to services provided; permits; Medicare and Medicaid provider numbers; goodwill and other intangible assets; menus, policy/procedures manuals; all financial and other books and records; telephone/telefax numbers; security deposits and prepayments; accounts receivables generated on and after the Closing Date, and all cash maintained by the Purchaser, subject to terms of the receivership agreement
Excluded Assets:	Cash, cash equivalents, bank deposits and all pre-closing accounts receivable, any refunds prior to the closing date, personnel files of employees not hired by the purchaser, documents not permitted by law to be transferred, any right to receive or expectancy of seller in any charitable gift, grant bequest or legacy. All other assets and properties of seller that are subject to the real estate contract.
Assumption of Liabilities:	At closing, the buyer shall assume all of seller's unpaid obligations to the State of NY, as specified in the RHCF Receivership Agreement, and unpaid obligations at closing that the Buyer obligated to pay under Receivership Agreement.
Purchase Price:	Assumption of Liabilities estimated at \$2,903,367 as of December 31, 2015, (estimated pre-closing amount to be reconciled at the date of Closing).
Payment of Purchase Price:	Liabilities assumed at Closing

The APA includes the 120-bed RHCf and on-site, 30-slot ADHCP, plus the 110-bed Adult Residence (AR) operated by Loretto-Utica Adult Residence, a related entity to the RHCf licensed operator, which is also located at 1445 Kemble Street, Utica, New York. The AR, Focus Senior Living at Utica, is certified for 87 Assisted Living Program beds. A corresponding application for the change in ownership of the AR is concurrently under review by the Department's Adult Care Facility Division (Project # 2712). The proposed new operator of the AR is Utica Operations Associates LLC.

#### Assignment and Amendment Agreement

An executed Assignment and Amendment Agreement has been submitted for the operations related to Focus Rehabilitation and Nursing Center at Utica, summarized as follows:

Date:	June 30, 2017
Assignor:	UCRN, LLC
Assignee:	Utica Operations Associates LLC
Rights assigned:	All rights assigned under the Asset Purchase Agreement for the operations have been modified as follows: cash as it exists at time of closing shall be included in assets to be transferred to assignee, no obligation to assume any collective bargaining agreements nor any liability in connection therewith. The only liability the assignee is obligated to assume at closing is the outstanding balance in connection with Medicaid audits #06-1062 (\$769,024.56, principal has been paid, this balance is the interest owed) and #09-7071 (\$108,948, original audit, does not include interest.
Purchase Price:	\$10 at time of closing.

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 August 29, 2017, the facility had outstanding Medicaid liabilities relating to OMIG audits of \$877,973.

#### Consulting Services Agreement

Utica Operations Associates LLC d/b/a Utica Center for Rehabilitation and Nursing will enter into a Consulting Services Agreement with Centers for Care LLC d/b/a Centers Health Care. The consultant will provide certain professional business and administrative services relating to the operation of the RHCf. The applicant has submitted a draft agreement, which is summarized below:

Facility:	Focus Rehabilitation and Nursing Center at Utica
Contractor:	Centers for Care LLC d/b/a Centers Health Care (CHC)
Administrative Term:	This agreement shall continue until the closing date in which ownership and operation of the facility is transferred to the approved third party.
Compensation:	Actual costs incurred by CHC in providing services to the established operator and is apportioned by facility's bed size.
Contractor's Duties:	Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Insurance, Operating Licenses and Regulatory matters and Billing and Collection services.

While Centers for Care LLC d/b/a Centers Health Care will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

## Lease Agreement

An executed lease agreement has been submitted by the applicant related to the lease of the RHCF's real property. The terms are summarized below:

Date:	July 31, 2017
Premises:	1445, Kemble Street, Utica, NY 13501 (Oneida County)
Landlord:	Kemble Street Realty, LLC
Lessee:	Utica Operations Associates LLC
Term:	10 Years
Rental:	\$450,000 per year.
Provisions:	Triple Net. Tenant is responsible for maintenance, utilities, insurance and real estate taxes.

The applicant has provided two letters from area brokers attesting to the reasonableness of the rent.

## 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 (2018)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>RHCF Revenue</u>				
Commercial-FFS	\$263.07	\$1,239,348	\$317.50	\$1,497,648
Medicare-FFS	\$426.48	931,440	\$374.00	817,190
Medicare-Managed Care	\$299.46	376,720	\$384.00	483,072
Medicaid-FFS	\$191.62	6,347,164	\$191.57	6,351,312
Medicaid-Managed Care	\$186.14	127,875	\$286.00	196,482
Private Pay	\$405.44	<u>373,817</u>	\$345.00	<u>318,435</u>
Total RHCF Revenue		\$9,396,364		\$9,664,139
<u>ADHCP Revenue</u>				
Medicaid Fee-for-Service	\$94.62	<u>490,797</u>	\$75.42	<u>476,504</u>
Total ADHCP Revenue		\$490,797		\$476,504
Total Revenues		\$9,887,161		\$10,140,643
<u>RHCF Expenses</u>				
Operating	\$193.10	\$8,281,030	\$199.73	\$8,573,136
Capital	<u>\$19.62</u>	<u>\$841,471</u>	<u>\$19.63</u>	<u>\$842,609</u>
Total RHCF Expenses	\$212.72	\$9,122,501	\$219.36	\$9,415,745
ADHCP Expenses (operating)	\$44.07	<u>\$228,587</u>	\$42.27	<u>\$267,079</u>
Total Expenses		\$9,351,088		\$9,682,824
Net Income		<u>\$536,073</u>		<u>\$457,819</u>
Utilization (Patient Days)		42,885		42,924
Visits (ADHCP)		5,187		6,318
Occupancy (Inpatient)		97.64%		98.0%

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

- The current year reflects the facility's actual 2016 revenues, expenses and utilization experience.
- Revenue assumptions for Year One are based on the facility's current 2017 Medicaid Regional Pricing rate. Medicare and Private Pay revenues were determined based on facility's 2016 payment rates without any adjustments.
- The projected utilization for the facility is 98.0% for the first year. It is noted that utilization for the past three years has averaged 96.2% and current occupancy was 97.16% as of June 30, 2017

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

	<u>Current Year and Year One</u>
Commercial-FFS	10.99%
Medicare-FFS	5.09%
Medicare-Managed Care	2.93%
Medicaid-FFS	77.24%
Medicaid-Managed Care	1.60%
Private Pay	<u>2.15%</u>
Total	100.0%

- Breakeven utilization is projected at 95.48% or 41,820 patient days for the first year.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the assets is \$10 with the assumption by Utica Operations Associates LLC of certain liabilities relating to the OMIG audits prior to closing, estimated at \$877,973 as of August 29, 2017

The working capital requirement is estimated at \$1,613,804 based on two months of Year One expenses and will be met with \$829,073 proposed members' equity and the remaining \$784,731 with a five-year loan at 5%. BFA Attachment A, proposed members' net worth, reveals sufficient resources exist for stated levels of equity. Proposed member, Kenneth Rozenberg, has provided an affidavit attesting that he will contribute resources disproportionate to his share. Greystone has provided a letter of interest for the working capital loan.

The submitted budget projects net profit of \$457,819 in Year One after the change in ownership. As of June 30, 2017, utilization was at 97.16%. BFA Attachment F is the budget sensitivity analysis based on current utilization of the facility as of June 30, 2017, which shows the budgeted revenues would increase by \$425,479 resulting in a net income in year one of \$883,829. BFA Attachment B is Utica Operations Associates LLC's Pro Forma Balance Sheet, which shows the entity will start with \$6,943,147 in net members' equity. Equity includes \$2,879,458 in goodwill, which is not a liquid resource nor is it recognized for Medicaid Reimbursement. Excluding goodwill, the total net equity is a positive \$4,063,689. 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 Financial Summary of Focus Rehabilitation and Nursing Center at Utica. As shown, the RHCF had a negative working capital position, average positive net assets, and positive income of \$541,346 for the 2016 period and a net operating loss of \$163,101 as of June 30, 2017. The June 30, 2017 loss is due to a decrease in Medicare census and slightly higher payables. Focus Rehabilitation and Nursing Center at Utica expects to correct these factors by year end.

BFA Attachments D, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown.

Based on the preceding and subject to 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 of Proposed Members, Utica Operations Associates LLC
BFA Attachment B	Pro Forma Balance Sheet, Utica Operations Associates LLC
BFA Attachment C	Financial Summary of Focus Rehabilitation & Nursing Center at Utica
BFA Attachment D	Financial Summary of Proposed Members' Affiliated RHCs
BFA Attachment E	Organizational Chart
BFA Attachment F	Budget Sensitivity Analysis

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 Utica Operations Associates LLC d/b/a Utica Center for Rehabilitation and Nursing as the new operator of Focus Rehabilitation and Nursing Center at Utica (f/k/a Loretto-Utica Nursing Residential Health Care Facility), and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172125 E

Utica Operations Associates LLC  
d/b/a Utica Center for Rehabilitation and  
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of the executed consulting services agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of the Consulting and Administrative Services Agreement, acceptable to the Department. [LTC]
4. Submission of a photocopy of a fully executed Consulting Services Agreement between Utica Operations Associates LLC and Centers for Care LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended Articles of Organization of Utica KR Holding LLC, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended Operating Agreement of Utica KR Holding LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an Assignment and Amendment Agreement between UCRN, LLC, Utica Operations Associates LLC, Loretto-Utica Residential Health Care Facility, Loretto-Utica Adult Residence, UCSL, LLC, and Utica AH Operations Associates LLC, which is acceptable to the Department. [CSL]
8. Submission of an assumed name, acceptable to the Department, that is not similar with other area health care facilities. [LTC]

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. 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]

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. Zahnleiter  
General Counsel

**Date:** July 25, 2017

**Subject:** Dissolution: Mercy Health-Care Center, Inc.

---

Mercy Health-Care Center, Inc. was a licensed Article 28 nursing home facility until 2007 when the corporation surrendered its license to the Department in connection with the sale of the facility to Adirondack Medical Center.

Since the corporation has been inactive since that time, the boards of Mercy Health-Care Center, Inc., and its sole corporate member, Mercy Uihlein Health Corporation, have elected to dissolve the corporation.

Pursuant to Article 10 of the New York State Not-for-Profit Corporation Law, PHHPC approval of the dissolution must be received. 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.

Attachments

# Buchanan Ingersoll & Rooney PC

Jan O. Wenzel  
412 562 1836  
jan.wenzel@bjpc.com

One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410  
T 412 562 8800  
F 412 562 1041  
www.bjpc.com

June 28, 2017

*Via United Parcel Service*

Colleen M. Leonard  
Executive Secretary, Public Health and Health Planning Council  
NYS Department of Health  
Corning Tower, Room 1805  
Empire State Plaza  
Albany, New York 12237

Re: Request for Approval of Voluntary Dissolution of Mercy Health-Care Center, Inc.

Dear Ms. Leonard:

This firm represents Mercy Health-Care Center, Inc. ("MHCC"), a New York not-for-profit corporation currently seeking Public Health and Health Planning Council ("PHHPC") approval of its voluntary dissolution.

By way of background, MHCC was formerly licensed as an Article 28 Nursing Home. However, MHCC voluntarily surrendered its license to the New York Department of Health (the "Department") on or about January 1, 2007, in connection with a transfer of all of its assets to Adirondack Medical Center. Although we have not located an executed version of the letter to the Department, we have attached a copy of the draft letter hereto at Tab A. In addition, a copy of the PHHPC letter approving the asset transfer is attached hereto at Tab B.

Despite maintaining its corporate existence, MHCC has been inactive in the ten years since the transfer of assets. For purposes of corporate efficiencies, and in conjunction with the fact that MHCC has no current assets or liabilities, the Board of Directors of MHCC has executed a unanimous written consent to dissolve the entity, a copy of which is attached hereto at Tab C. The dissolution has also been approved by MHCC's sole corporate Member, Mercy Uihlein Health Corporation, a copy of which approval is attached hereto at Tab D.

The proposed Plan of Dissolution and distribution of the assets, of which there are none, as well as the proposed Certificate of Dissolution and the proposed Petition to the Attorney General of the State of New York are attached hereto at Tabs E, F, and G, respectively. In addition, MHCC's existing Certificate of Incorporation is attached hereto at Tab H.

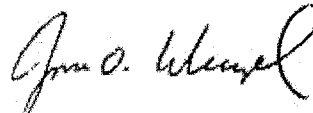
June 28, 2017

Page - 2 -

It is believed, based on the foregoing and the attached, that this action to dissolve an inactive entity will not negatively impact the rights or interests of the public or those previously associated with MHCC. Nevertheless, if it is your determination that additional documentation or other information is necessary or desirable in order for PHHPC to approve the dissolution, please feel free to contact us.

I sincerely look forward to working with PHHPC on this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jan O. Wenzel".

Jan O. Wenzel

Enclosures

cc: Michael C. Hemsley, Esq.

January 1, 2007

**VIA FACSIMILE & OVERNIGHT MAIL**

Mr. Larry Phillips  
New York Department of Health  
Capital District Regional Office  
One Fulton Street  
Troy, New York 12180-3281

**Re: Surrender of Nursing Home Licenses**

Dear Mr. Phillips:

In connection with the transfer of assets from The Uihlein Mercy Center, Inc. ("TUMC") and Mercy Health-Care Center, Inc. ("MHCC") to Adirondack Medical Center, which transfer became effective today, we have enclosed for surrender the original Nursing Home Licenses for both TUMC and MHCC. It is our understanding that you will now issue new Nursing Home Licenses to AMC. If my understanding is incorrect, please contact me at your earliest convenience.

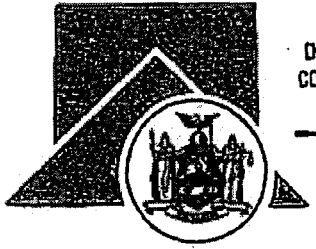
We sincerely appreciate your assistance during this process. Thank you.

Very truly yours,

Bill O'Reilly

Enclosures

cc: Michael C. Hemsley, Esq.  
Linda L. Fleming, Esq.

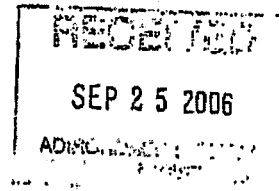


STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

*1cc Hyde  
+ Refca*

September 20, 2006



Ms. Gail Lautenschuetz  
Vice President of Ancillary Services  
Adirondack Medical Center  
2233 State Route 86, P.O. Box 471  
Saranac Lake, New York 12983

Re: Application No. 061042 – Adirondack Medical Center – Mercy Healthcare Center  
(Franklin County)

Dear Ms. Lautenschuetz:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Adirondack Medical Center – Mercy Healthcare Center is APPROVED, the contingencies having now been fulfilled satisfactorily. This approval is conditioned upon the applicant's continued compliance with the Medicaid access condition, as included in the Public Health Council's approval of the project. The Public Health Council had considered this application and imposed the contingencies at its meeting of May 12, 2006.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third-party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Capital District Regional Office of the New York State Office of Health Systems Management, Frear Building, 2<sup>nd</sup> Floor, One Fulton Street, Troy, New York 12180-3281 or (518) 408-5300, within 30 days of receipt of this letter.

Sincerely,

Donna W. Peterson  
Executive Secretary

/md

**UNANIMOUS WRITTEN CONSENT  
OF  
THE BOARD OF DIRECTORS  
OF  
MERCY HEALTH-CARE CENTER, INC.**

THE UNDERSIGNED, being all of the Directors ("Board") of Mercy Health-Care Center, Inc., a New York not-for-profit corporation (the "Corporation"), acting in accordance with the applicable provisions of the not-for-profit corporation laws of the State of New York and the certificate of incorporation and bylaws of the Corporation, do hereby waive notice and consent in writing to the adoption of, and do hereby recommend for adoption to the Corporation's sole member, Mercy Uihlein Health Corporation (the "Member"), the following resolutions as though adopted and ratified at a duly-called meeting of the Board of the Corporation held on the last date on which this Unanimous Written Consent was signed by the Board as indicated below:

WHEREAS, the Corporation sold substantially all of its assets pursuant to that certain Nursing Home Asset Purchase Agreement by and Between the Mercy Uihlein Health Corporation, The Uihlein Mercy Center, the Corporation, Catholic Health East, and Adirondack Medical Center dated February 9, 2006; and

WHEREAS, the Corporation no longer has any assets or liabilities and is inactive; and

WHEREAS, Mercy Uihlein Health Corporation (the "Member") is the sole Member of the Corporation; and

WHEREAS, the Board previously has been fully advised regarding the proposed dissolution of the Corporation; and

WHEREAS, the Board has determined that, under all of the circumstances, dissolving the Corporation is in the best interests of the Corporation.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that, this Board adopts and recommends to the Member to approve the Plan of Dissolution in substantially the form attached hereto as Exhibit A and hereby authorizes the Secretary of the Corporation, and such other officers of the Corporation as he/she shall designate (collective, the "Authorized Officers") to finalize, execute, deliver, consummate and perform, in the name of and on behalf of the Corporation, all such documents and other instruments as reasonably necessary or appropriate to effectuate and carry out the purposes and intent of the foregoing recitals and resolutions; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to seek approval of the dissolution from the Public Health and Health Planning Council, file a Petition to the Attorney General for Approval of Certificate of Dissolution substantially in the form attached hereto (and as may be revised by the Authorized Officers at the request of the Attorney General), file a Certificate of Dissolution with the Department of State of the State of New York substantially in the form attached hereto (and as may be revised by the Authorized Officers at the request of the Department of State), and, if required, seek approval of the dissolution from the New York State Department of Taxation and Finance; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>st</sup> day of MAY, 2017.

  
\_\_\_\_\_  
John Capasso, Board Member and President

\_\_\_\_\_  
Elizabeth Curtis, Board Member and  
Treasurer

\_\_\_\_\_  
Michael C. Hemsley, Esq., Board Member  
and Secretary

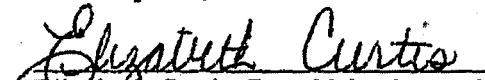
BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Seller, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>st</sup> day of MAY, 2017.

John Capasso, Board Member and President

  
Elizabeth Curtis, Board Member and  
Treasurer

Michael C. Hemsley, Esq., Board Member  
and Secretary



BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Seller, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

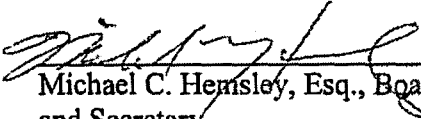
BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>ST</sup> day of MAY, 2017.

\_\_\_\_\_  
John Capasso, Board Member and President

\_\_\_\_\_  
Elizabeth Curtis, Board Member and  
Treasurer

  
\_\_\_\_\_  
Michael C. Hensley, Esq., Board Member  
and Secretary

**UNANIMOUS WRITTEN CONSENT  
OF  
THE BOARD OF DIRECTORS  
OF  
MERCY UIHLEIN HEALTH CORPORATION  
(APPROVAL OF DISSOLUTION OF SUBSIDIARIES)**

THE UNDERSIGNED, being all of the Directors ("Board") of Mercy Uihlein Health Corporation, a New York not-for-profit corporation (the "Corporation"), acting in accordance with the applicable provisions of the not-for-profit corporation laws of the State of New York and the certificate of incorporation and bylaws of the Corporation, do hereby waive notice and consent in writing to the adoption of, and do hereby recommend for adoption to the Corporation's sole member, Trinity Health Corporation (the "Corporation's Member"), the following resolutions as though adopted and ratified at a duly-called meeting of the Board of the Corporation held on the last date on which this Unanimous Written Consent was signed by the Board as indicated below:

WHEREAS, the Corporation and two of its subsidiaries, The Uihlein Mercy Center, Inc. and Mercy Health-Care Center, Inc. (together, the "Subsidiaries"; separately, the "Subsidiary"), sold substantially all of their assets pursuant to that certain Nursing Home Asset Purchase Agreement by and Between the Corporation, the Subsidiaries, Catholic Health East, and Adirondack Medical Center dated February 9, 2006; and

WHEREAS, the Subsidiaries no longer have any assets or liabilities and are inactive; and

WHEREAS, the Corporation is the sole member of each Subsidiary; and

WHEREAS, Trinity Health Corporation (the "Corporation's Member") is the sole member of the Corporation; and

WHEREAS, the Board previously has been fully advised regarding the proposed dissolution of the Subsidiaries; and

WHEREAS, The Uihlein Mercy Center, Inc. has approved and authorized the adoption of its Plan of Dissolution in substantially the form attached hereto at Exhibit A and has recommended that the Corporation similarly approve its adoption; and

WHEREAS, Mercy Health-Care Center, Inc. has approved and authorized the adoption of its Plan of Dissolution in substantially the form attached hereto at Exhibit B and has recommended that the Corporation similarly approve its adoption; and

WHEREAS, the Board has determined that, under all of the circumstances, dissolving the Subsidiaries is in the best interests of the Subsidiaries.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that, this Board adopts, authorizes the approval of, and recommends to the Corporation's Member to approve each Plan of

Dissolution for the Subsidiaries in substantially the forms attached hereto at Exhibit A and Exhibit B and hereby authorizes the Secretary of the Corporation, and such other officers of the Corporation as he/she shall designate (collectively, the "Authorized Officers") to finalize, execute, deliver, consummate and perform, in the name of and on behalf of the Corporation, all such documents and other instruments as reasonably necessary or appropriate to effectuate and carry out the purposes and intent of the foregoing recitals and resolutions; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>st</sup> day of MAY, 2017.

  
\_\_\_\_\_  
John Capasso, Board Member and President

\_\_\_\_\_  
Elizabeth Curtis, Board Member and  
Treasurer

\_\_\_\_\_  
Michael C. Hemsley, Esq., Board Member  
and Secretary

Dissolution for the Subsidiaries in substantially the forms attached hereto at Exhibit A and Exhibit B and hereby authorizes the Secretary of the Corporation, and such other officers of the Corporation as he/she shall designate (collectively, the "Authorized Officers") to finalize, execute, deliver, consummate and perform, in the name of and on behalf of the Corporation, all such documents and other instruments as reasonably necessary or appropriate to effectuate and carry out the purposes and intent of the foregoing recitals and resolutions; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>ST</sup> day of MAY, 2017.

\_\_\_\_\_  
John Capasso, Board Member and President

  
Elizabeth Curtis, Board Member and  
Treasurer

\_\_\_\_\_  
Michael C. Hemsley, Esq., Board Member  
and Secretary

Dissolution for the Subsidiaries in substantially the forms attached hereto at Exhibit A and Exhibit B and hereby authorizes the Secretary of the Corporation, and such other officers of the Corporation as he/she shall designate (collectively, the "Authorized Officers") to finalize, execute, deliver, consummate and perform, in the name of and on behalf of the Corporation, all such documents and other instruments as reasonably necessary or appropriate to effectuate and carry out the purposes and intent of the foregoing recitals and resolutions; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

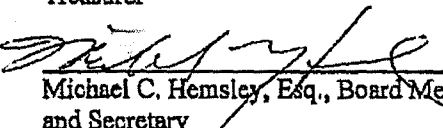
BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>st</sup> day of MAY, 2017.

John Capasso, Board Member and President

Elizabeth Curtis, Board Member and  
Treasurer

  
Michael C. Hemsley, Esq., Board Member  
and Secretary

**Exhibit A**

**Plan of Dissolution**

of

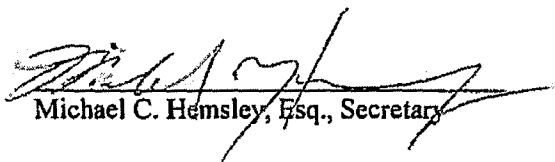
**Mercy Health-Care Center, Inc.**

The Board of Directors ("Directors") of Mercy Health-Care Center, Inc. does hereby resolve and recommend to the Member for approval that the corporation be dissolved. The Directors agreed to this resolution by unanimous written consent without a meeting. The Directors considered the advisability of voluntarily dissolving the corporation. All of the Directors determined that dissolution was advisable and in the best interest of the corporation. They adopted the following plan:

1. Following resolution of the Board of Directors adopting a Plan of Dissolution, the Board shall submit the plan to a vote of the Member for approval.
2. Approval of the dissolution must be obtained from the following government agencies and officers, whose approvals are/will be attached:
  - a. Public Health and Health Planning Council
3. The corporation has no assets or liabilities.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Certification

I, Michael C. Hemsley, Esq., Secretary of Mercy Health-Care Center, Inc. hereby certify under penalties for perjury that the within Plan of Dissolution was duly submitted and passed by a unanimous written consent of the Board of Directors. The Member approved the Plan of Dissolution by unanimous written consent.

  
Michael C. Hemsley, Esq., Secretary

Dated the 22<sup>nd</sup> day of June, 2017.

Certificate of Dissolution

of

Mercy Health-Care Center, Inc.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

I, Michael C. Hemsley, Esq., the Secretary of Mercy Health-Care Center, Inc. hereby certify:

1. The name of the corporation is Mercy Health Care-Center, Inc. The corporation was originally named Mercy General Hospital of Tupper Lake, New York.
2. The corporation's original Certificate of Incorporation was filed in the Office of the Secretary of State on January 16, 1939 under the Membership Corporation Law, under the name Mercy General Hospital of Tupper Lake, New York.
3. The names and addresses of each of the directors and officers of the corporation and the title of each are as follows:

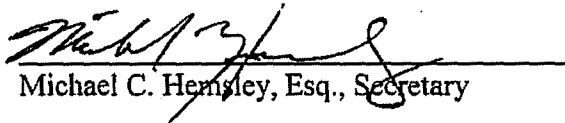
<u>Name</u>	<u>Officer or Director/Title</u>	<u>Address</u>
John Capasso	Board Member; President	EVP, Continuing Care Trinity Health 2055 Victor Parkway Livonia, MI 48152
Elizabeth Curtis	Board Member; Treasurer	Director, Finance Enterprise Development Trinity Health 20555 Victor Parkway Livonia, MI 48152
Michael C. Hemsley, Esq.	Board Member; Secretary	Deputy General Counsel Trinity Health 3805 West Chester Pike, Suite 100 Newtown Square, PA 19073

4. Dissolution of the corporation was authorized by unanimous written consent of the Board of Directors. Dissolution was then approved by the corporation's sole member.
5. The corporation elects to dissolve.
6. At the time of dissolution, the corporation is a Type B 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 sole member approved the Plan of Dissolution, the corporation had no assets or 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 of Dissolution of Mercy Health-Care Center, Inc. this 22<sup>nd</sup> day of June, 2017.

  
Michael C. Hensley, Esq., Secretary



Certificate of Dissolution  
of  
Mercy Health-Care Center, Inc.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

Filed by:

Jan O. Wenzel, Esq.  
Buchanan Ingersoll & Rooney PC  
One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410  
(412) 562-1838

NOTE: The filer identified here will receive the approved Certificate of Dissolution and the filing receipt from the Department of State.

**VERIFIED PETITION TO THE ATTORNEY GENERAL FOR APPROVAL OF  
CERTIFICATE OF DISSOLUTION**

In the Matter of the Application of  
Mercy Health-Care Center, Inc.  
For Approval of Certificate of  
Dissolution pursuant to  
Section 1002 of the Not-for-Profit  
Corporation Law.

VERIFIED PETITION

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Plattsburgh Regional Office  
43 Durkee Street – Suite 700  
Plattsburgh, NY 12901-2958

Petitioner, Mercy Health-Care Center, Inc., by Michael C. Hemsley, Esq., Secretary of the corporation, for its Verified Petition alleges:

1. The Mercy Health-Care Center, Inc., whose principal address is located in the county of Franklin, was incorporated pursuant to New York's Membership Corporation Law on January 16, 1939 under the name Mercy General Hospital of Tupper Lake, New York. A copy of the Certificate of Incorporation (and all amendments) is attached as Exhibit A.
2. The names, addresses and titles of the corporation's directors and officers are as follows:

<u>Name</u>	<u>Officer or Director/Title</u>	<u>Address</u>
John Capasso	Board Member; President	EVP, Continuing Care Trinity Health 2055 Victor Parkway Livonia, MI 48152
Elizabeth Curtis	Board Member; Treasurer	Director, Finance Enterprise Development Trinity Health 20555 Victor Parkway Livonia, MI 48152
Michael C. Hemsley, Esq.	Board Member; Secretary	Deputy General Counsel Trinity Health 3805 West Chester Pike, Suite 100 Newtown Square, PA 19073

3. The purposes for which the corporation was organized are as follows:

To establish, operate and maintain a residential healthcare facility to provide care and services, including nursing care and medical treatment for patients and residents of the facility.

To establish and maintain a diagnostic and treatment facility in the Town of Altamont for medical and surgical care and treatment of persons in need thereof, and to maintain a staff of competent physicians to treat, care for and prescribe to the persons in need of medical attention.

To perform such other powers as are incidental and necessary to maintain a residential healthcare facility and diagnostic and treatment center and to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not in the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-for-Profit Corporation Law.

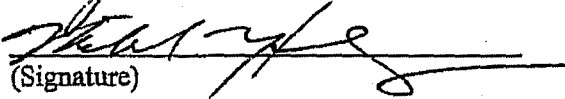
4. The corporation is a Type B charitable corporation.
5. On MAY 31, 2017, the Board of Directors of the corporation adopted a Plan and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. The Plan was authorized by unanimous written consent, a copy of which is attached as Exhibit B.
6. The sole member of the corporation approved the dissolution by unanimous written consent of the sole member's board of directors. A copy of the unanimous written consent of the sole member's board of directors approving the dissolution is attached as Exhibit C.
7. A certified copy of the corporation's Plan of Dissolution is attached as Exhibit D.
8. The corporation has no assets or liabilities, and its final report showing zero assets has been filed with the Attorney General.
9. Approval of the dissolution of the corporation must be obtained from the following governmental bodies and officers, and copies of such approval are attached as Exhibit E:

Public Health and Health Planning Council

10. 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 requests that the Attorney General approve the Certificate of Dissolution of Mercy Health-Care Center, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 22<sup>nd</sup> day of June, 2017, by

  
(Signature)

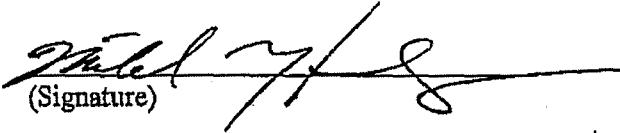
Michael C. Hemsley, Esq., Secretary

Verification

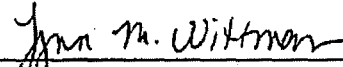
STATE OF NEW YORK )  
 )  
COUNTY OF \_\_\_\_\_ ) SS.

Michael C. Hemsley, Esq., being duly sworn, deposes and says:

I am the Secretary of Mercy Health-Care Center, Inc., the corporation 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 to be 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.

  
(Signature)

Sworn to before me executed this 22nd day of June, 2017.

  
\_\_\_\_\_  
Notary Public

LYNN M. WITTMAN  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires Sep. 25, 2023  
Acting in the County of Oakland



State of New York—Department of Social Welfare

State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Charities, designated the State Board of Social Welfare, held on the twentieth day of December, 1938, due inquiry and investigation having been made, the incorporation of Mercy General Hospital of Tupper Lake was approved.

21

In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twentieth day of December, 1938.

Wm. C. Hincley  
Secretary.

2968-21-F

CERTIFICATE OF INCORPORATION

OF  
MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK

Pursuant to Article III of the Membership Law of  
the State of New York.

WE, THE UNDERSIGNED, for the purpose of forming a  
membership corporation pursuant to the Membership Corpor-  
ation Law of the State of New York, hereby certify:

1. That the name of the proposed Corporation shall

be MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK.

2. The purposes for which it is to be formed are:

(a) to maintain a general hospital, in the town  
of Altamont, New York, for medical and surgical aid, care  
and treatment of persons in need thereof, and to maintain  
a staff of competent physicians and surgeons to treat, care  
for and prescribe to the persons in need of medical atten-  
tion.

(b) to perform such other powers as are incidental  
and necessary in the maintenance of a general hospital, in-  
cluding the ownership and leasing of real property, the ex-  
ecution of contracts and the borrowing of money.

3. The territory in which its operations are prin-  
cipally to be conducted, but not limited thereto, shall be  
the town of Altamont, New York and vicinity.

4. Its office, for the transaction of business, is  
to be located in the Village of Tupper Lake, town of Alta-

mont, New York, and County of Franklin, N.Y.

5. The number of its directors shall be five, and

the names and addresses of the directors until the first  
annual meeting of the board are:

Names	Addresses
Sister Mary Immaculata Murphy	Tarrytown, N.Y.
Sister Mary Victoria Ward	Tupper Lake, N.Y.
Sister Mary Aline McGuinnis	Tupper Lake, N.Y.

Sister Mary St. Carmel Pridmore  
Sister Mary Dorothy Riley

Upper Lake, N.Y.  
Upper Lake, N.Y.

All of the subscribers to this certificate are of full age, at least two-thirds of them are citizens of the United States, at least one of them is a resident of the State of New York. Of the persons named as directors at least one is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have said, subscribed, and acknowledged this certificate, this 10 day of November, 1938.

*Sister Mary Immaculate Murphy  
Sister Mary Victoria Ward  
Sister Mary Alice McGuinnis  
Sister Mary St. Carmel Pridmore  
Sister Mary Dorothy Riley*

State of New York  
County of Franklin SS.

On this 10 day of November, 1938, before me, the subscriber, personally came Sister Mary Victoria Ward, Sister Mary Alice McGuinnis, Sister Mary St. Carmel Pridmore, and Sister Mary Dorothy Riley, to me known and known to me to be the same persons described in and who executed the foregoing certificate of incorporation, and they severally duly acknowledged to me that they executed the same.

*Notary Public*


State of New York  
County of Westchester SS.

On this 10 day of November, 1938, before me, the subscriber, personally came Sister Mary Immaculate Murphy, to me known and known to me to be the same person described in and who executed the above foregoing certificate of incorporation, and she duly acknowledged to me that she executed

*Notary Public*



the same.

*J. M. [Signature]*  
Notary Public Westchester County  


State of New York  
County of Franklin SS.:

Sister Mary Victoria Ward, Sister Mary Alice McGuinnis, Sister Mary Mt. Carmel Protham and Sister Mary Dorothy Riley each being duly sworn, depose and says that she is one of the persons described in and who executed the foregoing Certificate of Incorporation, that she is of full age, a citizen of the United States, and a resident of the State of New York



*Sister Mary Victoria R. [Signature]*  
*Sister Mary Alice [Signature]*  
*Sister Mary Mt. Carmel [Signature]*  
*Sister Mary Dorothy [Signature]*

sworn to before me this  
10 day of November, 1938.


*Lawrence A. [Signature]*  
Notary Public, Franklin County

State of New York  
Westchester County SS.:

Sister Mary Immaculat Murphy, being duly sworn, deposes and says; that she is one of the persons described in and who executed the foregoing Certificate of Incorporation that she is of full age, a citizen of the United States, and a resident of the State of New York.

*Sister Mary Immaculate Murphy [Signature]*

Subscribed and sworn to before me this day  
15th of November, 1938.

*[Signature]*  
Notary Public, Westchester County  


State of New York  
County of Franklin

J. STUART WOOD, being duly sworn, deposes and says,  
that he is the author and the issuer of the annexed  
Certificate of Incorporation and that in executing said  
action for the approval of the said Certificate, of any  
Justice of the Supreme Court or by the State Board of  
Charities, this deed was

*John Stuart Wood*

Shown to before me this  
12 day of November, 1938

*John Stuart Wood*  
Notary Public, Franklin County

I, ELLSWORTH D. FARRINGTON, Justice of the Supreme Court  
of the Fourth Judicial District, hereby approve the fore-  
going Certificate of Incorporation.

*Ellsworth D. Farrington*  
J. S. C.

DATE: November 11, 1938

*EA*

*1938-213*

STATE OF NEW YORK  
DEPARTMENT OF INCORPORATION

CLERK GENERAL DEPARTMENT OF INCORPORATION  
ALBANY, NEW YORK

Subscribed to Act, Etc. of the  
Incorporation Law of the State of New York.

ORIGINAL  
CERTIFICATE OF INCORPORATION

STATE OF NEW YORK

DEPARTMENT OF INCORPORATION

ALBANY, NEW YORK

APR 11 1900

FILED

RECORDED

INDEXED

FILED

J. STREET FORD  
CLERK

Certificate of Report of Existence  
of

MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK

Exact Name of Corporation

Pursuant to Section 57 of the Membership Corporations Law

1. The name of the corporation is Mercy General Hospital of Tupper Lake. The  
Name of Corporation/New York

original name was Sisters of Mercy of the Diocese of Ogdensburg (July 10, 1886).  
If name has been changed, insert original name.

2. The certificate of incorporation was filed in the Department  
of State on November 18, 1938 11/18/38  
Date of Incorporation

3. The corporation was formed pursuant to Article III of the Membership  
Corporation Law of the State of New York. Cite Incorporation Statute

4. The existence of the foregoing corporation is hereby continued.

To be signed by an officer,  
trustee, director or five  
members in good standing.

Mother M. Regina Haughmeyer  
Chairman  
Sister Mary Stella Reed, R.S.M.  
President and Treasurer  
Sister M. Deshaies O'Connor, R.S.M.  
Vice-President  
Sister Mary Dolores O'Connor, R.S.M.  
Secretary  
Sister Mary Berchman O'Connor, R.S.M.  
Director

State of New York }  
County of } SS.:

FRANKLIN

On this 14th day of May, 1951, before me

personally appeared The Board of Directors to me personally known  
and known to me to be the person(s) described in and who executed  
the foregoing certificate, and ( he ) ( they ) thereupon acknowledged  
to me that ( he ) ( they ) executed the same for the uses and purposes  
therein mentioned.

Mrs. Louise Hart DeBary  
Notary Public.  
Commission Expires 2/20/52  
County of FRANKLIN

NOTE: If the foregoing acknowledgment is taken without the State of  
New York, the signature of the notary public should be  
authenticated by a certificate of the clerk of the county in  
which such notary has power to act, or other proper officer.

Certification of Report of  
Expenditure of:

MERCY GENERAL HOSPITAL OF  
TUPPER LARE, NEW YORK

Name of Corporation

President or Section of

Members of Corporation

Law

Joseph H. Hartigan,  
Attorney and Counselor at Law  
Tupper Lare, New York

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUN 4 1951

FILED FEE \$3.00

*Thomas J. Brennan*

Secretary of State

A 83559

DIVISION OF CORPORATIONS AND STATE RECORDS  
162 Washington Avenue Albany, 12225

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION  
OF

MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK

Exact Name of Corporation

Under Section 113 of the Not-for-Profit Corporation Law

The name of the corporation is Mercy General Hospital of Tupper Lake, New York.

The original name was Mercy General Hospital of Tupper Lake, New York.

The certificate of incorporation was filed by the Department of State, on January 16, 1939.  
Date of Incorporation

The corporation was formed pursuant to the Membership Corporation Law.  
Cite Incorporation Statute

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 114 Wawbeek Avenue, Tupper Lake, New York 12986

That under Section 201, it is a Type B Not-for-Profit Corporation as defined in this chapter.  
(Insert A, B, C or D)

IN WITNESS WHEREOF, this certificate has been subscribed this 20th day of June 1973 at the County of Franklin by the undersigned who affirm(s) that the statements made herein are true under the penalties of perjury.

MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK

To be signed pursuant to  
Section 104(d) of the N-PCL

By: Sister Marie John Kelly  
Sister Marie John Kelly  
Chairman of the Board & President

Sister Mary Denise Wilke  
Sister Mary Denise Wilke  
Secretary

NOTE: The fee for filing the foregoing certificate is \$10 payable to the Department of State by certified check or money order. Every corporation required to file under Paragraph (a) of Section 113 of the N-PCL will be considered a Type B corporation until it has filed a certificate of type.

A 83559 - 2

CERTIFICATE OF TYPE  
OF  
NOT-FOR-PROFIT CORPORATION  
OF

MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK

Exact Name of Corporation

Under Section 113  
of the

NOT-FOR-PROFIT CORPORATION LAW

STATE OF NEW YORK  
DEPARTMENT OF STATE

TAX \$ None

FILING FEE \$ 12

FILED JUL 6 - 1973

*John P. ...*

Secretary of State

By *17 Frank ...*  
*Type B*

*11/16/31*

*Tupper Lake*

*A. Yarr*

*39*

*710 P  
201*

Name and address of filer

Sister Marie John Kelly  
Chairman and President of The Board of  
Directors  
Mercy General Hospital  
114 Wawbeek Avenue  
Tupper Lake, New York 12986

*2*

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

A 66119

MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK

Under Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, being the President and Secretary of  
Mercy General Hospital of Tupper Lake, New York do hereby certify:

(1) The name of the corporation is Mercy

General Hospital of Tupper Lake, New York.

(2) The Certificate of Incorporation of  
Mercy General Hospital of Tupper Lake, New York was filed by  
the Department of State on the 16th day of January, 1939.  
The said corporation was formed under the Membership Corp-  
orations Law of the State of New York.

(3) Mercy General Hospital of Tupper Lake,  
New York 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 under Section 201 of said law.

(4) The Secretary of State is hereby designated  
as agent of the corporation upon whom process against it may  
be served. The post office address within this state to  
which the Secretary of State shall mail a copy of any process  
against it served upon him as well as a copy of any notice  
required by law is:



Office of the President  
Mercy General Hospital  
Tupper Lake, New York

~~(5)~~ ~~(a)~~ ~~The Certificate of Incorporation~~ is hereby amended: (i) to provide for the distribution of the assets of the corporation upon its dissolution; and (ii) to increase the maximum number of directors from five to not more than nine.

(b) In this regard the following paragraphs of the Certificate of Incorporation are hereby amended so as to read as follows:

"2:- The purposes for which it is to be formed are:

- (a) To maintain a general hospital, in the Town of Altamont, New York, for medical and surgical aid, care and treatment of persons in need thereof, and to maintain a staff of competent physicians and surgeons to treat, care for and prescribe to the persons in need of medical attention.
- (b) To perform such other powers as are incidental and necessary in the maintenance of a general hospital, including the ownership and leasing of real property, the execution of contracts and the borrowing of money.
- (c) Upon the dissolution of the corporation, the board of directors, shall, after paying of all of the liabilities of the corporation, distribute all of the remaining assets of the corporation exclusively for the purposes of the corporation, or for a similar religious, missionary and charitable purpose to such organization or organizations organized by the Sisters of Mercy of the Union in the United States of America, Province of New York or its successor organized

and operating exclusively for religious, missionary and charitable purposes as shall at the time qualify as an exempt organization of organizations under section 501(c)(3) of the Internal Revenue Code of 1954 as the same shall be in force, or the corresponding provision of any United States Internal Revenue Law, as the board of directors shall determine or, in the absence of such determination by the board of directors, such assets shall be distributed by the Supreme Court of the State of New York to such other qualified, exempt organization or organizations as, in the judgment of the Court, will best accomplish the general purposes or a similar religious, missionary and charitable use or purpose of this corporation. In no event shall the assets of this corporation upon dissolution be distributed to a director, officer, employee or member of this corporation.

The dissolution of this corporation and any distribution of the assets of this corporation incident thereto shall be subject to such law, if any, then in force as may require the approval or consent thereto by any Court or Judge thereof, having jurisdiction or by any governmental department or agency or official thereof."

\*\*\*\*\*

"5. The number of its directors shall be not less than five nor more than nine."

(6) The corporation shall hereafter continue to be a Type B corporation under section 201 of the Not-For-Profit Corporation Law.

(7) The manner in which this Amendment to the Certificate of Incorporation of Mercy General Hospital of Tupper Lake, New York, was authorized was by unanimous.

Vote of all of the members of the corporation required or permitted to vote thereon at a meeting duly called and held on the 20th day of May, 1980, in accord with Section 802 of the Not-For-Profit Corporation Law.

(8) The following approval and consent was endorsed on and annexed to the Certificate of Incorporation of Mercy General Hospital of Tupper Lake, New York,

A JUSTICE OF THE SUPREME COURT OF THE  
~~STATE OF NEW YORK~~

Prior to the delivery of this Certificate of Amendment to the Department of State for filing, all approvals or consents of the Public Health Council, the Attorney General of the State of New York and of a Justice of the Supreme Court of the State of New York, will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF the undersigned have made, subscribed and verified this Certificate this 22 day of October, 1981.

*John P. ...*  
John P. ... , M.D., President

*James ...*  
James ... , Secretary

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

Sr. Mary Paschal Hill, RSM and Jeremiah Hayes,

being duly sworn, depose and say that they are the persons and officers described in and who executed the foregoing Certificate of Amendment of the Certificate of Incorporation of Mercy General Hospital of Tupper Lake, New York, and they are the President and Secretary, respectively, of Mercy General Hospital of Tupper Lake, New York, and they executed the same at the unanimous direction of members of Mercy General Hospital of Tupper Lake, New York, and they have read the foregoing Certificate and know the contents thereof and that the statements therein contained are true.

*Sr. Mary Paschal Hill, RSM*

*Jeremiah Hayes*

Sworn to before me this  
21<sup>st</sup> day of October, 1921

*John M. Cassin, Notary*

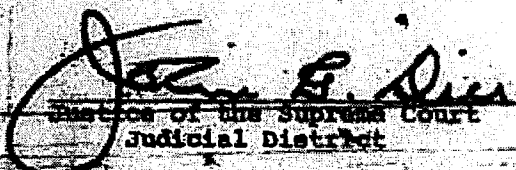
JOHN M. CASSIN, Notary  
Notary for the State of New York  
My Commission expires August 30, 1922

5


Approval of Certificate of Amendment  
To Certificate of Incorporation  
By Supreme Court Justice

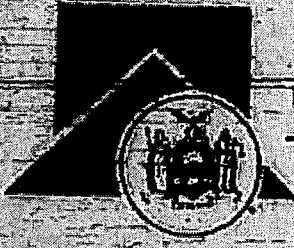
I, **JOHN G. DIER**, Justice of the Supreme Court of the State of New York, **Fourth** Judicial District, do hereby approve the foregoing Certificate of Amendment of Certificate of Incorporation of Mercy General Hospital of Tupper Lake, New York, and consent that the same be filed.

Dated: **4-26-82**  
Supreme Court, ~~Franklin~~ County,  
Special Term, Part **I**  
**Malone**, New York

  
Justice of the Supreme Court  
Judicial District

**November 10, 1981**  
THE UNDERSIGNED HAS NO  
OBJECTION TO THE GRANTING  
OF JUDICIAL APPROVAL  
HEREON AND WAIVES  
STATUTORY NOTICE

**ROBERT ARNONE**  
President  
Mercy General  
Hospital of Tupper Lake, New York  
  
6



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY 12227

# PUBLIC HEALTH COUNCIL

March 31, 1982

William J. O'Shea, Esq.  
Burns, Kennedy, Schilling and O'Shea  
598 Madison Avenue  
New York, New York 10022

Re: Certificate of Amendment of the Certificate of Incorporation  
of Mercy General Hospital of Tupper Lake, New York

Dear Mr. O'Shea:

The proposed certificate of amendment of the certificate of incorporation of the above referenced corporation does not require the approval of the Public Health Council for filing with the Department of State, since the certificate neither alters the corporation's purposes under Article 28 of the Public Health Law nor changes its name.

Sincerely yours,

Shirley M. Parham  
Executive Secretary.

**COUNCIL**

ROBERT H. HANULES, M.D.  
CHAIRMAN  
GORDON E. WOOD  
ROBERT J. COLLINS, M.D.  
THOMAS P. DONLINO  
USUR CHARLES J. FARRY

JOSEPH R. FONTANETTA, M.D.  
WILLIAM LEE PROST  
MORTON P. HYMAN  
JEROME S. JONAS  
HOWARD J. KESSELER, M.D.  
MARTIN G. McLAUGHLIN, M.D.

ROBERT H. HANULES, M.D.  
HOWARD J. KESSELER, M.D.  
KENNETH R. MULLER, M.D.  
COMMISSIONER  
DANIEL A. ROSEN, M.D.

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1865119

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK

Under Section 803 of the Not-For-Profit Corporation Law

7-7-P

1/16/39

Warrant Franklin Co

39691-21

P. A. 83559-2

TYPE: B

Not  
Ad- 114 was back  
Tupper Lake

8/25/3

**BILLED**

014237

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY 4 - 1962

AMT. OF CHECK \$ 1.00  
FILING FEE \$ 0.00  
TAXES \$ 0.00

RECEIVED  
MAY 3 - 2 1962

Franklin

79

MAY 4 9 21 AM '62

FILED

OFFICE OF THE  
CLERK OF THE STATE

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION

4935527

OF

MERCY GENERAL HOSPITAL OF TUPPER LAKE, NEW YORK

Under Section 803 of the Not-For-Profit Corporation Law

WE, the undersigned, being the President and Secretary of  
Mercy General Hospital of Tupper Lake, New York do hereby cer-  
tify:

(1) The name of the corporation is Mercy General Hospi-  
tal of Tupper Lake, New York.

(2) The Certificate of Incorporation of Mercy General  
Hospital of Tupper Lake, New York was filed by the Department  
of State on the 16th day of January, 1939. The said Corporation  
was formed under the Membership Corporations Law of the State  
of New York. A Certificate of Amendment of the Certificate of  
Incorporation of Mercy General Hospital of Tupper Lake, New  
York was filed by the Department of State on the 4th day of  
May, 1982.

(3) Mercy General Hospital of Tupper Lake, New York is  
a corporation as defined in subparagraph (a) (5) of Section



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2.  
of the Not-For-Profit Corporation Law and is a Type B corporation under Section 201 of said law.

(4) The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address within this state to which the Secretary of State shall mail a copy of any process against it served upon him is:

Office of the President  
Mercy General Hospital  
Tupper Lake, New York

(5) The Certificate of Incorporation is amended as follows:

a. to change the corporate name. Paragraph "1" of the certificate is amended to read:

"1. The name of the corporation is MERCY HEALTHCARE CENTER, INC."

b. to amend the purpose clause to read as follows:

"2. The purposes for which it is formed are:

(a) To establish, operate and maintain a residential healthcare facility to provide care and services, including nursing care and medical treatment for patients and residents of the facility.

(b) To establish and maintain a diagnostic and treatment facility in the Town of Altamont for medical and surgical

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care and treatment of persons in need thereof, and to maintain a staff of competent physicians to treat, care for and prescribe to the persons in need of medical attention.

(c) To perform such other powers as are incidental and necessary to maintain a residential healthcare facility and diagnostic and treatment center and to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, or officers except as permitted under Article 5 of the Not-For-Profit Corporation Law.

(d) Upon the dissolution of the corporation, the board of directors, shall, after paying of all of the liabilities of the corporation, distribute all of the remaining assets of the corporation exclusively for the purposes of the corporation, or for a similar religious, missionary and charitable purpose to such organization or organizations organized by the Sisters of Mercy of the Union in the United States of America, Province of New York or its successor organized and operating exclusively for religious, missionary and charitable purposes as shall at the time qualify as an exempt organization or organizations under section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall be in force, or the

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4.  
provision of any United States Internal Revenue Law, as the board of directors shall determine or, in the absence of such determination by the board of directors, such assets shall be distributed by the Supreme Court of the State of New York to such other qualified, exempt organization or organizations as in the judgment of the Court, will best accomplish the general purposes or a similar religious, missionary and charitable use or purpose of this corporation. In no event shall the assets of this corporation upon dissolution be distributed to a director, officer, employee or member of this corporation.

The dissolution of this corporation and any distribution of the assets of this corporation incident thereto shall be subject to such law, if any, then in force as may require the approval or consent thereto by any Court or Judge thereof, having jurisdiction or by any governmental department or agency or official thereof.

(5) The corporation shall hereafter continue to be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law.

(6) The manner in which this Amendment to Certificate of Incorporation of Mercy General Hospital of Tupper Lake, New York, was authorized was by unanimous vote of all of the members of

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the corporation required or permitted to vote thereon at a meeting duly called and held on September 15, 1982 in accord with Section 802 of the Not-For-Profit Corporation Law.

(7) The following approval and consent was endorsed and annexed to the Certificate of Incorporation of Marcy General Hospital of Tupper Lake, New York.

A JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK

Prior to the delivery of this Certificate of Amendment to the Department of State for filing, all approvals or consents of the Public Health Council, the Attorney General of the State of New York and of a Justice of the Supreme Court of the State of New York, will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF the undersigned have made, subscribed and verified this Certificate this 15<sup>th</sup> day of September, 1982.

STATE OF NEW YORK COUNTY OF FRANKLIN

*Mary Paschal Hill*  
SR. MARY PASCHAL HILL, RSM.,  
President

SR. MARY PASCHAL HILL, RSM., being duly sworn says that I am the President of Marcy General Hospital of Tupper Lake, New York and that I have read the annexed Certificate of Incorporation and know the contents thereof and the same are true to my 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.

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*Mary Paschal Hill Rsm*  
SR. MARY PASCHAL HILL RSM  
President

Sworn to before me this  
15<sup>th</sup> day of September, 1982.

*John M. A. [Signature]*  
Notary Public

JOHANNA M. ABERNATHY  
NOTARY PUBLIC, STATE OF NEW YORK  
ALBANY COUNTY  
MY COMMISSION EXPIRES MARCH 30, 1983

*Jeremiah M. Hayes*  
JEREMIAH M. HAYES, Secretary

STATE OF NEW YORK  
COUNTY OF FRANKLIN

JEREMIAH M. HAYES, being duly sworn says that I am the Secretary of Mercy General Hospital of Tupper Lake, New York and that I have read the annexed Certificate of Incorporation and know the contents thereof and the same are true to my 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.

*Jeremiah M. Hayes*  
JEREMIAH M. HAYES, Secretary

Sworn to before me this  
15<sup>th</sup> day of September, 1982.

*John M. A. [Signature]*  
Notary Public

JOHANNA M. ABERNATHY  
NOTARY PUBLIC, STATE OF NEW YORK  
ALBANY COUNTY  
MY COMMISSION EXPIRES MARCH 30, 1983

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Dominick J. Viscardi

Justice of the Supreme

Court of the State of New York, Fourth Judicial District, do

heretby approve the foregoing amendment of the certificate of

incorporation of Mercy General Hospital of Tupper Lake, New York.

*Dominick J. Viscardi*

December 1 1982

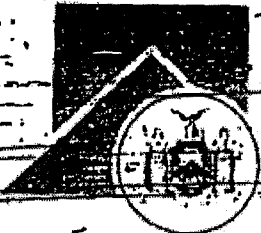
ATTORNEY GENERAL APPROVAL:

See Attached letter.

PUBLIC HEALTH COUNCIL APPROVAL:

See attached letter.

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH

# PUBLIC HEALTH COUNCIL

November 22, 1982

KNOW ALL MEN BY THESE PRESENTS:

After inquiry and investigation, and in accordance with action taken at a meeting of the Public Health Council,

held on the 19th day of November, 1982, I hereby certify that the

Certificate of Amendment of the Certificate of Incorporation of Mercy General Hospital of Tupper Lake, New York, dated September 15, 1982 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

SHIRLEY M. PARHAM  
Executive Secretary

Sent to: Jeremiah M. Hayes, Esq.  
Palmer and Hayes  
P.O. Box 800  
64 Park Street  
Tupper Lake, New York 12986

cc: Sister Mary Paschal Hill, President  
Mercy General Hospital of Tupper Lake  
114 Wawbeek Avenue  
Tupper Lake, New York 12986

Council

JOHN J. JOHNSON, M.D.	JOSEPH R. FONTANELLA, M.D.	ROBERT H. HENNING, D.D.S.
WILLIAM L. FORD, M.D.	WILLIAM L. FORD, M.D.	WILLIAM L. FORD, M.D.
JOHN J. JOHNSON, M.D.	JOHN J. JOHNSON, M.D.	JOHN J. JOHNSON, M.D.
JOHN J. JOHNSON, M.D.	JOHN J. JOHNSON, M.D.	JOHN J. JOHNSON, M.D.
JOHN J. JOHNSON, M.D.	JOHN J. JOHNSON, M.D.	JOHN J. JOHNSON, M.D.



STATE OF NEW YORK

DEPARTMENT OF LAW

ALBANY, N.Y. 12224

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. MCSPARRON  
ASSISTANT ATTORNEY GENERAL  
LITIGATION BUREAU

Telephone: 474-7206

December 1, 1982

Jeremiah M. Hayes, Esq.  
Palmer & Hayes, Esqs.  
64 Park Street  
Tupper Lake, New York 12986

Dear Mr. Hayes:

RE: MERCY HEALTH-CARE CENTER, INC. (NEW)  
MERCY GENERAL HOSPITAL (OLD)

Due and timely service of the notice of application for the approval of the proposed certificate of amendment of the 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

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FRANCIS GARRARD ALBRIGHT  
TRUSTEE, ALBRIGHT  
VIR. SUPPL. B.  
# 3702  
WITNESS, FRANKLIN S.

CERTIFICATE  
OF  
AMENDMENT

State of New York  
County of Hamilton  
MERCY ANN...  
Duffie...  
# 41155...

September 1982

STATE OF NEW YORK  
DEPARTMENT OF STATE

RECORDED

INDEXED

FILED

18/20

Francis A. Albright

FRANCIS A. ALBRIGHT  
ATTORNEY AT LAW

100  
100

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

MERCY HEALTHCARE CENTER, INC.

6126430

Under Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, being the President and Secretary of Mercy Healthcare Center, Inc., do hereby certify:

1. The name of the corporation is Mercy Healthcare Center, Inc. The corporation was formed under the name Mercy General Hospital of Tupper Lake, New York.

2. The certificate of incorporation of Mercy General Hospital of Tupper Lake, New York, was filed by the Department of State on the 16th day of January, 1939, under the Membership Corporation Law of the State of New York. A certificate of amendment of the certificate of incorporation of Mercy General Hospital of Tupper Lake, New York, was filed by the Department of State on the 4th day of May, 1982. By a certificate of amendment filed on December 29, 1982, the name of the corporation was changed to Mercy Healthcare Center, Inc.

3. Mercy Healthcare Center, Inc., is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law. It is a Type B corporation under Section 201 of said law and it shall continue to be a Type B corporation.

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4. The corporate purposes and powers of Mercy Healthcare Center, Inc., are not enlarged, limited or otherwise changed by this certificate of amendment.

5. The certificate of incorporation of Mercy Healthcare Center, Inc., is amended by adding the following provisions:

a. Catholic Identity. The accomplishment of the purposes of the corporation must be promoted and conducted in a manner consistent with the philosophies and missions of the Corporation, the Religious Sisters of Mercy, Province of New York, and the ethical and moral teachings of the Roman Catholic Church.

b. Charitable Purpose. The purposes for which the Corporation is organized are exclusively charitable, scientific and educational within the meaning of Section 501(c)(3) to the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue Law (the "Code," which term shall include with respect to each citation the corresponding provision of any future United States Internal Revenue Law), and consistent with the official teachings of the Roman Catholic Church. In the course of its operations:

(1) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to the directors or officers of the Corporation or any private inclusions, except that the Corporation shall be authorized and empowered to

pay reasonable compensation for services rendered to or for the benefit of the Corporation and to make payments and distributions in furtherance of the purposes set forth herein, and except further that the corporation may make distributions to its sole Member or any entity specified by its sole Member so long as such Member or other entity is a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or as to which distributions may be made by the Corporation without loss of the Corporation's tax exempt status under Section 501(c)(3) of the Code.

- (2) 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 publishing or distribution of statements), any political campaign on behalf of any candidate for public office except as authorized under the Code.
- (3) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from Federal income tax under Section 501(c)(3) of the Code or (b) a corporation,

contributions to which are deductible under  
Section 170(c)(2) of the Code.

- c. Sole Member. The Corporation shall have one class of member consisting of the Eastern Marcy Health System (EMHS). The sole member of the Corporation ("Member") is EMHS. As such, EMHS shall be entitled to all rights and powers of a member under New York law, this certificate of incorporation and the bylaws of the Corporation.
- d. Member Action. In addition to any other requirements under New York law, this certificate of incorporation or the bylaws of the Corporation, the following powers shall be expressly reserved to EMHS as the sole member of the Corporation. In the event the governance documents of the Corporation and/or its Member require the recommendation of the board of directors of the Corporation with respect to a power expressly reserved to the Member of the Corporation in this certificate, such action may be authorized by the Member of the Corporation without a recommendation by the board of directors following appropriate dialogue between the board of trustees and the Member. Action by the Corporation shall not be taken until EMHS, acting through its board of directors, shall have exercised its reserved powers. The following powers are reserved to EMHS:

- (1) to approve the statement of mission and philosophy adopted by the corporation and to require that the

corporation operate in conformance with its mission and philosophy;

- (2) to elect and remove, with or without cause, the chief executive officer of the corporation;
- (3) to approve and amend the bylaws and certificate of incorporation of the corporation;
- (4) to approve any plan of merger, consolidation or dissolution of the corporation;
- (5) to appoint, fix and number and remove, with or without cause, the trustees of the corporation;
- (6) to approve the debt of the corporation, in excess of an amount to be fixed from time to time by the member;
- (7) to approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the corporation in excess of an amount to be fixed from time to time by the member;
- (8) to approve the capital and operating budgets of the corporation;
- (9) to approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;
- (10) to approve any corporate reorganization of the corporation and the development or dissolution of any subsidiary organizations of the corporation;
- (11) to approve the strategic plan of the corporation, provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council.

e. Amendments to Certificate of Incorporation and Bylaws.

The certificate of incorporation or bylaws of the Corporation may be amended or repealed or a new or restated certificate of incorporation or bylaws adopted

only upon exercise by EMHS of its reserved power to approve such action.

6. The amendments to the certificate of incorporation, as set forth herein, were authorized by the unanimous vote of all of the members of the Corporation at a meeting of the members held on the 29th day of August, 1989.

7. The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any notice required by law is:

Office of the President  
Mercy Health Care Center  
Tupper Lake, New York 12986

IN WITNESS WHEREOF, this certificate is subscribed by the undersigned on August 31, 1989, and the statements herein are affirmed as true under the penalties of perjury.

*Sister Mary Paschal Hill RSM*  
Sister Mary Paschal Hill, R.S.M.  
President

*Jeremiah M. Hayes*  
Jeremiah M. Hayes  
Secretary

ACKNOWLEDGEMENT

STATE OF NEW YORK )  
COUNTY OF Franklin ) SS.:

On the 31 day of August, 1989, before me personally came SISTER MARY PASCHAL HILL, to me personally known, who, being by me duly sworn, did depose and say that she resides in Tupper Lake, N.Y.; that she is the President of the MERCY HEALTHCARE CENTER, INC., the corporation described in, and which executed, the within instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation; and that she signed her name thereto by like order.

*Linda J. Mandigo*  
Notary Public

LINDA J. MANDIGO  
Notary Public, State of New York  
Qualified in Franklin County

My Commission Expires 2/25 1990  
ID # 4933932

STATE OF NEW YORK )  
COUNTY OF Franklin ) SS.:

On the 31 day of August, 1989, before me personally came JEREMIAH M. HAYES, to me personally known, who, being by me duly sworn, did depose and say that he resides in Tupper Lake, N.Y.; that he is the Secretary of the MERCY HEALTHCARE CENTER, INC., the corporation described in, and which executed, the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation; and that he signed his name thereto by like order.

*Linda J. Mandigo*  
Notary Public

LINDA J. MANDIGO  
Notary Public, State of New York  
Qualified in Franklin County

My Commission Expires 2/25 1990  
ID # 4933932

0000 0544



I, JAN H. PLUMADORE, Justice of the Supreme Court of the  
State of New York, Fourth Judicial District, do hereby approve  
the foregoing amendment of the certificate of incorporation of  
Mercy Healthcare Center, Inc.

September 26, 1989

*Jan H. Plumadore*  
BY: JAN H. PLUMADORE

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0123470

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
MERCY HEALTHCARE CENTER, INC.

September 26, 1989

JEREMIAH M. HAYES  
ATTORNEY AT LAW  
64 PARK STREET  
UPPER MERSENER, NEW YORK 12086

*Handwritten notes:*  
A LP Type B.  
Amended 12/27/89  
Franklin Co.  
New Jersey General  
Hospital of Upper Merse-  
ner  
8909-21  
11/16/89  
Meredith M. Wainwright  
Upper Merse-  
ner NY  
12986

*Handwritten signature*

STATE OF  
DEPARTMENT  
FILED  
AMT. OF CH  
FILING FEE  
TAX \$  
COUNTY FEE  
COPY \$  
CERT. \$  
REFUND \$  
SPEC HAND  
BY: *[Signature]*

CERTIFICATE OF AMENDMENT

OF 971110000 333

CERTIFICATE OF INCORPORATION

OF

MERCY HEALTH-CARE CENTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, the President and Secretary of Mercy Health-Center, Inc. hereby certify that:

1. The name of the Corporation is Mercy Health-Care Center, Inc. The name under which the Corporation was formed is Mercy General Hospital of Tupper Lake, New York.

2. The Corporation was formed under the Membership Corporations Law of the State of New York and the Certificate of Incorporation was filed by the Department of State of New York on January 16, 1939.

3. Mercy Health-Care Center, Inc. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.

4. Mercy Health-Care Center, Inc. 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.

5. The corporate purposes and powers of Mercy Health-Care Center, Inc. are not enlarged, limited or otherwise changed by this Certificate of Amendment.

6. The Certificate of Incorporation of Mercy Health Care-Center, Inc. is amended as follows:

(a) The Certificate of Incorporation contains the following paragraphs:

a. **Catholic Identity.** The accomplishment of the purposes of the corporation must be promoted and conducted in a manner consistent with the philosophies and missions of the Corporation, the Religious Sisters of Mercy, Province of New York, and the ethical and moral teachings of the Roman Catholic Church.

c. **Sole Member.** The Corporation shall have one class of member consisting of the Eastern Mercy Health System (EMHS). The sole member of the Corporation ("Member") is EMHS. As such, EMHS shall be entitled to all rights and powers of a member under New York law, this certificate of incorporation and the bylaws of the Corporation.

d. **Member Action.** In addition to any other requirements under New York law, this certificate of incorporation or the bylaws of the Corporation, the following powers shall be expressly reserved to EMHS as the sole member of the Corporation. In the event the governance documents of the Corporation and/or its Member require the recommendation of the board of directors of the Corporation with respect to a power expressly reserved to the Member of the Corporation in this certificate, such action may be authorized by the Member of the Corporation without a recommendation by the board of directors following appropriate dialogue between the board of trustees and the Member. Action by the Corporation shall not be taken until EMHS, acting through its board of directors, shall have exercised its reserved powers. The following powers are reserved to EMHS:

(1) to approve the statement of mission and philosophy adopted by the corporation and to require that the corporation operate in conformance with its mission and philosophy;

(2) to elect and remove, with or without cause, the chief executive officer of the corporation;

(3) to approve and amend the bylaws and certificate of incorporation of the corporation;

(4) to approve any plan of merger, consolidation or dissolution of the corporation;

(5) to appoint, fix the number, and remove, with or without cause, the trustees of the corporation;

(6) to approve the debt of the corporation, in excess of an amount to be fixed from time to time by the member;

(7) to approve the sale, acquisition, lease, transfer, mortgage, pledge, or other alienation of real or personal property of the corporation in excess of an amount to be fixed from time to time by the member;

(8) to approve the capital and operating budgets of the corporation;

(9) to approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;

(10) to approve any corporate reorganization of the corporation and the development or dissolution of any subsidiary organizations of the corporation; and

(11) to approve the strategic plan of the corporation, provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council.

**e. Amendments to Certificate of Incorporation and Bylaws.**

The certificate of incorporation or bylaws of the Corporation may be amended or repealed or a new or restated certificate of incorporation or bylaws adopted only upon exercise by EMHS of its reserved power to approve such action."

The preceding paragraphs are deleted and shall be substituted with the following paragraphs which shall read as follows:

"The accomplishment of the purposes of the Corporation must be promoted and conducted in a manner consistent with the philosophies and missions of the Corporation, the Sisters of Mercy, Regional Community of New York, Mercy Uihlein Health Corporation, Eastern Mercy Health System and the ethical and moral teachings of the Roman Catholic Church.

The sole Member of the Corporation is Mercy Uihlein Health Corporation

("MUHC"). As such, MUHC shall be entitled to all rights and powers of a member under New York Law (except as otherwise limited or provided in this certificate of incorporation or the bylaws of the Corporation), this certificate of incorporation and the bylaws of the Corporation. Action by the Corporation shall not be taken until MUHC shall have exercised its reserved powers in accordance with the procedures specified in the certificate of incorporation and bylaws of MUHC and the corporate policies and procedures to which its actions are subject all as amended or restated from time to time, and MUHC shall have notified the Corporation of such approval or ratification. The following reserved powers are reserved to MUHC:

- (1) Approve and interpret the statement of mission and philosophy adopted by the Corporation; and to require the Corporation to operate in conformance with its statement of mission and philosophy;
- (2) Approve and amend the bylaws and certificate of incorporation of the Corporation;
- (3) Fix the number of, and elect, appoint, fill vacancies in and remove, with or without cause, the directors; and elect and remove, with or without cause, the chairperson of the Board of Directors of the Corporation;
- (4) Approve any merger, consolidation or dissolution of the Corporation;
- (5) Approve any acquisition or any sale, lease, exchange, mortgage, pledge or other alienation of assets or property in excess of an amount to be fixed from time to time by the Member;
- (6) Approve any capital or operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;
- (7) Approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- (8) Elect and remove, with or without cause, the chief executive officer of the Corporation;
- (9) Approve the criteria for, and the process of evaluating the performance of the chief executive officer of the Corporation;
- (10) Approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;

- (11) Approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations, including corporations, partnerships or other entities, of the Corporation; and
- (12) Approve the strategic plan of the Corporation, provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council of the State of New York.

The Certificate of Incorporation or Bylaws of the Corporation may be amended or repealed or a new or restated Certificate of Incorporation or Bylaws adopted only upon exercise by MUHC of its reserved powers and authorities to approve such action.

Should compliance with any of the restrictions in this provision require the Corporation to take any action which may contravene any law or regulation to which the Corporation may now or hereafter be subject, or require the establishment of the Member by the Public Health Council, such restriction shall be null and void."

(b) The Certificate of Incorporation contains the following paragraph:

"5. The number of its directors shall be not less than five nor more than nine."

The preceding paragraph is deleted.

(c) The Certificate of Incorporation contains the following paragraph

"(d) Upon the dissolution of the corporation, the board of directors, shall, after paying of all of the liabilities of the corporation, distribute all of the remaining assets of the corporation exclusively for the purposes of the corporation, or for a similar religious, missionary and charitable purpose to such organization or organizations organized by the Sisters of Mercy of the Union in the United States of America, Province of New York or its successor organized and operating exclusively for religious, missionary and charitable purposes as shall at the time qualify as an exempt organization or organizations under section 501(c) (3) of the Internal Revenue Code of 1954 as the same shall be in force, or in the provision of any United States Internal Revenue Law, as the board of directors shall determine or, in the absence of such determination by the board of directors, such assets shall be distributed by the Supreme Court of the State of New York to such other qualified, exempt organization or organizations as, in the judgment of the Court, will best accomplish the general purposes or a similar religious, missionary and

charitable use or purpose of this corporation. In no event shall the assets of this corporation upon dissolution be distributed to a director, officer, employee or member of this corporation. The dissolution of this corporation and any distribution of the assets of this corporation incident thereto shall be subject to such law, if any, then in force as may require the approval or consent thereto by any Court or Judge thereof, having jurisdiction or by any governmental department or agency or official thereof."

The preceding paragraph is deleted and shall be substituted with the following paragraph

which shall read as follows:

"(d) In the event of the liquidation or dissolution or termination of the Corporation for any reason, the Member, after paying or making provision for the payment of all liabilities of the Corporation, shall transfer, in any proportions as considered prudent; all of the remaining assets and other property of the Corporation (other than assets required by law to be used for a specific purpose) to such organization or organizations, as shall qualify as tax-exempt under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any subsequent federal tax law), subject to the approval of a court of competent jurisdiction to the extent required by applicable law and such other regulatory authorities as may then be required by the Not-for-Profit Corporation Law of the State of New York."

7. The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is Office of the President, Mercy Health-Care Center, Inc., Tupper Lake, New York 12986.

8. The foregoing amendments to the Certificate of Incorporation were authorized by the unanimous vote of the Member of the Corporation, the Member having consented in writing, without a meeting, to the adoption of a resolution setting forth the action so taken.



IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment and affirmed as true the statements made therein under penalties of perjury this 5 day of <sup>September</sup> ~~May~~, 1997.

Mercy Health-Care Center, Inc.

BY:

Douglas M. Menzies  
Douglas M. Menzies, President

BY:

Jeremiah Hayes  
Jeremiah Hayes, Secretary

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF Essex )

On <sup>Sept</sup> January 5, 1997, before me personally appeared Douglas M. Menzies, to me known, who, being by me duly sworn, did depose and say that he resides, at Lanesboro Lake, NY that he is the President of Mercy Health-Care Center, Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

WILFRED H. WILLIAMS  
Notary Public, State of New York  
No. 18-02-0710  
Qualified in Essex County  
Commission Expires October 31, 1997

*Wilfred H. Williams*  
Notary Public

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF Essex )

On <sup>Sept</sup> January 5, 1997, before me personally appeared Jeremiah Hayes, to me known, who, being by me duly sworn, did depose and say that he resides, at Box 840, Tupper Lake, New York 12986, that he is the Secretary of Mercy Health-Care Center, Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

WILFRED H. WILLIAMS  
Notary Public, State of New York  
No. 18-02-0710  
Qualified in Essex County  
Commission Expires October 31, 1997

*Wilfred H. Williams*  
Notary Public

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**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
MERCY HEALTH CARE CENTER, INC.**

Original

**ISEMAN, CUNNINGHAM, RIESTER AND HYDE, L.L.P.**  
Attorneys for

Office and Post Office Address  
9 Thurlow Terrace  
ALBANY, NEW YORK 12203  
618 423-2000

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

FILED NOV 10 1997

To: *PC*  
Attorney(s) for

*Castle*

Service of a copy of the within is hereby admitted

Dated:

Attorney(s) for

**PLEASE TAKE NOTICE**

(Not Applicable Box)

NOTICE OF ENTRY that the within is a (certified) true copy of a entered in the office of the clerk of the within named court on 19

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court.

at 19 at M.

Dated:

**ISEMAN, CUNNINGHAM, RIESTER AND HYDE, L.L.P.**  
Attorneys for

9

Office and Post Office Address  
9 Thurlow Terrace  
ALBANY, NEW YORK 12203  
618 423-2000

Attorney(s) for

971110000 333

F021220000497

RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
MERCY HEALTH-CARE CENTER, INC.

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

The undersigned, being the President of Mercy Health-Care Center, Inc. (the "Corporation"), does hereby certify that:

1. The name of the Corporation is **MERCY HEALTH-CARE CENTER, INC.**
2. The Corporation's original Certificate of Incorporation was filed in the office of the Secretary of State on January 16, 1939 under the name, **Mercy General Hospital of Tupper Lake, New York.**
3. The Corporation's purposes and powers are not enlarged, limited or otherwise changed by this amendment and restatement.
4. The Certificate of Incorporation as now in full force and effect is hereby amended to effect the following changes as authorized in Section 801 of the Not-for-Profit Corporation

Law:

- (a) Article SECOND, subsection (d), regarding dissolution of the Corporation, is renumbered Article "FIFTH" and amended to read as follows:

"FIFTH: Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, as well as any claims, subventions or subvention-like rights of or owed to the Sponsoring Organization, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, shall be

distributed, subject to an order of a justice of the Supreme Court of the State of New York, to the Corporate Member of this Corporation or its successors, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Sponsoring Organization have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation."

- (b) Article THIRD, regarding the territory of the Corporation's operations, is deleted in its entirety.
- (c) Article FOURTH, regarding the location of the Corporation's office, is renumbered Article "THIRD" and amended to read as follows:  
  
"THIRD: The Corporation's office is located in the County of Franklin, New York."
- (d) Article FIFTH, regarding the board of directors, was deleted by prior amendment.
- (e) Article SIXTH, regarding the Corporation's subscribers, is omitted in its entirety.
- (f) The unnumbered paragraph regarding how the Corporation's purposes will be promoted and conducted is numbered Article "FOURTH" and amended to read as follows:

"FOURTH: The Corporation shall be organized and operated exclusively for charitable, religious, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal

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Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the Corporation shall carry out its stated purposes in a manner that advances, promotes and supports the Catholic health system governed by Catholic Health East ("CHE"), a Pennsylvania nonprofit corporation, and its successors and constituent corporations, the Catholic healthcare ministries and Catholic healthcare mission of The Sisters of Mercy, Regional Community of New York, a religious institute of the Roman Catholic Church or its canonical successor (the "Sponsoring Organization"). The Corporation shall do any and all acts that are necessary, proper, useful, incidental or advantageous to carry out its stated purposes in conformity with the ethical and moral teachings of the Roman Catholic Church, the traditions, spirit and charism of the Sponsoring Organization, and the Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Catholic Conference of Bishops. This Corporation shall operate under the philosophy and guidance of the Corporate Member, as hereafter defined, without regard to race, creed, color, gender, age, national origin or ability to pay. The Corporation will not be operated for the pecuniary gain or profit, incidental or otherwise, of any private individual. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its Member, Directors, Officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not conduct or carry on activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation to which contributions are deductible under Section 170(c)(2) of the Code."

- (g) The unnumbered paragraphs regarding the Corporation's sole member and changes to the Bylaws and Certificate of Incorporation are numbered Article "EIGHTH" and amended to read as follows:

**"EIGHTH:** The sole Member of the Corporation shall be Mercy Uihlein Health Corporation, a New York not-for-profit corporation (the "Member" or "Corporate Member"). The Corporate Member and the Corporation both participate in the health care system of CHE. Certain powers have been expressly reserved to the Corporate Member, CHE and the Sponsoring Organization in this Certificate of Incorporation and the Bylaws of the Corporation. Action by the Corporation shall not be taken until the Corporate Member, acting through its Board of Directors, and, in some cases, CHE, acting through its Board of Directors, and the Sponsoring Organization, as applicable, shall have exercised their respective reserved powers in accordance with their respective governance documents. Action by the Corporation with respect to which action by the Corporate Member, CHE or the Sponsoring Organization is required shall not be effective until the Corporation shall have received notice of appropriate action having been taken by the respective party. The following powers are reserved to the Corporate Member, CHE and the Sponsoring Organization, as indicated:

(a) As reserved to the Board of Directors of the Corporate Member:

- (i) Approve the amendment or restatement of the Certificate of Incorporation of the Corporation, in whole or in part, and recommend the same to CHE for adoption.
- (ii) Approve the amendment or restatement of Key Bylaws Provisions (as defined in the Bylaws) of the Corporation, in whole or in part, and recommend the same to CHE for adoption.
- (iii) Approve the amendment or restatement of non-Key Bylaws Provisions of this Corporation, in whole or in part.
- (iv) Elect and remove Directors of the Corporation, with or without cause.
- (v) Elect and remove the President of this Corporation.
- (vi) Approve the official interpretation of the philosophy and mission of the Corporation.
- (vii) Approve the strategic plan of the Corporation, and recommend the same to CHE for adoption as part of the

consolidated strategic plan of the regional health system of the Corporate Member; provided that such right shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council of the State of New York.

(viii) Approve the annual operating plan and budget of the Corporation to ensure that such budget conforms to the mission and philosophy of the Corporation, and recommend the same to CHE for adoption as part of the consolidated operating plan and budget of the regional health system of the Corporate Member.

(ix) Approve Significant Financial Transactions (as defined in the Bylaws) and significant budget variances of the Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law, and recommend the same to CHE for adoption and authorization.

(x) Approve the development or dissolution of organizational relationships by the Corporation including without limitation subsidiary corporations, and significant partnerships, joint ventures and mergers as defined by the CHE Governance Documents (as defined in the Bylaws), and recommend the same to CHE for adoption and authorization.

(b) As reserved to the CHE Board of Directors:

(i) Adopt, amend, modify or restate the Certificate of Incorporation of the Corporation, in whole or in part, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

(ii) Adopt, amend, modify or restate the Key Bylaws Provisions of the Corporation, in whole or in part, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

(iii) Approve and authorize Significant Financial Transactions and significant budget variances of the Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

(iv) Approve and authorize the development or dissolution of organizational relationships by the Corporation



including without limitation subsidiary corporations, and significant partnerships, joint ventures and mergers as defined by the CHE Governance Documents, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

(v) Require the Corporation to timely participate in such programs and services as CHE provides to its other Constituent Corporations and which CHE, in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE system policies and the Corporation's mission and purposes.

(c) As reserved to the Sponsoring Organization:

(i) Ratification of those mergers, consolidations, dissolutions or other fundamental corporate reorganizations of the Corporation, as required by canon law and CHE policies consistent therewith."

(h) New Article "SIXTH," designating the Secretary of State as the Corporation's agent for service of process and providing an address for process, is added and shall read as follows:

"SIXTH: The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is Office of the President, Mercy Health-Care Center, Inc., Tupper Lake, New York 12986."

(i) New Article "SEVENTH," regarding the Corporation's status under the Not-for-Profit Corporation Law, is added and shall read as follows:

"SEVENTH: The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law and is a corporation as defined by subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law."

5. The Certificate of Incorporation, as heretofore amended, is hereby restated to read in its entirety as follows:

FIRST: The name of the Corporation is MERCY HEALTH-CARE CENTER, INC.

SECOND: The purposes for which the Corporation is formed are:

- (a) To establish, operate and maintain a residential healthcare facility to provide care and services, including nursing care and medical treatment for patients and residents of the facility.
- (b) To establish and maintain a diagnostic and treatment facility in the Town of Altamont for medical and surgical care and treatment of persons in need thereof, and to maintain a staff of competent physicians to treat, care for and prescribe to the persons in need of medical attention.
- (c) To perform such other powers as are incidental and necessary to maintain a residential healthcare facility and diagnostic and treatment center and to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not in the pecuniary profit or financial gain of its members, directors or officers except as permitted under Article 5 of the Not-for-Profit Corporation Law.

**THIRD:** The Corporation's office is located in the County of Franklin, New York.

**FOURTH:** The Corporation shall be organized and operated exclusively for charitable, religious, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the Corporation shall carry out its stated purposes in a manner that advances, promotes and supports the Catholic health system governed by Catholic Health East ("CHE"), a Pennsylvania nonprofit corporation, and its successors and constituent corporations, the Catholic healthcare ministries and Catholic healthcare mission of The Sisters of Mercy, Regional Community of New York, a religious institute of the Roman Catholic Church or its canonical successor (the "Sponsoring Organization"). The Corporation shall do any and all acts that are necessary, proper, useful, incidental or advantageous to carry out its stated purposes in conformity with the ethical and moral teachings of the Roman Catholic Church, the traditions, spirit and charisma of the Sponsoring Organization, and the Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Catholic Conference of Bishops. This Corporation shall operate under the philosophy and guidance of the Corporate Member, as hereafter defined, without regard to race, creed, color, gender, age, national origin or ability to pay. The Corporation will not be operated for the pecuniary gain or profit, incidental or otherwise, of any private individual. No part of the net earnings of the

Corporation shall inure to the benefit of or be distributable to its Member, Directors, Officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not conduct or carry on activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation to which contributions are deductible under Section 170(c)(2) of the Code.

**FIFTH:** Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, as well as any claims, subventions or subvention-like rights of or owed to the Sponsoring Organization, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, shall be distributed, subject to an order of a justice of the Supreme Court of the State of New York, to the Corporate Member of this Corporation or its successors, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kennedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Sponsoring Organization have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation.

**SIXTH:** The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is Office of the President, Mercy Health-Care Center, Inc., Tupper Lake, New York 12986.

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**SEVENTH:** The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law and is a corporation as defined by subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

**EIGHTH:** The sole Member of the Corporation shall be Mercy Uihlein Health Corporation, a New York not-for-profit corporation (the "Member" or "Corporate Member"). The Corporate Member and the Corporation both participate in the health care system of CHE. Certain powers have been expressly reserved to the Corporate Member, CHE and the Sponsoring Organization in this Certificate of Incorporation and the Bylaws of the Corporation. Action by the Corporation shall not be taken until the Corporate Member, acting through its Board of Directors, and, in some cases, CHE, acting through its Board of Directors, and the Sponsoring Organization, as applicable, shall have exercised their respective reserved powers in accordance with their respective governance documents. Action by the Corporation with respect to which action by the Corporate Member, CHE or the Sponsoring Organization is required shall not be effective until the Corporation shall have received notice of appropriate action having been taken by the respective party. The following powers are reserved to the Corporate Member, CHE and the Sponsoring Organization, as indicated:

- (a) As reserved to the Board of Directors of the Corporate Member:
- (i) Approve the amendment or restatement of the Certificate of Incorporation of the Corporation, in whole or in part, and recommend the same to CHE for adoption.
  - (ii) Approve the amendment or restatement of Key Bylaws Provisions (as defined in the Bylaws) of the Corporation, in whole or in part, and recommend the same to CHE for adoption.
  - (iii) Approve the amendment or restatement of non-Key Bylaws Provisions of this Corporation, in whole or in part.
  - (iv) Elect and remove Directors of the Corporation, with or without cause.
  - (v) Elect and remove the President of this Corporation.
  - (vi) Approve the official interpretation of the philosophy and mission of the Corporation.
  - (vii) Approve the strategic plan of the Corporation, and recommend the same to CHE for adoption as part of the consolidated strategic plan of the regional health system of the Corporate Member; provided that such right shall not permit the Member to exercise any of the governance

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authority under applicable regulations unless the Member has received establishment approval from the Public Health Council of the State of New York.

- (viii) Approve the annual operating plan and budget of the Corporation to ensure that such budget conforms to the mission and philosophy of the Corporation, and recommend the same to CHE for adoption as part of the consolidated operating plan and budget of the regional health system of the Corporate Member.
- (ix) Approve Significant Financial Transactions (as defined in the Bylaws) and significant budget variances of the Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law, and recommend the same to CHE for adoption and authorization.
- (x) Approve the development or dissolution of organizational relationships by the Corporation including without limitation subsidiary corporations, and significant partnerships, joint ventures and mergers as defined by the CHE Governance Documents (as defined in the Bylaws), and recommend the same to CHE for adoption and authorization.

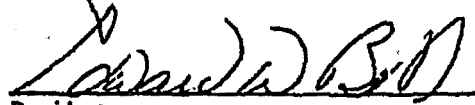
(b) As reserved to the CHE Board of Directors:

- (i) Adopt, amend, modify or restate the Certificate of Incorporation of the Corporation, in whole or in part, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.
- (ii) Adopt, amend, modify or restate the Key Bylaws Provisions of the Corporation, in whole or in part, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.
- (iii) Approve and authorize Significant Financial Transactions and significant budget variances of the Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

- (iv) Approve and authorize the development or dissolution of organizational relationships by the Corporation including without limitation subsidiary corporations, and significant partnerships, joint ventures and mergers as defined by the CHE Governance Documents, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.
  - (v) Require the Corporation to timely participate in such programs and services as CHE provides to its other Constituent Corporations and which CHE, in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE system policies and the Corporation's mission and purposes.
- (c) As reserved to the Sponsoring Organization:
- (i) Ratification of those mergers, consolidations, dissolutions or other fundamental corporate reorganizations of the Corporation, as required by canon law and CHE policies consistent therewith.

6. This restated Certificate of Incorporation was authorized by the Member of the Corporation as provided in Section 802(u)(1) of the Not-For-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned has executed this restated Certificate of Incorporation this 13 day of December 2002.

  
\_\_\_\_\_  
President  
Edward W. Bell

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RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
MERCY HEALTH-CARE CENTER, INC.  
Under Section 805 of the Not-for-Profit Corporation Law

200  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED DEC 20 2002  
TAX \$  
BY: Franklin  
Franklin

Filed by:  
Iseman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203  
(518) 462-3000

12

510

140701000339

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
MERCY HEALTH-CARE CENTER, INC.**

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

The undersigned, being the Secretary of Mercy Health-Care Center, Inc. (the "Corporation"), does hereby certify that:

1. The name of the Corporation is **MERCY HEALTH-CARE CENTER, INC.**
2. The Corporation's original Certificate of Incorporation was filed in the office of the Secretary of State on January 6, 1939 under the Membership Corporation Law. The Corporation was originally formed under the name, Mercy General Hospital of Tupper Lake, *NEW YORK.*
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPC-L").
4. The Certificate of Incorporation is amended to effect the following changes:
  - a. **REPLACE** in its entirety Article Fifth with the following new paragraph, both of which address the dissolution of the Corporation:

**"FIFTH:** Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, and upon approval of the New York attorney general or order of a Justice of the Supreme Court of the State of New York, shall be distributed to the member of this Corporation or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to CHE Trinity Inc., an Indiana nonprofit corporation or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code.

{00899498}

MERCY HEALTH-CARE CENTER, INC.

140701000339



Any assets not so disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Catholic Health Ministries have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation and applicable law. Any assets not so disposed of shall be disposed of by the New York attorney general or a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation."

- b. REPLACE in its entirety Article Sixth with the following new paragraph, both of which address the designation of the Secretary of State as the agent upon whom process is to be served:

"SIXTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served and the post office address within this State to which the Secretary of State shall mail a copy of any process against it, served upon him/her is: Catholic Health East, Counsel's Office, 3805 West Chester Pike, Suite 100, Newtown Square, PA 19073."

- c. REPLACE in its entirety Article Seventh with the following new paragraph, both of which address the definition of the Corporation:

"SEVENTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPC-L") and is a charitable corporation under Section 201 of the NPC-L."

- d. REPLACE in its entirety Article Eighth with the following new paragraph, both of which address powers reserved by the Corporation:

"EIGHTH: Mercy Uihlein Health Corporation is the sole member of the Corporation (the "Corporate Member") and shall be entitled to all rights and powers of a member under New York law, this Certificate of Incorporation and the Bylaws of the Corporation. CHE Trinity, Inc., is the sole member of Mercy Uihlein Health Corporation. Certain rights and powers related to the Corporation are reserved to Mercy Uihlein Health Corporation and CHE Trinity, Inc., under the Corporation's Governance Documents. Action by the Corporation shall not be taken or authorized until Mercy Uihlein Health Corporation and CHE Trinity,

Inc., as required, shall have exercised their respective reserved powers in the manner provided in the Governance Documents.

The following powers are reserved to Mercy Uihlein Health Corporation and CHE Trinity, Inc.:

- (a) As reserved to Mercy Uihlein Health Corporation:
- (i) Approve the amendment or restatement of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, and recommend the same to CHE Trinity, Inc., for adoption;
  - (ii) Elect and remove members of the Corporation's Board of Directors;
  - (iii) Elect and remove the President and Chief Executive Officer of the Corporation;
  - (iv) Approve the strategic plan of the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated strategic plan of Mercy Uihlein Health Corporation, provided that such right shall not permit Mercy Uihlein Health Corporation to exercise any of the governance authority prohibited under applicable regulations unless Mercy Uihlein Health Corporation has received establishment approval from the New York State Public Health and Health Planning Council;
  - (v) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of Mercy Uihlein Health Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law or the execution of hospital contracts for management or clinical services, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization, provided that such right of adoption and authorization shall not permit CHE Trinity, Inc., to exercise any of the governance authority prohibited under applicable regulations unless CHE Trinity, Inc., has received establishment approval from the New York State Public Health and Health Planning Council;
  - (vi) Approve the annual operating and capital budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation, and recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated operating and capital budgets of Mercy Uihlein Health

Corporation, provided that such right of adoption shall not permit CHE Trinity, Inc., to exercise any of the governance authority prohibited under applicable regulations unless CHE Trinity, Inc., has received establishment approval from the New York State Public Health and Health Planning Council;

- (vii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (viii) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (ix) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (x) Approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (xi) Approve any change to the structure or operations of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and recommend the same to CHE Trinity, Inc., for approval; and
- (xii) Approve all other matters and take all other actions reserved to members of nonprofit corporations (or shareholders of for-profit corporations, as the case may be) by the laws of the state in which the Corporation is domiciled or as reserved in the Governance Documents of the Corporation.

- (b) As reserved to CHE Trinity, Inc.:
- (i) Adopt, amend, modify or restate the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (ii) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of CHE Trinity, Inc., provided that CHE Trinity, Inc., shall not have approval authority over the incurrence of debt necessary to finance the cost of compliance with operational or physical plant standards required by law or the execution of hospital contracts for management or clinical services, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (iii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (iv) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (v) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (vi) Subject to the requirements of the New York Not-for-Profit Corporation Law, approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), except for pledges or encumbrances necessary to finance the cost of compliance with operational or physical plant standards required by law, or if CHE Trinity, Inc.,

receives a recommendation as to any such action, approve such action as recommended;

- (vii) Approve any change to the structure or operation of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c) of the Internal Revenue Code, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (viii) Appoint and remove the independent fiscal auditor of the Corporation; and
- (ix) Require the Corporation to timely participate in such programs and services as CHE Trinity, Inc., provides to its other Regional Health Ministries and which CHE Trinity, Inc., in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE Trinity, Inc.'s system policies and the Corporation's mission and purposes."

5. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served and the post office address within this State to which the Secretary of State shall mail a copy of any process against it served upon him/her is: Catholic Health East, Counsel's Office, 3805 West Chester Pike, Suite 100, Newtown Square, PA 19073.
6. This Certificate of Amendment of the Certificate of Incorporation was authorized by the Corporate Member as provided in Section 802(a)(1) of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned has signed this restated Certificate of Incorporation this 16th day of May, 2014.

  
Michael C. Hemsley, Esquire

SECRETARY

140701000339

**Certificate of Amendment**

of the

**Certificate of Incorporation**

of

**MERCY HEALTH-CARE CENTER, INC.**

Under Section 803 of the NYS Not-for-Profit Corporation Law

**FILED**

2014 JUL -1 PM 12:18

RECEIVED  
2014 JUL -1 AM 11:20

RECEIVED  
2014 JUL -1 AM 9:10

Filed by:  
Karen E. Sosler, Esq.  
Isman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203

**DRAWDOWN**  
**ACCT # TS**

1 cc  
**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

FILED JUL 01 2014

TAX \$ \_\_\_\_\_

BY: LHC

{00899498}

MERCY HEALTH-CARE CENTER, INC.

# Report Generation

CHE-BS002

4301 MERCY WHILEIN HEALTH CORP  
BALANCE SHEET - DETAIL  
As of May 31, 2017

07/13/17  
14:09  
PAGE 1

\*Co Company consolidation

		05/31/17	PRIOR MONTH	CURRENT MONTH CHANGE	05/31/16	PRIOR YR AUDIT	CURRENT YEAR CHANGE
ASSETS							
CURRENT ASSETS							
ASSETS LIMITED AS TO USE							
ASSETS LIMITED AS TO USE OTHER ASSETS							
LIABILITIES AND NET ASSETS							
CURRENT LIABILITIES							
4301	210005-0000	ACCOUNTS PAYABLE-CASH OVERDRAP	0.00	1,547,150.29	1,547,150.29-	1,172,178.16	1,191,845.26-
4301	210250-0000	AP INTERCOMPANY TRINITY HEALTH	0.00	0.00	0.00	1,433.00	0.00
4301	210251-0000	AP INTERCOMPANY IN305 - INSURAN	0.00	16,132.00	16,132.00-	16,132.00	16,132.00-
		ACCOUNTS PAYABLE	0.00	1,563,282.29	1,563,282.29-	1,189,743.16	1,207,977.26-
4301	210101-0000	ACCRUED EXPENSES	0.00	5,800.00	5,800.00-	5,800.00	5,800.00-
		ACCRUED EXPENSES	0.00	5,800.00	5,800.00-	5,800.00	5,800.00-
4301	240215-0000	MEDICAID 2007	0.00	0.00	0.00	135,663.58	135,663.58-
4301	240401-0000	PAYABLE TO 3RD PARTIES	0.00	0.00	0.00	53,772.80	53,772.80-
4301	270810-0002	THIRD PARTY PRIOR YEAR LT - ME	0.00	135,663.58	135,663.58-	0.00	0.00
4301	270810-0003	THIRD PARTY PRIOR YEAR LT - OT	0.00	53,772.80	53,772.80-	0.00	0.00
		EST PAY TO 3RD PARTY PAYORS	0.00	189,436.38	189,436.38-	189,436.38	189,436.38-
		TOTAL CURRENT LIABILITIES	0.00	1,758,518.67	1,758,518.67-	1,384,979.54	1,403,213.64-
4301	201901-0000	CURRENT PORTION ACCRUED PENSIO	0.00	11,760.00	11,760.00-	10,780.00	11,760.00-
4301	280301-0000	PENSION LIABILITY	0.00	1,503,376.97	1,503,376.97-	1,188,152.97	1,704,416.97-
		ACC PENSION AND RETIREE COSTS	0.00	1,515,136.97	1,515,136.97-	1,198,932.97	1,716,176.97-
4301	280450-0000	INSURANC IBNR CHE TRINITY IC L	0.00	2,690.00	2,690.00-	18,731.00	16,132.00-
		OTHER LT LIABILITIES	0.00	2,690.00	2,690.00-	18,731.00	16,132.00-
		TOTAL LIABILITIES	0.00	3,276,345.64	3,276,345.64-	2,602,643.51	3,135,522.61-
NET ASSETS							
4301	300000-0000	UNRESTRICTED NET ASSETS BEGINN	3,135,522.61-	3,135,522.61-	0.00	2,615,579.15-	2,673,616.61-
4301	310000-0000	EXCESS OF REVENUE OVER EXPENSE	156,040.76-	231,123.03-	75,082.27	51,788.36-	0.00
4301	310104-0000	UNREST INCOME LOSS FROM DISCON	212,714.38	0.00	212,714.38	0.00	0.00
4301	310109-0000	OTHER UNRESTRICTED NET ASSETS	3,078,848.99	0.00	3,078,848.99	0.00	0.00

Report Generation

CHE-BS002

4301 MERCY UNILEIN HEALTH CORP  
 BALANCE SHEET - DETAIL  
 As of May 31, 2017

07/13/17  
 14:09  
 PAGE 2

\*Co Company consolidation

		05/31/17	PRIOR MONTH	CURRENT MONTH CHANGE	05/31/16	PRIOR YR AUDIT	CURRENT YEAR CHANGE
4301	310200-0000 UNREST DEFERRED RETIREMENT ITE	0.00	90,300.00	90,300.00-	64,724.00	70,608.00	70,608.00-
4301	310201-0000 UNREST DEFERRED RETIREMENT ITE	0.00	0.00	0.00	0.00	532,514.00-	532,514.00
	UNRESTRICTED NET ASSETS	0.00	3,276,345.64-	3,276,345.64	2,602,643.51-	3,135,522.61-	3,135,522.61
	TOTAL NET ASSETS	0.00	3,276,345.64-	3,276,345.64	2,602,643.51-	3,135,522.61-	3,135,522.61



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of October 2017, approves the filing of the Certificate of Dissolution of Mercy Health-Care Center, Inc., dated June 22, 2017.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** July 25, 2017

**Subject:** Dissolution: Uihlein Mercy Center, Inc

---

Uihlein Mercy Center, Inc. was a licensed Article 28 nursing home facility until 2007 when the corporation surrendered its license to the Department in connection with the sale of the facility to Adirondack Medical Center.

Since the corporation has been inactive since that time, the boards of Uihlein Mercy Center, Inc., and its sole corporate member, Mercy Uihlein Health Corporation, have elected to dissolve the corporation.

Pursuant to Article 10 of the New York State Not-for-Profit Corporation Law, PHHPC approval of the dissolution must be received. 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.

Attachments

**Buchanan Ingersoll  Rooney PC**

Jan O. Wenzel  
412 562 1838  
jan.wenzel@bipc.com

One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410  
T 412 562 8800  
F 412 562 1041  
www.bipc.com

June 28, 2017

*Via United Parcel Service*

Colleen M. Leonard  
Executive Secretary, Public Health and Health Planning Council  
NYS Department of Health  
Corning Tower, Room 1805  
Empire State Plaza  
Albany, New York 12237

Re: Request for Approval of Voluntary Dissolution of The Uihlein Mercy Center, Inc.

Dear Ms. Leonard:

This firm represents The Uihlein Mercy Center, Inc. ("TUMC"), a New York not-for-profit corporation currently seeking Public Health and Health Planning Council ("PHHPC") approval of its voluntary dissolution.

By way of background, TUMC was formerly licensed to operate as an Article 28 Nursing Home. However, TUMC voluntarily surrendered its license to the New York Department of Health (the "Department") on or about January 1, 2007, in connection with a transfer of all of its assets to Adirondack Medical Center. Although we have not located an execution version of the letter to the Department, we have attached a copy of the draft letter hereto at Tab A. In addition, a copy of the PHHPC letter approving the asset transfer is attached hereto at Tab B.

Despite maintaining its corporate existence, TUMC has been inactive in the ten years since the transfer of assets. For the purposes of corporate efficiencies, and in conjunction with the fact that TUMC has no current assets or liabilities, the Board of Directors of TUMC has executed a unanimous written consent to dissolve the entity, a copy of which is attached hereto at Tab C. The dissolution has also been approved by TUMC's sole corporate Member, Mercy Uihlein Health Corporation, a copy of which approval is attached hereto at Tab D.

The proposed Plan of Dissolution and distribution of the assets, of which there are none, as well as the proposed Certificate of Dissolution and the proposed Petition to the Attorney General of the State of New York are attached hereto at Tabs E, F and G, respectively. In addition, TUMC's existing Certificate of Incorporation is attached hereto at Tab H.

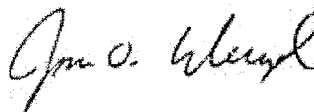
June 28, 2017

Page - 2 -

It is believed, based on the foregoing and the attached, that this action to dissolve an inactive entity will not negatively impact the rights or interests of the public or those previously associated with TUMC. Nevertheless, if it is your determination that additional documentation or other information is necessary or desirable in order for PHHPC to approve the dissolution, please feel free to contact us.

I sincerely look forward to working with PHHPC on this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jan O. Wenzel".

Jan O. Wenzel

Enclosures

cc: Michael C. Hemsley, Esq.

January 1, 2007

**VIA FACSIMILE & OVERNIGHT MAIL**

Mr. Larry Phillips  
New York Department of Health  
Capital District Regional Office  
One Fulton Street  
Troy, New York 12180-3281

**Re: Surrender of Nursing Home Licenses**

Dear Mr. Phillips:

In connection with the transfer of assets from The Uihlein Mercy Center, Inc. ("TUMC") and Mercy Health-Care Center, Inc. ("MHCC") to Adirondack Medical Center, which transfer became effective today, we have enclosed for surrender the original Nursing Home Licenses for both TUMC and MHCC. It is our understanding that you will now issue new Nursing Home Licenses to AMC. If my understanding is incorrect, please contact me at your earliest convenience.

We sincerely appreciate your assistance during this process. Thank you.

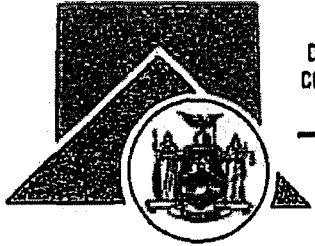
Very truly yours,

Bill O'Reilly

Enclosures

cc: Michael C. Hemsley, Esq.  
Linda L. Fleming, Esq.

OCT 02 2006



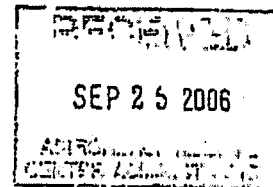
STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

*1 cc City of  
reform*

September 20, 2006

Ms. Gail Lautenschuetz  
Vice President of Ancillary Services  
Adirondack Medical Center  
2233 State Route 86, P.O. Box 471  
Saranac Lake, New York 12983



Re: Application No. 061041 – Adirondack Medical Center – Uihlein Mercy Center  
(Essex County)

Dear Ms. Lautenschuetz:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Adirondack Medical Center – Uihlein Mercy Center is APPROVED, the contingencies having now been fulfilled satisfactorily. This approval is conditioned upon the applicant's continued compliance with the Medicaid access condition, as included in the Public Health Council's approval of the project. The Public Health Council had considered this application and imposed the contingencies at its meeting of May 12, 2006.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third-party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Capital District Regional Office of the New York State Office of Health Systems Management, Frear Building, 2<sup>nd</sup> Floor, One Fulton Street, Troy, New York 12180-3281 or (518) 408-5300, within 30 days of receipt of this letter.

Sincerely,

Donna W. Peterson  
Executive Secretary

/md

**UNANIMOUS WRITTEN CONSENT  
OF  
THE BOARD OF DIRECTORS  
OF  
THE UIHLEIN MERCY CENTER, INC.**

THE UNDERSIGNED, being all of the Directors ("Board") of The Uihlein Mercy Center, Inc., a New York not-for-profit corporation (the "Corporation"), acting in accordance with the applicable provisions of the not-for-profit corporation laws of the State of New York and the certificate of incorporation and bylaws of the Corporation, do hereby waive notice and consent in writing to the adoption of, and do hereby recommend for adoption to the Corporation's sole member, Mercy Uihlein Health Corporation (the "Member"), the following resolutions as though adopted and ratified at a duly-called meeting of the Board of the Corporation held on the last date on which this Unanimous Written Consent was signed by the Board as indicated below:

WHEREAS, the Corporation sold substantially all of its assets pursuant to that certain Nursing Home Asset Purchase Agreement by and Between the Mercy Uihlein Health Corporation, the Corporation, Mercy Health-Care Center, Inc., Catholic Health East, and Adirondack Medical Center dated February 9, 2006; and

WHEREAS, the Corporation no longer has any assets or liabilities and is inactive; and

WHEREAS, Mercy Uihlein Health Corporation (the "Member") is the sole Member of the Corporation; and

WHEREAS, the Board previously has been fully advised regarding the proposed dissolution of the Corporation; and

WHEREAS, the Board has determined that, under all of the circumstances, dissolving the Corporation is in the best interests of the Corporation.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that, this Board adopts and recommends to the Member to approve the Plan of Dissolution in substantially the form attached hereto at Exhibit A and hereby authorizes the Secretary of the Corporation, and such other officers of the Corporation as he/she shall designate (collectively, the "Authorized Officers") to finalize, execute, deliver, consummate and perform, in the name of and on behalf of the Corporation, all such documents and other instruments as reasonably necessary or appropriate to effectuate and carry out the purposes and intent of the foregoing recitals and resolutions; and

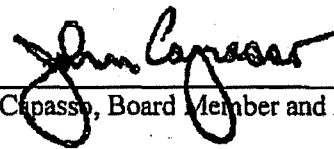
BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to seek approval of the dissolution from the Public Health and Health Planning Council, file a Petition to the Attorney General for Approval of Certificate of Dissolution substantially in the form attached hereto (and as may be revised by the Authorized Officers at the request of the Attorney General), file a Certificate of Dissolution with the Department of State of the State of New York substantially in the form attached hereto (and as may be revised by the Authorized Officers at the request of the Department of State), and, if required, seek approval of the dissolution from the New York State Department of Taxation and Finance; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>ST</sup> day of MAY, 2017.



John Capasso, Board Member and President

Elizabeth Curtis, Board Member and  
Treasurer

Michael C. Hemsley, Esq., Board Member  
and Secretary



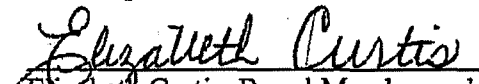
BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>st</sup> day of MAY, 2017.

\_\_\_\_\_  
John Capasso, Board Member and President

  
\_\_\_\_\_  
Elizabeth Curtis, Board Member and  
Treasurer

\_\_\_\_\_  
Michael C. Hemsley, Esq., Board Member  
and Secretary

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and


BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>ST</sup> day of MAY, 2017.

\_\_\_\_\_  
John Capasso, Board Member and President

\_\_\_\_\_  
Elizabeth Curtis, Board Member and  
Treasurer

  
\_\_\_\_\_  
Michael C. Hentsley, Esq., Board Member  
and Secretary

**UNANIMOUS WRITTEN CONSENT  
OF  
THE BOARD OF DIRECTORS  
OF  
MERCY UIHLEIN HEALTH CORPORATION**

**(APPROVAL OF DISSOLUTION OF SUBSIDIARIES)**

THE UNDERSIGNED, being all of the Directors ("Board") of Mercy Uihlein Health Corporation, a New York not-for-profit corporation (the "Corporation"), acting in accordance with the applicable provisions of the not-for-profit corporation laws of the State of New York and the certificate of incorporation and bylaws of the Corporation, do hereby waive notice and consent in writing to the adoption of, and do hereby recommend for adoption to the Corporation's sole member, Trinity Health Corporation (the "Corporation's Member"), the following resolutions as though adopted and ratified at a duly-called meeting of the Board of the Corporation held on the last date on which this Unanimous Written Consent was signed by the Board as indicated below:

WHEREAS, the Corporation and two of its subsidiaries, The Uihlein Mercy Center, Inc. and Mercy Health-Care Center, Inc. (together, the "Subsidiaries"; separately, the "Subsidiary"), sold substantially all of their assets pursuant to that certain Nursing Home Asset Purchase Agreement by and Between the Corporation, the Subsidiaries, Catholic Health East, and Adirondack Medical Center dated February 9, 2006; and

WHEREAS, the Subsidiaries no longer have any assets or liabilities and are inactive; and

WHEREAS, the Corporation is the sole member of each Subsidiary; and

WHEREAS, Trinity Health Corporation (the "Corporation's Member") is the sole member of the Corporation; and

WHEREAS, the Board previously has been fully advised regarding the proposed dissolution of the Subsidiaries; and

WHEREAS, The Uihlein Mercy Center, Inc. has approved and authorized the adoption of its Plan of Dissolution in substantially the form attached hereto at Exhibit A and has recommended that the Corporation similarly approve its adoption; and

WHEREAS, Mercy Health-Care Center, Inc. has approved and authorized the adoption of its Plan of Dissolution in substantially the form attached hereto at Exhibit B and has recommended that the Corporation similarly approve its adoption; and

WHEREAS, the Board has determined that, under all of the circumstances, dissolving the Subsidiaries is in the best interests of the Subsidiaries.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that, this Board adopts, authorizes the approval of, and recommends to the Corporation's Member to approve each Plan of

Dissolution for the Subsidiaries in substantially the forms attached hereto at Exhibit A and Exhibit B and hereby authorizes the Secretary of the Corporation, and such other officers of the Corporation as he/she shall designate (collectively, the "Authorized Officers") to finalize, execute, deliver, consummate and perform, in the name of and on behalf of the Corporation, all such documents and other instruments as reasonably necessary or appropriate to effectuate and carry out the purposes and intent of the foregoing recitals and resolutions; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>st</sup> day of MAY, 2017.



John Capasso, Board Member and President

Elizabeth Curtis, Board Member and  
Treasurer

Michael C. Hemsley, Esq., Board Member  
and Secretary

Dissolution for the Subsidiaries in substantially the forms attached hereto at Exhibit A and Exhibit B and hereby authorizes the Secretary of the Corporation, and such other officers of the Corporation as he/she shall designate (collectively, the "Authorized Officers") to finalize, execute, deliver, consummate and perform, in the name of and on behalf of the Corporation, all such documents and other instruments as reasonably necessary or appropriate to effectuate and carry out the purposes and intent of the foregoing recitals and resolutions; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>st</sup> day of MAY, 2017..

John Capasso, Board Member and President

  
Elizabeth Curtis, Board Member and Treasurer

Michael C. Hemsley, Esq., Board Member and Secretary

Dissolution for the Subsidiaries in substantially the forms attached hereto at Exhibit A and Exhibit B and hereby authorizes the Secretary of the Corporation, and such other officers of the Corporation as he/she shall designate (collectively, the "Authorized Officers") to finalize, execute, deliver, consummate and perform, in the name of and on behalf of the Corporation, all such documents and other instruments as reasonably necessary or appropriate to effectuate and carry out the purposes and intent of the foregoing recitals and resolutions; and

BE IT FURTHER RESOLVED, that the Authorized Officers shall be and hereby are authorized to take any and all actions as may be necessary or appropriate to do and perform, or cause to be done and performed, all such acts and deeds, in the name of and on behalf of Corporation, as may be deemed necessary or appropriate to effectuate or carry out the purpose and intent of the foregoing resolutions; and

BE IT FURTHER RESOLVED, that all prior lawful actions of the Authorized Officers in furtherance of the foregoing recitals and resolutions are hereby ratified and confirmed; and

BE IT FURTHER RESOLVED, that the delivery of an executed signature page by facsimile transmission or electronic mail shall constitute a legally effective and binding execution of this Unanimous Written Consent.

IN WITNESS WHEREOF, the undersigned have caused this Unanimous Written Consent to be signed as of the 31<sup>ST</sup> day of MAY, 2017.

\_\_\_\_\_  
John Capasso, Board Member and President

\_\_\_\_\_  
Elizabeth Curtis, Board Member and  
Treasurer

  
\_\_\_\_\_  
Michael C. Hemsley, Esq., Board Member  
and Secretary

**Exhibit A**

**Plan of Dissolution**

of

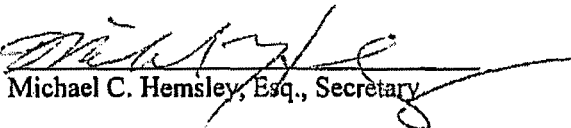
**The Uihlein Mercy Center, Inc.**

The Board of Directors ("Directors") of The Uihlein Mercy Center, Inc. does hereby resolve and recommend to the Member for approval that the corporation be dissolved. The Directors agreed to this resolution by unanimous written consent without a meeting. The Directors considered the advisability of voluntarily dissolving the corporation. All of the Directors determined that dissolution was advisable and in the best interest of the corporation. They adopted the following plan:

1. Following resolution of the Board of Directors adopting a Plan of Dissolution, the Board shall submit the plan to a vote of the Member for approval.
2. Approval of the dissolution must be obtained from the following government agencies and officers, whose approvals are/will be attached:
  - a. Public Health and Health Planning Council
3. The corporation has no assets or liabilities.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Certification

I, Michael C. Hemsley, Esq., Secretary of The Uihlein Mercy Center, Inc. hereby certify under penalties for perjury that the within Plan of Dissolution was duly submitted and passed by a unanimous written consent of the Board of Directors. The Member approved the Plan of Dissolution by unanimous written consent.

  
Michael C. Hemsley, Esq., Secretary

Dated the 22<sup>nd</sup> day of June, 2017.

Certificate of Dissolution

of

The Uihlein Mercy Center, Inc.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

I, Michael C. Hemsley, Esq., the Secretary of The Uihlein Mercy Center, Inc. hereby certify:

1. The name of the corporation is The Uihlein Mercy Center, Inc. The corporation was originally named Sanatorium Gabriels.
2. The corporation's original Certificate of Incorporation was filed in the Office of the Secretary of State on January 3, 1947 under the Membership Corporation Law, under the name Sanatorium Gabriels.
3. The names and addresses of each of the directors and officers of the corporation and the title of each are as follows:

<u>Name</u>	<u>Officer or Director/Title</u>	<u>Address</u>
John Capasso	Board Member; President	EVP, Continuing Care Trinity Health 2055 Victor Parkway Livonia, MI 48152
Elizabeth Curtis	Board Member; Treasurer	Director, Finance Enterprise Development Trinity Health 20555 Victor Parkway Livonia, MI 48152
Michael C. Hemsley, Esq.	Board Member; Secretary	Deputy General Counsel Trinity Health 3805 West Chester Pike, Suite 100 Newtown Square, PA 19073

4. Dissolution of the corporation was authorized by unanimous written consent of the Board of Directors. Dissolution was then approved by the corporation's sole member.
5. The corporation elects to dissolve.
6. At the time of dissolution, the corporation is a Type B 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 sole member approved the Plan of Dissolution, the corporation had no assets or 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 of Dissolution of The Uihlein Mercy Center, Inc. this 22<sup>nd</sup> day of June, 2017.

  
Michael C. Hemsley, Esq., Secretary

**Certificate of Dissolution**  
**of**  
**The Uihlein Mercy Center, Inc.**

**Pursuant to § 1003 of the Not-for-Profit Corporation Law**

**Filed by:**

**Jan O. Wenzel, Esq.**  
**Buchanan Ingersoll & Rooney PC**  
**One Oxford Centre**  
**301 Grant Street, 20th Floor**  
**Pittsburgh, PA 15219-1410**  
**(412) 562-1838**

**NOTE: The filer identified here will receive the approved Certificate of Dissolution and the filing receipt from the Department of State.**

**VERIFIED PETITION TO THE ATTORNEY GENERAL FOR APPROVAL OF  
CERTIFICATE OF DISSOLUTION**

In the Matter of the Application of  
The Uihlein Mercy Center, Inc.  
For Approval of Certificate of  
Dissolution pursuant to  
Section 1002 of the Not-for-Profit  
Corporation Law.

VERIFIED PETITION

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Plattsburgh Regional Office  
43 Durkee Street - Suite 700  
Plattsburgh, NY 12901-2958

Petitioner, The Uihlein Mercy Center, Inc., by Michael C. Hemsley, Esq., Secretary of the corporation, for its Verified Petition alleges:

1. The Uihlein Mercy Center, Inc., whose principal address is located in the county of Essex, was incorporated pursuant to New York's Membership Corporation Law on January 3, 1947 under the name Sanatorium Gabriels. A copy of the Certificate of Incorporation (and all amendments) is attached as Exhibit A.

2. The names, addresses and titles of the corporation's directors and officers are as follows:

<u>Name</u>	<u>Officer or Director/Title</u>	<u>Address</u>
John Capasso	Board Member; President	EVP, Continuing Care Trinity Health 2055 Victor Parkway Livonia, MI 48152
Elizabeth Curtis	Board Member; Treasurer	Director, Finance Enterprise Development Trinity Health 20555 Victor Parkway Livonia, MI 48152
Michael C. Hemsley, Esq.	Board Member; Secretary	Deputy General Counsel Trinity Health 3805 West Chester Pike, Suite 100 Newtown Square, PA 19073

3. The purposes for which the corporation was organized are as follows:

To maintain a hospital and sanatorium in the Town of Brighton, Franklin County, New York, to render medical and surgical aid, care and assistance to those in need thereof, particularly, but not limited, to tuberculosis patients, and to maintain a staff of competent physicians and surgeons to treat, care for and prescribe to the persons in need thereof.

To perform such other powers as are incidental and necessary in the maintenance of a general hospital and sanatorium including the purchase, ownership and leasing of real property and necessary equipment and supplies, the construction, alteration and repair of necessary buildings and the execution of contracts and borrowing of money.

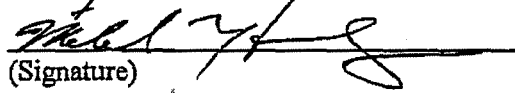
4. The corporation is a Type B charitable corporation.
5. On MAY 31, 2017, the Board of Directors of the corporation adopted a Plan and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. The Plan was authorized by unanimous written consent, a copy of which is attached as Exhibit B.
6. The sole member of the corporation approved the dissolution by unanimous written consent of the sole member's board of directors. A copy of the unanimous written consent of the sole member's board of directors approving the dissolution is attached as Exhibit C.
7. A certified copy of the corporation's Plan of Dissolution is attached as Exhibit D.
8. The corporation has no assets or liabilities, and its final report showing zero assets has been filed with the Attorney General.
9. Approval of the dissolution of the corporation must be obtained from the following governmental bodies and officers, and copies of such approval are attached as Exhibit E:

Public Health and Health Planning Council

10. 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 requests that the Attorney General approve the Certificate of Dissolution of The Uihlein Mercy Center, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 22 day of Jan 2017, by

  
(Signature)


Michael C. Hemsley, Esq., Secretary

Verification

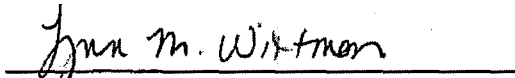
STATE OF NEW YORK )  
 )  
COUNTY OF \_\_\_\_\_ ) SS.

Michael C. Hemsley, Esq., being duly sworn, deposes and says:

I am the Secretary of The Uihlein Mercy Center, Inc., the corporation 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 to be 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.

  
(Signature)

Sworn to before me executed this 22<sup>nd</sup> day of June, 2017.

  
\_\_\_\_\_  
Notary Public

LYNN M. WITTMAN  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires Sep. 25, 2023  
Acting in the County of Oakland



State of New York—Department of Social Welfare

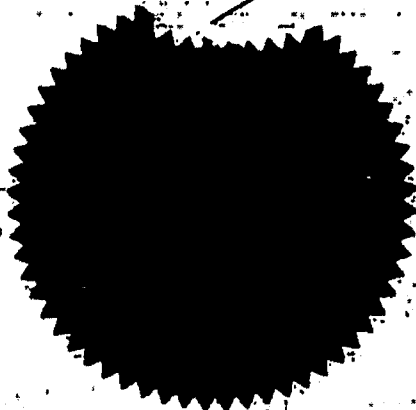
State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on  
the seventeenth day of December, 1946, due inquiry and investiga-  
tion having been made, the Board approved the certificate of incorporation of  
Sanatorium Gabriela, pursuant to the Membership Corporations Law.

In Witness Whereof, the State Board of  
Social Welfare has caused these presents to be  
signed in accordance with the provisions of the  
statutes and its by-laws, and the official seal of  
the Board and of the Department to be here-  
unto affixed, this twenty-seventh day of  
December, in the year one thousand  
nine hundred and forty-six.



Secretary,

4779-2-1

CERTIFICATE OF INCORPORATION

of

SANATORIUM GABRIELS

PURSUANT TO THE MEMBERSHIP CORPORATIONS LAW  
OF THE STATE OF NEW YORK.

We, the undersigned, for the purpose of forming a membership corporation pursuant to the Membership Corporations Law of the State of New York, hereby CERTIFY:

1. The name of the proposed corporation shall be SANATORIUM GABRIELS.

2. The purposes for which it is to be formed are:

(a) To maintain a hospital and sanatorium in the Town of Brighton, Franklin County, New York, to render medical and surgical aid, care and assistance to those in need thereof, particularly, but not limited, to tuberculous patients, and to maintain a staff of competent physicians and surgeons to treat, care for and prescribe to the persons in need thereof.

(b) To perform such other powers as are incidental and necessary in the maintenance of a general hospital and sanatorium including the purchase, ownership and leasing of real property and necessary equipment and supplies, the construction, alteration and repair of necessary buildings and the execution of contracts and borrowing of money.

3. The territory in which its operations are principally to be conducted is the Town of Brighton, Franklin County, New York.

4. The city, village or town and the county in which its office is to be located is Gabriels, Town of Brighton, Franklin County, New York.



5. The number of its directors shall be seven and the names and addresses of the directors until the first annual meeting of the Board of Directors are:

<u>NAMES</u>	<u>ADDRESSES</u>
Sister Mary Assumpta Knobbe	Tarrytown, New York
Sister Mary Brenda Gildea	Gabriels, N. Y.
Sister Mary Raphael Murray	Gabriels, N. Y.
Sister Mary Arcadius O'Connor	Gabriels, N. Y.
Sister Mary McAuley Connolly	Gabriels, N. Y.
Sister Mary Ita O'Dea	Gabriels, N. Y.
Sister Mary Emerita Wells	Gabriels, N. Y.

6. All of the subscribers to this certificate are of full age, at least two-thirds of them are citizens of the United States; at least one of them is a resident of the State of New York, and of the persons named as directors at least one is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this certificate this 9th day of October, 1946.

*Sister Mary Assumpta Knobbe*  
Sister Mary Assumpta Knobbe

*Sister Mary Brenda Gildea*  
Sister Mary Brenda Gildea

*Sister Mary Raphael Murray*  
Sister Mary Raphael Murray

*Sister Mary Arcadius O'Connor*  
Sister Mary Arcadius O'Connor

*Sister Mary McAuley Connolly*  
Sister Mary McAuley Connolly

*Sister Mary Ita O'Dea*  
Sister Mary Ita O'Dea

*Sister Mary Emerita Wells*  
Sister Mary Emerita Wells

4798-2-3

STATE OF NEW YORK :

COUNTY OF FRANKLIN:

On this 11 day of October, 1946, before me, the  
subscriber, personally appeared Sister Mary Anthonia Knabbe,  
Sister Mary Brenda Gildea, Sister Mary Raphael Murray, Sister  
Mary Arcadius O'Connor, Sister Mary McAuley Connelly, Sister Mary  
Ita O'Dea and Sister Mary Emerita Wells, to me known and known  
to me to be the same persons mentioned and described in and who  
executed the foregoing instrument, and they duly and severally  
acknowledged to me that they executed the same.

*[Signature]*  
Notary Public in the State of New York  
Franklin County No. 321  
My Commission Expires March 30, 1948.

I, a Justice of the Supreme Court of the Fourth  
Judicial District of the State of New York, hereby approve the  
foregoing Certificate of Incorporation.

Dated October 15<sup>th</sup>, 1946.

*[Signature]*  
JUSTICE OF THE SUPREME COURT.

~~Franklin~~  
~~4779~~ 10/19  
11/19

CERTIFICATE OF INCORPORATION

of  
SANATORIUM GABRIELS  
CO.

PURSUANT TO THE MEMBERSHIP  
CORPORATIONS LAW OF THE STATE  
OF NEW YORK

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JAN 3-1947

TAX \$ None

FILING FEES 40

*Thomas J. Curran*  
SECRETARY OF STATE

BY *[Signature]*

Messrs. Moore, Herron & Lawler  
New York  
New York

CERTIFICATE OF REPORT OF EXISTENCE  
OF

SANATORIUM GABRIELS

Exact Name of Corporation

Pursuant to Section 57 of the Membership Corporation Law

The name of the Corporation is SANATORIUM GABRIELS

Name of Corporation

original name was Same

If name has been changed, insert original name

the certificate of incorporation was filed in the Department of State  
on January 3, 1947

Date of Incorporation

The corporation was formed pursuant to The Membership Corporation Law  
of the State of New York

Cite Incorporation Statute

The existence of the foregoing corporation is hereby continued.

157

*Arthur Henry Comstock Kelly, P. M.*

To be signed by an officer,  
trustee, director or five  
members in good standing.

STATE OF NEW YORK  
COUNTY OF FRANKLIN

On this 17<sup>th</sup> day of May

1947 before me personally

appeared *Arthur Henry Comstock Kelly, P. M.* to me personally known and known to me  
to be the person (or persons) described in and who executed the foregoing certificate  
and (he) (they) thereupon acknowledged to me that (he) (they) executed the

and witnessed the said instrument

RECEIVED

OFFICE

NOV 19 1944

THE UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WASHINGTON, D. C.

NOV 19 1944

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563083

CERTIFICATE OF CHANGE OF NAME OF  
SANATORIUM GABRIELS

to

THE UHLEIN MERCY CENTER, INC.

(Pursuant to Section 40 of the General Corporation Law)

WE, the undersigned, SISTER MARY MICHELE AYOTTE, President, and SISTER MARY ROBERTA VALIN, Secretary, of Sanatorium Gabriels, a Membership Corporation, duly organized and existing under the Membership Corporations Law of the State of New York, for the purpose of changing its name from SANATORIUM GABRIELS to THE UHLEIN MERCY CENTER, INC., pursuant to Section 40 of the General Corporation Law, do hereby make, sign and acknowledge this Certificate and do certify as follows:

(1) The name of the corporation is SANATORIUM GABRIELS.

(2) The original Certificate of Incorporation was filed in the office of the Secretary of State of the State of New York on the 3rd day of January 1947 and a certified copy thereof was filed in the office of the Clerk of the County of Franklin on January 18, 1947.

(3) The new name to be assumed by this corporation is THE UHLEIN MERCY CENTER, INC.

~~IN WITNESS WHEREOF~~, we have made, signed and acknowledged this certificate this 23<sup>rd</sup> day of MAY 1966.

*Sister Mary Michele Ayotte*  
President

*Sister Mary Roberta Valin*  
Secretary

STATE OF NEW YORK )

COUNTY OF *Essex* )

ss.:

On this 23<sup>rd</sup> day of May 1966, before me personally, came SISTER MARY MICHELE AYOTTE and SISTER MARY ROBERTA VALIN, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they thereupon severally acknowledged to me that they executed the same.

*E. Ruth Castle*  
\_\_\_\_\_  
Notary Public

E. RUTH CASTLE  
Notary Public, State of New York  
No. 15-659885  
Qualified in Essex County  
Term expires March 30, 1967

*2*

STATE OF NEW YORK )  
COUNTY OF *Essex* ) ss.:

SISTER MARY MICHELE AYOTTE and SISTER MARY ROBERTA VALIN, being severally sworn, each for herself, deposes and says:

That the said Sister Mary Michele Ayotte is the President of Sanatorium Gabriels and that the said Sister Mary Roberta Valin is the Secretary thereof; that they were authorized to execute and file the foregoing Certificate of Change of Name of said corporation by the unanimous vote of the majority of the members of the corporation entitled to vote on the Change of Name, to wit, all of the members, at a meeting of the members held on the 16th day of November 1964 upon notice as prescribed in Section 43 of the Membership Corporations Law of the State of New York and that they subscribe such Certificate by virtue of such authority.

Sworn to before me, this  
3<sup>rd</sup> day of June 1966.

*Sister Mary Michele Ayotte*  
Sister Mary Michele Ayotte

*Sister Mary Roberta Valin*  
Sister Mary Roberta Valin

*E. Ruth Castle*

E. RUTH CASTLE  
Notary Public, State of New York  
No. 15 687015  
Qualified in Essex County  
Term expires March 30, 1967



563083

*Bohrer, Hanken & Co*

*man*

**CERTIFICATE OF CHANGE OF NAME OF**

**SANATORIUM GARMENTS**

to

**THE UPHAM MFG CENTER, INC.**

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUN 8 1966

TAX *Howe*  
FILING FEE \$ *3.00*

*John P. Thompson*

Secretary of State

*W. S. Franklin*  
*17 Franklin*

**O'CONNELL & BUTLER**

**LAW OFFICES OF**

**20 EAST 45th STREET  
NEW YORK, N. Y. 10017**

*man*

*6/13*  
*6/18*

*6/1*

*John*

609862

CERTIFICATE OF CHANGE OF LOCATION OF PRINCIPAL OFFICE  
OF  
THE UIHLEIN MERCY CENTER, INC.

Pursuant to Section 30 of the Membership Corporations Law.

WE, the undersigned, SISTER MARY MICHELE AYOTTE, President, and SISTER MARY GEORGINA CANFIELD, Secretary, of THE UIHLEIN MERCY CENTER, INC., do make, acknowledge and file this certificate as follows:

1. The name of the corporation is THE UIHLEIN MERCY CENTER, INC. The corporation was originally incorporated under the name "Sanatorium Gabriels".

2. The original certificate of incorporation was filed in the office of the Secretary of State of the State of New York on the 3rd day of January 1947 and a certified copy thereof was filed in the office of the Clerk of the County of Franklin on January 18, 1947.

3. The principal office of the corporation as previously fixed is Gabriels, Town of Brighton, Franklin County, New York.

4. The principal office of the corporation is hereby removed to and hereafter shall be in the Village of Lake Placid, Town of North Elba, County of Essex, New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this certificate in duplicate this 25<sup>th</sup> day of FEBRUARY 1967.

*Sister Mary Michele Ayotte*  
President

*Sister Mary Georgina Canfield*  
Secretary

STATE OF NEW YORK )  
COUNTY OF *Westchester* ) ss.:

On this *28<sup>th</sup>* day of FEBRUARY 1967, before me personally came SISTER MARY MICHELE AYOTTE and SISTER MARY GEORGINA CANFIELD, to me known and known to me to be the persons described in and who executed the foregoing Certificate and they thereupon severally acknowledged to me that they executed the same.

*Lona B. Wolf*  
Notary Public

LONA B. WOLF  
Notary Public, State of New York  
No. 03-9723300  
Qualified in Bronx County  
Commission Expires March 30, 1968

STATE OF NEW YORK )  
COUNTY OF Westchester; ss.:

SISTER MARY MICHELE AYOTTE and SISTER MARY  
GEORGINA CANFIELD, being severally sworn, each for herself  
deposes and says: That SISTER MARY MICHELE AYOTTE is the  
President of THE UIHLEIN MERCY CENTER, INC., and that SISTER  
MARY GEORGINA CANFIELD is the Secretary thereof; that they  
were authorized to execute and file the foregoing Certificate  
of Change of Location of the Principal Office of The Uihlein  
Mercy Center, Inc., pursuant to Section 30 of the Membership  
Corporations Law, by the concurring vote of a majority of the  
members of the corporation present at an annual meeting held  
on December 3, 1966, upon notice pursuant to section 43 of  
the Membership Corporations Law, and that they subscribe such  
certificate by virtue of such authority.

Sworn to before me, this

Sister Mary Michele Ayotte  
Sister Mary Michele Ayotte

28<sup>th</sup> day of February 1967.

Lona B. Wolf

Sister Mary Georgina Canfield  
Sister Mary Georgina Canfield

LONA B. WOLF  
Notary Public, State of New York  
No. 03-9723300  
Qualified in Bronx County  
Commission Expires March 30, 1968

37

609862 - J

*pro) Saratoga - Albany - Franklin 4*  
*1-3-47*

CERTIFICATE OF CHANGE OF LOCATION OF PRINCIPAL OFFICE OF  
THE UIHLEIN MERCY CENTER, INC.

*and*  
*4/8/66*  
*not*

Pursuant to Section 30 of the Membership Corporations Law.

CERTIFICATE OF CHANGE OF LOCATION

MAR 24 1967  
*W n*  
FILED FEB 23 1967

Secretary of State  
BY *W B*  
*17 Franklin*  
*16 Essex*

O'CONNELL & BUTLER  
ATTORNEYS AND COUNSELLORS AT LAW  
30 EAST 42ND STREET  
NEW YORK, N. Y. 10017

State of New York

A100723

Department of State

DIVISION OF CORPORATIONS AND STATE RECORDS  
162 Washington Avenue, Albany 12225

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION  
OF

THE UIHLEIN MERCY CENTER, INC.

Exact Name of Corporation

Under Section 113 of the Not-for-Profit Corporation Law

The name of the corporation is The Uihlein Mercy Center, Inc.

The original name was Sanatorium Gabriels

The certificate of incorporation was filed by the Department of State on January 3, 1947  
Date of Incorporation

The corporation was formed pursuant to the Membership Corporations Law of the State of New York  
Cite Incorporation Statute

The post office address to which the Secretary of State shall mail a copy of any notice required by law is  
The Uihlein Mercy Center, Inc.,  
Old Military Road  
Lake Placid, New York 12946

That under Section 201, it is a Type B Not-for-Profit Corporation as defined in this chapter.  
(Insert A, B, C or D)

IN WITNESS WHEREOF, this certificate has been subscribed this 28th day of August 1973 at the County of Essex  
by the undersigned who affirm(s) that the statements made herein are true, under the penalties of perjury

To be signed pursuant to  
Section 104(d) of the N-PCL

*Sister Mary Regina Haughey R.S.M.*  
Sr. Mary Regina Haughey, R.S.M., Chairman of the Board  
President

*Robert R. Reiss*  
Print or Type Names  
Robert R. Reiss, Secretary

NOTE: The fee for filing the foregoing certificate is \$10 payable to the Department of State by certified check or money order.  
Every corporation required to file under Paragraph (a) of Section 113 of the N-PCL will be considered a Type II corporation until it has filed a  
certificate of type.

A100243

CERTIFICATE OF TYPE  
OF  
NOT-FOR-PROFIT CORPORATION  
OF

THE UIHLEIN MERCY CENTER, INC.

Exact Name of Corporation

Under Section 113  
of the  
NOT-FOR-PROFIT CORPORATION LAW

*Sanctification Habits*  
*1/3/47* *47782*  
*Lake Placid, N.Y.*  
*No. 1000* *1000*  
*No. 1000* *3/4*

STATE OF NEW YORK  
DEPARTMENT OF STATE

TAX \$ *none*  
FILING FEE \$ *10*

FILED SEP 12 1973

*John P. Limon*  
Secretary of State

The Uihlein Mercy Center, Inc.  
Old Military Road  
Lake Placid, New York 12946

Name and address of filer

*16 Essex*  
*type B*

*21*

CERTIFICATE OF AMENDMENT

OF

F-961231000756

CERTIFICATE OF INCORPORATION

OF

THE UHLEIN MERCY CENTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, the President and Secretary of The Uihlein Mercy Center, Inc. hereby  
certify that:

1. The name of the Corporation is The Uihlein Mercy Center, Inc. The name under  
which the Corporation was formed was Sanatorium Gabriels.

2. The Corporation was formed under the Membership Corporations Law of the State  
of New York and the Certificate of Incorporation was filed by the Department of State of New York  
State on January 3, 1947.

3. The Uihlein Mercy Center, Inc. is a corporation as defined in subparagraph (a)(5) of  
Section 102 of the Not-For-Profit Corporation Law of the State of New York.

4. The Uihlein Mercy Center, Inc. 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.

5. The corporate purposes and powers of The Uihlein Mercy Center, Inc. are not en-  
larged, limited or otherwise changed by this Certificate of Amendment.



6. The Certificate of Incorporation of The Uihlein Mercy Center, Inc. is hereby amended by adding the following additional paragraphs to establish Eastern Mercy Health System as the sole member of the Corporation and to reserve to Eastern Mercy Health System certain powers:

Eastern Mercy Health System (hereafter known as "EMHS") is the sole member (hereafter known as "Member" of the Corporation. As such, EMHS shall be entitled to all rights and powers of a member under New York Law, this Certificate of Incorporation, and the Bylaws of the Corporation.

In addition to any of the requirements under New York law, this Certificate of Incorporation or the Bylaws of the Corporation, the following powers shall be expressly reserved to Eastern Mercy Health System as the sole Member of the Corporation. In the event the governance documents of the Corporation and/or its Member require the recommendation of the Board of Directors of the Corporation with respect to a power expressly reserved to the Member of the Corporation in this Certificate, such action may be authorized by the Member of the Corporation without a recommendation by the Board of Directors following appropriate dialogue between the Board of Director and the Member. Action by the Corporation shall not be taken until Eastern Mercy Health System, acting through its Board of Directors and/or Member(s) shall have exercised its reserved powers.

The following powers are reserved to EMHS:

- a. To approve the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;
- b. To elect and remove, with or without cause, the chief executive officer of the Corporation;
- c. To approve and amend the Bylaws and Certificate of Incorporation of the Corporation;
- d. To approve any plan of merger, consolidation or dissolution of the Corporation;
- e. To appoint, fix the number, and remove, with or without cause, the Directors of the Corporation;
- f. To approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law;

g. To approve the sale, acquisition, lease, transfer, mortgage, pledge, or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member;

h. To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;

i. To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;

j. To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations of the Corporation; and

k. To approve the strategic plan of the Corporation;

Provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council or other regulatory authority, as from time to time may be established

The Certificate of Incorporation or Bylaws of the Corporation may be amended or repealed or a new or restated Certificate of Incorporation or Bylaws adopted only upon exercise by Eastern Mercy Health System of its reserved power to approve such action."

7. The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is The Uihlein Mercy Center, Inc., 420 Old Military Road, Lake Placid, New York 12946-1707.


8. The foregoing amendments to the Certificate of Incorporation were authorized by the unanimous vote of all of the Directors of the Corporation followed by the unanimous vote of all of the Members of the Corporation, all of the directors and members being present at a meeting duly called and held on the 21st day of February, 1992.

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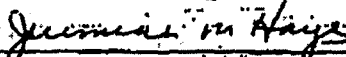
IN WITNESS WHEREOF, the undersigned affirm that the statements made herein are true  
under penalties of perjury and have subscribed this Certificate of Amendment this 16th day of  
December, 1996.

The Uihlein Mercy Center, Inc.

BY:

  
Douglas M. Menzies, President

BY:

  
Jeremiah Hayes, Secretary

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STATE OF NEW YORK )  
 ) SS. )  
COUNTY OF Essex )

On December 16, 1996, before me personally appeared Douglas M. Menzies, to me known, who, being by me duly sworn, did depose and say that he resides, at Laurel Lake, N.Y. that he is the President of The Uihlein Mercy Center, Inc., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

MILDRED N. WILLIAMS  
Notary Public, State of New York  
No. 15-4215/10  
Qualified in Essex County  
Commission Expires October 31, 1997

Mildred N. Williams  
Notary Public

STATE OF NEW YORK )  
 ) SS. )  
COUNTY OF Franklin )

On December 16, 1996, before me personally appeared Jeremiah Hayes, to me known, who, being by me duly sworn, did depose and say that he resides, at Box 840, Tupper Lake, New York 12986, that he is the Secretary of The Uihlein Mercy Center, Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

SUZANNE M. LAVIGNE  
Notary Public, State of New York  
No. 4844257  
Qualified in Franklin County  
My Commission Expires 12/31/97

Suzanne M. Lavigne  
Notary Public

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961231000756

DEC 31 3 36 PM '96

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
THE UHLEIN MERCH CENTER, INC.

Original

ISEMAN, CUNNINGHAM, RIESTER AND HYDE, L.L.P.  
Attorneys for

Office and Post Office Address  
9 Thurlow Terrace  
ALBANY, NEW YORK 12203  
(518) 462-3000

ICC  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED - DEC 31 1996  
TAX'S  
BY: [Signature] EASEY

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check applicable box

NOTICE OF ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named court on

19

NOTICE OF SETTLEMENT

that an Order of which the within is a true copy, will be presented for settlement to the Hon.  
one of the judges of the within named Court

on

19

at

M.

Dated:

961231000756

ISEMAN, CUNNINGHAM, RIESTER AND HYDE, L.L.P.  
Attorneys for

To

Office and Post Office Address  
9 Thurlow Terrace  
ALBANY, NEW YORK 12203  
(518) 462-3000

Attorney(s) for

CERTIFICATE OF AMENDMENT

OF

971110000 330

CERTIFICATE OF INCORPORATION

OF

THE UIHLEIN MERCY CENTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, the President and Secretary of The Uihlein Mercy Center, Inc. hereby

certify that:

1. The name of the Corporation is The Uihlein Mercy Center, Inc. The name under which the Corporation was formed was Sanatorium Gabriels.

2. The Corporation was formed under the Membership Corporations Law of the State of New York and the Certificate of Incorporation was filed by the Department of State of New York State on January 3, 1947.

3. The Uihlein Mercy Center, Inc. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.

4. The Uihlein Mercy Center, Inc. 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.

5. The corporate purposes and powers of The Uihlein Mercy Center, Inc. are not enlarged, limited or otherwise changed by this Certificate of Amendment.

6. The Certificate of Incorporation of The Uihlein Mercy Center, Inc. is hereby amended as follows:

(a) The certificate of incorporation contains the following paragraphs:

"Eastern Mercy Health System (hereafter known as "EMHS"), is the sole member (hereafter known as "Member") of the Corporation. As such, EMHS shall be entitled to all rights and powers of a member under New York Law, this Certificate of Incorporation, and the Bylaws of the Corporation.

In addition to any of the requirements under New York law, this Certificate of Incorporation or the Bylaws of the Corporation, the following powers shall be expressly reserved to Eastern Mercy Health System as the sole Member of the Corporation. In the event the governance documents of the Corporation and/or its Member require the recommendation of the Board of Directors of the Corporation with respect to a power expressly reserved to the Member of the Corporation in this Certificate, such action may be authorized by the Member of the Corporation without a recommendation by the Board of Directors following appropriate dialogue between the Board of Director and the Member. Action by the Corporation shall not be taken until Eastern Mercy Health System, acting through its Board of Directors and/or Member(s) shall have exercised its reserved powers.

The following powers are reserved to EMHS:

- a. To approve the statement of mission and philosophy adopted by the Corporation and to require that the Corporation operate in conformance with its mission and philosophy;
- b. To elect and remove, with or without cause, the chief executive officer of the Corporation;
- c. To approve and amend the Bylaws and Certificate of Incorporation of the Corporation;
- d. To approve any plan of merger, consolidation or dissolution of the Corporation;
- e. To appoint, fix the number, and remove, with or without cause, the Directors of the Corporation;
- f. To approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member, except for debt necessary to finance the cost of

compliance with operational or physical plant standards required by law;

g. To approve the sale, acquisition, lease, transfer, mortgage, pledge, or other alienation of real or personal property of the Corporation in excess of an amount to be fixed from time to time by the Member;

h. To approve the capital and operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;

i. To approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;

j. To approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations of the Corporation; and

k. To approve the strategic plan of the Corporation;

Provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council or other regulatory authority, as from time to time may be established

The Certificate of Incorporation or Bylaws of the Corporation may be amended or repealed or a new or restated Certificate of Incorporation or Bylaws adopted only upon exercise by Eastern Mercy Health System of its reserved power to approve such action."

The preceding paragraphs are deleted and shall be substituted with the following paragraphs.

which shall read as follows:

"The accomplishment of the purposes of the Corporation must be promoted and conducted in a manner consistent with the philosophies and missions of the Corporation, the Sisters of Mercy, Regional Community of New York, Mercy Uihlein Health Corporation, Eastern Mercy Health System and the ethical and moral teachings of the Roman Catholic Church.

The sole Member of the Corporation is Mercy Uihlein Health Corporation ("MUHC"). As such, MUHC shall be entitled to all rights and powers of a member under New York Law (except as otherwise limited or provided in this certificate of incorporation or the bylaws of the Corporation), this certificate of incorporation and the bylaws of the Corporation. Action by the Corporation shall not be taken until



MUHC shall have exercised its reserved powers in accordance with the procedures specified in the certificate of incorporation and bylaws of MUHC and the corporate policies and procedures to which its actions are subject all as amended or restated from time to time, and MUHC shall have notified the Corporation of such approval or ratification. The following reserved powers are reserved to MUHC:

- (1) Approve and interpret the statement of mission and philosophy adopted by the Corporation; and to require the Corporation to operate in conformance with its statement of mission and philosophy;
- (2) Approve and amend the bylaws and certificate of incorporation of the Corporation;
- (3) Fix the number of, and elect, appoint, fill vacancies in and remove, with or without cause, the directors; and elect and remove, with or without cause, the chairperson of the Board of Directors of the Corporation;
- (4) Approve any merger, consolidation or dissolution of the Corporation;
- (5) Approve any acquisition or any sale, lease, exchange, mortgage, pledge or other alienation of assets or property in excess of an amount to be fixed from time to time by the Member;
- (6) Approve any capital or operating budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation;
- (7) Approve the debt of the Corporation, in excess of an amount to be fixed from time to time by the Member, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- (8) Elect and remove, with or without cause, the chief executive officer of the Corporation;
- (9) Approve the criteria for, and the process of evaluating the performance of the chief executive officer of the Corporation;
- (10) Approve settlements of litigation when such settlements exceed applicable insurance coverage or the amount of any applicable self-insurance fund;
- (11) Approve any corporate reorganization of the Corporation and the development or dissolution of any subsidiary organizations, including corporations, partnerships or other entities, of the Corporation; and

- (12) Approve the strategic plan of the Corporation, provided that such right of approval shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council of the State of New York.

The Certificate of Incorporation or Bylaws of the Corporation may be amended or repealed or a new or restated Certificate of Incorporation or Bylaws adopted only upon exercise by MUHC of its reserved powers and authorities to approve such action.

Should compliance with any of the restrictions in this provision require the Corporation to take any action which may contravene any law or regulation to which the Corporation may now or hereafter be subject, or require the establishment of the Member by the Public Health Council, such restriction shall be null and void."

- (b) The following paragraph shall be added to the Certificate of Incorporation:

"In the event of the liquidation or dissolution or termination of the Corporation for any reason, the Member, after paying or making provision for the payment of all liabilities of the Corporation, shall transfer, in any proportions as considered prudent, all of the remaining assets and other property of the Corporation (other than assets required by law to be used for a specific purpose) to such organization or organizations, as shall qualify as tax-exempt under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provisions of any subsequent federal tax law), subject to the approval of a court of competent jurisdiction to the extent required by applicable law and such other regulatory authorities as may then be required by the Not-for-Profit Corporation Law of the State of New York."

7. The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is The Uihlein Mercy Center, Inc., 420 Old Military Road, Lake Placid, New York

12946-1707.

8. The foregoing amendments to the Certificate of Incorporation were authorized by the

unanimous vote of the Member of the Corporation, the Member having consented in writing, without a meeting, to the adoption of a resolution setting forth the action so taken.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment and affirmed as true the statements made therein under penalties of perjury this <sup>4<sup>th</sup></sup> ~~5~~ day of <sup>September</sup> ~~May~~, 1997.

The Uihlein Mercy Center, Inc.

BY: *Douglas M. Menzies*  
Douglas M. Menzies, President

BY: *Jeremiah Hayes*  
Jeremiah Hayes, Secretary

STATE OF NEW YORK )

COUNTY OF Essex )

ss.:

On Sept 5, 1997, before me personally appeared Douglas M. Menzies, to me known who, being by me duly sworn, did depose and say that he resides, at Tupper Lake, N.Y. that he is the President of The Uihlein Mercy Center, Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

MILDRED N. WILLIAMS  
Notary Public, State of New York  
No. 16-426710  
Qualified in Essex County  
Commission Expires October 31, 1997

*Mildred N. Williams*  
Notary Public

STATE OF NEW YORK )

COUNTY OF Essex )

ss.:

On Sept 5, 1997, before me personally appeared Jeremiah Hayes, to me known who, being by me duly sworn, did depose and say that he resides, at Box 840, Tupper Lake, New York 12986, that he is the Secretary of The Uihlein Mercy Center, Inc. the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

MILDRED N. WILLIAMS  
Notary Public, State of New York  
No. 16-426710  
Qualified in Essex County  
Commission Expires Oct 31, 1997

*Mildred N. Williams*  
Notary Public

1-971110000 330

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF THE UHLEIN MERCY CENTER, INC.**

Original

ISEMAN, CUNNINGHAM, RIESTER AND HYDE  
Attorneys for

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

Office and Post Office Address  
9 Thurlow Terrace  
ALBANY, NEW YORK 12203  
(518) 462-3000

FILED NOV 10 1997

TAXS

BY: *[Signature]*

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted

Dated:

Attorney(s) for

**PLEASE TAKE NOTICE**

(Check Applicable Box)

NOTICE OF ENTRY

that the within is a (certified) true copy of a entered in the office of the clerk of the within named court on

19

NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court,

at  
on

19 at M.

Dated:

8

ISEMAN, CUNNINGHAM, RIESTER AND HYDE, L.L.P.  
Attorneys for

Office and Post Office Address  
9 Thurlow Terrace  
ALBANY, NEW YORK 12203  
(518) 462-3000

Attorney(s) for

971110000

354

F 021220000 493

RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE UIHLEIN MERCY CENTER, INC.

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

The undersigned, being the President of The Uihlein Mercy Center, Inc. (the "Corporation"), does hereby certify that:

1. The name of the Corporation is THE UIHLEIN MERCY CENTER, INC.
2. The Corporation's original Certificate of Incorporation was filed in the office of the Secretary of State on January 3, 1947 under the name Sanatorium Gabriels.
3. The Corporation's purposes and powers are not enlarged, limited or otherwise changed by this amendment and restatement.
4. The Certificate of Incorporation as now in full force and effect is hereby amended to effect the following changes as authorized in Section 801 of the Not-for-Profit Corporation Law:
  - (a) Article THIRD, regarding the territory of the Corporation's operations, is deleted in its entirety.
  - (b) Article FOURTH, regarding the location of the Corporation's office, is renumbered Article "THIRD" and amended to read as follows:

"THIRD: The office of the Corporation is located in the County of Essex, New York."
  - (c) Article FIFTH, regarding the board of directors, is omitted in its entirety.
  - (d) Article SIXTH, regarding the Corporation's subscribers, is omitted in its entirety.

- (e) The unnumbered paragraph regarding how the Corporation's purposes will be promoted and conducted is numbered Article "FOURTH" and amended to read as follows:

**"FOURTH:** The Corporation shall be organized and operated exclusively for charitable, religious, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the Corporation shall carry out its stated purposes in a manner that advances, promotes and supports the Catholic health system governed by Catholic Health East ("CHE"), a Pennsylvania nonprofit corporation, and its successors and constituent corporations, the Catholic healthcare ministries and Catholic healthcare mission of The Sisters of Mercy, Regional Community of New York, a religious institute of the Roman Catholic Church or its canonical successor (the "Sponsoring Organization"). The Corporation shall do any and all acts that are necessary, proper, useful, incidental or advantageous to carry out its stated purposes in conformity with the ethical and moral teachings of the Roman Catholic Church, the traditions, spirit and charism of the Sponsoring Organization, and the Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Catholic Conference of Bishops. This Corporation shall operate under the philosophy and guidance of the Corporate Member, as hereafter defined, without regard to race, creed, color, gender, age, national origin or ability to pay. The Corporation will not be operated for the pecuniary gain or profit, incidental or otherwise, of any private individual. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its Member, Directors, Officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any

candidate for public office. Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not conduct or carry on activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation to which contributions are deductible under Section 170(c)(2) of the Code."

- (f) The unnumbered paragraphs regarding the Corporation's sole member and changes to the Bylaws and Certificate of Incorporation are numbered Article "EIGHTH" and amended to read as follows:

"EIGHTH: The sole Member of the Corporation shall be Mercy Uihlein Health Corporation, a New York not-for-profit corporation (the "Member" or "Corporate Member"). The Corporate Member and the Corporation both participate in the health care system of CHE. Certain powers have been expressly reserved to the Corporate Member, CHE and the Sponsoring Organization in this Certificate of Incorporation and the Bylaws of the Corporation. Action by the Corporation shall not be taken until the Corporate Member, acting through its Board of Directors, and, in some cases, CHE, acting through its Board of Directors, and the Sponsoring Organization, as applicable, shall have exercised their respective reserved powers in accordance with their respective governance documents. Action by the Corporation with respect to which action by the Corporate Member, CHE or the Sponsoring Organization is required shall not be effective until the Corporation shall have received notice of appropriate action having been taken by the respective party. The following powers are reserved to the Corporate Member, CHE and the Sponsoring Organization, as indicated:

(a) As reserved to the Board of Directors of the Corporate Member:

(i) Approve the amendment or restatement of the Certificate of Incorporation of the Corporation, in whole or in part, and recommend the same to CHE for adoption.

(ii) Approve the amendment or restatement of Key Bylaws Provisions (as defined in the Bylaws) of the Corporation, in whole or in part, and recommend the same to CHE for adoption.

(iii) Approve the amendment or restatement of non-Key Bylaws Provisions of this Corporation, in whole or in part.

(iv) Elect and remove Directors of the Corporation, with or without cause.



(v) Elect and remove the President of this Corporation.

(vi) Approve the official interpretation of the philosophy and mission of the Corporation.

(vii) Approve the strategic plan of the Corporation, and recommend the same to CHE for adoption as part of the consolidated strategic plan of the regional health system of the Corporate Member; provided that such right shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council of the State of New York.

(viii) Approve the annual operating plan and budget of the Corporation to ensure that such budget conforms to the mission and philosophy of the Corporation, and recommend the same to CHE for adoption as part of the consolidated operating plan and budget of the regional health system of the Corporate Member.

(ix) Approve Significant Financial Transactions (as defined in the Bylaws) and significant budget variances of the Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law, and recommend the same to CHE for adoption and authorization.

(x) Approve the development or dissolution of organizational relationships by the Corporation including without limitation subsidiary corporations, and significant partnerships, joint ventures and mergers as defined by the CHE Governance Documents (as defined in the Bylaws), and recommend the same to CHE for adoption and authorization.

(b) As reserved to the CHE Board of Directors:

(i) Adopt, amend, modify or restate the Certificate of Incorporation of the Corporation, in whole or in part, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

(ii) Adopt, amend, modify or restate the Key Bylaws Provisions of the Corporation, in whole or in part, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

(iii) Approve and authorize Significant Financial Transactions and significant budget variances of the Corporation,

except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

(iv) Approve and authorize the development or dissolution of organizational relationships by the Corporation including without limitation subsidiary corporations, and significant partnerships, joint ventures and mergers as defined by the CHE Governance Documents, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

(v) Require the Corporation to timely participate in such programs and services as CHE provides to its other Constituent Corporations and which CHE, in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE system policies and the Corporation's mission and purposes.

(c) As reserved to the Sponsoring Organization:

(i) Ratification of those mergers, consolidations, dissolutions or other fundamental corporate reorganizations of the Corporation, as required by canon law and CHE policies consistent therewith."

(g) The unnumbered paragraph regarding dissolution of the Corporation is numbered Article "FIFTH" and amended to read as follows:

"FIFTH: Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, as well as any claims, subventions or subvention-like rights of or owed to the Sponsoring Organization, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, shall be distributed, subject to an order of a justice of the Supreme Court of the State of New York, to the Corporate Member of this Corporation or its successors, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic

Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Sponsoring Organization have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation."

- (h) New Article "SIXTH," designating the Secretary of State as the Corporation's agent for service of process and providing an address for process, is added and shall read as follows:

"SIXTH: The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is The Uihlein Mercy Center, Inc., 420 Old Military Road, Lake Placid, New York 12946-1707."

- (i) New Article "SEVENTH," regarding the Corporation's status under the Not-for-Profit Corporation Law, is added and shall read as follows:

"SEVENTH: The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law and is a corporation as defined by subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law."

5. The Certificate of Incorporation, as heretofore amended, is hereby restated to read in its entirety as follows:

FIRST: The name of the Corporation is THE UHLEIN MERCY CENTER, INC.

SECOND: The purposes for which the Corporation is formed are:

- (a) To maintain a hospital and sanatorium in the Town of Brighton, Franklin County, New York, to render medical and surgical aid, care and assistance to those in need thereof, particularly, but not limited, to tuberculosis patients, and to maintain a staff of competent physicians and surgeons to treat; care for and prescribe to the persons in need thereof.
- (b) To perform such other powers as are incidental and necessary in the maintenance of a general hospital and sanatorium including the purchase, ownership and leasing of real property and necessary equipment and supplies, the construction, alteration and repair of necessary buildings and the execution of contracts and borrowing of money.

**THIRD:** The office of the Corporation shall be located in the County of Essex, New York.

**FOURTH:** The Corporation shall be organized and operated exclusively for charitable, religious, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the Corporation shall carry out its stated purposes in a manner that advances, promotes and supports the Catholic health system governed by Catholic Health East ("CHE"), a Pennsylvania nonprofit corporation, and its successors and constituent corporations, the Catholic healthcare ministries and Catholic healthcare mission of the Sisters of Mercy, Regional Community of New York, a religious institute of the Roman Catholic Church or its canonical successor (the "Sponsoring Organization"). The Corporation shall do any and all acts that are necessary, proper, useful, incidental or advantageous to carry out its stated purposes in conformity with the ethical and moral teachings of the Roman Catholic Church, the traditions, spirit and charism of the Sponsoring Organization, and the Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Catholic Conference of Bishops. This Corporation shall operate under the philosophy and guidance of the Corporate Member, as hereafter defined, without regard to race, creed, color, gender, age, national origin or ability to pay. The Corporation will not be operated for the pecuniary gain or profit, incidental or otherwise, of any private individual. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its Member, Directors, Officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth

herein. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not conduct or carry on activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (ii) by a corporation to which contributions are deductible under Section 170(c)(2) of the Code.

**FIFTH:** Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, as well as any claims, subventions or subvention-like rights of or owed to the Sponsoring Organization, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, shall be distributed, subject to an order of a justice of the Supreme Court of the State of New York, to the Corporate Member of this Corporation or its successors, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Sponsoring Organization have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation.

**SIXTH:** The Secretary of State of New York is hereby designated as the agent of the Corporation upon whom any process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation so served upon him is The Uihlein Mercy Center, Inc., 420 Old Military Road, Lake Placid, New York 12946-1707.

**SEVENTH:** The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law and is a corporation as defined by subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

**EIGHTH:** The sole Member of the Corporation shall be Mercy Uihlein Health Corporation, a New York not-for-profit corporation (the "Member" or "Corporate Member"). The Corporate Member and the Corporation both participate in the health care system of CHE. Certain powers have been expressly reserved to the Corporate Member, CHE and the Sponsoring Organization in this Certificate of Incorporation and the Bylaws of the Corporation. Action by the Corporation shall not be taken until the Corporate Member, acting through its Board of Directors, and, in some cases, CHE, acting through its Board of Directors, and the Sponsoring Organization, as applicable, shall have exercised their respective reserved powers in accordance with their respective governance documents. Action by the Corporation with respect to which action by the Corporate Member, CHE or the Sponsoring Organization is required shall not be effective until the Corporation shall have received notice of appropriate action having been taken by the respective party. The following powers are reserved to the Corporate Member, CHE and the Sponsoring Organization, as indicated:

**(a) As reserved to the Board of Directors of the Corporate Member:**

- (i)** Approve the amendment or restatement of the Certificate of Incorporation of the Corporation, in whole or in part, and recommend the same to CHE for adoption.
- (ii)** Approve the amendment or restatement of Key Bylaws Provisions (as defined in the Bylaws) of the Corporation, in whole or in part, and recommend the same to CHE for adoption.
- (iii)** Approve the amendment or restatement of non-Key Bylaws Provisions of this Corporation, in whole or in part.
- (iv)** Elect and remove Directors of the Corporation, with or without cause.
- (v)** Elect and remove the President of this Corporation.
- (vi)** Approve the official interpretation of the philosophy and mission of the Corporation.
- (vii)** Approve the strategic plan of the Corporation, and recommend the same to CHE for adoption as part of the consolidated strategic plan of the regional health system of the Corporate Member; provided that such right shall not permit the Member to exercise any of the governance authority under applicable regulations unless the Member has received establishment approval from the Public Health Council of the State of New York.

- (viii) Approve the annual operating plan and budget of the Corporation to ensure that such budget conforms to the mission and philosophy of the Corporation, and recommend the same to CHE for adoption as part of the consolidated operating plan and budget of the regional health system of the Corporate Member.
- (ix) Approve Significant Financial Transactions (as defined in the Bylaws) and significant budget variances of the Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law, and recommend the same to CHE for adoption and authorization.
- (x) Approve the development or dissolution of organizational relationships by the Corporation including without limitation subsidiary corporations, and significant partnerships, joint ventures and mergers as defined by the CHE Governance Documents (as defined in the Bylaws), and recommend the same to CHE for adoption and authorization.

(b) As reserved to the CHE Board of Directors:

- (i) Adopt, amend, modify or restate the Certificate of Incorporation of the Corporation, in whole or in part, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.
- (ii) Adopt, amend, modify or restate the Key Bylaws Provisions of the Corporation, in whole or in part, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.
- (iii) Approve and authorize Significant Financial Transactions and significant budget variances of the Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.
- (iv) Approve and authorize the development or dissolution of organizational relationships by the Corporation including without limitation subsidiary corporations, and significant partnerships, joint ventures and mergers as defined by the

CHE Governance Documents, or if the CHE Board of Directors receives a recommendation as to any such action, approve of such action as recommended.

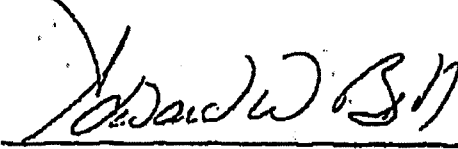
- (v) Require the Corporation to timely participate in such programs and services as CHE provides to its other Constituent Corporations and which CHE, in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE system policies and the Corporation's mission and purposes.

(c) As reserved to the Sponsoring Organization:

- (i) Ratification of those mergers, consolidations, dissolutions or other fundamental corporate reorganizations of the Corporation, as required by canon law and CHE policies consistent therewith.

6. This restated Certificate of Incorporation was authorized by the Member of the Corporation as provided in Section 802(a)(1) of the Not-For-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned has executed this restated Certificate of Incorporation this 13 day of December 2002.

  
\_\_\_\_\_  
President  
Edward W. Bell



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RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE UILHEIN MERCY CENTER, INC.  
Under Section 805 of the Not-for-Profit Corporation Law

*Sec/CT*

*2cc*

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED DEC 20 2002  
TAX \$ \_\_\_\_\_  
BY: *IRC*  
*Esney*

Filed by:  
Iseman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203  
(518) 462-3000

*12*

*506*

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**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE UIHLEIN MERCY CENTER, INC.**

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

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The undersigned, being the Secretary of The Uihlein Mercy Center, Inc. (the "Corporation"), does hereby certify that:

1. The name of the Corporation is THE UIHLEIN MERCY CENTER, INC.
2. The Corporation's original Certificate of Incorporation was filed in the office of the Secretary of State on January 3, 1947 under the Membership Corporation Law. The Corporation was originally formed under the name, Sanatorium Gabriels.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPC-L").
4. The Certificate of Incorporation is amended to effect the following changes:
  - a. REPLACE in its entirety Article Fifth with the following new paragraph, both of which address the dissolution of the Corporation:

**"FIFTH:** Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, and upon approval of the New York attorney general or order of a Justice of the Supreme Court of the State of New York, shall be distributed to the member of this Corporation or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to CHE Trinity Inc., an Indiana nonprofit corporation or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any assets not so disposed of in accordance with the foregoing shall be

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THE UIHLEIN MERCY CENTER, INC.

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distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Catholic Health Ministries have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation and applicable law. Any assets not so disposed of shall be disposed of by shall be disposed of by the New York attorney general or a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation."

- b. REPLACE in its entirety Article Sixth with the following new paragraph, both of which address the designation of the Secretary of State as the agent upon whom process is to be served:

"SIXTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served and the post office address within this State to which the Secretary of State shall mail a copy of any process against it served upon him/her is: Catholic Health East, Counsel's Office, 3805 West Chester Pike, Suite 100, Newtown Square, PA 19073."

- c. REPLACE in its entirety Article Seventh with the following new paragraph, both of which address the definition of the Corporation:

"SEVENTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPC-L") and is a charitable corporation under Section 201 of the NPC-L."

- d. REPLACE in its entirety Article Eighth with the following new paragraph, both of which address powers reserved by the Corporation:

"EIGHTH: Mercy Uihlein Health Corporation is the sole member of the Corporation (the "Corporate Member") and shall be entitled to all rights and powers of a member under New York law, this Certificate of Incorporation and the Bylaws of the Corporation. CHE Trinity, Inc., is the sole member of Mercy Uihlein Health Corporation. Certain rights and powers related to the Corporation are reserved to Mercy Uihlein Health Corporation and CHE Trinity, Inc., under the Corporation's Governance Documents. Action by the Corporation shall not be taken or authorized until Mercy Uihlein Health Corporation and CHE Trinity, Inc., as required, shall have exercised their respective reserved powers in the manner provided in the Governance Documents.

The following powers are reserved to Mercy Uihlein Health Corporation and CHE Trinity, Inc.:

- (a) As reserved to Mercy Uihlein Health Corporation:
- (i) Approve the amendment or restatement of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, and recommend the same to CHE Trinity, Inc., for adoption;
  - (ii) Elect and remove members of the Corporation's Board of Directors;
  - (iii) Elect and remove the President and Chief Executive Officer of the Corporation;
  - (iv) Approve the strategic plan of the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated strategic plan of Mercy Uihlein Health Corporation, provided that such right shall not permit Mercy Uihlein Health Corporation to exercise any of the governance authority prohibited under applicable regulations unless Mercy Uihlein Health Corporation has received establishment approval from the New York State Public Health and Health Planning Council;
  - (v) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of Mercy Uihlein Health Corporation, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law or the execution of hospital contracts for management or clinical services, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization, provided that such right of adoption and authorization shall not permit CHE Trinity, Inc., to exercise any of the governance authority prohibited under applicable regulations unless CHE Trinity, Inc., has received establishment approval from the New York State Public Health and Health Planning Council;
  - (vi) Approve the annual operating and capital budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation, and recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated operating and capital budgets of Mercy Uihlein Health Corporation, provided that such right of adoption shall not permit CHE Trinity, Inc., to exercise any of the governance authority

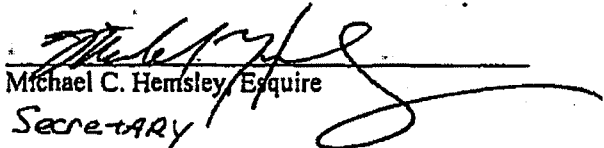
prohibited under applicable regulations unless CHE Trinity, Inc., has received establishment approval from the New York State Public Health and Health Planning Council;

- (vii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (viii) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (ix) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (x) Approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (xi) Approve any change to the structure or operations of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and recommend the same to CHE Trinity, Inc., for approval; and
  - (xii) Approve all other matters and take all other actions reserved to members of nonprofit corporations (or shareholders of for-profit corporations, as the case may be) by the laws of the state in which the Corporation is domiciled or as reserved in the Governance Documents of the Corporation.
- (b) As reserved to CHE Trinity, Inc.:

- (i) Adopt, amend, modify or restate the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (ii) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of CHE Trinity, Inc., provided that CHE Trinity, Inc., shall not have approval authority over the incurrence of debt necessary to finance the cost of compliance with operational or physical plant standards required by law or the execution of hospital contracts for management or clinical services, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (iii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (iv) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (v) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (vi) Subject to the requirements of the New York Not-for-Profit Corporation Law, approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), except for pledges or encumbrances necessary to finance the cost of compliance with operational or physical plant standards required by law, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;

- (vii) Approve any change to the structure or operation of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c) of the Internal Revenue Code, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (viii) Appoint and remove the independent fiscal auditor of the Corporation; and
  - (ix) Require the Corporation to timely participate in such programs and services as CHE Trinity, Inc., provides to its other Regional Health Ministries and which CHE Trinity, Inc., in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE Trinity, Inc.'s system policies and the Corporation's mission and purposes."
5. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served and the post office address within this State to which the Secretary of State shall mail a copy of any process against it served upon him/her is: Catholic Health East, Counsel's Office, 3805 West Chester Pike, Suite 100, Newtown Square, PA 19073.
6. This Certificate of Amendment of the Certificate of Incorporation was authorized by the Corporate Member as provided in Section 802(a)(1) of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned has signed this restated Certificate of Incorporation this 16<sup>th</sup> day of May, 2014.

  
Michael C. Hemsley, Esquire

Secretary

140701000 269

Certificate of Amendment

of the

Certificate of Incorporation

of

THE UHLEIN MERCY CENTER, INC.

Under Section 803 of the NYS Not-for-Profit Corporation Law

FILED

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2014 JUL -1 AM 11:20 2014 JUL -1 AM 9:10

RECEIVED

RECEIVED

Filed by:  
Karen E. Sosler, Esq.  
Iseman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203

DRAWDOWN  
ACCT # J8

1cc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 01 2014

TAX \$ \_\_\_\_\_

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THE UHLEIN MERCY CENTER, INC.

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# Report Generation

CHE-BS002

4301 MERCY WHILEIN HEALTH CORP  
BALANCE SHEET - DETAIL  
As of May 31, 2017

07/13/17  
14:09  
PAGE 1

\*Co Company consolidation

		05/31/17	PRIOR MONTH	CURRENT MONTH CHANGE	05/31/16	PRIOR YR AUDIT	CURRENT YEAR CHANGE
ASSETS							
CURRENT ASSETS							
ASSETS LIMITED AS TO USE							
ASSETS LIMITED AS TO USE							
OTHER ASSETS							
LIABILITIES AND NET ASSETS							
CURRENT LIABILITIES							
4301	210005-0000	ACCOUNTS PAYABLE-CASH OVERDRAF	0.00	1,547,150.29	1,547,150.29-	1,172,178.16	1,191,845.26-
4301	210250-0000	AP INTERCOMPANY TRINITY HEALTH	0.00	0.00	0.00	1,433.00	0.00
4301	210251-0000	AP INTERCOMPANY IN305 -INSURAN	0.00	16,132.00	16,132.00-	16,132.00	16,132.00-
		ACCOUNTS PAYABLE	0.00	1,563,282.29	1,563,282.29-	1,189,743.16	1,207,977.26-
4301	210101-0000	ACCRUED EXPENSES	0.00	5,800.00	5,800.00-	5,800.00	5,800.00-
		ACCRUED EXPENSES	0.00	5,800.00	5,800.00-	5,800.00	5,800.00-
4301	240215-0000	MEDICAID 2007	0.00	0.00	0.00	135,663.58	135,663.58-
4301	240401-0000	PAYABLE TO 3RD PARTIES	0.00	0.00	0.00	53,772.80	53,772.80-
4301	270810-0002	THIRD PARTY PRIOR YEAR LT - ME	0.00	135,663.58	135,663.58-	0.00	0.00
4301	270810-0003	THIRD PARTY PRIOR YEAR LT - OT	0.00	53,772.80	53,772.80-	0.00	0.00
		EST PAY TO 3RD PARTY PAYORS	0.00	189,436.38	189,436.38-	189,436.38	189,436.38-
		TOTAL CURRENT LIABILITIES	0.00	1,758,518.67	1,758,518.67-	1,384,979.54	1,403,213.64-
4301	201901-0000	CURRENT PORTION ACCRUED PENSIO	0.00	11,760.00	11,760.00-	10,780.00	11,760.00-
4301	280301-0000	PENSION LIABILITY	0.00	1,503,376.97	1,503,376.97-	1,188,152.97	1,704,416.97-
		ACC PENSION AND RETIREE COSTS	0.00	1,515,136.97	1,515,136.97-	1,198,932.97	1,716,176.97-
4301	280450-0000	INSURANC IBNR CHE TRINITY IC L	0.00	2,690.00	2,690.00-	18,731.00	16,132.00-
		OTHER LT LIABILITIES	0.00	2,690.00	2,690.00-	18,731.00	16,132.00-
		TOTAL LIABILITIES	0.00	3,276,345.64	3,276,345.64-	2,602,643.51	3,135,522.61-
NET ASSETS							
4301	300000-0000	UNRESTRICTED NET ASSETS BEGINN	3,135,522.61-	3,135,522.61-	0.00	2,615,579.15-	2,673,616.61-
4301	310000-0000	EXCESS OF REVENUE OVER EXPENSE	156,040.76-	231,123.03-	75,082.27	51,788.36-	0.00
4301	310104-0000	UNREST INCOME LOSS FROM DISCON	212,714.38	0.00	212,714.38	0.00	0.00
4301	310109-0000	OTHER UNRESTRICTED NET ASSETS	3,078,848.99	0.00	3,078,848.99	0.00	3,078,848.99

# Report Generation

CHE-BS002

4301 MERCY UNILEIN HEALTH CORP  
 BALANCE SHEET - DETAIL  
 As of May 31, 2017

07/13/17  
 14:09  
 PAGE 2

\*Co Company consolidation

		05/31/17	PRIOR MONTH	CURRENT MONTH CHANGE	05/31/16	PRIOR YR AUDIT	CURRENT YEAR CHANGE
4301	310200-0000 UNREST DEFERRED RETIREMENT ITE	0.00	90,300.00	90,300.00-	64,724.00	70,608.00	70,608.00-
4301	310201-0000 UNREST DEFERRED RETIREMENT ITE	0.00	0.00	0.00	0.00	532,514.00-	532,514.00
	UNRESTRICTED NET ASSETS	0.00	3,276,345.64-	3,276,345.64	2,602,643.51-	3,135,522.61-	3,135,522.61
	TOTAL NET ASSETS	0.00	3,276,345.64-	3,276,345.64	2,602,643.51-	3,135,522.61-	3,135,522.61

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of October 2017, approves the filing of the Certificate of Dissolution of The Uihlein Mercy Center, Inc., dated June 22, 2017.



Project # 172004-E
The Endoscopy Center of New York

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: New York
Acknowledged: July 10, 2017

Executive Summary

Description

Yorkville Endoscopy, LLC d/b/a The Endoscopy Center of New York (The Endoscopy Center), a proprietary, Article 28 freestanding ambulatory surgical center (FASC) located at 201 East 93rd Street, New York (New York County), requests approval to transfer 30% ownership interest to one new member and requests a three-year extension of their limited life status. The Endoscopy Center is certified as a single-specialty FASC specializing in gastroenterology services. The facility was approved under CON 111488 with a conditional five-year limited life and began operations effective February 22, 2013. The FASC continues to operate under the original lease, which expires in April 2027. There will be no change in services provided.

There are three membership classes at the Center. Class 1 membership pertains to any founding member or proposed member that by the terms of their subscription agreement has agreed to guarantee any debt of the Company. Class 2 and Class 3 membership pertains to any member that is not obligated by the terms of their subscription agreement to guarantee any such indebtedness.

The current and proposed shareholders and their ownership interest are as follows:

Table with 4 columns: Shareholder, Current, Proposed. Rows include Class 1 (James Aisenberg, MD, Kenneth Miller, MD, Neville Bamji, MD, Leon Kavaler, MD, Daniel Adler, MD, Joseph Felder, MD, Frontier Healthcare Associates, LLC), Class 2 (Brian Landzberg, MD, Arnie Lambroza, MD, William Perlow, MD), and Class 3 (Yevgenia Pashinsky, MD, Jay Desai, MD).

OPCHSM Recommendation
Contingent Approval of a three-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter.

Need Summary
Data submission by the applicant, as a contingency of CON 111488, is completed. Per CON 111488, The Endoscopy Center projected 5,500 procedures in Year 1 and 6,064 in Year 3. Medicaid utilization was projected at 2.6% and charity care was projected at 2%. Based on the Annual reports submitted by the applicant, the number of total procedures was 14,381 in 2014

(first full year) and 12,927 in 2016. Actual charity care in 2016 was 0.7% and Medicaid was 2.5%.

Upon approval of this project, the applicant projects the number of procedures to be 16,049 in Year One with Medicaid at 4.75% and Charity Care at 1.50%. There will be no changes in services.

#### Program Summary

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

#### Financial Summary

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

Revenues	\$22,580,640
Expenses	\$9,262,315
Net Income	\$13,318,325

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval of a three-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:**

1. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide quarterly reports to DOH. Reports will be due within 60 days of the conclusion of each quarter of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Reports must include:
  - a. Actual utilization including procedures;
  - b. Breakdown of visits by payor source;
  - c. Percentage of charity care provided by visits;
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - e. Number of emergency transfers to a hospital;
  - f. Number of nosocomial infections recorded;
  - g. A brief list of all efforts made to secure charity cases; and
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of an amended and executed Amended and Restated Operating Agreement of Yorkville Endoscopy, LLC, acceptable to the Department. [CSL]
3. Submission of an Amended Restated Certificate of Incorporation of Mount Sinai Ambulatory Ventures, Inc., acceptable to the Department. [CSL]
4. Submission of amended Bylaws for Mount Sinai Ambulatory Ventures, Inc., acceptable to the Department. [CSL]
5. Submission of the applicant's Membership Interest Purchase Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of quarterly reports to the Department as prescribed by the related contingency, each quarter, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

**October 11, 2017**

## Need Analysis

### Analysis

The primary service area is New York County. The table below provides information on projections and utilization for Year One and Year Three based on CON 111488.

CON 111488 - Procedures	Year 1 (2014)		Year 3 (2016)	
	Projected	Actual	Projected	Actual
	5,500	14,381	6,064	12,927

The table below provides Year three utilization, projections and actual, by payor, for CON 111488, and projections for Year One following approval of this application.

Payor	CON 111488 Projected Year 3 (2016)	CON 111488 Actual Year 3 (2016)	CON 172004 Projected Year 1
Medicaid FFS	1.0%	0.15%	0.29%
Medicaid MC	1.6%	2.18%	4.47%
Medicare FFS	20.6%	21.82%	19.66%
Medicare MC	3.4%	3.14%	4.97%
Commercial	71.4%	69.81%	66.54%
Private Pay/Other	0.0%	2.15%	2.57%
Charity Care	2.0%	0.74%	1.50%
Total	100%	100%	100%

The Center has not achieved its proposed Charity Care and Medicaid utilization during its original five-year limited life term. The following information was provided to DOH to document the center's efforts in providing service to the under-insured of New York County:

- The center has contracts with the following Medicaid managed care plans: Affinity, Amida Care, BCBS Medicaid, Fidelis, Healthfirst, HIP-MCD, Metroplus, UHC Comm Plan, and VNS Medicaid.
- The Center has hired a Charity Care Patient navigator, whose primary focus is to liaison with Charity Care referral partners and patients to maximizing the Center's provision of charity care to the community.
- The Center has referral partnerships with the following entities: Morrisania Diagnostic & Treatment Center (an FQHC), Borken Health Center (an FQHC), Community Health Network (an FQHC), and Mount Sinai Health First (a managed care organization).
- The Center believes that with the addition of Mount Sinai Ambulatory Ventures, Inc., an affiliate of Mount Sinai Health System, the Center will have additional access in providing services to the under-insured individuals in the service area.

The following table shows the Medicaid and Charity Care utilization of the other ASC's in New York County. Liberty Endoscopy Center, Manhattan Surgery Center and Surgicare of Manhattan are the other ASC's still operating under limited life approval. Carnegie Hill Endo, East Side Endoscopy, Manhattan Endo and West Side GI are ASC's that operated under the limited life process and have been granted permanent life.

Name	Type	2015		2016	
		Charity	Medicaid	Charity	Medicaid
<b>The Endoscopy Center of NY</b>	<b>Single</b>	<b>0.4%</b>	<b>0.6%</b>	<b>0.7%</b>	<b>2.5%</b>
Carnegie Hill Endo, LLC	Single	2.3%	2.1%	N/A	2.3%
East Side Endoscopy	Multi	2.4%	11.0%	N/A	10.7%
Fifth Avenue Surgery Center*	Multi	N/A	0.4%	N/A	0.5%
Gramercy Pk Digestive Disease Ctr	Multi	0.0%	7.1%	N/A	1.4%
Gramercy Surgery Center, Inc	Multi	0.0%	0.3%	N/A	2.1%
Kips Bay Endoscopy Center, LLC*	Single	N/A	2.6%	N/A	1.6%
Liberty Endoscopy Ctr (opened 2017)	Single	N/A	N/A	N/A	N/A
Manhattan Endoscopy Center, LLC	Single	1.1%	3.5%	0.9%	3.9%
Manhattan Surgery Center	Multi	1.2%	8.3%	N/A	5.1%
Mid-Manhattan Surgi-Center*	Single	N/A	5.6%	N/A	4.5%
Midtown Surgery Center*	Multi	N/A	0.1%	N/A	2.2%
Retinal ASC of New York Inc	Single	0.0%	16.1%	N/A	15.6%
SurgiCare of Manhattan, LLC	Multi	0.0%	0.4%	N/A	2.1%
West Side GI	Single	0.3%	22.3%	1.2%	21.1%
<b>Average for the County</b>		<b>1.0%</b>	<b>5.8%</b>	<b>0.9%</b>	<b>5.4%</b>

*DOH staff has confirmed that facilities are unable to report charity care through SPARCS*

*2015 data is from AHCF or Annual report, unless otherwise noted with an \**

*2016 data is from Annual report if filed, otherwise, data is not yet available*

*\*2015 data is from SPARCS*

#### Conclusion

The Center did not achieve its proposed Charity Care and Medicaid utilization during its original five-year limited life term. The Center is anticipating that the addition of Mount Sinai Ambulatory Ventures, an affiliate of Mount Sinai Health System, will provide for enhanced access for the underserved population in the service area. Approval of this three-year extension will allow the center the opportunity to demonstrate its commitment to improve its services to the under-insured within New York County.

#### Recommendation

**From a need perspective, contingent approval of a three-year extension of the limited life is recommended.**



## Program Analysis

### Project Proposal

Other than the proposed changes in membership (and membership percentages), there are no programmatic changes as a result of this request.

### Character and Competence

The following table details the proposed change in ownership:

Member Name	Original Membership Interest	Proposed Membership Interest
James Aisenberg, M.D., <i>Co-Medical Director</i>	13.00%	9.10%
Kenneth Miller, M.D.	13.00%	9.10%
Neville Bamji, M.D.	13.00%	9.10%
Leon Kavalier, M.D.	13.00%	9.10%
Daniel Adler, M.D., <i>Co-Medical Director</i>	13.00%	9.10%
Joseph Felder, M.D.	13.00%	9.10%
Brian Landzberg, M.D.	4.37%	3.06%
Arnie Lambroza, M.D.	4.37%	3.06%
William Perlow, M.D.	4.37%	3.06%
Yevgenia Pashinsky, M.D.	2.18%	1.53%
Jay Desai, M.D.	2.18%	1.53%
Frontier Healthcare Associates, LLC Karen Sablyak (33.333%) Frank Principati (33.333%) Barry Tanner (33.333%)	4.52%	3.16%
<b>*Mount Sinai Ambulatory Ventures, Inc.</b> <b>*Donald Scanlon</b> <b>*Jeremy Boal, M.D.</b> <b>*Brent Stackhouse</b> <b>*Brian Smith</b> <b>*Vicki LoPachin, M.D.</b> <b>*Michael Bruno</b>	<b>0%</b>	<b>30.00%</b>
<b>TOTAL</b>		<b>100.0%</b>

*\*Subject to Character & Competence Review*

The new proposed member, Mount Sinai Ambulatory Ventures, Inc. (MSAVI) is a not-for-profit corporation with six Board Members who have a variety of experience in the healthcare sector, including other ambulatory surgical facilities and other healthcare operations. The sole passive member of MSAVI is Mount Sinai Health System, Inc., a non-for-profit corporation which has no members (and will take no active role in the operation of The Endoscopy Center of New York.)

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

*Mr. Stackhouse disclosed two pending legal actions against healthcare entities with which he's affiliated. In the first matter, a lawsuit that named Beth Israel Ambulatory Care Services Corp. (later renamed Mount Sinai Ambulatory Ventures, Inc.) was determined by Mount Sinai's legal counsel to have been filed in error and they are working to get the corporation out of the lawsuit. In the second matter, Mr. Stackhouse*

*represents NYEE Holding Corp. on the board of Empire Surgery Center. In 2017, a malpractice suit was filed against the surgery center.*

*Dr. Boal disclosed that, while an employee of North Shore-Long Island Jewish Health System (NS-LIJ), in September 2008, Staten Island University Hospital (SIUH) entered into a settlement and paid \$76.4 million to the federal government and \$12.4 million to New York State. SIUH also entered into a 5-year Corporate Integrity Agreement (now completed) which covered payments related to stereotactic radiosurgery treatments; operating a detox and inpatient psychiatric unit when the complement of beds licensed for those services was already full; and reimbursements related to its Graduate Medical Education Program. In September 2010, the hospital settled certain claims filed under the civil False Claims Act by a private party whistleblower. NS-LIJ and the government agreed to resolve the matter with a payment of \$2.95 million covering a ten-year period. The payment was for isolated errors in certain North Shore University Hospital costs reports and there were no findings or admissions of fraud, liability or other wrong doing.*

*Mr. Bruno disclosed that, while employed by Beth Israel Medical Center (BIMC) as the Senior Vice President of Finance for both BIMC and St. Luke's/Roosevelt Hospital Center, issues arose that related to over reimbursement to these hospitals by Medicare and Medicaid. These matters were subsequently resolved through settlement and a corporate integrity agreement.*

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

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

*In a Stipulation and Order dated May 16, 2017, Mount Sinai was fined \$2,000 after Immediate Jeopardy was identified during an investigation completed on January 22, 2016 into allegations of sexual assault of a patient by a physician. The Department found that the alleged sexual assault was reported to a facility staff member, however, it was not properly escalated according to established protocols. Although the physician in question was arrested by the NYPD and suspended by the facility, efforts to ensure that all staff were retrained on the policy did not begin until January 21, 2016.*

#### 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

### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement to acquire 4,388 Class 1 units of the Seller (30%) to be effectuated upon PHHPC approval of this application. The terms of the agreement are summarized below:

Date:	May 4, 2017
Seller:	Yorkville Endoscopy, LLC d/b/a The Endoscopy Center of New York
Purchaser:	Mount Sinai Ambulatory Ventures, Inc.
Asset Transferred:	4,388 Class 1 units of the Seller or (30%) ownership of Yorkville
Excluded Assets:	N/A
Assumed Liabilities:	N/A
Purchase Price:	\$8,260,000
Payment of the Purchase Price:	Equity to be paid in full at the Closing

The purchase price for the operations is proposed to be satisfied with existing resources of Mount Sinai Ambulatory Ventures, Inc. BFA Attachment B is the financial statements of Mount Sinai Ambulatory Ventures, Inc., which shows sufficient liquid assets to meet equity requirements.

### Administrative Services Agreement

The applicant has submitted an executed administrative services agreement. The terms are summarized below:

Date:	August 1, 2017
Facility:	Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center
Contractor:	Physicians Endoscopy, LLC
Services Provided:	Administrative Services, Billing and Collection Services, Benefit Verification/Authorization Services.
Term:	10 years with 3 (3) year automatic renewal terms
Fee:	Administrative Fee \$250,000 annually with 2% annual increase after year 1. Billing and Collection Fee \$25 per claim with a 2% annual increase after year 1. Benefit Verification and Authorization Fee \$3,673.33 per month per full-time equivalent employee with a 2% increase annual after year 1.

Physicians Endoscopy, LLC is a privately-owned company that is 100% owned by Endo Parent LLC, a Delaware limited liability company. Three of the minority owners of Endo Parent LLC also have minority ownership in The Endoscopy Center. The agreement acknowledges that there are reserve powers that cannot be delegated per statutory and regulatory requirements, and that The Endoscopy Center will maintain responsibility and authority over the daily management and operations of the facility.

### Operating Budget

The applicant submitted an operating budget, in 2017 dollars, for the first year after approval. The budget is summarized below:

Revenues	Current Year (2016)		Year One	
	Per Proc.	Total	Per Proc.	Total
Medicaid FFS	\$267.40	\$5,348	\$265.22	\$12,200
Medicaid MC	\$392.67	\$110,734	\$392.44	\$281,383
Medicare FFS	\$101.97	\$287,663	\$101.98	\$321,842
Medicare MC	\$3,213.83	\$1,304,816	\$3,214.22	\$2,561,732
Commercial FFS	\$1,782.06	\$16,081,299	\$1,782.14	\$19,031,484
Private Pay /Other	\$900.05	\$250,214	\$900.72	\$371,999
<b>Total Revenues</b>		<b>\$18,040,074</b>		<b>\$22,580,640</b>

<u>Expenses</u>				
Operating	\$581.49	\$7,516,927	\$482.42	\$7,742,435
Capital	<u>\$117.57</u>	<u>\$1,519,880</u>	<u>\$94.70</u>	<u>\$1,519,880</u>
Total Expenses	\$699.06	\$9,036,807	\$577.13	\$9,262,315

Net Income or (Loss) \$9,003,267 \$13,318,325

Utilization (procedures) 12,927 16,049

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

Utilization by payor for 2016 (actual) and projected for Year One are as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	0.15%	0.29%
Medicaid MC	2.18%	4.47%
Medicare FFS	21.82%	19.66%
Medicare MC	3.14%	4.97%
Commercial FFS	69.81%	66.54%
Private Pay /Other	2.15%	2.57%
Charity	0.74%	1.50%

#### Capability and Feasibility

The Endoscopy Center projects an operating excess of \$13,318,325 in the first year of its three-year limited life extension. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on actual experience. The budget is reasonable.

BFA Attachment A is the 2014-2016 certified and internal financial statements of Yorkville Endoscopy, LLC as of April 30, 2017, which shows the facility maintained average positive working capital, equity, and net income positions for the periods shown. The facility achieved an average positive net income of \$8,710,376 for 2014-2016, and \$3,374,077 for the period ending April 30, 2017.

BFA Attachment B is the 2016 certified and the internal financial statements of Mount Sinai Ambulatory Ventures, Inc. as of April 30, 2017, which shows that the entity maintained average positive working capital, equity and net income positions for the period shown. The facility achieved a positive net income of \$9,805,159 for 2016 and \$1,196,958 for the period ending April 30, 2017.

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

#### Recommendation

**From a financial perspective, approval is recommended.**

## Attachments

- BFA Attachment A 2014-2016 Certified and 1/1/2017-4/30/2017 Internal Financial Statement for Yorkville Endoscopy, LLC
- BFA Attachment B 2016 and 1/1/2017-4/30/2017 Financial Statements for Mount Sinai Ambulatory Ventures, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 30% ownership interest to one (1) new member and a request for a three year extension to its limited life authorized in CON 111488, 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:

172004 E

The Endoscopy Center of New York

APPROVAL CONTINGENT UPON:

**Approval of a three-year extension of the operating certificate from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:**

1. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide quarterly reports to DOH. Reports will be due within 60 days of the conclusion of each quarter of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Reports must include:
  - a. Actual utilization including procedures;
  - b. Breakdown of visits by payor source;
  - c. Percentage of charity care provided by visits;
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - e. Number of emergency transfers to a hospital;
  - f. Number of nosocomial infections recorded;
  - g. A brief list of all efforts made to secure charity cases; and
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of an amended and executed Amended and Restated Operating Agreement of Yorkville Endoscopy, LLC, acceptable to the Department. [CSL]
3. Submission of an Amended Restated Certificate of Incorporation of Mount Sinai Ambulatory Ventures, Inc., acceptable to the Department. [CSL]
4. Submission of amended Bylaws for Mount Sinai Ambulatory Ventures, Inc., acceptable to the Department. [CSL]
5. Submission of the applicant's Membership Interest Purchase Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of quarterly reports to the Department as prescribed by the related contingency, each quarter, for the duration of the limited life approval of the facility. [RNR]

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



Project # 171304-E
FSNR Dialysis, LLC d/b/a Four Seasons Dialysis Center

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment Acknowledged: April 28, 2017

Executive Summary

Description

FSNR Dialysis, LLC d/b/a Four Seasons Dialysis Center (the Center), a Delaware limited liability company authorized to do business in New York State, requests approval to be established as the new operator of Gateway Dialysis Center, a 24-station, proprietary, Article 28 chronic renal dialysis center located at 1170 East 98th Street, Brooklyn (Kings County). The facility is currently operated by Four Seasons Dialysis Center, LLC. A separate entity, FSNR Acquisition Group, LLC, has acquired the real property. There will be no change in the number of stations or services provided.

On May 1, 2014, Four Seasons Dialysis Center, LLC entered into an Asset Purchase Agreement (APA) with FSNR Dialysis, LLC for the sale and acquisition of the operating interests of the clinic. It is noted that concurrently under review, FSNR SNF, LLC, with identical membership to FSNR Dialysis, LLC, is proposing to be established as the operator of Four Seasons Nursing and Rehabilitation Center, a 270-bed Article 28 residential health care facility (RHCF) operated by Parkshore Health Care, LLC, an entity related to the current dialysis center operator (CON 171109). The RHCF is located within the same building as the dialysis center, with a separate entrance and discrete address at 1555 Rockaway Parkway, Brooklyn, New York. The APA will close upon approval by the Public Health and Health Planning.

Concurrent with the APA, FSNR Acquisition Group, LLC entered into a Real Estate Purchase Agreement (REPA) with the following parties: 945 E 108th Street, LLC; 1555 Rockaway Parkway, LLC; LHF Associates, L.P.; 1222 E

96th St., LLC; 1174 E 96th St., LLC; and 9517 Ave. J, LLC, to purchase the dialysis center/RHCF building and various other parcels of property. The members of the respective realty entities are identified in BFA Attachment C. The total purchase price for the realty transaction was \$50,500,000 and the closing of the REPA occurred on January 22, 2015.

The applicant will sublease the dialysis clinic premises from FSNR SNF, LLC. There is a relationship between FSNR Dialysis, LLC, FSNR Acquisition Group, LLC and FSNR SNF, LLC in that the entities have several members in common.

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

Table with 2 columns: Member Name and Percentage. Title: Current Operator Four Seasons Dialysis Center, LLC. Members: Barry Friedman (90%), Jeffrey Goldstein (9%), Caroline Rich (1%).

Table with 2 columns: Member Name and Percentage. Title: Proposed Operator FSNR Dialysis, LLC. Members: Lea Sherman (40%), Michael Manela (20%), Alexander Sherman (15%), Jeffrey Goldstein (10%), Sheryl Frankel (8%), Howard Pomerantz (5%), Hindy Amsel (2%).

OPCHSM Recommendation  
Contingent Approval

Need Summary

The function, utilization, location, and number of stations will not change through the approval of this application.

Program Summary

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

Financial Summary

The purchase price for the acquisition of the dialysis center operations is \$200,000 to be funded by members' equity. On January 22, 2015, FSNR Acquisition Group, LLC purchased

the real estate properties for \$50,500,000, funded by \$3,450,000 in equity with the \$47,050,000 balance coming from loans totaling \$52,000,000. The loans were provided by a combination of commercial lenders (People's United Bank and Bank Leumi USA) under a commercial credit and security agreement, with terms of approximately 5% (Libor plus 2.75%), with amortized periods ranging from ten years to 25 years.

The projected budget is as follows:

Revenues	\$6,605,093
Expenses	<u>5,686,172</u>
Gain	\$918,921



## 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 written consent of Landlord/Lessor to sublet all or any part of the leased premises, acceptable to the Department of Health. [BFA]
2. Submission of an executed building sublease agreement, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the applicant's executed and dated Certificate of Amendment of Certificate of Formation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's clinical service agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2017**

## Need Analysis

### Background

The function, utilization, location, and number of stations will not change through the approval of this application.

### Conclusion

This is a change in ownership, there will not be any change in stations or services.

### Recommendation

**From a need perspective, approval is recommended.**

## Program Analysis

### Project Proposal

There will be no programmatic changes or changes in stations or services as a result of this proposed change in ownership.

Proposed Operator	FSNR Dialysis, LLC
Doing Business As	Four Seasons Dialysis Center
Site Address	1170 East 98th Street Brooklyn, NY 11236 (Kings)
Approved Services	Chronic Renal Dialysis (24 stations) Home Hemodialysis Training & Support Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	At least 2.5 shifts per day, 6 days per week. Additional hours as indicated by demand.
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	Current year staffing is 38.56 FTEs. There is no anticipated change for years 1 and 3.
Medical Director(s)	Eliezer L. Parnes, MD
Emergency, In-Patient and Backup Support	Will be provided by: Mount Sinai Beth Israel Medical Center
Services Agreement and Distance	3.1 miles / 17 minutes

### Character and Competence

The proposed membership of FSNR Dialysis, LLC is as follows:

<u>Name</u>	<u>Interest</u>
Lea Sherman, <i>manager</i>	40%
Michael Manela	20%
Alexander Sherman	15%
Jeffrey Goldstein, <i>manager</i>	10%
Sheryl Frankl	8%
Howard Pomerantz	5%
Hindy Amsel	2%
	100%

Ms. Sherman holds a master's degree from Adelphi University and is a self-employed licensed and registered Speech Language Pathologist. Mr. Manela reports self-employment for over 15 years as the owner/manager of Mac Trading, a wealth management business, located in Manhattan. Mr. Sherman has been employed as the Assistant Administrator for Sunharbor Manor Skilled Nursing & Rehabilitation Center in Roslyn Heights for the last eight years. He obtained a juris doctor (JD) degree from Touro Law

Center and is also a legal consultant to a skilled nursing management company. Mr. Goldstein is a licensed nursing home administrator in good standing and owner/operator of several nursing homes. He holds an MBA from Adelphi University and has over ten years of experience working in varied roles in nursing homes (i.e., Operations Manager, Fiscal Manager, and Temporary Administrator). Ms. Frankl is a Registered Professional Nurse who has been employed for over ten years as a Residence RN in supportive housing provided by the Women's League Community Residences, Inc. Mr. Pomerantz is the President of H.P. Industries, a wealth management company. Ms. Amsel holds a master's degree from Columbia University and is a self-employed licensed and registered Occupational Therapist who practices in Flushing.

The proposed Medical Director, Dr. Parnes, has been a practicing physician for over 30 years and is board-certified in Internal Medicine and Nephrology.

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

Mr. Goldstein disclosed an affiliation with the following:

*Fiddlers Green Manor Rehabilitation and Nursing Center*

- *On July 12, 2016, the Department issued a Stipulation and Order (S&O) and \$12,000 fine for surveillance findings of January 5, 2016 related to Quality of Care: Highest Practicable Potential and Notification of Changes.*

*The Hamptons Center for Rehabilitation and Nursing*

- *On April 26, 2009, the Department issued a S&O and \$8,000 fine for surveillance findings of April 21, 2008 relating to Staff Treatment of Residents, Quality of Care, Accidents, and Organization and Administration. Additionally, the facility incurred a \$6,500 Civil Money Penalty.*
- *On December 6, 2010, a S&O and fine of \$4,000 was issued based on surveillance findings on September 16, 2009. Deficient practice was cited in the areas of Accidents and Supervision and Administration. Additionally, the facility incurred a Civil Money Penalty of \$6,853.46.*
- *On May 24, 2011, a S&O and \$10,000 fine were issued for survey findings on July 30, 2010. The facility was cited for deficient practice in the area of Providing Care/Services for Highest Well Being.*

Messrs. Goldstein and Sherman disclosed an affiliation with the following:

*Niagara Rehabilitation and Nursing Center.*

- *On April 4, 2016, the Department issued a Stipulation and Order (S&O) and \$14,000 fine for deficient practices discovered during an inspection completed on August 13, 2015. Citations included Resident Rights (Notification of Changes) and two Quality of Care issues (Significant Medication Errors and Highest Practicable Potential).*
- *On June 28, 2016, the Department issued another S&O and \$10,000 fine based for issues related to Quality of Care (Highest Practicable Potential) discovered during an inspection that was concluded on January 21, 2016.*
- *On July 21, 2017, the Department issued a S&O and \$10,000 fine for surveillance findings on June 13, 2017 involving Notification of Changes.*

*Sweet Brook of Williamstown (MA) Rehabilitation and Nursing Center.*

- *The facility was fined \$5,354.05 for Resident Abuse, Failure to Timely Report Resident Abuse, and Failure to Follow Care Plan.*

Messrs. Goldstein and Sherman and Ms. Sherman disclosed an affiliation with:

Humboldt House Rehabilitation and Nursing Center.

- On May 15, 2017, the Department issued a Stipulation and Order (S&O) and \$2,000 fine to the facility for surveillance findings on January 27, 2017 related to Quality of Care (Significant Medication Errors). In addition, the facility incurred a Civil Money Penalty of \$12,205 related to the deficient findings.

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.

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>
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Asset Purchase Agreement

The change in ownership will be effectuated upon PHHPC approval in accordance with an executed asset purchase agreement. The terms are summarized below:

Date:	May 1, 2014
Seller:	Four Seasons Dialysis Center, LLC.
Purchaser:	FSNR Dialysis, LLC
Purchased Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses, and permits; telephone numbers, fax numbers, and all logos; software; warranties, representations, and guarantees; accounts and notes receivable; cash, deposits, and cash equivalents.
Excluded Assets:	Personal property, all retroactive rate increases for services provided prior to closing date, any real estate tax refund for property for period prior to closing date, all of seller's account receivable for services rendered prior to closing date.
Assumed Liabilities:	The ongoing obligations of seller arising on and after the property closing date with respect to basic assets, all of seller's accounts and trade payables and other liabilities incurred on or after the property closing date and the amount of seller's accounts and trade payables and other liabilities incurred prior to the property closing date. All cash receipts assessment liabilities relating to purchased AR, all of sellers' ongoing contractual and lease obligations as of the closing date with respect to assumed contracts.
Excluded Liabilities:	N/A
Purchase Price:	\$200,000
Payment of Purchase Price:	\$200,000 due at closing

The purchase price is proposed to be satisfied via equity. BFA Attachment A is the net worth summary for the proposed members of FSNR Dialysis, LLC, which shows sufficient resources to meet the equity requirement.

The proposed members 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 interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid audit liabilities.

**Purchase and Sale Agreement for the Real Property**

The applicant has submitted an executed REPA for the acquired properties. The terms are summarized below:

Date:	Executed May 1, 2014, Closed January 22, 2015.
Sellers:	945 E108th Street, LLC; 1555 Rockaway Parkway, LLC; LHF Associates, LP; 1222 E 96 <sup>th</sup> St, LLC; 1174 E 96 <sup>th</sup> St, LLC; and 9517 Ave, J, LLC
Buyer:	FSNR Acquisition Group, LLC
Assets Transferred:	All rights, title and interest in the respective real properties identified in Exhibit A of the REPA (listed in BFA Attachment D)
Purchase Price:	\$50,500,000
Payment of Purchase Price:	\$3,450,000 Deposit upon signing, balance paid at closing

The purchase price of the real property was satisfied as follows:

Equity - FSNR Acquisition Group, LLC Members	\$3,450,000
Mortgage loans (10 years, 10-25 year amortizations, Libor + 2.75%)	<u>\$47,050,000</u>
Total	\$50,500,000

The loans were provided by a combination of commercial lenders (People's United Bank and Bank Leumi USA) under a commercial credit and security agreement, terms of approximately 5% (Libor plus 2.75%), amortized periods from ten years to 25 years.

Allocation of the real estate purchase price for the SNF/dialysis property is as follows:

Dialysis	\$5,050,000
SNF	<u>\$45,450,000</u>
Total Real Estate Purchase Price	\$50,500,000

The tables below present a summary of the sources and uses of funds, which includes a \$15,000,000 payment to satisfy Parkshore Health Care, LLC's New York Office of the Medicaid Inspector General (OMIG) audit liability.

	Purchase Price	Equity/Escrow	Loan
RHCF Operation	\$1,800,000	\$500,000	\$1,300,000
Realty	\$50,500,000	\$3,450,000	\$47,050,000
Dialysis Center	\$200,000	\$200,000	\$0
OMIG Audit Liability	<u>\$15,000,000</u>	<u>\$11,350,000</u>	<u>\$3,650,000</u>
Total	\$67,500,000	\$15,500,000	\$52,000,000

Commercial Credit & Security Agreements – Loans	Amount	Term Years	Amortized Years	Interest
People's United Bank-Mortgage	\$21,635,000	10	25	Libor+2.75%
Bank Leumi USA-Mortgage	\$15,865,000	10	25	Libor+2.75%
People's United Bank-Loan	\$8,365,000	10	10	Libor+2.75%
Bank Leumi USA-Loan	<u>\$6,135,000</u>	10	10	Libor+2.75%
Total	\$52,000,000			

### Sublease Agreement

The applicant submitted a draft sublease agreement to be effectuated upon PHHPC approval of this application and CON 171109 (concurrently under review for change in ownership of the RHCF). The terms are summarized below:

Premises:	6,500 square feet in the rear lower level of the premises located at 1555 Rockaway Parkway, Brooklyn, NY. The Dialysis Center entrance to the building is discrete and known as 1170 East 98 <sup>th</sup> Street, Brooklyn, NY.
Landlord/Lessor	FSNR Acquisition Group, LLC
Lessee/Sublessor:	FSNR SNF, LLC
Sublessee:	Four Seasons Dialysis Center, LLC
Term:	20 Years
Rental:	\$317,343 annually or \$26,445.25 monthly
Provisions:	Triple-Net Tenant responsible for taxes, insurance, utilities, maintenance

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

### Operating Budget

The applicant submitted an operating budget for the current year (2015) and first and third years, in 2017 dollars, summarized below:

	<u>Current Year</u>		<u>Years One and Three</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
<u>Revenues</u>				
Medicare Fee-For-Service	\$237.37	\$3,051,636	\$262.28	\$3,608,946
Medicaid Fee-For-Service	\$224.74	\$335,314	\$220.97	\$462,935
Private Pay	\$285.70	\$2,277,586	\$286.43	\$2,523,713
Other Revenue *		<u>\$768,478</u>		<u>\$9,499</u>
Total Revenues		\$6,433,014		\$6,605,093
<u>Expenses</u>				
Operating	\$232.45	\$5,188,218	\$214.84	\$5,299,336
Capital	<u>\$21.08</u>	<u>\$470,482</u>	<u>\$15.68</u>	<u>\$386,836</u>
Total Expenses	\$253.53	\$5,658,700	\$230.52	\$5,686,172
Net Income (Loss)		<u>\$774,314</u>		<u>\$918,921</u>
Utilization (Treatments)		22,320		24,666

\* Home Dialysis is reported as Other Revenue in the Current Year, but included with patient revenue by payor for Years One and Three.

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

	<u>Current Year</u>	<u>Years One and Three</u>
Medicare FFS	57.60%	55.79%
Medicaid FFS	6.68%	8.49%
Commercial FFS	35.72%	35.72%

Revenue, expense and utilization assumptions are based on the facility's current operations and comparable clinics from the geographical area. The budget is reasonable.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$200,000 will be provided through equity from the proposed members. As shown on BFA Attachment A, the proposed members have sufficient resources.

Working capital requirements are estimated at \$947,695 based on two months of first year expenses and will be provided through the receipt of cash and accounts receivable net of accounts payable at the time of closure, currently that amount is \$1,256,210. BFA Attachment C is the pro forma balance sheet of FSNR Dialysis LLC as of the first day of operation, which indicates positive equity of \$1,456,210. It is noted that operating assets includes \$200,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity of \$1,256,210.

The submitted budget projects a net profit of \$918,921 during the first and third years, respectively. Medicare and Medicaid revenues reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The budget appears reasonable.

BFA Attachment F is the Financial Summary of Four Seasons Dialysis Center, LLC d/b/a Gateway Dialysis Center for 2013 through 2016. As shown, the facility had an average positive working capital position, average positive net assets, and average positive net income of \$1,108,371 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	Net Worth of Proposed Members of FSNR Dialysis, LLC
BFA Attachment B	Post-closing organizational chart
BFA Attachment C	Prior Owners of the Realty
BFA Attachment D	Current Owners of the Real Properties & List of parcels of properties
BFA Attachment E	Pro Forma Balance Sheet for Operations
BFA Attachment F	2013-2016 Certified Financial Statements for Four Seasons Dialysis Center, LLC d/b/a Gateway Dialysis Center

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 FSNR Dialysis, LLC d/b/a Four Seasons Dialysis Center as the new operator of a 24-station dialysis center located at 1170 East 98th Street, Brooklyn currently operated by Four Seasons Dialysis Center, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171304 E

FSNR Dialysis, LLC  
d/b/a Four Seasons Dialysis Center



APPROVAL CONTINGENT UPON:

1. Submission of written consent of Landlord/Lessor to sublet all or any part of the leased premises, acceptable to the Department of Health. [BFA]
2. Submission of an executed building sublease agreement, acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the applicant's executed and dated Certificate of Amendment of Certificate of Formation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's clinical service agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 # 171302-E**  
**Hampton NH Operating, LLC d/b/a Westhampton Care  
Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** April 27, 2017

**Executive Summary**

**Description**

Hampton NH Operating LLC, a New York limited liability company, requests approval to be established as the new operator of Westhampton Care Center, a 180-bed, Article 28 residential health care facility (RHCF) located at 78 Old Country Road, Westhampton (Suffolk County). East End Healthcare, Inc., a proprietary business corporation, is the current operator of the facility. A separate entity, Hampton NH Realty, LLC, has acquired the real property. There will be no change in beds or services provided.

On April 21, 2016, East End Healthcare, Inc. and Hampton NH Operating LLC entered into an Operations Transfer Agreement (OTA) whereby Hampton NH Operating LLC agreed to purchase the RHCF operations and certain other assets from East End Healthcare, Inc. for \$10 plus the assumption of certain liabilities as identified in the OTA, and the assumption of accounts receivable after the closing date for the sale of the RHCF property. Subsequently, in accordance with the terms of the OTA and the Shareholder Agreement, Charles-Edouard Gros became a 9.9% shareholder in East End Healthcare, Inc. via a stock purchase transaction that closed on June 30, 2016, as noticed to the Department. Pursuant to the terms of the Shareholder Agreement, Mr. Gros was appointed CEO of the facility.

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

<u>Current Operator</u>	
East End Health Care, Inc.	
<u>Shareholders</u>	
John Waterman	90.1%
Charles Edouard-Gros	9.9%

<u>Proposed Operator</u>	
Hampton NH Operating LLC	
<u>Members</u>	
Shlomo Boehm	80.0%
Ernest Schlesinger	17.0%
Esther Klein	3.0%

Westhampton Property, Inc. (prior property owner/landlord) and East End Healthcare, Inc. (tenant) are parties to a lease agreement executed in 1998 for the RHCF property. On April 21, 2016, Westhampton Property, Inc. entered into a Purchase and Sale Agreement (PSA) with Hampton NH Realty, LLC for the sale of the RHCF realty. Closing of the property sale took place on June 30, 2016. In accordance with the PSA, Hampton NH Realty, LLC assumed the existing lease and became the landlord to East End Healthcare, Inc.

Upon approval of this application, East End Healthcare, Inc. will assign its rights and obligations as tenant under the lease to Hampton NH Operating LLC, which will become the tenant of Hampton NH Realty, LC. Hampton NH Operating LLC and Hampton NH Realty, LLC have common ownership.

OPCHSM Recommendation  
Contingent Approval

Need Summary

Historical utilization for 2015 and 2016 was 93.09% and 94.25%, respectively. Utilization was 96.59% as of July 31, 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 proposal. The purchase price for the operations is \$10 and the assumption of accounts payable and payroll liabilities offset by accounts

receivables. As of December 31, 2016, accounts payable and payroll liabilities totaled \$1,967,6302 and accounts receivable totaled \$3,152,734 for net of \$1,185,104 operating income. The purchase price for the realty was \$27,000,000, which was met with \$5,400,000 equity from the realty members and a bank loan for \$21,600,000 from the Bank of Texas. The realty financing is currently a bridge-to-HUD loan at Libor (1.74% as of June 16, 2017) plus 2.75% over three years. The real property owner has informed the Department that they are in the process of obtaining a 30-year HUD mortgage at 3%. The real property closing took place on June 30, 2016.

The projected budget is as follows:

Revenues	\$23,488,391
Expenses	<u>22,029,103</u>
Gain	\$1,459,288

## 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;
  - e. Other factors as determined by the applicant to be pertinent. (RNR)
4. Submission of an executed assignment and assumption of lease agreement, acceptable to the Department of Health. (BFA)
5. Submission of photocopies of all executed facility lease agreement documents, acceptable to the Department. [CSL]
6. Submission of photocopies of all executed operations transfer agreement documents which are acceptable to the Department. [CSL]
7. Submission of photocopies of all executed purchase and sale agreement document, which are acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Within two years from the date of council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. (RNR)
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two-year period. (RNR)

Council Action Date

**October 11, 2017**

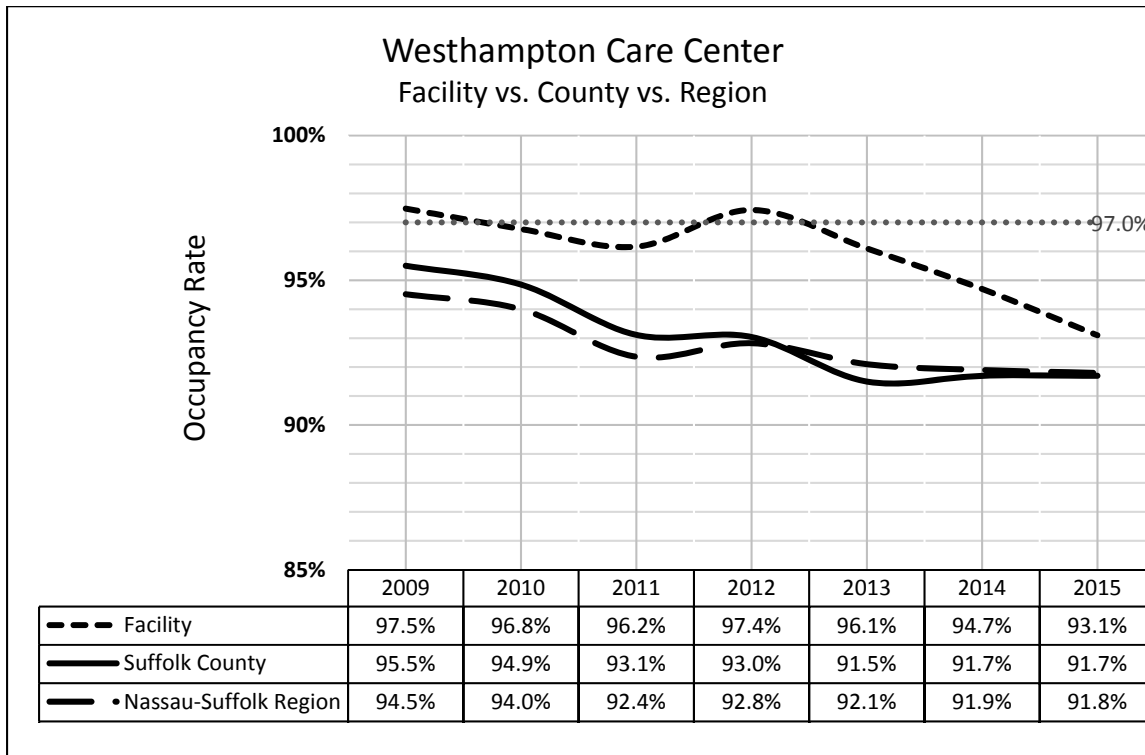
# Need Analysis

## Analysis

The current need methodology shows a need for 1,853 additional beds in the Nassau-Suffolk region.

### RHCF Need – Nassau-Suffolk

<b>2016 Projected Need</b>	16,962
<b>Current Beds</b>	15,248
<b>Beds Under Construction</b>	-139
<b>Total Resources</b>	15,109
<b>Unmet Need</b>	1,853



The overall occupancy for Suffolk County was 91.7% in 2015 and occupancy for the Nassau-Suffolk planning region was 91.8%.

## Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

The facility's Medicaid admissions of 11.4% in 2014 and 12.5% in 2015 were below Suffolk County's 75% threshold rates of 16.7% for 2014 and 18.4% for 2015. Many of the facility's residents are initially admitted as Medicare primary insurer with Medicaid being a secondary insurer. These dual eligible patients were considered as being counted toward meeting the 75% threshold requirement. The new operator intends to increase Medicaid admissions to address the 10 NYCRR Part 670.3(c)(2) 75% county threshold requirement as follows:

- o The facility has hired a Medicaid Admissions Coordinator to assist new residents with applying for Medicaid coverage;
- o They plan extensive outreach to local hospitals, senior centers and assisted living facilities; and
- o The facility will continue to accept Medicaid pending residents.

**Conclusion**

There will be no change in beds available in the region as a result of this change in ownership. The applicant will be required to implement plans to expand access to RHCF beds for Medicaid residents.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

**Program Analysis**

**Facility Information**

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Westhampton Care Center	Westhampton Care Center
Address	78 Old Country Rd, Weshampton, NY	Same
RHCF Capacity	180	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	East End Health Care, Inc.	Hampton NH Operating LLC <u>Members</u> Shlomo Boehm *      80% Esther Klein            3% Ernest Schlesinger    17%  * Managing Member

**Character and Competence - Background**

**Facilities Reviewed**

Dumont Center for Rehabilitation and Nursing Care	07/2010 to present
Bellhaven Center for Rehabilitation and Nursing Care	03/2010 to present
St. James Rehabilitation and Healthcare Center	08/2012 to present
The Grand Pavillion for Rehab and Nursing at Rockville Centre	08/2012 to present
The Greenery (PA)	06/2016 to present
Washington Square (OH)	01/2014 to present
Big Bend Woods (MO)	01/2016 to present
Abbey Woods (MO)	04/2017 to present
The Villa at Stamford (CT)	08/2016 to present

### **Individual Background Review**

**Shlomo Boehm** is self-employed as healthcare and real estate investor. He graduated from Columbia University School of Law. He is an Attorney at Law licensed through New York State with license in good standing. Mr. Boehm discloses the following ownership interests in health facilities:

The Villa at Stamford (CT) (27.94%) 08/2016 to present

**Esther Klein** is currently employed at Catapult Learning Center, LLC as a teacher's coach. Ms. Klein discloses she has a high school diploma. She discloses the following ownership interest:

Abbey Woods(MO) 30% 04/2017 to present

**Ernest Schlesinger** is the CEO of Sight Rite, which is an eyecare business. Mr. Schlesinger discloses that he has a high school diploma. He discloses the following health facility ownership interests:

Dumont Center for Rehabilitation and Nursing Care (2.50%)	07/2010 to present
Bellhaven Center for Rehabilitation and Nursing Care (5.00%)	03/2010 to present
St. James Rehabilitation and Healthcare Center (10%)	08/2012 to present
The Grand Pavillion for Rehab and Nursing at Rockville Centre (5%)	08/2012 to present
The Greenery (PA) (15%)	06/2016 to present
Washington Square (OH) (6%)	01/2014 to present
Big Bend Woods (MO) (10%)	01/2016 to present
Abbey Woods (MO) (50%)	04/2017 to present

### Character and Competence - Analysis

A review of operations at Dumont Center for Rehabilitation and Nursing Care for the period specified 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.
- The facility incurred a Civil Money Penalty of \$40,000 for the Immediate Jeopardy on April 13, 2015.

A review of operations at Big Woods Healthcare Center (MO) for the period specified reveals the following:

- A Civil Money Penalty of \$17,605 was assessed, which was reduced and paid in the amount of \$11,400 in regards to Survey findings on July 05, 2016 for Staff Treatment of Residents.
- A Civil Money Penalty of \$17,000 was assessed for survey findings on March 3, 2017 for Pressure Sores. This is in the appeal process at this time.

*The state of Missouri reported that none of the violations were repetitive in nature.*

A review of operations at The Villa at Stamford for the period specified reveals the following:

- The facility incurred a Civil Money Penalty of \$3,640 for survey findings on March 28, 2017 for Accidents and Supervision.

A review of operations at Bellhaven Center for Rehabilitation and Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, Greenery Center for Rehab and Nurisng(PA), Washington Square Nursing Center(OH) and Abbey Woods Center for Rehabilitation and Healing (MO) for the time periods identified above reveals that there were no enforcements, and no civil money penalties



Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Quintile
Dumont Center for Rehabilitation and Nursing	**	*	*****	4
Bellhaven Nursing & Rehab Center	**	**	*****	3
St James Rehab & Health Care Center	***	***	****	4
The Grand Pavilion for R & N at Rockville Centre	***	**	*****	5

**OH**

Washington Square Healthcare Center	****	***	*****
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**PA**

Greenery Center for Rehab and Nursing	**	*	*****
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**CT**

The Villa at Stamford	**	*	*****
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**MO**

Abbey Woods Center for Rehabilitation and Healing	****	***	**
Big Bend Woods Healthcare Center	*	*	****

With regard to the facilities with a quality rating of 1 or 2, the applicant stated that they have hired new administrative/nursing and marketing staff to better address issues, and reconfigure staffing schedules to improve quality of resident care.

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 applicant does not intend to utilize any staffing agencies upon the 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

### Operations Transfer Agreement

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

Date:	April 21, 2016
Transferor:	East End Health Care, Inc.
New Operator:	Hampton NH Operating LLC
Purchased Assets:	All assets used in the operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Assumed Liabilities:	Any liability arising on or after the effective date of this agreement.
Purchase Price:	\$10 and assumption of certain liabilities, accounts payable and payroll liabilities totaling \$1,967,630, and accounts receivables of \$3,152,734 as of December 31, 2016, with a net of \$1,185,104 operating income.
Payment of Purchase Price:	\$10 cash

At the time the OTA was executed, it was unknown whether there would be net liabilities or receivables at the closing. The net receivables will aid the buyer in any capital costs that may be required to improve the physical environment of the facility and the quality of care for the residents.

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 August 10, 2017, the facility had an outstanding Medicaid overpayment liability of \$70,177.

### Purchase and Sale Agreement

The applicant has submitted an executed Purchase and Sale Agreement (PSA) for the sale of the real estate related to the RHCF's real property. The terms are summarized below:

Date:	April 21, 2016
Seller:	Westhampton Property, Inc.
Purchaser:	Hampton NH Realty LLC
Purchase Price:	\$27,000,000
Property Purchased:	Premises located at 78 Old Country Road, Westhampton, New York

The purchase price for the realty was met with \$5,400,000 equity from the realty members and a bank loan for \$21,600,000 from the Bank of Texas. The realty financing is currently a bridge-to-HUD loan at Libor (1.74% as of June 16, 2017) plus 2.75% over three years. The real property owner has informed the Department that they are in the process of obtaining a 30-year HUD mortgage at 3%. The OTA and PSA allowed for different closing dates relative to each transaction and the closing of the property took place on June 30, 2016. In accordance with the PSA, Hampton NH Realty, LLC assumed the existing lease and became the landlord to East End Healthcare, Inc.

## Lease Agreement

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

Date:	November 6, 1998
Premises:	A 180-bed RHCf located at 78 Old Country Road, Westhampton, New York 11977
Landlord:	Westhampton Care, Inc.
Tenant:	East End Healthcare, Inc.
Terms:	20 years with two five-year extensions
Rental:	\$1,800,000 per year
Provisions:	Tenant responsible for real estate taxes, general liability insurance, utilities & maintenance

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

## Assignment and Assumption of Lease

A draft Assignment and Assumption Agreement has been submitted for the realty related to the Westhampton Care Center RHCf as follows:

Assignor:	East End Healthcare, Inc.
Assignee:	Hampton NH Operating, LLC
Rights assigned:	All rights assigned under the Lease for the real property.

## Operating Budget

The applicant has provided the current year (2016), and the first-year operating budget after the change in ownership, in 2017 dollars, as summarized below:

Revenues	Current Year		Year One	
	Per Diem	Total	Per Diem	Total
Medicaid	\$235.84	\$10,362,464	\$250.80	\$11,077,253
Medicare	\$635.74	8,721,731	\$635.71	8,767,084
Commercial	\$763.59	783,445	\$763.84	787,519
Private Pay	\$551.32	1,880,541	\$551.27	1,890,320
Assessment Revenues		<u>229,816</u>		<u>583,994</u>
Total Operating Revenue		\$21,977,997		\$23,106,170
Non-Operating*		<u>1,657,668</u>		<u>382,221</u>
Total Revenues		\$23,635,665		\$23,488,391
<b>Expenses</b>				
Operating	\$325.07	\$20,185,453	\$290.67	\$18,142,880
Capital	41.60	<u>2,583,208</u>	<u>62.26</u>	<u>3,886,223</u>
Total Expenses	\$366.67	\$22,768,661	\$352.93	\$22,029,103
Net Income(Loss)		<u>\$867,004</u>		<u>\$1,459,288</u>
Total Patient Days		62,095		62,418
Utilization		94.25%		95.0%

\*Non-Operating consist of TV rentals, barber shop, vending machines and other miscellaneous revenues.

The following is noted with respect to the submitted budget:

- Medicaid revenues are projected based on the current operating and capital components of the facility's 2017 Medicaid FFS rate.
- Operating expenses are based on the 2016 current year. Capital is increased by the additional annual lease payment.
- All current year rates, including Medicare, reflect the actual rates identified in the facility's 2016 Cost Report. The Private Pay rates in years one and three represent an overall average of the actual rates experienced by the facility in 2016 from this payor source.

- Historical utilization for 2015 and 2016 was 93.09% and 94.25%, respectively. Utilization was 96.59% as of July 31, 2017.
- Utilization by payor source is as follows:

	<u>Current Year and Year One</u>
Medicaid	70.8%
Medicare	22.0%
Commercial	1.7%
Private Pay	5.5%

- Breakeven utilization is 90.58% for the first year.

### Capability and Feasibility

There are no project costs associated with this proposal. The purchase price for the operations is \$10 and the assumption of accounts payable and payroll liabilities offset by accounts receivables. As of December 31, 2016, accounts payable and payroll liabilities totaled \$1,967,6302 and accounts receivable totaled \$3,152,734 for net of \$1,185,104 operating income. The \$27,000,000 purchase price for the realty was financed with \$5,400,000 in equity and a \$21,600,000 bank loan from the Bank of Texas, which is a bridge-to-HUD loan at Libor (1.74% as of June 16, 2017) plus 2.75% over 3 years. The real property owner has informed the Department that they are in the process of obtaining a 30-year HUD mortgage at 3%. The realty was closed on June 30, 2016.

The working capital requirement of \$3,671,517, based on two months of the first year's expenses, will be funded via proposed members' equity. BFA Attachment A, net worth of the proposed members of Hampton NH Operating LLC, reveals sufficient resources exist for stated levels of equity. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,844,625 for the operation.

The submitted budget indicates that net income of \$1,459,288 will be generated for the first year. No budget sensitivity analysis is needed since the facility's current historical utilization is higher than the budgeted utilization for Year One and there is a slightly higher Private Pay/Other payor mix as of July 31, 2017. 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 B, financial summary of Westhampton Care Center, Inc., indicates that the facility maintained positive working capital for periods 2014-2016, but experienced a negative equity position and generated a net loss of \$1,075,304 for 2014. However, Westhampton Care Center was able to maintain positive net equity and a net operating income of \$ 1,247,718 and \$1,018,008 for 2015 and 2016, respectively. The negative net equity position and net operating loss in 2014 was due to a reduction in the facility's Medicaid rate and an increased bad debt expense write-off.

BFA Attachments C, financial summary of the proposed members affiliated RHCFS, shows the facilities have maintained positive net income from operations for the periods shown, except for the Grand Pavilion-Rockville, which had an operating loss of \$532,000 in 2014 due to lower than expected occupancy levels related to ongoing construction at the facility.

Based on the preceding and subject to 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	Hampton NH Operating LLC, Proposed Members Net Worth
BFA Attachment B	Financial Summary, Westhampton Care Center, 2014-2016
BFA Attachment C	Affiliated Residential Health Care Facilities
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Organizational Chart

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 11th day of October 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 NH Operating, LLC as the new operator of the 180-bed residential health care facility located at 78 Old Country Road, Westhampton currently operated as Westhampton 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:

171302 E

FACILITY/APPLICANT:

Hampton NH Operating, LLC  
d/b/a Westhampton Care Center

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Within two years from the date of council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. (RNR)
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two-year period. (RNR)

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 # 171128-E
Barnwell Operations Associates LLC d/b/a The Grand Rehabilitation and Nursing at Barnwell

Program: Residential Health Care Facility
Purpose: Establishment

County: Columbia
Acknowledged: February 24, 2017

Executive Summary

Description

Barnwell Operations Associates LLC, d/b/a The Grand Rehabilitation and Nursing at Barnwell, a New York limited liability company, requests approval to be established as the new operator of Barnwell Nursing & Rehabilitation Center, a 236-bed, proprietary, Article 28 Residential Health Care Facility (RHCF) located at 3230 Church Street, Valatie (Columbia County). The facility also operates a 40-slot Adult Day Health Care Program (ADHCP) onsite, which is part of the sale agreement. A separate entity, Barnwell Realty Operations Associates LLC will acquire the real property. There will be no change in the number of beds or licensed services provided.

On January 3, 2017, Jopal, LLC, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Barnwell Operations Associates LLC for the sale and acquisition of the operating interests of the facility for \$21,000,000. Concurrently, Valatie Acquisition II, LLC, the current real property owner, entered into a Contract of Sale (COS) with Barnwell Realty Operations Associates LLC for the sale and acquisition of the RHCF's realty interests for \$9,090,000. The APA and COS will close at the same time upon CON approval by the Public Health and Health Planning Council. There is a relationship between Barnwell Operations Associates LLC and Barnwell Realty Operations Associates LLC in that Jeremy Strauss has ownership interest in both entities. The applicant will lease the premises from Barnwell Realty Operations Associates LLC.

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

Table with 2 columns: Members and Percentage. Title: Current Operator Jopal, LLC. Members: Joseph Carillo II (33.33%), Alex Solovey (33.33%), Pasquale Debenedictis (33.33%).

Table with 2 columns: Members and Percentage. Title: Proposed Operator Barnwell Operations Associates, LLC. Members: Barnwell Acquisitions, LLC (97.50%), Jeremy Strauss (95.00%), Meryl Strauss (5.00%), Bruce Gendron (2.50%).

BFA Attachment B presents an organization chart of Barnwell Operations Associates LLC after the change in ownership.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services at this facility. Barnwell Nursing & Rehabilitation Center's occupancy was 93.8% in 2013, 90.7% in 2014, 90.6% in 2015, and 90.3% in 2016. Current self-reported occupancy, as of June 7, 2017, is 97.5%.

### Program Summary

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Healthcare System (The Grand). The Grand is a related entity with Jeremy Strauss as CEO and Bruce Gendron as the Regional Administrator. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

### Financial Summary

The purchase price for the acquisition of the operating interests is \$21,000,000 and will be met with equity of \$5,250,000 from the proposed members and a loan for \$15,750,000 at 5% interest for a ten-year term. The purchase price

for the real estate is \$9,090,000 and will be met with \$450,000 cash down payment with the remaining \$8,640,000 to be financed with a bank loan at 5% interest for a ten-year term to cover the existing \$3,000,000 mortgage plus the remaining balance of \$5,640,000. Jeremy Strauss is the sole member of Barnwell Realty Operations Associates LLC. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$23,371,466
Expenses	<u>22,241,388</u>
Gain	\$130,078

## 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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
4. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
5. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the Consulting Services Agreement between Barnwell Operations Associates LLC and Strauss Ventures, LLC, which is acceptable to the department. [CSL]
7. Submission of a photocopy of the Articles of Organization of Barnwell Acquisitions LLC, which is acceptable to the department. [CSL]
8. Submission of a photocopy of the Operating Agreement of Barnwell Acquisitions LLC, 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]

Council Action Date

**October 11, 2017**

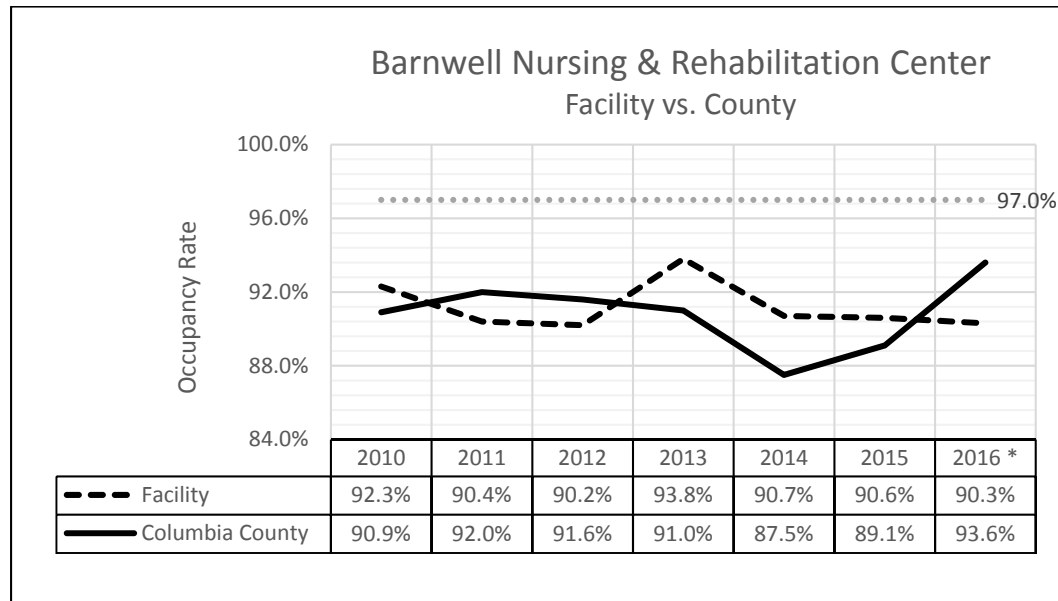
# Need Analysis

## Analysis

The current need methodology shows a need for 60 additional beds in Columbia County.

### RHCF Need – Columbia County

2016 Projected Need	667
Current Beds	596
Beds Under Construction	11
Total Resources	607
Unmet Need	60



\* Unaudited data; based upon facility reported data

Current self-reported occupancy, as of June 7, 2017, is 97.5%. The overall occupancy for Columbia County was 89.1% for 2015.

Per the applicant, the low utilization was attributable to a failure to invest time and resources to resident admission. The facility was unable to retain quality staff and fill management positions which impacted the provision of care to residents. Because of the difficulty to retain staff, the facility was unable to accept higher acuity patients.

To improve utilization going forward, the applicant plans to:

- Implement extensive staff training to improve overall quality of care and provide clinical expertise necessary to care for high acuity patients. A full-time physician and director of nursing will be added to the facility's staff.
- Hire an admissions nurse to streamline the admissions process.
- Become part of The Grand Healthcare System, a residential healthcare provider affiliated with seven facilities within New York State. This affiliation will allow the facility to benefit from staff and resources of the affiliated facilities, including the adoption of best practices.

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.

Barnwell Nursing & Rehabilitation Center's Medicaid admissions of 48.5% in 2014 and 65.7% in 2015 exceeded Columbia County's 75% threshold rates in 2014 and 2015 of 28.9% and 36.8%, respectively.

Conclusion

There will be no change in beds in Columbia County.

Recommendation

**From a need perspective, contingent approval is recommended.**

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Barnwell Nursing & Rehabilitation Center	The Grand Rehabilitation and Nursing at Barnwell
Address	3230 Church Street Valatie, NY 12184	Same
RHCF Capacity	236	Same
ADHC Program Capacity	40	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Jopal, LLC	Barnwell Operation Associates, LLC  Barnwell Acquisition, LLC 97.50% *Jeremy Strauss (95%) Meryl Strauss (5%) Bruce Gendron 2.50% *Managing Member

Character and Competence - Background

**Facilities Reviewed**

Nursing Homes

Boro Park Center for Rehabilitation	05/2011 to present
Brooklyn Center for Rehabilitation & Residential HealthCare	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Holliswood Center for Rehabilitation	05/2013 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare	07/2014 to present

The Grand Rehabilitation and Nursing at Guilderland	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley	09/2016 to present
The Grand Rehabilitation at Pawling	01/2004-present
The Grand Nursing and Rehabilitation at Queens	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango	05/2011 to present
The Grand Rehabilitation and Nursing at Rome	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015

Adult Homes

Washington Center Adult Home (AH)	02/2014 to 05/2016
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	08/2007 to present
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**Individual Background Review**

**Jeremy B. Strauss** discloses employment as Executive Director of Dutchess Center for Rehabilitation since 2003. He is also the CEO of The Grand HealthCare System, which is a consulting and service company for skilled nursing and rehabilitation facilities. He has a BA Degree from Yeshiva University. Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation (2%)	05/2011 to present
Brooklyn Center for Rehabilitation & Residential HealthCare (5%)	03/2007 to 12/2015
Bushwick Center for Rehabilitation (10%)	05/2011 to 12/2015
Corning Center for Rehabilitation (25%)	07/2013 to 02/2016
Essex Center for Rehabilitation (30%)	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care (25%)	04/2012 to 12/2015
Holliswood Center for Rehabilitation (7.5%)	05/2013 to present
Richmond Center for Rehabilitation and Specialty Healthcare (5%)	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare (29%)	07/2014 to present
The Grand Rehabilitation and Nursing at Guilderland (95%)	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley (95%)	09/2016 to present
The Grand Rehabilitation at Pawling (98%)	01/2004 to present
The Grand Nursing and Rehabilitation at Queens (95%)	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango (67%)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (67%)	05/2011 to 3/30/17
Washington Center for Rehabilitation (30%)	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
Washington Center Adult Home (AH) (30%)	02/2014 to 05/2016
Senior Care Emergency Ambulance Services, Inc. (23%)	05/2005 to present

**Meryl Strauss** discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. She has a BA Degree from Queens College. Ms. Strauss discloses the following health facility interests:

The Grand Rehabilitation and Nursing at Guilderland (4.875%)	11/2016 to present
The Grand Rehabilitation and Nursing at River Valley (4.70%)	09/2016 to present
The Grand Rehabilitation and Nursing at Rome (2%)	08/2016 to present
The Grand Rehabilitation and Nursing at Chittenango (2%)	07/2016 to present

**Bruce Gendron** is employed as the Regional Administrator of The Grand Healthcare Systems, and has a MBA Degree from Rensselaer Polytechnic Institute. Mr. Gendron holds a current Nursing Home Administrator license in good standing. He discloses no nursing home ownership interests.

## Character and Competence - Analysis

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

*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 of the Grand Rehabilitation and Nursing at Guilderland for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings
- The facility was fined \$10,000 pursuant to Stipulation and Order # 17-042 issued on July 25, 2017 for surveillance findings on April 14, 2017. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Changes Significant Changes in Condition-Complications and /or Life Threatening.

*An assessment of the underlying causes of the 2015 enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.*

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.

- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-118 issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

*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 operations of The Grand Rehabilitation and Nursing at Chittenango for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

A review of the operations of The Grand Rehabilitation and Nursing at Rome for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.
- A federal CMP of \$8,541 was assessed for the September 11, 2015 survey findings.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

A review of operations for Washington Center Adult Home, (Argyle Center for Independent Living) for the periods identified above, reveals the following:

- The facility was fined \$455.00 pursuant to Stipulation and Order # ACF-16-149 issued on 11/21/2016 for surveillance findings on 1/7/2016 and 4/5/2016. Deficiencies were found under 18 NYCRR 487.8, Food Service.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, and Steuben Center for Rehabilitation and Healthcare for the time periods indicated above reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements. Information provided by the Department's Bureau of Emergency Services indicates there have been issues involving motor vehicle accidents and vehicle maintenance.



## Quality Review

Provider name	Overall	Health Inspection	Quality Measures	Quintile
Boro Park Center for Nursing and Rehab Center	*****	*****	*****	4
Brooklyn Ctr For Rehab and Residential Hlth Care	***	****	***	3
Bushwick Center for Rehab and Health Care	****	***	*****	3
Corning Center for Rehabilitation and Healthcare	*	*	***	4
Essex Center for Rehabilitation and Healthcare	*	*	***	4
Fulton Center for Rehabilitation and Healthcare	***	**	****	4
Holliswood Center for Rehabilitation & Healthcare	***	***	****	5
Richmond Center for Rehab and Specialty H C	****	***	***	5
Steuben Center for Rehabilitation and Healthcare	***	***	**	5
The Grand Rehabilitation & Nursing at Guilderland <sup>1</sup>	*	*	**	N/A <sup>1</sup>
The Grand Rehabilitation & Nursing At River Valley	N/A	**	****	4
The Grand Rehabilitation & Nursing at Pawling	****	****	****	4
The Grand Rehabilitation & Nursing at Queens	*****	****	*****	4
The Grand Rehabilitation & Nursing at Chittenango	**	**	***	3
The Grand Rehabilitation & Nursing at Rome	**	*	*****	3
Washington Center for Rehabilitation & Healthcare	*	*	**	5
Waterfront Center for Rehabilitation & Healthcare	**	*	*****	5

<sup>1</sup>CMS Special Focus Facility 2015-16

With regard to the nursing homes with a quality score of 1 or 2, the applicants have stated they have responded by implementing staffing incentives to recruit and retain employees. They have enhanced training and education, and provided housing to augment staff recruitment and retention. For 2 of the nursing homes they indicate that the population served is clinically complex, which is a factor in the low ratings. They note that the nursing homes have been improving at each survey interval. Other measures implemented across the board include changes to policies and procedures, audits of staff practices and increased oversight.

The Grand Rehabilitation and Nursing at Guilderland was a Special Focus facility from July 2015 until November 2016. Mr. Strauss acquired a 9% membership interest of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, the previous operator, in November, 2014. Mr. Strauss was hired as a consultant to the operator, and the facility showed sufficient improvement to graduate from Special Focus. In November 2016, the ownership of Guilderland Center changed, with Mr. Strauss serving as managing member.

In response to the most recent 2017 enforcement, the applicant explained that a review of staff practices indicated a lack of clarity among staff regarding notification protocol. The applicant indicates that the issues with leadership and staff at the facility have been remedied. The facility has taken steps including hiring a new Administrator. The Grand, the operating consultant, has added Support and Regional Assessment nurses and a Corporate Director of Education. Specific staffing initiatives at Guilderland Center include hiring a staff recruiter for the Capital Region, the execution of a staffing contract to provide additional night and weekend staffing, introduction of a new benefit package for staff recruitment and retention and the implementation of an on-call transportation support program to provide assistance to staff getting to work.

**Project Review**

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Healthcare System. The Grand is a related party with Jeremy Strauss serving as CEO and Bruce Gendron the Regional Administrator. 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 for the operating interests of the RHCf. The terms of the agreement are summarized below:

<b>Date:</b>	January 3, 2017
<b>Seller:</b>	Jopal, LLC d/b/a Barnwell Nursing & Rehabilitation Center
<b>Purchaser:</b>	Barnwell Operations Associates LLC
<b>Purchased Assets:</b>	All security deposits and prepayments, menus, policies and procedures manuals, computers and computer software, telephone numbers and telefax numbers, copies of all financial books and records in the possession of Seller or its agents, resident/patient records, employee and payroll records of Transferred Employees, goodwill, all accounts receivable, licenses and permits held or owned by Seller and the Basic Assets to the extent transferable, cash, marketable securities, deposits and cash equivalents, and accrued interest and dividends thereon, reimbursement made before, on or after the Closing Date by Medicare, Medicaid or any third party payor for any period on or after the Closing Date, 17% of all payments under the Universal Settlement made after the Contract Date, leasehold improvements, furniture, fixtures and equipment owned by Seller, other assets of Seller of whatever nature or kind arising from or used in connection with the Facility and insurance policies purchased before the Closing Date.
<b>Excluded Assets:</b>	Retroactive rate increases, plans, claims, rights, causes of action, rights of recovery, rights of set-off and recoupment against any third parties, claims for refund or other claims owned by Seller in connection with any real estate taxes or assessments which relate to a period or periods before the Closing Date and the proceeds of any such claims, financial books and records of Seller, accounts receivable relating to services rendered by the Facility before the Closing Date, 83% of all payments under the Universal Settlement made after the Contract Date, The Universal Settlement Escrow Account, any assets of Seller not used in

	connection with the operation of the Facility; and the Real Property, and improvements thereon, and any rights relating to it.
Purchase Price:	\$21,000,000
Payment of Purchase Price:	\$1,050,000 cash deposit held in escrow with the remaining \$19,950,000 due at Closing by a \$15,750,000 loan and \$4,200,000 cash.

The applicant's financing plan appears as follows:

Equity via proposed members	\$5,250,000
Bank loan (5% interest, 10-year term)	\$15,750,000

BFA Attachment A is the net worth summary for the proposed members of Barnwell Operations Associates LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement. Harborview Capital Funding has provided a letter of interest for the loan at the stated terms. 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 August 25, 2017, the facility has no outstanding Medicaid overpayment liabilities.

#### Contract of Sale of Real Property

The applicant has submitted an executed COS for the real property. The agreement will close simultaneously with the APA upon approval by the PHHPC. The terms are summarized below:

Date:	January 3, 2017
Premises:	The parcel of land located at 3230 Church Street, Valatie, New York
Seller:	Valatie Acquisition II, LLC
Purchaser:	Barnwell Realty Operations Associates LLC
Purchase Price:	\$9,090,000
Payment of Purchase Price:	\$450,000 cash down payment with the remaining \$8,640,000 due at Closing to be paid via a bank loan at 5% interest for a ten-year term to cover the existing \$3,000,000 mortgage plus the remaining balance of \$5,640,000.

The existing mortgage is held by 300 Broadway-Sayville Lender, LLC, a Delaware limited liability company, and consists of a bank loan for \$3,000,000 at 8% interest for a three-year term. Jeremy Strauss is the sole owner and managing member of Barnwell Realty Operations Associates, LLC. BFA Attachment B shows the net worth of Mr. Strauss, which reveals sufficient resources for stated levels of equity.

#### Lease Agreement

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

Date:	January 17, 2017
Premises:	A 236-bed RHCf with a 40-slot ADHCP located at 3230 Church Street, Valatie, New York
Landlord:	Barnwell Realty Operations Associates, LLC
Tenant:	Barnwell Operations Associates, LLC
Terms:	10 years
Rental:	\$2,750,000 annually (\$229,166.67 per month)
Provisions:	Taxes, assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, license and permit fees and other governmental charges

The lease arrangement is a non-arm's length agreement. Jeremy Strauss has ownership interest in both Barnwell Operations Associates, LLC and Barnwell Realty Operations Associates, LLC.

## Consulting Services Agreement

The applicant has provided a draft consulting services agreement, summarized below:

Operator:	Barnwell Operations Associates, LLC
Contractor:	Strauss Ventures, LLC d/b/a The Grand Health Care System
Term:	One year and renew automatically for successive one year periods.
Compensation:	\$1,020,000 (\$85,000 per month) plus an initial fee of \$1,000 totaling \$1,021,000 for the first year.
Duties of contractor:	Provide assistance to established Operator's administrator, consulting/advisory services related to administration and operational functions, regulatory monitoring, compliance and quality assurance, oversight of all functions related to accounts receivables, develop and implement a marketing plan and operate, supervise and oversee all functions related to billing and Preparation of health facility assessments, RHCF 4 reports and Medicare cost reports. Review rate sheets and assisting with filing necessary appeals.

The agreement provides that Barnwell Nursing and Rehabilitation Center will retain ultimate control in all of the final decisions associated with the services.

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

The Grand Health Care System will also provide consulting services to the other RHCFs owned and operated by Jeremy Strauss. Mr. Strauss is a member of Strauss Ventures, LLC a with 95% membership interest.

## Operating Budget

The applicant has provided an operating budget, in 2017 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<u>Current Year (2016)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Inpatient Revenues</u>				
Commercial	\$328.17	\$551,326	\$304.20	\$550,298
Medicare	\$477.52	4,499,150	\$523.72	5,313,663
Medicaid	\$233.61	14,245,568	\$213.67	14,030,080
Private Pay	\$326.08	1,355,841	\$354.99	1,589,290
All Other	\$235.27	<u>318,556</u>	\$229.67	<u>334,853</u>
Total Inpatient Rev.		\$20,970,441		\$21,818,184
<u>ADHCP Revenues</u>				
Medicaid	\$110.13	\$797,043	\$149.36	\$1,087,042
Private Pay	\$215.32	<u>623,785</u>	\$160.00	<u>466,240</u>
Total Outpatient Rev.		\$1,420,828		\$1,553,282
Total Patient Revenues		\$22,391,269		\$23,371,466
Other Operating Rev.		<u>51,039</u>		<u>0</u>
Total Revenues		\$22,442,308		\$23,371,466
<u>Inpatient Expenses</u>				
Operating	\$253.70	\$19,686,092	\$238.52	\$18,508,002
Capital	<u>\$19.14</u>	<u>1,484,858</u>	<u>\$48.59</u>	<u>4,060,202</u>
Total Inpatient Exp.	\$272.84	\$21,170,950	\$270.11	\$22,568,204

<u>ADHCP Expenses</u>				
Operating	\$70.73	\$716,823	\$65.64	\$669,008
Capital	<u>\$0.41</u>	<u>4,176</u>	<u>\$0.41</u>	<u>4,176</u>
Total Outpatient Exp.	\$71.14	\$720,999	\$66.05	\$673,184
Total Expenses	\$343.98	\$21,891,949	\$336.16	\$23,241,388
Net Income		<u>\$550,359</u>		<u>\$130,078</u>
Total Patient Days		77,595		83,553
Total ADHCP Visits		10,134		10,192
Occupancy		90.10%		97.00%
Breakeven		90.16%		100.00%
Breakeven (Inpt & ADHCP)		87.83%		96.46%

The following is noted with respect to the submitted budget:

- All Other refers to income from the following sources: ADC insurance, VA benefits, Fidelis and CDPHP.
- Despite decreases in expenses of salaries and wages, employee benefits, professional fees, medical and surgical supplies, nonmedical supplies, purchase or contract services and other direct expenses, budgeted first year expenses increased from current year due to increased interest and depreciation and rent expenses.
- Other Operating Revenues refers to income from the following sources: cafeteria, cash discounts/rebates on purchases, unrestricted investment income, nurse aide training and miscellaneous.
- The Medicare and Private Pay rates are based upon current market rates.
- The current year reflects the facility's 2016 payor and 2016 RHCF-4 cost report information. Historical utilization for base year 2016 was 90.1%.
- For budget Year One, Medicaid revenues are projected based on the current operating and capital components of the facility's 2017 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors.
- Overall utilization is 90.1% for the current year and projected at 97.0% for Year One. Upon the change in ownership, the new operator will enter into a consulting services agreement with The Grand Healthcare System that is expected to improve operations, stabilize staffing and enhance care. The applicant indicated that Jeremy Strauss is a seasoned RHCF operator with experience transforming nursing facilities with soft utilization and poor quality.
- Utilization by payor source is as follows:

	<u>Current Year</u>		<u>Years One</u>	
	<u>Inpatient</u>	<u>ADHCP</u>	<u>Inpatient</u>	<u>ADHCP</u>
Commercial	2.20%	-	2.20%	-
Medicare	12.10%	-	12.10%	-
Medicaid	78.60%	56.10%	78.60%	71.41%
Private Pay	5.40%	43.90%	5.40%	28.59%
All Other	<u>1.70%</u>	<u>-</u>	<u>1.70%</u>	<u>-</u>
Total	100.00%	100.00%	100.00%	100.00%

- The current and first year budgeted breakeven of 87.83% and 96.46%, respectively, represents both Inpatient and ADHCP operations. The low cost profitable outpatient service of the facility will allow the applicant to achieve positive Net Operating Income in Year One. The applicant's business model, noted above, supports their commitment to improve the historically soft utilization of the facility, and the efforts they will employ to achieve a financially stable nursing home operation.

The applicant noted that the facility operates a short-term rehabilitation unit with 40 beds. The unit's average utilization is 95% with an average length of stay (LOS) of 30 days, compared to the average long-term patient's LOS of over 365 days. Short term rehab patients generate increased turnover that directly impacts occupancy rates at any point in time, yet the facility will be able to serve a greater number of individuals within the community. The applicant anticipates that the cumulative effect of their business model will achieve and sustain occupancy rates at or above the Department's planning optimum.

## Capability and Feasibility

The purchase price for the acquisition of the operating interests is \$21,000,000 and will be met with \$5,250,000 equity from proposed members and a bank loan for \$15,750,000 at 5% over a ten-year term. Harborview Capital Funding has provided a letter of interest at the stated terms.

The working capital requirement is \$3,873,565 based on two months of the first year's expenses. Working capital will be satisfied with \$1,959,359 equity from proposed members and the remaining \$1,914,206 will be financed through a bank loan for five years at 5% interest. Harborview Capital Funding has provided a letter of interest for the working capital financing. BFA Attachment A, net worth of the proposed members of Barnwell Operations Associates LLC, reveals sufficient resources for stated levels of equity. BFA Attachment D provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$7,209,359. It is noted that assets include \$19,950,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity is a negative \$12,740,641.

The submitted budget indicates that net income of \$130,078 will be generated for the first year. BFA Attachment F presents the budget sensitivity analysis based on current utilization of the facility as of June 30, 2017, which shows the budgeted inpatient revenues would decrease by \$836,612, but the offset of ADHCP revenues of \$1,553,282 results in net income in Year One of \$716,670. Jeremy Strauss, a majority member of the proposed operator and sole member of the proposed realty owner, has submitted an affidavit attesting that, should there be a loss in revenue during the facility's first year of operations, he will contribute funds to the operations to offset any such loss in revenue. BFA Attachment A, net worth of the proposed members of Barnwell Operations Associates LLC, reveals the Mr. Strauss has sufficient resources for stated levels of 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, the financial summary of Barnwell Nursing & Rehabilitation Center as of June 30, 2017, indicates that the facility experienced positive working capital, positive equity position and maintained an annual net operating income of \$1,553,075.

BFA Attachment E, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown.

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

## Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Barnwell Operations Associates, LLC – Proposed Members' Net Worth
BFA Attachment B	Barnwell Operations Associates, LLC – Organizational Chart
BFA Attachment C	Barnwell Nursing & Rehabilitation Center - Financial Summary
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Barnwell Nursing & Rehabilitation Center - Budget Sensitivity

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 Barnwell Operations Associates LLC as the new operator of the 236-bed residential health care facility located at 3230 Church Street, Valatie currently operated as Barnwell Nursing & Rehabilitation 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:

171128 E

FACILITY/APPLICANT:

Barnwell Operations Associates LLC  
d/b/a The Grand Rehabilitation and Nursing at  
Barnwell

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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
4. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
5. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the Consulting Services Agreement between Barnwell Operations Associates LLC and Strauss Ventures, LLC, which is acceptable to the department. [CSL]
7. Submission of a photocopy of the Articles of Organization of Barnwell Acquisitions LLC, which is acceptable to the department. [CSL]
8. Submission of a photocopy of the Operating Agreement of Barnwell Acquisitions LLC, 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]

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 # 171450-E
S&J Operational LLC d/b/a Mills Pond Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Suffolk
Acknowledged: July 12, 2017

Executive Summary

Description

S&J Operational LLC, a New York limited liability company, request approval to be established as the operator of Mills Pond Nursing and Rehabilitation Center, a 250-bed, proprietary, Article 28 residential health care facility (RHCF) located at 273 Moriches Road, St. James (Suffolk County). A separate entity, S&J Mills Pond Realty LLC, will acquire the real property. Upon approval, the applicant will operate the facility under the name Mills Pond Nursing and Rehabilitation Center. There will be no changes in bed or services provided.

On March 30, 2017, Jopal at St. James, LLC, the current RHCF operator, entered into an Asset Purchase Agreement (APA) with S&J Operational LLC for the sale and acquisition of the operating interest of the facility for \$8,150,000 plus assumed liabilities. Concurrent with the APA, Jopal Realty, LLC, the current RHCF realty owner, entered into a Purchase and Sale Agreement (PSA) with S&J Mills Pond Realty LLC, for the sale and acquisition of the RHCF's real property for \$46,850,000. The transactions contemplated by the APA and PSA will close simultaneously upon CON approval by the Public Health and Health Planning Council. There is a relationship between S&J Operational LLC and S&J Mills Pond Realty LLC in that the entities have identical membership and ownership interest. The applicant will lease the premises from S&J Mills Pond Realty LLC.

The current and proposed ownership of Mills Pond Rehabilitation and Nursing Center is as follows:

Table with 2 columns: Members, % (Current ownership of Jopal at St. James, LLC)

Table with 2 columns: Members, % (Proposed ownership of S&J Operational LLC)

Concurrently under review is CON 171451, in which the proposed members of the S&J Operational LLC seek approval to acquire the operating interest of Sayville Rehabilitation and Nursing Center.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will not be any changes to or services. The last year of certified data shows the applicant operating at 96.2 percent occupancy.

### 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

The purchase price for the operations is \$8,150,000 to be funded via members' equity of \$815,000 and a \$7,335,000 loan at 6.5% interest for five years with a borrower's option for an additional five years based on a 25-year amortization. Greystone Financial has provided a letter of interest for the loan at the stated terms. The purchase price for the realty is \$46,850,000 to be funded via members' equity of \$4,685,000 and a \$42,165,000 loan at 6% for

five years with a borrower's option for an additional five years based on a 25-year amortization. The borrower (realty) and lender intend to pursue a U.S. Department of Housing and Urban Development (HUD) loan within the initial five-year term. The Department of Health has advised the applicant that the proposed realty loan must be structured to incorporate payment of both interest and principal over the loan term. In addition to such payments, the realty members may also establish a sinking fund towards amortization for refinancing purposes. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$33,114,900
Expenses	<u>29,238,801</u>
Net Income	\$3,876,099

## 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 real property loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
4. Submission of an executed operational loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of a Managers Resolution of S & J Operational LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a Restated Articles of Organization of S & J Operational LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of a lease agreement between S & J Mills Pond Realty LLC and S & J Operational 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

**October 11, 2017**

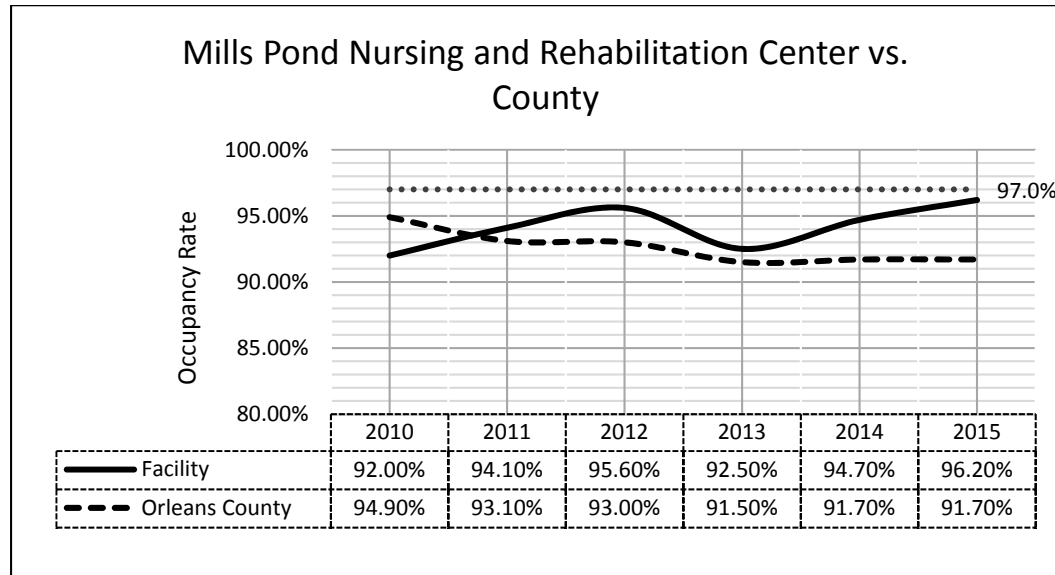
# Need Analysis

## Analysis

The current need Methodology shows a need for 1,853 additional beds in the Long Island region.

### RHCF Need – Long Island Region

2016 Projected Need	16,962
Current Beds	15,248
Beds Under Construction	-139
Total Resources	15,109
Unmet Need	1,853



The overall occupancy for Suffolk County was 91.7% for 2015 as indicated in the following chart:

Mills Pond Nursing and Rehabilitation Center utilization was 92.5% in 2013, 94.7% in 2014, and 96.2% in 2015. In 2016, the facility's average utilization was 94.8 percent.

## 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.

Mills Pond Nursing Nursing and Rehabilitation Center's Medicaid admissions for 2014 (19.1%) exceeded Suffolk County's threshold of 16.7%, Mills Pond's 76.6% Medicaid admissions exceeded the County's threshold of 18.4%.

Conclusion

There will be no change in beds in Suffolk County or the Long Island planning region upon completion of this project.

Recommendation

**From a need perspective, contingent approval is recommended.**

Program Analysis

Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Mills Pond Nursing and Rehabilitation Center	Same
Address	273 Moriches Road St. James, NY 11780	Same
RHCF Capacity	250	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	LLC	Same
Operator	Jopal at St. James, LLC	S & J Operational, LLC Jacob Hager * 25.00% Shaya Bernath* 25.00% Chaim Hager 18.75% Shifra Hager 18.75% Leo Oberlander * 5.00% Elliot J. Kahan 7.50% *Managing Members

Character and Competence - Background

**Facility Reviewed**

Apex Rehabilitation Care Center

08/2007 to present

**Individual Background Review**

**Jacob Hager** is currently employed at Paragon Management, as a business developer. This company provides office support services to skilled nursing facilities. He also discloses that he is a consultant to several nursing homes. Mr. Hager has a Rabbinical degree from Yeshiva Viznits. Mr. Hager discloses no health facility ownership interests.

**Shaya Bernath** is employed at Paragon Management as the Vice President of business development. This company provides office support services to skilled nursing facilities. Mr. Bernath has a Rabbinical degree from UTA Yeshiva. Mr. Bernath is a licensed paramedic in NYS who is in good standing. Mr. Bernath discloses no health facility ownership interests.

**Chaim Hager** is a member/owner of Cornell Realty Management, which is a real estate company. Mr. Hager has a degree from Yeshiva Vizaitz. Mr. Hager discloses no health facility ownership interests.

**Shifra Hager** is a member/owner of Cornell Realty Management, which is a real estate company. Ms. Hager attended the United Talmudical Academy. Ms. Hager discloses no health facility ownership interests.

**Leo Oberlander** is employed as the owner/operator of Apex Rehabilitation Care Center. Mr. Oberlander attended both Torah Vvirah Talmudical College and Touro College. He discloses the following nursing home ownership interest:

Apex Rehabilitation and Care Center 100%

08/2007 to present

**Elliot J. Kahan** is the owner /operator of Your Personal Touch, which is a Healthcare Consulting Company that works with skilled nursing facilities to develop their marketing practices. Mr. Kahan has a Bachelor of Arts degree from Queens College. He discloses no ownership interests.

#### Character and Competence - Analysis

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

A review of operations of Apex Rehabilitation Care Center for the period identified above reveals that there were no enforcements or civil money penalties.

Since there were no enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

#### Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Quintile
Apex Rehabilitation & Care Center	***	**	*****	3

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

Date:	March 30, 2017
Seller:	Jopal at St. James, LLC
Buyer:	S&J Operational LLC
Asset Acquired:	Fixed equipment, non-fixed equipment, assigned contracts, assumed contracts, all inventory, supplies and other articles of personal property, the name "Mills Pond Nursing and Rehabilitation Center", all security deposits and prepayments, if any, for future services at the Closing Date held by Seller, all menus, policies and procedures manuals, computers and computer software, all telephone numbers and telefax numbers used by the Business, copies of all financial books and records in the possession of Seller or its agents relating to the Business but not corporate minute books, corporate seals, consolidated financial statements, all employee and payroll records of Buyer Employees, good will in connection with the operation of the Business, all accounts receivable relating to services rendered by the Business on and after the Closing Date, all licenses and permits held or owned by Seller relating to the ownership or operation of the Business, the Seller's Medicare and Medicaid provider numbers and provider agreements, all rate increases or lump sum payments resulting from rate appeals, all rate reimbursement made before, on or after the Closing Date by Medicare, Medicaid or any third party payor for any period on or after the Closing Date, all leasehold improvements, furniture, fixtures and equipment owned by Sellers and all insurance policies purchase before the Closing Date.
Excluded Assets:	All retroactive rate increases, resulting from rate appeals, audits or otherwise, on third party payments, on or after the Closing Date for services rendered at the Business before the Closing Date, and all accounts receivable arising therefrom and proceeds thereof, all financial books and records of Seller, including, but not limited to organizational and other corporate type records, corporate minute books, corporate seals, financial statements and tax returns and records, all accounts receivable relating to services rendered by the Business before the Closing Date, all payments under the Universal Settlement made after the Closing Date and the real property and improvements thereon, and any rights relating to it.
Assumed Liabilities:	All the claims, liabilities and obligations of any kind or nature incurred in an attributable to the conduct of the Businesses or the use of the Purchased Assets from and after the Closing Date, all liabilities and obligations of Seller under the Assumed Contracts and all of Seller's liabilities relating to the Buyer employees for vacation, sick, holiday time and personal days, all of which were earned but not yet taken or paid prior to the Closing Date.
Purchase Price:	\$8,150,000.00
Payment of the Purchase Price:	\$407,400 paid and held in escrow upon execution of this agreement; \$7,742,500 balance due in cash or by wire transfer at Closing.

The applicant's financing plan is as follows:

Members' Equity	\$815,000
Bank Loan (6.5% interest, 5 years with 5-year Borrower's option, 25-year amortization)	\$7,335,000

If refinancing is not available, a balloon payment of \$5,685,458 would be due after the tenth year. Given the projected profitability of Mills Pond, the profitability of Mr. Oberlander's affiliated nursing home (proposed operations and realty member) and the excess rent over debt service requirements for Mills Pond, it appears that the operating entity will have sufficient funds for the balloon payment should acceptable financing terms not be available at the time of refinancing.

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

#### Real Estate Purchase and Sale Agreement

The applicant has submitted an executed real estate PSA and Addendum, summarized below:

Date:	March 30, 2017 (PSA) May 30, 2017 (Addendum)
Premises:	The RHCF located at 273 Moriches Road, St. James
Seller:	JOPAL Realty, LLC,
Purchaser:	S&J Mills Pond Realty LLC
Purchase Price:	\$42,850,000 (PSA) +\$3,000,000 (Addendum) \$46,850,000 (final purchase price)
Payment of Purchase Price:	\$4,685,000 paid upon execution of this agreement; \$42,165,500 due at Closing.

The applicant's financing plan consists of the following:

Equity	\$4,685,000
Bank Loan (6% interest, 5 years with 5-year Borrower's option, 25-year amortization)	\$42,165,000

The Addendum increases the purchase price to account for capital improvements undertaken by the current property owners that will materially increase the value of the premises prior to closing.

If refinancing is not available, a balloon payment of \$32,193,813 would be due after the tenth year. An assessment of the annual rent payments due the landlord over the ten-year term indicates that the payments will exceed the cumulative total annual debt service due on the loan by \$14,899,638. This excess will enable the landlord to establish a sinking fund to help finance the balloon payment. A remaining balance of \$17,294,175 would be needed to fully fund the balloon payment. Given the excess rent over debt service requirements, the projected profitability of Mills Pond, the profitability of Mr. Oberlander's affiliated nursing home (proposed operations and realty member), and the realty members' current liquid assets (per their personal net worth statements available to date), it appears that the realty entity will have sufficient funds for the balloon payment should acceptable financing terms not be available at the time of refinancing. As previously noted, the borrower and lender intend to pursue a HUD loan within the initial five-year term.

#### Lease Agreement

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

Premises:	273 Moriches Road, St James, New York, 11780
Landlord:	S&J Mills Pond Realty LLC
Tenant:	S&J Operational LLC
Term:	10 Years renewable once for a 10-year period
Rental:	\$4,750,500 annually
Provisions:	Tenant to pay all real estate taxes, insurance, maintenance and utilities.

The lease arrangement will be a non-arm's length agreement in that the realty and operating entities have identical membership and ownership interest. 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 (2016) results and the first-year operating budget after the change in ownership, in 2017 dollars, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Dem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$280.11	\$14,744,183		\$0
Medicaid MC		\$0	\$274.70	\$14,950,600
Medicare FFS	\$660.74	\$11,289,400		\$0
Medicare MC		0	\$650.00	\$11,598,600
Commercial FFS	\$350.00	\$3,527,600	\$350.00	\$3,591,300
Private Pay	\$439.41	\$2,900,560	\$440.02	\$2,944,600
All other		\$ 69,829		\$29,800
Bad debt		<u>(\$933,407)</u>		<u>\$0</u>
Total Revenues	\$365.71	\$31,598,165	\$371.15	\$33,114,900
<u>Expenses</u>				
Operating	\$287.90	\$24,875,331	\$268.52	\$23,957,800
Capital	<u>\$27.63</u>	<u>\$ 2,387,336</u>	<u>\$59.19</u>	<u>\$5,281,001</u>
Total Expenses	\$315.53	\$27,262,667	\$327.71	\$29,238,801
Net Income		<u>\$4,335,498</u>		<u>\$3,876,099</u>
Utilization (Patient Days)		86,403		89,222
Occupancy		93.94%		97.00%

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

- Private and Other rates are projected based on similar facilities in the same geographical area.
- Medicaid rates are projected based on the reimbursement methodology under statewide pricing.
- Incremental other operating revenue decreased due to a more conservative projection than the current operator with a reduction in the components of interest of \$5,033, rebates and refunds of \$58,596, and Miscellaneous of \$6,200.
- Professional Fees and Other Direct Expenses decreased by the elimination in projections of related party costs used by the current operator for functions such as Bookkeeping, Pharmacy, Therapy, Laundry, IT, and other administrative functions.
- Patient days increased during the first year since the current operator did not maximize the occupancy due to their shift from the Long Island to NYC Markets. The proposed operator is committed to the Long Island Market and have significant relationships with upstream and downstream healthcare providers. The projections reflect the results of these relationships.
- Breakeven utilization is estimated at 85.63% during the first year after the change in operator.

Utilization broken down by payor source during the current year and the first year after the change in operator is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	60.92%	0.00%
Medicaid MC	0.00%	61.00%
Medicare FFS	19.77%	0.00%
Medicare MC	0.00%	20.00%
Commercial FFS	11.67%	11.50%
Private Pay	7.64%	7.50%

## Capability and Feasibility

The purchase price for the operations is \$8,150,000 plus assumed liabilities to be funded by \$815,000 from members' equity and a \$7,335,000 loan at 6.5% interest for five years with a borrower's option for an additional five years based on a 25-year amortization. Greystone Financial has provided a letter of interest at the stated terms. The purchase price for the real property is \$46,850,000 to be funded via \$4,685,000 in members' equity, and a \$42,165,000 mortgage loan at 6.0% interest for five years with a borrower's option for an additional five years based on a 25-year amortization. The borrower and lender intend to pursue a HUD loan within the initial five-year term. The applicant has provided a letter of interest from Greystone Financial. The Department of Health has advised the applicant that the proposed realty loan must be structured to incorporate payment of both interest and principal over the loan term. In addition to such payments, the realty members may also establish a sinking fund towards amortization for refinancing purposes.

The working capital requirement is estimated at \$4,873,133 based on two months of Year One expenses. The applicant will finance \$2,435,000 at 6.5% interest for a five-year term. The remaining \$2,438,133 will be met via equity from the proposed members' personal resources. Shifra Hager and Chaim Hager submitted affidavits indicating that they will provide equity disproportionate to their ownership interest. BFA Attachment A is the net worth statements of the proposed members of S&J Operational, LLC indicating the availability of sufficient funds for the equity contribution to meet the operation equity portion, real estate equity portion, working capital and the balloon payments. BFA Attachment D is the Pro Forma balance sheet of S&J Operational, LLC, which indicates a positive net asset position of \$2,838,133 as of the first day of operation.

The submitted budget indicates a net income of \$3,876,099 during the first year after the change in ownership. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is a Financial Summary of Mills Pond Nursing & Rehabilitation Center from 2014 through 2016. The facility had an average positive working capital position and an average positive net asset position from 2014 through 2016. The facility achieved an average net income of \$856,840 from 2014 and 2016.

BFA Attachment C is the internal financial statements of Mills Pond Nursing & Rehabilitation Center as of May 31, 2017. As shown, the facility had a positive working capital position, a positive net asset position, and achieved an operating net income of \$3,939,412 through May 31, 2017.

BFA Attachment E is the financial summary of Apex Rehabilitation and Care Center. As shown, the entity had an average negative working capital position and an average positive net asset position from 2014 through 2016. Also, the entity achieved an average net income of \$579,066. The applicant indicated that the reason for the negative working capital position in 2014 and 2016 were as follows: investments in PPE (long term assets) as part of the renovation/upgrade initiatives, reductions of long term obligations and low census levels reduced cash flow, while fixed costs remained mostly unchanged causing cash and receivables to decline and payables to increase. The applicant indicated that reason for the 2014 loss was as follows: reduction in occupancy, reduction of contracted nurses and increase in in-house nursing staff resulted in higher salary and benefit expenses, high interest costs associated with the mortgage, and accounts receivable bad debt write-off of \$1,000,000. The applicant implemented the following steps to improve operations: facility renovations/upgrades and retention of staff along with marketing have increased census to nearly 95% by March 31, 2017.

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

## Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members
BFA Attachment B	Financial Summary- Mills Pond
BFA Attachment C	May 31, 2017 internal financial statements of Mills Pond
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary- Apex Rehabilitation

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 11th day of October 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 S & J Operational LLC d/b/a Mills Pond Nursing and Rehabilitation Center as the new operator of Mills Pond Rehabilitation and Nursing Center, a 250-bed residential health care facility located at 273 Moriches Road, St. James, 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:

171450 E

S & J Operational LLC d/b/a Mills Pond  
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 an executed real property loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
4. Submission of an executed operational loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of a Managers Resolution of S & J Operational LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a Restated Articles of Organization of S & J Operational LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of a lease agreement between S & J Mills Pond Realty LLC and S & J Operational 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 # 171451-E  
L & A Operational LLC d/b/a  
Sayville Nursing and Rehabilitation Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** July 12, 2017

**Executive Summary**

**Description**

L&A Operational LLC, a New York limited liability company, requests approval to be established as the new operator of Sayville Rehabilitation and Nursing Center, a 180-bed, proprietary, Article 28 residential health care facility (RHCF) located at 300 Broadway Avenue, Sayville (Suffolk County). A separate entity, L&A Sayville Realty LLC, will acquire the real property. Upon approval, the applicant will operate the facility under the name Sayville Nursing and Rehabilitation Center. There will be no change in beds or services provided.

On March 30, 2017, Jopal Sayville, LLC, the current RHCF operator, entered into an Asset Purchase Agreement (APA) with L&A Operational LLC for the sale and acquisition of the operating interest of the facility for \$225,000 plus assumed liabilities. Concurrent with the APA, Petite Fleur Acquisition, LLC, the current RHCF realty owner, entered into a Purchase and Sale Agreement (PSA) with L&A Sayville Realty LLC for the sale and acquisition of the RHCF's real property for \$37,275,000. The transactions contemplated by the APA and PSA will close simultaneously upon CON approval by the Public Health and Health Planning Council. There is a relationship between L&A Operational LLC and L&A Sayville Realty LLC in that the entities have identical membership and ownership interest. The applicant will lease the premises from L&A Sayville Realty LLC.

The current and proposed ownership of Sayville Rehabilitation and Nursing Center is as follows:

<u>Current</u>	
Jopal Sayville, LLC	
<u>Members</u>	<u>%</u>
Pasquale DeBenedictis	33.34%
Alex Solovey	33.33%
Joseph F. Carillo II	33.33%

<u>Proposed</u>	
L&A Operational LLC	
<u>Members</u>	<u>%</u>
Jacob Hager	25.00%
Shaya Bernath	25.00%
Shifra Hager	16.25%
Joseph Landau	11.26%
Leo Oberlander	10.00%
Elliot Kahan	7.50%
Chaim Hager	4.99%

Concurrently under review is CON 171450, in which the proposed members of L&A Operational LLC, except for Joseph Landau, seek approval to acquire the operating interest of Mills Pond Nursing and Rehabilitation Center.

OPCHSM Recommendation  
Contingent Approval

### Need Summary

There will be no changes to beds in the County. The last year of certified data shows the applicant operating at 94.2 percent occupancy.

### 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

The purchase price for the operations is \$225,000 plus assumed liabilities. The proposed members will provide equity from their personal resources to meet the purchase price for the operation. The purchase price for the real estate is \$37,275,000 to be financed as follows: equity of \$3,727,500 from the proposed members and a bank loan for \$33,547,500 at

6% interest for five years with a borrower's option for an additional five years based on a 25-year amortization period. Greystone Financial has provided a letter of interest for the realty financing at the stated terms. The borrower and lender intend to pursue a U.S. Department of Housing and Urban Development (HUD) loan within the initial five-year term. The Department of Health has advised the applicant that the proposed realty loan must be structured to incorporate payment of both interest and principal over the loan term. In addition to such payments, the realty members may also establish a sinking fund towards amortization for refinancing purposes. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$24,721,600
Expenses	<u>23,508,404</u>
Net Income	\$1,213,196

## 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.The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]
4. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed lease rental agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's executed Lease of Land, Building and Equipment, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicants amended and executed Restated Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2017**



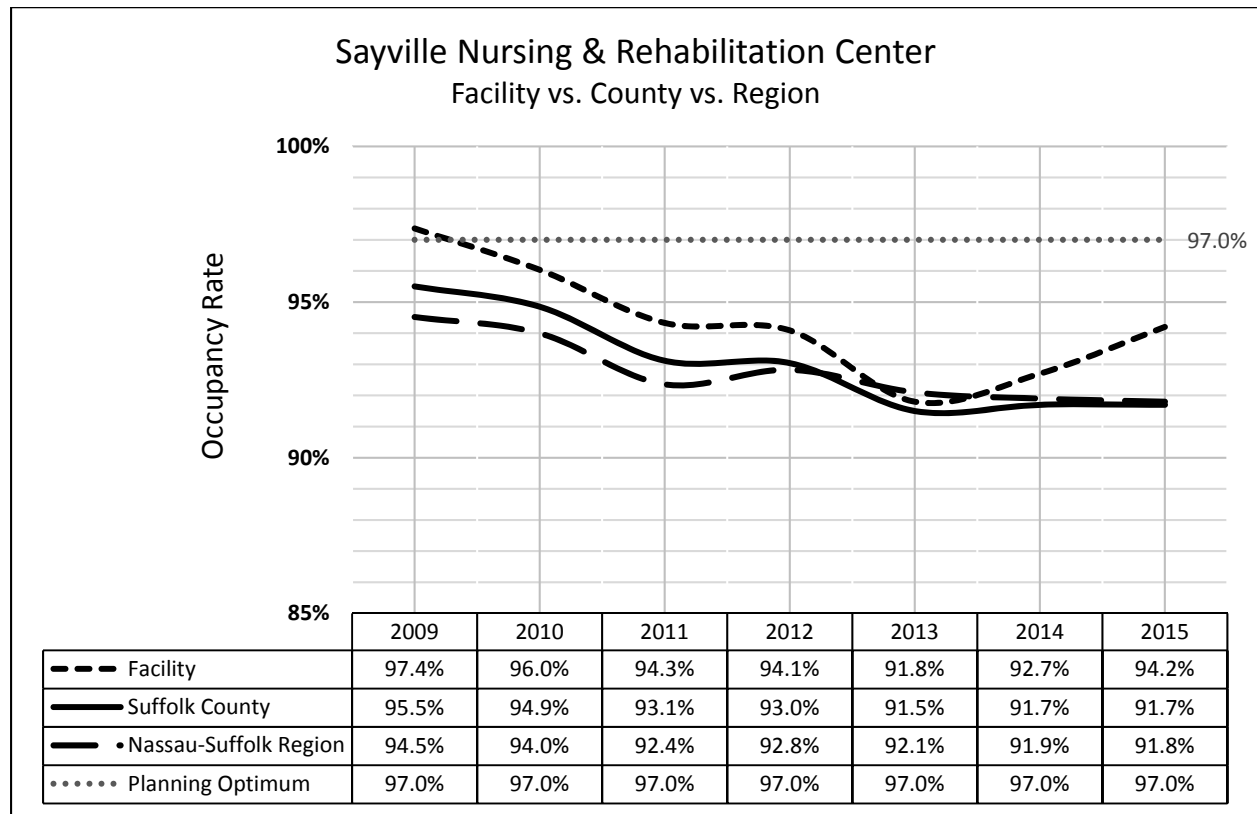
# Need Analysis

## Analysis

The current need methodology shows a need for 1,853 additional beds in the Long Island region.

### RHCF Need – Long Island Region

2016 Projected Need	16,962
Current Beds	15,248
Beds Under Construction	-139
Total Resources	15,109
Unmet Need	1,853



The overall occupancy for Suffolk County was 91.7% for 2015.

Sayville Nursing & Rehabilitation Center utilization was 91.8% in 2013, and, 94.2% in 2015. The facility saw a slight decrease in its latest self-reported utilization, but upon project approval the applicant plans to implement changes increase average census.

The proposed operators will work to develop strong partnerships with area hospitals, including those which are particularly important when trying to address those diagnoses with the highest rate of avoidable hospitalizations; such as heart disease, diabetes and asthma. Upon approval, the applicant(s) will collaborate with the local area hospitals to ensure:

- Prompt discharge of hospital patients appropriate for RHCF care; and
- Implementation of state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost savings to New York's Medicaid Program.

The applicant intends to meet with local physicians to see what the medical community feels is lacking in the area. This could be in the area of IV care, pulmonary services, trachea care, etc. Programs and services post change in ownership will address the specific needs of the community.

Upon the pending change in ownership, the proposed operator will immediately enact a series of personnel improvement or further enhance improvements in the following areas:

- Provider of Choice – Establish a program to become a post-acute provider of choice for local area hospital.
- Marketing / Outreach Efforts – enhance marketing and outreach services.
- Implementation of Clinical Core Competencies/Quality Outcomes
- Customer Satisfaction Campaign

#### 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.

Sayville Nursing & Rehabilitation Center's Medicaid admissions for 2014 (9.6%) did not exceed Suffolk County's threshold of 16.7%. In 2015, Sayville Nursing's 5.3% Medicaid admissions were also less than the County's threshold of 18.4%.

#### Conclusion

There will be no change in beds in Suffolk County or the Long Island planning region through completion of this project.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

### Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Sayville Nursing and Rehabilitation Center	Same
Address	300 Broadway Avenue	Same
RHCF Capacity	180	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	LLC	Same
Operator	Jopal Sayville, LLC	L&A Operational, LLC Jacob Hager * 25.00% Shaya Bernath* 25.00% Chaim Hager 4.99% Shifra Hager 16.25% Leo Oberlander * 10.00% Elliot J. Kahan 7.50% Joseph Landau 11.26% *managers

### Character and Competence - Background

#### Facilities Reviewed

Apex Rehabilitation Care Center

08/07 to present

#### Individual Background Review

**Jacob Hager** is currently employed at Paragon Management, as a business developer. This company provides office support services to skilled nursing facilities. He also discloses that he is a consultant to several nursing homes. Mr. Hager has a Rabbinical degree from Yeshiva Viznits. Mr. Hager discloses no health facility ownership interests.

**Shaya Bernath** is employed at Paragon Management as the Vice President of business development. This company provides office support services to skilled nursing facilities. Mr. Bernath has a Rabbinical degree from UTA Yeshiva. Mr. Bernath is a licensed paramedic in NYS who is in good standing. Mr. Bernath discloses no health facility ownership interests.

**Chaim Hager** is a member/owner of Cornell Realty Management, which is a real estate company. Mr. Hager has a degree from Yeshiva Vizaitz. Mr. Hager discloses no health facility ownership interests.

**Shifra Hager** is a member/owner of Cornell Realty Management, which is a real estate company. Ms. Hager attended the United Talmudical Academy. Ms. Hager discloses no health facility ownership interests.

**Leo Oberlander** is employed as the owner/operator of Apex Rehabilitation Care Center. Mr. Oberlander attended both Torah Vvirah Talmudical College and Touro College. He discloses the following nursing home ownership interest:

Apex Rehabilitation and Care Center 100%

08/2007 to present

**Elliot J. Kahan** is the owner /operator of Your Personal Touch, which is a Healthcare Consulting Company that works with skilled nursing facilities to develop their marketing practices. Mr. Kahan has a Bachelor of Arts degree from Queens College. He discloses no health facility ownership interests.

**Joseph Landau** is self-employed as an investor. He is also currently attending Beth Hatalmud. He discloses no ownership interests.

### Character and Competence – Analysis

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

A review of operations of Apex Rehabilitation Care Center for the period identified above reveals that there were no enforcements or civil money penalties.

Since there were no enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

### Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Quintile
Apex Rehabilitation & Care Center	***	**	*****	3

### 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 applicant members.

### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

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

Date:	March 30, 2017
Seller:	Jopal Sayville, LLC
Purchaser:	L&A Operational LLC
Assets Acquired:	Fixed equipment, non-fixed equipment, assigned contracts, assumed contracts, all inventory, supplies and other articles of personal property, the name "Sayville Nursing & Rehabilitation Center", all security deposits and prepayments, if any, for future services at the Closing Date held by Seller, all menus, policies & procedures manuals, computers and computer software, all telephone numbers and telefax numbers used by the Business, copies of all financial books and records in the possession of Seller or its agents relating to the Business but not corporate minute books, corporate seals, consolidated financial statements, all employee and payroll records of Buyer Employees, goodwill in connection with the operation of the Business, all accounts receivable relating to services rendered by the Business on and after the Closing Date, all licenses and permits held or owned by Seller relating to the ownership or operation of the Business, the Seller's Medicare and Medicaid provider numbers and provider agreements, all rate increases or lump sum payments resulting from rate appeals, all rate reimbursement made before, on or after the Closing Date by Medicare, Medicaid or any third party payor for any period on or after the Closing Date, all leasehold improvements, furniture, fixtures and

	equipment owned by Sellers and all insurance policies purchased before the Closing Date.
Excluded Assets:	All retroactive rate increases, resulting from rate appeals, audits or otherwise, on third party payments, on or after the Closing Date for services rendered at the Business before the Closing Date, and all accounts receivable arising therefrom and proceeds thereof, all financial books and records of Seller, including, but not limited to organizational and other corporate type records, corporate minute books, corporate seals, financial statements and tax returns and records, all accounts receivable relating to services rendered by the Business before the Closing Date, all payments under the Universal Settlement made after the Closing Date and the real property and improvements thereon, and any rights relating to it.
Assumed Liabilities:	All the claims, liabilities and obligations of any kind or nature incurred in and attributable to the conduct of the Businesses or the use of the Purchased Assets from and after the Closing Date, all liabilities and obligations of Seller under the Assumed Contracts and all of Seller's liabilities relating to the Buyer employees for vacation, sick, holiday time and personal days, all of which were earned but not yet taken or paid prior to the Closing Date.
Purchase Price:	\$225,000
Payment of Purchase Price:	\$11,250 paid and held in escrow upon execution of this agreement; \$213,750 balance due in cash or by wire transfer at Closing.

The applicant will provide equity to meet the purchase price.

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

#### Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement, summarized below:

Date:	March 30, 2017
Premises:	The RHCF located at 300 Broadway Avenue, Sayville, New York
Seller:	Petite Fleur Acquisitions LLC
Purchaser:	L&A Sayville Realty LLC
Purchase Price:	\$37,275,000
Payment of Purchase Price:	\$1,863,750 paid upon execution of this agreement; \$35,411,250 due at Closing.

The applicant's plan to meet the purchase price is as follows:

Equity	\$3,727,500
Bank Loan (6% interest, 5 years with 5-year Borrower's option, 25-year amortization)	\$33,547,500

If refinancing is not available, a balloon payment of \$25,614,181 would be due after the tenth year. An assessment of the annual rent payments due the landlord over the ten-year term indicates that the payments will exceed the cumulative total annual debt service due on the loan by \$16,562,358. This excess will enable the landlord to establish a sinking fund to help finance the balloon payment. A remaining balance of \$9,051,823 would be needed to fully fund the balloon payment. Given the excess rent over debt service requirements, the projected profitability of Sayville, the profitability of Mr. Oberlander's affiliated nursing home (proposed operations and realty member), and the realty members' current liquid assets (per their personal net worth statements available to date), it appears that the realty entity will have sufficient funds for the balloon payment should acceptable financing terms not be available at the time of refinancing. As previously noted, the borrower and lender intend to pursue a HUD loan within the initial five-year term.

## Lease Rental Agreement

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

Premises:	A 180-bed nursing home located at 300 Broadway Avenue, Sayville, New York
Lessor:	L&A Sayville Realty LLC
Lessee:	L&A Operational LLC
Term:	10 years
Rental:	\$4,250,000 annually
Provisions:	Tenant shall be responsible for real estate taxes, insurance, maintenance and utilities.

The lease agreement will be a non-arm's length lease agreement in that the realty and operating entities have identical membership and ownership interest. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

## Operating Budget

The applicant has submitted the current year (2016) operations and an operating budget, in 2017 dollars, for the first year after the change in operator, 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>Revenues</u>				
Medicaid FFS	\$320.74	\$11,925,258		\$0
Medicaid MC		0	\$304.52	11,838,700
Medicare FFS	\$671.92	8,194,004		0
Medicare MC		0	\$650.01	8,285,100
Commercial FFS	\$349.98	3,132,700	\$349.98	3,234,200
Private Pay	\$463.68	1,267,230	\$465.06	1,333,800
Other		27,342		29,800
Bad Debt		<u>(1,157,532)</u>		<u>0</u>
Total Revenues		\$23,389,002		\$24,721,600
<u>Expenses</u>				
Operating	\$322.30	\$19,679,343	\$297.98	\$18,990,800
Capital	<u>51.17</u>	<u>3,124,355</u>	<u>70.88</u>	<u>4,517,604</u>
Total Expenses	\$373.47	\$22,803,698	\$368.86	\$23,508,404
Net Income		<u>\$585,304</u>		<u>\$1,213,196</u>
Utilization (patient days)		61,059		63,732
Occupancy		92.93%		97.0%
Breakeven Occupancy				92.2%

The following is noted with respect to the submitted budget:

- Private and Other rates are projected based on similar facilities in the same geographical area.
- Medicaid rates are projected based on the reimbursement methodology under statewide pricing.
- Professional fees and Other Direct Expenses decreased by the elimination in projections of related party costs used by the current operator for functions such as bookkeeping, pharmacy, therapy, laundry, IT and other administrative functions.
- Patient days increased during the first year since the current operator did not maximize the occupancy due to their shift from the Long Island to NYC markets. The proposed operator indicated that they are committed to the Long Island market and have significant relationships with upstream and downstream healthcare providers. The projections reflect the results of these relationships.

- Utilization broken down by payor source during the current year and the first year after the change in operator is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	60.89%	0.00%
Medicaid MC	NA	61.00%
Medicare FFS	19.97%	0.00%
Medicare MC	NA	20.00%
Commercial FFS	14.66%	14.50%
Private Pay	4.48%	4.50%

#### Capability and Feasibility

The purchase price for the operations is \$225,000 plus assumed liabilities. The proposed members will provide equity from their personal resources to meet the operation purchase price. The purchase price for the real estate is \$37,275,000 to be financed as follows: equity of \$3,727,500 from the proposed members and a bank loan of \$33,547,500 at an interest rate of 6% for five years with a borrower's option for an additional five years based on a 25-year amortization period. The borrower and lender intend to pursue a U.S. Department of Housing and Urban Development (HUD) loan within the initial five-year term. The applicant has provided a letter of interest from Greystone Financial. The Department of Health has advised the applicant that the proposed realty loan must be structured to incorporate payment of both interest and principal over the loan term. In addition to such payments, the realty members may also establish a sinking fund towards amortization for refinancing purposes.

Working capital requirements are estimated at \$3,918,067, which is equivalent to two months of Year One expenses. The applicant will finance \$1,889,000 at an interest rate of 7% for a five-year term. The remaining \$2,029,067 will be met via equity from the proposed members' personal resources. Shifra Hager and Chaim Hager submitted affidavits indicating that they will provide equity disproportionate to their ownership interest. BFA Attachment A is the net worth statements of the proposed members of L&A Operational LLC and L&A Sayville Realty LLC (the operating and realty entities have identical membership), which indicates the availability of sufficient funds for the equity contribution to meet the purchase price, working capital and the balloon payments. BFA Attachment C is the pro forma balance sheet of L&A Operational LLC, which indicates a positive net asset position of \$2,254,067 as of the first day of operation.

The submitted budget projects \$1,213,196 of net income in Year One after the change in ownership. Revenues are based on the current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is the financial summary of Sayville Rehabilitation and Nursing Center. As shown, the entity had an average positive working capital position and an average positive net asset position from 2014 through 2016. Also, the entity achieved an average net income of \$391,431 from 2014 through 2016.

BFA Attachment D is the internal financial statements of Sayville Rehabilitation and Nursing Center as of May 31, 2017. As shown, the facility had a positive working capital position, a positive net asset position and achieved income from operations of \$2,175,848 through May 31, 2017.

BFA Attachment E is the financial summary of Apex Rehabilitation and Care Center. As shown, the entity had an average negative working capital position and an average positive net asset position from 2014 through 2016. Also, the entity achieved an average net income of \$579,066. The applicant indicated that the reason for the negative working capital position in 2014 and 2016 were as follows: investments in PPE (long term assets) as part of the renovation/upgrade initiatives, reductions of long term obligations and low census levels reduced cash flow, while fixed costs remained mostly unchanged causing cash and receivables to decline and payables to increase. The applicant indicated that reason for the 2014 loss was as follows: reduction in occupancy, reduction of contracted nurses and increase in in-house nursing staff resulted in higher salary and benefit expenses, high interest costs associated with the mortgage, and accounts receivable bad debt write-off of \$1,000,000. The applicant implemented the

following steps to improve operations: facility renovations/upgrades and retention of staff, along with marketing.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members
BFA Attachment B	Financial Summary- Sayville Rehabilitation
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	May 31, 2017 internal financial statements of Sayville Nursing
BFA Attachment E	Financial Summary- Apex Rehabilitation



Sayville Nursing

	<u>2016</u>	<u>2015</u>	<u>2014</u>
Current Assets	\$6,734,412	\$5,784,373	\$4,878,610
Fixed Assets	865,953	531,681	388,127
Total Assets	\$7,600,365	\$6,316,054	\$5,266,737
Current Liabilities	2,495,235	1,891,194	3,231,067
Long Term Liabilities	4,009,690	3,694,891	1,775,013
Total Liabilities	6,504,925	5,586,085	5,006,080
Net Asset Position	\$1,095,440	\$729,969	\$260,657
Working Capital Position	\$4,239,177	\$3,893,179	\$1,647,543
Revenues	\$23,389,002	\$24,065,313	\$22,414,580
Expenses	23,023,531	23,596,001	22,075,069
Net Income	\$365,471	\$469,312	\$339,511
Number of Beds	180	180	180
Occupancy	92.70%	94.20%	92.90%
Medicaid	60.90%	64.70%	68.40%
Medicare	20.00%	21.40%	19.90%
Private Pay	4.50%	4.70%	5.90%
Commercial	14.70%	9.20%	5.80%

Pro Forma Balance Sheet

ASSETS:

Cash	\$3,918,067
Resident Funds	108,000
Fixed Assets	<u>225,000</u>
TOTAL ASSETS	\$4,251,067

LIABILITIES:

Resident Funds	\$108,000
Working Capital Loan	<u>1,889,000</u>
TOTAL LIABILITIES	\$1,997,000

NET ASSETS	\$2,254,067
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JOPAL SAYVILLE, LLC  
dba SAYVILLE NURSING AND REHABILITATION CENTER

**BALANCE SHEET**

	<u>April 30, 2017</u>	<u>May 31, 2017</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and Cash Equivalents	\$ 1,058,782	\$ 984,022
Patient Accounts Receivable (net of allowance for doubtful accounts)	4,086,602	4,149,862
Prepaid Expenses	319,390	735,543
Escrow	1,428,264	984,366
Due From Prior Operator	81,132	81,132
<b>TOTAL CURRENT ASSETS</b>	<u>\$ 6,982,170</u>	<u>\$ 6,944,927</u>
Security Deposits	500	500
Fixed Assets (net of accumulated depreciation)	760,810	762,943
Patient Funds	101,432	101,432
<b>TOTAL ASSETS</b>	<u>\$ 7,844,912</u>	<u>\$ 7,809,802</u>
<b>LIABILITIES AND MEMBERS EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts Payable	\$ 920,880	\$ 806,889
Line of Credit	200,000	200,000
Accrued Payroll, Sick and Vacation	863,438	981,530
Accrued Payroll Taxes	32,898	38,442
Accrued Expenses	223,390	181,861
<b>TOTAL CURRENT LIABILITIES</b>	<u>\$ 2,240,614</u>	<u>\$ 2,186,722</u>
Due to Medicaid	205,733	205,733
Due to Landlord	2,952,448	2,952,448
Patient Funds	101,432	101,432
Due to Consulting Company	490,000	490,000
Notes Payable	393,183	388,345
<b>TOTAL LIABILITIES</b>	<u>\$ 6,383,408</u>	<u>\$ 6,324,678</u>
Members Equity	1,461,504	1,485,124
<b>TOTAL LIABILITIES AND MEMBERS EQUITY</b>	<u>\$ 7,844,912</u>	<u>\$ 7,809,802</u>

JOPAL SAYVILLE, LLC  
dba SAYVILLE NURSING AND REHABILITATION CENTER

STATEMENT OF INCOME AND MEMBERS EQUITY

	One Month Ended May 31, 2017		Five Months Ended May 31, 2017	
	Amount	Per Day	Amount	Per Day
<b>OPERATING INCOME</b>				
Patient Service Income	\$ 1,878,371	\$ 380.31	\$ 9,387,598	\$ 382.25
Other Income	1,481	0.30	11,084	0.45
<b>TOTAL OPERATING INCOME</b>	<u>\$ 1,879,832</u>	<u>\$ 380.61</u>	<u>\$ 9,398,682</u>	<u>\$ 382.70</u>
<b>OPERATING EXPENSES</b>				
Administrative Services	\$ 95,254	\$ 19.28	\$ 442,681	\$ 18.03
Fiscal Services	72,823	14.75	224,396	9.13
Plant, Operations and Maintenance Services	164,870	33.38	702,105	28.59
Patient Food Services	147,105	29.78	730,253	29.74
Housekeeping Services	56,568	11.46	310,035	12.63
Laundry Services	13,390	2.72	77,130	3.14
Nursing Administration Services	138,410	28.03	584,238	23.79
Medical Care Services	37,632	7.62	171,974	7.00
Leisure Time Services	23,957	4.85	122,403	4.99
Social Services & Admissions	80,958	16.40	261,574	10.65
Reception Services	6,163	1.25	30,515	1.25
Ancillary Services	204,270	41.37	872,929	39.61
Program Services	483,577	97.91	2,592,602	105.56
<b>TOTAL OPERATING EXPENSES</b>	<u>\$ 1,524,978</u>	<u>\$ 308.80</u>	<u>\$ 7,222,834</u>	<u>\$ 294.11</u>
<b>NET INCOME FROM OPERATIONS</b>	\$ 354,854	71.81	\$ 2,175,848	88.59
<b>NET OTHER OPERATING ACTIVITIES</b>				
Medicaid Assessment Revenue	\$ 40,017	\$ 8.10	\$ 195,083	\$ 7.94
Medicaid Assessment Expense	(71,616)	(14.50)	(361,881)	(15.55)
<b>NET INCOME BEFORE CONSULTING FEES AND RENT</b>	<u>\$ 323,255</u>	<u>\$ 65.41</u>	<u>\$ 1,989,070</u>	<u>\$ 80.98</u>
Rent Debt Service	\$ (99,175)	\$ (20.08)	\$ (495,875)	\$ (20.19)
Rent Escalator	(160,075)	(32.41)	(784,819)	(31.96)
Guaranteed Payments	(40,385)	(8.18)	(212,019)	(8.63)
<b>NET INCOME</b>	<u>\$ 23,620</u>	<u>\$ 4.74</u>	<u>\$ 496,357</u>	<u>\$ 20.20</u>
<b>MEMBERS EQUITY</b>				
Opening Equity			1,095,441	
Member Contributions			-	
Member Withdrawals			(106,674)	
<b>BALANCE, END OF PERIOD</b>			<u>\$ 1,485,124</u>	

Rate Date	Rate	CMI Date	CMI
1/1/2017	\$ 290.11	7/1/2016	1.2918
7/1/2017		1/1/2017	1.2900
1/1/2018		7/1/2017	

Estimate

Apex Rehabilitation

	<u>2016</u>	<u>2015</u>	<u>2014</u>
Current Assets	\$6,084,511	\$6,982,383	\$5,685,076
Fixed Assets	25,689,457	25,769,226	25,878,529
Total Assets	\$31,773,968	\$32,751,609	\$31,563,605
Current Liabilities	6,552,266	6,065,182	8,225,676
Long Term Liabilities	21,475,039	23,662,376	21,466,103
Total Liabilities	\$28,027,305	\$29,727,558	\$29,691,779
Working Capital Position	(\$467,755)	\$917,201	(\$2,540,600)
Revenues	\$26,030,903	\$24,871,524	20,567,482
Expenses	24,608,291	23,125,818	21,998,603
Net Income	\$1,422,612	\$1,745,706	(\$1,431,121)
Net Asset Position	\$3,746,663	\$3,024,051	\$1,871,826

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 11th day of October 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 L & A Operational LLC, d/b/a Sayville Nursing and Rehabilitation Center as the new operator of Sayville Rehabilitation and Nursing Center, a 180-bed residential health care facility located at 300 Broadway Avenue, Sayville, 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:

171451 E

L & A Operational LLC d/b/a Sayville 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.

The DOH reserves the right to require continued reporting beyond the two-year period.  
[RNR]
4. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed lease rental agreement, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's executed Lease of Land, Building and Equipment, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicants amended and executed Restated Articles of Organization, acceptable to the Department. [CSL]

9. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 # 171180-E
RTRNC, LLC d/b/a Robinson Terrace Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Delaware
Acknowledged: March 10, 2017

Executive Summary

Description

RTRNC, LLC, a New York limited liability company, requests approval to be established as the new operator of Robinson Terrace, a 120-bed, Article 28 residential health care facility (RHCF) located at 28652 State Highway 23, Stamford (Delaware County). The Stamford Health Care Society, Inc., a not-for-profit corporation, is the current operator of the facility. Upon approval of this application, the RHCF will be renamed Robinson Terrace Rehabilitation and Nursing Center. There will be no change in the number of beds or licensed services provided. Separate applications to change the operator of the 60-bed Adult Care Facility (ACF), which includes a 30-bed Assisted Living Program (ALP), and the licensed home care services agency (LHCSA) are under review.

On February 10, 2017, The Stamford Health Care Society, Inc., RTRNC, LLC (the RHCF purchaser) and RTACF, LLC (the ACF/ALP and LHCSA purchaser) entered into an Asset Purchase Agreement (APA), whereby RTRNC, LLC and RTACF, LLC agreed to purchase the operations of the RHCF and the ACF/ALP and LHCSA from The Stamford Health Care Society, Inc. The APA provides that the purchase price for the assets is \$100,000, plus the assumption by RTRNC, LLC and RTACF, LLC of certain liabilities identified in the APA. The purchase price will be paid from equity contributions from the applicant members.

Also on February 10, 2017, The Stamford Health Care Society, Inc. and 28652 State Highway 23,

LLC entered into a Facility Sale Agreement, whereby 28652 State Highway 23, LLC agreed to purchase the RHCF real estate from The Stamford Health Care Society, Inc. for \$12,000,000. 28652 State Highway 23, LLC will lease the RHCF to RTRNC, LLC for a term of 40 years. The members of 28652 State Highway 23, LLC are Uri Koenig (60%), Ephraim Steif (39.9%) and David Camerota (0.1%). The applicant submitted an affidavit attesting that there is a relationship between 28652 State Highway 23, LLC and RTRNC, LLC in that there is identical ownership between the entities.

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

Table with 1 column: Current Operator
Stamford Health Care Society, Inc. (not-for-profit)

Table with 2 columns: Proposed Operator (RTRNC, LLC) and Members
Uri Koenig 60.0%
Efraim Steif 39.9%
David Camerota 0.1%

The Seller lacks sufficient resources to sustain the recurring losses it has experienced since 2013, and will be unable to access capital necessary to make future infrastructure investments. The Seller's Board of Directors believes that in the relatively near future, the Robinson Terrace will ultimately be forced to

close; therefore, a decision was made to sell the RHCf. The Board engaged Evans Senior Investments (ESI) to complete a market valuation of the subject facility and develop a strategy to sell it. ESI is a senior housing investment company that specializes in selling nursing homes and assisted living facilities throughout the country. ESI identified 40 established and qualified potential buyers, and at the direction of the Board they submitted the confidential offering memorandum to each potential buyer. After interviewing a number of potential buyers and receiving five bids, the Board of Directors selected the subject applicant. Aside from being the highest bidder, the applicant was selected due to their commitment to continue the Seller's high standards of service to the community. The Seller fully intends to continue to operate as a charitable organization for the benefit of the greater Stamford community after the sale. Among other charitable endeavors, the Board of Directors expects that the Seller will provide funding to address other critical needs of the community such as drug and alcohol addiction programs, mental health programs, medical and transportation programs for the elderly and child daycare services. There are no restrictions on the property in regards to its use or ownership.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

The facility is currently operating at 96.7 percent occupancy and with only 3 vacant beds.

#### 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 following approval.

#### Financial Summary

The purchase price for the acquisition of the operating interests is \$100,000 and will be met with proposed members' equity. 28652 State Highway 23, LLC will fund the \$12,000,000 realty purchase price by assuming the facility's existing HUD mortgage for \$7,673,361 (as of February 14, 2017) at 2.83% interest with the maturity date of January 1, 2036, upon HUD approval. The remaining \$4,326,639 will come from a \$2,000,000 credit against the purchase price at closing, and members' equity of \$2,326,639. The proposed budget is as follows:

	<u>First Year</u>	<u>Third Year</u>
Revenues	\$9,460,470	\$9,460,470
Expenses	<u>9,334,465</u>	<u>9,377,738</u>
Gain	\$126,005	\$82,732

## 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 bank loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
3. Submission of an executed Facility Sale Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed SNF Assignment and Assumption Agreement related to the SNF Transferred Agreements, acceptable to the Department of Health. [BFA]
5. Submission of documentation of HUD approval for the assumption of the existing HUD mortgage, acceptable to the Department of Health. [BFA]
6. Submission of an amended copy of the by-laws of the applicant, which are acceptable to the Department. [CSL]
7. Submission of an executed and amended copy of the facility lease agreement of the applicant, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

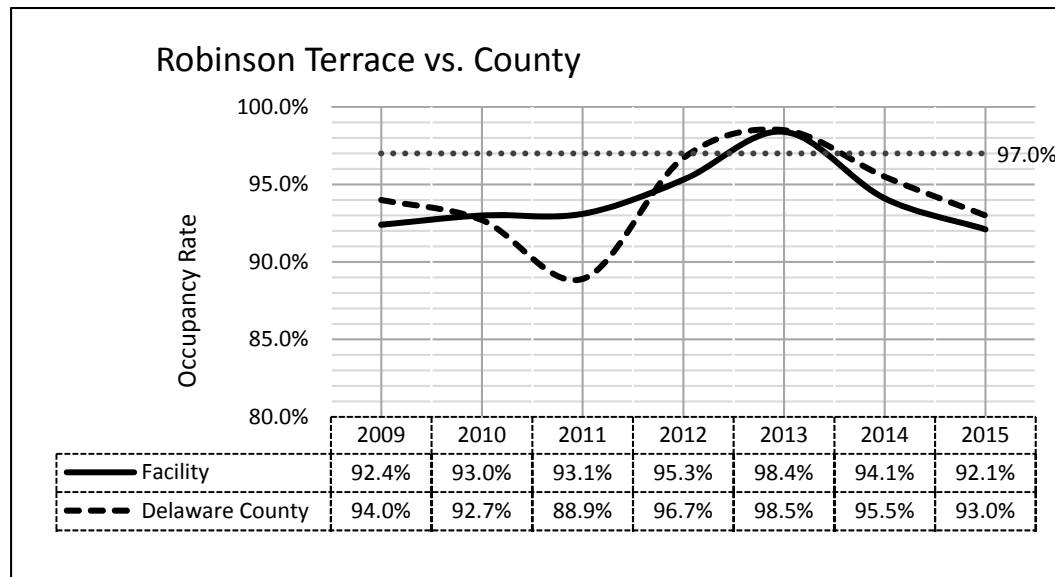
**October 11, 2017**

## Need Analysis

### Analysis

The current need methodology indicates an unmet need for 133 additional beds in Delaware County.

2016 Projected Need	511
Current Beds	202
Beds Under Construction	0
Total Resources	378
Unmet Need	133



The overall occupancy for Delaware County was 93.0% for 2015.

Robinson Terrace's utilization was 98.4% in 2013, 94.1% in 2014, and 92.1% in 2015. In 2016, the facility's average self-reported utilization was 96.7%.

### 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.

Robinson Terrace's Medicaid admissions for 2014 (39.8%) exceeded Delaware County's threshold of 33.9%. In 2015 the facility's 60.8% Medicaid admissions exceeded the County's threshold of 45.9%.

Conclusion

This project will not impact existing need or utilization in Delaware County.

Recommendation

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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Facility Information

	Existing	Proposed
Facility Name	Robinson Terrace	Robinson Terrace Rehabilitation and Nursing Center
Address	28652 State Highway 23 Stamford, NY 12167	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	The Stamford Healthcare Society, Inc.	RTRNC, LLC Members *Uri Koenig                   60.00% *Efraim Steif                 39.90% David Camerota <u>0.10%</u> 100.00% *Managing Members

Character and Competence - Background

**Facilities Reviewed**

Nursing Homes

Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Bridgewater Center for Rehabilitation & Nursing	08/2007 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Chestnut Park Rehabilitation and Nursing Center	06/2011 to present
Cortland Park Rehabilitation and Nursing Center	06/2011 to present
Colonial Park Rehabilitation and Nursing Center	06/2011 to present
Crown Park Rehabilitation and Nursing Center	08/2016 to present
Evergreen Commons Rehabilitation and Nursing Center	04/2016 to present
Highland Park Rehabilitation and Nursing	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing	08/2007 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Vestal Park Rehabilitation and Nursing	06/2011 to present

Assisted Living Facilities

Pavilion at Vestal	12/2015 to present
Pavilion at Pine Valley	09/2016 to present

Diagnostic and Treatment Center

Bridgewater Center for Dialysis	03/2012 to present
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### **Individual Background Review**

**Uri Koenig** is a CPA in good standing, and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. He has a Bachelor's degree in accounting from Touro College.

Mr. Koenig discloses the following health facility interests.

Bridgewater Center for Rehabilitation & Nursing (60%)	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing (17.714%)	01/2008 to present
Central Park Rehabilitation and Nursing Center (60%)	11/2008 to present
Van Duyn Center for Rehabilitation and Nursing (60%)	12/2013 to present
Chestnut Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Highland Park Rehabilitation and Nursing (60%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (60%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (60%)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (60%)	03/2012 to present
Northeast Center for Rehabilitation and Brain Injury (60%)	11/2013 to present
Beechtree Center for Rehabilitation and Nursing (60%)	09/2013 to present
Crown Park Rehabilitation and Nursing. Ctr. (60%)	08/2016 to present
Evergreen Commons Rehabilitation and Nursing Center (60%)	04/2016 to present
The Pavilion at Vestal (60%)	12/2015 to present
The Pavilion at Pine Valley (60%)	09/2016 to present
Bridgewater Center for Dialysis (60%)	03/2012 to present

**Efraim Steif** is a licensed New York Nursing Home Administrator in good standing. Mr. Steif is the President of FRS Healthcare Consultants, Inc. He has a Master's Degree from Beth Medrash Govoah.

Mr. Steif discloses the following health care facility interests.

Bridgewater Center for Rehabilitation & Nursing (39.9%)	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing (49.8%)	12/2004 to present
Central Park Rehabilitation and Nursing Center (39.9%)	11/2008 to present
Van Duyn Center for Rehabilitation and Nursing (39.9%)	12/2013 to present
Chestnut Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Highland Park Rehabilitation and Nursing (39.9%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (39.9%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (39.9%)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (39.9%)	03/2012 to present
Beechtree Center for Rehabilitation and Nursing (39.9%)	09/2013 to present
Northeast Center for Rehabilitation and Brain Injury (39.9%)	11/2013 to present
Crown Park Rehabilitation and Nursing Center (39.9%)	08/2016 to present
Evergreen Commons Rehabilitation and Nursing Center (39.9%)	04/2016 to present
The Pavilion at Vestal (39.9%)	12/2015 to present
The Pavilion at Pine Valley (39.9%)	09/2016 to present
Bridgewater Center for Dialysis (39.9%)	03/2012 to present

**David Camerota** is a licensed New York nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. He has a Bachelor's Degree in Health Systems Management from SUNY Utica. Mr. Camerota discloses the following health care facility interests.

Central Park Rehabilitation and Nursing Center (.1%)	11/2008 to present
Van Duyn Center for Rehabilitation and Nursing (.1%)	12/2013 to present
Bridgewater Center for Rehabilitation and Nursing (.1%)	08/2006 to present
Chestnut Park Rehabilitation and Nursing Center (.1%)	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (.1%)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (.1%)	06/2011 to present

Crown Park Rehabilitation and Nursing Center (.1%)	08/2016 to present
Evergreen Commons Rehabilitation and Nursing Center (.1%)	04/2016 to present
Highland Park Rehabilitation and Nursing (.1%)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center (.1%)	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (.1%)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (.1%)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (.1%)	03/2012 to present
Beechtree Center for Rehabilitation and Nursing (.1%)	09/2013 to present
Northeast Center for Rehabilitation and Brain Injury (.1%)	11/2013 to present
Pine Valley Center for Rehabilitation and Nursing (.1%)	12/2004 to present
The Pavilion at Vestal (.1%)	12/2015 to present
The Pavilion at Pine Valley (.1%)	09/2016 to present
Bridgewater Center for Dialysis (.1%)	03/2012 to present

#### Character and Competence - Analysis

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

A review of Beechtree Center for Rehabilitation and Nursing reveals the following.

- A Civil Money Penalty of \$2705.95 was assessed for the July 6, 2011 survey findings.

A review of Bridgewater Center for Rehabilitation & Nursing, LLC for the period identified above reveals the following.

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.
- A Civil Money Penalty of \$3,575.00 was assessed for the July 6, 2011 survey findings.

A review of Central Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-16-142 issued March 9, 2016 for surveillance findings on March 2, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 10NYCRR 415.12(c)(2) Quality of Care Pressures Sores, Prevention, Pressure Sores with Admission.
- A federal Civil Money Penalty of \$3,750 was assessed for the May 26, 2009 survey findings.
- A federal Civil Money Penalty(CMP) of \$18,000 was assessed for the July 16, 2015- August 15 survey findings. The CMP 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 Highland Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on October 25, 2013. Deficiencies were found under 10 NYCRR 415.3e(2)(ii)(b) Notification of Significant Changes in Condition.

A review of Hudson Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$28,000 pursuant to a Stipulation and Order NH-15-020 for surveillance findings on March 20, 2012, February 1, 2013 and May 7, 2013. Deficiencies were cited on: March 30, 2012 for 10 NYCRR 415.15(b)(2)(iii) Physician Services: Physician Visits; March 1, 2013 for 10NYCRR 415.12 Quality of Care: Highest Practicable Potential, 10 NYCRR

415.12(m)(2) Quality of Care: Medication Errors, 10 NYCRR 415.26 Administration and 10 NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance; May 7, 2013 for 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents.

- The facility was fined \$18,000 pursuant to Stipulation and Order NH-16-137 for surveillance findings on January 28, 2011, March 28, 2011 and December 17, 2012. Deficiencies were cited on December 17, 2012 for 10NYCRR 415.26 Quality of Care: Highest Practicable Potential.
- The facility incurred a Civil Monetary Penalty of \$4,387.50 for the period of December 17, 2012 to February 1, 2013; and a Civil Monetary Penalty of 51,053.63 for the period of September 19, 2013 to October 28, 2013.

*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. The State enforcements listed above occurred when the facility was under receivership. For NH-16-137 the applicant had assumed receivership only at the time of the December 17, 2012 survey. The facility has experienced a state enforcement free period since permanent establishment of the current operators in December 2014.*

A review of Van Duyn Center for Rehabilitation and Nursing for the period identified above reveals the following:

- The facility was fined \$14,000 pursuant to Stipulation and Order # NH-16-172 dated June 6, 2016 for surveillance findings on October 14, 2015. Deficiencies were found under 10NYCRR 415.14(h) Dietary Services Food Storage, 415.12(c)(2) Quality of Care Pressure Sores with Admission 415.12 Quality of Care Highest Practicable Potential.

A review of operations for Capstone Center for Rehabilitation and Nursing, Crown Park Rehabilitation and Nursing Center, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Evergreen Commons Rehabilitation and Nursing Center, Northeast Center for Rehabilitation and Brain Injury, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, The Pavilion at Pine Valley, The Pavilion at Vestal and Bridgewater Center for Dialysis for the periods identified above revealed that there were no enforcements.

#### Quality Review

Provider name	Overall	Health Inspection	Quality Measures	Quintile
Beechtree Center for Rehabilitation and Nursing	*	*	**	5
Bridgewater Center for Rehab & Nursing LLC	*	*	****	3
Capstone Center for Rehabilitation and Nursing	*	**	*	5
Central Park Rehabilitation and Nursing Center	**	*	*****	4
Chestnut Park and Rehabilitation Nursing Center	**	**	****	4
Cortland Park Rehabilitation and Nursing Center	***	**	*****	1
Colonial Park Rehabilitation and Nursing Center	**	**	*****	1
Crown Park Rehabilitation and Nursing Center	*	*	****	4



Evergreen Commons Rehab & Nursing Center	*	*	****	4
Highland Park Rehabilitation and Nursing Center	***	***	***	2
Hudson Park Rehabilitation and Nursing Center	**	**	**	5
Northeast Center for Rehabilitation & Brain Injury	****	*****	****	2
Riverside Center for Rehabilitation And Nursing	*	*	****	2
Van Duyn Center for Rehabilitation and Nursing	*	*	**	5
Vestal Park Rehabilitation and Nursing Center	*	*	*	5
Pine Valley Center for Rehab and Nursing	*****	****	*****	2

With regard to the nursing homes with a quality score of 1 or 2, the applicants have stated they have responded by putting into practice a minimum of two mock surveys per year. Many of the facilities have a quality improvement plan in place. Additional new staff has been hired and trained and policies and procedures have been reviewed. Two of the facilities were purchased in early 2016, and the applicant indicates it takes time to implement institutional changes that will translate into higher STAR ratings. They do expect rating improvements at many of the facilities based on recent surveys.

#### Project Review

No administrative services or consulting agreements are proposed in this application. However, there is currently a consulting agreement in place between the existing operator and Upstate Services Group, LLC (USG) which has common ownership with the applicant. Under this agreement, USG provides the current operator with assistance regarding administrative services for the facility. This agreement is dated June 1, 2016 and will terminate upon the final approval of this application.

#### Conclusion

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.

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

#### Asset Purchase Agreement (APA)

The applicant has submitted an executed APA for the operating interests of the RHCF. The terms are summarized below:

Date:	February 10, 2017
SNF Buyer:	RTRNC, LLC
ACF Buyer:	RTACF, LLC
Seller:	The Stamford Health Care Society, Inc.

Seller of ACF Real Estate:	Stamford Society Foundation, Inc.
SNF Purchased Assets:	All assets, interests and rights used in operation of the facility. Equipment; supplies and inventory; licenses, certificates and permits; financial records; Books, records, medical charts and information pertaining to the Residents and Service Providers ; payments made by Payors for goods or Services rendered; contracts; Motor Vehicles; financial, accounting /operating data and records, telephone numbers; computer software, programs and similar systems; intellectual property; Medicaid provider number and provider agreements; deposits and prepayments for room and service charges; intangible assets; cash, cash deposits and cash equivalents; prepaid maintenance contracts; retroactive rate increases and/or lump sum or other payments; and all other assets of Sellers, other than the Excluded Assets.
Excluded Assets:	Except as otherwise set forth herein, leased or licensed property; The Sellers' rights, title and interests in the insurance policies covering the Sellers, their officers, directors, employees and agents, and any claims for refunds or recoveries under any insurance policy; The Seller's rights, title and interest in and to any rebates, refunds, settlements from class actions or other legal proceedings and/or other amounts due to the Seller; Insurance policies not transferred to SNF Buyer; Rights and interests of Seller under and pursuant to this Agreement and any documents executed in connection with the Closing; Employee Benefit Plans; Assets being transferred or sold pursuant to the terms of the Facility Sale Agreements; Sellers' endowment fund and any restricted charitable contributions; Any and all funds now or hereafter on deposit in the reserve fund for replacements or in any sinking fund held by the Lender; and The Cash Consideration and the Purchase Price.
Purchase Price:	\$100,000
Payment of Purchase Price:	\$100,000 cash at closing.

The APA states that there are SNF assets and ACF assets. The ACF assets will be reviewed under a separate CON.

The applicant will finance the purchase price through proposed members' equity. BFA Attachment A is the net worth summary for the proposed members of RTRNC, LLC, which shows sufficient liquid assets.

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 August 15, 2017, there are no outstanding Medicaid overpayment liabilities.

#### Assignment and Assumption of SNF Transferred Agreement

As the SNF and ACF assets are combined under the one APA, in conjunction with the APA the applicant has submitted separate draft Assignment and Assumption Agreements (AAAs) for the transfer of SNF and ACF Contracts (Transferred Agreements) that the Buyers, in their sole discretion, determines to assume no later than 30 days prior to Closing. The draft AAA for the SNF contract transfer of assets is as follows:

#### SNF transfer:

Assignor:	The Stamford Health Care Society, Inc.
Assignee:	RTRNC, LLC
Rights assigned:	For good and valuable consideration received by the Assignor the receipt and sufficiency of which is hereby acknowledged, the Assignor hereby grants, transfers and assigns to the Assignee the entire right, title and interest of the Assignor in and to the SNF Transferred Agreements, which is warranted to be free and clear of all

	liens, charges and encumbrances except any Permitted Encumbrance set forth on Exhibit "B"; and the Assignor shall continue to be responsible for and shall perform and satisfy its obligations under the SNF Transferred Agreements insofar as such obligations relate to the period on or before the date of this Assignment.
Obligations Assumed:	The Assignee hereby assumes the covenants, agreements and obligations of the Assignor under the SNF Transferred Agreements which are applicable to the period and required to be performed from and after the date of this Assignment, but not otherwise. The Assignor shall promptly notify the Assignee in writing if any claim is made against the Assignor with respect to any matter which the Assignee has agreed to assume in this Assignment, specifying the nature and details of such claim. The Assignor shall cooperate fully with the Assignee and its counsel and attorneys in the defense against such claim in accordance with their judgment and discretion, and the Assignor shall not pay or settle any such claim without the Assignee's prior written consent.

### Facility Sale Agreement

The applicant has submitted a draft facility sale agreement for the site they will occupy. The agreement will close simultaneously with the APA upon approval by the Public Health and Health Planning Council. The terms are summarized below:

Premises:	Real property located at 28652 State Highway 23 in the Village of Stamford, Town of Harpersfield, Delaware County, New York, and known as "Robinson Terrace," together with the building, structures and other improvements located thereon.
Seller:	The Stamford Health Care Society, Inc..
Purchaser:	28652 State Highway 23, LLC
Purchase Price:	\$12,000,000
Payment of Purchase Price:	\$25,000 deposit to be paid within three Business Days of execution of the agreement; \$7,673,361 HUD mortgage (as of February 14, 2017) to be assumed; \$2,000,000 credit against the purchase price at closing; and \$2,301,639 cash at Closing.

The buyer shall receive a \$2,000,000 credit against the purchase price that must be expended for improvements within five years of the Closing Date. In addition to the purchase price, all funds in the reserve fund for replacements or in excess of \$300,000 in any sinking fund held by the Lender pursuant to the terms of the Mortgage, shall be released and paid over to the Seller at Closing. Century Health Capital, Inc. has provided a bank letter of interest for \$7,673,361 at 2.83% interest with a maturity date of January 1, 2036.

### Lease Agreement

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

Date:	March 1, 2016
Premises:	A 120-bed Skilled Nursing Facility (SNF) located at 28652 State Highway 23, Stamford, New York
Landlord:	28652 State Highway 23, LLC
Tenant:	RTRNC, LLC
Terms:	40 years
Rental:	\$689,244 annually (\$57,437 per month)
Provisions:	Taxes, assessments, license and permit fees and other governmental charges.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant in that there is identical ownership between the entities.

## Operating Budget

The applicant has provided an operating budget, in 2017 dollars, for the first and third years after the change of ownership. The budget is summarized below:

	<u>Current Year (2016)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
Medicare	\$378.38	\$723,849	\$381.88	\$1,302,600	\$381.93	\$1,302,600
Medicaid	\$145.78	4,954,500	\$168.42	5,169,117	\$169.69	5,169,117
Private Pay	\$457.15	2,435,251	\$277.23	2,363,350	\$277.23	2,363,350
All Other		<u>230,358</u>		<u>625,403</u>		<u>625,403</u>
Total Revenues		\$8,343,958		\$9,460,470		\$9,460,470
<u>Expenses</u>						
Operating	\$222.56	\$9,175,248	\$192.33	\$8,198,751	\$193.35	\$8,242,024
Interest	5.41	223,235	10.47	446,470	10.47	446,470
Depreciation/Rent	<u>13.52</u>	<u>557,552</u>	<u>16.17</u>	<u>689,244</u>	<u>16.17</u>	<u>\$689,244</u>
Total Expenses	\$241.50	\$9,956,035	218.97	\$9,334,465	219.99	\$9,377,738
Net Income		<u>(\$1,612,077)</u>		<u>\$126,005</u>		<u>\$82,732</u>
Total Patient Days		41,226		42,628		42,628
Occupancy		94.1%		97.3%		97.3%

The following is noted with respect to the submitted budget:

- The Medicare rates are based upon current market rates. Private pay rates have been reduced by bad debt expense and are shown more conservatively for year one and year three.
- The current year reflects the facility's 2016 payor and 2016 RHCF-4 cost report information. Historical utilization was 94.1% for base year 2016, and 96.0% as of July 31, 2017.
- For budget Year One, Medicaid revenues are projected based on the current operating and capital components of the facility's 2017 Medicaid FFS rate.
- All other revenue represents assessment revenue, rental income and miscellaneous income.
- Expenses are forecasted to decrease in Year One and Year Three based on the applicant's experience with operating other similarly-sized nursing homes within New York State. They include: Professional Fees, Purchased Services and Other Direct Expenses as a result of reducing certain administrative expenses.
- Increases in capital costs will accrue through additional rent expense.
- Utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare	4.64%	8.00%	8.00%
Medicaid	82.44%	72.00%	72.00%
Private Pay	<u>12.92%</u>	<u>20.00%</u>	<u>20.00%</u>
Total	100.00%	100.00%	100.00%
- Breakeven utilization is 96.03% or 42,628 patient days for the first year.

## Capability and Feasibility

The purchase price for the acquisition of the operating interests is \$100,000 and will be met with equity from proposed members. BFA Attachment A, net worth of the proposed members of RTRNC, LLC, reveals sufficient resources for stated levels of equity. The purchase price for the real estate interests is \$12,000,000 and will be met by assumption of the facility's existing HUD mortgage for \$7,673,361 (as of February 14, 2017) at 2.83% interest with a maturity date of January 1, 2036, upon HUD approval. Century Health Capital, Inc. has provided a letter of interest for the financing term. The remaining \$4,326,639 will come from a \$2,000,000 credit against the purchase price at closing, and members' equity of \$2,326,639.

The working capital requirement is \$1,555,744 based on two months of the first year's expenses, and will be funded from operations as follows: \$373,811 from cash and \$1,181,933 from Accounts Receivable, as of April 30, 2017. Pursuant to Section 1.3(c) of the APA, RTRNC, LLC is not assuming any accounts payable or loans payable balances, which will remain a liability of The Stamford Health Care Society, Inc. BFA Attachment E is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$351,088.

The submitted budget indicates a net gain of \$126,005 and \$82,732 for the first year and third year, respectively. As of July 31, 2017, utilization was at 96.0%. BFA Attachment G is the budget sensitivity analysis based on current utilization of the facility as of July 31, 2017, which shows the budgeted revenues would decrease by \$1,281,545 resulting in a net loss in Year One of \$1,155,540 and a net loss in Year Three of \$1,198,813. The proposed operators, Uri Koenig and Efraim Steif, have submitted affidavits attesting they will provide equity contributions for operations as necessary. 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 a financial summary of the 2014-2016 certified and internal financial statements of Robinson Terrace as of April 30, 2017. The 2016 certified financials indicate that the facility experienced negative working capital, a positive net asset position and an annual net operating loss of \$2,099,174. Their internal financial statements for the first quarter of 2017 indicate that the facility experienced negative working capital, a positive net asset position and an annual net operating loss of \$1,618,610. The 2016 operating loss was due to lower than expected occupancy at the facility. In addition, a relatively high amount of operating expenses impacted the facility's 2016 operating results and the 2017 operating results through April 30, 2017. The applicant plans to reduce avoidable expenses upon the closing of this transaction. The negative working capital situation during these periods was the result of a higher than expected Accounts Payable. Per these financial statements, the facility's average occupancy from January 1, 2017 through April 30, 2017 was 96.90%, which should improve working capital and operating positions prior to the change of operations.

BFA Attachments D, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income from operations as of March 31, 2017, except for the following RHCs:

- Beechtree Center for Rehabilitation and Nursing shows an operating loss of \$1,381 as of March 31, 2017, due to lower than expected occupancy levels which have since gone up from 2016 and the facility expects a positive operating income by the end of 2017.
- Vestal Park Rehabilitation and Nursing Center was acquired in mid-2015 and is still in the process of being financially stabilized.

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	RTRNC, LLC, Proposed Members Net Worth
BFA Attachment B	28652 State Highway 23, LLC - Net Worth Realty Members
BFA Attachment C	Robinson Terrace, Financial Summary
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Organizational Chart of RTRNC, LLC and 28652 State Highway 23, LLC
BFA Attachment G	Budget Sensitivity

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 RTRNC, LLC as the new operator of Robinson Terrace, a 120-bed residential health care facility located at 28652 State Highway 23, Stamford, 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:

171180 E

RTRNC, LLC d/b/a Robinson Terrace  
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 an executed bank loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
3. Submission of an executed Facility Sale Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed SNF Assignment and Assumption Agreement related to the SNF Transferred Agreements, acceptable to the Department of Health. [BFA]
5. Submission of documentation of HUD approval for the assumption of the existing HUD mortgage, acceptable to the Department of Health. [BFA]
6. Submission of an amended copy of the by-laws of the applicant, which are acceptable to the Department. [CSL]
7. Submission of an executed and amended copy of the facility lease agreement of the applicant, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 # 162532-E  
Highland Nursing Home Inc.**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** St. Lawrence  
**Acknowledged:** December 23, 2016

**Executive Summary**

**Description**

Highland Nursing Home, Inc., the current operator of a 140-bed, proprietary, Article 28 residential health care facility (RHCF) located at 182 Highland Road, Massena (Saint Lawrence County), requests approval to transfer 100% ownership of its capital stock (100 shares) to three new shareholders: Alexander Sherman, Lea Sherman, and Jeffrey Goldstein (collectively the "Buyers"). A separate entity, Highland Realty Co., LLC, owned by the Buyers, will acquire the real property. There will be no change in beds or services provided.

On June 23, 2016, Elizabeth Kaneb, the current sole shareholder of the RHCF, entered into a Stock Purchase Agreement (SPA) to sell all the issued and outstanding capital stock in the Corporation to the aforementioned Buyers for \$2,050,000. Concurrently, Highland Nursing Home, Inc., the current real property owner, entered into an Agreement for Sale of Real Property (ASRP) with Highland Realty Co. LLC, for the sale and acquisition of the real property for \$4,950,000. The ASRP will close immediately prior to the Closing of the sale and transfer of Stock, which is subject to approval by the Public Health and Health Planning Council. There is a relationship between the proposed owners of Highland Nursing Home, Inc. and Highland Realty Co., LLC in that the entities will have identical membership. The applicant will lease the premises from Highland Realty Co., LLC.

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

<u>Current Operator</u>	
Highland Nursing Home, Inc.	
<u>Shareholder</u>	<u>%</u>
Elizabeth Kaneb	100%

<u>Proposed Operator</u>	
Highland Nursing Home, Inc.	
<u>Shareholders</u>	<u>%</u>
Jeffrey Goldstein	33.4%
Alexander Sherman	33.3%
Lea Sherman	33.3%

OPCHSM Recommendation  
Contingent Approval

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

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

Alexander Sherman, Lea Sherman and Jeffrey Goldstein will acquire 100% of Highland Nursing Home, Inc.'s corporate stock for \$2,050,000 funded via \$512,500 in shareholders' equity and a ten-year loan for \$1,537,500 at 5.25% interest, amortized over 25 years. Highland Realty Co., LLC will purchase the real property for \$4,950,000 funded by \$887,500 in members' equity and a ten-year loan for \$4,062,500 at 5.25% interest, amortized over 25 years. HHC

Finance has provided a letter of interest for the operating and realty loans at the stated terms.

The proposed budget is as follows:

	<u>Year One</u>	<u>Three One</u>
Revenues	\$7,453,423	\$8,574,006
Expenses	<u>7,453,363</u>	<u>8,468,971</u>
Net Income	\$60	\$105,035

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
4. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of the applicant's executed Shareholders Agreement, acceptable to the Department. [CSL]
6. Submission of the applicant's approved Amended and Restated By-Laws, acceptable to the Department. [CSL]
7. Submission of the applicant's executed lease agreement, acceptable to the Department. [CSL]
8. Submission of the applicant's Certificate of Amendment to the Certificate of Incorporation, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 11, 2017**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Highland Nursing Home, Inc.	Same
Address	182 Highland Road Massena, NY 13662	Same
RHCF Capacity	140	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	Corporation	Same
Operator	Highland Nursing Home, Inc.  Elizabeth Kaneb      100%	Highland Nursing Home, Inc  Alexander Sherman      33.33% Lea Sherman              33.33% Jeffrey Goldstein        33.34%

### Character and Competence - Background

#### Facilities Reviewed

Fiddlers Green Manor Rehabilitation and Nursing Center	12/2013 to present
Four Seasons Nursing and Rehabilitation	01/2015 to present
Humboldt House Rehabilitation and Nursing Center	12/2015 to present
Niagara Rehabilitation and Nursing Center	06/2012 to present
The Hamptons Center for Rehabilitation and Nursing	11/2007 to present
Sweet Brook of Williamstown Rehab and Nursing Ctr. (MA)	06/2014 to present
Concord Care of Cortland (OH)	08/2015 to present
Concord Care of Hartford (OH)	08/2015 to present
Concord Care of Sandusky (OH)	08/2015 to present
Concord Care of Toledo (OH)	08/2015 to present
Washington Square Healthcare Center (OH)	01/2014 to present
Cardinal Woods Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Eagle Pointe Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Lake Pointe Rehabilitation & Nursing Center (OH)	04/2017 to present

#### Individual Background Review

**Alexander Sherman** is the Assistant Administrator at Sunharbor Manor Skilled Nursing and Rehabilitation Center and the legal consultant to Absolut Care Facilities Management, a skilled nursing management company. Mr. Sherman is an attorney in good standing in the states of New York and New Jersey and has a JD degree from Touro Law Center. Mr. Sherman discloses the following nursing home ownership interests:

Humboldt House Rehabilitation and Nursing Center (17.18%)	12/2015 to present
Niagara Rehabilitation and Nursing Center (13.33%)	06/2012 to present
Sweet Brook of Williamstown Rehab and Nursing Ctr. (MA) (10%)	06/2014 to present
Concord Care of Cortland (OH) (12.5%)	08/2015 to present
Concord Care of Hartford (OH) (12.5%)	8/2015 to present
Concord Care of Sandusky (OH) (12.5%)	08/2015 to present
Concord Care of Toledo (OH)(12.5%)	08/2015 to present
Cardinal Woods Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Eagle Pointe Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Lake Pointe Rehabilitation & Nursing Center (OH)	04/2017 to present
Washington Square Healthcare Center (OH) (4.67%)	01/2014 to present

**Lea Sherman** is a speech therapist at Strivright Auditory Oral School in Brooklyn and holds a Masters degree from Adelphi University. Ms. Sherman discloses the following nursing home ownership interest:  
Humboldt House Rehabilitation and Nursing Center (17.18%) 12/2015 to present

**Jeffrey Goldstein** is a licensed nursing home administrator with license in good standing. Mr. Goldstein is the owner/operator of several nursing homes and was previously employed as Operations Manager at Bay Park Center for Nursing and Rehabilitation, Nassau Extended Care, The Hamptons Center for Nursing and Rehabilitation, Townhouse Center for Rehabilitation and Nursing and Throggs Neck Extended Care. Mr. Goldstein holds an MBA from Adelphi University and discloses the following nursing home ownerships:

Fiddlers Green Manor Rehabilitation and Nursing Center	12/2013 to present
Four Seasons Nursing and Rehabilitation (9%)	01/2015 to present
Humboldt House Rehabilitation and Nursing Center (24%)	12/2015 to present
Niagara Rehabilitation and Nursing Center (13.33%)	06/2012 to present
The Hamptons Center for Rehabilitation and Nursing	11/2007 to present
Sweet Brook of Williamstown Rehab and Nursing Ctr. (MA) (15%)	06/2014 to present
Washington Square Healthcare Center (OH) (14.75%)	1/2014 to present
Concord Care of Cortland (OH) (10%)	08/2015 to present
Concord Care of Hartford (OH) (10%)	8/2015 to present
Concord Care of Sandusky (OH) (10%)	08/2015 to present
Concord Care of Toledo (10%)	08/2015 to present
Cardinal Woods Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Eagle Pointe Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Lake Pointe Rehabilitation & Nursing Center (OH)	04/2017 to present

#### Character and Competence – Analysis

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

A review of operations of Fiddlers Green Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order NH-16-184 issued July 12, 2016 for surveillance findings on July 12, 2016. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Medication Errors.

A review of operations of Humboldt House Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-17-028 issued May 15, 2017 for surveillance findings on January 27, 2017. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Medication Errors.
- The facility incurred a Civil Money Penalty of \$12,205 related to these deficiencies.

A review of operations of Niagara Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-049 issued July 21, 2017 for surveillance findings on June 13, 2017. Deficiencies were found under 10 NYCRR 415.(e)(2)(ii)(c) Notification of Changes.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-176 issued June 28, 2016 for surveillance findings on January 21, 2016. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential.
- The facility was fined \$14,000 pursuant to Stipulation and Order NH-16-139 issued April 4, 2016 for surveillance findings on August 13, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.3(e)(2)(ii)(b)(c) Resident Rights: Notification of Changes; and 415.12(m)(2) Quality of Care: Medication Errors.

*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 Hamptons Center for Rehabilitation and Nursing for the period identified above reveals:

- The facility was fined \$8,000 pursuant to a Stipulation and Order issued April 26, 2009 for surveillance findings on April 21, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) - Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.12 - Quality of Care; 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; and 415.26 - Organization and Administration. The facility incurred a Civil Money Penalty of \$6,500 related to these deficiencies.
- The facility was also fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) - Quality of Care: Accidents & Supervision; and 10 NYCRR 415.26 - Administration. The facility incurred a Civil Money Penalty of \$6,853.46 related to these deficiencies.
- The facility was also fined \$10,000 pursuant to Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

*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 for Sweet Brook of Williamstown Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$5,354.05 for Resident Abuse, Failure to Timely Report Resident Abuse and Failure to Follow Care Plan.

A review of operations for Four Season Nursing and Rehabilitation, Concord Care Center of Cortland, Concord Care Center of Hartford, Concord Care Center of Sandusky, Concord Care of Toledo and Washington Square Health Center for the periods identified above, reveals that there were no enforcements.

The applicant has submitted an affidavit attesting that there have been no conditional level non-compliance issues since the purchase of Cardinal Woods Skilled Nursing and Rehabilitation Center, Eagle Pointe Skilled Nursing and Rehabilitation Center and Lake Pointe Skilled Nursing and Rehabilitation Center.

#### Quality Review

Provider name	Overall	Health Inspection	Quality Measures	Quintile
Fiddlers Green Manor Rehabilitation & Nursing Ctr	*	*	*	3
Four Seasons Nursing and Rehab	*****	****	*****	3
Humboldt House Rehabilitation and Nursing Center	*	*	**	5
Niagara Rehabilitation and Nursing Center	*	*	****	5
The Hamptons Center for Rehabilitation and Nursing	***	***	*****	4

#### Massachusetts

Sweet Brook of Williamstown Rehabilitation & N Ctr	*	*	****
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Provider name	Overall	Health Inspection	Quality Measures	Quintile
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**Ohio**

Concord Care Center of Toledo	**	*	***	
Concord Care Center of Cortland	****	**	*****	
Cardinal Woods Skilled Nursing & Rehab Ctr	**	**	**	
Eagle Pointe Skilled Nursing & Rehab	***	****	****	
Lake Pointe Rehabilitation and Nursing Center	**	*	*****	
Washington Square Healthcare Center	****	***	*****	
Concord Care of Sandusky	**	***	*	
Concord Care of Hartford	****	**	*****	

The applicant indicates that the poor-quality ratings for the New York State and Massachusetts nursing homes are largely a reflection of poor surveys. The applicant identifies the following strategies being employed to improve quality:

- Monthly quality assurance team meeting focusing on quality assurance measures;
- Monthly hospitalization reviews to improve early identification of changes in conditions in order to reduce hospitalization;
- Daily review of discharge and admissions charts;
- Daily review of resident charges to ensure assessments, medications etc. are current;
- Increased nursing education and annual skill proficiency assessments of all staff.
- Implementation of full electronic medical records;
- Enhanced registered nursing coverage.

The following initiatives have been implemented:

- New Director of Nursing and Assistant Director of Nursing at Humboldt House;
- New Administrator, Medical Director and Nurse Practitioner at Niagara;
- Weekly rounds for wound care by a certified nurse practitioner;
- Patient Navigators to address residents' needs at admission and throughout their stay at the nursing home.

Regarding Niagara Rehabilitation and Nursing Center, the applicant has supplied the Quality Assurance Plan addressing issues such as falls, hospital readmissions and pressure sores as well as the F-tag deficiencies which prompted the enforcement actions. The applicant has also described the response to the July 21, 2017 survey deficiencies to deter any repeat incidents.

**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

### Stock Purchase Agreement (SPA)

The applicant has submitted an executed SPA to acquire the operating entity's corporate stock. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	June 23, 2016
Seller:	Elizabeth Kaneb
Purchaser:	Alexander Sherman, Lea Sherman, and Jeffrey Goldstein (Buyers)
Assets Acquired:	100% (100 shares) of the corporate stock in Highland Nursing Home, Inc.
Purchase Price:	\$2,050,000
Payment of the Purchase Price:	\$300,000 paid upon execution; \$1,750,000 due at Closing

The purchase price for the operations' corporate stock will be satisfied as follows:

Equity – Buyers of corporate stock	\$512,500
Loan (10-year, 25-year amortization, 5.25% interest)	<u>1,537,500</u>
Total	\$2,050,000

HHC Finance has provided a letter of interest at the stated terms.

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 August 3, 2017, the facility had no outstanding Medicaid liabilities.

### Agreement for Sale of Real Property (ASRP)

The applicant has submitted an executed ASRP to purchase the RHCF's real property. The ASRP will close immediately prior to the Closing of the sale and transfer of Stock, which is subject to CON approval by the PHHPC. The terms are summarized below:

Date:	June 23 2016
Seller:	Highland Nursing Home, Inc.
Purchaser:	Highland Realty Co., LLC
Asset Transferred Realty:	Real Property located at 182 Highland Road, Massena, NY 13662
Purchase Price:	\$4,950,000
Payment of Purchase Price:	\$4,950,000 due at Closing

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

Equity - Highland Realty Co., LLC Members	\$887,500
Loan (10-year, 25-year amortization, 5.25% interest)	<u>4,062,500</u>
Total	\$4,950,000

HHC Finance has provided a letter of interest at the stated terms.

BFA Attachments A and B are the net worth summaries for the proposed Buyers of Highland Nursing Home, Inc.'s corporate stock and the members of Highland Realty Co., LLC (proposed real property owner), respectively. As the result of potential equity shortfalls, Lea Sherman and Alexander Sherman, members of both the operating and real property entities, have provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in the operating entity to make up any member's equity shortfall. Israel Sherman (Alexander Sherman's father), who is neither a proposed



shareholder of the operating entity nor a proposed member of the realty entity, has provided an affidavit stating his willingness to contribute resources as needed to make up any operating or realty member's equity shortfall. Israel Sherman's affidavit specifically acknowledges that he will have no ownership interest in the operations of Highland Nursing Home, Inc.

Israel Sherman has also provided an affidavit to fund the operating and real property loan balloon payments, should terms acceptable to the Department be unavailable at the time of refinancing. The affidavit confirms he will have no ownership interest in the operation of Highland Nursing Home, Inc., and that there are no other repayment terms associated with the use of funds provided for the balloon payments.

#### Lease Agreement

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

Premises:	140-bed RHCF located at 182 Highland Road, Massena, NY 13662
Owner/Landlord:	Highland Realty Co., LLC
Lessee:	Highland Nursing Home, Inc.
Term:	30 years with one (1) 10-year renewal option
Rent:	\$360,000 plus annual debt repayment obligations (principal and interest) of the loan documents or other loan agreements containing debt obligations secured by the mortgage encumbering the real property (estimated at \$402,694) or approximately \$762,694 per year (\$63,558 monthly)
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 (2016) operations and an operating budget, in 2017 dollars, for the first and third year of operation subsequent to the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</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	\$157.95	\$4,209,021	\$145.98	\$4,743,681	\$145.98	\$5,473,478
Medicare	\$309.75	913,774	\$312.08	1,354,419	\$312.04	1,541,811
Private Pay	\$259.52	590,660	\$272.38	971,863	\$272.38	1,121,381
Assessment		0		350,202		404,079
All Other*		<u>137,724</u>		<u>33,258</u>		<u>33,257</u>
Total		\$5,851,179		\$7,453,423		\$8,574,006
 <u>Expenses</u>						
Operating	\$159.00	\$5,067,899	\$164.85	\$6,660,720	\$165.09	\$7,685,447
Capital	<u>15.18</u>	<u>483,968</u>	<u>19.62</u>	<u>792,643</u>	<u>16.83</u>	<u>783,524</u>
Total Expenses	\$174.18	\$5,551,867	\$184.47	\$7,453,363	\$181.92	\$8,468,971
 Net Income		<u>\$299,312</u>		<u>\$60</u>		<u>\$105,035</u>
 Patient Days		31,874		40,404		46,553
Utilization %		62.38%		79.07%		91.10%

\* Includes: Beauty/Barber, Employee Meals, TV Rental, Nursing Aide Training, DSRIP, Miscellaneous.

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 the forecasted year one and year three Medicare is based on the average daily rate experienced during July 2016. The forecasted Private Pay rate is based on the average daily rate experienced during July 2016.
- Projected expenses were based on the current operator's 2016 costs and adjusted for increased volume. The incremental cost consists primarily of increased labor costs related to hiring additional clinical, aides/orderlies, housekeeping and food service staff (19.68 FTEs in Year One and 37.63 FTEs by Year Three) to accommodate anticipated increased patient volume.
- The facility's projected utilization for Year One and Year Three is 79.07% and 91.10%, respectively. It is noted that utilization for the past five years has averaged around 68.62% and current occupancy was 55.7% as of July 5, 2017. The applicant plans on increasing utilization by implementing a number of measures including:
  - Hiring an admission coordinator to market the facility to hospitals, physician practices, assisted living facilities, senior housing communities and community based referral sources;
  - Implementing measures to attract more sub-acute rehabilitation as well as traditional residential health care services;
  - Adding clinical specialties to serve more complex short-stay and post-acute patients; and
  - Making physical improvement to the facility.
- 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>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid	26,648	83.60%	32,496	80.43%	37,495	80.55%
Medicare	2,950	9.26%	4,340	10.74%	4,941	10.61%
Private Pay	<u>2,276</u>	<u>7.14%</u>	<u>3,568</u>	<u>8.83%</u>	<u>4,117</u>	<u>8.84%</u>
Total	31,874	100%	40,404	100%	46,553	100%

- The facility's Medicaid admissions of 58.2% in 2014 and 42.6% in 2015 exceeded Saint Lawrence County's 75% threshold rates of 22.7% for 2014 and 17.6% for 2015.
- The breakeven utilization is projected at 79% for the first year.

### Capability and Feasibility

Alexander Sherman, Lea Sherman, and Jeffrey Goldstein will acquire 100% of the corporate stock of Highland Nursing Home, Inc. for \$2,050,000 funded via \$512,500 in shareholders' equity and a ten-year loan for \$1,537,500 at the above stated terms. Highland Realty Co., LLC will purchase the real property for \$4,950,000 funded by \$887,500 in members' equity and a ten-year loan for \$4,062,500 at the above stated terms. HHC Finance has provided a letter of interest for the operating and realty loans at the above stated terms.

The working capital requirement is estimated at \$1,242,227 based on two months of Year One expenses. Funding will be as follows: \$621,114 from the members' equity with the remaining \$621,113 satisfied through a five-year loan at 5.25% interest rate. HHC has provided a letter of interest.

Review of BFA Attachments A and B net worth summaries for the proposed Buyers of Highland Nursing Home, Inc.'s corporate stock and Highland Realty Co., LLC (proposed real property owner), respectively reveals a potential equity shortfall. Lea Sherman and Alexander Sherman (members of both operating and real property entities) and Israel Sherman (a non-member in either) provided affidavits stating they will contribute resources disproportionate to membership interest in the operating and realty entities to make up any member's equity shortfall. Additionally, Israel Sherman has provided an affidavit stating he is willing to contribute resources, as a non-shareholder and non-member, in the operating and realty entity balloon payments should terms acceptable to the Department be unavailable at the time of refinancing. Israel Sherman's affidavits confirm he will have no ownership interest in the operation of Highland Nursing Home, Inc., and that there are no other repayment terms associated with the use of funds provided for the balloon payments.

The submitted budget projects \$60 and \$105,035 of net income in the first and third years, respectively. Revenues are estimated to increase by approximately \$1,602,244, primarily from an 26.7% increase in patient days bringing utilization to 79.07%. Overall expenses are expected to increase by \$1,901,496, coming from a \$1,592,821 increase in operating expense and a \$308,675 increase in capital expenses. The functional areas affected include: \$754,825 in Non-Revenue Support Services (primarily from rent & food), \$155,718 in Ancillary Services (primarily from physical therapy & pharmaceutical), and \$990,953 in Revenue Services (primarily from salary & benefits associated with residential health care staff).

BFA Attachment D is Highland Nursing Home, Inc.'s pro forma balance sheet, which shows the entity will start with \$1,133,614 in equity. Equity includes \$1,850,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, the total net assets are a negative \$716,386. 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 E is a Financial Summary of Highland Nursing Home, Inc. for 2014 through 2016. The RHCF had average positive working capital and average positive net assets and generate an average positive net income.

BFA Attachment F, Financial Summary of the proposed members' affiliated RHCF, shows the following: AmeriFalls Operating, LLC and Parkshore Health Care, LLC had positive working capital and positive net income in 2015 and 2016. JSSG Healthcare, LLC had negative net income and positive working capital in 2016, and the loss is attributed to a decrease in census caused by turnover in its social workers and transitioning in its marketers. North Sea Associates, LLC had positive net income, but negative working capital in 2015 due to interest associated with a long-term loan. However, the facility had positive working capital and positive net income in 2016. North Sea Associates, LLC also had a slightly negative equity position at the end of 2016, but it's expected to turn positive in 2017. NHRC Acquisition, LLC was acquired in December 2015, and the negative operating margin and net assets as of December 2016 is due to take-over issues with the previous owner. Management is implementing steps to produce positive operating results.

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	Highland Nursing Home, Inc. Proposed Stockholders Net Worth
BFA Attachment B	Highland Realty Co., LLC, Proposed Members Net Worth
BFA Attachment C	Current and Proposed Owners of the Real Property
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Financial Summary and 2015 - 2016 Highland Nursing Home, Inc. Certified Financial Statement
BFA Attachment F	Proposed members' ownership interest in Affiliated RHCFs and their Financial Summary

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% ownership interest from the sole current member to three (3) new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

162532 E

Highland Nursing Home Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
4. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of the applicant's executed Shareholders Agreement, acceptable to the Department. [CSL]
6. Submission of the applicant's approved Amended and Restated By-Laws, acceptable to the Department. [CSL]
7. Submission of the applicant's executed lease agreement, acceptable to the Department. [CSL]
8. Submission of the applicant's Certificate of Amendment to the Certificate of Incorporation, 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 # 171109-E  
FSNR SNF, LLC d/b/a Four Seasons Nursing and  
Rehabilitation Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** February 17, 2017

**Executive Summary**

**Description**

FSNR SNF, LLC d/b/a Four Seasons Nursing and Rehabilitation Center (Four Seasons), a Delaware limited liability company authorized to do business in New York State, is requesting to be established as the new operator of Four Seasons Nursing and Rehabilitation Center, a 270-bed (including 20 ventilator-dependent beds) Article 28 residential health care facility (RHCF) located at 1555 Rockaway Parkway, Brooklyn (Kings County). The facility operates two off-site Adult Day Health Care Programs (ADHCPs), which are included in this sale transaction. The ADHCPs are: a 100-slot ADHCP located at 945 East 108<sup>th</sup> Street in Brooklyn, and a 200-slot ADHCP located at 9517 Avenue J & 95<sup>th</sup> Street in Brooklyn. The facility is also certified for two respite beds. Parkshore Health Care, LLC, a proprietary corporation, is the current operator of the facility. Upon approval of this application, the facility will be named Four Seasons Nursing and Rehabilitation Center. A separate entity, FSNR Acquisition Group, LLC, has acquired the real property. There will be no change in beds or services provided.

On May 1, 2014, Parkshore Health Care, LLC entered into an Asset Purchase Agreement (APA) with FSNR SNF, LLC for the sale and acquisition of the operating interests and certain assets of the RHCF, the ADHCPs, Four Seasons Nursing and Rehabilitation Certified Home Health Agency (CHHA) and a pharmacy with registration #027476. A separate application is being submitted for the change in ownership of the CHHA. The pharmacy's

change in ownership is being handled by the NYS Education Department. It is noted that concurrently under review, FSNR Dialysis, LLC, with identical membership to FSNR SNF, LLC, is proposing to be established as the operator of Gateway Dialysis Center, which is operated by Four Seasons Dialysis Center, LLC, an entity related to the current RHCF operator (CON 171304). The dialysis center is located within the same building as the RHCF, with a separate entrance in the back and a discrete address of 1170 East 98<sup>th</sup> Street, Brooklyn, New York. The APA will close upon CON approval by the Public Health and Health Planning Council.

Concurrent with the APA, FSNR Acquisition Group, LLC entered into a Real Estate Purchase Agreement (REPA) with the following parties: 945 E 108th Street, LLC; 1555 Rockaway Parkway, LLC; LHF Associates, L.P.; 1222 E 96th St., LLC; 1174 E 96th St., LLC; and 9517 Ave. J, LLC, to purchase the RHCF/dialysis center building premises and certain assets used in the operation of the RHCF, the ADHCPs, the CHHA and the pharmacy. The members of the respective realty entities are identified in BFA Attachment C. The total purchase price for the realty transaction was \$50,500,000 and the closing of the REPA occurred on January 22, 2015. The CHHA facility was not a part of the REPA, as it is owned by a separate realty entity.

The applicant will lease the RHCF and the two ADHCP premises from FSNR Acquisition Group, LLC. There is a relationship between FSNR SNF, LLC and FSNR Acquisition Group, LLC in that the entities have several members in common.

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

<u>Current Operator</u>	
Parkshore Health Care, LLC	
<u>Members</u>	
Barry Friedman	90%
Jeffrey Goldstein	9%
Caroline Rich	1%

<u>Proposed Operator</u>	
FSNR SNF, LLC	
<u>Members</u>	
Michael Manela	20%
Lea Sherman	40%
Alexander Sherman	15%
Jeffrey Goldstein	10%
Sheryl Frankl	8%
Howard Pomerantz	5%
Hindy Amsel	2%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to beds or services at this facility. Four Seasons Nursing and Rehabilitation Center's occupancy was 96.6% in 2014, 96.4% in 2015 and 95.6% in 2016. Current occupancy, as of July 5, 2017, was 96.3%.

**Program Summary**

No negative information has been received concerning the character and competence of the proposed applicants. No administrative services or consulting agreements are proposed in this application.

**Financial Summary**

FSNR SNF, LLC will acquire the RHCF operations for \$1,800,000 to be funded by \$500,000 in members' equity with the remaining \$1,300,000 to be provided by FSNR Acquisition Group, LLC and repaid through the lease. On January 22, 2015, FSNR Acquisition Group, LLC purchased the real estate properties for \$50,500,000, funded by \$3,450,000 in equity with the \$47,050,000 balance coming from loans totaling \$52,000,000. The loans were provided by a combination of commercial lenders (People's United Bank and Bank Leumi USA) under a commercial credit and security agreement, with terms of approximately 5% (Libor plus 2.75%), with amortized periods ranging from ten years to 25 years. BFA Attachment D provides a listing of the properties and realty memberships.

The projected budget is as follows:

	<u>Year One</u>
Revenues	\$60,349,876
Expenses	\$57,001,878
Net Income	\$3,347,998

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a photocopy of the lease between FSNR SNF, LLC and FSNR Acquisition Group, LLC, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of a Certificate of Amendment to the Certificate of Formation of FSNR SNF, LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an Operating Agreement of FSNR SNF, LLC, which is 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. 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]

Council Action Date

**October 11, 2017**



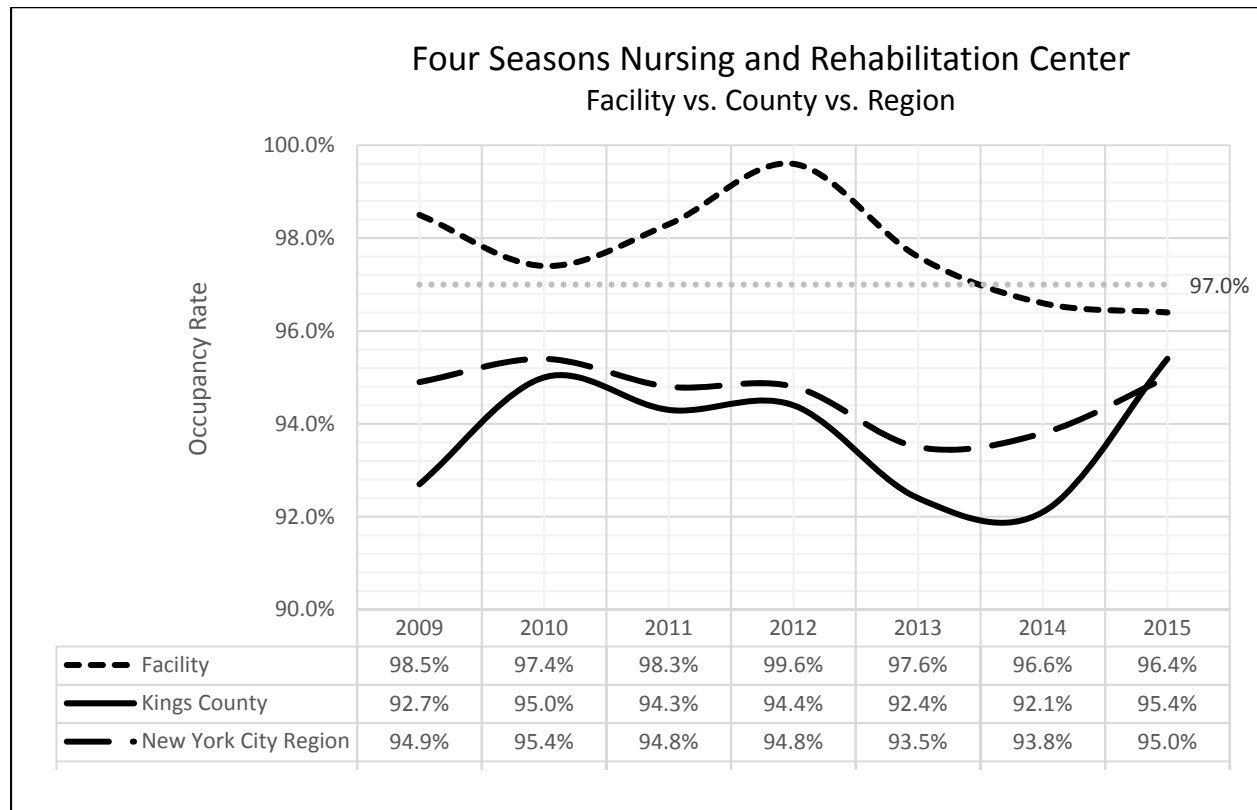
# Need Analysis

## Analysis

The current need methodology shows a need for 9,818 additional beds in the New York City region.

### RHCF Need – New York City Region

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	41,296
<b>Beds Under Construction</b>	-43
<b>Total Resources</b>	41,253
<b>Unmet Need</b>	9,818



The overall occupancy for the New York City region was 95.0% in 2015. Four Seasons Nursing and Rehabilitation Center's occupancy was 96.6% in 2014, 96.4% in 2015, and 95.6% in 2016. Current occupancy, as of July 5, 2017, was 96.3%. This facility includes 20 ventilator-dependent beds. Overall occupancy for this unit through June 30, 2017 was 95.0%. The facility has a history of maintaining high RHCF occupancy at or near the Department's planning optimum, which is expected to continue going forward.

### 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.

Four Seasons Nursing and Rehabilitation Center's Medicaid admissions of 34.1% in 2014 and 28.5% in 2015 exceeded Kings County's 75% threshold rates in 2014 and 2015 of 29.6% and 27.8%, respectively.

**Conclusion**

Contingent approval of this application is being recommended to maintain a resource for the residents of Kings County.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

<b>Program Analysis</b>
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**Facility Information**

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Four Seasons Nursing & Rehabilitation Center	Same
Address	1555 Rockaway Parkway Brooklyn, NY 11236	Same
RHCF Capacity	270	
ADHC Program Capacity	300 (2 ADHCP's)	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Parkshore Health Care LLC	FSNR SNF, LLC  *Jeffrey Goldstein      10.00% *Lea Sherman            40.00% Michael Manela         20.00% Alexander Sherman     15.00% Sheryl Frankel            8.00% Chanania Pomerantz    5.00% Hindy Amsel               2.00%  *Managing Member

**Character and Competence - Background**

**Facilities Reviewed**

The Hamptons Center for Rehab and Nursing	11/2007 to present
Niagara Rehabilitation and Nursing Center	06/2012 to present
Fiddler's Green Manor Rehabilitation and Nursing Center	01/2014 to present
Four Seasons Nursing and Rehabilitation	01/2015 to present
Humboldt House Rehabilitation & Nursing	12/2015 to present
Sweet Brook of Williamstown Rehabilitation & Nursing Center (MA)	06/2014 to present
Washington Square Healthcare Center (OH)	01/2014 to present
Concord Care of Cortland (OH)	08/2015 to present
Concord Care of Hartford (OH)	08/2015 to present
Concord Care of Sandusky (OH)	08/2015 to present
Concord Care of Toledo (OH)	08/2015 to present

Cardinal Woods Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Eagle Pointe Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Lake Pointe Rehabilitation & Nursing Center (OH)	04/2017 to present

**Individual Background Review**

**Jeffrey Goldstein** is a licensed nursing home administrator in NY, with a license in good standing. Mr. Goldstein is the owner/operator of several nursing homes and was previously employed as Operations Manager at Bay Park Center for Nursing and Rehabilitation, Nassau Extended Care, The Hamptons Center for Nursing and Rehabilitation, Townhouse Center for Rehabilitation and Nursing and Throggs Neck Extended Care. Mr. Goldstein holds an MBA from Adelphi University and discloses the following nursing home ownerships:

The Hamptons Center for Rehab and Nursing (.5%)	11/2007 to present
Niagara Rehabilitation and Nursing Center (25%)	06/2012 to present
Fiddler's Green Manor Rehabilitation and Nursing Center (75%)	01/2014 to present
Four Seasons Nursing and Rehabilitation (9%)	01/2015 to present
Humboldt House Rehabilitation & Nursing Center (24%)	12/2015 to present
Sweet Brook of Williamstown Rehab & Nursing Center (MA) (15%)	06/2014 to present
Washington Square Healthcare Center (OH) (14.75%)	01/2014 to present
Concord Care of Cortland (OH) (10%)	08/2015 to present
Concord Care of Hartford (OH) (10%)	08/2015 to present
Concord Care of Sandusky (10%)	08/2015 to present
Concord Care of Toledo (10%)	08/2015 to present
Cardinal Woods Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Eagle Pointe Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Lake Pointe Rehabilitation & Nursing Center (OH)	04/2017 to present
*Pending Highland Nursing Home (162532) (33.4%)	

**Lea Sherman** is a speech therapist at Strivright Auditory Oral School in Brooklyn and holds a Masters degree from Adelphi University. Ms. Sherman discloses the following health facility interest:

Humboldt House Rehabilitation & Nursing Center (24%)	12/2015 to present
*Pending Highland Nursing Home (33.3%)	

**Alexander Sherman** is the Assistant Administrator at Sunharbor Manor Skilled Nursing and Rehabilitation Center and the legal consultant to Absolut Care Facilities Management, a skilled nursing management company. Mr. Sherman is an attorney in good standing in the states of New York and New Jersey and has a JD degree from Touro Law Center. Mr. Sherman discloses the following nursing home ownership interests:

Niagara Rehabilitation and Nursing Center (13.33%)	06/2012 to present
Humboldt House Rehabilitation & Nursing Center (17.18%)	12/2015 to present
Sweet Brook of Williamstown Rehab & Nursing Center (MA) (10%)	06/2014 to present
Washington Square Healthcare Center (OH) (4.67%)	01/2014 to present
Concord Care of Cortland (12.5%)	08/2015 to present
Concord Care of Hartford (12.5%)	08/2015 to present
Concord Care of Sandusky (12.5%)	08/2015 to present
Concord Care of Toledo (12.5%)	08/2015 to present
Cardinal Woods Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Eagle Pointe Skilled Nursing & Rehabilitation Center (OH)	04/2017 to present
Lake Pointe Rehabilitation & Nursing Center (OH)	04/2017 to present

**Hindy (Sherman) Amsel** has a Masters degree from Columbia University. Ms. Amsel is a licensed occupational therapist in good standing in New York. She is employed as an occupational therapist at Challenge Early Intervention Center. Ms. Amsel discloses the following health facility interest:

Humboldt House Rehabilitation and Nursing (2%)	12/2015 to present
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**Michael Manela** has a Bachelors degree from Touro College. He is self-employed at Mac Trading, a wealth management company. Mr. Manela discloses no health facility interests.

**Chanania Pomerantz** has a Bachelors degree from Beth Medrash Govoha. He is the President of H.P. Industries, Inc. which is a jewelry services company. Mr. Pomerantz discloses no ownership interests.

**Sheryl Frankel** has an Associate's degree in Applied Science from Borough of Manhattan Community College. She is a licensed registered nurse in good standing in New York. Ms. Frankel is employed as a Residence RN at Women's League Community Residences, Inc. Ms. Frankel discloses no health facility interests.

#### Character and Competence - Analysis

A review of operations of Niagara Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-049 issued July 21, 2017 for surveillance findings on June 13, 2017. Deficiencies were found under 10 NYCRR 415(e)(2)(ii)(c) Notification of Changes.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-176 issued June 28, 2016 for surveillance findings on January 21, 2016. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential.
- The facility was fined \$14,000 pursuant to Stipulation and Order NH-16-139 issued April 4, 2016 for surveillance findings on August 13, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.3(e)(2)(ii)(b)(c) Resident Rights: Notification of Changes; and 415.12(m)(2) Quality of Care: Medication Errors.

*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 Hamptons Center for Rehabilitation and Nursing for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to a Stipulation and Order issued April 26, 2009 for surveillance findings on April 21, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) - Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.12 - Quality of Care; 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; and 415.26 - Organization and Administration. The facility incurred a Civil Money Penalty of \$6,500 related to these deficiencies.
- The facility was also fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) - Quality of Care: Accidents & Supervision; and 10 NYCRR 415.26 - Administration. The facility incurred a Civil Money Penalty of \$6,853.46 related to these deficiencies.
- The facility was also fined \$10,000 pursuant to Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

*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 of Fiddlers Green Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order NH-16-184 for surveillance findings on January 5, 2016. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential and 415.3(e)(2)(ii)(b)(c) Notification of Changes.

A review of operations of Humboldt House Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-17-028 issued on April 25, 2017 for surveillance findings on January 27, 2017. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Medication Errors.
- The facility incurred a Civil Money Penalty of \$12,205 related to these deficiencies.

A review of operations for Sweet Brook of Williamstown Rehabilitation and Nursing Center for the period identified above reveals the following:

- The facility was fined \$5,354.05 for Resident Abuse, Failure to Timely Report Resident Abuse and Failure to Follow Care Plan.

A review of operations for Four Seasons Nursing and Rehabilitation, Concord Care Center of Cortland, Concord Care Center of Hartford, Concord Care Center of Sandusky, Concord Care of Toledo and Washington Square Health Center for the periods identified above, reveals that there were no enforcements.

The applicant has submitted an affidavit attesting that there have been no conditional level non-compliance issues since the purchase of Cardinal Woods Skilled Nursing and Rehabilitation Center, Eagle Pointe Skilled Nursing and Rehabilitation Center and Lake Pointe Skilled Nursing and Rehabilitation Center.

#### Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Quintile
<b>NY</b>				
Niagara Rehabilitation and Nursing Center	*	*	****	5
The Hamptons Center for Rehabilitation and Nursing	***	***	*****	4
Fiddlers Green Manor Rehabilitation & Nursing Center	*	*	*	3
Four Seasons Nursing and Rehab Center	*****	****	*****	3
Humboldt House Rehabilitation and Nursing Center	*	*	**	5
<b>MA</b>				
Sweet Brook of Williamstown Rehabilitation & Nursing Center	*	*	****	
<b>OH</b>				
Washington Square Healthcare Center	****	***	*****	
Concord Care Center of Cortland	****	**	*****	
Meadowbrook Manor*	**	*	*****	
Concord Care and Rehabilitation Center**	**	***	*	
Concord Care Center of Toledo	**	*	***	
Cardinal Woods Skilled Nursing & Rehab Ctr	**	**	**	
Eagle Pointe Skilled Nursing & Rehab	***	****	****	
Lake Pointe Rehabilitation and Nursing Center	**	*	*****	

\*Meadowbrook Manor is the a.k.a. for Concord Care Center of Hartford per OH Concord Care Centers website.

\*\*Concord Care and Rehabilitation Center is the same as Concord Care Center of Sandusky per the Medicare.gov website for OH Nursing Homes.

The applicant indicates that the poor-quality ratings for the New York State and Massachusetts nursing homes are largely a reflection of poor surveys. The applicant identifies the following strategies being employed to improve quality:

- Monthly quality assurance team meeting focusing on quality assurance measures;
- Monthly hospitalization reviews to improve early identification of changes in conditions in order to reduce hospitalization;
- Daily review of discharge and admissions charts;
- Daily review of resident charges to ensure assessments, medications etc. are current;
- Increased nursing education and annual skill proficiency assessments of all staff.
- Implementation of full electronic medical records;
- Enhanced registered nursing coverage.

The following initiatives have been implemented:

- New Director of Nursing and Assistant Director of Nursing at Humboldt House;
- New Administrator, Medical Director and Nurse Practitioner at Niagara;
- Weekly rounds for wound care by a certified nurse practitioner;
- Patient Navigators to address residents' needs at admission and throughout their stay at the nursing home.

Regarding Niagara Rehabilitation and Nursing Center, the applicant has supplied the Quality Assurance Plan addressing issues such as falls, hospital readmissions and pressure sores as well as the F-tag deficiencies which prompted the enforcement actions. The applicant has also described the response to the July 21, 2017 survey deficiencies to deter any repeat incidents.

#### 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.

#### Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

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

Date:	May 1, 2014
Seller:	Parkshore Health Care, LLC
Buyer:	FSNR SNF, LLC
Asset Acquired:	All rights, title and interest in the business assets lien free. The assets include: the business and operation of a 270-bed nursing home and adult day health care programs at 945 East 108 <sup>th</sup> Street, Brooklyn, New York 11236 and 9517 Avenue J & 95 <sup>th</sup> Street, Brooklyn, New York 11236. After property closing, accounts receivable, retroactive rate increases, and assumed contracts. Cash & cash equivalents, lease hold improvements, vehicles; inventory, supplies, resident funds held in trust; any and all trade names, logos, trademarks and service marks including the name "Four Seasons Nursing & rehabilitation Center" all security deposits and prepayments for future services; all menus, policies and procedures manuals and computer software; all telephone numbers, telefax numbers and domain names; copies of all financial books and records relating to the Facility; all resident/patient records; all employee and payroll records; Seller's Medicare and Medicaid provider agreements and provider numbers; goodwill and licenses and permits.
Excluded Assets:	Retroactive rate increases for services prior to property closing date, accounts receivable prior to the property closing date (not yet collected as of the closing date), real estate tax funds prior to property closing date.
Assumption of Liabilities:	Ongoing obligations on after the property closing date (including trade payables), cash assessment liabilities on purchase accounts receivable, outstanding OMIG liabilities per section 11.7. lease obligations as of property closing and property environmental conditions.
Purchase Price:	\$1,800,000
Payment of the Purchase Price:	\$500,000 deposit paid upon signing; \$1,300,000 due at closing

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

Equity – FSNR SNF, LLC Members	\$500,000
FSNR Acquisition, LLC- (FSNR SNF, LLC will repay this through the lease)	<u>1,300,000</u>
Total	\$1,800,000

The loans were provided by a combination of commercial lenders (People's United Bank and Bank Leumi USA) under a commercial credit and security agreement, terms of approximately 5% (Libor plus 2.75%), amortized periods from ten years to 25 years.

BFA Attachment A is the net worth summary for the proposed members of FSNR SNF, LLC, which shows sufficient resources to meet the equity requirement.

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

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA for the acquired real property. The agreement closed on January 22, 2015. The terms of the agreement are summarized below:

Date:	May 01, 2014 and closed on January 22, 2015.
Sellers:	945 E. 108th Street, LLC, 1555 Rockaway Parkway, LLC, LHF Associates, L.P., 1222 E. 96 <sup>th</sup> St, LLC, 1174 E. 96 <sup>th</sup> St, LLC, 9517 Ave, J, LLC (above affiliated with Parkshore Health Care, LLC)
Buyer:	FSNR Acquisition Group, LLC
Assets Transferred:	All rights, title and interest in the respective parcel of properties identified in Exhibit A of REPA which is presented as BFA Attachment C
Purchase Price:	\$50,500,000
Payment of Purchase Price:	\$3,450,000 deposit upon signing, 47,050,000 balance due/paid at closing.

The purchase price of the real property was satisfied as follows:

Equity- FSNR Acquisition Group LLC Members	\$3,450,000
Mortgages loans (10 years, 10-25 year amortizations, Libor + 2.75%)	<u>\$47,050,000</u>
Total	\$50,500,000

The loans were provided by a combination of commercial lenders (People's United Bank and Bank Leumi USA) under a commercial credit and security agreement, terms of approximately 5% (Libor plus 2.75%), amortized periods from ten years to 25 years.

Allocation of the purchase price for the SNF/dialysis property is as follows:

Dialysis	\$5,050,000
SNF	<u>\$45,450,000</u>
Total Real Estate Purchase Price	\$50,500,000

The tables below present a summary of the sources and uses of funds, which includes a \$15,000,000 payment to satisfy Parkshore Health Care, LLC's New York Office of the Medicaid Inspector General (OMIG) audit liability.

	Purchase Price	Equity/Escrow	Loan
RHCF Operation	\$1,800,000	\$500,000	\$1,300,000
Realty	\$50,500,000	\$3,450,000	\$47,050,000
Dialysis Center	\$200,000	\$200,000	\$0
OMIG Audit Liability	<u>\$15,000,000</u>	<u>\$11,350,000</u>	<u>\$3,650,000</u>
Total	\$67,500,000	\$15,500,000	\$52,000,000

Commercial Credit & Security Agreements – Loans	Amount	Term Years	Amortized Years	Interest
People's United Bank-Mortgage	\$21,635,000	10	25	Libor+2.75%
Bank Leumi USA-Mortgage	\$15,865,000	10	25	Libor+2.75%
People's United Bank-Loan	\$8,365,000	10	10	Libor+2.75%
Bank Leumi USA-Loan	<u>\$6,135,000</u>	10	10	Libor+2.75%
Total	\$52,000,000			



## Lease Agreement

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

Premises:	RHCF located at 1555 Rockaway Parkway, Brooklyn, NY 11236; ADHCP located at 945 E 108 <sup>th</sup> Street, Brooklyn, NY 11236; ADHCP located at 9517 Ave J & 95 St., Brooklyn, NY 11236; and Parcel of properties listed on Exhibit A of REPA and Lease agreement.
Landlord:	FSNR Acquisition Group, LLC
Lessee:	FSNR SNF, LLC
Term:	30 Years
Rental:	Annual rent at the sum of the debt service on the real property mortgage, plus annual amount for taxes and insurance estimated at \$4,436,163 per year.
Provisions:	Triple-Net

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

## Operating Budget

The applicant has provided the current year (2016) results and the first-year operating budget subsequent to the change in ownership, in 2017 dollars, summarized as follows:

	<u>Current Year (2016)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>RHCF Revenues</u>				
Medicaid-FFS	\$300.02	\$20,457,490	\$293.54	\$13,617,248
Medicaid-MC		\$0	\$280.66	\$5,741,463
Medicare-FFS	\$535.16	\$9,752,716	\$537.96	\$9,803,850
Commercial & Private Pay	\$1,341.14	\$2,853,954	\$1,036.03	\$3,569,138
Other Income *		\$392,697		\$297,672
Assessment		<u>\$1,888,756</u>		<u>\$1,177,393</u>
RHCF Total Revenue		\$35,345,613		\$34,206,764
<u>RHCF Expenses</u>				
Operating	\$467.25	\$41,102,977	\$458.46	\$40,582,177
Capital	\$82.24	\$7,234,504	\$60.06	\$5,316,281
RHCF Total Expenses	<u>\$549.50</u>	<u>\$48,337,481</u>	<u>\$518.52</u>	<u>\$45,898,458</u>
RHCF Income/Loss		<u>(\$12,991,868)</u>		<u>(\$11,691,694)</u>
Vent Bed Revenue	\$658.45	\$4,673,651	\$613.03	\$4,433,453
Vent Bed Expenses	<u>\$1,110.45</u>	<u>\$7,881,967</u>	<u>\$1,034.88</u>	<u>\$7,484,257</u>
Vent Bed Income/Loss	<u>(\$452.00)</u>	<u>(\$3,208,316)</u>	<u>(\$421.85)</u>	<u>(\$3,050,804)</u>
ADHCP Revenue	\$148.05	\$21,140,252	\$148.05	\$21,709,659
ADHCP Expenses	<u>\$21.70</u>	<u>\$3,098,528</u>	<u>\$24.68</u>	<u>\$3,619,163</u>
ADHCP Income	<u>\$126.35</u>	<u>\$18,041,724</u>	<u>\$123.37</u>	<u>\$18,090,496</u>
Total Revenues		\$61,159,516		\$60,349,876
Total Expenses		<u>\$59,317,976</u>		<u>\$57,001,878</u>
Total Net Income (Loss)		<u>\$1,841,540</u>		<u>\$3,347,998</u>
RHCF-Occupancy %/Days		97% / 88,540		97% / 88,515
Vent Bed Occupancy %/Days		97% / 7,098		99% / 7,232
ADHCP Visits		142,787		146,633

\*Other income includes rental income of \$24,000, interest income of \$107,626, universal settlement of \$318,016, Misc. income of \$473 and prior period income adjustment of (\$57,418).

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

- The current year reflects the facility's 2016 revenues and expenses for the 270-bed facility.
- Medicaid revenue is based on the facility's current 2017 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2016. Private Pay and Other Manage Care payment rates are also based on the facility's 2016 rates.
- Expense and staffing assumptions were based on the current operator's cost incurred during 2016 and adjusted for inflation.
- The RHCF's projected utilization for Year One is 97%. It is noted that utilization for the past three years has averaged around 96.6% and current occupancy was 96.3% as of July 5, 2017.
- Medicaid MC utilization is based on the facility's experience during 2016 and then annualized.
- The applicant will look to implement the following:
  - Total parenteral nutrition program;
  - In-house Urology and bladder scans and a program on incontinence and bladder retraining;
  - Accept new trachea tube patients and provide a full range of ventilator services;
  - Train existing staff to become IV certified nurses;
  - Offer in-house, at-bedside FEES exams and offer balance testing and outcomes-based vestibular therapy.
- Utilization by payer source for the first year after the change in ownership is summarized below:

<u>RHCF</u>	<u>Current</u>	<u>Year One</u>
Medicaid-FFS	77.01%	52.41%
Medicaid-MC	0.00%	23.11%
Medicare-FFS	20.58%	20.59%
Commercial & Private pay	2.40%	3.89%
Total	100%	100%

<u>Vent Unit</u>	<u>Current</u>	<u>Year One</u>
Medicaid-FFS	93.50%	90.43%
Medicare-FFS	6.29%	6.53%
Commercial-FFS	0.00%	2.92%
Private Pay	<u>0.01%</u>	<u>0.02%</u>
Total	100%	100%

<u>ADHCPs</u>	<u>Current</u>	<u>Year One</u>
Medicaid-FFS	69.58%	69.58%
Commercial-FFS	<u>30.42%</u>	<u>30.42%</u>
Total	100%	100%

#### Capability and Feasibility

FSNR SNF, LLC will acquire the RHCF operations for \$1,800,000 to be funded by \$500,000 in members' equity with the remaining \$1,300,000 to be provided by FSNR Acquisition Group, LLC and repaid through the lease. On January 22, 2015, FSNR Acquisition Group, LLC purchased the real properties for \$50,500,000, funded by \$3,450,000 in equity with the \$47,050,000 balance coming loans totaling \$52,000,000. The loans were provided by a combination of commercial lenders (People's United Bank and Bank Leumi USA) under a commercial credit and security agreement, at above stated terms. Also, as noted in the above table is a \$15,000,000 payment to OMIG (equity \$11,350,000 & loan \$3,650,000) plus \$200,000 to purchase operating interest in an Article 28 dialysis Center (CON 171304 currently under review). Review of BFA Attachments A, proposed members' net worth summaries reveal sufficient resources to meet equity requirements. BFA Attachment D provides a listing of the property and realty membership. There are no project costs associated with this application.

The working capital requirement is estimated at \$9,500,313 based on two months of first year expenses, plus accounts payables of \$4,201,123 as of December 31, 2016. The working capital requirement will be met from \$2,854,999 in assumed cash and \$14,008,654 in assumed account receivable as of December 31, 2016. BFA Attachment E is the Pro Forma balance sheet of Four Seasons, which shows the operation will start off with the members' equity of \$16,125,122.

The submitted budget projects net income of \$3,347,998 in Year One. In the first year, RHCf total revenues (inpatient exclusive of vent unit) are estimated to decline \$1,138,848 while expenses are expected to decrease by \$2,439,023. Expense and staffing assumptions were based on the current operator's cost incurred in 2016. The decrease in RHCf expenses comes from a \$520,800 decrease in operating expenses and a \$1,918,223 decrease in interest and rent. The ADHCP (outpatient service) has been profitable historically, and is expected to generate income to support overall operations going forward. 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 F is the Financial Summary of Parkshore Healthcare LLC d/b/a Four Seasons Nursing & Rehabilitation Center for 2013 through 2015. As shown, the RHCf had an average positive working capital position of \$7,893,525, average positive net assets of \$7,889,738, and average positive net income of \$423,301 for the period. The reason for net operating loss in year 2014 was loan due to Four Seasons was deemed uncollectible and written off as business debt. BFA Attachment G is 2016 certified financial statements of Four Seasons Nursing & Rehabilitation Center, which shows positive working capital position of \$13,465,940, positive net assets position of \$16,125,122 and generated operating income of \$1,388,918.

BFA Attachment H is the proposed members' interest in affiliated RHCfs in New York.

BFA Attachment I, Financial Summary of the proposed members' affiliated RHCfs, shows the facilities have maintained positive net assets position, positive working capital position and positive income from operations for the periods shown, with the exception of the following:

- The Hampton Center for Rehab & Nursing is showing negative net assets position in 2014 due to a revolving credit line that had higher interest rates and fees. The facility paid off the credit line in 2015, which resulted in negative working capital and negative net assets in 2015. The facility's financial situation has improved in 2016 with positive working capital and slight negative net assets of \$79,935.
- Humboldt House Rehab & Nursing shows net operating losses and negative net assets position in 2016 due to take over issues with the previous operator. Since taking over the facility, management continues to implement necessary steps to produce positive working capital.
- JSSG Healthcare is showing negative working capital in year 2014 due to the assumption of DOH liabilities when the facility was acquired out of bankruptcy from the prior operator. The facility improved negative working capital and negative net assets position in 2015. The facility experienced a decrease in census in 2016 due to turnover in its social workers and transition to marketers. The census has since been improving in the initial months of 2017.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Net Worth of Proposed Members of FSNR SNF, LLC
BFA Attachment B	Post-closing organizational chart
BFA Attachment C	Prior Owners of the Realty
BFA Attachment D	Current Owners of the Real Properties & List of parcels of properties.
BFA Attachment E	Pro Forma Balance Sheet for Operation
BFA Attachment F	Financial Summary of Parkshore Health Care, LLC
BFA Attachment G	2016 Financial Statement of Parkshore Health Care, LLC
BFA Attachment H	Proposed Members' interest in affiliated RHCfs.
BFA Attachment I	Financial Summary of proposed members' affiliated RHCfs

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October 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 FSNR SNF, LLC as the new operator of the 270-bed residential health care facility located at 1555 Rockaway Parkway and its two off-site adult day health care programs, 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:

171109 E

FSNR SNF, LLC d/b/a Four Seasons Nursing  
and Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a photocopy of the lease between FSNR SNF, LLC and FSNR Acquisition Group, LLC, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of a Certificate of Amendment to the Certificate of Formation of FSNR SNF, LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of an Operating Agreement of FSNR SNF, LLC, which is 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. 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]

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 # 171186-E  
Prospect Acquisition I, LLC d/b/a  
Center for Nursing & Rehabilitation**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** March 24, 2017

**Executive Summary**

**Description**

Prospect Acquisition I, LLC d/b/a Center for Nursing & Rehabilitation, a New York limited liability company, requests approval to be established as the new operator of Center for Nursing & Rehabilitation, Inc., a 320-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 520 Prospect Place, Brooklyn (Kings County). Center for Nursing & Rehabilitation, Inc. is the current RHCF operator and real property owner. A separate entity, Prospect Acquisition II, LLC, will acquire the real property. There will be no change in beds or services provided.

On January 31, 2017, Center for Nursing & Rehabilitation, Inc. entered into an Asset Purchase Agreement (APA) with Prospect Acquisition I, LLC for the sale and acquisition of the RHCF operating interests for a purchase price of \$1,000,000. In conjunction with the APA, Center for Nursing & Rehabilitation, Inc. entered into a Purchase and Sale Agreement (PSA) with Prospect Acquisition II, LLC, for the sale and acquisition of the RHCF's real property for a purchase price \$64,000,000. The transaction contemplated by the APA and PSA will close simultaneously upon approval by the Public Health and Health Planning Council. The applicant will lease the premises from Prospect Acquisition II, LLC. There is a relationship between Prospect Acquisition I, LLC and Prospect Acquisition II, LLC in that the entities have identical members and ownership percentages.

The Seller has been experiencing a challenging environment due to competition from multiple for-profit operators whose skilled nursing facilities employ economies of scale, making it difficult to contain nursing home costs and sustain operations. A decision was made to sell the RHCF and the Seller undertook a bidding process that included solicitation of bids and proposed contracts from several prospective purchasers who are experienced nursing home operators in New York State. The Seller chose the applicant because of its experience, the likelihood of timely receiving required approvals, and because overall, the price and contract terms offered by the applicant were the most favorable to the Seller. The Seller is an affiliate of a not-for-profit health system controlled by CenterLight Health System, Inc. (CLHS). Another affiliate controlled by CLHS is CenterLight Health Care, Inc. ("CLHC"), which operates a Program of All-Inclusive Care for the Elderly (PACE), a Medicare and Medicaid program that helps the frail elderly meet their complex medical and social needs. Due to a variety of factors, CLHC's premiums have been insufficient over time to meet its expenses and as part of a recapitalization plan proposed to the Department of Health, CLHS has undertaken to sell the facility operated by the Seller in order to make the proceeds available to CLHC to support the PACE program. There are no restrictions on the property as to its use or ownership.

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

<u>Current Operator</u> Center for Nursing and Rehabilitation, Inc. (Not-for-profit)
--

<u>Proposed Operator</u> Prospect Acquisition I, LLC	
<u>Members</u>	
Pasquale DeBenedictis	27.34%
Alex Solovey	27.33%
Leopold Friedman	27.33%
Joseph Carillo II	10.00%
Solomon Rutenberg	8.00%

OPCHSM Recommendation  
Contingent Approval

Need Summary

This change in ownership will have no impact on currently available beds and services.

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

Prospect Acquisition I, LLC will acquire the RHC operations for \$1,000,000 funded via members' equity. Prospect Acquisition II, LLC will purchase the real estate for \$64,000,000 to be met with \$6,400,000 equity from the proposed realty members and a loan of \$57,600,000 at an interest rate of 3.25% above the one-month LIBOR rate (approximately 1.24% as of August 23, 2017) for a ten-year term with a 25-year amortization period. Bank of America has provided a letter of interest at the stated terms.

The projected budget is as follows:

	<u>Year One</u>
Revenues	\$42,977,500
Expenses	<u>40,490,245</u>
Net Income	\$1,587,255



## 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 loan commitment, acceptable to the Department of Health. (BFA)
2. Submission of an executed lease rental agreement, acceptable to the Department of Health. (BFA)
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
5. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent. (RNR)
6. Submission of a photocopy of the lease between Prospect Acquisition I, LLC and Prospect Acquisition II, LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of Prospect Acquisition I, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the Amended and Restated Operating Agreement of Prospect Acquisition I, LLC, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the Prospect Acquisition I, LLC Certificate of Assumed Name, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of the Consulting Agreement between Prospect Acquisition I, LLC and Cassena Care, LLC, which is acceptable to the Department. [CSL]
11. Submission of an Attestation for Service Agreements, which is acceptable to the Department.

**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

**October 11, 2017**

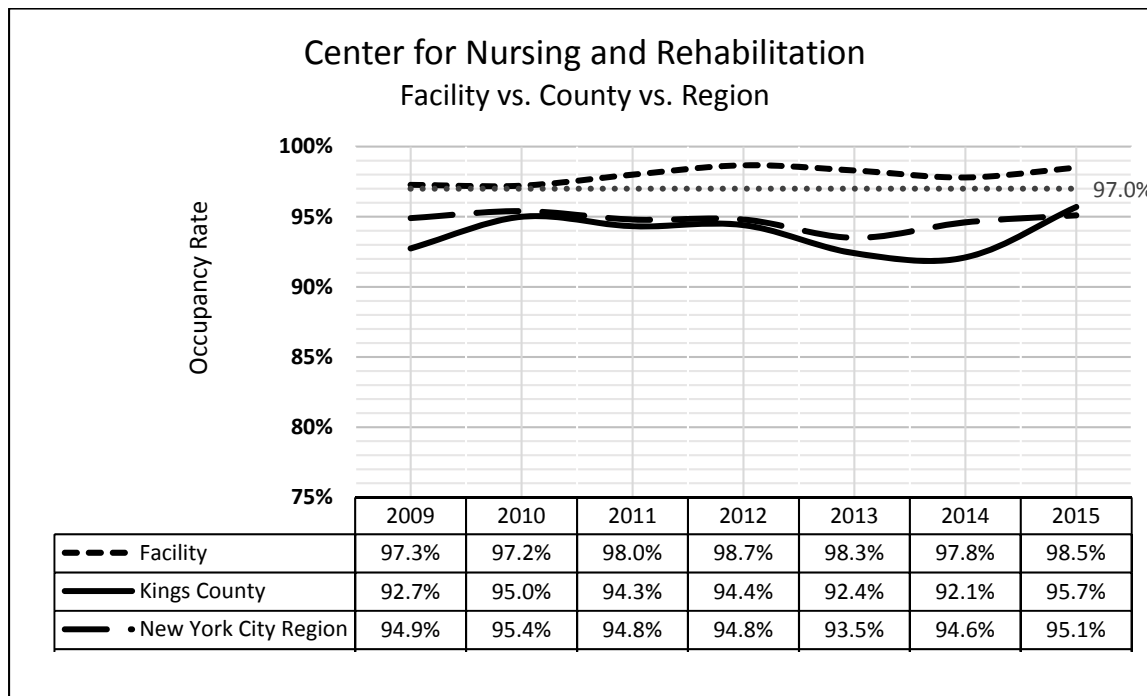
# Need Analysis

## Background

The current need methodology shows a need of 9,818 additional beds in the New York City Region. This project is a change in ownership and will not result in a change in the number of RHCN beds in the region.

## RHCF Need – New York City

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	41,296
<b>Beds Under Construction</b>	-43
<b>Total Resources</b>	41,253
<b>Unmet Need</b>	9,818



Occupancy at the facility has consistently exceed occupancy planning thresholds.

## Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

The Center for Nursing and Rehabilitation'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.

<b>Percent of New RHCFA Admissions that are Medicaid</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Kings County 75% Threshold	24.8%	22.2%	20.9%
Center for Nursing & Rehabilitation Inc	20.7%	15.4%	14.1%

#### Conclusion

There will be no change to beds and services. The facility has maintained high occupancy and a continuation of its services benefits the residents of the county and planning region.

#### Recommendation

**From a need perspective, contingent approval is recommended.**

## Program Analysis

#### Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Center for Nursing & Rehabilitation, Inc.	Center for Nursing and Rehabilitation
Address	520 Prospect Place Brooklyn, NY 11238	Same
RHCF Capacity	320	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Center for Nursing & Rehabilitation, Inc.	Prospect Acquisition 1, LLC.  <b>Members</b> Pasquale DeBenedictis* 27.34% Alex Solovey* 27.33% Leo Friedman* 27.33% Joseph F. Carillo 10.00% Soloman Rutenberg 8.00%  *managing members

#### Character and Competence - Background

##### **Facilities Reviewed**

##### Nursing Homes

Barnwell Nursing and Rehabilitation Center	10/2003 to present
Beach Gardens Rehab and Nursing Center	11/2014 to present
Bronx Gardens Rehabilitation and Nursing Center	11/2016 to present
Brooklyn Gardens Nursing and Rehabilitation Center	09/2014 to present
Carillon Nursing and Rehabilitation Center	01/1999 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Fordham Nursing and Rehabilitation Center	08/2016 to present
Hudson Pointe at Riverdale Center for Nursing & Rehabilitation	06/2016 to present
Long Beach Nursing and Rehabilitation Center	08/2016 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present

Ross Center for Nursing and Rehabilitation (5%)	06/2016 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Sea Crest Nursing and Rehabilitation	07/2015 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge	02/2015 to present
The Plaza Rehab and Nursing Center	09/2016 to present
Upper East Side Rehabilitation and Nursing Center	06/2015 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at New Britain (CT)	02/2016 to present
Cassena Care of Norwalk (CT)	07/2013 to present
Cassena Care at Stamford (CT)	02/2016 to present

Dialysis Centers

Cassena Care Dialysis at Peninsula	11/2016 to present
East Neck Dialysis Center	09/2015 to present
Workmen's Circle Dialysis Center	08/2015 to present

**Individual Background Review**

**Pasquale DeBenedictis** is currently employed as the Chief Financial Officer at Center for Nursing & Rehabilitation, the subject nursing home, and also the Controller at Hillside Manor Certified Home Health Agency, since July, 2016. Mr. DeBenedictis has a Bachelor's degree from SUNY Plattsburgh and holds a CPA license, currently inactive. Mr. DeBenedictis discloses ownership interests in the following health care facilities.

Barnwell Nursing and Rehabilitation Center (33.30%)	10/2003 to present
East Neck Nursing and Rehabilitation Center (26.68%)	02/2005 to present
Fordham Nursing and Rehabilitation Center (25.25%)	08/2016 to present
Long Beach Nursing and Rehabilitation Center (25.00%)	08/2016 to present
Mills Pond Nursing and Rehabilitation Center (29.00%)	10/2010 to present
Morningside Nursing and Rehabilitation Center (35.00%)	07/2014 to present
Peninsula Nursing and Rehabilitation Center (25.05%)	08/2014 to present
Sayville Nursing and Rehabilitation Center (29.00%)	12/2012 to present
Sea Crest Nursing and Rehabilitation (32.50%)	07/2015 to present
Shore View Nursing and Rehabilitation Center (32.50%)	06/2014 to present
Upper East Side Rehabilitation and Nursing Center	06/2015 to present
Workmen's Circle Multicare Center (25.00%)	07/2013 to present
Cassena Care Dialysis at Peninsula (23.75%)	11/2016 to present
East Neck Dialysis Center (33.33%)	09/2015 to present
Workmen's Circle Dialysis Center (25.00%)	08/2015 to present
Cassena Care at New Britain (CT) (35.00%)	02/2016 to present
Cassena Care of Norwalk (CT) (35.00%)	07/2013 to present
Cassena Care at Stamford (CT) (35.00%)	02/2016 to present

Mr. DeBenedictis is approved to become the owner of Morningside Adult Home/ALP and Morningside LHCSA.

**Alex Solovey** is a New York State licensed physical therapist employed as the Director of Rehabilitation at Theradynamics Physical Therapy Rehabilitation P.C., since 1999. Mr. Solovey is also Director of Operations at Hillside Manor Certified Home Health Agency, since July 2016, and Chief Operating Officer of Center for Nursing and Rehabilitation, since February 2017. discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center (33.33%)	10/2003 to present
East Neck Nursing and Rehabilitation Center (15.00%)	02/2005 to present
Fordham Nursing and Rehabilitation Center (25.25%)	08/2016 to present
Long Beach Nursing and Rehabilitation Center (25.00%)	08/2016 to present
Mills Pond Nursing and Rehabilitation Center (29.00%)	10/2010 to present
Morningside Nursing and Rehabilitation Center (35.00%)	07/2014 to present

Peninsula Nursing and Rehabilitation Center (25.05%)	08/2014 to present
Sayville Nursing and Rehabilitation Center (33.33%)	12/2012 to present
Sea Crest Nursing and Rehabilitation (32.50%)	07/2015 to present
Shore View Nursing and Rehabilitation Center (32.50%)	06/2014 to present
Upper East Side Rehabilitation and Nursing Center (34.50%)	06/2015 to present
Workmen's Circle Multicare Center (25.00%)	07/2013 to present
Cassena Care Dialysis at Peninsula (23.75%)	11/2016 to present
East Neck Dialysis Center (33.33%)	09/2015 to present
Workmen's Circle Dialysis Center (25.00%)	08/2015 to present
Cassena Care at New Britain (CT) (35.00%)	02/2016 to present
Cassena Care of Norwalk (CT) (35.00%)	07/2013 to present
Cassena Care at Stamford (CT) (35.00%)	02/2016 to present

Mr. Solovey is approved to become the owner of Sea Crest Dialysis Center, Morningside Adult Home/ALP, Morningside LHCSA and Hillside Manor Certified Home Health Agency.

**Leopold Friedman** is the Chief Executive Officer of Advanced Care Staffing, Inc., a healthcare staffing agency, since 2006. Mr. Friedman discloses the following ownership interests.

Beach Gardens Rehab and Nursing Center (20%)	11/2014 to present
Bronx Gardens Rehabilitation and Nursing Center (50%)	11/2016 to present
Hudson Pointe at Riverdale Center for Nursing & Rehab (50%)	06/2016 to present
Long Beach Nursing and Rehabilitation Center (25%)	08/2016 to present
Peninsula Nursing and Rehabilitation Center (25%)	01/2013 to present
Ross Center for Nursing and Rehabilitation (5%)	06/2016 to present
The Citadel Rehab and Nursing Center at Kingsbridge (50%)	02/2015 to present
The Plaza Rehab and Nursing Center (25%)	09/2016 to present
Upper East Side Rehabilitation and Nursing Center (3%)	06/2015 to present
Cassena Care Dialysis at Peninsula (23.75%)	11/2016 to present
Ultimate Care, Inc. (33%)	02/2010 to present

Mr. Friedman is approved to be the owner of Brooklyn Gardens Dialysis Center, LLC.

Mr. Friedman is also a board member for the following voluntary nursing home:

Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
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Mr. Friedman has received Public Health and Health Planning Council approval to operate Brooklyn Gardens Dialysis Center (D&TC), Highland View Care Center (receiver since 02/03/2015), and Cassena Care Dialysis at Peninsula (D&TC). The applicant has not closed on these purchases.

**Joseph F. Carillo** is a licensed nursing home administrator with license in good standing and serves as the administrator of record at Carillon Nursing Home. Mr. Carillo holds an MBA from Adelphi University and discloses the following ownership interests.

Barnwell Nursing and Rehabilitation Center (33.33%)	10/2003 to present
Carillon Nursing and Rehabilitation Center (11.12%)	01/1999 to present
East Neck Nursing and Rehabilitation Center (15.00%)	02/2005 to present
Morningside Nursing and Rehabilitation Center (10.00%)	07/2014 to present
Sayville Nursing and Rehabilitation Center (33.33%)	12/2012 to present
Upper East Side Rehabilitation and Nursing Center (10.50%)	06/2015 to present
Workmen's Circle Multicare Center (25.00%)	07/2013 to present
Workmen's Circle Dialysis Center (25.00%)	08/2015 to present
Carillon Dialysis Center (11.11%)	01/1999 to present

Mr. Carillo is approved to become an owner of Morningside Dialysis Center, Morningside Adult Home/ALP and Morningside LHCSA.

**Soloman Rutenberg** is currently employed as the CEO of Workmen's Circle Multicare Center, since 2006. Mr. Rutenberg has a Masters in Engineering degree from Latvia Technical University and discloses ownership interests in the following health care facilities.

Fordham Nursing and Rehabilitation Center (32.25%)	08/2016 to present
Long Beach Nursing and Rehabilitation Center (9%)	08/2016 to present
Mills Pond Nursing and Rehabilitation Center (9%)	10/2010 to present
Morningside Nursing and Rehabilitation Center (20%)	07/2014 to present
Sea Crest Nursing and Rehabilitation (5%)	07/2015 to present
Shore View Nursing and Rehabilitation Center (5%)	06/2014 to present
Upper East Side Rehabilitation and Nursing Center (4.25%)	06/2015 to present
Workmen's Circle Multicare Center (25.01%)	07/2013 to present
Workmen's Circle Dialysis Center (25.00%)	08/2015 to present
Cassena Care at New Britain (CT) (15.00%)	02/2016 to present
Cassena Care of Norwalk (CT) (15.00%)	07/2013 to present
Cassena Care at Stamford (CT) (15.00%)	02/2016 to present

Mr. Rutenberg has been approved to become an owner of Morningside Adult Home/ALP, Morningside LHCSA, Morningside Dialysis Center and Seacrest Dialysis Center.

#### Character and Competence - Analysis

A review of Barnwell Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-15-001 issued January 12, 2014 for surveillance findings on March 13, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care: Accidents/Supervision.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on February 1, 2013. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors; 10NYCRR 415.26 Administration; and 10NYCRR 415.27 Quality Assurance.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on September 26, 2013. Deficiencies were found under 10NYCRR 415.4(b)(1)(2)(3) Free from Mistreatment Neglect and Misappropriation of Property; and 10NYCRR 415.12 Quality of Care Highest Practicable Potential.
- The nursing home paid a CMP of \$3,250 for Immediate Jeopardy on 3/13/12.
- The nursing home paid a CMP of \$5,000 for Immediate Jeopardy on 2/1/13.
- The nursing home paid a CMP of \$8,000 for Immediate Jeopardy on 9/26/13.

*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 East Neck Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to Stipulation and Order NH-15-039 issued November 3, 2015 for surveillance findings on March 21, 2014. Deficiencies were found under 10NYCRR 415.3(e)(1)(ii) Residents Rights to Accept/Refuse Treatment- Right to Formulate Advance Directives, 10NYCRR 415.26 Administration and 10NYCRR 415.27(a-c) Administration Quality Assessment and Assurance.

A review of Mills Pond Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-17-050 issued September 18, 2017 for surveillance findings on July 12, 2017. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care: Medication Errors.

A review of operations for The Citadel Rehab and Nursing Center at Kingsbridge for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-205 issued November 29, 2016 for surveillance findings on August 1, 2016. Deficiencies were found under 10NYCRR 415.12(h)(1) Quality of Care Accident Free Environment and 10NYCRR 415.26 Administration.
- The nursing home paid a CMP of \$20,737.60 for the survey dated August 1, 2016.

A review of operations for Cassena Care at New Britain for the period identified above reveals the following:

- The facility was fined \$1,750 by the State of Connecticut for a survey on September 15, 2016 for F tag 309-Quality of Care.
- The facility incurred a Civil Money Penalty of \$17,821.05 for survey findings on September 15, 2016.

A review of operations for Cassena Care at Norwalk for the period identified above reveals that the facility was fined by the state of Connecticut for the following:

- The facility was fined \$1,020 for the survey on September 5, 2013 for F Tag 309- Provide necessary care and services to maintain highest well-being of each resident and F Tag 323 -Free of Accidents: Hazards/supervision/devices.
- The facility was fined \$360 for the survey on October 17, 2013 for Tag F 323- Free from accident hazards and risks, supervision to prevent avoidable accidents.
- The facility was fined \$1,160 for the survey on December 23, 2017 for Tag F 323- Free from accident -Fall in shower.
- The facility was fined \$1,370 for the survey on February 28, 2014 for Tag F F309G- Provide care/services for highest well-being, F314 G- Treatment/services to prevent/heal pressure sores.
- The facility was fined \$3,000 for the survey on January 26, 2016 for Tag F223- Protect resident from all abuse, physical punishment, and being separated from others.
- The facility was fined \$2,370 and \$3,000 for the survey on March 31, 2016 for Tag F224 Prohibit mistreatment/neglect/misappropriation.
- The facility was fined \$2,530 for the survey on July 13, 2017 Free of Accident Hazards/Supervision/Devices.

The facility incurred the following Civil Money Penalties for the period identified above:

- \$7,850 for survey findings on September 5, 2013.
- \$13,650 for survey findings on February 28, 2014.
- \$6,500 for survey findings on January 26, 2016.
- \$8,750 for survey findings on March 31, 2016.
- \$2,315.95 for survey findings on September 15, 2016.

*The applicant has signed an affidavit signed attesting that none of the above fines are repetitive.*

A review of operations for Beach Gardens Rehab and Nursing Center, Bronx Gardens Rehabilitation and Nursing and Nursing Center, Brooklyn Gardens Nursing & Rehabilitation Center, Carillon Nursing & Rehabilitation Center, Fordham Nursing and Rehabilitation Center, Hudson Pointe at Riverdale Center for Nursing & Rehabilitation, Long Beach Nursing and Rehabilitation Center, Morningside Nursing and Rehabilitation Center, Ross Center for Nursing and Rehabilitation, Sayville Nursing and Rehabilitation Center, Peninsula Nursing and Rehabilitation Center, Sea Crest Nursing and Rehabilitation, Shore View Nursing and Rehabilitation Center, The Plaza Rehab and Nursing Center, Upper East Side Rehabilitation and Nursing Center, and Workmen's Circle Multicare Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

The applicant has submitted an affidavit which attests that there have been no enforcement actions for Cassena Care at Stamford in the State of Connecticut for the periods identified above which results in a conclusion of substantially consistent high level of care.

A review of operations for Cassena Care Dialysis at Peninsula, East Neck Dialysis Center and Workmen's Circle Dialysis Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.



A review of Ultimate Care LLC (LHCSA) for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements

Quality Review

Facility	Overall	Health Inspection	Quality Measures	Staffing	NYS Quintile
Barnwell Nursing and Rehabilitation Center	*	*	**	**	5
East Neck Nursing & Rehab Center	*****	****	*****	**	4
Mills Pond Nursing and Rehabilitation Center	**	***	****	*	4
Sayville Nursing and Rehabilitation Center	***	**	*****	**	5
Workmens Circle Multicare Center	*****	*****	*****	**	2
Shore View Nursing & Rehabilitation Center	*****	*****	*****	**	5
Morningside Nursing and Rehabilitation Center	*****	*****	*****	*	4
Peninsula Nursing and Rehabilitation Center	*	**	****	*	5
Upper East Side Rehabilitation and Nursing Center	*****	****	*****	**	Not Available
Sea Crest Nursing and Rehabilitation Center	*****	*****	*****	***	2
Fordham Nursing and Rehabilitation Center	****	****	*****	*	3
Long Beach Nursing and Rehabilitation Center	***	**	*****	**	Not Available
Carillon Nursing & Rehab Center	****	***	*****	**	3
Brooklyn Gardens Nursing & Rehabilitation Center	****	***	*****	Not Available	3
Beach Gardens Rehab and Nursing Center	****	***	*****	**	Not Available
The Citadel Rehab & Nursing Ctr at Kingsbridge	*	*	****	*	2
Hudson Pointe at Riverdale Ctr For Nrsg And Rehab	****	***	*****	**	4
Bronx Gardens Rehabilitation & Nursing Center	Not Available	**	*****	Not Available	Not Available
The Plaza Rehab and Nursing Center	*****	*****	*****	*	Not Available
Ross Center for Nursing and Rehabilitation	***	**	*****	***	3

**CT**

Cassena Care at New Britain	**	*	*****	****
Cassena Care at Norwalk	*	*	****	***
Cassena Care at Stamford	*****	***	*****	****

With regard to the nursing homes with a quality score of 1 or 2, the applicant has stated they have responded by replacing the Administrator and Director of Nursing. They have increased staff training and have implemented a continuing education program for staff. They are also working with the current unions to increase the number of RN's and in some cases, reduce the number of LPN's.

**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. They will however, conduct a full review of existing staff levels. If a need is found in a particular discipline, a staffing agency may be used to immediately fill that staffing area.

**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.**

<b>Financial Analysis</b>
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**Asset Purchase Agreement**

The applicant has submitted an executed APA for the transfer of the operations, which is summarized below:

<b>Date:</b>	Entered into on January 31, 2017, effective as of February 1, 2017.
<b>Premises:</b>	The RHCF located at 520 Prospect Place, Brooklyn, New York
<b>Seller:</b>	Center for Nursing & Rehabilitation, Inc.
<b>Buyer:</b>	Prospect Acquisition I, LLC
<b>Assets Acquired:</b>	Non-fixed equipment, the assigned contracts, all cash, deposits, and cash equivalents in the new Accounts as of the Closing Date, all retroactive rate increases relating to services rendered by the Business on and after the Effective Date, all resident records and other records of those residents who are being treated in connection with the Business on and after the Effective Date, copies of all the business records related to an used solely by the Company in the operation of the Business, the Medicare and Medicaid provider numbers and Medicare and Medicaid provider agreements from the Business, to the extent assignable, any and all permits of the Company related solely to Business issued by a governmental entity, resident/patient prepayments for services rendered on and after the Effective Date, security deposits relating solely to the Business, any inventory in Stock at the Business at the time of Closing, all telephone numbers and for similar numbers used solely in the conduct of the Business, any right to receive or expectancy of the Company in Vital Access/Safety Net Provider Program grant funds to the extent that such grant funds were awarded to the Company prior to the Effective Date and related to dates of service on and after the Effective Date, all accounts receivable, billed and unbilled, of the Business for date of service prior to the Closing Date and all rights to proceeds of the Universal Settlement.
<b>Excluded Assets:</b>	All real estate, resident records, Company's corporate records, any personnel records that is required by Law to retain in its possession, credits, prepaid expenses prior to the Effective Date, the names "Center for Nursing & Rehabilitation" and "Center Light" and any and all rights to the Intellectual Property of the Company, all assets of the Employee Plans, any permits of the Company issued by a governmental entity that are not related solely to the Business and all tax credits,

	refunds, recoveries and similar benefits to the Company or in respect of any taxes paid by the Company.
Assumed Liabilities:	All claims, liabilities and obligations of any kind or nature (including accounts payable), all liabilities and obligations of the Company under the Assignee Contracts from and after the Effective Date, all vendor liability and trade accounts payable for the Business before the Effective Date and all liabilities under the Promissory Note. The assumed liabilities are estimated at \$1,986,000.
Purchase Price:	\$1,000,000
Deposit:	\$300,000 on Effective Date for immediate use by the Company in its sole discretion.
Additional Deposits:	\$500,000 if the Closing has not occurred within 18 months of Effective Date, Company or Buyer may extend Closing by additional six months (First Extended Outside Date).
Payment of Purchase Price:	On the Closing Date, Buyer shall deliver to the Company by wire transfer of the bank account designated by the Company an amount in cash equal to the Purchase Price (i) minus the Deposit and Additional Deposits, if any, and plus or minus all of the amounts due and owing under this Agreement, including the Pro-rations and the Closing Adjustment.

The applicant will meet the purchase price 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/r 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 audit liabilities.

#### Purchase and Sale Agreement for the Real Estate

The applicant has submitted an executed real estate PSA. The transaction will close simultaneously with the APA upon approval by the PHHPC. The terms are summarized below:

Date:	January 31, 2017
Premises:	The RHC located at 520 Prospect Place, Brooklyn, New York.
Seller:	Center for Nursing & Rehabilitation, Inc.
Purchaser:	Prospect Acquisition II, LLC
Purchase Price:	\$64,000,000
Payment of Purchase Price:	Payable by (i) the payment of the Down payment of \$3,700,000 in immediate funds and (ii) the balance in cash by wire transfer at the Closing as directed by Seller in writing at least two business days prior to the Closing.

The applicant's financing plan appears as follows:

Equity (members)	\$ 6,400,000
Bank Loan (interest at 3.25% above one-month LIBOR (approx. 1.24% as of 8/23/17), 10-year term, 25-year amortization period)	57,600,000

When the balloon payment becomes due after the tenth year, the assessment of the annual rent payments due the landlord over the ten-year term indicates that the payments will exceed the cumulative total annual debt service due on the loan by \$34,528,804. This excess will enable the landlord to establish a sinking fund to finance the balloon payment. Given the excess rent over debt service requirements, the profitability of the other nursing home operations of the proposed realty members, and the realty members current liquid assets per their personal net worth statements available to date, it appears that the realty entity will have sufficient funds for the balloon payment should acceptable financing terms not be available at the time of refinancing.

## Lease Rental Agreement

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

Premises:	A 320-bed nursing home located at 520 Prospect Place, Brooklyn, New York
Lessor:	Prospect Acquisition II, LLC
Lessee:	Prospect Acquisition I, LLC
Term:	10 years
Rental:	Year One \$6,600,000 base rent with 2% increase annually
Provisions:	Lessee to pay utilities (electricity, telephone, oil, water, sewer) and real estate taxes

This lease agreement will be a non-arm's length lease arrangement since the lessor and lessee have identical ownership.

## Operating Budget

The applicant has submitted an operating budget, in 2017 dollars, for the first year after the change in operator, as 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>Revenues</u>				
Medicaid FFS	\$309.54	\$24,798,983		0
Medicaid MC		0	\$307.20	\$28,980,400
Medicare FFS	\$596.45	2,246,218		0
Medicare MC		0	704.34	11,344,800
Commercial FFS	\$297.98	8,928,585	367.75	846,200
Private Pay	\$394.22	611,041	367.75	846,200
Other		723,428		59,900
Non-Operating Revenues		<u>3,424,675</u>		<u>0</u>
Total Revenues		\$40,732,930		\$42,077,500
<u>Expenses</u>				
Operating	\$338.07	\$39,011,453	\$289.13	\$33,263,500
Capital	<u>22.34</u>	<u>2,578,073</u>	<u>62.82</u>	<u>7,226,745</u>
Total Expenses	\$360.41	\$41,589,526	\$351.95	\$40,490,245
Net Income		<u>(\$856,596)</u>		<u>\$1,587,255</u>
Utilization (patient days)		115,396		115,047
Occupancy		98.80%		98.50%
Breakeven Occupancy				94.78%

The following is noted with respect to the operating budget:

- Employee benefit expenses are decreasing. The current operator receives benefits as allocated from a related entity, which include Deferred Compensation Plans. The projected budget utilizes the benefit package currently in effect for the buyer's other unionized skilled nursing home facilities.
- Other operating revenues in the current year consisted of Meals Revenue (\$519,697), Café Revenues (\$147,350) and Other Miscellaneous Items (\$56,381). In the projections, the applicant assumed the continuation of the other miscellaneous items but did not project the meals and café revenues.
- Non-operating revenues consisted of grant revenues, as well as services sold to related parties of the current operator. None of these revenues were projected going forward.
- Other direct expenses are decreasing by \$4,152,491 during the first year. Items included in this reduction are \$1,928,693 of Administrative Consulting Expense and an additional \$243,230 for Administrative Consultants. Additionally, \$1,150,000 of bad debts were grouped in other direct expenses in accordance with the RHC-4 reporting guidelines, but removed from the projections going forward. The remaining cost reductions are anticipated from a reduction in utility expenses,

repairs and maintenance expenses, and additional costs allocated from related parties to the current operator.

- The reason for the shift in utilization is that the prior operator included all Managed Care as part of Commercial Insurance. In the projected year one budget, these revenue sources are moved to their correct payor categories. Additional changes were made to bring utilization in line with the buyer's current operations.
- Commercial rates are increasing from the current year to the first year. The prior operator included Managed Care days and revenue as part of Commercial Insurance, which distorted the presentation. The applicant's projections moved these revenue source to their correct categories, resulting in a true presentation of the actual Commercial Insurance rates.
- The Medicare rate was based on a benchmark of the proposed operator's existing NYC Metro facilities, increased 2% per year to account for changes in the CMS promulgated PPS rates.
- The year one Medicaid and Medicare utilization was projected using benchmark data from the proposed buyers' other nursing home operations, as well as other freestanding proprietary nursing home operators in the region.
- The applicant indicated that they will be in compliance with 10NYCRR Section 670.3(c)(2) regarding Medicaid admissions going forward, and notes that the current operator has a high Medicaid occupancy percentage. The reporting anomaly with MLTC patients may have distorted the historical percentage of Medicaid admissions.
- Utilization broken down by payor source during the first year is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	69.43%	0%
Medicaid MC	0%	82.0%
Medicare FFS	3.26%	0%
Medicare MC	0%	14.0%
Commercial FFS*	25.97%	2.0%
Private Pay	1.34%	2.0%

\* Overstated for current year as it incorrectly includes all managed care payor statistics.

#### Capability and Feasibility

The purchase price for the operations is \$1,000,000 and will be met via equity. The purchase for the real estate is \$64,000,000 and will be met as follows: Equity of \$6,400,000 via the members and a loan of \$57,600,000 at an interest rate of 3.25% above the one-month LIBOR rate (approximately 1.22889% as of 8/4/17) for a ten-year term and a 25-year amortization period. Bank of America has provided a letter of interest for the financing at the stated terms. As previously noted, the proposed realty members do not currently have sufficient liquid resources to fund the balloon payment, but assessment of the annual rent payments due the landlord over the ten-year term indicates that the payments will exceed the cumulative total annual debt service due on the loan by \$34,528,804. The excess would enable the landlord to establish a sinking fund to finance the balloon payment. Given the excess rent over debt service requirements, the profitability of the proposed realty members other nursing home operations, and the realty members current liquid assets per their personal net worth statements available to date, it appears that the realty entity will have sufficient funds for the balloon payment should acceptable financing terms not be available at the time of refinancing.

Working capital requirements are estimated at \$6,748,374, which is equivalent to two months of first year expenses. The applicant will provide equity via the proposed members personal net worth. Pasquale DeBenedictis and Alex Solovey have submitted affidavits indicating that they will provide equity that is disproportionate to their ownership interests. BFA Attachment A is the personal net worth statements of the proposed members of Prospect Acquisition I, LLC (operating entity) and Prospect Acquisition II, LLC (realty entity), which indicates the availability of sufficient funds for the equity contribution. BFA Attachment C is the pro forma balance sheet of Prospect Acquisition I, LLC as of the first day of operation, which indicates a positive net asset position of \$9,881,874. The submitted budget projects \$1,587,258 of net income in Year One after the change in ownership. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is the financial summary of Center for Nursing & Rehabilitation, Inc. As shown, the entity had an average negative working capital position and an average positive net asset position from 2014 through 2016. Also, the entity had an average excess of revenues over expenses of (\$535,268) from 2014 through 2016. The applicant indicated that the reason for the negative working capital position is that the facility had \$1,718,665 due to related entities, which will not be assumed by the buyers, and \$4,722,841 as due to third parties. Liabilities of \$2.8 million were recouped as part of operations in 2015 and are not recurring liabilities going forward. The applicant indicated that the reason for the losses in 2014 and 2016 were the result of old existing contracts that have not been renegotiated in years, including managed care contracts, and a shift to changes in payments such as value based reimbursement.

The applicant implemented the following steps to improve operations: since February 2017, two of the proposed members of the new operator (Pasquale DeBenedictis and Alex Solovey) have been the Chief Financing Officer and Chief Operating Officer. This has helped with revenue cycle over the past four plus months to stabilize operations.

BFA Attachment D is a financial summary of the other nursing homes that the proposed members have ownership interests in. As shown, all nursing homes had an average positive working capital position except for Terrace Acquisition, LLC. All entities had an average positive net asset positions and achieved average net incomes during the period shown.

BFA Attachment F is the internal financial statement of Center of Nursing & Rehabilitation as of August 31, 2017. As shown, the entity had a positive working capital position and a positive net asset position. Also, the entity achieved an income from operations of \$3,128,183 through August 31, 2017.

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

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Personal net worth statement- Proposed members of Prospect Acquisition I, LLC
BFA Attachment B	Financial Summary - Center for Nursing & Rehabilitation, Inc.
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary- Other nursing homes that the proposed members own.
BFA Attachment E	Nursing Homes proposed members own with ownership interest.
BFA Attachment F	August 31, 2017 internal financial statements of Center of Nursing & Rehabilitation.

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 11th day of October 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 Prospect Acquisition I, LLC Center for Nursing & Rehabilitation as the new operator of Center for Nursing & Rehabilitation, Inc., a 320-bed RHCF, located at 520 Prospect Place, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171186 E

Prospect Acquisition I, LLC  
d/b/a Center for Nursing & Rehabilitation

APPROVAL CONTINGENT UPON:

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



11. Submission of an Attestation for Service Agreements, 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: Behdokht Kangarlu d/b/a Hopewell Health Home Care  
Address: Fishkill  
County: Dutchess  
Structure: Sole Proprietorship  
Application Number: 2149L

Description of Project:

Behdokht Kangarlu d/b/a Hopewell Health Home Care, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Hopewell Health Home Care is the following individual:

Behdokht Kangarlu, HHA, PCA  
Associate broker, Siderow Residential Group

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the New York State Home Care Registry revealed that Behdokht Kangarlu is certified as a Home Health Aide and a Personal Care Aide with no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 1121 Jefferson Boulevard, Fishkill, NY 12524:

Dutchess                  Westchester                  Orange                  Ulster                  Putnam

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: August 24, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: EZ Living Home Care of NY, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2334L

Description of Project:

EZ Living Home Care of NY, 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: Felix Slepitsky to own 66 2/3 shares, Victor Izhak to own 66 2/3 shares, and Mikhail Litvin to own 66 2/3 shares.

The proposed Board of Directors of EZ Living Home Care of NY, Inc. comprises the following individuals:

Felix Slepitsky, LMT (NY & FL), President  
Administrator, EZ Living Home Care of NY, Inc. (CDPAP-FI)  
Massage Therapist, ORAMED  
Massage Therapist/Physical Therapy Aide, Top Care Physical Therapy

Mikhail Litvin, PCA, HHA, Vice President  
Coordinator, EZ Living Home Care of NY, Inc. (CDPAP-FI)  
Real Estate Paralegal, Yuriy Moshes, P.C.  
Real Estate Sales, Real NY Homes Corp.

Victor Izhak, Secretary/Treasurer  
Coordinator, EZ Living Home Care of NY, Inc. (CDPAP-FI)  
President/Real Estate Property Manager, 5721, LLC  
Project Management/Investor, Carrus Mobile, 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 healthcare professionals associated with this application.

The Florida Department of Health indicates no issues with the licenses of the healthcare professionals associated with this application.

Mikhail Litvin was certified as a Home Health Aide and Personal Care Aide before the New York State Home Care Registry was initiated. Certification was verified by obtaining copies of the HHA and PCA Certificates of Completion.

The applicant proposes to serve the residents of the following counties from an office located at 251 East 5<sup>th</sup> Street, Unit 110, Brooklyn, New York 11218:

Kings  
Bronx

Queens  
Nassau

Richmond  
New York

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care Aide
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Equipment, Supplies and Appliances		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 29, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: ProHealth Homecare, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2335-L

Description of Project:

ProHealth Homecare, 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 are to be solely owned by Dr. Samer Chahine.

The proposed Board of Directors of ProHealth Homecare, Inc. comprises the following individual:

Samer Chahine, DMD, Director/Owner  
New York, New Jersey & Connecticut Licensed Dentist  
Dentist, New York Family Dental Care

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.

The State of New Jersey Department of Law & Public Safety, Division of Consumer Affairs and the State of Connecticut Department of Public Health indicated no issues with the license of the healthcare professional associated with this application.

The State of Connecticut indicated 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 334-86 Street, 1<sup>st</sup> Floor, Brooklyn, New York 11209:

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
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: June 29, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: OnSite LifeCare, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2339-L

Description of Project:

OnSite LifeCare, 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 are to be solely owned by Djenane Bartholomew.

The proposed Board of Directors of OnSite LifeCare, Inc. comprises the following individual:

Djenane Bartholomew, LPN, RN, DNP, (FKA Djenane Thibaut), President  
Nursing Care Coordinator, Visiting Nurses Service of New York  
Hospice Interdisciplinary Team Member, Vitas Hospice

Affiliation:

Onsite Lifecare of NJ, Inc. (NJ Health Care Services Firm, 2016 – Present)

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 professional associated with this application.

The State of New Jersey Department of Law & Public Safety, Division of Consumer Affairs indicated 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 22 Cortlandt Street, Suite 1619, New York, New York 10007:

New York	Bronx	Kings
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Equipment, Supplies & Appliances		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Onsite Lifecare of NJ, Inc. (2016 – Present)

The State of New Jersey, Office of the Attorney General, Division of Consumer Affairs, Office of Consumer Protection 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 29, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Healthy Aging Homecare, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2340-L

Description of Project:

Healthy Aging Homecare, 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 are to be solely owned by Fulop Lebowitz.

The proposed Board of Directors of Healthy Aging Homecare, Inc. comprises the following individual:

Fulop Lebowitz, PCA, President  
Administrator, STG Solution's, Inc.

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 126 Nostrand Avenue, 2<sup>nd</sup> Floor, Brooklyn, New York 11205:

Kings	Queens	Bronx
Richmond	New York	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	Medical Equipment and Supplies	

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 29, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Galaxy Home Care Inc.  
Address: Kew Gardens  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2539-L

Description of Project:

Galaxy 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: Yelena Sokolsky owns 100 shares and Igor Rick owns 100 shares.

The Board of Directors of Galaxy Home Care Inc. comprises the following individuals:

Yelena Sokolsky, RN (FKA Yelena Berger), President  
VP of Operations, Excellent Home Health Care

Igor Rick (FKA Igor Rik), Vice President  
Ophthalmic Dispensing License  
Optician/President, Cohen's Fashion Optical

The Office of the Professions of the State Education Department of the State of New York indicates no issues with the licenses of the healthcare 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 119-40 Metropolitan Avenue, Kew Gardens, New York 11415:

Queens	Kings	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
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: June 29, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Apple Best Home Care Agency Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2581L

Description of Project:

Apple Best 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.

Apple Best Home Care Agency Inc. has authorized 200 shares of stock which are owned solely by Mei Yu Liang.

The Board of Directors of Apple Best Home Care Agency Inc. is comprised of the following individuals:

Mei Yu Liang, DNP, FNP, RN – President  
Family Practice Doctor of Nursing Practice, Dr. Ye's Medical Office P.C.  
President for Companion Care, Apple Best Home Care Agency Inc.

Melissa Liang – Vice-President/Secretary  
Phone Interviewer, Teach for America

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 licenses of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 2750 East 22<sup>nd</sup> Street, Brooklyn, New York 11235:

Kings                  Queens                  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

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: June 13, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: DMV Home Care, Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2623-L

Description of Project:

DMV 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 David Modnyy.

The Board of Directors of DMV Home Care, Inc. comprises the following individual:

David Modnyy, Chairman/Treasurer  
Owner/Administrator, Prestige LHCSA Management, Inc. d/b/a Hand in Hand Together Home Care

Affiliations:

Aza Home Health Care, LLC d/b/a Hand in Hand Together Home Care (LHCSA, 2013 – 2015)

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 672 Britton Avenue, Staten Island, New York 10304:

Richmond	New York	Kings
Queens	Bronx	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

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Prestige LHCSA Management, Inc. d/b/a Hand in Hand Together Home Care (2015 – Present)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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 15, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: C.A.R.E. Mavens Home Health Agency LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2625-L

Description of Project:

C.A.R.E. Mavens Home Health Agency 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 C.A.R.E. Mavens Home Health Agency LLC comprises the following individuals:

Amber Martin-Ross, MD – 50%  
Georgia Medical License  
Anesthesiologist, Wellstar Douglas Hospital

Jacklyn Sukie (FKA Jacklyn Beckford, Jacklyn Grant, Jacklyn Holden-Beckford) – 50%  
Unemployed

The Board of Directors of C.A.R.E. Mavens Home Health Agency LLC comprises the following individuals:

Amber Martin-Ross, MD, Chairperson/Board President  
Disclosed Above

Jacklyn Sukie, Vice President/Treasurer  
Disclosed Above

Pamela Martin, Secretary  
Illinois and Indiana Real Estate License  
Owner, Realty Service Consortium

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 Georgia Composite State Board of Medical Examiners indicates no issues with the license of the healthcare professional associated with this application.

The State of Illinois Department of Financial and Professional Regulation indicates no issues with the license of the real estate salesperson associated with this application.

The State of Indiana indicates no issues with the license of the real estate salesperson associated with this application

The applicant proposes to serve the residents of the following counties from an office located at 2220 West 11<sup>th</sup> Street, Apartment 7D, Brooklyn, New York 11223:

Kings  
Queens

New York  
Richmond

Bronx  
Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Speech-Language Pathology	Medical Social Services
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.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: August 25, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Key To Life Homecare, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2631L

Description of Project:

Key To Life Homecare, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which, are owned as follows: Henrich Chigirinsky owns 120 shares and Anthony Trochtchenkov owns 80 shares.

The Board of Directors of Key To Life Homecare, Inc. comprises the following individuals:

Henrich Chigirinsky, President  
President/Owner, Key To Life Adult Daycare, Inc.  
President/Owner, South Orange Medical Supply

Anthony Trochtchenkov, Vice-President  
President/Owner, Sequoia Consulting, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 229 East 2<sup>nd</sup> Street, Unit 1A, New York, New York 10009:

New York	Kings	Queens
Richmond	Bronx	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

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 22, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Help From The Heart LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2633-L

Description of Project:

Help From The Heart 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 Help From The Heart LLC comprises the following individuals:

Flora Lax, President/Secretary – 82%  
Special Education Teacher, Through Ages, Inc.

Howard Neufeld, Vice President/Treasurer – 18%  
Executive Director, Boulevard ALP

Affiliations:

Boulevard ALP (2004 – Present, EHP/ALP)

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 211 Arkansas Drive, Brooklyn, New York 11234:

Kings	Queens	Bronx
New York	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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):

Boulevard ALP

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.

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: L & G Enterprises USA LLC  
d/b/a L & G Home Care Agency  
Address: Fresh Meadows  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2636L

Description of Project:

L & G Enterprises USA, LLC d/b/a L & G Home Care Agency, 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 L & G Enterprises USA, LLC d/b/a L & G Home Care Agency comprises the following individuals:

Larisa Yushuva, RN – 70%  
MDS Coordinator, Crown Heights Center for Nursing and Rehabilitation

Gavriel Yushuva – 30%  
Associate, A to Z Enterprises Solutions 123, LLC

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 healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 77-41 170<sup>th</sup> Street, Fresh Meadows, New York 11366:

Queens	Kings	New York
Richmond	Bronx	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	

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 1, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Amelia Home Care, Inc.  
Address: Rego Park  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2640-L

Description of Project:

Amelia 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: Henrich Chigirinsky owns 120 shares and Anthony Trochtchenkov owns 80 shares.

The Board of Directors of Amelia Home Care, Inc. comprises the following individuals

Anthony Trochtchenkov, President  
President/Owner, Sequoia Consulting, Inc.

Henrich Chigirinsky, Vice-President  
President/Owner, Key To Life Adult Daycare, Inc.  
President/Owner, South Orange Medical Supply

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 63-10 Dieterle Crescent, 2<sup>nd</sup> Floor, Rego Park, New York 11374:

Queens	Kings	New York
Richmond	Bronx	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

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 22, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Shalom Home Care Agency, Inc.  
Address: Rosedale  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 151254-E

Description of Project:

Shalom 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.

Shalom Home Care Agency, Inc. has authorized 200 shares of stock which are owned solely by Yvena Michel.

The Board of Directors of Shalom Home Care Agency, Inc. is comprised of the following individuals:

Yvena Michel, HHA, PCA – Vice-President/Secretary Home Health Aide, Better Home Care Agency, Inc.	Fabien Jules, LPN - President/Treasurer Home Care Nurse, TFC Service Bureau
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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.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA and PCA, is currently employed as a HHA, and has no convictions or findings.

The Office of Professions of the State of 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 139-11 250<sup>th</sup> Street, Rosedale, New York 11422:

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

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 18, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: AAA HealthSource, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 152053

Description of Project:

AAA HealthSource, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

AAA HealthSource, Inc. has authorized 200 shares of stock which are owned solely by Anthony Millar.

The Board of Directors of AAA HealthSource, Inc. is comprised of the following individual:

Anthony Millar, HHA – President  
Account Executive, Contour Mortgage Corporation

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA and has no convictions or findings.

Anthony Millar disclosed that on October 2, 2013 he appeared in the Criminal Court of the City of New York and was convicted of DWI, Vehicle and Traffic Law § 1192.2. His license was revoked for 6 months, and he was ordered to pay necessary fines, attend a driving course, and have an Ignition Interlock Device (IID) installed in his vehicle.

The applicant proposes to serve the residents of the following counties from an office located at 111 East 125<sup>th</sup> Street, First Floor, New York, New York 10035:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Durable Medical Supplies and Equipment	
Homemaker	Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 17, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Blue Ridge Home Care, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 152103

Description of Project:

Blue Ridge 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.

Blue Ridge Home Care, Inc. has authorized 10,000 shares of stock which are owned as follows: Tunji Ogunmola owns 8000 shares, Oluwatobi Ogunmola owns 1000 shares, and Ayodele Ogunmola owns 1000 shares.

The Board of Directors of Blue Ridge Home Care, Inc. is comprised of the following individuals:

Tunji Ogunmola – President/Treasurer  
President/CEO, Blue Ridge Home Health Care  
Services, Inc. (LHCSA, PA)  
Program Director, S.G. Isaacs, Inc.

Affiliations

Blue Ridge Home Health Care Services, Inc. (PA)

Oluwatobi Ogunmola – Vice-President  
Student/Unemployed

Ayodele Ogunmola – Secretary  
Secretary, Blue Ridge Home Health Care  
Services, Inc. (LHCSA, PA)

Affiliations

Blue Ridge Home Health Care Services, Inc. (PA)

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 1370 Broadway, 5<sup>th</sup> Floor, Suite 558, New York, New York 10018:

New York	Bronx	Kings
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Blue Ridge Home Health Care Services, Inc.  
(Home Care Agency, Philadelphia. PA, 2012-present)

The information received from the State of Pennsylvania indicated that the home care agency is in current compliance and that no enforcement actions have been taken against the agency.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: August 17, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review]

Name of Agency: Fidelity Home Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 152107

Description of Project:

Fidelity Home Care, Inc., a proposed business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant proposes to authorized 200 shares of stock which will be owned as follows:

Boris Alergant, HHA – 200 Shares  
Corporate Banking Analyst, MUFG Union Bank

The proposed sole member of the Board of Directors of Fidelity Home Care, Inc is:  
Boris Alergant  
(Previously Disclosed)

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.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified 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 1829 E 13th Street, Suite 1B, Brooklyn, New York, 11229:

Bronx	Kings	New York	Richmond
Queens	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 17, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review]

Name of Agency: Regal Home Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 152159

Description of Project:

Regal 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 common stock which are owned as follows:

Keith Reich, Esq., CPA – 200 Shares  
Associate/Accounting, Cohnreznick

The following individual is the sole member of Board of Directors of Regal Home Care, Inc.:

Keith Reich - President  
(Previously Disclosed)

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 licensure of the certified public accountant associated with this application.

A Certificate of Good Standing was received for Keith Reich.

The applicant proposes to serve the residents of the following counties from an office located at 251 East 5<sup>th</sup> Street, Brooklyn, New York 11218:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper
Medical Equipment, Supplies and Appliances			

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 24, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review]

Name of Agency: Home Care of Northern New York, LLC  
Address: Potsdam  
County: St. Lawrence  
Structure: Limited Liability Company  
Application Number: 152344

Description of Project:

Home Care of Northern New York, 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 Home Care of Northern New York, LLC are comprised of the following individuals:

Mark E. Hamister, Member - 95%  
Chairman/CEO, Hamister Group of Florida, Inc.

Daniel M. Hamister, Member – 5%  
Executive Vice President/Chief Investment Officer,  
Hamister Group, LLC

Affiliations:

- Brompton Heights, Inc. (AH) (1983 – Present)
- Orchard Heights, Inc. (AH) (1991 – Present)
- Heather Heights of Pittsford, Inc. (AH) (1999 – Present)
- Health Services of Northern New York (CHHA/LTHHCP) (1985 – Present)
- Forest Hill Heights, LLC (Assisted Living, MD) (11/2015 – Present)

Affiliations:

- Brompton Heights, Inc. (AH) (1983 – Present)
- Orchard Heights, Inc. (AH) (1991 – Present)
- Heather Heights of Pittsford, Inc. (AH) (1999 – Present)
- Health Services of Northern New York (CHHA/LTHHCP) (1985 – Present)
- Forest Hill Heights, LLC (Assisted Living, MD) (11/2015 – Present)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Brompton Heights, Inc. (AH)
- Orchard Heights, Inc. (AH)
- Heather Heights of Pittsford, Inc. (AH)
- Health Services of Northern New York (CHHA/LTHHCP)
- Forest Hill Heights, LLC (Assisted Living, MD) (11/2015 – Present)

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
Health Services of Northern New York	2.5 out of 5 stars

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.

**Brompton Heights** was fined one thousand dollars (\$1,000) pursuant to stipulation and order ACF-12-020 dated August 21, 2012 for violation to 18 NYCRR 486.5(a)(4)(iii), endangerment, identified in an inspection report dated April 4, 2012.



**Brompton Heights** was fined eight hundred dollars (\$800) pursuant to stipulation and order ACF-14-012 dated March 18, 2014 for violations to 18 NYCRR 487.7(f)(12)(iii), Resident Services, identified in inspection reports dated March 21, 2013 and July 26, 2013.

**Brompton Heights** was fined six thousand six hundred and sixty dollars (\$6,660.00) pursuant to stipulation and order ACF-17-051 dated August 16, 2017 for violations to 18 NYCRR 487.8(e)(1), Food Service and 18 NYCRR 487.9(a)(8), Personnel, identified in inspection reports dated November 18, 2016 and March 24, 2017.

**Orchard Heights** was fined two thousand dollars (\$2,000.00) pursuant to stipulation and order ACF-12-024 dated September 25, 2012 for violations to 18 NYCRR 487.8(e)(1), Food Service, identified in inspection reports dated January 28, 2011 and May 24, 2011.

**Orchard Heights** was fined forty thousand dollars (\$40,000.00) pursuant to stipulation and order ACF-16-147 dated October 24, 2016 for violations to 18 NYCRR 486.5(a)(4)(v), Endangerment, identified in inspection reports dated December 28, 2015 and July 1, 2016.

**Heather Heights of Pittsford** as fined four thousand six hundred and ninety-five dollars (\$4,695.00) pursuant to stipulation and order ACF-16-053 dated August 16, 2017 for violations to 18 NYCRR 487.7(g)(1)(ii-xiii), Resident Services and 487.8(c), Food Service, identified in inspection reports dated November 30, 2016 and March 24, 2017.

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 State of Maryland has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 56 Market Street, Potsdam, New York 13676:

Jefferson                      Lewis                              St. Lawrence

The applicant proposes to provide the following health care services:

Nursing                      Personal Care                      Physical Therapy                      Homemaker                      Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:    Contingent Approval  
Date:                      September 7, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Capital District Home Care Agency, LLC  
Address: Colonie  
County: Albany  
Structure: Limited Liability Company  
Application Number: 161375

Description of Project:

Capital District Home Care Agency, 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 Capital District Home Care Agency, LLC is comprised the following individual:

Judith Lutwama, LPN, RDH – 100%  
LPN, Hudson Park Nursing & Rehab Center  
LPN, Medical Staffing Network

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 licenses 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 160 Osborne Road, Colonie, New York 12205:

Albany	Schenectady	Saratoga
Rensselaer	Columbia	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Medical Social Services	Occupational Therapy
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: August 17, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Embrace Care, LLC  
Address: Rochester  
County: Monroe  
Structure: Limited Liability Company  
Application Number: 162341

Description of Project:

Embrace 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 Embrace Care, LLC comprises the following individuals:

Jason Stott – 33%  
CEO/President, Embrace Care (companion care)

David Georgiev – 33%  
Managing Partner/Financial Advisor, Monarch Wealth Management  
CFO/Managing Partner, Embrace Care (companion care)

Matthew Humby – 33%  
Communication and Fare Collection Supervisor, Rochester Genesee Transportation Authority  
COO/Managing Partner, Embrace Care (companion care)

Rhonda Humby – 1%  
Medical Transcriptionist, Canandaigua Orthopaedic Associates, PC  
Medical Transcriptionist, Gastroenterology Associates  
Vice-President/ Managing Partner, Embrace Care, LLC (companion care)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1672 Monroe Avenue, Suite A, Rochester, New York 14618:

Monroe	Livingston	Genesee
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Nutrition	Homemaker	Housekeeper

Jason Stott disclosed that on October 14, 2016 he was charged with Driving Under the Influence. He appeared in the Brockport Village Court, took a plea deal, and was charged with Common Law DWI, Vehicle and Traffic Law § 1192.3. He was required to pay necessary fines, attend a driving course, and have an Ignition Interlock Device (IID) installed in his vehicle for a period of 6 months.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: August 17, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: New York Resorts for Seniors, LLC d/b/a Oasis Home Care  
Address: Monticello  
County: Sullivan  
Structure: Limited Liability Company  
Application Number: 2320-L

Description of Project:

New York Resorts for Seniors, LLC d/b/a Oasis Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA will be affiliated with the Assisted Living Program to be operated by New York Resorts for Seniors, LLC d/b/a The Camelot and Assisted Living Residence.

The members of New York Resorts for Seniors, LLC d/b/a Oasis Home Care comprise the following individuals:

Zhong Mei Huang, Member – 40%  
Manufacturing Manager, Fancy Style Production  
Owner, Travel Inn Motel

Thomas Ting, Member – 38%  
Owner/Director, Enter Equity, Inc.

Affiliations:

- Valley Vista Adult Home (AH/ALP) (07/07-present)
- Valley Vista Home Care (LHCSA) (07/07-present)

Mary Mei, Member – 10%  
Manager, Nu-Design Furniture  
Manager, Travel Inn Motel

Peter Ting, LVN, Member – 10%  
Wellness LVN, La Costa Glen Carlsbad

David Ting, Member – 2%  
Assistant Administrator, New York Senior Care in the  
Valley

Affiliations:

- Valley Vista Adult Home (AH/ALP) (03/09-present)
- Valley Vista Home Care (LHCSA) (03/09-present)

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Valley Vista Adult Home (AH/ALP)
- Valley Vista Home Care (LHCSA)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Valley Vista Adult Home was fined three thousand dollars (\$3,000) pursuant to stipulation and order dated May 30, 2012 for violation to 18 NYCRR 487.11, Environmental Standards, identified in an inspection report dated January 15, 2009, May 5, 2009, October 28, 2009, March 19, 2010, October 6, 2010 and March 8, 2011.

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 applicant proposes to serve the residents of the following counties from an office located at 472-476 Broadway, Monticello, New York 12701:

Delaware                      Orange                      Sullivan                      Ulster

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:    Contingent Approval  
Date:                      July 11, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Sanford Home Care Agency, LLC d/b/a Sanford Home Care Agency  
Address: Flushing  
County: Queens  
Structure: Limited Liability Company  
Application Number: 162538

Description of Project:

Sanford Home Care Agency, LLC d/b/a Sanford Home Care Agency, a limited liability company, requests approval for a change in ownership and change in legal entity of a licensed home care services agency under Article 36 of the Public Health Law.

Sanford Manor Home Care Agency, a partnership, was originally approved as a home care services agency by the Public Health Council at its October 20, 1998 meeting and subsequently licensed as 9976L001 on July 8, 1999.

This LHCSA will be associated with the Assisted Living Program, to be operated by Sanford Home for Adults. The LHCSA and the ALP will have identical ownership.

The membership of Sanford Home Care Agency, LLC d/b/a Sanford Home Care Agency comprises the following individuals:

David S. Edrich, Managing Member – 50%  
Retired

Affiliations:

New Haven Manor Home for Adults	(Adult Home, 1991-present)
New Haven Manor Home Care	(LHCSA, 1999-present)
Sanford Manor Home for Adults	(Adult Home, 2013-present)

Jacob A.M. Elefant, Managing Member – 25%  
Retired

Affiliations:

Riverdale Manor Home for Adults	(Adult Home, 1985-present)
Riverdale Home Care Agency	(LHCSA, 1998-2/6/2017)
Sanford Manor Home for Adults	(Adult Home, 2013-present)

Rivka Dagim – 25%  
Self-employed, Rivka Dagim College Cafeteria

Affiliations:

Riverdale Manor Home for Adults	(Adult Home, 2005-present)
Riverdale Home Care Agency	(LHCSA, 2016-2/6/2017)
Sanford Manor Home for Adults	(Adult Home, 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 140-40 Sanford Avenue, Flushing, New York 11355:

Bronx	Kings	New York
Queens	Richmond	

The applicant proposes to provide the following health care services:

Nursing

Home Health Aide

Personal Care

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

New Haven Manor Home for Adults	(2010-present)
New Haven Manor Home Care	(2010-present)
Riverdale Home Care Agency	(2010-2/6/2017)
Riverdale Manor Home for Adults	(2010-present)
Sanford Manor Home for Adults	(2013-present)

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that New Haven Manor Home for Adults and Sanford Manor Home for Adults have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Riverdale Manor Home for Adults was fined forty-two thousand dollars (\$42,000.00) pursuant to a stipulation and order dated July 5, 2017 for surveillance findings of December 20, 2016. Deficiencies were found under 18 NYCRR 487.7(d)(11), 487.7(f)(5), 487.7(f)(8), 487.7(g)(1)(ii-xiii), 487.7(g)(3) and 487.9(a)(2).

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: July 13, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: The W Group at New Broadview, LLC  
d/b/a New Broadview Manor Home for Adults LHCSA  
Address: Staten Island  
County: Richmond  
Structure: Limited Liability Company  
Application Number: 171031E

Description of Project:

The W Group at New Broadview, LLC d/b/a New Broadview Manor Home for Adults LHCSA, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

New Broadview Manor Home for Adults, LLC d/b/a New Broadview Manor Home for Adults LHCSA was approved for a change of ownership by the Public Health and Health Planning Council at its June 9, 2016 meeting. The agency continued to be licensed as 9910L001, effective August 1, 2016. At that time, the members were Josef Yunger (90%), Jonathan Yunger (5%) and Katherine Yunger (5%).

This LHCSA will be associated with the Adult Home/Assisted Living Program operated by New Broadview Manor Home for Adults, LLC. The LHCSA, Adult Home and Assisted Living Program will have identical ownership.

The membership of The W Group at New Broadview, LLC d/b/a New Broadview Manor Home for Adults LHCSA comprises the following individuals:

<p>Samuel Ari Weiss, MBA – 80% President/CEO, NAE Edison LLC d/b/a Edison Home Health Care</p> <p><u>Affiliations:</u> NAE Edison LLC d/b/a Edison Home Health Care (LHCSA, 2008 – Present) Assistcare Home Health Services LLC d/b/a Preferred Home Care of New York/Preferred Gold (LHCSA, 2010 – Present)</p>	<p>Shmuel Berry Weiss – 20% President/CEO, Assistcare Home Health Services LLC d/b/a Preferred Home Care of New York/Preferred Gold</p> <p><u>Affiliation:</u> Assistcare Home Health Services LLC d/b/a Preferred Home Care of New York/Preferred Gold (LHCSA, 2010 – Present)</p>
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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 Richmond County from an office located at 70 Father Capodanno Boulevard, Staten Island, New York 10305.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

NAE Edison LLC d/b/a Edison Home Health Care (LHCSA, 2008 – Present)  
Assistcare Home Health Services LLC d/b/a Preferred Home Care of New York/Preferred Gold (LHCSA, 2010 – Present)  
New Broadview Manor Home for Adults

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that adult care facilities have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 11, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: New Haven Manor Home Care Agency, LLC  
Address: Far Rockaway  
County: Queens  
Structure: Limited Liability Company  
Application Number: 171394

Description of Project:

New Haven Manor Home Care Agency, LLC, a proposed limited liability company, requests approval for a change in ownership and change in legal entity of a licensed home care services agency under Article 36 of the Public Health Law.

New Haven Manor Home Care Agency, a partnership, was originally approved as a home care services agency by the Public Health Council at its September 26, 1997 meeting and subsequently licensed as 0557L001 on November 5, 1999.

This LHCSA will be associated with the Assisted Living Program, to be operated by New Haven Manor. The LHCSA and the ALP will have identical ownership.

The membership of New Haven Manor Home Care Agency, LLC will be comprised of the following individuals:

David S. Edrich – 97%  
Operator, New Haven Manor

Affiliations:

New Haven Manor Home for Adults	(Adult Home, 1991-present)
New Haven Manor Home Care	(LHCSA, 1999-present)
Sanford Manor Home for Adults	(Adult Home, 10/28/14-present)

Edna Edrich, MD – 3%  
Medical Doctor of Internal Medicine, PAGNY

Affiliation:

New Haven Manor Home for Adults	(ALP, 1/1/2016-current)
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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, the New York State Physician Profile and the Office of Professional Medical Conduct indicate no issues with the licensure of the health professionals 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 applicant proposes to serve the residents of the following counties from an office located at 1526 New Haven 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

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

New Haven Manor Home for Adults

New Haven Manor Home Care

Sanford Manor Home for Adults (10/28/14-present)

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that New Haven Manor Home for Adults and Sanford Manor Home for Adults have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that New Haven Manor Home Care 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: August 25, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: RTACF, LLC d/b/a The Pavilion at Robinson Terrace  
Address: Stamford  
County: Delaware  
Structure: Limited Liability Company  
Application Number: 171401

Description of Project:

RTACF, LLC d/b/a The Pavilion at Robinson Terrace, 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.

The Stamford Health Care Society, Inc. d/b/a Robinson Terrace Senior Living was previously approved as a home care services agency by the Public Health Council at its May 8, 2009 meeting and was subsequently licensed as 1754L001 effective January 4, 2012.

The purpose of this application is to seek approval for RTACF, LLC d/b/a The Pavilion at Robinson Terrace to acquire to become the new owner of the LHCSA through an asset purchase agreement.

This LHCSA will be associated with the assisted living program to be operated by RTACF, LLC d/b/a The Pavilion at Robinson Terrace and will serve the assisted living program residents.

Uri Koenig, CPA – 60.00% Membership, Co-Managing Member  
Accountant, JH Koenig & Co.

Affiliations:

- Bridgewater Center for Rehabilitation & Nursing, LLC (SNF)
- Bridgewater CFD, LLC d/b/a Bridgewater Center for Dialysis (Dialysis Center)
- BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing (SNF)
- CCRNC LLC d/b/a Crown Park Rehabilitation and Nursing Center (SNF)
- CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (SNF)
- CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center (SNF)
- CSRNC LLC d/b/a Capstone Center for Rehabilitation and Nursing (SNF)
- ECRNC LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center (SNF)
- HRNC, LLC d/b/a Highland Park Adult Day Care Center (Adult Day Care)
- HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center (SNF)
- JBRNC, LLC d//a Hudson Park Rehabilitation and Nursing (SNF)
- NCRNC LLC d/b/a Northeast Center for Rehabilitation and Brain Injury (SNF)
- ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (SNF)
- Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing (SNF)
- RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center (SNF)
- RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing (SNF)
- The Pavilion at Vestal, LLC (Assisted Living)
- TPPV LLC d/b/a The Pavilion at Pine Valley (Assisted Living)
- VDRNC LLC d/b/a Van Duyn Center for Rehabilitation and Nursing (SNF)
- VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center (SNF)

David Camerota, NHA - 0.10% Membership, Member  
Chief Operating Officer, Upstate Services Group, LLC

Affiliations:

- Bridgewater Center for Rehabilitation & Nursing, LLC (SNF)
- Bridgewater CFD, LLC d/b/a Bridgewater Center for Dialysis (Dialysis Center)
- BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing (SNF)
- CCRNC LLC d/b/a Crown Park Rehabilitation and Nursing Center (SNF)
- CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (SNF)

- CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center (SNF)
- CSRNC LLC d/b/a Capstone Center for Rehabilitation and Nursing (SNF)
- ECRNC LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center (SNF)
- HRNC, LLC d/b/a Highland Park Adult Day Care Center (Adult Day Care)
- HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center (SNF)
- JBRNC, LLC d//a Hudson Park Rehabilitation and Nursing (SNF)
- NCRNC LLC d/b/a Northeast Center for Rehabilitation and Brain Injury (SNF)
- ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (SNF)
- Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing (SNF)
- RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center (SNF)
- RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing (SNF)
- The Pavilion at Vestal, LLC (Assisted Living)
- TPPV LLC d/b/a The Pavilion at Pine Valley (Assisted Living)
- VDRNC LLC d/b/a Van Duyn Center for Rehabilitation and Nursing (SNF)
- VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center (SNF)

Efraim Steif, NHA – 39.90 % Membership, Co-Managing Member  
 President, FRS Healthcare Consultants, Inc.

Affiliations:

- Bridgewater Center for Rehabilitation & Nursing, LLC (SNF)
- Bridgewater CFD, LLC d/b/a Bridgewater Center for Dialysis (Dialysis Center)
- BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing (SNF)
- CCRNC LLC d/b/a Crown Park Rehabilitation and Nursing Center (SNF)
- CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (SNF)
- CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center (SNF)
- CSRNC LLC d/b/a Capstone Center for Rehabilitation and Nursing (SNF)
- ECRNC LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center (SNF)
- HRNC, LLC d/b/a Highland Park Adult Day Care Center (Adult Day Care)
- HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center (SNF)
- JBRNC, LLC d//a Hudson Park Rehabilitation and Nursing (SNF)
- NCRNC LLC d/b/a Northeast Center for Rehabilitation and Brain Injury (SNF)
- ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center (SNF)
- Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing (SNF)
- RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center (SNF)
- RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing (SNF)
- The Pavilion at Vestal, LLC (Assisted Living)
- TPPV LLC d/b/a The Pavilion at Pine Valley (Assisted Living)
- VDRNC LLC d/b/a Van Duyn Center for Rehabilitation and Nursing (SNF)
- VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center (SNF)

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Efraim Steif NHA license #04491 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of Professional Credentialing has indicated that David Camerota NHA license #04675 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Bridgewater Center for Rehabilitation & Nursing, LLC	SNF	8/1/06 - Present
Bridgewater CFD, LLC d/b/a Bridgewater Center for Dialysis	Dialysis Center	3/13/12 - Present
BTRNC LLC d/b/a Beechtree Center for Rehabilitation and Nursing	SNF	9/11/13 -Present

CCRNC LLC d/b/a Crown Park Rehabilitation and Nursing Center	SNF	8/19/16 -Present
CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center	SNF	11/24/08 - Present
CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center	SNF	6/19/11 - Present
CSRNC LLC d/b/a Capstone Center for Rehabilitation and Nursing	SNF	3/19/12 - Present
ECRNC LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center	SNF	4/28/16 - Present
HRNC, LLC d/b/a Highland Park Adult Day Care Center	Adult Day Care	6/19/11 - Present
HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center	SNF	6/19/11 - Present
JBRNC, LLC d//a Hudson Park Rehabilitation and Nursing	SNF	6/19/11 -Present
NCRNC LLC d/b/a Northeast Center for Rehabilitation and Brain Injury	SNF	11/1/13 - Present
ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center	SNF	6/19/11 - Present
Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing	SNF	12/04 - Present
RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center	SNF	6/19/11 - Present
RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing	SNF	3/19/12 - Present
The Pavilion at Vestal, LLC	Assisted Living	12/17/15 - Present
TPPV LLC d/b/a The Pavilion at Pine Valley	Assisted Living	9/6/16 – Present
VDRNC LLC d/b/a Van Duyn Center for Rehabilitation and Nursing	SNF	12/1/13 – Present
VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center	SNF	6/19/11 - Present

**Highland Park Rehabilitation and Nursing Center** was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated January 5, 2016 for surveillance findings on October 25, 2013. Deficiencies were found under 10 NYCRR 415.3e(2)(ii)(b) Notification of Significant Changes in Condition. (S/O #16-018)

#### **Beechtree Center for Rehabilitation and Nursing**

- A federal CMP of two thousand seven hundred five dollars and ninety-five cents (\$2,705.95) was assessed for the February 4, 2016 survey findings.

**Central Park Rehabilitation and Nursing Center** was fined twelve thousand dollars (\$12,000) pursuant to a Stipulation and Order dated March 9, 2016 for surveillance findings on March 2, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, Highest Practicable Potential and 415.12(c)(2) Quality of Care Pressure Sores, Prevention, Pressure Sores w/Admission. (S/O #16-142)

**Central Park Rehabilitation and Nursing Center** was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control. (S/O #16-64)

- A federal CMP of three thousand seven hundred and fifty dollars (\$3,750.00) was assessed for the May 26, 2009 survey findings.

#### **Central Park Rehabilitation and Nursing Center**

- A federal CMP of eighteen thousand dollars (\$18,000.00) was assessed for the July 16, 2015 – August 17, 2015 survey findings. There is an Open Hearing – Pending Appeal for this CMP.

**Bridgewater Center for Rehabilitation and Nursing, LLC** was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills. (S/O #13-016)

- A federal CMP of three thousand five hundred and seventy-five dollars (\$3,575.00) was assessed for the July 6, 2011 survey findings.

**Hudson Park Rehabilitation and Nursing Center** was fined fourteen thousand dollars (\$14,000) pursuant to a Stipulation for surveillance findings on September 20, 2013. Deficiencies were found under 10 NYCRR 415.4(b)(3),(4) Resident Behavior & Facility Practices Staff Treatment of Residents; 415.12 Quality of Care Highest Practicable Potential; and 415.26 Administration: Administration. (S/O #16-179)

- A federal CMP of fifty-one thousand fifty-three dollars and sixty-three cents (\$51,053.63) was assessed for the September 9, 2013 – October 28, 2013 survey findings.

**Hudson Park Rehabilitation and Nursing Center** was fined eighteen thousand dollars (\$18,000) pursuant to a Stipulation and Order dated March 15, 2016 for surveillance findings on January 28, 2011; March 28, 2011; and December 17, 2012. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential; 415.19(a)(b) Infection Control: Infection Control; 415.26

Administrator: Administration; 415.12(c)(1)(2) Quality of Care: Pressure Sores; and 415.26 Quality of Care: Highest Practicable Potential. (S/O #16-137)

**Hudson Park Rehabilitation and Nursing Center** was fined twenty-eight thousand dollars (\$28,000) pursuant to a Stipulation and Order dated September 1, 2015 for surveillance findings on March 30, 2012, February 1, 2013 and May 7, 2013. Deficiencies were found under 10 NYCRR 415.15(b)(2)(iii) Physician Services: Physician Visits; 415.12 Quality of Care: Highest Practicable Potential; 415.12(m)(2) Quality of Care: Medication Errors; 415.26 Administration; 415.27(a-c) Administration: Quality of Assessment and Assurance; and 415.12(h)(1)(2) Quality of Care: Accidents. (S/O #15-020)

- A federal CMP of four thousand three hundred eighty-seven dollars and fifty cents (\$4,387.50) was assessed for the December 17, 2012 – February 1, 2013 survey findings.

**Van Duyn Center for Rehabilitation and Nursing** was fined fourteen thousand dollars (\$14,000) pursuant to a Stipulation and Order dated June 6, 2016 for surveillance findings on October 14, 2015. Deficiencies were found under 10 NYCRR 415.14(h) Dietary Services Food Storage; 415.12(c)(2) Quality of Care Pressure Sores with Admission; and 415.12 Quality of Care Highest Practicable Potential (S/O #16-172)

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

**Robinson Terrace Senior Living** was fined one thousand dollars (\$1,000) pursuant to a Stipulation and Order dated July 5, 2017 for surveillance findings on August 16, 2016. Deficiencies were found under 10 NYCRR 766.12(c).

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 Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at One Buntline Drive, Stamford, New York 12167:

Delaware                      Greene                      Schoharie

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy	Nutrition
Homemaker	Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

#### Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 22, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Hamaspik Care, Inc.  
 Address: Monsey  
 County: Rockland  
 Structure: Not-For-Profit Corporation  
 Application Number: 171402

Description of Project:

Hamaspik Care, Inc., a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Hamaspik of Rockland County, Inc. d/b/a Hamaspikcare, a not-for-profit corporation, was previously approved by the Public Health Council at its November 11, 2007 meeting and subsequently licensed as 1612L001 and 1612L002 effective March 13, 2009 and August 24, 2012 respectively.

This application seeks Public Health and Health Planning Council approval for a change in ownership.

The Board of Directors of Hamaspik Care, Inc. is comprised of the following individuals:

<p>Herschel Weiss – President Salesperson, Elegant Furniture</p> <p>Affiliation:  <ul style="list-style-type: none"> <li>• Hamaspik of Rockland County, Inc.</li> </ul> </p>	<p>Peretz Klein, Treasurer Owner, Hashomer Alarms</p> <p>Affiliation:  <ul style="list-style-type: none"> <li>• Hamaspik of Rockland County, Inc.</li> </ul> </p>
<p>Abraham Hershkovitz – Secretary Manager, Grand Food Market</p> <p>Affiliation:  <ul style="list-style-type: none"> <li>• Hamaspik of Rockland County, Inc.</li> </ul> </p>	<p>Wolf Schnitzer – Board Member Owner, KJ Shoe Store</p> <p>Affiliation:  <ul style="list-style-type: none"> <li>• Hamaspik of Rockland County, Inc.</li> </ul> </p>
<p>Israel Stein – Board Member Salesman, Absolute Office Furniture</p> <p>Affiliation:  <ul style="list-style-type: none"> <li>• Hamaspik of Rockland County, Inc.</li> </ul> </p>	<p>Meyer Wertheimer – Board Member Executive Director, Hamaspik</p> <p>Affiliation:  <ul style="list-style-type: none"> <li>• Hamaspik of Rockland County, Inc.</li> </ul> </p>

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations Hamaspik of Rockland County, Inc. was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 58 Route 59, Suite 1, Monsey, New York 10952:

Dutchess                      Orange                                      Putnam                                      Rockland  
 Sullivan                      Ulster                                      Westchester

The applicant proposes to also serve the residents of the following counties from an office located at 293 Division Avenue, Brooklyn, New York 11211:

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	Nutrition
Medical Social Services	Homemaker	Housekeeper
Speech-Language Pathology	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: August 3, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Magic Home Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 172030

Description of Project:

Magic Home Care, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Magic Home Care, LLC. was previously approved by the Public Health and Health Planning Council at its October 6, 2011 meeting and subsequently licensed as 2007L001 effective September 7, 2012. A partial change in ownership was approved by PHHPC at its June 12, 2014 meeting under application number 2209L. This change of ownership became effective May 12, 2015 with no change to the license number. At that time, Magic Home Care, LLC was owned as follows: Gennady Shafir – 50% and Esfira Shafir – 50%.

This application seeks Public Health and Health Planning Council approval partial change in ownership.

The proposed members of Magic Home Care, LLC are comprised of the following individuals:

Gennady Shafir – 47.5% Membership  
(Previously approved by PHHPC for this operator)

Milana Feldman – 47.5% Membership  
Operational Manager, Magic Home Care, LLC

Esfira Shafir – 5 % Membership  
(Previously approved by PHHPC for this operator)

Gennady Shafir and Esfira Shafir are 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 Milana Feldman (and entity where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations Magic Home Care, LLC Inc. (September 2012 – present) was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 250 Avenue X, Brooklyn, NY 11223:

Bronx	Kings	New York	Queens
Richmond			

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Housekeeper	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: August 22, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Infusion Options, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 152373

Description of Project:

Infusion Options, 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.

Infusion Options, Inc. was previously approved by the Public Health Council at its January 21, 2000 meeting and subsequently licensed as 0934L001 effective March 31, 2005. At that time, all issued and outstanding shares of stock were solely owned by MMC Holding of Brooklyn, Inc.

This application seeks Public Health and Health Planning Council approval for a corporate restructuring in which IO Holdings I, Inc. and IO Holdings II, Inc. will be incorporated to be the direct and indirect subsidiaries of MMC Holding of Brooklyn, Inc.

Infusion Options, Inc. authorized 200 shares of stock which are owned as follows:

IO Holdings II – 8 shares

Estee Altman – 2 shares  
Pharmacist  
CEO, Infusion Options, Inc.  
Director Metabolic Support Services, Maimonides  
Medical Center

190 shares of stock remain unissued.

The Board of Directors of Infusion Options, Inc. is comprised of the following individuals:

Robert L. Naldi – President  
Executive V.P. – Finance, Maimonides Medical  
Center

Martin A. Cammer – Vice President  
SVP & Corporate Compliance Officer, Maimonides  
Medical Center

John Scanlan – Treasurer  
Senior V.P. – Finance, Maimonides Medical Center

Joyce Leahy, Esq. – Secretary  
VP & General Counsel, Legal Affairs, Maimonides  
Medical Center

IO Holdings II has authorized 200 shares of stock which are owned as follows:

IO Holdings I – 8 shares

Estee Altman – 2 shares  
(Previously Disclosed)

190 shares remain unissued

The Board of Directors of IO Holdings II is comprised of the following individuals:

Robert Naldi – President  
(Previously Disclosed)

Martin Cammer – Vice President  
(Previously Disclosed)

John Scanlan – Treasurer  
(Previously Disclosed)

Joyce Leahy, Esq. – Secretary  
(Previously Disclosed)

IO Holdings I has authorized 200 shares of stock which are owned as follows:

MMC Holding of Brooklyn, Inc. – 8 shares

Estee Altman – 2 shares  
(Previously Disclosed)

190 shares remain unissued

The Board of Directors of IO Holdings I is comprised of the following individuals:

Robert Naldi – President  
(Previously Disclosed)

Martin Cammer – Vice President  
(Previously Disclosed)

John Scanlan – Treasurer  
(Previously Disclosed)

Joyce Leahy, Esq. – Secretary  
(Previously Disclosed)

MMC Holding of Brooklyn, Inc. has authorized 200 shares of stock which are owned as follows:

Maimonides Health Resources, Inc. – 10 Shares

190 shares remain unissued

The Board of Directors of MMC Holding of Brooklyn, Inc. is comprised of the following individuals:

Kenneth Gibbs – President  
President & Chief Executive Officer, Maimonides  
Medical Center

Paul Addison – Treasurer  
Retired

Eugene Keilin – Secretary  
Retired

The Board of Directors of Maimonides Health Resources, Inc., a not-for-profit corporation, is comprised of the following individuals:

Paul T. Addison – Treasurer  
(Previously Disclosed)

Steven Adelsberg, CPA – Trustee  
Partner, S. Adelsberg & Co.

Donna J. Astion, M.D. – Trustee  
M.D., Foot & Ankle Orthopedic Surgery PC

Irwin M. Birnbaum, Esq. – Trustee  
Senior Advisor, Yale University School of Medicine

Affiliation:

- South County Hospital & Health System  
(May 1997-Present)

Joseph F. Bruno, Esq. – Trustee  
President & CEO, Helen Keller Services

David Cassato, Msgr – Trustee  
Parish Priest, RC Diocese of Brooklyn

David L. Diamond, M.D. – Trustee  
M.D., Self Employed: Boro Park Pediatric  
Association PLLC

Richard Forman – Trustee  
Manager, Health Ventures Group

Kenneth D. Gibbs – President & CEO  
(Previously Disclosed)

Moishe (aka Marvin) Hellman – Trustee  
Owner, Hellman Real Estate

Jack A. Hidary – Trustee  
Chairman, Hidrock Properties

Eugene Keilin – Chairman of the Board  
(Previously Disclosed)

Mortimer N. Klaus – Trustee  
CEO, Burma - Bibas

Andrew Kohen – Trustee  
Operator and Developer of Real Estate Properties, Self-  
Employed

Chaim Herbert Leshkowitz, Esq., CPA – Vice  
Chairman  
Managing Partner, Leshkowitz & Company, LLP

Robert B. Machinist – Vice Chairman  
Investor, Self-employed

Charles Mamiye – Trustee  
President, Mamiye Brothers

Donald Meltzer – Trustee  
Head of North America M&A, Rabobank Securities Inc.

Frank Naccarato – Trustee  
Broker – Agent, Prudential Financial

George G. Neiderman, M.D. – Trustee  
Physician, Kings Renal Services PC  
Attending Physician, M2 Medical Community Practice PC  
Medical Staff President, Maimonides Medical Center

Azzam Obeid – Trustee  
Owner, Azzon Obeid (self-employed)

Steven D. Oppenheim, Esq.– Trustee  
Partner, Faust Oppenheim LLP

Martin D. Payson – Trustee  
Retired

Peter B. Rebenwurz – Trustee  
Owner/Managing Member, Coney Realty CO/Coney  
Management LLC

Affiliations:

- Nassau Health Care Corp d/b/a Nassau University Hospital (2006-2011)
- Nassau Health Care Corp d/b/a A Holly Patterson Extended Family (2006-2011)

Erminia Rivera – Vice Chair  
Member/Owner, Park Ave Building Supplies LLC

Alex Rovt, PhD – Trustee  
President/Business Owner, TBE Trade Corp.

Affiliations:

- The Brookdale University Hospital and Medical Center (2001-Present)
- Prime Home Health Services LLC (2007-Present)
- Assisted Home Care LLC d/b/a Prime Assisted Home Care (2016-Present)

Veronica Santilli, M.D. – Trustee  
President/Physician, Brook-Island Pediatrics Group

Isaac M. Sutton – Trustee  
Retired

Aaron D. Twerski, Esq. – Trustee  
Irwin and Jill Cohen Professor of Law, Brooklyn Law School

Howard Weiss, CPA – Trustee  
Chief Financial Officer, Stella Point Capital LPC

Moshe H. Wieder – Secretary  
Retired

Keith R. Wortman – Trustee  
CEO, Blackbird Presents, Inc.

Michael L. Ziegler, Esq. – Trustee  
Owner, Dembiny Assoc. (Self-employed)

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following agencies/facilities was performed as part of this review (unless otherwise noted):

- The Brookdale University Hospital and Medical Center
- Prime Home Health Services LLC (2014-Present)
- Maimonides Medical Center
- Assisted Home Care LLC d/b/a Prime Assisted Home Care (2016-Present)
- Nassau Health Care Corp d/b/a Nassau University Hospital (2006-2011)
- Nassau Health Care Corp d/b/a A Holly Patterson Extended Family (2006-2011)
- South County Hospital & Health System
- Infusion Options, Inc.

Infusion Options, Inc. was fined one thousand dollars (\$1,000) pursuant to a Stipulation and Order dated May 8, 2017 for failure to submit to the Department information and materials relating to the 2015 Licensed Home Care Agency Statistical Report pursuant to 10 NYCRR 766.12(c).

The information provided by the Division of Home and Community Based Services has indicated that the home care agencies have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the hospitals reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the State of Rhode Island has indicated that South County Hospital & Health System has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A Certificate of Good Standing has been received for the attorney associated with this application.

The applicant proposes to continue to serve the residents of the following counties from an office located at 5924 13<sup>th</sup> Avenue, Brooklyn, New York 11219:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: July 13, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: R.A.I.N. Home Attendant Services, Inc.  
Address: Bronx  
County: Bronx  
Structure: Not-For-Profit Corporation  
Application Number: 162326

Description of Project:

R.A.I.N. Home Attendant Services, Inc., a not-for-profit corporation, requests approval for a change in ownership of a home care services agency under Article 36 of the Public Health Law.

R.A.I.N. Home Attendant Services, Inc. was previously approved as a home care services agency by the Public Health Council at its November 17, 1995 meeting and subsequently licensed as 9792L001 on July 11, 1997. The purpose of this application is to establish R.A.I.N. Total Care, Inc., a not-for-profit corporation, as the parent entity of R.A.I.N. Home Attendant Services, Inc.

The Board of Directors of R.A.I.N. Total Care, Inc. is comprised of the following individuals:

<p>John J. DeMartino, CPA, Chairperson of the Board/Director Chartered Global Management Accountant (CGMA) FINRA Series 27, 6, 63 (Currently Unregistered) NY, NJ, CT, GA: Accident, Health, Life Insurance Agent EVP/CFO/Board Member, National Event Company II, LLC Owner, JJD Consultants, LLC (CPA Consulting)</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2013 – Present)</p>	<p>Jim Lanfranchi, Treasurer/Director Senior Relationship Manager, Business Banking Group – Webster Bank, NA</p>
<p>Moises DeJesus, JD, Secretary/Director Law Clerk, Cabanillas &amp; Associates, PC</p>	<p>Angelo O’Neill, Director Director, Able Health Care</p>
<p>Edwin Salas, Director President/CEO, Salcare Home Health Services, Inc. President/CEO, Synergy Home Health Care Services, Inc. President/Program Director, Interact Home Care Training Institute, Inc.</p> <p><u>Affiliations:</u> Salcare Home Health Services, Inc. (LHCSA, 2000 – Present) Interact Home Care Training Institute, Inc. (NYS Proprietary Career School, 2004 – Present)</p>	<p>Sumir Sahgal, MD, Director Physician, State of Connecticut Physician, State of New Jersey Medical Director, Essen Medical Associates</p> <p><u>Affiliations:</u> Centers for Planned Healthy Living (NYS MLTCP, 2012 – Present) R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2014 – Present)</p>
<p>Dan Suarez, RN, MA, Director Business Development Manager, OnCourse Learning</p>	<p>Helene Velazquez, Director Program Director, American Diabetes Association</p>



<p>Christina Coons RN, BSN, CCM, Director (FKA Christina Ciliberto), North Carolina Licensed Nurse (Expired) Consultant, RFR Consulting Group Per Diem Clinical Educator, Board of Cooperative Education Services – Southern Westchester</p>	<p>Dr. Catherine Alicia Georges, RN, BSN, EdD, Director Chairperson/Executive Officer of the Department of Nursing, Lehman College – Department of Nursing</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2014 – Present)</p>
<p>Dr. Jonathan Kazdan, Director Owner/Chiropractor, Dr. Jonathan Kazden DC PC</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2013 – Present)</p>	<p>Marciana Zenaida Roger, Director NY Health Insurance Agent Owner, Everwell Insurance Agency</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA)</p>
<p>Francisco Diaz, RN, BSN, MSN, Director Gerontological &amp; Adult Health Nurse Practitioner Diabetes Education/Management, Mt. Sinai Health System Adjunct Professor of Nursing, Hunter-Bellevue School of Nursing</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2014 – Present)</p>	<p>Lucia Alfano, RN, BSN, Director (FKA Lucia Arguello) Assistant Professor of Nursing, Concordia College</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2013 – Present)</p>
<p>Esther M. Huertas, LCSW-R, Director NY Accident &amp; Health Insurance Agent Self Employed, Health Consultant/Geriatric Care Management</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2013 – Present)</p>	<p>Luis Torres, MS Principal, New York City Department of Education</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2014 – Present)</p>
<p>Licet Valois, LMSW (FKA Licet Valois-Gonzalez) Supervising Social Worker, Independence Care System Consultant, Weill Cornell Alzheimer’s Prevention Clinic Therapist, Integrity Senior Services</p> <p><u>Affiliations:</u> R.A.I.N. Home Attendant Services, Inc. (LHCSA, 2013 – Present)</p>	

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 Connecticut indicates no issues with the license of the health care professional 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 State of North Carolina Board of Nursing indicates no issues with the license of the health care professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve the residents of the following counties from an office located at 811 Morris Park Avenue, Bronx, New York 10462:

Bronx New York	Kings Richmond	Queens Westchester
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The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Housekeeper
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A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

R.A.I.N. Home Attendant Services, Inc. (NYS LHCSA)  
Salcare Home Health Services, Inc. (NYS LHCSA)  
Centers for Planned Healthy Living (NYS MLTCP, 2012 – Present)  
Interact Home Care Training Institute, Inc. (NYS Proprietary Career School)

R.A.I.N. Home Attendant Services, Inc. was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated April 11, 2017 for failure to submit to the Department information and materials relating to the 2015 Licensed Home Care Agency Statistical Report pursuant to 10 NYCRR 766.12(c).

The information provided by the Division of Home and Community Based Services indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Long Term Care indicated that the MLTC plan associated with this application is current and in compliance.

The Bureau of Proprietary School Supervision website indicated that Interact Home Care Training Institute, Inc. has a current license to provide Personal Care Aide Training in English, Chinese and Spanish; as well as Home Health Aide Training in English and PCA Upgrade to HHA in English.

A Certificate of Good Standing has been received for the attorney 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.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 25, 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 11th day of October, 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>
2149L	Behdokht Kangarlu d/b/a Hopewell Health Home Care (Duchess, Westchester, Orange, Ulster, Putnam Counties)
2334L	EZ Living Home Care of NY, Inc. (Kings, Queens, Richmond, Bronx, Nassau, New York Counties)
2335L	ProHealth Homecare, Inc. (Kings, Queens, New York, Richmond, Bronx, Nassau Counties)

2339L OnSite LifeCare, Inc.  
(New York, Bronx, Kings, Queens, Richmond, Nassau  
Counties)

2340L Healthy Aging Homecare, Inc.  
(Kings, Queens, Bronx, Richmond, New York,  
Westchester Counties)

2539L Galaxy Home Care Inc.  
(Queens, Kings, Bronx, New York Richmond, Nassau  
Counties)

2581L Apple Best Home Care Agency Inc.  
(Kings, Queens, New York, Bronx, Richmond, Nassau  
Counties)

2623L DMV Home Care, Inc.  
(Richmond, New York, Kings, Queens, Bronx,  
Westchester Counties)

2625L C.A.R.E. Mavens Home Health Agency, LLC  
(Kings, New York, Bronx, Queens, Richmond,  
Westchester Counties)

2631L Key To Life Homecare, Inc.  
(New York, Kings, Queens, Richmond, Bronx,  
Westchester Counties)

2633L Help From The Heart LLC  
(Kings, Queens, Bronx, New York, Richmond,  
Westchester Counties)

2636L L & G Enterprises USA LLC d/b/a L & G Home Care  
Agency (Queens, Kings, New York, Richmond, Bronx,  
Nassau Counties)

2640L Amelia Home Care, Inc.  
(Queens, Kings, New York, Richmond, Bronx,  
Westchester Counties)

151254 Shalom Home Care Agency, Inc.  
(Bronx, Kings, New York, Queens, Richmond, Nassau  
Counties)

152053 AAA HealthSource, Inc.  
(Bronx, Kings, Nassau, New York, Queens, Richmond  
Counties)

152103 Blue Ridge Home Care, Inc.  
(New York, Bronx, Kings, Queens, Richmond, Nassau  
Counties)

152107 Fidelity Home Care, Inc.  
(Bronx, Kings, New York, Richmond, Queens,  
Westchester Counties)

152159 Regal Home Care, Inc.  
(Bronx, Kings, Nassau, New York, Queens, Richmond  
Counties)

152344 Home Care of Northern New York, LLC  
(Jefferson, Lewis, St. Lawrence Counties)

161375 Capital District Home Care Agency, LLC  
(Albany, Schenectady, Saratoga, Rensselaer, Columbia  
Counties)

162341 Embrace Care, LLC  
(Monroe, Livingston, Genesee Counties)

2320L New York Resort for Seniors, LLC d/b/a Oasis Home  
Care (Delaware, Orange, Sullivan, Ulster Counties)

152373 Infusion Options, Inc.  
(Bronx, Kings, Nassau, New York, Queens, Richmond  
Counties)

162326 R.A.I.N. Home Attendant Services, Inc.  
(Bronx, Kings, Queens, New York, Richmond,  
Westchester Counties)

162538 Sanford Home Care Agency, LLC d/b/a Sanford Home  
Care Agency (Bronx, Kings, New York, Queens,  
Richmond Counties)

171031 The W Group at New Broadview, LLC d/b/a New  
Broadview Manor Home for Adults LHCSA  
(Richmond County)

171394 New Haven Manor Home Care Agency, LLC  
(Bronx, Kings, Nassau, New York, Queens, Richmond  
Counties)

- 171401 RTACF, LLC d/b/a The Pavilion at Robinson Terrace  
(Delaware, Greene, Schoharie Counties)
- 171402 Hamaspik Care, Inc.  
(Bronx, Kings, Nassau, New York, Queens, Richmond  
Counties)
- 172030 Magic Home Care, LLC  
(Bronx, Kings, New York, Queens, Richmond  
Counties)