

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

**AGENDA**

*December 7, 2017*

*Immediately following the Committee on Codes, Regulations and Legislation meeting  
(Scheduled to begin at 9:30 a.m.)*

*90 Church Street 4th Floor, Room 4A & 4B, New York City  
Corning Tower, 14<sup>th</sup> Floor, Conference Room #1, Albany (video site)*

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Chair

**II. APPROVAL OF MINUTES**

October 11, 2017

**III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

**A. Report of the Department of Health**

Sally Dreslin, Executive Deputy Commissioner

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

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

**C. Report of the Office of Public Health Activities**

Brad Hutton, Deputy Commissioner, Office of Public Health

**IV. PUBLIC HEALTH SERVICES**

**A. Report on the Activities of the Committee on Public Health**

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

**B. Report on the Activities of the Joint Meeting of the Health Planning Committee and the Public Health Committee**

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

**V. HEALTH POLICY**

**Report on the Activities of the Committee on Health Planning**

John Ruge, M.D., Chair of the Health Planning Committee

**VI. REGULATION**

**Report of the Committee on Codes, Regulations and Legislation**

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

**For Adoption**

- 13-22 Amendment of Parts 405 and 708 of Title 10 NYCRR (Trauma Centers)
- 17-02 Amendment of Subpart 5-1 of Title 10 NYCRR (Public Water Systems)

**For Discussion**

- 17-19 Amendment of Subpart 5-1 of Title 10 NYCRR (Public Water Systems - Revised Total Coliform Rule)
- 17-16 Amendment of Part 405 of Title 10 NYCRR (Hospital Policies and Procedures for Individuals with Substance Use Disorders)

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

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

Peter Robinson, Chair of Establishment and Project Review Committee

**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Acute Care Services - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	172161 C	University Hospital SUNY Health Science Center (Onondaga County)	Contingent Approval

**Ambulatory Surgery Center - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	172083 C	Specialists' One-Day Surgery Center, LLC (Onondaga County)	Contingent Approval



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

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

**CON Applications**

**Acute Care Services - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	172211 C	Brooks Memorial Hospital (Chautauqua County) Mr. Holt - Interest	Contingent Approval

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

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

**CON Applications**

**Acute Care Services - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	172084 C	Olean General Hospital (Cattaraugus County) Mr. Holt - Interest Dr. Bennett – Opposed at EPRC	Contingent Approval
2.	172133 C	The New York and Presbyterian Hospital (Westchester County) Dr. Brown – Recusal Dr. Bennett – 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

**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>E.P.R.C. Recommendation</u></b>
1.	172129 E	Sterling Surgical Center, LLC (Erie County)	Contingent Approval

**Diagnostic and Treatment Center – Establish/Construct**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	172060 B	Starling Diagnostics, LLC d/b/a Starling Diagnostic & Imaging Center (Bronx County)	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.	171305 E	Fishkill Dialysis Center (Dutchess County)	Contingent Approval
2.	171330 E	Queens Dialysis at The Pavilion (Queens County)	Contingent Approval
3.	171447 B	Freedom Center of Westmere, LLC (Albany 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.	172146 E	Roscoe Regional Healthcare, LLC d/b/a Roscoe Rehabilitation and Nursing Center (Sullivan County)	Contingent Approval

- |    |          |  |                     |
|----|----------|--|---------------------|
| 2. | 172264 E | Clinton Square Operations, LLC<br>d/b/a Clinton Square Nursing<br>and Rehabilitation Center<br>(Onondaga County)         | Contingent Approval |
| 3. | 172191 E | Otsego SNF Operations Associates<br>LLC d/b/a Cooperstown<br>Center for Rehabilitation<br>and Nursing<br>(Otsego County) | Contingent Approval |

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

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171408 E	Personal Touch Home Aides of New York Inc (Kings County)	Contingent Approval
2.	172049 E	Gurwin Certified Home Health Agency (Suffolk County)	Contingent Approval
3.	172134 E	Lawrence Home Care of Westchester (Westchester County)	Contingent Approval

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

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Beth Abraham Health Services	Approval
Schnurmacher Center for Rehabilitation and Nursing	Approval
The Women and Children’s Hospital of Buffalo Foundation	Approval
The Mary Imogene Bassett Hospital (d/b/a Bassett Medical Center)	Approval

**Restated Certificate of Incorporation**

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
The Kingston Hospital Foundation	Approval

## Certificate of Dissolution

### Applicant

Reconstruction Home and Health Care Center, Inc.

Tri Town Regional Healthcare

### 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**

#### **Acute Care Services – Establish/Construct**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172166 E	Community Providers, Inc. (Clinton County) Dr. Rugge - Recusal	Contingent Approval

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

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172164 B	Ellis Ambulatory Surgery Center, LLC (Schenectady County) Dr. Bennett – Interest/Abstaining	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**

#### **Acute Care Services – Establish/Construct**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172262 E	Nyack Hospital (Rockland County) Dr. Bennett – Opposed at EPRC	Contingent Approval

2.	172263 E	St. Luke's Cornwall Hospital/Newburgh (Orange County) Dr. Bennett – Opposed at EPRC	Contingent Approval
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**Ambulatory Surgery Centers – Establish/Construct**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171297 E	Syracuse Surgery Center (Onondaga County) Dr. Brown – Opposed at EPRC	Contingent Approval

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**HOME HEALTH AGENCY LICENSURES**

**New LHCSAs**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
	2062 L	1 Of a Kind Home Health, LLC (Kings, Bronx, Queens, Richmond, New York, and Westchester Counties)	Contingent Approval
	2173 L	Ultracare Family Wellness of NY, Inc. (Queens, New York, Bronx, Richmond, Kings, and Nassau)	Contingent Approval
	2283 L	Just Care, LLC (Queens, New York, Kings, Bronx, Richmond and Nassau Counties)	Contingent Approval

2347 L	Perfect Gentle Hands Homecare, Inc. (Kings, Bronx, Queens, Nassau, Richmond and New York Counties)	Contingent Approval
2348 L	Bangla Homecare, Inc. (Kings, Bronx, Queens, Nassau, Richmond, and New York Counties)	Contingent Approval
2350 L	Raices Homecare, Inc. (Kings, Bronx, Queens, New York and Richmond Counties)	Contingent Approval
2359 L	Micah Eastman LPN, Michael Eastman RN, Oshea Eastman RN, PLLC d/b/a MNO Nursing (Kings, New York, Queens, Bronx, Richmond and Westchester Counties)	Contingent Approval
2370 L	Multicommunity Services at 95 Street Corp. d/b/a Agelass Beauty Homecare Agency (Kings, Richmond, Queens, Bronx, and New York Counties)	Contingent Approval
2409 L	Alpha Home Care Services Inc. (Bronx, New York, Kings, Richmond, and Queens Counties)	Contingent Approval
2432 L	Rising Sun Medical Staffing, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
2433 L	K Kari and Associates Corp d/b/a Kari Agency and Staffing Services (Nassau, Suffolk and Queens Counties)	Contingent Approval
2457 L	Imperial Home Health Care Inc. (Nassau, Queens, Suffolk and Westchester Counties)	Contingent Approval

2463 L	Eula Care Senior Companion Agency, Inc. d/b/a Eula Care Manorville (Suffolk and Nassau Counties)	Contingent Approval
2495 L	Pentec Infusions of New York, LLC (Nassau, Suffolk and Queens Counties)	Contingent Approval
2499 L	RCDN Inc. d/b/a Griswold Home Care North Orange County, NY	Contingent Approval
2517 L	Care Universal Inc. (Kings, Bronx, Queens, Richmond, New York and Westchester Counties)	Contingent Approval
2528 L	Connected Home Care LLC d/b/a Connected Home Care (Westchester, Sullivan, Dutchess, Ulster, Orange, Rockland, Putnam and Bronx Counties)	Contingent Approval
2533 L	Bikur Cholim, Inc. (Rockland, Sullivan, Putnam, Ulster, Dutchess, Westchester, Orange and Nassau Counties)	Contingent Approval
2541 L	Gracious Hands Home Care Agency, LLC (Schenectady, Albany, Rensselaer, and Saratoga Counties)	Contingent Approval
2571 L	Bright Horizon Prime Care Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval

2620 L	Stellar Home Care Solutions, Inc. (Bronx, Kings, New York, Richmond, Queens, and Westchester Counties)	Contingent Approval
2626 L	Embrace Independence Elder Care, Inc. (Westchester and Rockland Counties)	Contingent Approval
2630 L	Safiya Haamid and Amal Qaasem d/b/a Happy Home Care (Erie County)	Contingent Approval
2639 L	Jancare Private Health Services, Inc. (Dutchess, Putnam and Westchester Counties)	Contingent Approval
2645 L	VESRETTA Homecare LLC (Queens, New York, Kings, Nassau and Bronx Counties)	Contingent Approval
2649 L	All Patient Care Home Health Agency Inc. (Queens, Richmond, Kings, Bronx, New York and Nassau Counties)	Contingent Approval
152016	JJR Lifecare, Inc. d/b/a Right at Home Eastern L.I. (Suffolk County)	Contingent Approval
152055	Caregiver Pro Homecare, Inc. (Bronx, New York, Kings, Richmond, Queens and Nassau Counties)	Contingent Approval
152084	Family Respite Homecare Agency, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
152242	Hope & Cherish Home Care L.L.C. (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval



152300	Excel Care, LLC (Kings, New York, Queens, Richmond, Bronx and Westchester Counties)	Contingent Approval
152333	Consortium Home Care, Inc. (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
152345	Castle Rock Home Care, Inc (Richmond, Bronx, New York, Westchester, Kings and Queens Counties)	Contingent Approval
152349	Help At Home Homecare, Inc. (New York and Westchester Counties)	Contingent Approval
152351	East End Home Care, Inc. (Suffolk County)	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>
162314	Ingersoll Adult Home, Inc. d/b/a Ingersoll Place Licensed Home Care Services Agency (Schenectady County)	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>
162235	Big Heart Home Care LLC (Bronx, Queens, New York, Richmond, Kings and Westchester Counties)	Contingent Approval
171325	Westchester Family Care, Inc. (Westchester, Nassau, Rockland, Suffolk, Putnam, Bronx, and Dutchess Counties)	Contingent Approval

172039	CenterCare Home Care Agency, LLC (Bronx, New York, Kings, Queens, Nassau, and Richmond Counties)	Contingent Approval
172050	Gurwin Home Care Agency, Inc. (Nassau, Suffolk and Queens Counties)	Contingent Approval
172072	FEGS Home Attendant Services, Inc. (Bronx, Richmond, Kings, New York, Queens and Westchester Counties)	Contingent Approval
162039	Family Home Health Care, Inc. (Bronx, Rockland, Orange, Suffolk, Putnam, Westchester, Kings, Nassau, Queens, New York and Richmond Counties) Mr. La Rue – Recusal	Contingent Approval

**VIII. NEXT MEETING**

January 25, 2018 – NYC  
February 8, 2018 – NYC

**IX. ADJOURNMENT**

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

**Minutes**  
**October 11, 2017**

The meeting of the Public Health and Health Planning Council was held on Thursday, October 11, 2017 at the Empire State Plaza, Concourse Meeting Room 6, Albany. Chairman, Mr. Jeffrey Kraut presided.

**COUNCIL MEMBERS PRESENT**

Ms. Judy Baumgartner – via video Buffalo Dr. Howard Berliner Dr. Lawrence Brown – via video NYC Ms. Kathleen Carver-Cheney Dr. Angel Gutierrez – via video NYC Mr. Thomas Holt – via video Buffalo Dr. Gary Kalkut Mr. Jeffrey Kraut Mr. Scott La Rue	Mr. Harvey Lawrence Dr. Glenn Martin – via video NYC Ms. Ellen Rautenberg – via video NYC Dr. John Ruge Dr. Anderson Torres Dr. Kevin Watkins Sally Dreslin – Ex-officio
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**DEPARTMENT OF HEALTH STAFF PRESENT**

Mr. Charles Abel Ms. Lee Burns Ms. Barbara DelCogliano Ms. Alejandra Diaz Ms. Sally Dreslin Mr. Ken Evans Mr. Mark Furnish Mr. Brad Hutton Ms. Colleen Leonard Mr. George Macko	Mr. Mark Noe Ms. Nancy Nowakowski Ms. Sylvia Pirani – via video NYC Ms. Tracy Raleigh Ms. Gilda Riccardi Dr. Michael Ryan Mr. Daniel Sheppard Ms. Lisa Thomson Ms. Lisa Ullman Mr. Richard Zahnleuter
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**INTRODUCTION**

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

**APPROVAL OF THE MINUTES OF AUGUST 3, 2017**

Mr. Kraut asked for a motion to approve the August 3, 2017 Minutes of the Public Health and Health Planning Council meeting. Mr. Lawrence motioned for approval which was seconded by Dr. Berliner. The minutes were unanimously adopted. Please refer to page 3 of the attached transcript.

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

Next, Mr. Kraut introduced Ms. Dreslin to give a report on the Department of Health report.

### Dr. Yokum Franc

Ms. Dreslin began her report by congratulating Dr. Franc, a former Wadsworth Center Scientist who won the 2017 Nobel Prize in chemistry. Dr. Franc's pioneering work at the Wadsworth Center enables scientists around the globe to record highly precise three-dimensional images of biomolecules. This technology opens up a new frontier in science by enabling us to see inside cells in ways that could never be done before. Cryoelectronmicroscopy as the technology is called, has already been used to analyze the structure of the Zika Virus and in kind of a nice crossover it was used in the study of circadian rhythms by the winners of this year's Nobel Prize in medicine.

### PFAS

Ms. Dreslin stated that the Department is also leading a formal request to the CDC asking for a longitudinal national health effect study of communities impacted by perfluoroalkyl substances or P-FAS. These substances include perfluorooctanoic acid, P-FOA and perfluorooctan sulfonic acid, P-FAS. In New York PFOA and PFAS have been identified in local water systems in Hoosick Falls, Petersburg, Newburgh, and Long Island. In late August Dr. Zucker sent a letter to the CDC's agency for toxic substance and disease registry, the ATSDR and the letter was co-signed by state health officials from Alaska, Michigan, New Hampshire, Pennsylvania and Vermont. Like New York, each of these states has been working to address PFAS contamination and each state has had extensive response and data collection efforts. In New York we've conducted PFAS bloodtesting from for than 6000 individuals, tested more than 1600 private well samples and collected more than 1700 community health survey's from individuals. The Department is also launching an online survey. The survey is already launched in Hoosick Falls, Petersburg, Newburgh, and Long Island. Together additional information about potential health impacts of PFAS exposure. The Department is encouraging residents in these impacted communities who have not been surveyed to complete this new survey that is online. All survey responses are kept confidential and we thank the residents of the communities in advance for their participation and cooperation in helping us to better understand the health impacts of PFAS.

### New York State of Health Open Enrollment

Ms. Dreslin spoke on the topic of New York State of Health. Open enrollment on the market place for the 2018 year begins on November 1 and it continues until January 31 of 2018. New York State has used its authority to extend this open enrollment period so that New Yorkers have sufficient time to enroll. There will be 12 insurers who are offering qualified healthplans on the individual marketplace in 2018. Many people who qualify for federal tax credits to purchase a qualified health plan will see their premiums decrease in 2018. On average, consumers who enroll in the most popular silver plan will see a decrease of 5 percent in 2018

compared to last year. Fifteen insurers will offer the essential plan which is for lower income New Yorkers. The monthly premium on the essential plan will remain at \$20 per person or less. And this program has been extremely successful. The first week in October, it was announced an enrollment in that program exceeds 680,000 people. Five insurers will offer coverage on New York State of Health small business marketplace, the SHOP and new to the marketplace is the New York State providers and look-up tool. Which is an online tool which lets consumers search for their preferred healthcare providers and see which plans include these providers to help them find the best coverage needs.

### Prevention Agenda

Ms. Dreslin advised that the Department is also getting ready to update the Prevention Agenda for 2019 - 2024. The new agenda will help incorporate health across all policies, an initiative that builds health considerations into policy decisions, and also healthy aging, which aims to make New York an age-friendly state. In the remaining months of 2017, the Department will update New York's health assessment. This is part of the process. The assessment describes the current demographics and health status of New Yorkers and based on that the Department then proposes potential priorities for the new Prevention Agenda. The first half of 2018 an Ad-Hoc Committee to Lead the Prevention Agenda will create New York's new agenda with stakeholder engagement. They will obtain feedback on the health assessment, finalize state priority areas and develop a priority-specific set of action plans. In 2019 the new local collaborative planning cycle starts and local partners will work together on specific focus areas and implement strategies that are unique to their communities.

### Vaccinations

Ms. Dreslin reported good news about New York's vaccination rates. New York is being recognized by the CDC for achieving improvements in HPV vaccination rates in adolescents between ages 13 and 17. New York achieved these improvements during our 2013-2016 cycle. The percentage of New York teens, both male and female who have started the HPV vaccine increased from 61.3 percent in 2015 to 71.5 percent in 2016. That is higher than the national HPV vaccination coverage for males and females which was 60.4 percent. New York also has had an extensive public awareness campaign about the HPV vaccine. School meningococcal vaccine requirements may also have inadvertently improved our HPV coverage if they were offered at the same time. It is worth noting that New York's 2016 immunization rates for the tetanus, diphtheria, and pertussis, the TDAP vaccine and the meningococcal vaccine exceed the national averages as well. In New York 91.1 percent of teens have received the TDAP vaccine and 89.2 percent have received the meningococcal vaccine. The national target is 80 percent for both vaccines. Vaccines are still the best and safest way to protect children and adults against disease.

### Flu Vaccine

Lastly, Ms. Dreslin spoke on the topic of the flu vaccine. October is the start of flu season and it is time for our annual reminder that everyone should get a flu shot. It is especially important for people who are at risk for complications such as the elderly and people who have

chronic health conditions. Last year in New York State there were 12,912 flu related hospitalizations and eight pediatric deaths as a result of flu. Over the last four years there have been 25 pediatric flu deaths in New York State and an average of 10,571 flu related hospitalizations. The Department is urging all New Yorkers to get their flu shot.

Ms. Dreslin concluded her report. To read the complete report, please see pages 4 through 9 of the attached transcript.

### **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 updating the Council on the recommendations that came out of the PHHPC Retreat with respect to regulatory modernization and reform. There were recommendations regarding public health and public health to become part of the CON process. Other recommendations to move forward on were in the areas of post acute and long term care. Secondary in the post-acute long term care was to incorporate quality measures into the character and competence determinations and a lot of focus with respect to the residential healthcare facility side of that. In terms of status, the detailed recommendations in for both of these recommendation areas will be developed through the regulatory modernization initiative or RMI workgroups. The post-acute workgroup held two meetings already. Another area for recommendations out of the PHHPC Retreat were to modernize the CON process to align with health system transformation. This focused on three areas. One was to eliminate financial feasibility reviews for provider applicants that demonstrate financial stability with the criteria for that to be defined by OPCHSM. A second area was to eliminate CON for primary care clinic construction. A third area was the OPCHSM would develop a proposal to eliminate CON for all facility construction projects that do not reflect changes in services. Projects would still be reviewed for compliance with health safety construction standards.

Mr. Sheppard gave a broad overview of the remaining regulatory modernization initiative workgroups. He gave an update on the work of the Integrated Physical and Behavioral Health Workgroup, the Telehealth Workgroup, the Cardiac Services Needs Workgroup, and the Off-Campus Emergency Department.

Mr. Sheppard concluded his report. To view the complete report and questions from the members, please see pages 9 through 22 the attached transcript.

Mr. Kraut introduced Mr. Abel to give the semi-annual report on ambulatory surgery centers. Mr. Abel presented a report regarding ambulatory surgery centers and gave highlights concerning the ambulatory surgery centers that are under their initial limited life, facilities that have received extensions to their limited life and ambulatory surgery centers that had been subject to a limited life but received approval for perpetual life.

Mr. Abel concluded his portion of the report. To view the report, please see pages 22 through 35 of the attached transcript.

## **Office of Public Health Activities**

Mr. Kraut introduced Mr. Hutton to give the Office of Public Health report.

Mr. Hutton began his report by giving an update on mosquito-borne diseases. There are several areas of the state where there has been West Nile Virus either positive pools or human cases. There were also some positive triple E, positive pools of mosquitos in Central New York. The Department continues to test for Zika virus. In 2017, we have detected 158 cases of Zika virus among New York State residents.

Mr. Hutton spoke on the topic of drinking water quality. There is a drinking water quality council that met in October. The 12 member council was created by statute as part of the last state budget that would be advising the Commissioner of Health on emerging contaminants that water systems across New York State should be testing for. As well as the notification levels that should prompt actions, and then finally the maximum contaminant levels which would be the legally enforceable levels that water systems need to stay within or take actions to remediate the problem.

Mr. Hutton advised that the Department has also been heavily engaged over the last six weeks in response to harmful algae blooms and related cyanotoxins that can potentially cause concerns among humans. The Department has been focusing efforts on drinking water impact.

Mr. Hutton next presented an update on the PHHPC Retreat recommendations and discussed ways that potentially incorporate public health into the CON review process, possibly considering it under such other matters authority that we reviewed at the retreat. There were two recommendations that came from that PHHPC retreat. First that it would become part of the CON process and that we would make health across all policies and healthy aging the framework for the next iteration of the prevention agenda. And at the local level, require local health departments and health systems to completely align their community health improvement plans. The purpose is for the state to incorporate the public health provisions into the CON review process to advance the health of communities, support the achievement of prevention agenda goals, and support the goals that were articulated by our governor in a recent budget, incorporating health across all policies and making New York an age friendly state.

Mr. Hutton continued and stated the first concept here is the who? Who are the public health review applied to? The idea is that it could impact new providers seeking establishment including mergers, active parents, and acquisitions, it could include construction CONs for existing established providers, proposing to add a new service or expand capacity of an existing service. This could depend on the service, dollar value, other thresholds. Staff is contemplating phasing this in, potentially starting the requirement with hospitals and then expanding it in the future to other entities such as nursing homes, D&TCs, and ambulatory surgery centers.

Mr. Hutton presented the what? the questions could include things like how the CON project proposes to advance local prevention agenda priorities identified by the communities in those recently completed community health improvement plans and CSPs. If the project does not advance it, what is the plan and time table for the organization to begin to advance the local prevention agenda priorities? Whether the organization is a member of the local prevention agenda coalition for hospitals, how the organization is investing community benefit dollars specifically in the community health improvement area or how their DSRIP domain four activities are supporting local prevention agenda goals. The Department feels strongly those interventions need to be evidence-based and will be asking for entities, applicants to describe their evidence-based interventions. How they have engaged local community partners including the local health department, and then to have it be performance-based and ask for data from the prevention agenda dashboard and other metrics that are going to be tracked to help advance local prevention agenda goals. How did you engage the community in developing your proposal and please describe the types of organizations engaged in the process used. These are our thoughts about the what.

Mr. Hutton described the How? Applicants would be asked to complete the questions as part of the CON submission and we're continuing to investigate some processes that we would undertake internally to have staff review those responses and present that information to you as part of your review. Mr. Hutton said these recommendations are a work in process.

Mr. Hutton concluded his report. To view the complete report and questions from the members, please see pages 35 through 48 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**

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

Dr. Gutiérrez described the proposed Amendment of Section 34-2.11 of Title 10 NYCRR (Communication Between Clinical Laboratory Physicians and Patients). Dr. Gutiérrez motioned for adoption, Dr. Berliner seconded. The proposed regulation was adopted. Please see page 48 of the transcript

#### **For Information**

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

Dr. Gutiérrez described for information the proposed Amendment of Parts 405 and 708 of Title 10 NYCRR (Trauma Centers). Dr. Gutiérrez concluded his report, please see page 49 of the transcript.



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

## **PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

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

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

#### **A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

#### **CON Applications**

##### **Ambulatory Surgery Center - Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	171438 C	Advanced Surgery Center (Rockland County)	Contingent Approval

Dr. Kalkut called application 171438 and motioned for approval. Dr. Berliner seconded the motion, the motion carried. Please see page 49 of the transcript.

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

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

#### **CON Applications**

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

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	171344 C	Women and Children's Hospital Of Buffalo (Erie County) Ms. Baumgartner - Recusal	Contingent Approval

Dr. Kalkut introduced applications 171344 and noted for the record that Ms. Baumgartner has a conflict and has left the Buffalo meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion carried with Ms. Baumgartner's noted recusal. Ms. Baumgartner returned to the Buffalo meeting room. Please see pages 49 and 50 of the transcript.

**Diagnostic and Treatment Center - Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 171142 C	Joseph P. Addabbo - Family Health Center (Queens County) Dr. Kalkut – Recusal	Contingent Approval

Mr. Kraut introduced application 171142 and noted for the record that Dr. Kalkut has a conflict and has exited the meeting room. Mr. Kraut motioned for approval, Dr. Torres seconded the motion. The motion to approve carried with Dr. Kalkut’s noted recusal. Dr. Kalkut returned to the meeting room. See pages 50 and 51 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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

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

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

**CON Applications**

**Acute Care Services – Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1. 172071 E	Brooks Memorial Hospital (Chautauqua County) Ms. Baumgartner - Recusal	Contingent Approval

Dr. Kalkut called application 172071 and noted for the record that Ms. Baumgartner has declared a conflict and has exited the Buffalo meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion to approve carried with Ms. Baumgartner’s recusal. Ms. Baumgartner returned to the Buffalo meeting room. Please see pages 51 and 52 of the attached transcript.

**Ambulatory Surgery Centers – Establish/Construct**

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

Dr. Kalkut introduced applications 172004 and noted that Dr.’s Berliner and Martin had declared conflicts and have exited the meeting room. Dr. Kalkut motioned for approval, Dr. Torres seconds the motion. The motion carries with the noted recusals. Dr.’s Berliner and Martin return to the meeting room. Please see page 52 of the transcript.

**Dialysis Services– Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</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>Council Action</u></b>
1. 171302 E	Hampton NH Operating, LLC d/b/a Westhampton Care Center (Suffolk County) Ms. Carver-Cheney – Recusal	Contingent Approval

Dr. Kalkut calls applications 171304 and 171302 and notes that Ms. Carver-Cheney has declared a conflict on both applications and has exited the meeting room. Dr. Kalkut motions for approval. Dr. Torres seconds the motion. The motion to approve applications 171304 and 171302 carries with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney returns to the meeting room. Please see pages 52 and 52 of the attached transcript.

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

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 (Suffolk County) Mr. La Rue - Recusal	Contingent Approval
4.	171451 E	L & A Operational LLC d/b/a Sayville Nursing and Rehabilitation Center (Suffolk County) Mr. La Rue - Recusal	Contingent Approval

Dr. Kalkut then calls applications 171128, 171450, and 171451 and notes for the record that Mr. La Rue has declared a conflict on the three applications and has exited the meeting room. Dr. Kalkut motions for approval, Dr. Berliner seconds the motion. The motion to approve applications 171128, 171450, and 171451 carried with Mr. La Rue’s recusals. Mr. La Rue returned to the meeting room. Please see page 53 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.	171180 E RTRNC, LLC d/b/a Robinson Terrace Rehabilitation and Nursing Center (Delaware County)	Contingent Approval

Dr. Kalkut moves to application 171180 and motions for approval. Dr. Watkins seconds the motion. The motion to approve carries. Please see pages 54 and 55 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**

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

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 162532 E	Highland Nursing Home, Inc. (St. Lawrence County) Ms. Carver-Cheney – Recusal	Contingent Approval
2. 171109 E	FSNR SNF, LLC d/b/a Four Seasons Nursing and Rehabilitation Center (Kings County) Ms. Carver-Cheney – Recusal	

Dr. Kalkut calls applications 162532 and 171109 and notes for the record that Ms. Carver-Cheney has declared a conflict and has exited the meeting room. Dr. Berliner seconds the motion. The motion carries for applications 162532 and 171109 with Ms. Carver-Cheney’s recusals. Ms. Carver-Cheney returned to the meeting room. Please see pages 55 and 56 of the attached transcript.

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

**NO APPLICATIONS**

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

**CON Applications**

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

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 171186 E	Prospect Acquisition I, LLC d/b/a Center for Nursing & Rehabilitation (Kings County) Dr. Kalkut – Interest Mr. La Rue - Recusal	Contingent Approval

Dr. Kalkut called application 171186 and noted for the record that he has an interest and that Mr. La Rue has exited the meeting room after declaring a conflict. Dr. Kalkut motions for approval, Dr. Berliner seconds the motion. The motion to approve carries with Mr. La Rue's noted recusal. Mr. La Rue returns to the meeting room. Please see pages 56 and 57 of the transcript.

**HOME HEALTH AGENCY LICENSURES**

**New LHCSA**

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)**

2320L	New York Resort for Seniors, LLC d/b/a Oasis Home Care (Delaware, Orange, Sullivan, Ulster Counties)	Contingent Approval
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Dr. Kalkut calls applications 2149L, 2334L, 2335L, 2339L, 2340L, 2539L, 2581L, 2623L, 2625L, 2631L, 2633L, 2636L, 2640L, 151254, 152053, 152103, 152107, 152159, 152344, 161375, 162341, 2320L and motions for approval. Dr. Berliner seconds the motion. Please see page 57 of the attached transcript.

**Changes in Ownership**

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

Dr. Kalkut called applications 162538, 171031, 171394, 171401, 171402, 172030 and motions for approval. Dr. Berliner seconds the motion. The motion carries. Please see pages 57 and 58 of the transcript.

152373	Infusion Options, Inc. (Bronx, Kings, Nassau, New York, Queens, Richmond Counties) Mr. Kraut – Interest/Abstaining	Contingent Approval
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Dr. Kalkut calls application 152373 and motions for approval. Dr. Berliner seconds the motion. The motion carries with Mr. Kraut’s interest/abstention. Please see page 58 of the transcript.

162326	R.A.I.N. Home Attendant Services, Inc. (Bronx, Kings, Queens, New York, Richmond, Westchester Counties) Dr. Torres – Recusal	Contingent Approval
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Dr. Kalkut next moves to application 162326 and notes for the record that Dr. Torres has a conflict and has left the meeting room. Dr. Kalkut motions for approval, Dr. Berliner seconds the motion. The motion carries with Dr. Torres’ recusal. Dr. Torres returns to the meeting room. Please see page 59 of the transcript.

**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.	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

Dr. Kalkut called applications 171220, 171432, and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 59 and 60 of the attached transcript.

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

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

Dr. Kalkut called application 172125 and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see page 60 of the attached transcript.

**Certificates**

**Certificate of Dissolution**

<b><u>Applicant</u></b>	<b><u>Council Action</u></b>
Mercy Health-Care Center, Inc.	Approval
The Uihlein Mercy Center, Inc.	Approval

Lastly, Dr. Kalkut called Mercy Health-Care Center, Inc. and The Uihlein Mercy Center, Inc. and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 60 of the attached transcript.

**ADJOURNMENT:**

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

1                                   **NEW YORK STATE DEPARTMENT OF HEALTH**

2                                   **PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

3                                   **OCTOBER 11, 2017**

4                                   **MEETING TRANSCRIPT**

5                                   **EMPIRE STATE PLAZA, MEETING ROOM 6, ALBANY**

6           JEFF KRAUT:       Thank you very much. I'm Jeff Kraut and I  
7 have the privilege to call to order today the meeting of the  
8 public health and health planning council of October 11, 2017.  
9 I'd like to welcome our members, Ms. Dreslin, representing  
10 commissioner Zucker, participants, and observers. I'd also like  
11 to acknowledge that in the New York City office we have Dr.  
12 Brown, Dr. Gutierrez, Dr. Martin. In the Buffalo office we have  
13 Ms. Baumgartner, and Mr. Holt. I'd like to remind the council  
14 members, staff and the audience, this meeting is subject to the  
15 open meeting law and its broadcast over the internet. That  
16 webcast can be accessed through the Department of Health's  
17 website, and NY Health.gov. These on-demand webcasts will be  
18 available no later than seven days after the meeting for a  
19 minimum of 30 days a copy will be retained in the Department for  
20 upwards of four months or more. There's some suggestion and  
21 ground rules that we'd like to adhere to, to make the meeting  
22 more successful. Because of synchronized captioning it's  
23 important we don't speak over each other. We obviously can't  
24 capture the information and caption the discussion when two  
25 people speak at the same time. When you speak for the first

1 time, please identify yourself as a council member or DOH staff  
2 and your name. This will be helpful to us recording that  
3 meeting. And please remember not only are the mics hot, meaning  
4 they pick up every sound, we have to avoid the rustling of  
5 papers next to the microphone and be sensitive about personal  
6 conversations and sidebars. Not only will the microphones pick  
7 it up, but it'll be webcasted for eternity. As a reminder for  
8 our audience, there's a form that needs to be filled out before  
9 you enter the meeting which records your attendance at the  
10 meetings. It's required by the Joint Commission on Public  
11 Ethics. In accordance with executive law section 166 and the  
12 form is also posted on the New York, on the Department's Website  
13 at NYHealth.gov under the tab or section, Certificate of Need.  
14 So in the future you can fill out that form prior to arriving at  
15 the Council meeting, and we appreciate your support of  
16 fulfilling our duties as prescribed by law.

17 We have a revised agenda that was posted and a member  
18 hopefully have copies at their seats which we rearranged the  
19 order of the CON applications to retain our quorum. Take a look  
20 at it while I'm speaking. We're going to get back to that in a  
21 moment. We're going to start with reports from Ms. Dreslin from  
22 the Commissioner on the Department of Health activities followed  
23 by Mr. Sheppard which will give a report for the office of  
24 primary care and health systems management, and Mr. Hutton on  
25 the Office of Public Health Activities. Then we will call the

1 regulation and code committees by Dr. Gutierrez giving a report.  
2 Dr. Kalkut under project review and establishment actions. When  
3 you look at our agenda, we've organized it by topics or  
4 categories which captures the roles and responsibilities of the  
5 council and it includes the batching of certificate of need  
6 applications. And members, I hope you have the time to review  
7 those applications, thought about if you'd like a project moved  
8 to a different category, and if you do, please let us know  
9 before we call the project review committee for its report.  
10 Before we start the adoption of the minutes, I'd like to thank  
11 staff for following up on the first of our recommendations from  
12 the retreat which is to have water at the council meeting. Just  
13 shows you we are making progress. We are working on  
14 carbohydrates, protein, and fruit.

15 Our first agenda item is the adoption of the minutes. May  
16 I have a motion for the adoption of the August 3, 2017 PHHPC  
17 minutes. I have a motion by Mr. Lawrence, a second by Dr.  
18 Berliner. Now my pleasure to turn it over to Ms. Dreslin who  
19 will update the council about the Department's activities since  
20 our last meeting. OK. We have to vote on the minutes. All  
21 those in favor of adopting the minutes say Aye?

22

23 [Aye]

24 I'm assuming everybody in Buffalo, New York, and in New  
25 York City voted similarly. The minutes are adopted. Ms. Dreslin.

1

2           SALLY DRESLIN: Thank you very much. I'd like to begin today  
3 by congratulating Dr. Yokum Franc, A former Wadsworth Center  
4 Scientist who won this year's 2017 Nobel Prize in chemistry.  
5 Dr. Franc's Pioneering work at the Wadsworth Center enables  
6 scientists around the globe to record highly precise three-  
7 dimensional images of biomolecules. This technology opens up a  
8 new frontier in science by enabling us to see inside cells in  
9 ways that could never be done before. Kryoelectronmicroscopy as  
10 the technology is called, has already been used to analyze the  
11 structure of the Zika Virus and in kind of a nice crossover it  
12 was used in the study of circadian rhythms by the winners of  
13 this year's Nobel Prize in medicine. So thanks to his  
14 influential work, researchers are not able to precisely target  
15 pharmaceuticals at the molecular level leading to new treatments  
16 for life-threatening diseases. And I want to take this  
17 opportunity to congratulate Dr. Franc on his tremendous  
18 achievement and thank him for his many years of service to New  
19 York State. He was at Wadsworth Center for over 20 years.

20           So the Department is also leading a formal request to the  
21 CDC asking for a longitudinal national health effect study of  
22 communities impacted by perfluoroalkyl substances or P-FAS.  
23 These substances include perfluorooctanoic acid, P-FOA and  
24 perfluorooctan sulfonic acid, P-FAS. In New York PFOA and PFAS  
25 have been identified in local water systems in Hoosick Falls,

1 Petersburg, Newburgh, and Long Island. In late August Dr.  
2 Zucker sent a letter to the CDC's agency for toxic substance and  
3 disease registry, the ATSDR and the letter was co-signed by  
4 state health officials from Alaska, Michigan, New Hampshire,  
5 Pennsylvania and Vermont. Like New York, each of these states  
6 has been working to address PFAS contamination and each state  
7 has had extensive response and data collection efforts. In New  
8 York we've conducted PFAS bloodtesting from for than 6000  
9 individuals, tested more than 1600 private well samples and  
10 collected more than 1700 community health survey's from  
11 individuals. We're also launching an online survey. Actually  
12 that survey is already launched in Hoosick Falls, Petersburg,  
13 Newburgh, and Long Island. Together additional information  
14 about potential health impacts of PFAS exposure. The DOH is  
15 encouraging residents in these impacted communities who have not  
16 been surveyed to complete this new survey that's online. We hope  
17 they'll share it with friends and family who have moved away so  
18 we can have a broader picture and we'll use the results to study  
19 the relationship between reported disease prevalence and PFAS.  
20 All survey responses are kept confidential and we thank the  
21 residents of the communities in advance for their participation  
22 and cooperation in helping us to better understand the health  
23 impacts of PFAS.

24 We have some news about the New York State of Health. Open  
25 enrollment on the market place for the 2018 year begins on

1 November 1 and it continues until January 31 of 2018. New York  
2 State has used it's authority to extend this open enrollment  
3 period so that New Yorkers have sufficient time to enroll.  
4 There'll be 12 insurers who are offering qualified healthplans  
5 on the individual marketplace in 2018. And many people who  
6 qualify for federal tax credits to purchase a qualified health  
7 plan will see their premiums decrease in 2018. On average,  
8 consumers who enroll in the most popular silver plan will see a  
9 decrease of 5 percent in 2018 compared to last year. Fifteen  
10 insurers will offer the essential plan which is for lower income  
11 New Yorkers. The monthly premium on the essential plan will  
12 remain at \$20 per person or less. And this program has been  
13 extremely successful. Just last week we announced an enrollment  
14 in that program exceeds 680,000 people. Five insurers will  
15 offer coverage on New York State of Health small business  
16 marketplace, the SHOP and new to the marketplace is the New York  
17 State providers and look-up tool. Which is an online tool which  
18 lets consumers search for their preferred healthcare providers  
19 and see which plans include these providers to help them find  
20 the best coverage needs. And if you haven't had a chance to  
21 look at it, it's a great tool. And you can look it up by  
22 provider or by plan. It's very helpful. As you know, the  
23 Department is also getting ready to update the prevention agenda  
24 for 2019, 2024. The new agenda will help incorporate health  
25 across all policies, an initiative that builds health



1 considerations into policy decisions, and also healthy aging,  
2 which aims to make New York an age-friendly state. In the  
3 remaining months of 2017, the Department will update New York's  
4 health assessment. This is part of the process. The assessment  
5 describes the current demographics and health status of New  
6 Yorkers and based on that the Department then proposes potential  
7 priorities for the new prevention agenda. The first half of 2018  
8 an ad-hoc committee to lead the prevention agenda will create  
9 New York's new agenda with stakeholder engagement. They'll  
10 obtain feedback on the health assessment, finalize state  
11 priority areas and develop a priority-specific set of action  
12 plans. In 2019 the new local collaborative planning cycle starts  
13 and local partners will work together on specific focus areas  
14 and implement strategies that are unique to their communities.  
15 We have good news about our vaccination rates. New York is being  
16 recognized by the CDC for achieving improvements in HPV  
17 vaccination rates in adolescents between ages 13 and 17. New  
18 York achieved these improvements during our 2013-2016 cycle.  
19 The percentage of New York teens, both male and female who have  
20 started the HPV vaccine increased from 61.3 percent in 2015 to  
21 71.5 percent in 2016. That's higher than the national HPV  
22 vaccination coverage for males and females which was 60.4  
23 percent. New York also has had an extensive public awareness  
24 campaign about the HPV vaccine. School meningococcal vaccine  
25 requirements may also have inadvertently improved our HPV

1 coverage if they were offered at the same time. It's worth  
2 noting that New York's 2016 immunization rates for the tetanus,  
3 diphtheria, and pertussis, the TDAP vaccine and the  
4 meningococcal vaccine exceed the national averages as well. In  
5 New York 91.1 percent of teens have received the TDAP vaccine  
6 and 89.2 percent have received the meningococcal vaccine. The  
7 national target is 80 percent for both vaccines. So this is  
8 great news. And again, just to reiterate, vaccines are still  
9 the best and safest way to protect children and adults against  
10 disease.

11 Which leads to our next topic which is the Flu vaccine.  
12 October is the start of flu season and it's time for our annual  
13 reminder that everyone should get a flu shot. It's especially  
14 important for people who are at risk for complications such as  
15 the elderly and people who have chronic health conditions. Last  
16 year in New York State there were 12,912 flu related  
17 hospitalizations and eight pediatric deaths as a result of flu.  
18 Over the last four years there have been 25 pediatric flu deaths  
19 in New York State and an average of 10,571 flu related  
20 hospitalizations. So we are urging all New Yorkers to get their  
21 flu shot and thank you very much.

22

23 JEFF KRAUT: Thank you very much Ms. Dreslin. Any  
24 questions for Ms. Dreslin. Dr. Berliner.

25

1           HOWARD BERLINER:       Ms. Dreslin, wondering if you could say  
2 something about what's happening with Zika and also West Nile.

3  
4           SALLY DRESLIN: Yeah, I'm going to kick it over to Brad  
5 Hutton from the Office of Public Health. We're continuing to  
6 obviously very very closely monitor both Zika and West Nile and  
7 all mosquito borne diseases, but Brad can give you a quick  
8 update. Do you want to do that now?

9  
10          BRAD HUTTON:       Do you want me to do it in my report? OK.

11  
12          JEFF KRAUT:        Are there any other questions from New York  
13 or from Buffalo? OK. Hearing none, thank you very much. I'd  
14 like now to turn to Mr. Sheppard to give an update on the  
15 activities of the office of primary care and health systems  
16 management.

17  
18          DAN SHEPPARD:       Goodmorning. I'm going to focus my report  
19 this morning on recapping and updating the recommendations that  
20 came out of the PHHPC retreat with respect to regulatory  
21 modernization and reform. So just as a refresher, it was only  
22 about a month ago, but just as a quick refresher, the areas  
23 where we landed in terms of recommendations were in the public  
24 health area and this was certainly a subject of a lot of  
25 discussion, that public health would become part of the CON

1 process. And this was to foster better alignment with community  
2 health improvement plans. I'm going to be ... Brad as part of his  
3 report will give a detailed proposal recommendations but we  
4 worked really thanks to Sylvia Pirani who I believe is in New  
5 York City for her leadership, but we worked, HSM and OPH worked  
6 together to develop the draft proposal that Brad will be going  
7 over shortly.

8 Other areas that where we agree to move forward on  
9 recommendations where in the areas of post acute and long term  
10 care, and these were to build on the 2016 nursing home need  
11 methodology recommendations to distinguish rehabilitation from  
12 long term stays in need determinations for nursing home beds.  
13 And also to take into account age-friendly considerations and  
14 community benefit as part of the long term care need methodology  
15 determinations.

16 Secondary in the post-acute long term care was to  
17 incorporate quality measures into the character and competence  
18 determinations and a lot of focus with respect to the  
19 residential healthcare facility side of that. In terms of  
20 status, the detailed recommendations in for both of these  
21 recommendation areas will be developed through the regulatory  
22 modernization initiative or RMI workgroups. The post-acute... and  
23 the two that this will flow through are the post-acute care  
24 management models and the need methodologies innovative models  
25 workgroup. The post-acute workgroup held two meetings already.

1 One in august and another in September and we expect those will  
2 be ... that's all the meetings we're going to have and  
3 recommendations are being developed as a result of those  
4 meetings and will be finalized later this fall and have an  
5 opportunity certainly to report to you on that during the next  
6 cycle.

7 The need methodology, the models workgroup will be holding  
8 it's first meeting in early November and a second one in early  
9 December. Dates should be finalized very shortly, and the  
10 recommendations for that group will be completed by January  
11 2018.

12 Another area for recommendations out of the PHHPC retreat  
13 were to modernize the CON process to align with health system  
14 transformation. And this focused on three areas. One was to  
15 eliminate financial feasibility reviews for provider applicants  
16 that demonstrate financial stability with the criteria for that  
17 to be defined by OPCHSM. A second area was to eliminate CON for  
18 primary care clinic construction. This was noted at the retreat,  
19 is recommendation number six from the December 2012 PHHPC  
20 report. A third area was the OPCHSM would develop a proposal to  
21 eliminate CON for all facility construction projects that do not  
22 reflect changes in services. And of course projects we said  
23 would still be reviewed for compliance with health safety  
24 construction standards.

1 With respect to the rest of the... pivoting off of the PHHPC,  
2 the update on the recommendations that came out of the PHHPC  
3 retreat, just to give a broad overview of the rest of the  
4 regulatory modernization initiative workgroups, there is an  
5 integrated physical and behavioral health workgroup that met on  
6 August 17 and will be having it's final meeting this Friday  
7 October 13, and that workgroup is focusing on developing  
8 proposals for limited integrated license, and this limited  
9 integrated license will allow for certain primary care mental  
10 health, or substance use disorder services to be added to an  
11 existing clinic without that clinic having to obtain additional  
12 licenses. Also, focus on increasing the flexibility by, under  
13 which providers can be reimbursed as well as developing  
14 financial incentives for integration models. And finally  
15 creating a new licensure type that would allow a provider to  
16 obtain a single license for comprehensive set of primary care,  
17 mental health, and substance use disorder services.

18 Another my workgroup is the telehealth  
19 workgroup, and that workgroup met on September 5 and September  
20 27. It's completed it's meetings and a summary of the issues  
21 that were raised and associated recommendations from that  
22 workgroup are being finalized. The goals of that workgroup are  
23 greater flexibility related to the originating and consulting  
24 sites for telehealth encounter, telehealth services as well as  
25 reimbursement. The emphasis throughout those, continual emphasis

1 throughout those workgroup sessions where it's important that we  
2 have a regulatory and statutory structure that allows technology  
3 and methods to evolve, our regulations to evolve with rapidly  
4 changing technology while also focusing on safety, privacy, and  
5 fraud, preventing fraud. Again, the general theme being that we  
6 have a reg set that's very very specific with respect to  
7 services and methods by which services can be provided and we  
8 have an area of telehealth where technology is changing rapidly  
9 and so we're trying to bring those into alignment.

10 An additional workgroup that will be meeting this fall is  
11 the cardiac services needs methodology workgroup. They'll be  
12 meeting on October 16 and November 8, and the focus will be on  
13 modifying the existing regs to allow consideration of cardiac  
14 services applications both surgery and PCI in the context of  
15 larger systems as opposed to stand alone facilities. And the  
16 primary, I think primary focus of the work of this group will be  
17 looking at factors outside of a site-specific volume as an  
18 indicator of quality.

19 The final workgroup is the off campus emergency departments  
20 workgroup. It had it's first meeting yesterday. The focus of  
21 that workgroup is on developing standards for consideration  
22 applications for new off campus emergency departments, and the  
23 reason for this workgroup is that the ones, the off campus  
24 emergency departments that we've approved so far have been very  
25 much on a case-by-case basis, and we want to develop a set of

1 principles, policies, if necessary, but probably not likely,  
2 regulations that help guide us an insure consistency as we move  
3 forward. Preliminary consensus of that workgroup based on  
4 yesterday's meeting was that new off campus emergency  
5 departments should continue to be part of hospital systems,  
6 should only be in communities where one currently exists, or and  
7 is threatened because perhaps the inpatient services that  
8 surrounded it are being decertified or closing. And only in  
9 instances where at a very high bar services are not being met  
10 should an off-campus emergency department be considered in an  
11 area that doesn't currently have one and with the main focus  
12 making sure that existing safety net emergency departments would  
13 not be compromised.

14 So that is the end of my portion of the report. I would  
15 like to turn it over to Charlie Abel who is going to present on  
16 the ambulatory surgery center annual numbers.

17  
18 JEFF KRAUT: So, let's do this. Before we go to the am-  
19 surg let's see if there's any questions on for Mr. Sheppard.  
20 Yes, Dr. Berliner.

21  
22 HOWARD BERLINER: Dan, I'm sorry, I didn't understand the  
23 last part about the off campus emergency rooms. You only want  
24 them to be in areas that already have an off campus?....

25



1           DAN SHEPPARD: No, no, sorry for the lack of clarity. So,  
2 just wanted to communicate it being fresh certainly in my mind  
3 and in this room because this is where the meeting was held  
4 yesterday that a lot of the discussion revolved around the  
5 circumstances under which are appropriate circumstances for an  
6 off campus emergency department, and the ones that we've  
7 approved to date have all been in instances where in a sense the  
8 inpatient services around that emergency department were closed  
9 but it was determined that there was still a need in that  
10 community for emergency full 911 services. And there are, while  
11 we don't have any applications currently, there's occasionally  
12 talk about siting off-campus emergency department in a new  
13 location. In a location where there aren't circumstances like  
14 hospitals converted to a non-inpatient facility. So, and again,  
15 I don't want to presuppose the final recommendations of the  
16 workgroup but the direction that they were certainly heading  
17 that the bar would have to be very high to consider locating a  
18 free standing emergency department or an off campus emergency  
19 department where a community is currently being served by  
20 another open emergency department, is probably the best way to  
21 say it. Thank you for allowing me to clarify that.

22

23           JEFF KRAUT: Are there any questions? Dr. Ruge. And  
24 then I'll turn to New York and Buffalo in a moment.

25

1           JOHN RUGGE:     Dan, in the capital region there are a  
2 number of 24 hour "emergent" care centers that are not emergency  
3 centers. Is there a distinction in the reimbursement? What's  
4 the difference between these two kinds of facilities and what  
5 kind of clarity should the public expect?

6  
7           DAN SHEPPARD:   Again, we look forward to coming back in  
8 early 2018 and fully presenting what the final recommendations  
9 are, but I think one of the things to understand is all of our  
10 off campus emergency departments that we've authorized are  
11 equivalent to hospital emergency departments. They are not  
12 urgent care centers. They are full service emergency department  
13 capable of dealing with any emergency that comes in their door.  
14 So, they are, I mean from a rate perspective they are reimbursed  
15 at about the same rate a hospital would be for that visit and  
16 from a care perspective. I think I just explained.

17  
18           JEFF KRAUT:     So, let me as a question following that. If  
19 somebody is holding themselves forth and using the word  
20 "emergent," I think we had a conversation about that two years  
21 ago that they shouldn't be using it and there should be some  
22 enforcement action or a (de)cease and desist [sic], I don't know  
23 if it raises to that. And that urgent care was fine and the  
24 public was smart enough to figure out the distance. But

1 emergent was one of those words we had thought shouldn't be used  
2 unless it was in the context of the licensed entity.

3

4 DAN SHEPPARD: So I do recall that was part of a 2014 set  
5 of recommendations from this committee. There was I believe  
6 language that would require statute to do that. There was  
7 language advanced I believe during the 2014 or 2015 session on  
8 that, that was not successful. Was not successful. This is an  
9 area that I think it's certainly right for a lot of broad  
10 discussion. One of our charges to the workgroup was to keep it  
11 focused on policies and procedures and if necessary regulations  
12 around what standards we should use for new, for approval going  
13 forward of new ones. There are certainly those related issues  
14 and there was some good discussion yesterday. We were all  
15 webcast and archived and people can look at them, and Peter  
16 Robinson was serving on that workgroup. I know he couldn't be  
17 here today, but I think we look forward to having this  
18 conversation with him in the fall. But there are a lot of  
19 different models all around the country. What we can do is,  
20 there was a paper, a package that was circulated, a working  
21 paper for that meeting. I think we'd be happy to give it to  
22 circulate it through Colleen and Lisa through PHHPC...

23 [that would be helpful]

24 And give you some background on.

25

1 JEFF KRAUT: Mr. Lawrence then Mr. LaRue.

2

3 HARVEY LAWRENCE: Oh, Dan, I don't know if this has been  
4 reviewed yet, but as you, I guess we've all learned that the  
5 current administration in Washington will be eliminating the  
6 coverage or requiring employers to cover contraception and for I  
7 guess religious reasons or other reasons. Is there a position  
8 that the State is taking on that issue and what is...

9

10 DAN SHEPPARD: That area is a little bit out of my scope...

11

12 SALLY DRESLIN: Dan, I think the Governor is very clear and  
13 in fact he put out a press release, there will be no changes in  
14 New York State in access to coverage to contraceptive services  
15 in New York State. Will remain the same as it currently is and  
16 will not be impacted by any decisions at the federal level.

17

18 SCOTT LARUE: Good morning Dan. Just from a process  
19 perspective, once these workgroups make the recommendations,  
20 what are the next steps and what do you see the timeline for  
21 this?

22

23 DAN SHEPPARD: So, our goal is to have all of the, with  
24 maybe one exception to have all of the recommendations finalized  
25 by the end of this calendar year, to the extent that

1 recommendations come forward that require, that are policy or  
2 regulation. Policy ones we're implementing as quickly as  
3 possible. In fact, on the telehealth workgroup, there was a  
4 consensus recommendation that came regarding, the term is, in  
5 lieu of services which essentially provides more flexibility to  
6 reimburse services that weren't specifically identified in our  
7 telehealth parody statute. So that we're just, a great  
8 collaboration and cooperation with OHIP Medicaid division. They  
9 put out a policy guidance within a week or two after that  
10 meeting implementing a policy that had come out of the workgroup  
11 to create some more flexibility in the types of services that  
12 can be offered. So, policy recommendation that we can do and  
13 roll out as quickly as possible. If, and then regulations will  
14 develop and those we would expect depending on workload from  
15 other things will be rolled out in 2018. And to the extent that  
16 it's determined there are any statutory changes to implement,  
17 workgroup recommendations, those would be advanced through  
18 either the budget or if it has a budget implication or program  
19 bill process for the 2018 session.

20

21 JEFF KRAUT: So just to manage our expectations, so  
22 that's really it.

23

24 DAN SHEPPARD: But, there'll be a roadmap available. My  
25 hope is I think the January, February cycle, mid-January

1 meeting, I think, I mean our hope would be certainly the goal  
2 we're working towards is that we could, that, what my deputy  
3 commissioner report at that meeting would be essentially a road  
4 map that's hopefully near complete. There may still be some  
5 lingering issues that we haven't decided on, but provide a  
6 substantial roadmap to the implementation.

7

8 JEFF KRAUT: So, I just want to expand on that a little.  
9 So just to remind everybody, and we're very aware that the  
10 efforts we spent in September are not wasted. Right? That was  
11 very clear. We didn't want to go through a process that didn't  
12 have an outcome. So we looked at all these forces, we looked at  
13 technology, the clinical, the economic, the business issues, and  
14 what we said is we had a perspective and we had ideas. Then we  
15 have other entities, the reform workgroups working here. So you  
16 have multiple policy streams looking at these issues. What we  
17 said is we're going to give time for all those streams to go  
18 through their process and that it'll result in a consensus  
19 driven consolidated policy perspective that will inform  
20 recommendation. And initiatives. Then they have to go through,  
21 once there's a clarity about what is it we're doing and how it's  
22 going to be done, there has to be public comment and industry  
23 comment and others to engage in that and they have to figure out  
24 where to bucket those actions. So there are policies at the  
25 council. We can probably agree there may be some things we want

1 to do and change. You've heard regulation which is a little  
2 different than anything that required statute or an economic or  
3 budget actions, and once they know what bucket these policy  
4 initiatives are streaming through, they can establish a time  
5 table so we can manage the expectations and also monitor the  
6 implementation. So, you know, we're out of the starting gate. A  
7 lot of different things that are going on. That'll have to  
8 converge towards the end of the year and that's where we're  
9 hoping we'll come back with a better clarity as to the things we  
10 discussed in September, how they may be affected and you might  
11 see an outcome, and I would suspect some of these would change,  
12 and some of them will be a consensus driven and come through the  
13 process.

14

15 DAN SHEPPARD: And the goal will be each part for beginning  
16 in 2018 there'll be a portion of my deputy commissioner report  
17 that will be hopefully streamline almost, you know, check,  
18 check, status on schedule, off schedule. And again, although I  
19 know there's a lot, I think there's an awful lot to be said for  
20 coming out with a comprehensive final report...

21 [it's not going to happen...]

22 Well, no, the goal I think on balance we found is that  
23 there will certainly be issues where it's important, anything  
24 regulation that will be a much more formalized process, but  
25 thing that are policy changes. If they make sense, you know, we

1 can move ahead with them, and then we don't want to hold up  
2 certain things. So you're going to hear from Brad in a little  
3 bit about the actual proposed implementation details for this  
4 group to discuss about incorporating public health into the CON  
5 process. And so I guess what I'm trying to say, and hopefully  
6 people feel favorably about this, is that we're not going to go  
7 into a box and emerge three months later with a full report.  
8 It's going to be an interim process, flexible, nimble, process  
9 and we think over time we're going to get more out of that than  
10 a formal fixed process.

11

12 JEFF KRAUT: Before we go to Mr. Abel and am-surg, are  
13 there any questions from New York or Buffalo? OK. Hearing none,  
14 I'm going to turn it over to Mr. Abel to give us the report on  
15 ambulatory surgery centers that we had requested be prepared for  
16 today's meeting.

17

18 CHARLIE ABEL: Thank you. So, as promised, this is our  
19 semi-annual report. As you will recall each six months we have  
20 prepared this report which essentially are three reports. The  
21 first one lists the ambulatory surgery centers that are under  
22 their initial limited life. We chart performance relative to  
23 their charity care and their Medicaid utilization. You'll note  
24 that we have columns there for when they became operational and  
25 when their limited life expires. We gather the information that



1 is portrayed here from a variety of sources. The cost reports  
2 being one source. SPARCS being another. Of note, SPARCS does not  
3 have a field to denote charity care. So, we do have an A in some  
4 of the categories there which basically indicates that while we  
5 may have received SPARCS reporting, we have not yet received a  
6 cost report submission, or the third source is the annual  
7 reports that are requires to be submitted to the Department by  
8 the ambulatory surgery centers while under their limited life.  
9 So that first report are ASCs that have been approved with a  
10 limited life, but have not yet gone forward with an extension or  
11 of any sort. The second sheet, the second tab on the spreadsheet  
12 is a report of those facilities that have received extensions to  
13 their limited life. So we may have approved them for an  
14 additional two or three years because their performance was less  
15 than desirable or less than optimal and the PHHPC made these  
16 recommendations, or embraced these recommendations for  
17 extension. And the final sheet indicates those ambulatory  
18 surgery centers that had been subject to a limited life but  
19 received approval for perpetual life. So they are no longer  
20 limited with respect to an establishment approval or on their  
21 operating certificate with respect to an end date. So providing  
22 that report to you as we will, as we intend to on a six month  
23 basis. I'm willing to take any questions.

24

1           JEFF KRAUT:       So when you take a look at the first large  
2 page, that's the 8.5 x 14, if you look at 2018 which would be  
3 the fourth column, the operating expiration date for the ones  
4 that are coming for limited life, you'll see those are the ones  
5 that will be coming before us next year. So these are the ones  
6 that are teed up. And if you look to the extreme right-hand  
7 column where there says they're actual Medicaid, you get a sense  
8 of how they're tracking as compared to their approved targets  
9 for, maybe we'll combine as the committee suggested, charity  
10 care and Medicaid. So when you take a look at that, there's  
11 probably only one applicant when you look at that which is New  
12 York Eye Surgical, 112382, that is probably tracking below what  
13 the expectations were. And that gives you a sense, I think this  
14 is more of an indication of the value of the conversations we've  
15 been having over the years. And you're seeing for the first  
16 time more consistently of those that are being, that have a  
17 limited life knowing they're coming back in here have made  
18 progress in meeting the objectives that we've laid out as part  
19 of the approval. And the other one seem, again, there's one or  
20 two here we're going to have to take a look at a little more.  
21 So are there any questions for Mr. Abel? Dr. Watkins.

22

23           DR. WATKINS:     On that same vein, let's look at the first  
24 CON that's gone under approval. Syracuse Surgery Center. It

1 appears that they look like their Medicaid rate are tracking  
2 well below as well. Is there anything that we are ...

3

4 JEFF KRAUT: Did that come back to us?

5

6 CHARLIE ABEL: It did not. Obviously with the operating  
7 certificate having been now expired, there's a reason for that,  
8 and you've picked up on exactly what the Department is working  
9 with the applicant on. So we do hope to be able to bring that  
10 application to PHHPC in the November/December cycle. There is a  
11 story to be told with that one. We're working through that, with  
12 those facility's principles right now, and we hope again next  
13 cycle to be able to bring that to PHHPC.

14 I should probably clarify or reiterate what I've said in  
15 the past, and that is, whenever we receive a new information,  
16 primarily the annual reports that have to be submitted to the  
17 Department, every time there is a situation where their  
18 performance is less than what we would expect, less than their  
19 projections would expect, we engage the applicant in discussions  
20 through the period. And seek to educate the applicant with  
21 respect to what is expected. Again, reiterating what their  
22 projections were and what the expectation of PHHPC is. We speak  
23 about the ad-hoc committee that we had on ASCs and charity care  
24 and Medicaid, and how we look a sustained good-faith effort to  
25 be able to achieve the targets. And whenever we have a situation

1 where we are expecting to receive an annual report but we have  
2 not yet received on, we reach out and again, remind the  
3 applicant of that obligation.

4

5 JEFF KRAUT: Yes, Mr. Lawrence. Sorry. Dr. Kalkut. I  
6 didn't see you.

7

8 HARVEY LAWRENCE: Thank you Dr. Kalkut. I guess I just  
9 need some clarification as to whether for charity care and  
10 Medicaid requirements whether it's either/or or both. Because  
11 when I look at charity care unless I miss... I'm not reading this  
12 correctly, seems like most of them are underperforming on  
13 charity care. Is that accurate?

14

15 JEFF KRAUT: Yeah, I think... you want to describe the  
16 policy? Is Mr. Robinson?...

17

18 CHARLIE ABEL: I can do both. Describe what we believe the  
19 charge is to the healthcare community, the ASC community as well  
20 as the Department was a result of that ad-hoc committee for ASC  
21 charity care, and Medicaid issues, and also how the Department  
22 goes about doing this. So, the emphasis that came out of the  
23 ad-hoc report, ad-hoc committee was that we should look at both  
24 things together, that we shouldn't have a hard and fast minimum  
25 number related to either charity care or Medicaid, and look at

1 the facility's performance relative to both in a combined  
2 fashion. So for instance, if they were relatively low on charity  
3 care and they had a strong argument why they weren't doing more  
4 charity care and they were able to have a strong number on  
5 Medicaid, then in combination that, and they were able to  
6 demonstrate a sustained good faith effort in trying to serve  
7 both communities, then we could recommend an approval. That  
8 would be the expectation that PHHPC would follow suit and give  
9 approval. When we look at, when we engage these ASCs as follow  
10 up to their annual report submission, we specifically address  
11 both payers in terms of the efforts that the ASC has taken to  
12 try to serve that population. So it's not only, we don't look at  
13 a strict combined number. Rather we look at it individually and  
14 seek the facility's feedback in terms of why they have or have  
15 not been successful in meeting their targets.

16

17 JEFF KRAUT: I'm going to go to Dr. Kalkut, then Dr.  
18 Martin in New York City, then I'll come back to Dr. Berliner  
19 here.

20

21 GARY KALKUT: Charlie, I have a related question to Mr.  
22 Lawrences. And that's about separating charity and Medicaid  
23 numbers. Certainly in some settings, particularly in FQHCs, the  
24 percentage of patients who do not have insurance and receive  
25 charity care runs 10, 15, 20 percent, and I'd be concerned that

1 those in the era of increasing Medicaid coverage there are still  
2 a fair number of patients without insurance who I would think  
3 our intent would be to include those in our approvals and still  
4 aim to get those people served when we consider these  
5 certificates.

6

7 JEFF KRAUT: Dr. Martin in New York and then Dr. Berliner  
8 up here.

9

10 GLENN MARTIN: Can you hear me?

11

12 JEFF KRAUT: Yes, we can.

13 [no audio]

14 Thank you. Dr. Berliner.

15

16 HOWARD BERLINER: Charlie, it seems to me that the  
17 problem that we face is that these places are coming up for  
18 their second review, they are not meeting the relatively weak  
19 standards that we've set, they tell you that they're going to  
20 try to meet the standards, they tell us they're going to try to  
21 meet the standards. What are our options as a council? Can we  
22 instead of giving a permanent life, give a second limited life?  
23 Are there any other options that we might have in the face of  
24 that?

25

1 CHARLIE ABEL: Two things: one, I think our colleagues at  
2 DLA are prepared to give a broader set of options because  
3 there's pretty much everything is on the table for you folks,  
4 but with respect to how we approach an applicant that appears to  
5 have not demonstrated a sustained good faith effort over their  
6 five-year limited life period to serve these two targeted  
7 populations, our practice has been to engage the applicant to  
8 inform or remind the applicant of the ad-hoc committee  
9 recommendations going forward which not only include how we look  
10 at charity care and Medicaid, but also engagement with the  
11 community, with FQHCs, etc., and our typical response from the  
12 applicant tends to be positive. Albeit some of them have started  
13 their efforts relatively recently at that point. But they  
14 understand the seriousness and the importance that the  
15 Department and the PHHPC put on these efforts. And they come  
16 back with a plan that seems reasonable. We've got sliding fee  
17 scales, we've got communications with FQHCs, we've got  
18 enrollment in Medicaid managed care organizations, we have all  
19 the things that we would expect to see, although it would've  
20 been nice to see them earlier on in their limited life, and a  
21 commitment that seems genuine. So in those kinds of situations  
22 we have ... we've disclosed all this in our review to PHHPC and  
23 we've recommended them for a limited life extension. If they've  
24 proceeded, if they've made good progress over some period of  
25 time, it may only be a two-year period, otherwise it could be

1 three year or may even go for another five-year, we operate  
2 within those parameters. So far, we have not brought back a  
3 project to PHHPC where we have recommended disapproval, based on  
4 their poor performance. That's a possibility going forward. And  
5 in fact since we changed our policy of putting limited life on  
6 the establishment of the provider to putting it as an operating  
7 certificate expiration date, many of the future limited life  
8 renewals, those applications will come administratively to the  
9 Department, and the only way the PHHPC will see them is if we  
10 recommend disapproval. It'll be another year or two before we  
11 get to that point so many of the projects that are here expiring  
12 in 2018 I'm suspecting those will have to come back to PHHPC.

13

14 JEFF KRAUT: We have a question from Dr. Brown in New  
15 York.

16

17 LAWRENCE BROWN: Can you hear me? Charlie this is great...  
18 I'm just wondering in the future if we have just one... some  
19 kind of analysis that tells something that

20 I'm wondering if we might be able to do that in the future  
21 and I have a second follow up question. I have, with respect to  
22 Syracuse... so does that mean that Department  
23 temporary extension?

24



1 CHARLIE ABEL: I'll take the last question first. With  
2 respect to Syracuse surgery center. That application had been  
3 submitted prior to the expiration of the operating certificate  
4 and we've been reviewing that application and engaging the  
5 applicant on it's story of how it's been operating. And you'll  
6 hear that story again perhaps next cycle, which is typically  
7 where we do our full analysis. The expectation is that over the  
8 course of a five year limited life a facility has start up  
9 struggles. They really don't hit their stride until perhaps the  
10 third year with respect to financial performance and so we do  
11 expect that beginning by the third year, fourth year, they  
12 should be well on their way for hitting their targets for  
13 Medicaid and charity care, and that's when we become more when  
14 we engage more intensively with these folks and typically it's  
15 during the fourth year when they submit their application for an  
16 extension, whether that be a limited life extension or extension  
17 in perpetuity and shortly thereafter through our analysis we  
18 present, we have presented to the PHHPC the product of our  
19 analysis. I'm not sure there's a lot of opportunity in the  
20 interim period to engage the applicant more fully and have a  
21 productive explanation and report to the PHHPC but I leave that  
22 to PHHPC to decide.

23

24 JEFF KRAUT: Dr. Rugge.

25

1 JOHN RUGGE: Charlie, the question also included what's  
2 happened since May 31 since the five year date expired with this  
3 particular facility?

4  
5 CHARLIE ABEL: Thank you. I should've mentioned this. When  
6 an operating certificate expires, same thing with establishment  
7 approval expiring, as long as we have an application in house  
8 and we are actively engaging the applicant in the review of that  
9 application, our colleagues at DLA have opined that it  
10 functioned, continued to function during that period. Obviously  
11 if there's been an expiration of the operating certificate and  
12 no application has been submitted, that's a problem. If there's  
13 been an application submitted but there's a recommendation for  
14 disapproval or decision for disapproval that comes from PHHPC  
15 then again, that's a problem for the facility. And the DLA may  
16 be able to speak more fully on that.

17  
18 JEFF KRAUT: I'm going to go to Dr. Martin in New York  
19 then come back to Dr. Berliner, and then Mr. Lawrence. Dr.  
20 Martin.

21  
22 GLENN MARTIN: Just a quick comment and question.  
23 (inaudible)

24

1 JEFF KRAUT: OK. Thank you. Dr. Berliner. And then Mr.  
2 Lawrence.

3  
4 HOWARD BERLINER: Thank you. I'm going to take the Lou  
5 Gehrig reverb as a positive omen for the Yankees tonight. I  
6 think it's important for newer members of the council to  
7 understand that at least in New York City there are public  
8 service projects. We've heard at least two or three times from  
9 one that's a project of the American Cancer Society and the New  
10 York City Health Department which will refer people without the  
11 ability to pay to ambulatory surgery centers for preventive  
12 colonoscopies and other procedures. Given that, and they were  
13 not at capacity. It wasn't like, they had plenty of people and  
14 places. Given that, it just seems to me that if, and looking at  
15 the list, almost all the places, I think all the places in New  
16 York City are below even, and again, what I think is a very  
17 minimal you know, bottom threshold that we've set, can't make it  
18 is, it's unconscionable. And so places that are far out of the  
19 way that represent only a single specialty, where people may not  
20 know the place even exists, or what kind of work they do, that  
21 may require a little more work on the part of the applicant and  
22 also the Department, kind of give them suggestions on how to  
23 improve. But these places in New York City, there's really no  
24 excuse. Everyone knows about this. It was in our report. And  
25 just seems you know, we're just trying to find excuses for

1 people not living up to these very minimal thresholds. Thank  
2 you.

3

4 JEFF KRAUT: Mr. Lawrence.

5

6 HARVEY LAWRENCE: You took a lot of the words out of my  
7 mouth, Dr. Berliner. And I'd like to thank Dr. Kalkut for  
8 indicating that in the FQHC environment, the uninsured  
9 populations run 10, 15, in some cases as high as 30 percent. So,  
10 this is , really important. And my earlier question regarding  
11 whether it's either or because I got the sense that if you were  
12 to meet the Medicaid threshold that that would be sufficient.  
13 And so there was not a need necessarily to look for charity  
14 care. But I think charity care is really quite important because  
15 there are a lot of people that are still in this city as we know  
16 that are uninsured and without insurance that need to have this  
17 service. So, and I think in terms of making the service  
18 available, is it possible to encourage these institutions to  
19 reach out to CHCANYS and a very strong way to connect them to  
20 health centers that are serving the underserved in the  
21 neighborhoods and at some point when they are coming back for  
22 their review, it's not sufficient to at that time essentially  
23 say oh, we've been trying but there should be some standard,  
24 some criteria, some quantitative metrics for yes, I've had I  
25 don't know, five conversations with four community health

1 centers and we have created a linkage arrangement with this  
2 center in our neighborhood for referrals so that there's some  
3 beyond a qualitative they are trying their best that there's  
4 metrics associated with that you can quantify and then use  
5 across the universe for all of these centers.

6  
7 JEFF KRAUT: Alright. Thank you and I'd see that the more  
8 we talk about it, at least no one can come into this room and  
9 say I didn't know. It's the one thing we've gotten over. And I  
10 think as we go through this in the following year and then  
11 obviously the application will come to us in the 17<sup>th</sup>, we'll be  
12 able to see how some of the discussions and policies that we put  
13 into practice. And we just have to carefully do that in a very  
14 fair and balanced way as Charlie had indicated. The Department's  
15 views are proceeding. So thank you so much.

16 I'll now turn to Mr. Hutton to give the report of the  
17 Office of Public Health.

18  
19 BRAD HUTTON: Thanks Jeff. I have a few items this  
20 morning. First I'll provide Dr. Berliner with that answer on  
21 West Nile and Zika. Going to give you the Council, a few  
22 updates in the area of drinking water quality, and then also  
23 report on some progress that has been made internally within the  
24 Department on steps that we can take to incorporate public  
25 health into the CON review process.

1           So, first it has been a fairly busy year for mosquito-borne  
2 diseases. There are several areas of the state where we've had  
3 West Nile Virus either positive pools or human cases. A little  
4 bit increased over most recent years but I don't think  
5 completely out of the norm where we've had cases in Oswego and  
6 Onondaga and Center New York, Buffalo and Erie County and  
7 especially in Long Island and New York City where there's been a  
8 fair amount of West Nile activity. We also have had some  
9 positive triple E, eastern equine encephalitis positive pools of  
10 mosquitos in central New York which is pretty typical and also  
11 in Suffolk County which was the first positive mosquito pool for  
12 triple E in about a decade, and again, not completely out of the  
13 ordinary.

14           With the Zika virus we are continuing to do a fair amount  
15 of testing. In 2017 we have detected 158 cases of Zika virus  
16 among New York State residents. Those are all travel associated  
17 cases. That results in a total of more than 1300 cases since the  
18 Zika virus epidemic began in 2016. We're definitely seeing  
19 declining number of cases. The countries that have active  
20 transmission are now reaching a point where they have a decent  
21 percentage of the population that have had passed infection and  
22 now are immune, so that's not uncommon with vector-borne  
23 diseases such as this. But it's still a concern. We continue to  
24 have all the standard travel recommendations, especially for  
25 pregnant women or pregnant women who has a partner who's

1 traveled to take the appropriate precautions to prevent Zika and  
2 protect their infant.

3         In the area of drinking water quality which I'd like to  
4 continue to keep you apprised of because of the likelihood that  
5 there will be rule-making that comes before this council in the  
6 future, we did have the very first meeting of a brand new  
7 drinking water quality council two Mondays ago on October 2, at  
8 SUNY Stony Brook. This is a new council, 12 members that was  
9 created by statute as part of the last state budget that would  
10 be advising the commissioner of health on emerging contaminants  
11 that water systems across New York State should be testing for.  
12 As well as the notification levels that should prompt actions.  
13 And then finally the maximum contaminant levels which would be  
14 the legally enforceable levels that water systems need to stay  
15 within or take actions to remediate the problem. They will be  
16 working very aggressively to provide recommendations on those  
17 maximum contaminant levels or MCLs for three contaminants, PFOA,  
18 and PFOS which Sally had mentioned earlier but also one for  
19 dioxane which is a contaminant that is unfortunately pretty  
20 prevalent on many water systems on Long Island. Those three  
21 contaminants will be the priority for the drinking water council  
22 and then they'll move to consider many other candidate  
23 contaminants that could begin to be tested for water systems in  
24 future years. So I certainly expect that there'll be proposed  
25 rulemaking to come before this council in 2018 that's related to

1 the emerging contaminants in drinking water quality council. The  
2 Department's also been heavily engaged over the last six weeks  
3 in response to harmful (algae) blooms and related cyanotoxins  
4 that can potentially cause concerns among humans. So those  
5 harmful Alga blooms are otherwise known as bluegreen algae or  
6 cyanobacter have been increasing in prevalence in water bodies  
7 across New York State and certainly many other states. There's  
8 many reasons for that. In New York we had a really challenging  
9 weather year that had heavy rains that resulted in runoffs and  
10 nutrients feeding the bacteria in water bodies across the state.  
11 We've been focusing our efforts on drinking water impact so  
12 while there are blooms in water bodies all around the state,  
13 there aren't water intakes that serve populations in every one  
14 of those water bodies. And so, beginning several weeks ago we've  
15 been heavily focused on the city of Syracuse and he communities  
16 served by Skaneateles Lake which happens to be one of five water  
17 systems that are unfiltered. So as a result they have to have  
18 numerous controls in place to protect drinking water. We  
19 detected microcystin which is the toxin of concern that we  
20 primarily monitor for in low levels but it was in the near  
21 finished water of Skaneateles which serves the city of Syracuse  
22 and three other villages in the pathway between Skaneateles Lake  
23 and Syracuse. The concerns are liver and kidney toxicity  
24 especially among sensitive populations. Young children, pregnant  
25 moms, nursing mothers, people with preexisting kidney or liver



1 disease and fortunately we did some testing through the night  
2 once we first found toxin present and were able to demonstrate  
3 that toxin was not present throughout the water system at taps  
4 and we were able to make some treatment tweaks that maximized  
5 the amount of chlorine that was in the system. Chlorine does  
6 seem to have a modest beneficial impact on oxidizing the toxin  
7 that's present. So we've been working very closely with  
8 Skaneateles Lake and some other water systems, two small ones  
9 that are served by Chautauqua Lake and a few that are served by  
10 Seneca Lake, primarily focusing on those because of the position  
11 of the intakes and the presence of HABS or Harmful Algae Blooms  
12 in those areas.

13 We're fortunate once again that Wadsworth Center has the  
14 capabilities that it does. We're able to monitor for microcysts  
15 in these toxins when I think you'll find that many other states  
16 are not even monitoring or able to monitor for drinking water  
17 impact. And so when we've had situations where there's a visible  
18 presence of blooms and there's been a spot check screening that  
19 has identified the presence of toxins and the surface water,  
20 then we've in many cases moved to pretty aggressive monitoring  
21 for microcysts and we'll looking forward to the close of the  
22 season here pretty soon as temperatures change and knock the  
23 HABS down for the year.

1           Maybe I'll pause and see if there's any questions on those  
2 before I completely shift gears and talk about our proposal to  
3 move forward and incorporate public health provisions into CON.

4  
5           JEFF KRAUT:       Are there any questions from Buffalo or New  
6 York? I'm sorry. Mr. Lawrence then Dr. Watkins. Dr. Watkins.  
7 I'm sorry.

8  
9           DR. WATKINS:     Brad, you talked about your drinking water  
10 quality council and I know that a while back we've had a number  
11 of quality controls taken place in the schools and you didn't  
12 mention anything about the leads in the schools, so maybe you  
13 can elaborate a little more about that for us?

14  
15          BRAD HUTTON:    I'd be happy to do that Dr. Watkins. There  
16 was legislation enacted in the past year that required public  
17 schools around New York State to test all of their outlets for  
18 the presence of lead and if there was detection of a level in  
19 the drinking water that exceeded the action level, that they had  
20 to take that outlet offline and address the problem before they  
21 brought it back on. We've tested tens of thousands of outlets,  
22 identified many problems that were addressed. Really I think  
23 leading the nation, while it's probably not the primary source  
24 of lead poisoning among children who have elevated blood lead  
25 levels, it certainly is a contributing source, and we're really

1 pleased that the work that schools did in really short order to  
2 implement that new legislation.

3

4 JEFF KRAUT: Why don't you proceed with the health in all  
5 policies.

6

7 BRAD HUTTON: I'm not sure if I'm able to get the  
8 presentation up for folks to view? Great. So, you may recall  
9 that recently here, and I know Sylvia is on in New York City,  
10 want to give kudos to her for really championing this issue both  
11 leading into the retreat and then also working with our  
12 colleagues at OPCHSM as we came back from the retreat. There  
13 was some exciting conversation from our perspective - next  
14 slide, sorry I can move this myself - there was some exciting  
15 conversation at the retreat about ways that we could potentially  
16 incorporate public health into the CON review process, possibly  
17 considering it under such other matters authority that we  
18 reviewed at the retreat. And so staff in the two offices have  
19 been meeting to develop some recommendations. These are the  
20 actual two recommendations that came from that PHHPC retreat.  
21 First that it would become part of the CON process and that we  
22 would make health across all policies and healthy aging the  
23 framework for the next iteration of the prevention agenda. And  
24 at the local level, require local health departments and health  
25 systems to completely align their community health improvement

1 plans. So the purpose is for the state to incorporate the public  
2 health provisions into the CON review process to advance the  
3 health of communities, support the achievement of prevention  
4 agenda goals, and support the goals that were articulated by our  
5 governor in a recent budget, incorporating health across all  
6 policies and making New York an age friendly state.

7 So the first concept here is the who? Who are the public  
8 health review applied to? Obviously, let me stress again, this  
9 is draft concepts that we're continuing to discuss and we'll  
10 certainly want to have your input on, but the idea is that it  
11 could impact new providers seeking establishment including  
12 mergers, active parents, and acquisitions. Could include  
13 construction CONs for existing established providers, proposing  
14 to add a new service or expand capacity of an existing service.  
15 This could depend on the service, dollar value, other  
16 thresholds. I think that's something we'd love to have your  
17 input on. We also contemplate phasing this in, potentially  
18 starting the requirement with hospitals and then expanding it in  
19 the future to other entities such as nursing homes, D&TCs, and  
20 am-surg centers. We don't think it would apply, obviously want  
21 your input to pier construction, rehab CONs without a service  
22 expansion or addition.

23 OK, the what; the questions could include things like how  
24 the CON project proposes to advance local prevention agenda  
25 priorities identified by the communities in those recently

1 completed community health improvement plans and CSPs. If the  
2 project does not advance it, what is the plan and time table for  
3 the organization to begin to advance the local prevention agenda  
4 priorities? Whether the organization is a member of the local  
5 prevention agenda coalition for hospitals, how the organization  
6 is investing community benefit dollars specifically in the  
7 community health improvement area or how their DSRIP domain four  
8 activities are supporting local prevention agenda goals. We feel  
9 strongly those interventions need to be evidence-based and so  
10 we'll be asking for entities, applicants to describe their  
11 evidence-based interventions. How you've engaged local community  
12 partners including the local health department, and then to have  
13 it be performance-based and ask for data from the prevention  
14 agenda dashboard and other metrics that are going to be tracked  
15 to help advance local prevention agenda goals. How did you  
16 engage the community in developing your proposal and please  
17 describe the types of organizations engaged in the process used.  
18 These are our thoughts about the what.

19 And finally the How. Applicants would be asked to complete  
20 the questions as part of the CON submission and we're continuing  
21 to investigate some processes that we would undertake internally  
22 to have staff review those responses and present that  
23 information to you as part of your review, so that this is  
24 certainly a work in process. So very pleased that the progress

1 that Sylvia, and I know Tracy and others have made an OPCHSM to  
2 act upon this based upon your recommendations at the retreat.

3

4 JEFF KRAUT: Are there questions? Let me just check  
5 anybody from New York or Buffalo.

6 [Jeff?]

7 Yes, Scott.

8

9 SCOTT LARUE: Did the workgroup have any examples or was  
10 there any discussion about how they saw nursing homes  
11 participating?

12

13 BRAD HUTTON: Sylvia, did you hear that question? I wonder  
14 if you have a response to that one.

15 Question was whether or not we had any thoughts about how  
16 nursing homes could potentially be impacted.

17

18 SYLVIA PIRANI: Yes, I think... and Dan could comment too  
19 (inaudible)

20 [Can you get a little closer to the mic]

21

22 TRACY RALEIGH: I can pick up from Sylvia. Can everybody  
23 hear me OK? So, we did talk about nursing homes. Clearly we  
24 thought the phase in would be easiest to start with hospitals  
25 because there's established data and community service plans

1 that the hospitals have. But for nursing homes the whole idea  
2 here is to connect facilities with the health priorities in  
3 communities and prevention agenda goals. So, you know, specific  
4 examples may be what's the prevalence among the elderly  
5 community in certain comorbid disease conditions, what is the  
6 nursing home? How can it engage with the local health  
7 department in addressing some of the issues that are the highest  
8 health concerns of the community. So we're still working on  
9 specifics, but the whole point of this is to connect the  
10 communities with the local health priorities that are identified  
11 by the local health departments and work on ways to improve in  
12 prevention agenda. So I don't know if that addresses your  
13 question.

14

15 JEFF KRAUT: Dr. Brown in New York.

16

17 LAWRENCE BROWN: Yes, I want to (no audio)

18 BRAD HUTTON: I think that's a good suggestion, something  
19 we could definitely consider in the future.

20

21 JEFF KRAUT: One of the, let me just... so one of the  
22 issues you just talked about it, you have to be careful we're  
23 not creating another layer of bureaucracy. In the analysis and  
24 how you use this. So, you use the hospitals as the examples.  
25 Where they're doing a community needs plan, they're filing with

1 the IRS and the 990s and the Department of Health has to do a  
2 review of those. Not to check off that they got it, but now to  
3 say if providers acknowledge the projects they may be bringing  
4 forward and how it relates to it, once you've reviewed that  
5 issue, you don't necessarily have to repeat it again when you're  
6 doing a CON. So, for example, if they've identified projects  
7 they may come in the next year or two or in the cycle of the  
8 community needs and explain how it relates and aligns with the  
9 prevention agenda, and you've done a review of that and you've  
10 accepted the community needs plan, that may in fact, serve as  
11 the review for the CON because you've kind of checked it off.  
12 The concern is when you're coming in and certain transactions  
13 that you have identified there, some of those transactions are  
14 changing the way we're delivering care that this provision, if  
15 not managed correctly, could be weaponized. Because it's  
16 different. It's change. And you have groups, as you know, that  
17 have a different view of that change. And you have to just be  
18 careful of how it's going to be applied but in a positive rather  
19 than in a punitive sense. So those are issues you, cause I'm  
20 looking at some of the things that you put on there that I think  
21 is going to need conversation in the public health committees  
22 about how it's applied. Not the underlying concept of what  
23 we're trying to accomplish, but really the practice of how it's  
24 going to be applied.

25



1           BRAD HUTTON:    I think we're very mindful of minimizing the  
2 burden to applicants and the Department and the council and  
3 we'll definitely tend to streamline what's expected.

4

5           JEFF KRAUT:     OK. Mr. Lawrence then Mr. Sheppard.

6

7           HARVEY LAWRENCE:   I think this is a wonderful opportunity  
8 to introduce on the front end more sort of targeting,  
9 microtargeting and planning within communities. And so that it  
10 should not simply begin at the point of an application, but  
11 institutions should be aware of this agenda and be involved in  
12 it at the community level long before they anticipate a project,  
13 and so that to your point they will already have been involved  
14 and will have been prepared for that submission without making  
15 this an additional step in the process for them. So if it's  
16 working right then it's already integrated in their process and  
17 their behavior.

18

19          JEFF KRAUT:     The smart ones will.

20

21          DAN SHEPPARD:   Just to emphasize and expand on something  
22 Brad said earlier. These are draft proposals. We're following  
23 up on the good discussion that was had at the retreat and  
24 absolutely these need to be formalized and vetted probably in a  
25 more extensive committee discussion with PHHCP but we certainly

1 just wanted to give you our initial thoughts on how to implement  
2 what received so much tension with respect to recommendations of  
3 the PHHPC retreat. So, now we look forward to streamlining these  
4 and making sure what it does. I think the intent is to bring  
5 focus on the community health plan process and on the community  
6 needs and not be weaponized or otherwise slow down the process.

7

8 JEFF KRAUT: Sylvia Pirani in New York wants to make a  
9 comment. Go ahead Sylvia.

10

11 SYLVIA PIRANI: (no audio)

12 JEFF KRAUT: Well, yeah, I absolutely agree with that and  
13 we'll figure out how to do that because that's what we said we  
14 were going to do. That's all.

15 OK. Thank you very much. Mr. Hutton. And now I'll turn to  
16 Dr. Gutierrez to give a report on the Codes, Regulation,  
17 Legislation committee.

18

19 ANGEL GUTIERREZ: (no audio)

20 JEFF KRAUT: Do I have a second? Second, Dr. Berliner.  
21 Are there any questions? Hearing none, I'll call for a vote. All  
22 those in favor, aye.

23 [Aye.]

24 Motion carries.

1 ANGEL GUTIERREZ: The next one for information only...

2 (inaudible)

3 JEFF KRAUT: So I don't know if there's any questions?

4 Hearing none, thank Dr. Gutierrez and the committee for it's

5 work. Anything else Dr. Gutierrez? Thank you very much. I'll

6 now turn to Dr. Kalkut to give a report of the Establishment and

7 Project review.

8

9 GARY KALKUT: First applications are for construction

10 first is 171438C, Advanced Surgery Center in Rockland County.

11 The Committee recommended contingent approval. Mr. Abel? And I

12 so move. Excuse me.

13

14 CHARLIE ABEL: I'm here for questions.

15

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

17 Berliner. Are there Any questions from the Council, the staff? ...

18 not the staff, the members? New York? Buffalo? Hearing none

19 and seeing none, no texts from you, I'll call the application.

20 All those in favor, all the batch, all those in favor, aye?

21

22 [Aye]

23 Opposed? Abstention? The motion carries.

24 GARY KALKUT: Thank you. Next is 171344C, Ms. Baumgartner

25 in Buffalo has a recusal. She's walking out. Women and

1 Children's Hospital in Erie County. Committee recommended  
2 contingent approval, and I so move.

3

4 JEFF KRAUT: OK, and you're going to batch the next one?

5

6 GARY KALKUT: Yes. Well, I can('t).

7

8 JEFF KRAUT: Any questions for the Department? Any  
9 comments from the council members? Hearing none, all those in  
10 favor, aye.

11

12 [Aye]

13 Opposed? Abstention? The motion carries. Can we ask Ms.  
14 Baumgartner to return to the room. I'll take it from here.

15 Now, we're calling application 171142C, Joseph Adabo Family  
16 Health Center in Queens. A recusal by Dr. Kalkut who has left  
17 the room. The Department and the committee recommended  
18 contingent approval and I so move. May I have a second? Second,  
19 Dr. Torres. Any comment from the Department.

20

21 CHARLIE ABEL: Not at this time.

22

23 JEFF KRAUT: Any questions on this application? Hearing  
24 none, I'll call for a vote, all those in favor, aye.

25

1 [aye]

2 Opposed? Abstention. The motion carries. We'll ask Dr.  
3 Kalkut to return to the room and he'll take control back for the  
4 agenda.

5

6 GARY KALKUT: Establishment and construction, acute care,  
7 excuse me, application 172071, again Ms. Baumbartner has a  
8 recusal. This is Brooks Memorial Hospital in Chautauqua County.  
9 And 172004, Endoscopy Center of New York, New York County. Two  
10 recusals; Dr. Berliner and Dr. Martin. We're going to have  
11 enough?

12 (Why don't we just do Brooks?)

13 So Brooks Memorial Hospital, the Department... the committee  
14 recommends contingent approval and I so move.

15

16 JEFF KRAUT: I have a second Dr. Berliner. Any comments  
17 from the Department?

18

19 CHARLIE ABEL: No.

20

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

23

24 [Aye]

1           Opposed? Abstentions? Motion carries. Let's ask Ms.  
2 Baumgartner please return to the room, and Dr. Berliner and Dr.  
3 Martin please get ready to leave.

4  
5           GARY KALKUT:    Next, 172004E, Endoscopy Center of New York,  
6 New York County. Dr. Berliner and Martin have left the room.  
7 Committee recommends contingent approval and I so move.

8  
9           JEFF KRAUT:     I have a motion, do I have a second? Dr.  
10 Torres. Any comment by the Department Any questions from the  
11 Council members? All those in favor, aye?

12           Opposed? Abstentions? Motion carries. Could we ask Dr.  
13 Berliner and Dr. Martin to return to the room in New York, and  
14 Ms. Carver-Cheney will be leaving in a moment. For the next two  
15 applications.

16  
17           GARY KALKUT:    171304E, FSNR Dialysis LLC, d/b/a Four  
18 Seasons Dialysis in Kings County. Ms. Carver-Cheney has left the  
19 room. 171302E, Hampton Nursing Home Operating LLC, d/b/a West  
20 Hampton Care Center in Suffolk County. The committee recommends  
21 contingent approval and I so move.

22  
23           JEFF KRAUT:     So I have a motion and I have a second, Dr.  
24 Torres. Any questions, any comments by the Department? No. Any

1 questions from council members? Comments? All those in favor  
2 aye?

3

4 [Aye]

5 Opposed? Abstentions? Motion carries. Please ask Ms.  
6 Carver-Cheney to return, and say goodbye to Mr. LaRue.

7

8 GARY KALKUT: 171128E, Barnwell Operations Associates,  
9 LLC, d/b/a The Grand Rehabilitation and Nursing at Barnwell in  
10 Columbia County. Mr. LaRue has left the room. Has a recusal.

11 171450E. SNJ Operational LLC, d/b/a Mills Pond Nursing and  
12 Rehabilitation Center. Again, a recusal by Mr. LaRue. And  
13 171451E, LNA Operational LLC, d/b/a Sayville Nursing and  
14 Rehabilitation Center in Suffolk County. Mr. LaRue recuses. The  
15 committee recommends contingent approval and I so move.

16

17 JEFF KRAUT: I have a motion, I have a second, Dr.  
18 Berliner. Any comments Mr. Abel?

19

20 CHARLIE ABEL: Not at this time.

21

22 JEFF KRAUT: Any questions from the council members? All  
23 those in favor, aye?

24 Opposed? Abstention? The motion carries.

25 Please ask Mr. LaRue to return.

1

2 GARY KALKUT: Next is 171180E. RTRNC LLC, d/b/a Robinson  
3 Terrace Rehabilitation and Nursing Center in Delaware County. Of  
4 Note, Mr. LaRue opposed this motion at EPRC and Dr. Berliner and  
5 Dr. Brown both abstained. The committee recommended contingent  
6 approval and I so move.

7

8 JEFF KRAUT: So we have a motion. May we have a second?  
9 Dr. Watkins. Mr. Abel?

10

11 CHARLIE ABEL: Thank you. So I just wanted to call to the  
12 committee's attention, the PHHPC's attention at the committee  
13 meeting there was a request for the information on the use of  
14 the sale proceeds by the seller and that was provided in an  
15 email in the interim period by the Department. I'm willing to  
16 take any questions on that. But in summary, at least \$3.1  
17 million will remain after payment of liabilities and the not-  
18 for-profit entity expects to be able to use those proceeds to  
19 support services for the elderly and it is noted that the seller  
20 is engaged with the attorney general's office on the use of  
21 those proceeds as well.

22

23 JEFF KRAUT: So, just to clarify for those people who  
24 were not there, there was a question about obviously the  
25 proceeds. The seller as a successor entity, continues in



1 operation and has a mission after it satisfies it's liabilities.  
2 It's using the proceeds of this sale to support the not-for-  
3 profit mission of the seller. Correct? OK. And hopefully that  
4 satisfied the questions that were raised. Are there any other  
5 questions from the council members who want to make any  
6 comments? Hearing none, I'll call for a vote. All those in  
7 favor aye?

8

9 [Aye]

10 Opposed? Abstentions? Motion carries.

11

12 GARY KALKUT: Next is 162532E, Highland Nursing Home in  
13 St. Lawrence County. Ms. Carver-Cheney has a recusal and is  
14 leaving the room, and 171109E, FSNR Skilled Nursing Facility  
15 LLC, d/b/a/ Four Seasons Nursing and Rehabilitation Center in  
16 Kings County. Again, a recusal by Ms. Carver Cheney. The  
17 Committee recommended contingent approval for both. Both motions  
18 were opposed at the committee level by Dr. Torres. And I so  
19 move.

20

21 JEFF KRAUT: We have a motion to move. We have a second  
22 by Dr. Berliner. Mr. Abel.

23

24 CHARLIE ABEL: I'm available for questions.

25

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

4

5 [Aye]

6 All those opposed? Abstentions? Motion carries.

7 Ask Ms. Carver-Cheney to return please. And Gary I'll take  
8 the next one.

9 You have to leave. Oh, no, no.

10 (Just an interest)

11 I'm sorry. Go ahead.

12

13 GARY KALKUT: 171186E, Prospect Acquisition One, LLC,  
14 d/b/a Center for Nursing and Rehabilitation in Kings County.  
15 Mr. LaRue has a conflict and is recused. Sir. And is leaving  
16 the room. I have declared an interest. This was the application  
17 presented earlier today at a special establishment and project  
18 review committee and the recommendation was contingent approval,  
19 and I so move.

20

21 JEFF KRAUT: I have a motion, I have a second, Dr.  
22 Berliner. Any comment from the Department?

23

24 CHARLIE ABEL: Only for questions.

25

1 JEFF KRAUT: Any questions from the council? Hearing  
2 none, all those in favor, aye.

3

4 [Aye]

5 Opposed? Abstentions? Motion carries. Please ask Mr. LaRue  
6 to return.

7

8 GARY KALKUT: We'll move to the home health agency  
9 licensures, where I will read the numbers of the applications.  
10 2149L, 2334L, 2335L, 2339L, 2340L, 2539L, 2581L, 2623L,  
11 2625L, 2631L, 2633L. 2636L, 2640L, 151254, 152053, 152103,  
12 152107, 152159, 152344, 161375, 162341, 2320L. The Committee  
13 recommended contingent approval for these applications, and I so  
14 move.

15

16 JEFF KRAUT: I have a motion. May I have a second? Dr.  
17 Berliner. Are there any questions from the council on any one of  
18 these applications? Hearing none, I'll call for a vote. All  
19 those in favor, aye.

20

21 [Aye]

22 Opposed? Any abstain? The motion carries.

23

24 GARY KALKUT: Changes of ownership. 162538, 171031,  
25 171394, 171401, 171402, 172030, 152373, Mr. Kraut has an

1 interest and is abstaining. Well, we'll do that separately. So  
2 why don't, the committee is recommending contingent approval and  
3 I so move.

4  
5 JEFF KRAUT: I have a motion. I have a second, Dr.  
6 Berliner. Any questions from the Council on any one of these  
7 applications? Hearing none, I'll call for a vote. All those in  
8 favor, aye?

9  
10 [Aye]

11 Opposed? And I'm abstaining. Motion carries.

12  
13 GARY KALKUT: 73 we haven't called yet. So there's no need  
14 for you to abstain.

15  
16 JEFF KRAUT: Oh, so I will not abstain, I vote yes.

17  
18 GARY KALKUT: Motion carries?

19  
20 JEFF KRAUT: Motion carries.

21  
22 GARY KALKUT: 152373, Mr. Kraut has an interest and is  
23 abstaining. Committee recommended contingent approval, and I so  
24 move.

25

1 JEFF KRAUT: I have a motion. I have a second, Dr.  
2 Berliner. Any questions? Any comments? All those in favor Aye?

3  
4 [Aye]

5 Opposed? And one abstention. Myself. Motion carries.

6  
7 GARY KALKUT: 162326, Mr. Torres has a conflict and has  
8 recused and has left the room. Committee recommended approval  
9 and I so move.

10  
11 JEFF KRAUT: I have a motion. I have a second, Dr.  
12 Berliner. Any questions? Any comments? All those in favor Aye?

13 [Aye]

14 Opposed? Abstentions? The motion carries. Please ask Dr.  
15 Torres to return.

16  
17 GARY KALKUT: This group is to establish and construct  
18 ASCs. 171220E, Fifth Avenue Surgery Center in New York County.  
19 The committee recommended contingent approval.

20 171432E, Sheepshead Bay Surgery Center in Kings County.  
21 Committee recommended approval.

22 And 171477E, Clifton Park ASC, LLC, d/b/a Ortho New York  
23 Surgical Suites in Saratoga County. Committee recommended  
24 contingent approval, and I so move.

25

1           JEFF KRAUT:       I have a motion. I have a second, Dr.  
2 Berliner. Any questions? Any comments? All those in favor Aye?

3           [Aye]

4           Opposed? Abstentions? The motion carries.

5

6           GARY KALKUT:     Next is 172125E, Utica Operations  
7 Associates, LLC, d/b/a Utica Center for Rehabilitation and  
8 Nursing in Oneida County. Committee recommended contingent  
9 approval and I so move.

10

11          JEFF KRAUT:       I have a motion. I have a second by Dr.  
12 Berliner. Is there any questions or comments? All those in  
13 favor aye?

14          [Aye]

15          Opposed? Abstention? The motion carries.

16

17          GARY KALKUT:     Certificates of dissolution. Mercy Health  
18 Care Center Inc., and the Uline Mercy Health Center Inc., both  
19 were recommended by the committee for approval and I so move.

20

21          JEFF KRAUT:       I have a motion. I have a second, Dr.  
22 Berliner. Any questions? Any comments? All those in favor Aye?

23          [Aye]

24          Opposed? Abstentions? The motion carries.

25

1           GARY KALKUT:    The next, we're at the conclusion of the  
2 business of the ERPC.  At the next meeting is November 16 in  
3 Albany and December 7 the full council meeting in New York and  
4 the committee is adjourned.

5  
6           JEFF KRAUT:     So thank you very much for everybody getting  
7 up here, maintaining a quorum at our multiple locations.  We  
8 thank everybody for participating, and as you said, we'll meet  
9 again on November 16 in Albany.  This is motion to adjourn?  I  
10 have approve.  We are adjourned.

11  
12 [end of audio]

## **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

undesignated 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*.

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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 (HANYS).

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.

## SUMMARY OF EXPRESS TERMS

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

The amendments that conform to the revised federal regulations include:

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

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

ultraviolet light, or deliver water that has been treated with a primary or residual disinfectant, other than ultraviolet light, must meet the requirements of this rule.

- Long Term 2 Enhanced Surface Water Treatment Rule (LT2)

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

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

- Variations and Exemptions (V&E) Rule

- The EPA promulgated the V&E Rule to provide eligible systems with options for achieving compliance with regulations. Variations allow eligible systems to provide



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

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

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

#### Cross-Connection Control

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

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

- Enforcement provisions are clarified.

### Water Supply Emergency Plans

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

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

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

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

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

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

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

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

(c) *Approved method* means an analytical method, including sample preparation, of proven reliability which has been approved, or given similar recognition by the United States Environmental Protection Agency (EPA) or a New York State regulatory program in environmental or public health protection, for the specific purpose for which the method is to be used. Methods approved by the department pursuant to section 10 NYCRR 55-2.5 shall be deemed approved methods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Existing subdivision (ao) of section 5-1.1 is relettered (ap) and amended to read as follows:

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

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

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

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

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

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

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

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

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

includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Section 5-1.13 is amended to read as follows:

**5-1.13 Sampling and analytical requirements.**

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

[\_\_\_\_\_]

<sup>1</sup>See Appendix 5-C, *infra*.]

Subdivision 5-1.22 (a) is amended to read as follows:

**5-1.22 Approval of plans and completed works.**

(a) No supplier of water shall make, install or construct, or allow to be made, installed or constructed, a public water system or any addition or deletion to or modification of a public water system until the plans and specifications have been submitted to and approved by the State. Materials used in the design, construction and repair of a public water system shall be lead-free.

For this Subpart, lead-free shall mean:

(1) [~~solder~~] Solder or flux which contains no more than 0.2 percent lead [~~and pipes,~~].

(2) ~~Pipes, pipe fittings,~~ [~~or any appurtenances~~] plumbing fittings and fixtures which contain no more than [~~eight percent~~] a weighted average of 0.25 percent lead with respect to the wetted surfaces.

The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead is multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component is added together, and the sum of these weighted percentages constitutes the weighted average lead content of the product. The lead content of the material used to produce wetted components is used to determine compliance with subdivision (a)(2) of this section. For lead content of materials that are provided as a range, the maximum content of the range must be used for calculating the weighted average lead content.

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

**5-1.30 Providing treatment for public water systems.**

The supplier of water shall provide such treatment as necessary to deliver to the consumer a water conforming to the requirements of this section and determined [in accordance with the analytical methods contained in Appendix 5-C and] using an approved method, with method modifications as listed in the Tables in section 5-1.52 of this Subpart, and by an approved laboratory as described in section 5-1.74 of this Subpart.

\* \* \*

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

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

\* \* \*

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

(3) Disinfection must be sufficient to ensure at least 99.9 percent inactivation of *Giardia lamblia* cysts [and], 99.99 percent inactivation of viruses, and 99 or 99.9 percent inactivation of *Cryptosporidium* (per section 5-1.83(c)(2) of this Subpart), between a point where the raw water is no longer subject to recontamination by surface water runoff and a point downstream before or at the first consumer. Actual CT values must be equal to or greater than the required values found in section 5-1.52 [tables] Tables 14A through [14G] 14I of this Subpart, except for one day in each month that the system served water to the public, or except where the State determines

that an additional failure in one month in the previous 12 months was caused by circumstances that were unusual and unpredictable. The supplier of water must calculate the CT values of the system for each day the system is in operation to document satisfactory disinfection. The necessary parameters and related monitoring frequencies to conduct this evaluation include:

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

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

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

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

exceedance constitutes a public health hazard, as found in section [5-1.1(bc)(4)] 5-1.1(bw)(4) of this Subpart, which requires a Tier 1 notification.

\* \* \*

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

**5-1.31 Cross-Connection Control.**

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

- (1) requiring a protective device commensurate with the degree of hazard posed by any service connection;
- (2) requiring the user of such connections to submit plans for the installation of protective devices to the supplier of water and/or the State for approval; and
- (3) assuring all protective devices are inspected and tested by a certified backflow prevention device tester, as prescribed in subdivision (b) of this section, at the time of initial installation, after each repair, and annually thereafter. Records of such tests shall be made available to, reviewed by, and maintained by the supplier of water. All protective device tests and inspections shall be conducted by a certified backflow prevention device tester (“tester”).

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

- (1) Initial certification and renewal requirements. Initial and/or renewal certifications for a certified backflow prevention device tester will be issued by a department-approved entity,

when the applicant provides proof of satisfactory completion of a department-approved certified backflow prevention training course. The certification shall be valid for a period of three years.

(2) Conditions of certification.

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

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

(3) Recertification requirements.

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

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

(c) Enforcement

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

- (1) making false statements or notations on legal or official records required by the department; or
- (2) providing misleading statements to government officials or agents of the government regarding protective device testing/certification.

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

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



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

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

Section 5-1.32 is amended to read as follows:

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

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

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

5-1.33 Water supply emergency plans.

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

(b) The water supply emergency plan shall include:

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

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

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

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

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

- (6) A specific action plan outlining all the steps to be carried out, taken or followed during a water supply emergency. The plan shall include a process for State notification, emergency notification rosters of key water supply personnel with current telephone numbers both business and home, and details of the follow-up corrective action process to minimize the reoccurrence of an emergency.
- (7) The identification and implementation of procedures for water conservation and water use restrictions to be put in place during a water supply emergency.
- (8) The identification of and the procedures for prioritization of potable water users during a water supply emergency.
- (9) The identification and availability of emergency equipment needed during a water supply emergency.
- (10) The system's capacity and ability to meet peak water demands and fire-flow conditions concurrently during a water supply emergency.
- (c) An all-hazard vulnerability analysis, including an analysis of vulnerability to terrorist attack and cyber attack, shall be performed on all components of the water system. System components include but are not limited to: the source or sources of water supply; water treatment plants; disinfection stations; pipes and valves; storage tanks; and system operations and

management. The system shall take whatever steps are necessary to ensure that potable water can be and is available during a water supply emergency.

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

(e) The water supply emergency plan shall be submitted to the State for review at least once every five years and within thirty days after major water facility infrastructure changes have been made. The system shall keep the emergency plan up to date, and shall provide updated communication and notification information to the State by December thirty-first of each year.

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

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

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

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

#### Control of Copper and Lead in Drinking Water

##### **5-1.40 General Requirements and Action Levels.**

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

(b) Lead and copper action levels.

(1)

Analyte	Action Level <sup>1,2</sup>
Lead	0.015 mg/L

Copper	1.3 mg/L
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Notes:

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

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

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

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

(4) The 90th percentile lead and copper levels shall be computed as follows:

(i) Place the results of all lead and copper samples taken during a monitoring period in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result will be assigned a number, ascending by single integers beginning with the number one for the sample with the lowest contaminant level. The number

assigned to the sample with the highest contaminant level will be equal to the total number of samples taken.

(ii) Multiply the number of samples taken during the monitoring period by 0.9.

(iii) The contaminant concentration of the numbered sample obtained by the calculation in subdivision (b)(4)(ii) of this section is the 90th percentile contaminant level.

(iv) For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentration.

(v) For a public water system that has been allowed by the State to collect fewer than five samples under section 5-1.42(a)(3), the sample result with the highest concentration is considered the 90th percentile value.

#### **5-1.41 Corrosion Control Treatment Steps and Requirements.**

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

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

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

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

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

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

(ii) a report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in subdivision (c)(3)(ii) of this section, the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;



- (iii) a report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and
- (iv) the results of first draw lead and copper tap water samples collected in accordance with section 5-1.42 for two consecutive six-month monitoring periods after corrosion control has been installed.

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

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

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

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

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

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

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

(c) Corrosion control treatment steps and deadlines.

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

- (i) Step 1: The water system shall conduct initial first draw lead and copper tap sampling and water quality parameter sampling in accordance with sections 5-1.42 and 5-1.43. If the lead or copper action level exceeds the 90th percentile, the water system shall conduct source water sampling in accordance with section 5-1.44 within a schedule specified by the State.
  
- (ii) Step 2: The water system shall complete corrosion control studies as specified by the State within 18 months after the end of the monitoring period during which the system exceeds one of the action levels.
  
- (iii) Step 3: The water system shall install optimal corrosion control treatment within 24 months after the State designates such treatment.
  
- (iv) Step 4: After installation of optimal corrosion control treatment, the water system shall complete first draw lead and copper tap sampling and water quality parameter follow-up sampling in accordance with sections 5-1.42(b)(2) and 5-1.43(b)(2) during the two consecutive six-month monitoring periods immediately following installation of treatment.
  
- (v) Step 5: After State designation of water quality parameters for optimal corrosion control treatment, the water system shall operate in compliance with State-designated optimal water quality parameter values in accordance with subdivision (g) of this section; and continue to conduct first draw lead and copper tap sampling and water quality parameter sampling in accordance with sections 5-1.42(b)(3) and 5-1.43(b)(3).

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

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

(ii) Step 2: The water system shall recommend optimal corrosion control treatment within six months after the end of the monitoring period during which the system exceeds one of the action levels. Within 12 months after the end of the monitoring period during which a system exceeds the lead or copper action level, the State may designate optimal corrosion control treatment or require the system to perform corrosion control studies. If the State requires corrosion control studies to be conducted, the water system shall complete corrosion control studies as specified in subdivision (c)(3) of this section.

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

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

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

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

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

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

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

(a) alkalinity and pH adjustment;

(b) calcium hardness adjustment; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that

the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

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

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

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

(g) Continued operation and maintenance.

(1) All systems optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the State under subdivision (f) of this section for all samples collected in accordance with section 5-1.43(b)(3) and section 5-1.43(c). Compliance with the requirements of this paragraph shall be determined every six months, as specified in section 5-1.42(b)(3). A water system is out of compliance with the requirements of this



paragraph if it has excursions for any State-designated parameter on more than nine (9) days during any six-month period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the State. The State has the discretion to delete results of obvious sampling errors from this calculation. Daily values are calculated as follows:

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

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

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

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

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

(a) Sample Requirements.

(1) Sample site location.

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

(ii) The public water system shall review sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the system shall seek to collect such information, where possible, in the course of its normal operations (e.g., checking service line material when reading water meters or performing maintenance activities):

(a) All plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(b) All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(c) All existing water quality information which includes the results of all prior analyses of the system or individual structures connected to the system indicating locations that may be particularly susceptible to high lead or copper concentrations.

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

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

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

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

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

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

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

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

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

(a) contain copper pipes and leaded solder joints installed after 1982 or contain lead pipes; and/or (b) are served by a lead service line.

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

(2) Sample collection methods.

Samples shall be collected in a manner that will reasonably reflect potential lead levels delivered to user taps in accordance with 40 CFR 141.86(b)(2).

(i) All samples for lead and copper shall be collected from user taps and shall be first draw samples with the following exceptions: lead service line samples collected under section 5-1.45(b)(2); or, if a system meets the criteria in section 5-1.47(g) (e.g., prisons and hospitals).

(ii) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First-draw samples from residential housing shall be collected from the cold water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. Non-first-draw samples collected in lieu of first-draw samples pursuant to subdivision (a)(2)(iii) of this section shall be one liter in volume and shall be collected at an interior tap from which water is

typically drawn for consumption. First-draw samples may be collected by the system or the system may allow residents to collect first-draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acidification of first-draw samples may be done up to 14 days after the sample is collected. After acidification to resolubilize the metals, the sample must stand in the original container for the time specified in the approved EPA method before the sample can be analyzed. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(iii) Each service line sample shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(a) At the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(b) Tapping directly into the lead service line; or

(c) If the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(iv) A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(v) A non-transient non-community water system, or a community water system that meets the criteria of 40 CFR 141.85(b)(7), that does not have enough taps that can supply first draw samples, as defined in 40 CFR 141.2, may apply to the State in writing to substitute non-first-draw samples. Such systems must collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. The State has the discretion to waive the requirement for prior State approval of non-first-draw sample sites selected by the system, either through State regulation or written notification to the system.

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

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

writing based on a request from the system or onsite verification by the State. The State must specify sampling locations when a system is conducting reduced monitoring. A public water system may also apply to the State in writing to substitute non-first-draw samples. Such systems must collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites.

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

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

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

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

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

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

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

(3) Monitoring after State designates water quality parameter values for optimal corrosion control. After the State designates the values for water quality parameters under section 5-1.41(f), the system shall monitor during each six-month monitoring period following designation of water quality parameter values with the first monitoring period to begin either January 1 or July 1, whichever comes first.

(c) Reduced monitoring.

(1) A system serving 50,000 or fewer persons that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with subdivision (a)(3) of this section, and reduce the frequency of



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

(2) Any water system that has optimal corrosion control treatment installed that meets the lead action level and maintains the range of values for optimal corrosion control treatment during each of two consecutive six-month monitoring periods may reduce the frequency of monitoring to once per year and reduce the number of lead and copper samples in accordance with subdivision (a)(3) of this section if it receives written approval from the State. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. Samples collected during the initial two six-month monitoring periods can be applied to the first year of a three-year reduced monitoring frequency.

Upon written approval from the State, any water system that has optimal corrosion control treatment installed that meets the lead action level and maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment during three

consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Samples collected once every three years shall be collected no later than every third calendar year.

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

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

(ii) Systems monitoring annually, that have been collecting samples during the months of June through September and that receive State approval to alter their sample monitoring period under subdivision (c)(3)(i) of this section, shall collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling. Systems monitoring triennially that have been collecting samples during the months of June through

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

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

(5) Conditions requiring a return to standard monitoring.

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

first. Any such system may resume reduced monitoring if it meets the reduced monitoring criteria as specified in subdivision (c)(1) of this section.

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

(6) Any water system subject to reduced monitoring that either adds a new source of water or changes any water treatment shall notify the State in writing within 60 days of any proposed changes. The State may require any system that makes treatment or source changes to resume standard monitoring in accordance with subdivision (b) of this section or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations. Any proposed changes to add a new source or long-term change in treatment must be consistent with section 5-1.22(a) and approved by the State prior to implementation.

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

(e) Invalidation of lead or copper tap water samples. The State may invalidate a lead or copper tap water sample if one of the following conditions is met. (1) The laboratory establishes that improper sample analysis caused erroneous results.

(2) The State determines that the sample was taken from a site that did not meet the site selection criteria of this section.

(3) The sample container was damaged in transit.

(4) There is substantial reason to believe that the sample was subject to tampering.

If a sample is invalidated, it does not count toward determining lead or copper 90th percentile levels or toward meeting the minimum monitoring requirements for that system. To invalidate a sample, the decision and the rationale for the decision must be documented in writing.

The system shall submit to the State, for invalidation determination, the results it believes should be invalidated along with supporting documentation and the rationale for supporting invalidation of the samples. If after invalidation of sample results, the system has too few samples to meet minimum sampling requirements, replacement samples shall be taken as soon as possible, but no

later than 20 days after invalidation or by the end of the applicable monitoring period, whichever is later. Replacement samples apply only to the monitoring period associated with the original sample, and shall be taken from the same location. If resampling from the same location is not possible or the sample site was invalidated, the resample may be taken from other sites in the sampling pool not already used for sampling during that monitoring period.

(f) Monitoring waivers for systems serving 3,300 or fewer persons. Any water system that serves 3,300 or fewer persons and meets the criteria in this subdivision may be eligible for a waiver to reduce monitoring of lead and copper to once every nine years (“full waiver”), or only for lead, or only for copper (“partial waiver”). The system must demonstrate that its distribution system and service lines and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and/or copper-containing materials as those terms are defined as follows:

(1) Lead. To qualify for a full waiver or a waiver of the tap water monitoring requirements of lead (i.e. a “lead waiver”), the water system must provide certification and supporting documentation to the State that the system is free of all lead-containing materials, as follows:

(i) It contains no plastic pipes which contain lead plasticizers, or plastic service lines which contain lead plasticizers; and

(ii) It is free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to section 5-1.22(a) (Approval of Plans and Completed Works).

(2) Copper. To qualify for a full waiver or a waiver of the tap water monitoring requirements of copper (i.e. a “copper waiver”), the water system must provide certification and supporting documentation to the State that the system contains no copper pipes or copper service lines.

(3) Approval of waiver application. The system will be notified of the State’s determination in writing, setting forth the basis for its decision and any condition of the waiver. The System may be required to perform specific activities (e.g., limited monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void reduced monitoring) to avoid the risk of lead or copper concentration of concern in tap water. A system serving fewer than 3,300 persons must continue monitoring for lead and copper at the tap as required in subdivision (f)(1)-(4) of this section, as appropriate, until it receives written notification that the reduced monitoring has been approved.

(4) Monitoring frequency for systems with waivers. (i) A system with a full waiver must conduct tap water monitoring for lead and copper in accordance with subdivision (c)(4) of this section at the reduced number of sampling sites identified in subdivision (a)(3) of this section at least once every nine years and provide the materials certification specified in subdivision (f) of this section for both lead and copper to the State along with the monitoring results. Samples collected every nine years must be collected no later than every ninth calendar year.

(ii) A system with a partial waiver monitoring for a single contaminant must conduct tap water monitoring for that contaminant in accordance with subdivision (c)(4) of this section at the reduced number of sampling sites specified in subdivision (a)(3) of this section at least once every nine years and provide the materials certification specified in subdivision (f) of this section

pertaining to the contaminant along with the monitoring results. Such systems must also continue to monitor for the contaminant not on reduced monitoring in accordance with requirements of subdivisions (b)(1) through (b)(3) and (c) of this section, as appropriate.

(iii) Any water system with a full or partial waiver must notify the State in writing in accordance with section 5-1.48(a)(3) of any upcoming long-term change in treatment or addition of a new source. The State must review and approve the addition of a new source or change in water treatment before it is implemented by the water system. The State has the authority to require the system to add or modify waiver conditions (e.g., require recertification that the system is free of lead-containing and/or copper-containing materials require additional round(s) of monitoring), if it deems such modifications are necessary to address treatment or source water changes at the system.

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

(5) Continued eligibility. Systems may continue to be eligible for a waiver, and such waiver will renew automatically, unless any of the conditions listed in subparagraphs (i)-(iii) of this paragraph occurs. If a waiver is not renewed, the system shall meet the requirements for action level exceedances or for the three-year reduced monitoring cycle, as appropriate. A system whose waiver has been revoked may re-apply for a waiver at such time as it again meets the appropriate materials and monitoring criteria of subdivisions (f)(1) and (f)(2) of this section.

(i) A system with a full waiver or a lead waiver no longer satisfies the materials criteria of subdivision (f)(1)(i) of this section or has a 90th percentile lead level greater than 0.005 mg/L.



(ii) A system with a full waiver or a copper waiver no longer satisfies the materials criteria of subdivision (f)(2) of this section or has a 90th percentile copper level greater than 0.65 mg/L.

(iii) The State notifies the system, in writing, that the waiver has been revoked, setting forth the basis of its decision.

(6) Requirements following waiver revocation. A system whose full or partial waiver has been revoked by the State is subject to the corrosion control treatment and lead and copper tap water monitoring requirements, as follows:

(i) If the system exceeds the lead and/or copper action level, the system must implement corrosion control treatment as specified in section 5-1.41(c)(2), and any other applicable requirements.

(ii) If the system meets both the lead and the copper action level, the system must monitor for lead and copper at the tap no less frequently than once every three years using the reduced number of sample sites specified in section 5-1.43(a)(2).

(7) Any water system with a full or partial waiver shall notify the State in writing of any upcoming long-term change in treatment or addition of a new source, consistent with section 5-1.22(a) and approved by the State prior to implementation. The State must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. The State may require the system to add or modify waiver conditions (e.g., require recertification that the system is free of lead-containing and/or copper-containing materials, require additional round(s) of monitoring), if it deems such modifications are necessary to address treatment or source water changes at the system.

### **5-1.43 Monitoring requirements for water quality parameters.**

All systems serving over 50,000 persons and systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in tap water in accordance with this section.

(a) Sample requirements.

(1) Sample collection method.

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

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

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

(2) Number of samples.

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

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

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

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

(1) Initial sampling. All systems serving more than 50,000 persons shall measure the applicable water quality parameters during each six-month monitoring period specified in section 5-1.42(b)(1). All systems serving 50,000 or fewer persons shall measure the applicable water quality parameters during each six-month monitoring period during which the system exceeds the lead or copper action level. Applicable water quality parameters at taps and entry points include: pH; alkalinity; conductivity; water temperature; calcium; and orthophosphate or silica, as appropriate to the corrosion control treatment used.

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

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

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

(iii) A ground water system may limit entry point sampling described in subdivision (b)(2)(ii) of this section to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated ground water sources mixes with water from treated ground water sources, the system shall monitor for water quality parameters both at representative entry points receiving treatment and representative entry points receiving no treatment. Prior to the start of any monitoring under this paragraph, the system shall provide to the State written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(3) Monitoring after State specifies water quality parameter values for optimal corrosion control. After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment, all systems serving more than 50,000 persons and any

system serving 50,000 or fewer persons that has optimal corrosion control treatment installed shall measure the applicable water quality parameters during each six-month monitoring period specified in section 5-1.42(b)(3), in accordance with subdivisions (b)(2)(i)-(iii) of this section, and determine compliance with the requirements of section 5-1.41(g) during each six-month monitoring period specified in section 5-1.42(b)(3).

(c) Reduced monitoring.

(1) Reducing the number of sampling sites. Any water system that maintains the range of State specified values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under subdivision (b)(3) of this section shall continue monitoring at the entry point(s) to the distribution system as specified in subdivision (b)(2)(ii)-(iii) of this section. Such system may collect two distribution system samples for applicable water quality parameters from the reduced number of sites in accordance with subdivision (a)(2)(i) of this section during each six-month monitoring period.

(2) Reducing sampling frequency.

(i) Any water system that maintains the range of State-specified values for the water quality parameters reflecting optimal corrosion control treatment during three consecutive years of monitoring in accordance with subdivision (c)(1) of this section may reduce the frequency with which it collects the number of distribution system samples for applicable water quality parameters specified in subdivision (c)(1) of this section from every six months to annually. This

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

(ii) A water system may reduce the frequency with which it collects the number of distribution system samples for applicable water quality parameters specified in subdivision (c)(1) of this section to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead specified in section 5-1.40(b)(1), that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L for copper, and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under section 5-1.41(f).

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

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

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

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

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

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

(a) Sample Requirements.



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

(2) The State may reduce the total number of samples which shall be analyzed by allowing the use of compositing. Compositing of samples shall be done by certified laboratory personnel. Composite samples from a maximum of five samples are allowed, provided that the method detection limit (MDL) for lead of 0.001 mg/L is achieved. If the lead concentration in the composite sample is greater than or equal to 0.001 mg/L, or the copper concentration is greater than or equal to 0.160 mg/L, then either:

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

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

(3) Where the results of sampling indicate an exceedance of State-specified maximum permissible source water levels established under section 5-1.45(a)(4), the State may require that one follow-up sample be collected as soon as possible after the initial sample was taken (but not

to exceed two weeks) at the same sampling point. If a State-required follow-up sample is taken for lead or copper, then the results of the initial and follow-up samples shall be averaged to determine compliance with the State-specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the practical quantitation limit (PQL) shall either be considered as the measured value or be considered one-half the PQL.

(b) Standard Monitoring.

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

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

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

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

(a) A water system using only ground water shall collect samples once every three years with the first three year monitoring period to begin January 1 of the year in which the State determination is made under subdivision (b)(3)(i) of this section. Such systems shall collect samples once during each subsequent compliance period. Triennial samples shall be collected in the third calendar year.

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

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

(c) Reduced monitoring.

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

(i) The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the State under section 5-1.45(a) during at least three consecutive years in which sampling was conducted under subdivision (b)(3)(i) of this section; or

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

(2) A water system using surface water (or a combination of surface water and ground water) may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle provided that the samples are collected no later than every ninth calendar year and if the system meets one of the following criteria:

(i) The system demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the State for at least three consecutive years; or

(ii) The State has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive years, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

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

#### **5-1.45 Source Water Treatment Requirements**

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

(a) Source water treatment requirements.

(1) A water system exceeding the lead or copper action level shall complete required lead and copper source water monitoring in accordance with section 5-1.44(b)(1) and make an appropriate treatment recommendation to the State no later than 180 days after the end of the monitoring period during which the system exceeds the lead or copper action level. A system

may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

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

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

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

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

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

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

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

(b) Operation and maintenance requirements.

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

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

#### **5-1.46 Lead Service Line Replacement.**

(a) Water systems that fail to meet the lead action level in tap samples collected after installing corrosion control treatment and/or source water treatment (whichever occurs later) shall replace lead service lines in accordance with the requirements of this section. Water systems that fail to install optimal corrosion control treatment in accordance with section 5-1.41(c) or

source water treatment in accordance with section 5-1.45(a)(2) by the date(s) specified by the State may be required to begin replacement of lead service lines.

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

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

(2) A water system is not required to replace an individual lead service line if the results of all samples representative of water in the lead service line, collected in accordance with section 5-1.42(a)(2)(iii) of this Subpart, are less than or equal to 0.015 mg/L.

(3) The total number of lines replaced, either entirely or partially per subdivision (c) of this section, shall equal at least 7 percent of the initial number of lead lines identified under



subdivision (b)(1) of this section or the percentage specified by the State as per subdivision (d) of this section.

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

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

(1) At least 45 days prior to commencing with partial replacement of a lead service line, the water system shall provide notice to the resident(s) of all buildings served by the line explaining that they may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers can take to minimize their exposure to lead. The State may allow the water system to provide notice of less than 45 days prior to commencing partial lead service line replacement, if such replacement is done in conjunction with emergency repairs. In addition, the water system shall inform the resident(s) served by the line that the system will, at the system's expense, collect a sample from each partially-replaced lead service line that is representative of the water in the service line for analysis of lead content, as prescribed in section 5-1.42(a)(2)(iii) of this Subpart, within 72 hours after the completion of the partial replacement of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three business days of receiving the results. Mailed notices post-marked within three business days of receiving the results shall be considered "on time."

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

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

lead service line replacement based on monitoring results referenced in subdivision (a) of this section.

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

(f) To demonstrate compliance with subdivisions (a) through (d) of this section, a system shall report to the State the information specified and no later than the schedule described in 40 CFR 141.90(e).

#### **5-1.47 Notification and Public Education Requirements.**

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

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

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

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

1.72(f).

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

(1) Content of public education materials.

(i) Community water systems and nontransient noncommunity water systems. Water systems shall include the following elements in printed materials (e.g., brochures and pamphlets) in the same order as listed below. In addition, language in subdivision (b)(1)(i)(a) through (b) and (b)(1)(i)(f) of this section shall be included in the materials, exactly as written, except for the text in brackets in these clauses for which the water system shall include system-specific information.

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

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

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

(c) Provide information on sources of lead.

(1) Explain what lead is.

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

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

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

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

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

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

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

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

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

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

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

(ii) Community water systems. In addition to including the elements specified in subdivision (b)(1) of this section, community water systems shall:

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

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

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

(2) Delivery of public education materials.

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the State, the public education materials shall contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or

address where persons served may contact the water system to obtain a translated copy of the public education materials or to request assistance in the appropriate language.

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

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

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

(1) Contact the State for information regarding community based organizations serving target populations and deliver education materials to all appropriate organizations along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users as determined in consultation with the State.

(2) Contact customers who are most at risk by delivering materials to the following organizations that are located within the water system's service area, along with an informational



notice that encourages distribution to all the organization's potentially affected customers or community water system's users:

*(i)* Public and private schools or school boards.

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

*(iii)* Public and private hospitals and medical clinics.

*(iv)* Pediatricians.

*(v)* Family planning clinics.

*(vi)* Local welfare agencies.

*(3)* Make a good faith effort to locate the following organizations within the service area and deliver materials, along with an informational notice that encourages distribution to all potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of these organizations from the State:

*(i)* Licensed childcare centers.

*(ii)* Public and private preschools.

*(iii)* Obstetricians-Gynecologists and Midwives.

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

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

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

*(f)* In addition to the other requirements of this section, systems shall implement at least three activities from one or more categories listed below. The educational content and selection of these activities must be determined in consultation with the State.

*(1)* Public service announcements.

(2) Paid advertisements.

(3) Public area informational displays.

(4) E-mails to customers.

(5) Public meetings.

(6) Household deliveries.

(7) Targeted individual customer contact.

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

(9) Other methods approved by the State.

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

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

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

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

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

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

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

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

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

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

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

(1) the system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices;

(2) the system provides water as part of the cost of services provided and does not separately charge for water consumption; and

(3) the State has not directed the water system to conduct broader distribution of education material as needed if in its judgment education materials are not reaching the system's consumers.

(h) A community water system serving 3,300 or fewer people may limit certain aspects of their public education programs as follows:

(1) With respect to the requirements of subdivision (b)(2)(ii)(f) of this section, a system serving 3,300 or fewer shall implement at least one of the activities listed in that clause.

(2) With respect to the requirements of subdivision (b)(2)(ii)(b) of this section, a system serving 3,300 or fewer people may limit the distribution of the public education materials required under that clause to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

(3) With respect to the requirements of subdivision (b)(2)(ii)(e) of this section, the State may waive this requirement for systems serving 3,300 or fewer persons as long as system distributes notices to every household served by the system.

(i) Consumer requests for lead sampling. A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with section 5-1.42 shall provide assistance in determining lead levels at the tap of any customer who requests it. Systems may collect and analyze the samples, but are not obligated to incur expenses. Systems are also not obligated to

collect and analyze samples itself, but shall provide information about laboratories providing this service.

**5-1.48 Reporting and Record Keeping Requirements.**

(a) Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.

(1) Unless the State has specified a more frequent reporting requirement, a water system shall report the following information for all tap water samples specified in section 5-1.42 and for all water quality parameter samples specified in section 5-1.43 to the State within the first ten days following the end of each applicable monitoring period; for monitoring periods with a duration of less than six months, the end of the monitoring period is the last date samples can be collected during that period as specified in sections 5-1.42 and 5-1.43:

(i) results of all first draw lead and copper tap samples collected in accordance with section 5-1.42, including site locations and the criteria used in selecting the site in accordance with section 5-1.42(a)(1);

(ii) documentation for each tap water lead or copper sample for which the water system requests invalidation in accordance with section 5-1.42(e);

(iii) the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period and calculated in accordance

with section 5-1.41(c), unless the State calculates the system's 90th percentile under subdivision (h) of this section;

(iv) with the exception of initial tap sampling conducted pursuant to section 5-1.42(b)(1)-(3), the system shall identify any site which was not sampled during previous monitoring periods, and include an explanation of changes in sampling sites if any; and

(v) the results of all tap samples for applicable water quality parameters collected in accordance with section 5-1.43(b)-(d).

(vi) The results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under section 5-1.43(b)-(d).

(2) For a nontransient noncommunity water system, or a community water system meeting the criteria of section 5-1.47(b)(2)(g) that does not have enough taps that can provide first-draw samples, the system shall provide written documentation to the State identifying standing times and locations for enough first-draw samples to make up its sampling pool by the start of the first applicable monitoring period in accordance with section 5-1.42(a)(3) or, identify in writing, each site that did not meet the six-hour minimum standing time and the length of time for that particular substitute sample collected, and include this information with the lead and copper tap sample results that are required to be submitted pursuant to subdivision (a)(1)(i) of this section.

(3) At a time specified by the State, or if no specific time is designated by the State, then as early as possible prior to the addition of a new source or any long-term change in water



treatment, a water system deemed to have optimized corrosion control, a water system subject to reduced monitoring pursuant, or a water system subject to a monitoring waiver pursuant, shall submit written documentation to the State describing the change or addition as required under section 5-1.22(a). A water system shall obtain approval from the State before implementing the addition of a new source or long-term change in water treatment. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants (e.g., alum to ferric chloride), and switching corrosion inhibitor products (e.g., orthophosphate to blended phosphate). Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(4) Any system serving 3,300 or fewer persons applying for a monitoring waiver pursuant to section 5-1.42(f), shall provide the following information to the State in writing by the specified deadline:

(i) By the start of the first applicable monitoring period, any system serving 3,300 or fewer persons applying for a monitoring waiver shall provide the documentation required to demonstrate that it meets the requirements of section 5-1.42(f).

(ii) No later than nine years after the monitoring previously conducted pursuant to section 5-1.42(b) or (c), each system serving 3,300 or fewer persons desiring to maintain its monitoring waiver shall provide the information required by section 5-1.42(f)(1)-(3).

(iii) No later than 60 days after it becomes aware that it is no longer free of lead-containing and/or copper containing material, as appropriate, each system serving 3,300 or fewer persons with a monitoring waiver shall provide written notification to the State, stating the circumstances resulting in the lead-containing and/or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to remove these materials.

(4) Each ground water system that limits water quality parameter monitoring to a subset of entry points under section 5-1.43(b)(2)(iii) shall provide by the commencement of such monitoring, written correspondence to the State that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(b) Source water monitoring reporting requirements.

(1) A water system shall report the sampling results for all source water samples collected in accordance with section 5-1.44 within the first 10 days following the end of each source water monitoring period.

(2) With the exception of the first round of source water sampling conducted, the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(c) Corrosion control treatment reporting requirements. By the applicable dates under section 5-

1.41(c) or a date specified by the State, systems shall report the following:

(1) For systems demonstrating that they have already optimized corrosion control, information required in section 5-1.41(b).

(2) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment in accordance with section 5-1.41(c)(3).

(3) For systems required to evaluate the effectiveness of corrosion control treatments, the information required for corrosion control studies in accordance with section 5-1.41(c)(3).

(4) For systems required to install optimal corrosion control designated by the State, a letter certifying that the system has completed installing that treatment in accordance with section 5-1.41(e).

(d) Source water treatment reporting requirements. In accordance with section 5-1.45, systems shall report the following:

(1) For systems required to make a source water treatment recommendation in accordance with section 5-1.45(a)(1), the information required by that section.

(2) For systems required to install source water treatment in accordance with section 5-1.45(a)(2), a letter certifying that the system has completed installing the treatment designated by the State within 24 months after the State designated the treatment.

(e) Lead service line replacement reporting requirements. Water systems subject to the requirements of section 5-1.46 shall report the following to demonstrate compliance with that section:

(1) No later than 12 months after the end of a monitoring period in which a system exceeds the lead action level in sampling referred to in section 5-1.46(a), the system shall submit written documentation to the State of the material evaluation conducted as required in section 5-1.42(a), identify the initial number of lead service lines in its distribution system at the time the system exceeds the lead action level, and provide the system's schedule for annually replacing at least 7 percent of the initial number of lead service lines in its distribution system.

(2) No later than 12 months after the end of a monitoring period in which a system exceeds the lead action level in sampling referred to in section 5-1.46(a), and every 12 months thereafter, the system shall demonstrate to the State in writing that the system has either:

(i) replaced in the previous 12 months at least 7 percent of the initial lead service lines in its distribution system; or

(ii) conducted sampling which demonstrates that the lead concentration in all service line samples from an individual line(s), meeting the requirements of section 5-1.46(b)(2), is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced and/or which meet the criteria in section 5-1.46(b)(2) shall equal at least 7 percent of the initial number of lead lines identified under subdivision (e)(1) of this section or the percentage specified by the State under section 5-1.46(d).

(3) The annual letter submitted to the State under subdivision (e)(2) of this section shall contain the following information:

(i) the number of lead service lines replaced during the previous year of the system's replacement schedule;

(ii) the number and location of each lead service line replaced during the previous year of the system's replacement schedule; and

(iii) if measured, the lead concentration in the water and the location of each lead service line sampled, the sampling method, and the date of sampling.

(4) Any system which collects lead service line samples following partial lead service line replacement in accordance with section 5-1.46(c)(1) shall report the results to the State within the first ten days of the month following the month in which the system receives the laboratory results, or as specified by the State. Systems shall also report any additional information as specified by the State, and in a time and manner prescribed by the State, to verify that all partial lead service line replacement activities have taken place.

(f) Public education reporting requirements. Water systems shall report the following to demonstrate compliance with requirements of section 5-1.47:

(1) Each system shall mail a sample copy of the consumer notification of tap results to the State along with a certification that the notification has been provided no later than 3 months following the end of the monitoring period.

(2) Any water system that is subject to the public education requirements under section 5-1.47 shall, within ten days after the end of each period in which the system is required to perform public education, send written documentation to the State that contains:

(i) a demonstration that the system has delivered the public education materials that meet the content requirements in section 5-1.47(b)(1) and the delivery requirements in section 5-1.47(b)(2); and

(ii) a list of all newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(3) Unless required by the State, a system that previously has submitted the information required by subdivision (f)(2)(ii) of this section need not resubmit the information required, as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(g) Reporting of additional monitoring data. Any system which collects sampling data in addition to that required by this sections 5-1.40 through 5-1.48, including data collected in accordance with section 5-1.41(b)(6), and sections 5-1.42(d), and 5-1.43(d), shall report the results to the State within the first ten days following the end of the applicable monitoring period during which the samples were collected.

(h) Reporting the 90th percentile lead and copper concentration where the State calculates a system's 90th percentile concentrations. A water system is not required to report the 90th

percentile lead and copper concentration measured from among all lead and copper tap water samples collected during each monitoring period, as required by subdivision (a)(1)(iii) of this section if:

(1) The State has previously notified the water system that it will calculate the water system's 90th percentile lead and copper concentrations, based on the lead and copper tap results submitted pursuant to subdivision (h)(2)(i) of this section, and has specified a date before the end of the applicable monitoring period by which the system shall provide the results of lead and copper tap water samples; and

(2) The system has provided the following information to the State by the date specified in subdivision (h)(1) of this section:

(i) the results of all tap samples for lead and copper including the location of each site and the criteria under section 5-1.42(a)(1)(iii)-(iv) under which the site was selected for the system's sampling pool, pursuant to subdivision (a)(1)(i) of this section; and

(ii) an identification of sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods, and an explanation why sampling sites have changed; and

(3) The State has provided the results of the 90th percentile lead and copper calculations, in writing, to the water system before the end of the monitoring period.

(i) Prior to the addition of a new source or any long-term change in water treatment, a water system deemed to have optimized corrosion control under section 5-1.41(b), a water system subject to reduced monitoring under section 5-1.42(c), or a water system subject to a monitoring waiver under section 5-1.42(f) shall submit written documentation to the State describing the proposed change or addition within a timeframe specified by the State, or if no specific time is designated by the State, then as early as possible.

(j) Recordkeeping requirements. Any system subject to the requirements of sections 5-1.40 through 5-1.48 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State approvals and determinations, and any other information required by section 5-1.41 through 5-1.48. Each water system shall retain the records required by this section for no fewer than 12 years.

Subdivision (c) of section 5-1.51 of this section is amended to read as follows:

(c) Each system [must] shall develop and implement a monitoring plan that includes all monitoring requirements specified in this Subpart. [This plan must be completed by January 31, 2012.] The system [must] shall maintain the plan and make it available for inspection by the State and the general public. After review, the State may require changes in any plan elements. Failure to monitor in accordance with the monitoring plan is a monitoring violation. Systems may only use data collected in accordance with the monitoring plan to qualify for reduced monitoring. The monitoring plan [must] shall include at least the following elements, as applicable:



Paragraph (1) of subdivision (c) of section 5-1.51 is amended to read as follows:

(1) specific locations and schedules for collecting samples for all applicable parameters listed in [sections] section 5-1.42, section 5-1.43, [5-1.52 tables] Tables 8A-12, 15 and 15A of section 5-1.52, section 5-1.61, and section 5-1.81 of this Subpart;

A new paragraph (5) of subdivision (c) of section 5-1.51 is added to read as follows:

(5) Disinfection Byproduct Monitoring.

(i) The following requirements of this subdivision apply to community and nontransient noncommunity water systems that use or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light, provided they serve 15 or more service connections or serve 25 or more persons:

(a) if a new community or nontransient noncommunity water system begins operation, or an existing community or nontransient noncommunity water system begins using a disinfectant other than ultraviolet light, the system shall consult with the State to identify compliance monitoring locations for disinfection byproducts to include in the system's monitoring plan, consistent with the requirements in 40 CFR 141.601 and 141.602, and for new systems that need an Initial Distribution System Evaluation (IDSE), consistent with 40 CFR 141.605; and

(b) if a community or nontransient noncommunity water system adds or removes compliance monitoring locations, the system shall identify additional locations by alternating selection of

locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified, as specified in section 5-1.52 Table 9A. Systems shall also provide the rationale for identifying the locations as having high levels of TTHM or HAA5.

(ii) Systems shall revise monitoring plans to reflect changes in treatment, distribution system operations and layout (including new service areas), other factors that may affect TTHM or HAA5 formation or upon consultation with the State.

(a) If a system changes monitoring locations, it shall replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels.

(b) The State may require modifications in the monitoring plan.

(c) Surface water or GWUDI systems serving more than 3,300 people shall submit a copy of their modified monitoring plan to the State prior to the date they are required to comply with the revised monitoring plan.

(iii) A system is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating a LRAA if the system fails to monitor.

Subdivision (e) of section 5-1.51 is amended to read as follows:

(e) The CT values for inactivation of *Giardia lamblia* cysts by free chlorine at various pH and temperature levels are listed in section 5-1.52 [tables] Tables 14A through 14F of this Subpart.

The CT values for inactivation of *Giardia lamblia* cysts by chlorine dioxide and ozone at various temperature levels are listed in section 5-1.52 [table] Table 14G of this Subpart. The CT values for inactivation of *Giardia lamblia* cysts by chloramines at various temperature levels are listed in section 5-1.52 Table 14H of this Subpart. The CT values for inactivation of *Cryptosporidium* by chlorine dioxide at various temperature levels are listed in section 5-1.52 Table 14I. The CT values for inactivation of *Cryptosporidium* by ozone at various temperature levels are listed in section 5-1.52 Table 14J. The UV doses for *Cryptosporidium*, *Giardia lamblia*, and virus inactivation credit are listed in section 5-1.52 Table 14K.

New subdivision (o) is added to section 5-1.51 to read as follows:

(o) Disinfection Byproduct Monitoring. The requirements of this subdivision apply to community and nontransient noncommunity water systems that use a primary or residual disinfectant other than ultraviolet light, or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light in accordance with monitoring requirements in Table 9A of section 5-1.52.

(1) Systems required to conduct quarterly monitoring shall calculate compliance at the end of each quarter or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters in accordance with Table 3 of section 5-1.52.

(2) Systems required to conduct monitoring at a frequency that is less than quarterly shall monitor in the calendar month identified in the monitoring plan developed under subdivision (c)

of this section. Compliance calculations shall be made beginning with the first compliance sample taken after the compliance date.

Tables 1, 2, 3, 3A, 4, 4A, 6, 7, 8B, 9A, 9B, 9C, 10 and 13 of section 5-1.52 are repealed. Footnote 6 for Table 8C of section 5-1.52 is amended and new Tables 1, 2, 3, 3A, 4, 4A, 6, 7, 8B, 9A, 9B, 9C, 10, 13, 14H, 14I, 14J, and 14K are added to section 5-1.52 to read as follows:

**5-1.52 Tables.**

**Table 1. Inorganic Chemicals and Physical Characteristics Maximum Contaminant Level Determination**

Contaminants <sup>1,2</sup>	MCL (mg/l) <sup>3</sup>	Determination of MCL violations
Asbestos	7.0 million fibers/liter (MFL) (longer than 10 microns)	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one more sample from the same sampling point within 2 weeks or as soon as practical.
Antimony	0.006	
Arsenic	0.010	An MCL violation for all contaminants listed in this table, except for Arsenic, occurs when the average <sup>4</sup> of the initial sample and any confirmation sample exceeds the MCL.
Barium	2.00	
Beryllium	0.004	
Cadmium	0.005	MCL violations for Arsenic will be determined as follows:
Chromium	0.10	
Cyanide(as free cyanide) <sup>5,6</sup>	0.2	Compliance with the Arsenic MCL shall be determined based on the analytical result(s) obtained at each sampling point.
Mercury	0.002	For systems which are conducting monitoring at a frequency greater than annual, an Arsenic MCL violation occurs when the running annual average <sup>8,9,10</sup> at any sampling point is greater than the MCL. If any one sample would cause the annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.
Selenium	0.05	
Silver	0.1	
Thallium	0.002	
Fluoride	2.2	Systems monitoring annually or less frequently whose sample result exceeds the Arsenic MCL <sup>8</sup> must begin quarterly sampling <sup>11</sup> . The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling and the running annual average <sup>8,9,10</sup> at that sampling point is greater than the Arsenic MCL. If any one sample would cause the annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.
Chloride	250.0	
Iron	0.3 <sup>5</sup>	
Manganese	0.3 <sup>5</sup>	
Sodium	No designated limits <sup>7</sup>	
Sulfate	250.0	
Zinc	5.0	
Color	15 Units	
Odor	3 Units	

Contaminants <sup>1,2</sup>	MCL (mg/l) <sup>3</sup>	Determination of MCL violations
Bromate <sup>8</sup>	0.010	Compliance is based on a running annual average of monthly samples, computed quarterly. If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public.
Chlorite <sup>9</sup>	1.0	Compliance is based on an average of each three-sample set taken in the distribution system in accordance with Table 8B. If the average exceeds the MCL, the system is in violation of the MCL and must notify the public.

<sup>1</sup> If EPA Methods 200.7 or 200.9 are used, the MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher, because they were determined using a 2x preconcentration step during sample digestion. Consider the need to preconcentrate, or the use of multiple in-furnace depositions to achieve required MDLs. For direct analysis of cadmium by Method 200.7, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Standard Methods 3113 B; and lead by ASTM Method D3559-90D, unless multiple in-furnace depositions are made.

<sup>2</sup>When metals or nitrate samples are collected, they may be acidified with a concentrated acid or a dilute (50% by volume) solution of the applicable concentrated acid. This acidification may be done at the laboratory rather than at the time of sampling, provided the shipping time and other instructions in Section 8.3 of EPA Methods 200.7, 200.8, or 200.9 are followed.

<sup>3</sup>mg/L = milligrams per liter

<sup>4</sup>If iron and manganese are present, the total concentration of both should not exceed 0.5 mg/L. Higher levels may be allowed by the State when justified by the supplier of water.

<sup>5</sup>If Ligand Exchange and Amperometry is used for cyanide analysis; either ASTM Method D6888-04 or Method OIA-1677, DW, "Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry," January 2004 are approved. EPA-821-R-04-001, is available from ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842-9010; sulfide levels below those detected using lead acetate paper may produce positive method interferences. Samples should be tested using a more sensitive sulfide method to determine if a sulfide interference is present, and samples shall be treated accordingly.

<sup>5</sup>Cyanide samples must be adjusted with sodium hydroxide to pH 12 at the time of collection. The sample must be shipped and stored at 4 °C or less. <sup>6</sup>Rounded to the same number of significant figures as the MCL for the contaminant in question.

<sup>7</sup>Water containing more than 20 mg/L of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 mg/L of sodium should not be used for drinking by people on moderately restricted sodium diets.

<sup>8</sup>Community and nontransient noncommunity water systems using ozone for disinfection or oxidation must comply with the bromate standard.

<sup>9</sup>Community and nontransient noncommunity water systems using chlorine dioxide as a disinfectant or oxidant must comply with the chlorite standard.

<sup>10</sup>Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

<sup>11</sup>Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

<sup>12</sup>If confirmation samples are collected, the average of the initial sample and any confirmation samples will be used for the determination of compliance and future monitoring requirements.

<sup>13</sup>Systems are only required to conduct the increased monitoring frequency at the sampling point where the MCL was exceeded and for only the specific contaminant(s) that triggered the system into the increased monitoring frequency.

**Table 2 - Nitrate, Nitrite, Total Nitrate/Nitrite Maximum Contaminant Level Determination**

Contaminants	MCL (mg/L)	Determination of MCL violation
Nitrate <sup>1</sup>	10 (as Nitrogen) <sup>2</sup>	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect another sample from the same sampling point, within 24 hours of the receipt of results or as soon as practical. <sup>3</sup> An MCL violation occurs when the average of the two results exceeds the MCL.
Nitrite	1 (as Nitrogen)	
Total Nitrate and Nitrite	10 (as Nitrogen)	

<sup>1</sup>Nitrate samples are to be shipped and stored at 4 °C or less and analyzed within 48 hours of collection. If the sample is chlorinated, the holding time for an unacidified sample kept at 4 °C is extended to 14 days.

<sup>2</sup>An MCL of 20 mg/L may be permitted at a noncommunity water system if the supplier of water demonstrates that:

- (a) the water will not be available to children under six months of age;
- (b) a notice that nitrate levels exceed 10 mg/L and the potential health effects of exposure will be continuously posted according to the requirements of a Tier 1 notification;
- (c) the State will be notified annually of nitrate levels that exceed 10 mg/L; and
- (d) no adverse health effects shall result.

<sup>3</sup>Systems unable to collect an additional sample within 24 hours must issue a Tier 1 notification and must collect the additional sample within two weeks of receiving the initial sample results.



**Table 3. Organic Chemicals Maximum Contaminant Level Determination**

<b>Contaminants</b>	<b>MCL (mg/L)</b>	<b>Type of water system</b>	<b>Determination of MCL violation</b>
General organic chemicals		Community, NTNC and Noncommunity	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one to three more samples from the same sampling point, as soon as practical, but within 30 days. An MCL violation occurs when at least one of the confirming samples is positive <sup>1</sup> and the average of the initial sample and all confirming samples exceeds the MCL.
Principal organic contaminant (POC)	0.005		
Unspecified organic contaminant (UOC)	0.05		
Total POCs and UOCs	0.1		
Disinfection byproducts <sup>2,3</sup>		Community and NTNC	For systems required to monitor quarterly, the results of all analyses at each monitoring location per quarter shall be arithmetically averaged and shall be reported to the State within 30 days of the public water system's receipt of the analyses. A violation occurs if the average of the four most recent sets of quarterly samples at a particular monitoring location (12-month locational running annual average (LRAA)) exceeds the MCL. If a system collects more than one sample per quarter at a monitoring location, the system shall average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation. If a system fails to complete four consecutive quarters of monitoring, compliance with the MCL will be based on an average of the available data from the most recent four quarters. An MCL violation for systems on annual or less frequent monitoring that have been increased to quarterly monitoring as outlined in Table 9A, is determined after four quarterly samples are taken.
Total trihalomethanes	0.080		
Haloacetic acids	0.060		
		Transient noncommunity	Not applicable

**Table 3. Organic Chemicals Maximum Contaminant Level Determination (continued)**

Contaminants	MCL (mg/L)	Type of Water System	Determination of MCL violation
Specific Organic Chemicals		Community, NTNC and Noncommunity	If the results of a monitoring sample analysis exceed the MCL, the supplier of water shall collect one to three more samples from the same sampling point, as soon as practical, but within 30 days. An MCL violation occurs when at least one of the confirming samples is positive <sup>1</sup> and the average of the initial sample and all confirming samples exceeds the MCL.
Alachlor	0.002 0.003		
Aldicarb	0.002 0.004		
Aldicarb sulfone	0.003		
Aldicarb sulfoxide	0.0002		
Atrazine <sup>4</sup>	0.04		
Benzo(a)pyrene	0.002		
Carbofuran	0.006		
Chlordane	0.0002		
Di(2-ethylhexyl)phthalate	0.05		
Dibromochloropropane(DBCP)	0.007		
2,4-D	0.02		
Dinoseb	0.002		
Diquat	0.00005		
Endrin	0.0004		
Ethylene dibromide(EDB)	0.0002		
Heptachlor	0.001		
Heptachlor epoxide	0.0002		
Hexachlorobenzene	0.04		
Lindane	0.010		
Methoxychlor	0.001		
Methyl-tertiary-butyl-ether(MTBE)	0.0005		
Pentachlorophenol	1.0		
Polychlorinated biphenyls(PCBs) <sup>5</sup>	0.004		
Propylene glycol	0.003		
Simazine	0.01		
Toxaphene	0.00000003		
2,4,5-TP (Silvex)	0.002		
2,3,7,8-TCDD (dioxin)			
Vinyl chloride			

<sup>1</sup>A sample is considered positive when the quantity reported by the State approved laboratory is greater than or equal to the method detection limit.

<sup>2</sup>For systems monitoring yearly or less frequently, the sample results for each monitoring location is considered the LRAA for that monitoring location. Systems required to conduct monitoring at a frequency that is less than quarterly shall monitor in the calendar month identified in the monitoring plan developed under section 5-1.51(c). Compliance calculations shall be made beginning with the first compliance sample taken after the compliance date.

<sup>3</sup> Systems that are demonstrating compliance with the avoidance criteria in section 5-1.30(c), shall comply with the TTHM and HAA5 LRAA MCLs; however the LRAA MCLs are not considered for avoidance purposes. For avoidance purposes, TTHMs and HAA5s are based on a running annual average of analyses from all monitoring locations.

<sup>4</sup>Syngenta Method AG-625, "Atrazine in Drinking Water by Immunoassay," February 2001, available from Syngenta Crop Protection, Inc., 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419. Telephone: 336-632-6000, may not be used for the analysis of atrazine in any system where chlorine dioxide is used for drinking water treatment. In samples from all other systems, any result for atrazine generated by Method AG-625 that is greater than one-half the maximum contaminant level (MCL) (in other words, greater than 0.0015mg/L or 1.5 µg/L) must be confirmed using another approved method for this contaminant and should use additional volume of the original sample collected for compliance monitoring. In instances where a result from Method AG-625 triggers such confirmatory testing, the confirmatory result is to be used to determine compliance.

<sup>5</sup>If PCBs (as one of seven Aroclors) are detected in any sample analyzed using EPA Method 505 or 508, the system shall reanalyze the sample using EPA Method 508A to quantitate PCBs (as decachlorobiphenyl). Compliance with the PCB MCL shall be determined based upon the quantitative results of analyses using Method 508A.

**Table 3A. Maximum Residual Disinfectant Level (MRDL) Determination**

Disinfectant	MRDL (mg/L)	Type of water system <sup>1</sup>	Determination of MRDL violation
Chlorine	4.0 (as Cl <sub>2</sub> )	Community and NTNC using chlorine or chloramines as disinfectant or oxidant	Compliance is based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system. If the running annual average exceeds the MRDL, the system is in violation and must notify the public.
Chloramines <sup>2</sup>	4.0 (as Cl <sub>2</sub> )		
Chlorine Dioxide	0.8 (as ClO <sub>2</sub> )	Community, NTNC, and Transient Noncommunity using chlorine dioxide as disinfectant or oxidant	Public Health Hazard (Acute Violation) Compliance is based on daily samples collected by the system. If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceeds the MRDL, the system is in violation.
			Nonacute Violation Compliance is based on daily samples collected by the system. If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL, and all distribution system samples taken are below the MRDL, the system is in violation.
<sup>1</sup> The monitoring and MRDL requirements for chlorine and chloramines in this column apply to community or nontransient noncommunity water systems that are consecutive systems that do not add a disinfectant, but deliver water that has been treated with primary or residual disinfection other than ultraviolet light.			
<sup>2</sup> In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all Cl <sub>2</sub> monitoring results of both chlorine and chloramines.			

**Table 4. Entry Point Turbidity Maximum Contaminant Level Determination for Unfiltered Systems<sup>1,2</sup>**

Contaminant	MCL	Determination of MCL violation
Entry point turbidity (surface water and ground water directly influenced by surface water)	1 NTU <sup>3,5</sup> (Monthly Average)  5 NTU <sup>4,5</sup>	A violation occurs when the average of all daily entry point analyses for the month exceeds the MCL rounded off to the nearest whole number.  A violation occurs when the average of two consecutive daily entry point analyses exceeds the MCL rounded off to the nearest whole number.
<p><sup>1</sup>The requirements of this table apply to unfiltered systems that the State had determined, in writing pursuant to section 5-1.30 of this Subpart, must install filtration, until filtration is installed.</p> <p><sup>2</sup>If formazin is used for turbidity testing, styrene divinyl benzene beads (e.g., AMCO-AEPA-1 or equivalent) and stabilized formazin (e.g., Hach StablCalTMor equivalent) may be substituted for formazin.</p> <p><sup>3</sup>If the daily entry point analysis exceeds one NTU, a repeat sample must be taken as soon as practicable and preferably within one hour. If the repeat sample exceeds one NTU, the supplier of water must make State notification. The repeat sample must be used for the monthly average and the two consecutive day average.</p> <p><sup>4</sup>If the two consecutive day average exceeds the MCL, the supplier of water shall analyze for microbiological contamination at a point downstream of the first consumer, but as close to the first consumer as is feasible. The additional microbiological sample should be taken within one hour as soon as feasible after determining the two consecutive day average. The supplier of water shall report the result of this microbiological analysis to the State within 48 hours of obtaining the result. The result of this analysis shall not be used for monitoring purposes.</p> <p><sup>5</sup>NTU = Nephelometric Turbidity Units</p>		

**Table 4A. Surface Water Turbidity Performance Standards <sup>1</sup>**

Contaminant	Filtration type	Performance standard <sup>1</sup>	Determination of treatment technique violation	
Filtered water turbidity <sup>2</sup>	Conventional filtration and Direct filtration	0.3 NTU <sup>3,5</sup>	A treatment technique violation occurs if more than five percent of the composite filter effluent measurements taken each month exceed the performance standard values.	The turbidity level of representative samples of the filtered water must at no time exceed 1 NTU. <sup>4,5</sup>
	Slow sand filtration	1.0 NTU <sup>3</sup>	A treatment technique violation occurs if more than five percent of the composite filter effluent measurements taken each month exceed the performance standard values.	The turbidity level of representative samples of the filtered water must at no time exceed 5 NTU.
	Diatomaceous earth filtration	1.0 NTU <sup>3</sup>		
	Alternative filtration	1.0 NTU <sup>3,4</sup>		

<sup>1</sup>The standards apply to systems with surface water sources or ground water sources directly influenced by surface water.

<sup>2</sup>If formazin is used for turbidity testing, styrene divinyl benzene beads (e.g., AMCO-AEPA-1 or equivalent) and stabilized formazin (e.g., Hach StablCalTMor equivalent) may be substituted for formazin.

<sup>3</sup>NTU= Nephelometric Turbidity Unit

<sup>4</sup>The performance standard applies to alternative filtration technologies capable of complying with requirement of section 5-1.30(b) of this Subpart as demonstrated to the department by pilot studies, unless the department sets a turbidity performance standard for a specific system.

<sup>5</sup>If the combined filter effluent turbidity exceeds 1 NTU, the system must consult with the State in accordance with section 5-1.78(d)(3) of this Subpart.

**Table 6. Microbiological Contaminants Maximum Contaminant Level (MCL)/Treatment Technique (TT) Violation Determination**

Contaminant	Sample Location	MCL or TT	Performance Standard <sup>1,2</sup>	Determination of MCL/TT violation <sup>3</sup>
Total coliform <sup>4</sup>	Distribution Sample Sites	MCL	No positive sample <sup>5</sup>	An MCL violation occurs at systems collecting 40 or more samples per month when more than 5.0 percent of the total coliform samples are positive.
		MCL		An MCL violation occurs at systems collecting less than 40 samples per month when two or more samples are total coliform positive.
<i>Escherichia coli</i> ( <i>E. coli</i> )	Distribution Sample Sites	MCL	No positive sample <sup>5</sup>	An MCL violation occurs when a total coliform positive sample is positive for <i>E. coli</i> and a repeat total coliform sample is positive or when a total coliform positive sample is negative for <i>E. coli</i> but a repeat total coliform sample is positive and the sample is also positive for <i>E. coli</i> . <sup>6</sup>
Fecal indicator: <i>E. coli</i> , and/or enterococci, and/or coliphage <sup>7</sup>	Untreated Water from a Ground Water Source	TT	No fecal indicator in samples collected from raw source water from a ground water source. <sup>8</sup>	A TT violation occurs when a raw water sample is positive for the fecal indicator contaminant and system does not provide and document, through process compliance monitoring, 4-log virus treatment during peak flow at first customer. If repeat sampling of the raw water is directed by the State and all additional samples are negative for fecal indicator, there is no TT violation. <sup>8</sup>

<sup>1</sup>A public water system must comply with the MCL for total coliform each month the system is required to monitor for total coliform.

<sup>2</sup>All samples collected in accordance with Table 11 footnotes 1, and 2 and Table 11B of this section, and samples collected in accordance with section 5-1.51(g) of this Subpart shall be included in determining compliance with the MCL unless any of the samples have been invalidated by the State.

<sup>3</sup>For notification purpose, an *E. coli* MCL violation in the distribution system is a public health hazard requiring Tier 1 notification.

<sup>4</sup>Total coliform method additions or modifications to approved methods:

- For total coliform (TC) samples collected from untreated surface water or GWUDI sources, the time from sample collection to initiation of analysis may not exceed 8 hours and the samples must be held below 10 degrees C during transit to the laboratory. For other TC samples, the time from collection to initiation of analysis may not exceed 30 hours. Systems are encouraged, but not required, to hold TC samples below 10 degrees C during transit.
- If the Total Coliform Fermentation Technique using standard methods 9221A or B is used, and if inverted tubes are used to detect gas production, the media should cover these tubes at least one half to two-thirds after the sample is added. Also, no requirement exists to run the completed phase on 10 percent of all TC-positive confirmed tubes. Additionally, lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for TC, using lactose broth, is less than 10 percent.

- If Membrane Filter Technique Standard Methods 9222A, B, and optionally C are used, MI agar also may be used. Verification of colonies is not required.
- If the Standard Methods Presence-Absence (P-A) Coliform Test, 9221D is used, six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.
- If the Total Coliform Membrane Filter Technique, Standard Methods 9222 A, B, C is used, MI agar also may be used. Verification of colonies is not required.
- For any TC testing it is strongly recommended that laboratories evaluate the false-positive and negative rates for the method(s) they use for monitoring TC. Laboratories are also encouraged to establish false-positive and false-negative rates within their own laboratory and sample matrix (drinking water or source water) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. It is suggested that laboratories perform these studies on a minimum of 5% of all TC-positive samples, except for those methods where verification/ confirmation is already required. Methods for establishing false-positive and negative-rates may be based on lactose fermentation, the rapid test for  $\beta$ -galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies and/or from the manufacturer(s).

<sup>5</sup>See Table 13 for public notification requirements.

<sup>6</sup>If any total coliform or *E. Coli* sample is positive, repeat samples must be collected in accordance with Table 11B of this section.

<sup>7</sup>For any fecal indicator sample collected as described in section 5-1.52, Table 6, the time from sample collection to initiation of analysis may not exceed 30 hours. The system is encouraged but is not required to hold samples below 10 °C during transit.



<sup>8</sup>If raw water source sample is fecal indicator positive, the water system, in consultation with the State, may collect an additional 5 samples within 24 hours at each source that tested fecal indicator positive. If none of the additional samples are fecal indicator positive, then there is no TT violation. Note that Tier 1 notification must be made after the initial raw water fecal indicator positive sample, even if it is not confirmed.

**Table 7. Radiological Maximum Contaminant Level Determination<sup>1</sup>**

<b>Contaminant</b>	<b>MCL</b>	<b>Type of water system</b>	<b>Determination of MCL violation<sup>2</sup></b>
Combined radium-226 and radium-228	5 picocuries per liter	Community	A violation occurs when a sample or the annual average of samples at any sampling point exceeds the MCL <sup>3,4,5,6,7</sup>
Gross alpha activity (including radium-226 but excluding radon and uranium)	15 picocuries per liter	Community	
Uranium <sup>8</sup>	30 micrograms per liter	Community	
Beta particle and photon radioactivity from manmade radionuclides	Four millirems (mrem) per year as the annual dose equivalent to the total body or any internal organ <sup>9</sup> .	Community Water Systems designated by the State as vulnerable	A violation occurs when a sample or the annual average of samples at any sampling point exceeds the MCL <sup>3,4,5,7,10,11</sup>
		Community systems designated by the State as utilizing waters contaminated by effluents from nuclear facilities	A violation occurs when a sample or the annual average of samples at any sampling point exceeds the MCL <sup>3,4,5,7,10,11</sup>

<sup>1</sup>The Radionuclides Rule including the MCLs and minimum monitoring requirements applies to only community water systems.

<sup>2</sup>To judge compliance with the maximum contaminant levels, averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

<sup>3</sup>For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

<sup>4</sup>For systems monitoring more than once a year, if any sample result will cause the running average to exceed the MCL at any sample point, e.g., a single sample result is greater than four times of the MCL, the system is out of compliance with the MCL immediately.

<sup>5</sup>If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

<sup>6</sup>If a sample result is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than detection and is substituted for radium-226 and/or uranium, ½ the detection limit will be used to calculate the annual average.

<sup>7</sup>If the MCL for radionuclides in this Table is exceeded, the community water system must give notice to the State.

<sup>8</sup>If uranium (U) is determined by mass-type methods (i.e., fluorometric or laser phosphorimetry), a 0.67 pCi/μg of uranium conversion factor must be used.

<sup>9</sup>A system must determine compliance with the MCL for beta particle and photon radioactivity by using the calculation described below:

$$\frac{[\text{pCi/L found in sample (from laboratory results)} / \text{pCi/L equivalent of 4 mrem of exposure}]}{\text{fraction of the maximum 4 mrem/year exposure limit}} = 10$$
To determine compliance with the MCL, a system must monitor at a frequency as described in Table 12.

<sup>11</sup>If the results show an MCL violation for any of the constituents, the system must conduct monthly monitoring for all species at any sampling point that exceeds the MCL. Monitoring must be conducted in accordance with Table 12 in this section. A system can resume quarterly monitoring if the rolling average of three months of samples is at or below the MCL.

**Table 8B. Inorganic Chemicals and Physical Characteristics Minimum Monitoring Requirements**

Contaminant	Type of water system	Initial frequency by source type <sup>1</sup>		Accelerated sampling <sup>2</sup>
		Ground water only	Surface only or surface and ground water	
Antimony Arsenic Barium Beryllium Cadmium Chromium Cyanide Mercury Nickel Selenium Thallium Fluoride	Community and NTNC <sup>3,4,5</sup>	One sample per entry point every 3 years	One sample per entry point per year	If GT MCL, one sample quarterly. <sup>6,7</sup>  If LT MCL, maintain initial frequency.
	Transient noncommunity	State discretion <sup>8</sup>	State discretion <sup>8</sup>	State discretion <sup>8</sup>
Bromate <sup>9</sup>	Community and NTNC using ozone for disinfection or oxidation	One sample per month at each entry point <sup>10, 11</sup>	One sample per month at each entry point <sup>10, 11</sup>	State discretion <sup>8</sup>
Chlorite <sup>12</sup>	Community and NTNC using chlorine dioxide for disinfection or oxidation	Daily samples at each entry point. Additional three-sample set monthly in the distribution system <sup>11, 13, 14, 15</sup>	Daily samples at each entry point. Additional three-sample set monthly in the distribution system <sup>11, 13, 14, 15</sup>	State discretion <sup>8</sup>

GT = Greater Than; LT = Less Than

<sup>1</sup>For all types of water sources the system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources, or separately at the individual sources. The State may allow systems to composite samples in accordance with the conditions in Appendix 5-C. All samples taken and analyzed in accordance with the monitoring plan must be included in determining compliance, even if the number is greater than the minimum required.

<sup>2</sup>The average of the initial and confirmation sample contaminant concentration at each sampling point shall be used to determine compliance with the MCL.

<sup>3</sup>A waiver from the required initial monitoring frequencies may be granted by the State, based upon the following conditions:

- a. A minimum of one sample shall be collected while the waiver is effective;
- b. Surface water systems must have monitored annually for at least three years and ground water systems must have conducted a minimum of three rounds of monitoring with at least one sample taken since January 1, 1990;
- c. All results must be less than the MCL;
- d. New sources are not eligible for a waiver until completion of three rounds of sampling; and
- e. Waivers issued by the State shall be made in writing, shall cite the basis for determination and shall not exceed a maximum of nine years.

<sup>4</sup>To determine the appropriate reduced monitoring frequency, the State shall consider:

- a. Reported concentrations from all previous monitoring;
- b. Variations in reported concentrations; and

c. Other factors which may affect contaminant concentrations such as changes in ground water pumping rates, changes in the system's configuration, operating procedures, stream flows or other characteristics.

<sup>5</sup>The State may require or the water system may request more frequent monitoring frequencies than is minimally required. The State, at its discretion, may require confirmation samples.

<sup>6</sup>The State may decrease the quarterly monitoring requirement to the initial sampling requirement provided that it is determined that the system is reliably and consistently below the MCL on the basis of a minimum of two quarterly ground water samples and a minimum of four quarterly samples for surface water.

<sup>7</sup>If concentrations of a listed contaminant exceed the MCL, the department requires the collection of an additional sample as soon as possible but not to exceed two weeks.

<sup>8</sup>State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

<sup>9</sup>Community and nontransient noncommunity water systems using ozone for disinfection or oxidation must comply with the bromate monitoring requirement.

<sup>10</sup>Systems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system's running annual average bromate concentration is  $\leq 0.0025$  mg/l based on monthly bromate measurements for the most recent four quarters. A system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.025 mg/L. If the average bromide concentration is equal to or greater than 0.025 mg/L, the system must resume routine monthly bromate monitoring.

<sup>11</sup>Failure to monitor will be treated as a monitoring violation for the entire period covered by an annual average where compliance is based on an annual average of monthly or quarterly samples or averages and a system's failure to monitor makes it impossible to determine MCL compliance.

<sup>12</sup>Community and nontransient noncommunity water systems using chlorine dioxide as a disinfectant or oxidant must comply with the chlorite monitoring requirement.

<sup>13</sup>On each day following a sample result that exceeds the chlorite MCL at the entrance to the distribution system, the system must take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and in a location representative of maximum residence time. The samples comprising the three-sample set required for routine monitoring must be collected at the same three locations in the distribution system that are used when following up on a daily MCL exceedance at the entry point. The system may use results of additional monitoring, conducted as the result of an entry point MCL exceedance, to meet the requirement for routine monthly monitoring.

<sup>14</sup>Daily chlorite monitoring at the entrance to the distribution system may not be reduced. Monthly chlorite monitoring in the distribution system may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system has exceeded the chlorite MCL. If the system has had to conduct distribution system monitoring as a result of an MCL exceedance at the entry point, the system cannot reduce monitoring. The system may remain on a reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system exceeds the chlorite MCL or the system is required to conduct distribution system monitoring because of an entry point chlorite MCL exceedance.

<sup>15</sup>A system must monitor according to its monitoring plan as described in section 5-1.51(c) of this Subpart. Failure to monitor in accordance with the monitoring plan is a monitoring violation.

Footnote 6 of Table 8C of section 5-1.52 is amended as follows:

<sup>6</sup> For both types of water sources the system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. If a system draws water from more than one source and the sources are combined before distribution the system must sample at an entry point to the distribution systems during periods of normal operating conditions when water is representative of all sources. The average of the initial and confirmation sample contaminant concentration at each sampling point shall be used to determine compliance with the MCL.

**Table 9A. Organic Chemicals – Disinfection Byproducts Minimum Monitoring Requirements<sup>1</sup>**

	Source Water Type	Population Size	Routine Monitoring		Reduced Monitoring <sup>2</sup>	
			Distribution System monitoring location per monitoring period <sup>3</sup>	Frequency <sup>4</sup>	Distribution System monitoring locations per monitoring period	Frequency
Total Trihalomethanes (TTHM)  Haloacetic Acids (HAA5)	Surface water and GWUDI	<500	2 <sup>5</sup>	per year <sup>6</sup>	not allowed	not allowed
		500 – 3,300	2 <sup>5</sup>	per quarter	2 <sup>5</sup>	per year <sup>6</sup>
		3,301 – 9,999	2	per quarter	2 <sup>7</sup>	per year <sup>6</sup>
		10,000 – 49,999	4	per quarter	2 <sup>8</sup>	per quarter
		50,000 – 249,999	8	per quarter	4 <sup>9</sup>	per quarter
		250,000 – 999,999	12	per quarter	6 <sup>10</sup>	per quarter
		1,000,000 – 4,999,999	16	per quarter	8 <sup>11</sup>	per quarter
		≥5,000,000	20	per quarter	10 <sup>12</sup>	per quarter
	Ground water	<500	2 <sup>5</sup>	per year <sup>6</sup>	2 <sup>5</sup>	every third year <sup>6</sup>
		500 – 9,999	2	per year <sup>6</sup>	2 <sup>5</sup>	per year <sup>6</sup>
		10,000 – 99,999	4	per quarter	2 <sup>7</sup>	per year <sup>6</sup>
		100,000 – 499,999	6	per quarter	2 <sup>8</sup>	per quarter
		≥500,000	8	per quarter	4 <sup>9</sup>	per quarter

Table 9A (continued)

<sup>1</sup>To comply with monitoring requirements, certain conditions must be applied to test methods. The following apply to any samples collected for compliance with section 5-1.50(o) of this Subpart:

- Total Organic Carbon (TOC) samples. Inorganic carbon must be removed from TOC samples prior to analysis. TOC samples may not be filtered prior to analysis. TOC samples must be acidified at the time of sample collection to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified TOC samples must be analyzed within 28 days.
- SUVA Samples:

For Specific Ultraviolet Absorbance (SUVA) samples, SUVA must be determined on water prior to the addition of disinfectants/oxidants by the system. Dissolved Organic Carbon (DOC) and Ultraviolet Absorption at 254 nm (UV254) samples used to determine a SUVA value must be taken at the same time and at the same location.

DOC samples must be filtered through the 0.45 µm pore-diameter filter as soon as practical after sampling, not to exceed 48 hours. After filtration, DOC samples must be acidified to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified DOC samples must be analyzed within 28 days of sample collection. Inorganic carbon must be removed from the samples prior to analysis. Water passed through the filter prior to filtration of the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet the following criteria: DOC < 0.5 mg/L.

For UV254 samples, UV absorption must be measured at 253.7 nm (may be rounded off to 254 nm). Prior to analysis, UV254 samples must be filtered through a 0.45 µm pore-diameter filter. The pH of UV254 samples may not be adjusted. Samples must be analyzed as soon as practical after sampling, not to exceed 48 hours.

<sup>2</sup> Systems may reduce monitoring if, at all monitoring locations, the TTHM LRAA is ≤0.040 mg/L and the HAA5 LRAA is ≤0.030 mg/L. In addition, the source water annual average TOC level, before any treatment, shall be ≤4.0 mg/L at each treatment plant treating surface water or GWUDI. A system with quarterly reduced monitoring may remain on reduced monitoring as long as the TTHM LRAA is ≤0.040 mg/L and the HAA5 LRAA is ≤0.030 mg/L at each monitoring location. For systems with annual or less frequent monitoring, each TTHM sample shall be ≤0.060 mg/L and each HAA5 sample shall be ≤0.045 mg/L. In addition, the source water annual average TOC level, before any treatment, shall be ≤4.0 mg/L at each treatment plant treating surface water or GWUDI. If these conditions are not met, or at the State's discretion, the system shall resume routine monitoring in the quarter immediately following the exceedance (for quarterly systems) or in the year immediately following the exceedance (for systems that monitor annually or less frequently).

<sup>3</sup>A system shall monitor according to its monitoring plan as described in section 5-1.51(c) of this Subpart. Failure to monitor in accordance with the monitoring plan is a monitoring violation. All systems shall monitor during the month of highest Disinfection Byproducts concentrations. Monitoring shall be increased to quarterly at all locations if a TTHM sample is > 0.080 mg/L or a HAA5 sample is >0.060 mg/L.

<sup>4</sup>Systems on quarterly monitoring shall take dual sample sets every 90 days at each monitoring location, except for surface water and GWUDI systems serving a population of 500 -3,300. Ground water systems serving a population of 500 – 9,999 on annual monitoring shall take dual sample sets at each monitoring location. All other systems on annual monitoring and surface water and GWUDI systems serving a population of 500 – 3,300 are required to take individual TTHM and HAA5 samples (instead of dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. For systems serving fewer than 500 people, only one location with a dual sample set per monitoring period is needed if the highest TTHM and HAA5 concentrations occur at the same location and month.

Table 9A (continued)

<sup>5</sup>Collect one TTHM sample at the location and during the quarter with the highest TTHM single measurement, and one HAA5 sample at the location and during the quarter with the highest HAA5 single measurement; alternatively, collect one dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

<sup>6</sup>If a system is required to monitor a particular location annually or less frequently, and a TTHM sample is  $>0.080$  mg/L or a HAA5 sample is  $>0.060$  mg/L at any location, the system shall increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations. The system may return to routine monitoring if at least four consecutive quarters of increased monitoring have been conducted and for every monitoring location the TTHM LRAA  $\leq 0.060$  mg/L and the HAA5 LRAA is  $\leq 0.045$  mg/L.

<sup>7</sup>Collect one dual sample set at the location and during the quarter of the highest TTHM single measurement, and one dual sample set at the location and during the quarter of the highest HAA5 single measurement.

<sup>8</sup>Collect dual sample sets at the locations with the highest TTHM and HAA5 LRAAs.

<sup>9</sup>Collect dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs.

<sup>10</sup>Collect dual sample sets at the locations with the three highest TTHM and three highest HAA5 LRAAs.

<sup>11</sup> Collect dual sample sets at the locations with the four highest TTHM and four highest HAA5 LRAAs.

<sup>12</sup> Collect dual sample sets at the locations with the five highest TTHM and five highest HAA5 LRAAs.



**Table 9B. Organic Chemicals - POCs, Vinyl Chloride, Methyl-tertiary-butyl-ether (MTBE), UOCs, Propylene Glycol  
Minimum Monitoring Requirements**

<b>Contaminant</b>	<b>Type of water system</b>	<b>Initial requirement<sup>1</sup></b>	<b>Continuing requirement where detected<sup>1</sup></b>	<b>Continuing requirement where not detected and vulnerable to contamination<sup>1</sup></b>	<b>Continuing requirement where not detected and invulnerable to contamination<sup>1</sup></b>
Principal Organic Contaminants listed on Table 9D and Vinyl chloride and Methyl-tertiary-butyl-ether (MTBE) <sup>2</sup>	Community and Nontransient Noncommunity serving 3,300 or more persons	Quarterly sample per source for one year. <sup>3</sup>	Quarterly <sup>4</sup>	Annually <sup>5</sup>	Once every six years <sup>6</sup> for ground water sources. State discretion <sup>7</sup> for surface water sources.
	Community and Nontransient Noncommunity serving fewer than 3,300 persons	Quarterly sample per source for one year. <sup>3</sup>	Quarterly <sup>4</sup>	Annually <sup>5</sup>	Once every six years <sup>6</sup> for ground water sources. State discretion <sup>7</sup> for surface water sources.
	Noncommunity excluding NTNC	State discretion <sup>7</sup>	State discretion <sup>7</sup>	State discretion <sup>7</sup>	State discretion <sup>7</sup>
Unspecified Organic Contaminants and other POCs not listed on Table 9C or 9D and Propylene glycol	Community and Noncommunity	State discretion <sup>7</sup>	State discretion <sup>7</sup>	State discretion <sup>7</sup>	State discretion <sup>7</sup>

<sup>1</sup>The location for sampling of each ground water source of supply shall be between the individual well and at or before the first service connection and before mixing with other sources, unless otherwise specified by the State to be at the entry point representative of the individual well. Public water systems which rely on a surface water shall sample at points in the distribution system representative of each source or at an entry point or points to the distribution system after any water treatment plant.

<sup>2</sup>The initial requirement does not apply to MTBE monitoring

<sup>3</sup>The State may reduce the initial monitoring requirement to one sample if the State determines that the system is invulnerable in accordance with footnote 4.

<sup>4</sup>The State may decrease the quarterly monitoring requirement to annually provided that the system is reliably and consistently below the MCL based on a minimum of two quarterly samples from a ground water source and four quarterly samples from a surface water source. Systems which monitor annually must monitor during the quarter which previously yielded the highest analytical result.

<sup>5</sup>The State may reduce the frequency of monitoring of a ground water source to once every three years for a public water system which has three consecutive annual samples with no detection of a contaminant.

<sup>6</sup>The State may determine that a public water system is invulnerable to a contaminant or contaminants after evaluating every three years the following factors:

- a. Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the State reveals no previous use of the contaminant within the watershed or zone of influence, a waiver can be granted.
- b. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver can be granted.
  1. Previous analytical results.
  2. The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.
  3. The environmental persistence and transport of the contaminants.
  4. The number of persons served by the public water system and the proximity of a smaller system to a larger system.
  5. How well the water source is protected against contamination, such as whether it is a surface or ground water system. Ground water systems must consider factors such as depth of the well, the type of soil, and wellhead protection. Surface water systems must consider watershed protection.

<sup>7</sup>State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

**Table 9C. Organic Chemicals - Pesticides, Dioxin, PCBs Minimum Monitoring Requirements**

Contaminant		Type of water system	Initial requirement <sup>1</sup>	Continuing requirement where detected <sup>1,2,3,4</sup>	Continuing requirement where not detected <sup>1</sup>
Group 1 Chemicals Alachlor Aldicarb Aldicarb sulfoxide Aldicarb sulfone Atrazine Carbofuran Chlordane Dibromochloropropane 2,4-D Endrin Ethylene Dibromide Heptachlor Heptachlor epoxide Lindane Methoxychlor Polychlorinated biphenyls Pentachlorophenol Toxaphene 2,4,5-TP (Silvex)	Group 2 Chemicals Aldrin Benzo(a)pyrene Butachlor	Community and Nontransient Noncommunity serving 3,300 or more persons <sup>3</sup>	Quarterly sample per source, for one year <sup>5</sup>	Quarterly	One sample every eighteen months per source <sup>6,7,8</sup>
	Carbaryl Dalapon Di(2-ethylhexyl)adipate Di(2-ethylhexyl)phthalate Dicamba Dieldrin Dinoseb Diquat Endothall	Community and Nontransient Noncommunity serving fewer than 3,300 persons and more than 149 service connections	Quarterly samples per entry point, for one year <sup>6,7,8</sup>	Quarterly	Once per entry point every three years <sup>6,7,8</sup>
	Glyphosate Hexachlorobenzene Hexachlorocyclopentadiene 3-Hydroxycarbofuran Methomyl Metolachlor Metribuzin Oxamyl (vydate) Picloram Propachlor Simazine 2,3,7,8-TCDD (Dioxin)	Community and Nontransient Noncommunity serving fewer than 3,300 persons and fewer than 150 service connections	Quarterly samples per entry point for one year <sup>6,7,8</sup>	Quarterly	Once per entry point every three years <sup>6,7,8</sup>
		Noncommunity excluding NTNC	State discretion <sup>9</sup>	State discretion <sup>9</sup>	State discretion <sup>9</sup>

Table 9C (continued)

<sup>1</sup>The location for sampling of each ground water source of supply shall be between the individual well and at or before the first service connection and before mixing with other sources, unless otherwise specified by the State to be at the entry point representative of the individual well. Public water systems which take water from a surface water body or watercourse shall sample at points in the distribution system representative of each source or at entry point or points to the distribution system after any water treatment plant.

<sup>2</sup>The State may decrease the quarterly monitoring requirement to annually provided that system is reliably and consistently below the MCL based on a minimum of two quarterly samples from a ground water source and four quarterly samples from a surface water source. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result. Systems serving fewer than 3,300 persons and which have three consecutive annual samples without detection may apply to the State for a waiver in accordance with footnote 6.

<sup>3</sup>If a contaminant is detected, repeat analysis must include all analytes contained in the approved analytical method for the detected contaminant.

<sup>4</sup>Detected as used in the table shall be defined as reported by the State approved laboratory to be greater than or equal to the method detection levels. <sup>5</sup>The State may allow a system to postpone monitoring for a maximum of two years, if an approved laboratory is not reasonably available to do a required analysis within the scheduled monitoring period.

<sup>6</sup>The State may waive the monitoring requirement for a public water system that submits information every three years to demonstrate that a contaminant or contaminants was not used, transported, stored or disposed within the watershed or zone of influence of the system.

<sup>7</sup>The State may reduce the monitoring requirement for a public water system that submits information every three years to demonstrate that the public water system is invulnerable to contamination. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted.

- a. Previous analytical results.

- b. The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Nonpoint sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses.
- c. The environmental persistence and transport of the pesticide or PCBs.
- d. How well the water source is protected against contamination due to such factors as depth of the well and the type of soil and the integrity of the well casing. e. Elevated nitrate levels at the water supply source.
- f. Use of PCBs in equipment used in production, storage or distribution of water.

<sup>8</sup>The State may allow systems to composite samples in accordance with the conditions in Appendix 5-C of this Title.

<sup>9</sup>State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

**Table 10. Turbidity Minimum Monitoring Requirements for Unfiltered Systems Pending Filtration<sup>1</sup>**

Contaminant	Type of water system	Source Type	
		Ground water only	Surface only, surface and ground water, or ground water directly influenced by surface water
Entry point turbidity	Community	State discretion <sup>2</sup>	Collect and analyze one sample per day from each entry point. All results must be recorded to two significant figures.
	Noncommunity	State discretion <sup>2</sup>	Collect and analyze one sample annually. Monitoring requirement may be increased at State discretion. <sup>2</sup>
Distribution point turbidity	Community	State discretion <sup>2</sup>	Five distribution samples each week unless otherwise determined by the State. No two samples may be obtained on the same day and no two samples are to be collected from the same distribution point during the week.
	Noncommunity	State discretion <sup>2</sup>	State discretion <sup>2</sup>

<sup>1</sup>The requirements of this table apply to unfiltered systems that the State has determined, in writing pursuant to section 5-1.30 of this Subpart, must install filtration. These requirements only apply until filtration is installed.

<sup>2</sup>State discretion shall mean requiring monitoring when the State has reason to believe the MCL has been violated, the potential exists for an MCL violation or the contaminant may present a risk to public health.

**Table 13 - REQUIRED NOTIFICATIONS**

<b>Contaminant/Situation (Subpart 5-1 citations)</b>	<b>Single sample exceeds MCL/MRDL<sup>1</sup></b>	<b>MCL/MRDL/TT<sup>1</sup> violation</b>	<b>Failure to meet monitoring requirements and/or failure to use applicable testing procedure</b>
Public Health Hazard (section 5-1.1(bw)) <sup>2</sup>	Not applicable	State Tier 1	State Tier 1
<i>Escherichia coli</i> ( <i>E. coli</i> ) in distribution system (section 5-1.52, Tables 6, 11 and 11B)	<sup>3</sup> State Not applicable, or <sup>4</sup> Tier 1	State Tier 1	State <sup>5</sup> Tier 3, or Tier 1
<i>E. coli</i> or other fecal indicator detected in ground water source at system not providing both 4-log virus treatment and process compliance monitoring (section 5-1.52, Tables 6, 11 and 11B)	<sup>2, 3, 5, 6</sup> Tier 1	<sup>6</sup> Tier 1	State <sup>2, 5, 7</sup> Tier 3, or Tier 1
Total coliform in distribution system (section 5-1.52, Tables 6, 11 and 11B)	Not applicable	<sup>8</sup> State <sup>9</sup> Tier 2, or Tier 1	State Tier 3, or Tier 2 as directed by State
Entry Point Turbidity monthly average (section 5-1.52, Tables 4 and 10)	<sup>10</sup> State	State Tier 2	State Tier 3
Entry Point Turbidity two day average (section 5-1.52, Tables 4 and 10)	State	State <sup>11</sup> Tier 2, or Tier 1	State Tier 3
Raw Water Turbidity (section 5-1.30(d) and section 5-1.52, Table 10A)	State	State <sup>11</sup> Tier 2, or Tier 1	State Tier 3
Filtered Water Turbidity Single exceedance of the maximum allowable Turbidity level (section 5-1.52, Tables 4A and 10A)	State	State <sup>11</sup> Tier 2, or Tier 1	State Tier 3
Filtered Water Turbidity Treatment Technique violation (section 5-1.52, Tables 4A and 10A)	Not applicable	State Tier 2	State Tier 3

**Table 13 (cont.)**

<b>Contaminant/Situation (Subpart 5-1 citations)</b>	<b>Single sample exceeds MCL/MRDL<sup>1</sup></b>	<b>MCL/MRDL/TT<sup>1</sup> violation</b>	<b>Failure to meet monitoring requirements and/or failure to use applicable testing procedure</b>
Distribution Point Turbidity (section 5-1.52, Tables 5, 10 and 10A)	Not applicable	State Tier 2	State Tier 3
<sup>12, 13</sup> Treatment Technique violations other than turbidity (sections 5-1.12, 5-1.30, 5-1.32, 51.81, and 5-1.83 and section 5-1.71(d))	Not applicable	State <sup>2, 13</sup> Tier 2, or Tier 1	State <sup>12, 13</sup> Tier 3, or Tier 2
<sup>14</sup> Free chlorine residual less than 0.2 mg/L at the entry point (section 5-1.30(d))	Not applicable	State	Not applicable
<sup>15</sup> Free chlorine residual less than required minimum for a ground water system or ground water source required to provide 4-log virus treatment (section 5- 1.30(a))	Not applicable	State <sup>9</sup> Tier 2, or Tier 1	Tier 2
Inorganic chemicals and physical characteristics listed in Tables 8A and 8B (section 5-1.52, Tables 1, 8A, and 8B)	State	State Tier 2	State Tier 3
Chloride, iron, manganese, silver, sulfate, and zinc (section 5-1.52, Tables 1 and 8D)	Not applicable	State Tier 3	State Tier 3
Sodium (section 5-1.52, Tables 1 and 8D)	State if the level exceeds 20 mg/L	Tier 2 if the level exceeds 270 mg/L	Tier 3
Nitrate, Nitrite, Total Nitrate and Nitrite (section 5-1.52, Tables 2 and 8C)	State	State Tier 1	State <sup>16</sup> Tier 1, or Tier 3
Lead and Copper (sections 5-1.40 to 1.48)	Not applicable	State Tier 2	State Tier 3
Organic Chemicals Group 1 and 2 (section 5-1.52, Table 9C)	State	State Tier 2	State Tier 3

**Table 13 (cont.)**

<b>Contaminant/Situation (Subpart 5-1 citations)</b>	<b>Single sample exceeds MCL/MRDL1</b>	<b>MCL/MRDL/TT<sup>1</sup> violation</b>	<b>Failure to meet monitoring requirements and/or failure to use applicable testing procedure</b>
Principal Organic Contaminants Unspecified Organic Contaminants Total POCs and UOCs (section 5-1.52, Tables 3, 9B and 9D)	State	State Tier 2	State Tier 3
Radiological Contaminants (section 5-1.52, Tables 7 and 12)	State	State Tier 2	State Tier 3
Monitoring and Control of Disinfection Byproduct Precursors (sections 5-1.60 to 5-1.64)	Not applicable	State Tier 2	State Tier 3
Disinfectant residuals Chlorine and Chloramine (section 5-1.52, Tables 3A and 15A)	State	State Tier 2	State Tier 3
Disinfectant residual Chlorine dioxide at entry point (section 5-1.52, Tables 3A, 15 and 15A)	State	State Tier 2	State <sup>17</sup> Tier 3, or Tier 2
Disinfectant residual Chlorine dioxide in distribution system (section 5-1.52, Tables 3A, 15 and 15A)	State	State <sup>18</sup> Tier 1	State <sup>18</sup> Tier 1
Disinfection byproducts Trihalomethanes Haloacetic acids (section 5-1.52, Tables 3 and 9A) and Bromate and Chlorite (section 5-1.52, Tables 1 and 8B)	Not applicable	State Tier 2	State Tier 3



**Table 13 (cont.)**

<b>Contaminant/Situation (Subpart 5-1 citations)</b>	<b>Single sample exceeds MCL/MRDL<sup>1</sup></b>	<b>MCL/MRDL/TT<sup>1</sup> violation</b>	<b>Failure to meet monitoring requirements and/or failure to use applicable testing procedure</b>
Acrylamide and Epichlorohydrin (section 5-1.51(m))	Not applicable	State Tier 2	Not applicable
Operation under a variance or exemption (sections 5-1.90 to 5-1.96)	Not applicable	Tier 3	Not applicable
Violation of conditions of a variance or exemption (sections 5-1.90 to 5-1.96)	Not applicable	State Tier 2	Not applicable
Disruption of water service of four hours or more (section 5-1.23(b))	Not applicable	<sup>19</sup> State	Not applicable

<sup>1</sup>MCL-maximum contaminant level, MRDL-maximum residual disinfectant level, TT-treatment technique

<sup>2</sup>Community systems must describe in their annual water supply statement (section 5-1.72(e)), prepared in accordance with section 5-1.72(f), any Public Health Hazard that is determined to be a violation, or any uncorrected significant deficiency, and indicate whether corrective action is completed. This notice must be repeated every year until the annual report documents that corrective action is completed in accordance with section 5-1.22 of this Subpart.

<sup>3</sup>State notification must be made by the supplier of water within 24 hours of learning of an *E. coli* positive sample.

<sup>4</sup>Public notification normally does not have to be issued for an *E. coli* positive sample prior to the results of the repeat samples. However, there may be situations where the State determines that a Tier 1 notification is necessary to protect the public health. The supplier of water must provide the Tier 1 notification no later than 24 hours after learning of the State's determination.

<sup>5</sup>Failure to test for *E. coli* requires a Tier 1 notification if testing is not done after any repeat sample tests positive for coliform. All other *E. coli* monitoring and testing procedure violations require Tier 3 notification.

<sup>6</sup>At a ground water system, Tier 1 notification is required after initial detection of *E. coli* or other fecal indicator in raw source water, if system does not provide 4-log virus treatment and process compliance monitoring. Confirmation of *E. coli* or other fecal indicator in the source water requires Tier 1 notification. Failure to take confirmatory samples may be a public health hazard requiring Tier 1 notification.

<sup>7</sup>Notice of the fecal indicator positive raw water sample must be made in the annual water supply statement (section 5-1.72(e)), until the annual report documents that corrective action is completed.

<sup>8</sup>State notification must be made by the supplier of water within 24 hours of learning of the violation.

**Table 13 (cont.)**

<sup>9</sup>Tier 2 notification is normally required, however, there may be situations where the State determines that a Tier 1 notification is necessary to protect the public health. The supplier of water must provide the Tier 1 notification no later than 24 hours after learning of the State's determination.

<sup>10</sup>If the daily entry point analysis exceeds one NTU, a repeat sample must be taken as soon as practicable and preferably within one hour. If the repeat sample exceeds one NTU, the supplier of water must make state notification.

<sup>11</sup>Systems must consult with the State within 24 hours after learning of the violation. Based on this consultation, the State may subsequently decide to elevate the violation from a Tier 2 to a Tier 1 notification. If consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notification no later than 48 hours after the system learns of the violation.

<sup>12</sup>These violations include the following: failure to comply with the treatment technique or monitoring requirements in section 5-1.30(a), (b), (c), and (g) of this Subpart; failure to comply with the avoidance criteria in section 5-1.30(c) of this Subpart; failure to cover a finished water storage facility or treat its discharge required in section 5-1.32 of this Subpart; failure to report to the state information required in section 5-1.72(c)(3) of this Subpart; failure to maintain records required in section 5-1.72(c)(7) of this Subpart; failure to meet the bin classification requirements for filtered systems associated with Cryptosporidium in section 5-1.83(a); failure to meet the treatment technique requirements for filtered systems associated with Cryptosporidium in section 5-1.83(b); and failure to meet the treatment technique requirements for unfiltered systems associated with Cryptosporidium in section 5-1.83(c). Failure to collect three or more samples for Cryptosporidium analysis as required in section 5-1.81 of this Subpart is a Tier 2 violation requiring public notification; failure to perform all other monitoring and testing procedures as required in section 5-1.81 of this Subpart are Tier 3 violations.

<sup>13</sup>Any significant deficiency that is not corrected or where correction has not begun according to a State-approved corrective action plan within 120 days, or as directed by the State, is a treatment technique violation and must be addressed in accordance with the requirements in section 5-1.12. If the deficiency is a public health hazard, the deficiency must be addressed as directed by the State and Tier 1 notification is required.

<sup>14</sup>Applies to systems that have surface water or ground water directly influenced by surface water as a source and use chlorine. The system must make State notification whether the residual was restored to at least 0.2 mg/L within four hours.

<sup>15</sup>Required minimum chlorine residual at point that demonstrates adequate CT for disinfected water from ground water sources at first customer.

<sup>16</sup>Failure to take a confirmation sample within 24 hours for nitrate or nitrite after an initial sample exceeds the MCL requires a Tier 1 notification. Other monitoring violations for nitrate or nitrite require a Tier 3 notification.

<sup>17</sup>Failure to monitor for chlorine dioxide at the entrance to the distribution system the day after exceeding the MRDL at the entrance to the distribution system requires a Tier 2 notification. Other monitoring violations for chlorine dioxide at the entrance to the distribution system require a Tier 3 notification.

<sup>18</sup>If any daily sample taken at the entrance to the distribution system exceeds the MRDL for chlorine dioxide and one or more samples taken in the distribution system the next day exceed the MRDL, Tier 1 notification is required. Failure to take the required samples in the distribution system the day after the MRDL is exceeded at the entry point also triggers Tier 1 notification.

<sup>19</sup>Tier 1 notification is required if the situation meets the definition of a public health hazard.

Table 14H. CT Values (CT<sub>99.9</sub>) for 99.9 Percent Inactivation of *Giardia Lamblia* Cysts by Chloramines<sup>1</sup>

Water Temperature, in Degrees Celsius					
<1	5	10	15	20	25
3,800	2,200	1,850	1,500	1,100	750

<sup>1</sup>These values are for pH values of 6 to 9. These CT values may be assumed to achieve greater than 99.99 percent inactivation of viruses only if chlorine is added and mixed in the water prior to the addition of ammonia. If this condition is not met, the system must demonstrate, based on on-site studies or other information, as approved by the State, that the system is achieving at least 99.99 percent inactivation of viruses. CT values between the indicated temperatures may be determined by linear interpolation. If no interpolation is used, use the CT<sub>99.9</sub> value at the lower temperature for determining CT<sub>99.9</sub> values between indicated temperatures.

Table 14I. CT Values (mg·min/L) for *Cryptosporidium* Inactivation by Chlorine Dioxide<sup>1</sup>

Log Credit	Water Temperature, in Degrees Celsius										
	<=0.5	1	2	3	5	7	10	15	20	25	30
0.25	159	153	140	128	107	90	69	45	29	19	12
0.5	319	305	279	256	214	180	138	89	58	38	24
1.0	637	610	558	511	429	360	277	179	116	75	49
1.5	956	915	838	767	643	539	415	268	174	113	73
2.0	1275	1220	1117	1023	858	719	553	357	232	150	98
2.5	1594	1525	1396	1278	1072	899	691	447	289	188	122
3.0	1912	1830	1675	1534	1286	1079	830	536	347	226	147

<sup>1</sup> Systems may use this equation to determine log credit between the indicated values:

$$\text{Log credit} = (0.001506 \times (1.09116)^{\text{Temp}}) \times \text{CT}.$$

Table 14J. CT Values (mg·min/L) for *Cryptosporidium* Inactivation by Ozone<sup>1</sup>

Log Credit	Water Temperature, in Degrees Celsius										
	<=0.5	1	2	3	5	7	10	15	20	25	30
0.25	6.0	5.8	5.2	4.8	4.0	3.3	2.5	1.6	1.0	0.6	0.39
0.5	12	12	10	9.5	7.9	6.5	4.9	3.1	2.0	1.2	0.78
1.0	24	23	21	19	16	13	9.9	6.2	3.9	2.5	1.6
1.5	36	35	31	29	24	20	15	9.3	5.9	3.7	2.4
2.0	48	46	42	38	32	26	20	12	7.8	4.9	3.1
2.5	60	58	52	48	40	33	25	16	9.8	6.2	3.9
3.0	72	69	63	57	47	39	30	19	12	7.4	4.7

<sup>1</sup> Systems may use this equation to determine log credit between the indicated values:

$$\text{Log credit} = (0.0397 \times (1.09757)^{\text{Temp}}) \times \text{CT}.$$

Table 14K. UV Dose Table for *Cryptosporidium*, *Giardia lamblia*, and Virus Inactivation Credit<sup>1,2,3,4</sup>

Log Credit	<i>Cryptosporidium</i> UV dose (mJ/cm <sup>2</sup> )	<i>Giardia lamblia</i> UV dose (mJ/cm <sup>2</sup> )	Virus UV dose (mJ/cm <sup>2</sup> )
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	15	15	163
4.0	22	22	186

<sup>1</sup>Ultraviolet light. Systems receive *Cryptosporidium*, *Giardia lamblia*, and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in this table. Systems must use validated UV reactors and monitor UV reactors as described in footnotes 3 and 4 of this table to demonstrate that they are achieving a particular UV dose value for treatment credit.

<sup>2</sup>UV dose table. The treatment credits listed in this table are for UV light at a wavelength of 254 nm as produced by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation testing, as described in footnote 3 of this table. The UV dose values in this table are applicable only to unfiltered systems (either by filtration waiver or those that do not require filtration) and to post-filter applications of UV in filtered systems.

<sup>3</sup>Reactor validation testing. Systems must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the UV dose required in footnote 2 of this table (*i.e.*, validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

- When determining validated operating conditions, systems must account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.
- Validation testing must include full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp. The State may approve an alternative approach to validation testing.

<sup>4</sup>Reactor monitoring.

- To receive treatment credit for UV light, systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as described in footnotes 2 and 3 of this table. Systems must demonstrate compliance with this condition by monitoring UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters designated by the State.



The Title for sections 5-1.60 through 5-1.65 is amended to read as follows:

Monitoring and Control of Disinfection Byproducts and Disinfection Byproduct Precursors

Section 5-1.60 is amended to read as follows:

5-1.60 Applicability.

Surface water systems or systems using [groundwater] ground water under the direct influence of surface water that are community or nontransient noncommunity water systems, serve 15 or more service connections or serve 25 or more persons, and use conventional filtration treatment [must] shall operate with enhanced coagulation to achieve the total organic carbon (TOC) percent removal levels specified in section 5-1.63 of this Subpart, unless the system meets the alternative compliance criteria described in section 5-1.62 of this Subpart. [Systems serving 10,000 or more people must comply with this requirement beginning January 1, 2002. Systems serving fewer than 10,000 people must comply with this requirement beginning January 1, 2004.]



Section 5-1.61 is repealed and a new section is adopted to read as follows:

5-1.61 Monitoring requirements for disinfection byproduct precursors.

Monitoring for Disinfection byproduct precursors shall be in accordance with the following table.

<b>Monitoring Requirements for Disinfection Byproduct Precursors</b>							
Source Type	System Type	Filtration Type	Sampling location at each plant	Routine		Reduced <sup>1</sup>	
				Monitoring requirements	Frequency <sup>2</sup>	Running annual average TOC results	Frequency
Surface water and GWUDI	Community and NTNC	Conventional	Combined Filter effluent <sup>3</sup>	TOC <sup>4</sup>	Monthly	<2.0 mg/L for two consecutive years or <1.0 mg/L for one year	1 TOC (paired) per plant/quarter
			Raw	TOC <sup>4</sup>	Monthly		
				Alkalinity	Monthly		
		All other types	Raw	TOC	Monthly	≤4.0 mg/L	1 TOC quarterly

<sup>1</sup>Routine monitoring shall begin in the month following the quarter when the running annual average TOC is ≥2.0 mg/L for systems using conventional filtration and >4.0 mg/L for systems using all other types of filtration

<sup>2</sup> TOC monitoring for disinfection precursors for both treated and source water shall be collected at the same time. These samples (source water and treated water) are referred to as paired samples

<sup>3</sup>Samples collected for TOC shall be collected no further downstream than point of combined filter effluent turbidity monitoring and representative of treated water.

<sup>4</sup>Systems shall take one paired TOC sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality. The alkalinity sample shall be collected at the same time as the source water TOC sample.

Section 5-1.62 is repealed and a new section is adopted to read as follows:

5-1.62 Alternative compliance criteria for enhanced coagulation.

Systems may use one of the following alternative compliance criteria instead of enhanced coagulation. Systems using the alternative compliance criteria shall still comply with the monitoring requirements stated in section 5-1.61 of this Subpart.

Water Type	Parameter	Concentration	Calculation Frequency
Source water	TOC	$\leq 2.0$ mg/L	Quarterly RAA
Treated water	TOC	$\leq 2.0$ mg/L	Quarterly RAA
Source water <sup>1,2</sup>	SUVA	$\leq 2.0$ L/mg-m	Quarterly RAA
Treated water <sup>2</sup>	SUVA	$\leq 2.0$ L/mg-m	Quarterly RAA
Source water	TOC	$< 4.0$ mg/L	Quarterly RAA
	Alkalinity (as CaCO <sub>3</sub> )	$> 60$ mg/L	Quarterly RAA
	TTHM	$\leq 0.040$ mg/L	LRAA of all sites
	HAA5	$\leq 0.030$ mg/L	LRAA of all sites
Treated water in the distribution system <sup>3</sup>	TTHM	$\leq 0.040$ mg/L	LRAA of all sites
	HAA5	$\leq 0.030$ mg/L	LRAA of all sites

<sup>1</sup>Prior to any treatment

<sup>2</sup>Measured monthly

<sup>3</sup>System uses only chlorine for primary disinfection and maintains a residual in the distribution system.

A new section 5-1.64 is added to read as follows:

5-1.64 Operational Evaluation Levels.

(a) If a system exceeds the operational evaluation level at any monitoring location when the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by 4 to determine the average, exceeds 0.080 mg/L, or when the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by 4 to determine the average, exceeds 0.060 mg/L.

(b) If a system exceeds the operational evaluation level, it shall conduct an operational evaluation and submit a written report of the evaluation to the State no later than 90 days after being notified of the analytical result that caused the exceedance of the operational evaluation level. The written report shall be made available to the public upon request.

(c) The operational evaluation shall include an examination of the operational practices for system treatment(s) and the distribution system, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedances.

(1) A system may request, and the State may allow, limiting the scope of the evaluation if the system is able to identify the cause of the operational evaluation level exceedance.

(2) The request to limit the scope of the evaluation does not extend the schedule in subdivision (b) of this section for submitting the written report. The State shall approve this

limited scope of evaluation in writing, and the system shall keep that approval with the completed report.

A new section 5-1.65 is added to read as follows:

5-1.65 Best Available Technologies (BATs) for Disinfection Byproduct Control

The following is a table of the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for Bromate, Chlorite, TTHM and HAA5, for public water systems that disinfect their source water.

<b>Water system type</b>	<b>Source type</b>	<b>Disinfection byproduct</b>	<b>Best available technology<sup>1</sup></b>
All systems that disinfect their source water	GW; SW; GWUDI	Bromate	Control of ozone treatment process to reduce production of bromate
		Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels
All systems that disinfect their source water	GW; SW; GWUDI	Total trihalomethanes (TTHM); Haloacetic acids (five) (HAA5)	Enhanced coagulation or enhanced softening, plus GAC10; or nanofiltration with a molecular weight cutoff $\leq 1000$ Daltons; or GAC20
Consecutive systems: applies only to the disinfected water that consecutive	GW; SW; GWUDI	Total trihalomethanes (TTHM); Haloacetic acids (five) (HAA5)	Systems serving $\geq 10,000$ : Improved distribution system and storage tank management to reduce residence time, plus the use of chloramines for disinfectant residual maintenance

systems buy or otherwise receive			Systems serving <10,000: Improved distribution system and storage tank management to reduce residence time
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<sup>1</sup> Softening that results in removing at least 10 mg/L of magnesium hardness (as CaCO<sub>3</sub>), measured monthly and calculated quarterly as a running annual average can be the best available technology for controlling disinfection byproduct precursors.

New paragraphs (5) and (6) are added to subdivision (c) of section 5-1.72 to read as follows:

(5) Surface water systems and ground water systems under the direct influence of surface water that are required to provide enhanced filtration and disinfection for *Cryptosporidium*, shall report to the State in accordance with the treatment and/or management options used to comply with the treatment requirements under section 5-1.83(b) or (c) of this Subpart, as applicable. Alternatively, the State may approve a system to certify operation within required parameters for treatment credit, rather than reporting monthly operational data. The applicable treatment compliance dates are found in section 5-1.83(d) of this Subpart.

(i) For systems using the watershed control program option, notice of intention to develop a new or continue an existing watershed control program shall be submitted no later than two years before the treatment compliance date. The watershed control plan shall be submitted no later than one year before the treatment compliance date. The annual watershed control program status report shall be submitted every 12 months. For community water systems, the watershed sanitary survey report shall be submitted every

three years. For noncommunity water systems, the watershed sanitary survey report shall be submitted every five years.

(ii) For systems using the alternative source/intake management option, verification that the system has relocated the intake or adopted the intake withdrawal procedure, reflected in monitoring results, shall be submitted.

(iii) For systems using the presedimentation option, monthly verification of the following shall be submitted within 10 days after the month in which the monitoring was conducted: continuous basin operation; treatment of 100 percent of the flow; continuous addition of coagulant; and at least 0.5-log mean reduction of influent turbidity or compliance with alternative State-approved compliance criteria.

(iv) For systems using the two-stage lime softening option, monthly verification of the following shall be submitted within 10 days after the month in which the monitoring was conducted: chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration; and both stages treated 100 percent of the plant flow.

(v) For systems using the bank filtration option, initial demonstration of the following shall be submitted no later than treatment compliance date: aquifer shall be unconsolidated sand containing at least 10 percent fines; and setback distance of at least 25 feet (0.5-log credit) or 50 feet (1.0-log credit). If the monthly average of daily maximum turbidity is greater than 1 NTU, then the system shall report the result and

submit an assessment of the cause within 30 days after the month in which the monitoring was conducted, beginning on the applicable treatment compliance date.

(vi) For systems using the combined filter performance option, monthly verification of the following shall be submitted within 10 days following the month in which the monitoring was conducted: combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the four-hour CFE measurements taken each month.

(vii) For systems using the individual filter performance option, monthly verification of the following shall be submitted within 10 days following the month in which the monitoring was conducted: individual filter effluent (IFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of sample each month in each filter; and no individual filter greater than 0.3 NTU in two consecutive readings 15 minutes apart.

(viii) For systems using the demonstration of performance option, the results from testing following a State-approved protocol shall be submitted no later than the treatment compliance date. Monthly verification of operation within the conditions of State approval for demonstration of performance credit, may be required to be submitted within 10 days after the month in which the monitoring was conducted, beginning on the applicable treatment compliance date.

(ix) For systems using the bag filter and cartridge filter option, demonstration that the following criteria are met shall be submitted no later than the treatment compliance date: the process meets the definition of bag or cartridge filtration; and the removal efficiency

established through challenge testing that meets criteria approved by the State. Monthly verification that 100 percent of the plant flow was filtered shall be submitted within 10 days after the month in which monitoring was conducted, beginning on the applicable treatment compliance date.

(x) For systems using the membrane filtration option, results of verification testing demonstrating the following shall be submitted no later than the treatment compliance date: removal efficiency established through challenge testing that meets criteria approved by the State; and integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline. A monthly report summarizing the following shall be submitted within 10 days after the month in which monitoring was conducted: all direct integrity tests above the control limit; and, if applicable, any turbidity or alternative State-approved indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken.

(xi) For systems using the second stage filtration option, monthly verification that 100 percent of flow was filtered through both stages, and that the first stage was preceded by a coagulation step, shall be submitted within 10 days after the month in which monitoring was conducted.

(xii) For systems using the slow sand filtration (as secondary filter) option, monthly verification that both a slow sand filter and a preceding separate stage of filtration treated 100 percent of surface water flow shall be submitted within 10 days after the month in which monitoring was conducted.



(xiii) For systems using the chlorine dioxide option, a summary of CT values for each day shall be submitted within 10 days after the month in which monitoring was conducted.

(xiv) For systems using the ozone option, a summary of CT values for each day shall be submitted within 10 days after the month in which monitoring was conducted.

(xv) For systems using the UV option, validation test results demonstrating operating conditions that achieve the required UV dose shall be submitted no later than the treatment compliance date. A monthly report, summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose shall be submitted within 10 days after the month in which monitoring was conducted.

(6) Within 10 days of the end of any quarter in which monitoring of disinfection byproducts (DBP) and/or disinfection byproduct precursors (DBPP) is required under section 5-1.52 Table 9A and/or sections 5-1.60 and 5-1.61, the following must be reported to the State:

(i) Number of DBP and DBPP samples taken during the quarter.

(ii) Date and results of each DBP and DBPP sample taken during the last quarter.

(iii) The arithmetic average of DBP quarterly results for the last four quarters for each monitoring location (LRAA). If the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the system must report this information to the State as part of the first report due following the end of the quarter or anytime thereafter that this determination is made. If the system is required to conduct monitoring at a frequency that is less than quarterly, the system

must make compliance calculations beginning with the first compliance sample unless the system is required to conduct increased monitoring under section 5-1.52 Table 9A or 5-1.51.

(iv) Whether the MCL for Total Trihalomethanes (TTHM) and/or Halo Acetic Acids (5) (HAA5) was violated at any monitoring location.

(v) Any operational evaluation levels that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(vi) If the system is a surface water system or a system using a source of ground water under the direct influence of surface water, and seeking to qualify for or remain on reduced TTHM/HAA5 monitoring, source water Total Organic Carbon (TOC) information must be reported for each treatment plant that treats surface water or ground water under the direct influence of surface water, as follows:

(a) The number of source water TOC samples taken each month during last quarter.

(b) The date and result of each TOC sample taken during last quarter.

(c) The quarterly average of monthly TOC samples taken during the last quarter.

(d) The running annual average (RAA) of quarterly TOC averages from the past four quarters.

(e) Whether the TOC RAA exceeded 4.0 mg/L.

A new paragraph (8) of subdivision (d) of section 5-1.72 is added to read as follows:

(8) For surface water systems and ground water systems under the direct influence of surface water, the following records shall be maintained:

(i) Systems shall keep results from the initial round of source water monitoring under section 5-1.81(a)(1) of this Subpart and the second round of source water monitoring

under section 5-1.81(a)(2) of this Subpart until three years after bin classification under section 5-1.83(a) of this Subpart for filtered systems, or determination of the mean *Cryptosporidium* level under section 5-1.83(c) of this Subpart for unfiltered systems for the particular round of monitoring.

(ii) Systems shall keep any notification to the State that they will not conduct source water monitoring due to meeting the criteria of section 5-1.81(a)(4) of this Subpart for three years.

(iii) Systems shall keep the results of treatment monitoring associated with *Cryptosporidium* and with uncovered finished water storage facilities under section 5-1.32 of this Subpart for three years.

Paragraph (5) of subdivision (f) of section 5-1.72 is amended to read as follows:

(5) Information on detected contaminants from sampling used to determine compliance. For the purpose of this subdivision (except *Cryptosporidium*, *Giardia*, and radon monitoring), *detected* means: at or above the contaminant's [minimum] method detection limit (MDL), as [specified in Appendix 5-C of this Subpart] defined in section 5-1.1(bi), or as prescribed by the State. Any contaminants specified in sections 5-1.41 (lead and copper) and 5-1.51 of this Subpart and section 5-1.52 Tables 8A, 8B, 8C, 8D, 9A, 9B, 9C, 9D, 10, 10A, 11, 11A, 11B, 12, 16 and 17 of this Subpart that are detected during compliance monitoring [must] shall be displayed in one table or in several adjacent tables. Additionally, the report shall include detected monitoring results for samples collected and analyzed by the State and/or detected monitoring results of additional

samples required by the State. If a system is allowed to monitor for specific contaminants less often than once a year, the table [must] shall include the date and results of the most recent sampling and the report [must] shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included. For the contaminants listed in section 5-1.52 Tables 8A, 8B, 8C, 8D, 9A, 9B, 9C, 9D, 10, 10A, 11, 11B, 12, 16 and 17 of this Subpart the table(s) [must] shall contain:

\* \* \*

Clause (c) of subparagraph (iv) of paragraph (5) of subdivision (f) of section 5-1.72 is amended to read as follows:

(c) when compliance with the MCL is determined by calculating a running annual average of all samples taken at a [sampling point] monitoring location: the highest average of any of the [sampling points] monitoring locations used to determine compliance and the range of all sampling points expressed in the same units as the MCL; and]. For the MCLs for TTHM and HAA5, systems shall include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system shall include the locational running annual averages for all locations that exceed the MCL; and

\* \* \*

Subparagraph (iii) of paragraph (9) of subdivision (f) of section 5-1.72 is amended to read as follows:

(iii) lead and copper control requirements. The report [must] shall include health effects language [prescribed by the state] specified in 40 CFR 141.54(d) for lead, copper, or both, for systems which fail to take one or more actions prescribed by sections 5-1.40[-5-1.49] through 5-1.48 of this Subpart;

Section 5-1.73 is amended to read as follows:

**5-1.73 Water treatment plant laboratory.**

Every supplier of water shall provide, or have available environmental laboratory facilities approved by [ELAP] the New York State Environmental Laboratory Approval Program (ELAP). Tests for the control of the operation of such public water system shall be made daily or more frequently as required by the State. The results of such tests shall be recorded on forms pursuant to section 5-1.72(d) of this Subpart.

Section 5-1.74 is repealed and new section 5-1.74 is added to read as follows:

**5-1.74 Approved laboratories.**

(a) For determining compliance with this Subpart, results of analyses, except for parameters listed in section 5-1.74(b), may be considered only if they have been performed by an environmental laboratory approved in accordance with Subpart 55-2 of this Title (10 NYCRR Part 55, Subpart 55-2).

(b) Measurements for pH, temperature, conductivity, turbidity, disinfectant residual, alkalinity, calcium, orthophosphate, bromide, chlorite, total organic carbon (TOC) concentration, dissolved organic carbon concentration, ultraviolet (UV) absorption, and silica may be performed by any person with a demonstrated ability to perform these analyses. These analyses shall be conducted in accordance with 40 CFR Part 141. All necessary documentation required by the approved methods shall be retained by the water system conducting the analyses for a period of ten years.

(c) The owner of a water system shall ensure the approved environmental laboratory performing the analyses sends laboratory results to the department in a manner prescribed by the department.

New subparagraphs (iv) and (v) are added to paragraph (4) of subdivision (b) of section 5-1.78 to read as follows:

(iv) Standard language for repeated failure to conduct *Cryptosporidium* monitoring: We are required to monitor the source of your drinking water for *Cryptosporidium*. Results of the monitoring are to be used to determine whether water treatment at the (treatment plant name) is sufficient to adequately remove *Cryptosporidium* from your drinking water. We are required to complete this monitoring and make this determination by (required bin determination date). We “did not monitor or test” or “did not complete all monitoring or testing” on schedule, and therefore, we may not be able to determine by the required date what treatment modifications, if

any, shall be made to ensure adequate *Cryptosporidium* removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

(v) Standard language for failure to determine bin classification or mean *Cryptosporidium* level:

We are required to monitor the source of your drinking water for *Cryptosporidium* in order to determine by (date) whether water treatment at the (treatment plant name) is sufficient to adequately remove *Cryptosporidium* from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

Subdivision (c) of section 5-1.78 is amended to read as follows:

(c) Tier 1 notification requirements (public health hazards, as defined in section 5-1.1 [(bc)] (bw) of this Subpart, require Tier 1 notification). The supplier of water [must] shall:

\* \* \*

Paragraphs (3), (4), and (5) of subdivision (d) of section 5-1.78 are renumbered to be paragraphs (4), (5), and (3) and a new paragraph (6) is added to read as follows:

(6) For repeated failure to conduct *Cryptosporidium* monitoring, failure to determine bin classification, or failure to calculate mean *Cryptosporidium*, each notification shall also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

A new section 5-1.80 is added to read as follows:

### **ENHANCED TREATMENT FOR *CRYPTOSPORIDIUM***

#### **5-1.80: Applicability.**

(a) The provisions of this section, and sections 5-1.81 through 5-1.83 apply to all public water systems supplied by a surface water source(s) or ground water source(s) directly influenced by surface water, provided the system serves 15 or more service connections or serves 25 or more persons. The requirements in this section for filtered systems apply to any system with a surface water or GWUDI source that is required to provide filtration, regardless of whether the system is currently operating a filtration system. All treatment must comply with the requirements of the Microbial Toolbox Components as described in 40 CFR 141.715 through 40 CFR 141.720. Any unfiltered systems that are in compliance with the filtration avoidance criteria in section 5-1.30(c) of this Subpart, are subject to the requirements in sections 5-1.80 through 5-1.83 pertaining to unfiltered systems. Wholesale system compliance with sections 5-1.81 through 5-1.83 is based on the population of the largest system in the combined distribution system. The above systems shall comply with the following requirements: (a) Systems shall conduct an initial and a second round of source water monitoring for each plant that treats water from a surface water source or ground water source directly influenced by surface water. This monitoring may include *Cryptosporidium*, *E. coli*, and turbidity, as described in



section 5-1.81(a) through (d) of this Subpart, to determine what level, if any, of additional *Cryptosporidium* treatment shall be provided. *Cryptosporidium* monitoring shall be done using an approved method. The following method modifications must also be followed:

(1) Samples must be at least 10 liters (L) or a packed pellet volume of at least 2 milliliters (mL) must be used. If a 10 L sample cannot be processed, as much sample volume as can be filtered by two filters, as described in 40 CFR 141.704(a)(1), must be processed, up to a packed pellet volume of at least 2 mL.

(2) The method-required matrix spike (MS) samples must be spiked and filtered by a laboratory certified for the method.

(3) If the volume of the MS is greater than 10 L, the volume greater than 10 L may be filtered in the field, and the filtered sample may be shipped with the 10 L sample to the laboratory where the 10 L sample is spiked and filtered through the filter that was used to collect the balance of the sample in the field.

(4) Flow cytometer-counted spiking suspensions must be used for MS samples and ongoing precision and recovery samples.

(b) Systems that plan to make a significant change to their disinfection practice shall develop disinfection profiles and calculate disinfection benchmarks, as described in section 5-1.82 of this Subpart.

(c) Filtered systems shall determine their *Cryptosporidium* treatment bin classification, as described in section 5-1.83(a) of this Subpart, and provide additional treatment for *Cryptosporidium*, if required, as described in section 5-1.83(b) of this Subpart. All unfiltered systems shall determine their mean *Cryptosporidium* level and provide

treatment for *Cryptosporidium* as described in section 5-1.83(c) of this Subpart. Systems shall implement *Cryptosporidium* treatment according to the schedule in section 5-1.83(d) of this Subpart.

A new section 5-1.81 is added to read as follows:

**5-1.81: Source Water Monitoring Requirements at Systems using Surface Water and Ground Water under the Direct Influence of Surface Water (GWUDI) Sources.**

(a) Source Water Monitoring.

(1) Initial round of source water monitoring. Systems shall conduct the following monitoring, based on the monitoring schedule prescribed in paragraph (3) of this subdivision, unless they meet the monitoring exemption criteria in paragraph (4) of this subdivision:

(i) Filtered systems serving at least 10,000 people shall sample their source water for *Cryptosporidium*, *E. coli*, and turbidity at least monthly for 24 months.

(ii) Unfiltered systems serving at least 10,000 people shall sample their source water for *Cryptosporidium* at least monthly for 24 months.

(iii) Filtered systems serving fewer than 10,000 people:

(a) shall sample their source water for *E. coli* and use an approved method to enumerate the presence of *E. coli* at least once every two weeks for 12 months;

(b) may avoid *E. coli* monitoring if the system notifies the State that it will monitor for *Cryptosporidium* as described in subparagraph (iv) of this paragraph. The system shall notify the state no later than three months prior to the date the system is otherwise required to start *E. coli* monitoring under paragraph (3) of this subdivision; and

(c) shall sample their source water for *Cryptosporidium* at least twice per month for 12 months, or at least monthly for 24 months, if, based on monitoring conducted under subparagraph (iii) of this paragraph, they meet one of the following criteria:

(1) the annual mean *E. coli* concentration is greater than 10 *E. coli*/ 100 mL; or

(2) the system does not conduct *E. coli* monitoring at least once every two weeks for 12 months.

(3) The State may approve an alternative to the *E. coli* concentration specified in subdivision (a)(1)(iii)(c)(1) of this section to trigger *Cryptosporidium* monitoring. This approval by the State will be provided to the system in writing and will include the basis for the State's determination that the alternative trigger concentration will provide a more accurate identification of whether a system will exceed the Bin 1 *Cryptosporidium* level specified in section 5-1.83(a)(2) of this Subpart.

(iv) Unfiltered systems serving fewer than 10,000 people shall sample their source water for *Cryptosporidium* at least twice per month for 12 months or at least monthly for 24 months.

(v) Systems may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(2) Second round of source water monitoring. Systems shall conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in paragraph (1) of this subdivision, unless they meet the monitoring exemption criteria in paragraph (4) of this subdivision. Systems shall conduct this monitoring on the schedule in paragraph (3) of this subdivision.

(3) Monitoring schedule. Systems shall comply with the monitoring schedule prescribed in 40 CFR 141.701(c).

(4) Monitoring avoidance.

(i) Filtered systems are not required to conduct source water monitoring under this section if the system will provide a total of at least 5.5-log of treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 in section 5-1.83(b) of this Subpart.

(ii) Unfiltered systems are not required to conduct source water monitoring under this section if the system will provide a total of at least 3-log *Cryptosporidium* inactivation, equivalent to meeting the treatment requirements for unfiltered systems with a mean *Cryptosporidium* concentration of greater than 0.01 oocysts/L in section 5-1.83(c) of this Subpart.

(iii) If a system chooses to provide the level of treatment in subparagraph (i) or (ii) of this paragraph, as applicable, rather than start source water monitoring, the system shall notify the State in writing no later than the date the system is otherwise required to submit a sampling schedule for monitoring under subdivision (b) of this section. Alternatively, a

system may choose to stop sampling at any point after it has initiated monitoring if it notifies the State in writing that it will provide this level of treatment. Systems shall install and operate technologies to provide this level of treatment by the applicable treatment compliance date in section 5-1.83(d) of this Subpart.

(5) Plants operating only part of the year. Systems with surface water sources or ground water sources directly influenced by surface water and with plants that operate for only part of the year shall conduct source water monitoring in accordance with this section and section 5-1.80 of this Subpart, but with the following modifications:

(i) Systems shall sample their source water only during the months that the plant operates unless the State specifies another monitoring period based on plant operating practices.

(ii) Systems with plants that operate less than six months per year and that monitor for *Cryptosporidium* shall collect at least six *Cryptosporidium* samples per year during each of two years of monitoring. Samples shall be evenly spaced throughout the period the plant operates.

(6) New sources.

(i) A system that begins using a new source of surface water or ground water directly influenced by surface water after the system is required to begin monitoring under paragraph (3) of this subdivision shall monitor the new source on a schedule approved by the State. Source water monitoring shall meet the requirements of this section. The system also shall meet the bin classification of section 5-1.83(a) and *Cryptosporidium* treatment requirements of section 5-1.83(b) or 5-1.83(c) of this Subpart, as applicable, for the new source on a schedule approved by the State.

(ii) The requirements of this paragraph also apply to new systems that use surface water or ground water directly influenced by surface water, that begin operation after the monitoring start date applicable to the system's size under paragraph (3) of this subdivision.

(iii) The system shall begin a second round of source water monitoring no later than six years following initial bin classification or determination of the mean *Cryptosporidium* level, as applicable.

(b) Sampling Schedules.

(1) Systems required to conduct source water monitoring under this section shall submit a sampling schedule that specifies the calendar dates when the system will collect each required sample. Systems shall submit sampling schedules to the State no later than three months prior to any applicable date referenced in subdivision (a)(3) of this section. If the State does not respond to a system regarding its sampling schedule, the system shall sample at the reported schedule.

(2) Systems shall collect samples within two days before or two days after the dates indicated in their sampling schedule, unless one of the following conditions applies:

(i) If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided and causes the system to be unable to sample in the scheduled five-day period, the system shall sample as close to the scheduled date as is feasible, unless the State approves an alternate sampling date. The system shall submit an

explanation for the delayed sampling date to the State concurrent with the shipment of the sample to the laboratory.

(ii) If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements in subdivision (d) of this section, or the failure of an approved laboratory to analyze the sample, then the system shall collect a replacement sample. The replacement sample shall be collected no later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date, unless the system demonstrates that collecting a replacement sample within this time frame is not feasible, or the State approves an alternative resampling date. The system shall submit an explanation for the delayed sampling date to the State concurrent with the shipment of the replacement sample to the laboratory.

(3) Systems that fail to meet the criteria of paragraph (2) of this subdivision for any source water sample required under subdivision (a) of this section shall revise their sampling schedules to add dates for collecting all missed samples. Systems shall submit the revised schedule to the State for approval prior to when the system begins collecting the missed samples.

(c) Sampling Locations.

(1) Systems required to conduct source water monitoring under subdivision (a) of this section shall collect samples for each plant that treats a surface water or GWUDI source.

Where multiple plants draw water from the same influent, such as the same pipe or intake, the State may approve one set of monitoring results to be used to satisfy the requirements for all plants.

(2) Systems shall collect source water samples prior to chemical treatment, such as coagulants, oxidants, and disinfectants, unless the State determines that collecting a sample prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(3) Systems that recycle filter backwash water shall collect source water samples prior to the point of filter backwash water addition.

(4) Bank filtration.

(i) Systems that receive *Cryptosporidium* treatment credit for bank filtration, as applicable, shall collect source water samples in the surface water prior to bank filtration.

(ii) Systems that use bank filtration as pretreatment to a filtration plant shall collect source water samples from the well (i.e., after bank filtration). Use of bank filtration during monitoring shall be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration.

(5) Multiple sources. Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and ground water sources, shall



collect samples as specified in subparagraph (i) or (ii) of this paragraph. The use of multiple sources during monitoring shall be consistent with routine operational practice.

(i) If a sampling tap is available where the sources are combined prior to treatment, systems shall collect samples from that tap.

(ii) If a sampling tap where the sources are combined prior to treatment is not available, systems shall collect samples at each source near the intake on the same day and select one of the following options for sample analysis;

(a) Systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source shall be weighted according to the proportion of the source in the total plant flow at the time the sample is collected; or

(b) Systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average shall be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(6) Additional Requirements. Systems shall submit a description of their sampling location(s) to the State at the same time as the sampling schedule. This description shall address the position of the sampling location in relation to the system's water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter

backwash recycle. If the State does not respond to a system regarding sampling location(s), the system shall sample at the reported location(s).

(d) Reporting source water monitoring results.

(1) Systems shall report results from the source water monitoring no later than 10 days after the end of the first month following the month when the sample is collected.

(2) Systems shall report the following information, as applicable, for the source water monitoring samples required under subdivision (a) of this section.

(i) Systems shall report the following data elements for each *Cryptosporidium* analysis: PWS ID; facility ID sample collection date sample type (field or matrix spike); sample volume filtered (in liters, to the nearest 0.25 liter); confirmation that 100 percent of filtered volume was examined; and the number of oocysts counted.

(a) For matrix spike samples, systems shall also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples. (b) For samples in which less than 10 liters are filtered or less than 100 percent of the sample volume is examined, systems shall also report the number of filters used and the packed pellet volume.

(c) For samples in which less than 100 percent of sample volume is examined, systems shall also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(ii) Systems shall report the following data elements for each *E. coli* analysis: PWS ID; facility ID; sample collection date; analytical method number; method type; source type; *E. coli*/100 mL; and turbidity. Systems serving fewer than 10,000 people that are not required to monitor for turbidity are not required to report turbidity with their *E. coli* results.

A new section 5-1.82 is added to read as follows:

**5-1.82: Requirements when making a significant change in disinfection practice.**

(a) Following the completion of initial source water monitoring under section 5-1.81(a)(1) of this Subpart, a system that plans to make a significant change to its disinfection practice, as defined in subdivision (b) of this section, shall develop disinfection profiles and calculate disinfection benchmarks for *Giardia lamblia* and viruses, in accordance with 40 CFR 141.709. Prior to changing the disinfection practice, the system shall notify the State and shall include in this notice the following information:

(1) A completed disinfection profile and disinfection benchmark for *Giardia lamblia* and viruses prepared as described in 40 CFR 141.709.

(2) A description of the proposed change in disinfection practice.

(3) An analysis of how the proposed change will affect the current level of disinfection.

(b) Significant changes to disinfection practice are defined as follows:

(1) Changes to the point of disinfection;

(2) Changes to the disinfectant(s) used in the treatment;

(3) Changes to the disinfection process; or

(4) Any other modification identified by the State as a significant change to disinfection practice.

A new section 5-1.83 is added to read as follows:

**5-1.83: Treatment Technique Requirements**

(a) Bin classification for filtered systems.

(1) Following completion of the initial round of source water monitoring under section 5-1.81(a)(1) of this Subpart, filtered systems shall calculate an initial *Cryptosporidium* bin concentration for each plant for which monitoring was required, such calculation shall be done in accordance with 40 CFR 141.710(b)(1) through 40 CFR 141.710(b)(5).

Calculation of the bin concentration shall use the *Cryptosporidium* results reported under section 5-1.81 of this Subpart.

(2) Filtered systems shall determine their initial bin classification from the following table and using the *Cryptosporidium* bin concentration calculated under paragraph (1) of this subdivision:

BIN CLASSIFICATION TABLE FOR FILTERED SYSTEMS

System Characteristic	<i>Cryptosporidium</i> Concentration <sup>1</sup>	Bin Classification
Required to monitor for <i>Cryptosporidium</i>	<i>Cryptosporidium</i> <0.075 oocyst/L	Bin 1
	0.075 oocysts/L ≤ <i>Cryptosporidium</i> <1.0 oocyst/L	Bin 2
	1.0 oocyst/L ≤ <i>Cryptosporidium</i> <3.0 oocysts/L	Bin 3
	<i>Cryptosporidium</i> ≥3.0 oocysts/L	Bin 4
Serving fewer than 10,000 people and NOT required to monitor for <i>Cryptosporidium</i>	Not Applicable	Bin 1

<sup>1</sup> Based on calculations in paragraph (1) or (4) of this subdivision, as applicable.

(3) Following completion of the second round of source water monitoring required under section 5-1.81(a)(2) of this Subpart, filtered systems shall recalculate their *Cryptosporidium* bin concentration using the *Cryptosporidium* results reported under section 5-1.81(a)(2) of this Subpart, and following the procedures in 40 CFR 141.710(b)(1) through 40 CFR 141.710(b)(4). Systems shall then reevaluate their bin classification using the bin concentration from the second round of monitoring and the table in paragraph (2) of this subdivision.

(4) (i) Filtered systems shall report their initial bin classification under paragraph (2) of this subdivision to the State for approval no later than six months after the system is required to complete initial source water monitoring based on the schedule referenced in section 5-1.81(a)(3) of this Subpart.

(ii) Systems shall report their bin classification under paragraph (3) of this subdivision to the State for approval no later than six months after the system is required to complete the second round of source water monitoring based on the schedule referenced in section 5-1.81(a)(3) of this Subpart.

(iii) The bin classification report to the State shall include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(b) Filtered system additional *Cryptosporidium* treatment requirements.

(1) Filtered systems shall provide the level of additional treatment for *Cryptosporidium* specified in this paragraph based on their bin classification as determined under subdivision (a) of this section and according to the schedule in subdivision (d) of this section.

System Classification	If the system uses the following filtration treatment in full compliance with section 5-1.30(b) of this Subpart (as applicable), then the additional <i>Cryptosporidium</i> treatment requirements are:			
	Conventional Filtration Treatment (including softening)	Direct Filtration	Slow Sand or Diatomaceous Earth Filtration	Alternative Filtration Technologies
Bin 1	No additional	No additional	No additional	No additional

Bin 2	1-log	1.5-log	1-log	( <sup>1</sup> )
Bin 3	2-log	2.5-log	2-log	( <sup>2</sup> )
Bin 4	2.5-log	3-log	2.5-log	( <sup>3</sup> )
<sup>1</sup> As determined by the State such that the total <i>Cryptosporidium</i> removal and inactivation is at least 4.0-log. <sup>2</sup> As determined by the State such that the total <i>Cryptosporidium</i> removal and inactivation is at least 5.0-log. <sup>3</sup> As determined by the State such that the total <i>Cryptosporidium</i> removal and inactivation is at least 5.5-log.				

(2) (i) Filtered systems shall use one or more of the treatment and management options, as approved by the State, to comply with the additional *Cryptosporidium* treatment required in paragraph (1) of this subdivision.

(ii) Systems classified in Bin 3 and Bin 4 shall achieve at least 1-log of the additional *Cryptosporidium* treatment required under paragraph (1) of this subdivision using either one or a combination of the following, as approved by the State: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV.

(3) Failure by a system in any month to achieve treatment credit at least equal to the level of treatment required in paragraph (1) of this subdivision is a violation of the treatment technique requirement.

(4) If the State determines during a sanitary survey or an equivalent source water assessment that, after a system completed the monitoring conducted under section 5-1.81(a)(1) or (2) of this Subpart, significant changes occurred in the system's watershed that could lead to increased contamination of the source water by *Cryptosporidium*, the system shall take actions specified by the State to address the contamination.

(c) Unfiltered system *Cryptosporidium* treatment requirements.

(1) Determination of mean *Cryptosporidium* level.

(i) Following completion of the initial source water monitoring required under section 5-1.81(a)(1) of this Subpart, unfiltered systems shall calculate the arithmetic mean of all *Cryptosporidium* sample concentrations reported for such monitoring. Systems shall report this value to the State for approval no later than six months after the month the system is required to complete initial source water monitoring based on the schedule referenced in section 5-1.81(a)(3) of this Subpart.

(ii) Following completion of the second round of source water monitoring required under section 5-1.81(a)(2) of this Subpart, unfiltered systems shall calculate the arithmetic mean of all *Cryptosporidium* sample concentrations reported under that monitoring. Systems shall report this value to the State for approval no later than six months after the month the system is required to complete the second round of source water monitoring based on the schedule referenced in section 5-1.81(a)(3) of this Subpart.

(iii) If the monthly *Cryptosporidium* sampling frequency varies, systems shall first calculate a monthly average for each month of monitoring. Systems shall then use these monthly average concentrations, rather than individual sample concentrations, in the calculation of the mean *Cryptosporidium* level in subparagraphs (i) or (ii) of this paragraph.



(iv) The report to the State of the mean *Cryptosporidium* levels calculated under subparagraphs (i) and (ii) of this paragraph shall include a summary of the source water monitoring data used for the calculation.

(2) *Cryptosporidium* inactivation requirements. Unfiltered systems shall provide the level of inactivation for *Cryptosporidium* specified in this paragraph, based on their mean *Cryptosporidium* levels as determined under paragraph (1) of this subdivision and according to the schedule in subdivision (d) of this section.

(i) Unfiltered systems with a mean *Cryptosporidium* level of 0.01 oocysts/L or less shall provide at least 2-log *Cryptosporidium* inactivation.

(ii) Unfiltered systems with a mean *Cryptosporidium* level of greater than 0.01 oocysts/L shall provide at least 3-log *Cryptosporidium* inactivation.

(3) Inactivation treatment technology requirements. Unfiltered systems shall use chlorine dioxide, ozone, or UV to meet the *Cryptosporidium* inactivation requirements of this section.

(4) Use of two disinfectants. Unfiltered systems shall meet the combined *Cryptosporidium* inactivation requirements of this section and *Giardia lamblia* and virus inactivation requirements of section 5-1.30(c)(3) of this Subpart using a minimum of two disinfectants, and each of two disinfectants must separately achieve the total inactivation required for either *Cryptosporidium*, *Giardia lamblia*, or viruses. Systems that fail to

install a second disinfectant to treat for *Cryptosporidium* are in violation of the treatment technique requirement.

(d) Schedule for compliance with *Cryptosporidium* treatment requirements.

(1) Following initial bin classification under subdivision (a) of this section, filtered systems shall provide the level of treatment for *Cryptosporidium* required under subdivision (b) of this section, on a schedule approved by the State.

(2) Following initial determination of the mean *Cryptosporidium* level under subdivision (c)(1)(i) of this section, unfiltered systems shall provide the level of treatment for *Cryptosporidium* required under subdivision (c).

(3) If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under subdivision (a)(3) of this section, the system shall provide the level of treatment for *Cryptosporidium* required under subdivision (b) of this section on a schedule approved by the State.

(4) If the mean *Cryptosporidium* level for an unfiltered system changes following the second round of monitoring, as determined under subdivision (c)(1)(ii) of this section, and if the system shall provide a different level of *Cryptosporidium* treatment under subdivision (c) of this section due to this change, the system shall meet this treatment requirement on a schedule approved by the State.

Subdivision 5-1.91 (b) is amended to read as follows:

(b) As a condition to the [grant] granting of a variance under subdivision (a) of this section, the supplier of water shall perform monitoring and other requirements as prescribed by the [department] Department.

The table Best Available Technologies (BATs) in subdivision (d) of section 5-1.91 is amended to read as follows:

**BEST AVAILABLE TECHNOLOGIES (BATs)**

Contaminant	Best Available Technologies		
	PTA <sup>1</sup>	GAC <sup>2</sup>	OX <sup>3</sup>
Benzene	X	X	
Carbon tetrachloride	X	X	
1,2-Dichloroethane	X	X	
Trichloroethylene	X	X	
para-Dichlorobenzene	X	X	
1,1-Dichloroethylene	X	X	
1,1,1-Trichloroethane	X	X	
Vinyl chloride	X		
cis-1,2-Dichloroethylene	X	X	
1,2-Dichloropropane	X	X	
Ethylbenzene	X	X	
Monochlorobenzene	X	X	
o-Dichlorobenzene	X	X	
Styrene	X	X	
Tetrachloroethylene	X	X	
Toluene	X	X	
trans-1,2-Dichloroethylene	X	X	
Xylenes (total)	X	X	
Alachlor		X	
Aldicarb		X	

Aldicarb sulfoxide		X	
Aldicarb sulfone		X	
Atrazine		X	
Carbofuran		X	
Chlordane		X	
Dibromochloropropane	X	X	
2,4-D		X	
Ethylene dibromide	X	X	
Heptachlor		X	
Heptachlor epoxide		X	
Lindane		X	
Methoxychlor		X	
PCBs		X	
Pentachlorophenol		X	
Toxaphene		X	
2,4,5-TPBenzo(a)pyrene		X	
Dalapon		X	
Dichloromethane	X		
Di(2-ethylhexyl)adipate	X	X	
Di(2-ethylhexyl)phthalate		X	
Dinsoeb		X	
Endothal		X	
Endrin		X	
Glyphosate			X
Hexachlorobenzene		X	
Hexachlorocyclopentadiene	X	X	
Oxamyl (Vydate)		X	
Picloram		X	
Simazine		X	
1,2,4-Trichlorobenzene	X	X	
1,1,2-Trichloroethane	X	X	
2,3,7,8-TCDD (Dioxin)		X	
[TTHMs]		[X <sup>4</sup> ]	
[HAA5s]		[X <sup>4</sup> ]	
<u>TTHM, HAA5, Bromate, Chlorite<sup>4</sup></u>			

1 Packed Tower Aeration 2 Granular Activated Carbon 3 Oxidation (Chlorination or Ozonation) 4 [GAC10, as defined in section 5-1.1 of this Subpart. The other best available technology for TTHM and HAA MCL compliance is enhanced coagulation for TTHM and HAA precursor removal, as described in section 5-1.60 of this Subpart.] For surface water systems or ground water systems influenced by surface water, GAC10, as defined in section 5-1.1 of this Subpart, is the BAT for compliance with the TTHM and HAA5 MCL as a Running Annual Average (RAA). The other BAT for RAA compliance is enhanced coagulation for TTHM and HAA5 precursor removal, as described in section 5-1.60 of this Subpart. For compliance with the MCLs for TTHM and HAA5 as LRAAs, the following are the BATs: enhanced coagulation or enhanced softening, plus GAC10; GAC20, as defined in section 5-1.1 of this Subpart; or nanofiltration with a molecular weight cutoff less than or equal to 100 Daltons. Refer to section 5-1.65 of this Subpart for BATs for TTHM, HAA5, Bromate, and Chlorite.

Subdivisions (e) and (f) of section 5-1.91 are repealed and replaced with the new subdivisions (e) and (f) to read as follows:

(e) The following are the best technologies, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the inorganic chemicals and radionuclides listed in section 5-1.52, Tables 1 and 7 of this Subpart:

<b>Technologies for Achieving MCL Compliance</b>	
<b>Chemical Name</b>	<b>Best Available Technologies</b>
Antimony	2,7
Arsenic <sup>5</sup>	1,2,5,6,7,9,13 <sup>6</sup>
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6 <sup>2</sup> ,7
Cyanide	5,7,10
Fluoride	1,7
Mercury (Hg)	2 <sup>1</sup> ,4,6 <sup>1</sup> ,7 <sup>1</sup>
Nickel	5,6,7
Nitrate	5,7
Nitrite	5,7, 9
Selenium	1,2 <sup>3</sup> ,6,7,9
Thallium	1,5
Gross alpha (excluding radon and uranium)	7
Combined radium (226 and 228)	5,6,7
Uranium	5,6,7,12 <sup>4</sup>
Beta particle and photon radioactivity	5,7

<sup>1</sup>BAT only if influent Hg concentrations  $\leq 10$   $\mu\text{g/L}$ .

<sup>2</sup>BAT for Chromium III only.

<sup>3</sup>BAT for Selenium IV only.

<sup>4</sup>Assumes that the system already has coagulation/filtration in place.

<sup>5</sup>BATs for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.

<sup>6</sup>To obtain high removals, iron to arsenic ratio must be at least 20:1.

#### Key to Best Available Technologies (BATs) in Table

- 1 = Activated Alumina
- 2 = Coagulation/Filtration (not BAT for systems < 500 service connections)
- 3 = Direct and Diatomite Filtration
- 4 = Granular Activated Carbon
- 5 = Ion Exchange
- 6 = Lime Softening (not BAT for systems < 500 service connections)
- 7 = Reverse Osmosis
- 8 = Corrosion Control
- 9 = Electrodialysis
- 10 = Chlorine
- 11 = Ultraviolet
- 12 = Enhanced coagulation/filtration
- 13 = Oxidation/Filtration

(f) The following are the affordable technologies, treatment techniques, or other means available to systems serving 10,000 persons or fewer for achieving compliance with the MCL for arsenic as listed in section 5-1.52 Table 1 of this

Subpart:

<b>Technology for Arsenic MCL Compliance at Systems Serving ≤10,000</b>	
<b>Small system compliance technology<sup>1</sup></b>	<b>Affordable for listed small system categories</b>
Activated Alumina (centralized)	All Systems Serving 25-10,000
Activated Alumina (Point-of-Use) <sup>2</sup>	All Systems Serving 25-10,000
Coagulation/Filtration <sup>3</sup>	Systems Serving 501-10,000
Coagulation-assisted Microfiltration	Systems Serving 501-10,000
Electrodialysis reversal <sup>4</sup>	Systems Serving 501-10,000
Enhanced coagulation/filtration	All Systems Serving 25-10,000
Enhanced lime softening (pH > 10.5)	All Systems Serving 25-10,000
Ion Exchange	All Systems Serving 25-10,000
Lime Softening <sup>3</sup>	Systems Serving 501-10,000
Oxidation/Filtration <sup>5</sup>	All Systems Serving 25-10,000
Reverse Osmosis (centralized) <sup>4</sup>	Systems Serving 501-10,000
Reverse Osmosis (Point-of-Use) <sup>2</sup>	All Systems Serving 25-10,000

<sup>1</sup>Small System Compliance Technologies for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.

<sup>2</sup>When point-of-use or point-of-entry devices are used for compliance, programs to ensure proper longterm operation, maintenance, and monitoring must be provided by the water system to ensure adequate performance.

<sup>3</sup>Unlikely to be installed solely for arsenic removal. May require pH adjustment to optimal range if high removals are needed.

<sup>4</sup>May not be appropriate for areas where water quantity may be an issue.

<sup>5</sup>To obtain high removals, iron to arsenic ratio must be at least 20:1.

Subdivision (e) of section 5-1.92 is amended to read as follows:



(e) In the case of a system which [does not serve] serves a population of no more than [500 service connections] 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under [paragraph] subdivision (a)(1) or (2) of this section may be renewed for one or more additional two-year periods, not to exceed six years, if the system establishes that it is taking all practical steps to meet the requirements of subdivision (a) of this section.

Subdivision (c) of section 5-1.94 is amended to read as follows:

(c) Public notice of an opportunity for hearing pursuant to subdivision (a) or (b) of this section shall be circulated in a manner designated to inform potentially interested persons of the proposed action. Requests for hearing [must] shall be submitted to the [department] Department within [15] 30 days after issuance of such public notice.

Appendix 5-A is repealed and a new Appendix 5-A is added to read as follows:

## **APPENDIX 5-A**

### **RECOMMENDED STANDARDS FOR WATER WORKS, 2012 EDITION**

“Recommended Standards for Water Works, 2012 edition” reported by the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. Available online at <http://10statesstandards.com/> and is available for viewing at the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 and the Bureau of Water Supply Protection, Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237.

Appendix 5-C of Subpart 5-1 is repealed and replaced with the new Appendix 5-C to read as follows:

## **APPENDIX 5-C**

### **ACCEPTABLE METHODS FOR THE ANALYSIS OF CONTAMINANTS IN DRINKING WATER**

#### **Table of Contents**

- I. Approved methods for analysis of water samples to determine compliance with this Subpart**
- II. Sample Compositing Requirements**
  - A. Inorganic Chemical Compositing Requirements**
  - B. Water Sample Compositing Requirements for Pesticides, Dioxin, and PCBs**
- I. Approved methods for analysis of water samples to determine compliance with this Subpart**

All samples shall be analyzed using approved methods as recognized by the United States Environmental Protection Agency (EPA) and/or the New York State Environmental Laboratory Approval Program (ELAP). A list of approved methods is available from ELAP on The Wadsworth Center's website at

[https://www.wadsworth.org/sites/default/files/WebDoc/I180\\_0\\_07.pdf](https://www.wadsworth.org/sites/default/files/WebDoc/I180_0_07.pdf) or by request from the Records Access Officer, Department of Health, Corning Tower, Room 2364, Albany, New York

12237-0044. Method references are cited in 41 CFR 141 at 141.21(f), 141.24(e), 141.40(c), 141.131(a)(2), 141.704(a), 141.707(c) and 141.852(c).

Test strips for free chlorine, Method D99–003, may be used for compliance monitoring only when approval of the State has been provided in writing. Method D99–003, Revision 3.0, “Free Chlorine Species (HOCl– and OCl–) by Test Strip,” November 21, 2003, is available from Industrial Test Systems, Inc., 1875 Langston St., Rock Hill, SC 29730 or from the Records Access Officer, Department of Health, Corning Tower, Room 2364, Albany, New York 12237-0044.

## **II. Sample Compositing Requirements**

### **A. Inorganic Chemical Sample Compositing Requirements**

The State may reduce the total number of samples which must be analyzed in accordance with Tables 8A-8D of section 5-1.52 of this Subpart by allowing the use of compositing. Composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples shall be done in an ELAP certified laboratory.

If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any inorganic chemical, then a follow-up sample shall be taken within 14 days at each sampling point included in the composite. Each of the follow-up samples shall be analyzed for the contaminant(s) that exceeded one-fifth of the MCL in the composite sample.

### **B. Water Sample Compositing Requirements for Pesticides, Dioxin and PCBs**

The State may reduce the total number of samples collected and analyzed in accordance with Table 9C of section 5-1.52 of this Subpart by allowing the use of compositing. Composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples shall be done in an ELAP certified laboratory.

- (a) If the concentration in the composite sample is greater than or equal to the detection limit of any organic chemicals listed in section 5-1.52 Table 9C, then a separate follow-up sample shall be taken within 14 days at each sampling point included in the composite. Each of the follow-up samples shall be analyzed for the contaminant(s) which were detected in the composite sample.
  
- (b) If duplicates or residual portions of the original sample taken from each sampling point used in the composites are available, the system may use such samples if additional sampling is necessary. Additional samples shall be analyzed and the results reported to the State within 14 days of collection.

(c) In systems serving fewer than 3,300 persons, the State may permit compositing among different systems provided the five-sample limit is maintained. In systems serving 3,300 or more persons, the State may permit compositing of samples from up to five sampling locations within the system, provided the reporting limit is maintained.

## REGULATORY IMPACT STATEMENT

### **Statutory Authority:**

The statutory authority for the proposed revisions is set forth in Public Health Law (PHL) sections 201 and 225. Section 201(1)(l) of the PHL establishes the powers and duties of the Department of Health (Department), which include the supervision and regulation of the sanitary aspects of public water supplies. Section 225 of the PHL sets forth the powers and duties of the Public Health and Health Planning Council (PHHPC), which include the authority to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Further, section 225(5)(a) of the PHL allows the SSC to deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in New York State.

The revisions are in accord with the requirements of the United States Environmental Protection Agency (EPA) for: the Lead and Copper Rule (LCR), 56 FR 26460 - 26564, June 7, 1991, as amended 56 FR 32112, July 15, 1991; 57 FR 28785, June 29, 1992; and 59 FR 33860, June 30, 1994; the LCR Minor Revisions (LCRMR), 65 FR 1950, January 12, 2000; the LCR Short-Term Revisions (LCRSTR), 72 FR 57782, October 10, 2007; the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR), 71 FR 654, January 5, 2006, Vol. 71, No. 3, as corrected on January 30, 2006, Vol. 71, No. 19, and February 6, 2006, Vol. 71, No. 24; the Stage 2 Disinfection and Disinfection Byproducts Rule (Stage 2 DBPR), 71 FR 388, January 4, 2006, with corrections on January 27, 2006, Vol. 71, No. 18; June 29, 2006, Vol. 71, No. 125; and November 14, 2006, Vol. 73, No.221 and an amendment on June 29, 2009, Vol. 74 No. 123; and the Variances and Exceptions Rule (V & E), 63 FR 43834, August 14, 1998, Vol. 74, No. 123.

**Legislative Objectives:**

The legislative objective of sections 201 and 225 of the PHL is to ensure that PHHPC, in conjunction with the Commissioner of Health, protect the public health by adopting drinking water sanitary standards. In accordance with that objective, this regulation amends the SSC by revising Part 5 to enhance current protections governing public water systems (PWSs). Further, this amendment will update the SSC to ensure consistency among State and federal requirements.

**Needs and Benefits:**

The Department recognizes that there is no higher public health priority than ensuring the delivery of clean drinking water. To this end, the Department has obtained primacy for the implementation and enforcement of the majority of federal drinking water regulations. These revisions to Subpart 5-1, incorporate the following additional federal regulations to ensure the Department is eligible for primacy over such requirements: Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR, respectively); Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR); and the Variances and Exemptions (V&E) Rule. The Department is already implementing these federal regulations through a partnership agreement with EPA. Accordingly, the adoption of these regulations merely formalizes the existing regulatory arrangement and is expected to have no impact on PWSs.

Additionally, the proposed amendments reflect changes in the PHL regarding cross-connection control and water supply emergency plans. The proposed amendments also include revisions to



Appendix 5-C of Subpart 5-1. Minor edits to correct typographical errors and to update references are also proposed.

The minor revisions (LCRMR) eliminate unnecessary requirements in the Lead and Copper Rule (LCR), reduce the reporting burden, and promote consistent national implementation of the LCR. In addition, language was added to clarify requirements and correct oversights in the original rule. The revisions are called “minor” because they do not affect the lead and copper maximum contaminant level goals, action levels, or other basic regulatory requirements to monitor for lead and copper at the tap and to optimize corrosion control.

The Short-Term revisions (LCRSTR) enhance the implementation of the LCR in the areas of monitoring, treatment, customer awareness, lead service line replacement, and public education. The amendments ensure that drinking water consumers receive meaningful, timely, and useful information needed to help limit exposure to lead in drinking water.

The EPA promulgated the Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR) to reduce potential adverse health risks associated with the use disinfection byproducts (DBPs) in drinking water. Chlorination is the most popular disinfectant used and, within the State, an estimated 2,687 community (CWS) and nontransient noncommunity (NTNCWS) PWSs in the State, serving over 18 million people, use chlorination as a means of disinfecting drinking water to kill or inactivate microbial contaminants.

The Stage 2 DBPR strengthens public health protection for customers of systems that deliver disinfected water, by requiring such systems to meet maximum contaminant levels as an average

at each compliance monitoring location (instead of as a system-wide average as in previous rules) for two groups of DBPs: trihalomethanes (TTHM) and five haloacetic acids (HAA5). This amendment reduces DBP exposure, along with related potential health risks, and provides more equitable public health protection.

Additionally, the amendments include the federal Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR). EPA promulgated the LT2 ESWTR to provide further protection of public health against *Cryptosporidium* and other microbial pathogens in drinking water from surface water sources. *Cryptosporidium* is a protozoan parasite that is common in surface water. Approximately 1,039 PWSs in the State, serving 14 million people, use surface water or ground water under the direct influence of surface water as a raw water source.

When ingested, *Cryptosporidium* can cause acute and severe gastrointestinal illness, which is especially dangerous for immunocompromised individuals. The proposed amendment builds on current regulations, which require PWSs using surface water sources to filter the water, unless a filtration avoidance waiver is granted, to remove at least 99 percent (2-log) of *Cryptosporidium*. This rule extends the public health benefit of *Cryptosporidium* removal or inactivation to consumers served by all PWSs that use water sources from surface water or ground water that is under the direct influence of surface water.

Further, the proposed LT2 ESWTR regulations address the risk posed by uncovered finished water storage facilities. These facilities are subject to contamination through runoff, bird and animal wastes, human activity, algal growth, insects, and airborne deposition. Under this proposed rule, PWSs must limit these risks by either covering the facility or treating the outflow.

The proposed amendments also reflect the federal Variances and Exemptions (V&E) Rule, which allows states to grant variances to small PWSs that cannot afford to comply with primary drinking water standards. These variances and exemptions allow a system to install and maintain technology that can remove a contaminant to the maximum extent that is affordable while still being protective of public health.

Further, requirements regarding cross-connection control are being revised for consistency with section 225 of the PHL. The revisions reduce the burden on the State by allowing a Department approved entity to certify backflow prevention testers.

The proposed rule also reflects an amendment to PHL section 1125. This change requires systems which service a population of more than 3,300 to submit water supply emergency plans, rather than only those with a minimum operational revenue. In addition, the proposed regulation requires a PWS to include cyber attacks in its vulnerability assessment and to incorporate the penalty established in PHL for disclosing confidential information about a water system emergency plan. This rule change simply makes Subpart 5-1 consistent with PHL.

Appendix 5-C to Subpart 5-1, Acceptable Methods for the Analysis of Contaminants in Water, is also amended. The Department is removing the approved methods from the Appendix and requiring all samples to be analyzed using a method approved by the EPA or the New York State Environmental Laboratory Approval Program (ELAP). This approach will eliminate the redundancy of listing this information in multiple locations and ensure that PWSs are using the

most current method. In addition, the revisions will also allow limited use of test strips to test for chlorine residual in drinking water.

**Costs:**

**Costs to Public Water Systems:**

The proposed regulatory amendments incorporate revisions to federal rules regarding Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR); Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR); the Variances and Exemptions (V&E) Rule. These proposed amendments will not impose an additional cost to PWSs when adopted because PWSs are already complying with these federal requirements.

In general, the proposed revision concerning cross-connection control will not impose costs because this amendment merely conforms to revisions to the PHL. The only new cost is that of having cross-connection control tester courses approved by a third-party, which may cost up to \$1500 per trainer each year. However, this cost may be passed on to testers who are renewing their certifications. Spread over approximately 1,100 testers, it should cost each less than \$15 for renewal, or about \$5 extra per tester per year.

The requirement for systems that serve a population of more than 3,300 to submit water supply emergency plans will not incur additional costs, because PWSs are already complying with this statutory requirement.

The revisions to Appendix 5-C will not change the methods that PWSs use for monitoring water quality. Accordingly, this revision will result in no financial impact to PWSs.

Finally, the proposed amendments to the tables simply make the tables consistent with the other amendments and, therefore, will not impose any additional costs.

**Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:**

State and local government agencies are affected in different ways by these rule revisions. Some PWSs are operated by local, State or federal government agencies. All PWSs are subject to State or local health department oversight. To the extent these amendments incorporate existing federal requirements, there is no additional cost imposed.

The cost to State and local government agencies that operate PWSs will be minimal for the proposed cross-connection control revisions. As discussed, above, the proposed revisions will incur costs to training providers for the third party certification of their courses.

The requirement for systems that serve a population of more than 3,300 to submit water supply emergency plans will not incur additional costs because PWSs are already complying with this statutory requirement.

The revisions to Appendix 5-C will not change the methods that PWSs use for monitoring water quality. Accordingly, this revision will result in no financial impact to PWSs.

Finally, the proposed amendments to the tables simply make the tables consistent with the other amendments and, therefore, will not impose any additional costs.

After the Department is granted primacy for the enforcement of these regulations, enforcement costs are expected to be minimal because the State and LHDs already enforce current public water supply regulations, and compliance with the proposed amendments is already widespread. Enforcement of these additional regulations represents a minimal increase in burden over current enforcement efforts.

**Local Government Mandates:**

LHDs will not be impacted by the proposed regulations because they are already in compliance.

**Paperwork:**

These revised regulations do not require new forms or other paperwork. Adoption of these regulations will actually reduce paperwork because it will eliminate the need for PWSs to conduct dual reporting to the State and federal government.

**Duplication:**

Adoption of these revised regulations will reduce duplication efforts for PWS, by eliminating the need for PWSs to conduct dual reporting to the State and federal government.

**Alternatives:**

Declining to adopt these regulations would make compliance oversight of PWSs primarily the responsibility of the State, with oversight by the federal government remaining for four specific federal rules. This option would require additional and unnecessary reporting and coordination for PWSs. The proposed rule revisions are the better alternative.

**Federal Standards:**

The majority of these revisions incorporate changes in federal standards.

**Compliance Schedule:**

Currently, PWSs must comply with the federal LCRM, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule, pursuant to schedules established by EPA, with the exception of certain deadlines in LT2 ESWTR. The provisions regarding certification of a cross-connection control tester course by a third-party will take effect in 2017. All provisions concerning the Water Supply Emergency Plans are currently in effect, pursuant to statute.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

### **Effect of Rule:**

Revisions to 10 NYCRR Subpart 5-1 of the State Sanitary Code are required to obtain primacy from the United States Environmental Protection Agency (EPA) for implementation of the following federal rules: Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR); Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR); and the Variances and Exemptions (V&E) Rule. Additionally, these amendments address changes the New York State Public Health Law (PHL) regulating cross-connection control and water supply emergency plans.

Local governments and small businesses operate most of the PWSs in New York State. It is estimated that almost 93 per cent of the PWSs impacted by any of the proposed revisions are either small businesses or local governments.

These revisions will benefit local governments and small businesses by consolidating and simplifying reporting requirements.

### **Compliance Requirements:**

Currently, PWSs must comply with the federal LCRMR, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule, pursuant to schedules established by EPA, with the exception of certain deadlines in LT2 ESWTR. The provisions regarding certification of a cross-connection control



tester course by a third-party will take effect in 2017. All provisions concerning the Water Supply Emergency Plans are currently in effect, pursuant to statute.

**Professional Service:**

The revision of the rules regarding LCRMR, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule will not change the requirements for professional services used by small businesses or local governments, because PWSs are already complying with the requirements.

Additional professional services will be needed to provide required training courses on cross-connection control and for third party certification of training providers.

The addition of cyber security provisions to the water supply emergency plans may have a small impact for those systems that do not prepare their own Emergency Response Plans and Vulnerability Assessments. However, compliance is a statutory requirement.

**Compliance costs:**

The proposed amendments that incorporate federal regulations will not impose an additional cost to small business or local governments that own or operate a PWS, because PWSs are already complying with these federal requirements.

The cost to State and local government agencies that operate PWSs will be minimal for the proposed cross-connection control revisions. As discussed, above, the proposed revisions will incur costs to training providers for the third party certification of their courses. The requirement

for systems that serve a population of more than 3,300 to submit water supply emergency plans will not incur additional costs because PWSs are already complying with this statutory requirement.

The revisions to Appendix 5-C will not change any methods that PWS use for monitoring water quality. Accordingly, this revision will result in no financial impact to PWSs.

Finally, the proposed amendments to the tables simply make the tables consistent with the other amendments and, therefore, will not impose any additional costs.

After the Department is granted primacy for the enforcement of these regulations, enforcement costs are expected to be minimal because the State and LHDs already enforce current public water supply regulations, and compliance with the proposed amendments is already widespread. Enforcement of these additional regulations represents a minimal increase in burden over current enforcement efforts.

**Economic and Technological Feasibility:**

Currently available technology is adequate to meet rule requirements. Notably, EPA also determined that compliance with the federal regulations, as incorporated by these regulations, was both economically and technologically feasible for small businesses and local governments.

**Minimizing Adverse Impact:**

The proposed revisions largely incorporate existing federal rules and revisions to the PHL. With respect to provisions specific to New York State, the Department will provide PWSs with training, guidance documents, and other assistance.

**Small Business and Local Government Participation:**

The Department presented and discussed the proposed revisions at organizational meetings where small community water systems were represented. These meetings included the New York

Rural Water Association, the American Water Works Association, the Conference of Environmental Health Directors, the New York Association of Towns, and the New York Conference of Mayors, among others.

The revisions regarding cross-connection control were discussed with backflow prevention training providers, most of whom operate small businesses or are non-governmental nonprofit organizations. Prior to the implementation of the revised program, the Department provided training providers, certifying agencies, and backflow prevention device testers with an opportunity to comment on the revisions.

**For Rules That Either Establish or Modify a Violation or Penalties Associated With a Violation:**

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties

subject to enforcement under the proposed regulation. This regulation creates no new penalty or sanction. Hence, no cure period is necessary.

## **RURAL AREA FLEXIBILITY ANALYSIS**

### **Types and Estimated Numbers of Rural Areas:**

Many PWSs are located in the 44 counties that are defined as rural and in the towns of the additional nine counties where there are rural towns. Although the revised regulations will impact PWSs in these rural areas, the revisions will have the same effect on a PWS regardless of whether it is in a rural area or an urban area.

Revisions to 10 NYCRR Subpart 5-1 of the State Sanitary Code are required to obtain primacy from the United States Environmental Protection Agency (EPA) for implementation of the following federal rules: Minor and Short-Term Revisions to the Lead and Copper Rule (LCRMR and LCRSTR); Stage 2 Disinfectant and Disinfection Byproducts Rule (Stage 2 DBPR); Long Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR); and the Variances and Exemptions (V&E) Rule. Additionally, these amendments address changes the New York State Public Health Law (PHL) regulating cross-connection control and water supply emergency plans.

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

Currently, PWSs must comply with the federal LCRMR, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule, pursuant to schedules established by EPA, with the exception of certain deadlines in LT2 ESWTR. The provisions regarding certification of a cross-connection control tester course by a third-party will take effect in 2017. All provisions concerning the Water Supply Emergency Plans are currently in effect, pursuant to statute.

The revision of the rules regarding LCRMR, LCRSTR, Stage 2 DBPR, LT2 ESWTR, and V&E Rule will not change the requirements for professional services used by small businesses or local governments in rural areas, because PWSs are already complying with the requirements.

Additional professional services will be needed to provide required training courses on cross-connection control and for third party certification of training providers.

The addition of cyber security provisions to the water supply emergency plans may have a small impact for those systems that do not prepare their own Emergency Response Plans and Vulnerability Assessments. However, compliance is a statutory requirement.

**Compliance costs:**

The proposed amendments that incorporate federal regulations will not impose an additional cost to small business or local governments in rural areas that own or operate a PWS, because PWSs are already complying with these federal requirements.

The cost to State and local government agencies that operate PWSs will be minimal for the proposed cross-connection control revisions. As discussed, above, the proposed revisions will incur costs to training providers for the third party certification of their courses. The requirement for systems that serve a population of more than 3,300 to submit water supply emergency plans will not incur additional costs because PWSs are already complying with this statutory requirement.

The revisions to Appendix 5-C will not change any methods that PWS use for monitoring water quality. Accordingly, this revision will result in no financial impact to PWSs.

Finally, the proposed amendments to the tables simply make the tables consistent with the other amendments and, therefore, will not impose any additional costs.

After the Department is granted primacy for the enforcement of these regulations, enforcement costs are expected to be minimal because the State and LHDs already enforce current public water supply regulations, and compliance with the proposed amendments is already widespread. Enforcement of these additional regulations represents a minimal increase in burden over current enforcement efforts.

**Minimizing Adverse Impact:**

The proposed revisions largely incorporate existing federal rules and revisions to the PHL. With respect to provisions specific to New York State, the Department will provide PWSs with training, guidance documents, and other assistance.

**Rural Area Participation:**

The majority of the proposed revisions incorporate existing federal regulations into 10 NYCRR Subpart 5-1. Representatives of public and private interests in rural areas had an opportunity to participate in the rule making process while the federal regulations were being developed.

Outreach was also conducted by the DOH's Bureau of Water Supply Protection in the form of presentations at various stakeholder meetings, such as the New York Section of the American Water Works Association and the New York Rural Water Association.

## **JOB IMPACT STATEMENT**

The Department of Health has determined that the proposed revisions will not have substantial adverse impact on jobs or employment opportunities. It is possible that new technologies or products developed to comply with the revised rules would bring new employment opportunities to the state.



## **SUMMARY OF EXPRESS TERMS**

These amendments are necessary for the Department to maintain primacy for delivery, oversight and management of New York State's public drinking water supply program and to ensure consistency with the Revised Total Coliform Rule (RTCR) promulgated by the United States Environmental Protection Agency (EPA).

The RTCR builds on the Total Coliform Rule (TCR) by requiring all public water systems (PWS) to assess indicators of coliform contamination, and to take corrective action when necessary. Under these amendments, there is no longer a Maximum Contaminant Level (MCL) for total coliform, and follow up sampling requirements for total coliform-positive (TC+) samples have been reduced. Three repeat samples following a routine TC+ sample are now required, instead of four. These amendments also require a PWS that is vulnerable to microbial contamination to conduct an assessment to determine why it is vulnerable, and to take corrective action. There are two levels of assessments (designated Level 1 and Level 2) relating to the severity or frequency of the vulnerability to contamination. These assessments must be conducted within 30 days by the PWS or by the Local Health Department (LHD), depending on the level of assessment.

A technical change is also being made to Subpart 7-5 of the State Sanitary Code to make Subpart 7-5 consistent with the changes regarding the RTCR.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, Subpart 5-1 and Subpart 7-5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

Subdivisions (j)-(ba) of section 5-1.1 are re-lettered (k)-(bb), and a new subdivision (j) is added to read as follows:

(j) Clean compliance history means a record of no MCL violations for *E. coli*, no Total Coliform or *E. coli* monitoring violations, no treatment technique trigger exceedances, and no treatment technique violations under section 5-1.52 Table 6 of this Subpart.

Subdivisions (bb)-(cd) of section 5-1.1 are re-lettered (be)-(cg), and new subdivisions (bc) and (bd) are added to read as follows:

(bc) Level 1 assessment means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and, when possible, the likely reason that the system triggered the assessment.

(bd) Level 2 assessment means an evaluation conducted by an individual approved by the State, to identify the possible presence of sanitary defects, defects in distribution system coliform

monitoring practices, and, when possible, the likely reason that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than a Level 1 assessment, through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices.

Subdivision (ce) of section 5-1.1 is re-lettered (ci), and new subdivision (ch) is added to read as follows:

(ch) Sanitary defect means a defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.

Subdivisions (cf)-(di) of section 5-1.1 are re-lettered (ck)-(dn), and a new subdivision (cj) is added to read as follows:

(cj) Seasonal system means a non-community water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season.

Section 5-1.25 is amended to read as follows:

5-1.25 Disinfection/Start-up of Facilities.

(a) No spring basin, collecting basin, well, infiltration gallery, water main, pumping station, standpipe or reservoir shall be placed in service following cleaning or repairs until it has been disinfected in a manner approved by the State.

(b) For each operational period, before serving water to the public, all seasonal systems must demonstrate completion of a State approved start-up procedure.

Section 5-1.30(c)(10) is amended to read as follows:

(10) The public water system must [comply with the maximum contaminant level for total coliform] not exceed a total coliform treatment technique trigger in accordance with section 5-1.52 of this Subpart in 11 months of the 12 previous months that the system served water to the public on an ongoing basis, unless the State determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water.

Subdivision 5-1.30(d) is amended to read as follows:

(d) Notwithstanding anything to the contrary in sections 5-1.12, 5-1.23, 5-1.51 or 5-1.77 of this Subpart, if the public water system fails to comply with the treatment technique and/or the monitoring requirements of subdivisions (a), (b), (c) or (g) of this section, fails to install the filtration and/or disinfection treatment required by this section or fails to comply with the avoidance criteria requirements contained in subdivision (c) of this section, the system violates this Subpart and shall make State and public notification, including any required mandatory

health effects language. Pursuant to subdivision (c) of this section, if at any time the raw water turbidity exceeds five nephelometric turbidity units, the system shall consult with the State within 24 hours of learning of the exceedance. Based on this consultation, the State may determine that the exceedance constitutes a public health hazard, as found in section 5-1.1[(bw)](bz)(4) of this Subpart, which requires a Tier 1 notification.

\* \* \*

Section 5-1.52 Table 6, Table 11, Table 11B, and Table 13 are repealed and replaced as follows:

Table 6. Microbiological Contaminants Maximum Contaminant Level (MCL)/Treatment Technique Trigger (TTT)/Treatment Technique Violation (TTV) Determination

Contaminant/Trigger/ Violation	Sample Location	MCL or TTT or TTV	Performance Standard <sup>1</sup>	Determination of MCL/TTV and TTT
Total coliform	Distribution Sample Sites	TTT <sup>3</sup>	No positive sample <sup>4,6</sup>	A Level 1 TTT occurs at systems collecting 40 or more samples per month when more than 5.0 percent of the samples are total coliform positive.
		TTT <sup>3</sup>		A Level 1 TTT occurs at systems collecting less than 40 samples per month when two or more samples are total coliform positive.
		TTT <sup>3</sup>		A Level 1 TTT occurs at any system that fails to collect every required repeat sample after any single total coliform positive sample.
		TTT <sup>5</sup>		A Level 2 TTT occurs at any system that has a second Level 1 trigger within a rolling 12-month period, unless the State has determined a likely reason that the samples that caused the first Level 1 TTT were total coliform positive and has established that the system has corrected the problem.
<i>Escherichia coli (E. coli)</i>		MCL/TTT <sup>2,5</sup>	No positive sample <sup>4,6</sup>	An MCL violation and Level 2 TTT occurs when a total coliform sample is positive for <i>E. coli</i> and a repeat total coliform sample is positive.
		MCL/TTT <sup>2,5</sup>		An MCL violation and Level 2 TTT occurs when a total coliform sample is positive for total coliform but negative for <i>E. coli</i> and a repeat total coliform

		MCL/TTT <sup>2,5</sup>		sample is positive for <i>E. coli</i> or not analyzed for <i>E. coli</i> . An MCL violation occurs when a system fails to collect every required repeat sample after any <i>E.coli</i> positive routine sample.
Fecal indicator: <i>E. coli</i> , and/or enterococci, and/or coliphage	Untreated Water from a Ground Water Source	TTV <sup>2</sup>	No fecal indicator in samples collected from raw source water from a ground water source. <sup>7</sup>	A TTV occurs when a raw water sample is positive for the fecal indicator contaminant and system does not provide and document, through process compliance monitoring, 4-log virus treatment during peak flow at first customer. If repeat sampling of the raw water is directed by the State and all additional samples are negative for fecal indicator, there is no TTV. <sup>7</sup>
Other trigger or violation		TTV		A TTV occurs when a system exceeds a TTT and then fails to conduct the required assessment or corrective actions.
		TTV		A TTV occurs when a seasonal system fails to complete a State-approved start-up procedure prior to serving water to the public.

1. All samples collected in accordance with Table 11 footnotes 1 and 2 and Table 11B of this section and samples collected in accordance with subdivision 5-1.51(g) of this Subpart shall be included in determining compliance with the MCL, TTT, and/or TTV unless any of the samples have been invalidated by the State.
2. For notification purpose, an *E. coli* MCL violation is a public health hazard requiring Tier 1 notification. At a ground water system, Tier 1 notification is required after initial detection of *E. coli* or other fecal indicator in raw source water, if system does not provide 4-log virus treatment and process compliance monitoring, even if not confirmed with additional sampling.
3. The system must complete a Level 1 assessment as soon as practical after exceeding any Level 1 TTT. The system must submit the completed Level 1 assessment form to the State within 30 days after the system learns that it has exceeded a trigger. Corrective actions shall be addressed in accordance with section 5-1.71(e) of this Subpart.

4. See Table 13 for public notification requirements.
5. A Level 2 assessment must be completed within 30 days after the system learns that it has exceeded a trigger. Corrective actions shall be addressed in accordance with section 5-1.71(e) of this Subpart.
6. If any total coliform or *E. coli* sample is positive, repeat samples must be collected in accordance with Table 11B of this section.
7. If raw water source sample is fecal indicator positive, the water system, in consultation with the State, may collect an additional 5 samples within 24 hours at each source that tested fecal indicator positive. If none of the additional samples are fecal indicator positive, then there is no TTV. Note that Tier 1 notification must be made after the initial raw water fecal indicator positive sample, even if it is not confirmed with additional sampling.

Table 11 Microbiological  
Minimum Monitoring Requirements (Refer to Table 11B following any positive samples) <sup>1,2,3,4</sup>

Contaminant	Type of Water System	Number of Routine Samples Based on Population			
		Population Served	Minimum Number of Samples per Month <sup>4</sup>	Population Served	Minimum Number of Samples per Month <sup>4</sup>
Total coliform in distribution system <sup>5</sup>	Community	Up to 1,000 <sup>6,7</sup>	1	59,001 to 70,000	70
		1,001 to 2,500	2	70,001 to 83,000	80
		2,501 to 3,300	3	83,001 to 96,000	90
		3,301 to 4,100	4	96,001 to 130,000	100
		4,101 to 4,900	5	130,001 to 220,000	120
		4,901 to 5,800	6	220,001 to 320,000	150
		5,801 to 6,700	7	320,001 to 450,000	180



	6,701 to 7,600	8	450,001 to 600,000	210
	7,601 to 8,500	9	600,001 to 780,000	240
	8,501 to 12,900	10	780,001 to 970,000	270
	12,901 to 17,200	15	970,001 to 1,230,000	300
	17,201 to 21,500	20	1,230,001 to 1,520,000	330
	21,501 to 25,000	25	1,520,001 to 1,850,000	360
	25,001 to 33,000	30	1,850,001 to 2,270,000	390
	33,001 to 41,000	40	2,270,001 to 3,020,000	420
	41,001 to 50,000	50	3,020,001 to 3,960,000	450
	50,001 to 59,000	60	3,960,001 or more	480
Noncommunity using surface water or groundwater directly influenced by surface water	All	Same as community		
Noncommunity using only groundwater not directly influenced by surface water <sup>9</sup>	≤1,000	Quarterly <sup>8,9</sup>		
	>1,000	Same as community		
Seasonal	All	Monthly <sup>9</sup>		

<i>Escherichia coli</i> ( <i>E. coli</i> )	Community and Noncommunity	All	Any routine or repeat samples that are Coliform positive must be analyzed for <i>E. coli</i> . <sup>4,10</sup>		
Fecal Indicator in Raw Source Water <sup>10</sup>	All ground water systems unless providing 4-log virus treatment and process compliance monitoring	All	State discretion <sup>11</sup>		

1. Public water supply systems must collect total coliform samples at sites that are representative of water throughout the distribution system and throughout the reporting period, in accordance with a written monitoring plan which is subject to State review and revision as described in section 5-1.51(c) of this Subpart. A public water system that uses only groundwater and serves 4,900 or fewer people may collect all required samples on a single day if they are taken from different sites.
2. Public water systems using surface water or groundwater directly influenced by surface water, and which do not provide filtration, must collect and analyze at least one sample for total coliforms near the first service connection each day the turbidity level of the raw water exceeds 1.49 NTU. This sample shall be collected within 24 hours. Results of this sample must be included in determining compliance with the MCLs and TTTs in Table 6 of this section.
3. Samples taken to determine disinfection practices after pipe repair, replacement, or similar activity are not to be used for determining compliance with the MCLs or TTTs in Table 6 of this section.
4. See Table 11B for repeat sampling requirements following any total coliform or *E. Coli* positive samples.
5. If chlorine or chloramines are used as the disinfectant, a chlorine residual determination shall be made at the same time and location that the sample is collected for total coliform analysis. Monitoring for heterotrophic bacteria may be substituted for free chlorine residuals. The State may allow a public water system that uses both: (1) a surface water source, or a ground water source under direct influence of surface water, and (2) a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system. A heterotrophic plate count result equal to or less than 500 colonies per milliliter is considered to be equivalent to a measurable free chlorine residual.
6. The State may, in writing, reduce the monitoring frequency to quarterly for a community water system serving 1,000 or fewer persons and using ground water only if the system is in compliance with 10 NYCRR Subpart 5-4; has a clean compliance

history for a minimum of 12-months; is free of sanitary defects; and has a protected water source. The system must meet at least one of the following criteria: an annual site visit by the State or State-approved party that is equivalent to a Level 2 assessment and correction of all identified sanitary defects; cross connection control, as approved by the State; continuous disinfection entering the distribution system and a residual in the distribution system in accordance with criteria specified by the State; or demonstration of maintenance of at least a 4-log removal or inactivation of viruses. Systems that have been granted a disinfection waiver are not eligible for reduced monitoring frequency.

7. A community water system on quarterly monitoring must begin monthly monitoring if it meets any of the following conditions: a Level 2 assessment is triggered; two Level 1 assessment in a rolling 12-month period are triggered; an *E. coli* MCL violation; a coliform TTV; or two total coliform monitoring violations in a rolling 12-month period. Monthly monitoring must begin in the month following the event.
8. A noncommunity water system on quarterly monitoring must begin monthly monitoring if it meets any of the following conditions: a Level 2 assessment is triggered; two Level 1 assessments in a rolling 12-month period are triggered; an *E. coli* MCL violation; a coliform TTV; two total coliform monitoring violations; or one total coliform monitoring violation and one Level 1 assessment in a rolling 12-month period. Monthly monitoring must begin in the month following the event.
9. A noncommunity water system may return to quarterly monitoring if they meet the following criteria: within the last 12 months, the system must have a completed sanitary survey or Level 2 assessment, be free of sanitary defects, have a protected water source; and the system must have a clean compliance history for a minimum of 12 months.
10. Fecal indicators include *E. coli*, enterococci, and coliphage. Only *E. coli* testing will be required, unless otherwise directed by the State.
11. State discretion shall mean that monitoring is required when the State has reason to believe the MCL or TT has been violated, the potential exists for an MCL violation or TTV; or the contaminant may present a risk to public health.

Table 11B Repeat Microbiological Sampling Requirements Following Total Coliform Positive and/or Fecal Indicator Positive Sample(s)<sup>1</sup>

<b>Type of Positive Sample</b>	<b>Type of Water System/Source</b>	<b>System Size</b>	<b>Number of Repeat Samples Required Within 24 Hours of Notification</b>	<b>Sampling Location</b>	<b>Required Action for Positive Repeat Samples</b>
Routine total coliform sample(s) from distribution system	Surface water, GWUDI, or ground water performing 4-log virus treatment and process compliance monitoring	More than one service connection	Three distribution system samples	The same sampling site where the original coliform-positive sample was collected, one sample within five service connections upstream, one sample within five service connections downstream in accordance with a state approved sampling plan.	Distribution sampling must be repeated until total coliform is not detected in repeat samples, or it is determined that a treatment technique has been triggered or an MCL has been violated. <sup>2,3</sup>
		One service connection	One distribution system sample <sup>4</sup>	Original sampling location	
	Ground water system or ground water source not providing (or not documenting) 4-log virus treatment <sup>5</sup>	Population >1,000	Three distribution system samples and one source water sample from each source collected in accordance with a State-approved sampling plan <sup>6</sup>	The same distribution system sampling site where the original coliform-positive sample was collected, one sample within five service connections upstream, one sample within five service connections downstream. An additional sample must be collected from each raw water source or according to State approved sampling plan. <sup>6,7</sup>	Distribution sampling must be repeated until total coliform is not detected in repeat samples, or it is determined that a treatment technique has been triggered or an MCL has been violated. <sup>2,3</sup>

		Population ≤1,000 and more than one service connection	Three distribution system samples and one source water sample from each source collected in accordance with a State-approved sampling plan. <sup>5, 8</sup>	The same distribution system sampling site where the original coliform-positive sample was collected, one sample within five service connections upstream, and one sample within five service connections downstream. An additional sample must be collected from each raw water source or according to State approved sampling plan. <sup>6, 7, 8</sup>	
		One service connection	One distribution system sample and source water sample(s) in accordance with a State-approved sampling plan <sup>4, 6, 8</sup>	Original sampling location. An additional sample must be collected from each raw water source or according to State approved sampling plan. <sup>6, 7, 8</sup>	
		Wholesale System of any size	After notification by consecutive system of total coliform-positive sample <sup>6, 7, 9, 11</sup>	Collect one raw water sample at each source or in accordance with a State-approved sampling plan. <sup>6, 7, 9</sup>	As directed by State <sup>10</sup>
Source water sample(s) fecal indicator positive <sup>7, 10</sup>	Ground water system or ground water source not providing or not documenting 4-log virus treatment	All	Five raw water samples for fecal indicator or immediate corrective action as directed by State <sup>6, 9, 11</sup>	Fecal indicator sampling from source or sources with initial fecal indicator positive samples <sup>6, 7</sup>	As directed by State <sup>10, 11</sup>

1. After any total coliform positive sample from the distribution system, the system must collect repeat samples on the same day and within 24 hours of being notified.
2. The month following a total coliform positive sample, systems collecting samples quarterly must collect a minimum of three routine distribution system samples. The State may waive, in writing, the requirement to collect three routine samples the following month the system provides water to the public, if the State carries out an onsite visit before the end of the following month and the State determines why the sample was total coliform positive and establishes that the system has corrected the problem. The State cannot waive the requirement to collect three routine samples solely on the basis that all the repeat samples were total coliform negative. Before the end of the following month the system serves water to the public, at least one routine sample to determine compliance with the MCLs and TTTs must be collected by the system as required in Table 11.
3. Results of all routine and repeat microbiological samples not invalidated by the State must be used to determine whether a coliform TTT specified in Table 6 has been exceeded.
4. The State may allow a system with a single service connection to collect the required set of repeat samples over a three-day period or to collect a larger volume repeat sample(s) in one or two more sample containers of any size, as long as the total volume collect is at least 300 mL. If *E. coli* is used as the fecal indicator at a ground water system with a single well, a single sample of two (2) times the minimum sample volume or two (2) bottles of minimum required sample volume may be collected consecutively from the tap and the third sample collected from the raw water source. This source water sample result must be used to determine compliance with all Table 6 requirements.
5. If a consecutive system purchasing (or otherwise obtaining) ground water from a wholesale system has a total coliform-positive sample from the distribution system, the system must notify the wholesale system and collect distribution system repeat samples as specified in Table 11B within 24 hours. The wholesale system must collect raw source water sample(s) unless the system provides 4-log virus treatment at peak flow before or at the first customer as confirmed through process compliance monitoring.
6. Sampling plan requirements are given in section 5-1.51 (c) of this Subpart.
7. Fecal indicators include *E. coli*, enterococci and coliphage. Sampling for fecal indicators other than *E. coli* is at State discretion.
8. A system with a single well or a ground water source serving 1,000 or fewer persons may collect a single raw water sample to serve as both a distribution repeat sample to replace the upstream location sample and a raw water sample taken following a routine total coliform positive sample, if *E. coli* is used as the fecal indicator. If this dual-purpose source water sample is collected, the sample result must be used to determine compliance with all Table 6 requirements.
9. Wholesale system source water sampling requirements are in addition to distribution system sampling requirements for consecutive systems.
10. In the event of a fecal indicator positive sample from the raw source water, the state must be notified immediately and may require immediate corrective action. In no case will notification be later than 24 hours as described in section 5-1.78(d)(4) of this Subpart.

11. If a ground water wholesale system does not perform 4-log virus treatment and process compliance monitoring, and has a fecal indicator positive sample from a raw source water, the system must notify any consecutive systems as well as any of its own customers.

**Table 13 - REQUIRED NOTIFICATIONS**

<b>Contaminant/Situation (Subpart 5-1 citations)</b>	<b>Single sample exceeds MCL/MRDL<sup>1</sup></b>	<b>MCL/MRDL/TT<sup>1</sup> violation</b>	<b>Failure to meet monitoring requirements and/or failure to use applicable testing procedure</b>
Public Health Hazard (Section 5-1.1(bz)) <sup>2</sup>	Not applicable	State Tier 1	State Tier 1
<i>Escherichia coli</i> ( <i>E. coli</i> ) in distribution system (Section 5-1.52, Tables 6, 11 and 11B)	State <sup>3</sup> Not applicable, or Tier 1 <sup>4</sup>	State Tier 1	State Tier 3, or Tier 1 <sup>5</sup>
<i>E. coli</i> or other fecal indicator detected in ground water source at system not providing both 4-log virus treatment and process compliance monitoring (Section 5-1.52, Tables 6, 11 and 11B)	Tier 1 <sup>2,3,5,6</sup>	Tier 1 <sup>6</sup>	State Tier 3, or Tier 1 <sup>2,5,7</sup>
Total coliform in distribution system (Section 5-1.52, Tables 6, 11 and 11B)	Not applicable	State <sup>8</sup> Tier 2, or Tier 1 <sup>9</sup>	State Tier 3, or Tier 2 as directed by State
Entry Point Turbidity monthly average (Section 5-1.52, Tables 4 and 10)	State <sup>10</sup>	State Tier 2	State Tier 3
Entry Point Turbidity two day average (Section 5-1.52, Tables 4 and 10)	State	State Tier 2, or Tier 1 <sup>11</sup>	State Tier 3
Raw Water Turbidity (Subdivision 5-1.30(d) and Section 5-1.52, Table 10A)	State	State Tier 2, or Tier 1 <sup>11</sup>	State Tier 3
Filtered Water Turbidity Single exceedance of the maximum allowable Turbidity level (Section 5-1.52, Tables 4A and 10A)	State	State Tier 2, or Tier 1 <sup>11</sup>	State Tier 3
Filtered Water Turbidity Treatment Technique violation (Section 5-1.52, Tables 4A and 10A)	Not applicable	State Tier 2	State Tier 3



**Table 13 (cont.)**

<b>Contaminant/Situation (Subpart 5-1 citations)</b>	<b>Single sample exceeds MCL/MRDL<sup>1</sup></b>	<b>MCL/MRDL/TT<sup>1</sup> violation</b>	<b>Failure to meet monitoring requirements and/or failure to use applicable testing procedure</b>
Distribution Point Turbidity (Section 5-1.52, Tables 5, 10 and 10A)	Not applicable	State Tier 2	State Tier 3
Treatment Technique violations other than turbidity <sup>12,13</sup> (Sections 5-1.12, 5-1.30, 5- 1.32, 5-1.81, and 5-1.83 and Subdivision 5-1.71(d))	Not applicable	State Tier 2, or Tier 1 <sup>2,13</sup>	State Tier 3 <sup>13</sup> , or Tier 2 <sup>12</sup>
Free chlorine residual less than 0.2 mg/L at the entry point <sup>14</sup> (Subdivision 5-1.30(d))	Not applicable	State	Not applicable
Free chlorine residual less than required minimum for a ground water system or ground water source required to provide 4-log virus treatment <sup>15</sup> (Subdivision 5- 1.30(a))	Not applicable	State Tier 2, or Tier 1 <sup>9</sup>	Tier 2
Inorganic chemicals and physical characteristics listed in Tables 8A and 8B (Section 5-1.52, Tables 1, 8A, and 8B)	State	State Tier 2	State Tier 3
Chloride, iron, manganese, silver, sulfate, and zinc (Section 5-1.52, Tables 1 and 8D)	Not applicable	State Tier 3	State Tier 3
Sodium (Section 5-1.52, Tables 1 and 8D)	State if the level exceeds 20 mg/L	Tier 2 if the level exceeds 270 mg/L	Tier 3
Nitrate, Nitrite, Total Nitrate and Nitrite (Section 5-1.52, Tables 2 and 8C)	State	State Tier 1	State Tier 1, or Tier 3 <sup>16</sup>
Lead and Copper (Sections 5-1.40 to 1.48)	Not applicable	State Tier 2	State Tier
Organic Chemicals Group 1 and 2 (Section 5-1.52, Table 9C)	State	State Tier 2	State Tier 3

**Table 13 (cont.)**

<b>Contaminant/Situation (Subpart 5-1 citations)</b>	<b>Single sample exceeds MCL/MRDL1</b>	<b>MCL/MRDL/TT<sup>1</sup> violation</b>	<b>Failure to meet monitoring requirements and/or failure to use applicable testing procedure</b>
Principal Organic Contaminants Unspecified Organic Contaminants Total POCs and UOCs (Section 5-1.52, Tables 3, 9B and 9D)	State	State Tier 2	State Tier 3
Radiological Contaminants (Section 5-1.52, Tables 7 and 12)	State	State Tier 2	State Tier 3
Monitoring and Control of Disinfection Byproduct Precursors (Sections 5-1.60 to 5-1.64)	Not applicable	State Tier 2	State Tier 3
Disinfectant residuals Chlorine and Chloramine (Section 5-1.52, Tables 3A and 15A)	State	State Tier 2	State Tier 3
Disinfectant residual Chlorine dioxide at entry point (Section 5-1.52, Tables 3A, 15 and 15A)	State	State Tier 2	State Tier 3, or Tier 2 <sup>17</sup>
Disinfectant residual Chlorine dioxide in distribution system (Section 5-1.52, Tables 3A, 15 and 15A)	State	State Tier 1 <sup>18</sup>	State Tier 1 <sup>18</sup>
Disinfection byproducts Trihalomethanes Haloacetic acids (Section 5-1.52, Tables 3 and 9A) and Bromate and Chlorite (Section 5-1.52, Tables 1 and 8B)	Not applicable	State Tier 2	State Tier 3

**Table 13 (cont.)**

<b>Contaminant/Situation (Subpart 5-1 citations)</b>	<b>Single sample exceeds MCL/MRDL<sup>1</sup></b>	<b>MCL/MRDL/TT<sup>1</sup> violation</b>	<b>Failure to meet monitoring requirements and/or failure to use applicable testing procedure</b>
Acrylamide and Epichlorohydrin (Subdivision 5-1.51(m))	Not applicable	State Tier 2	Not applicable
Operation under a variance or exemption (Sections 5-1.90 to 5-1.96)	Not applicable	Tier 3	Not applicable
Violation of conditions of a variance or exemption(Sections 5-1.90 to 5-1.96)	Not applicable	State Tier 2	Not applicable
Disruption of water service of four hours or more (Subdivision 5-1.23(b))	Not applicable	State <sup>19</sup>	Not applicable

<sup>1</sup>MCL-maximum contaminant level, MRDL-maximum residual disinfectant level, TT-treatment technique

<sup>2</sup>Community systems must describe in their annual water supply statement (see section 5-1.72(e) and (f)) any Public Health Hazard that is determined to be a violation, and any uncorrected significant deficiency, and must indicate whether corrective action has been completed. This notice must be repeated every year until the annual report documents that corrective action has been completed in accordance with section 5-1.22 of this Subpart.

<sup>3</sup>State notification must be made by the supplier of water within 24 hours of learning of an *E. coli* positive sample.

<sup>4</sup>Public notification normally does not have to be issued for an *E. coli* positive sample prior to the results of the repeat samples. However, there may be situations where the State determines that a Tier 1 notification is necessary to protect the public health. The supplier of water must provide the Tier 1 notification no later than 24 hours after learning of the State's determination.

<sup>5</sup>Failure to test for *E. coli* requires a Tier 1 notification if testing is not performed after any repeat sample tests positive for coliform. All other *E. coli* monitoring and testing procedure violations require Tier 3 notification.

<sup>6</sup>At a ground water system, Tier 1 notification is required after initial detection of *E. coli* or other fecal indicator in raw source water, if the system does not provide 4-log virus treatment and process compliance monitoring. Confirmation of *E. coli* or other fecal indicator in the source water requires Tier 1 notification. Failure to take confirmatory samples may be a public health hazard requiring Tier 1 notification.

<sup>7</sup>Notice of the fecal indicator positive raw water sample must be made in the annual water supply statement (see section 5-1.72(e)), until the annual report documents that corrective action has been completed.

<sup>8</sup>State notification must be made by the supplier of water within 24 hours of learning of the violation.

<sup>9</sup>Tier 2 notification is normally required; however, there may be situations where the State determines that a Tier 1 notification is necessary to protect the public health. The supplier of water must provide the Tier 1 notification no later than 24 hours after learning of the State's determination.

<sup>10</sup>If the daily entry point analysis exceeds one NTU, a repeat sample must be taken as soon as practicable, and preferably within one hour. If the repeat sample exceeds one NTU, the supplier of water must make state notification.

<sup>11</sup>Systems must consult with the State within 24 hours after learning of the violation. Based on this consultation, the State may subsequently decide to elevate the violation from a Tier 2 to a Tier 1 notification. If consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notification no later than 48 hours after the system learns of the violation.

<sup>12</sup>These violations include the following: failure to comply with the treatment technique or monitoring requirements in section 5-1.30(a), (b), (c), and (g) of this Subpart; failure to comply with the avoidance criteria in section 5-1.30(c) of this Subpart; failure to cover a finished water storage facility or treat its discharge required in section 5-1.32 of this Subpart; failure to report to the state information required in section 5-1.72(c)(3) of this Subpart; failure to maintain records required in section 5-1.72(d)(7) of this Subpart; and failure to meet the treatment and bin classification requirements associated with *Cryptosporidium* in section 5-1.83 of this Subpart. Failure to collect three or more samples for *Cryptosporidium* analysis as required in section 5-1.81 of this Subpart is a Tier 2 violation requiring public notification. Failure to perform any other monitoring and testing procedure as required in section 5-1.81 of this Subpart is a Tier 3 violation.

<sup>13</sup>Any significant deficiency that is not corrected, or where correction has not begun according to a State-approved corrective action plan within 120 days, or as directed by the State, is a TTV and must be addressed in accordance with section 5-1.12. If the deficiency is a public health hazard, the deficiency must be addressed as directed by the State and Tier 1 notification is required.

<sup>14</sup>Applies to systems that have surface water or groundwater directly influenced by surface water as a source and use chlorine. The system must make State notification whether the residual was restored to at least 0.2 mg/L within four hours.

<sup>15</sup>Required minimum chlorine residual at point that demonstrates adequate CT for disinfected water from ground water sources at first customer.

<sup>16</sup>Failure to take a confirmation sample within 24 hours for nitrate or nitrite after an initial sample exceeds the MCL requires a Tier 1 notification. Other monitoring violations for nitrate or nitrite require a Tier 3 notification.

<sup>17</sup>Failure to monitor for chlorine dioxide at the entrance to the distribution system the day after exceeding the MRDL at the entrance to the distribution system requires a Tier 2 notification. Other monitoring violations for chlorine dioxide at the entrance to the distribution system require a Tier 3 notification.

<sup>18</sup>If any daily sample taken at the entrance to the distribution system exceeds the MRDL for chlorine dioxide and one or more samples taken in the distribution system the next day exceed the MRDL, Tier 1 notification is required. Failure to take the required samples in the distribution system the day after the MRDL is exceeded at the entry point also triggers Tier 1 notification.

<sup>19</sup>Tier 1 notification is required if the situation meets the definition of a public health hazard.

New subdivision (e) is added to section 5-1.71 to read as follows:

(e) Public water systems shall correct sanitary defects found through a Level 1 or 2 assessment. For corrections that have not been completed at the time that the assessment form is submitted the system shall complete the corrective action(s) within 120 days of identifying the sanitary defect or be in compliance with a timeframe approved by the State in consultation with the system. The system shall notify the State when each scheduled corrective action is complete.

Paragraphs (2) – (7) of subdivision (d) of section 5-1.72 are renumbered (4) – (9) and new paragraphs (2) and (3) are added to read as follows:

(2) All Level 1 and Level 2 assessment forms, documentation of corrective actions completed as a result of such assessments, and any other summary documentation of sanitary defects and corrective actions, shall be retained for at least five years.

(3) All records of repeat samples that are taken for the purpose of obtaining an extension of the 24-hour period for collecting such repeat samples shall be retained for at least five years.

Subdivision (c) of section 5-1.78 is amended to read as follows:

(c) Tier 1 notification requirements (public health hazards, as defined in subdivision 5-1.1 [(bw)](bz) of this Subpart, require Tier 1 notification). The supplier of water must:

\* \* \*

Subdivision (c) of section 5-1.90 is repealed.

Subdivision (a) of section 5-1.92 is amended to read as follows:

- (a) The supplier of water may request, and the department may grant, one or more exemptions from any treatment technique requirement, except for disinfection of a surface water source, and/or any MCL, except for [total coliform or Escherichia coli (E. coli)] Escherichia coli (E. coli). Exemptions may be granted to any public water system based on a finding that:

\* \* \*

Paragraph (1) of subdivision (k) of section 7-5.12 is amended to read as follows:

\*\*\*\*\*

<b>Agricultural fairground water system type</b>	<b>Required minimum operator grade<sup>1</sup></b>
Agricultural fairground water system with on-site groundwater treatment ( <i>i.e.</i> , filtration and disinfection)	II B
Agricultural fairground water system with on-site disinfection	C
Purchases water from a public water system as defined in Subpart 5-1.1 [(at)] of this Title	D

\*\*\*\*\*

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The statutory authority for the proposed revisions is set forth in Public Health Law (PHL) sections 201 and 225. Section 201(1)(l) of the PHL establishes the powers and duties of the Department of Health (Department), which include the supervision and regulation of the sanitary aspects of public water supplies. Section 225 of the PHL sets forth the powers and duties of the Public Health and Health Planning Council (PHHPC), which include the authority to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Further, section 225(5)(a) of the PHL allows the SSC to deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in New York State. These regulations are also in accordance with the requirements of the United States Environmental Protection Agency (EPA) and the Safe Drinking Water Act (SDWA).

### **Legislative Objectives:**

The legislative objective of sections 201 and 225 of the PHL is to ensure that PHHPC, in conjunction with the Commissioner of Health, protect the public health by adopting drinking water sanitary standards. In accordance with that objective, this regulation amends the SSC by revising Part 5 to enhance current protections governing public water systems (PWSs). Further, this amendment will update the SSC to ensure consistency with federal requirements.

**Needs and Benefits:**

The Department recognizes that there is no higher public health priority than ensuring the delivery of clean drinking water. To this end, the Department has obtained primacy for the implementation and enforcement of the majority of federal drinking water regulations. These revisions to Subpart 5-1 incorporate federal mandates regarding the Revised Total Coliform Rule (RTCR) and ensure the Department is eligible for primacy over this Rule. Notably, the Department is already implementing these federal requirements through an agreement with EPA. Accordingly, the adoption of these regulations merely formalizes the existing regulatory arrangement and is expected to have no impact on PWSs.

The RTCR increases public health protection by reducing potential pathways for fecal contamination of distribution systems. The RTCR builds on the existing Total Coliform Rule by requiring all public water supplies to assess indicators of coliform contamination and to take corrective action. These amendments strengthen the integrity of the distribution system, through increased monitoring for effectiveness of treatment and increased monitoring for possible contamination.

A technical change is also being made to Subpart 7-5 of the State Sanitary Code to make Subpart 7-5 consistent with the changes regarding the RTCR.

**Costs:****Costs to Public Water Systems**



The proposed regulatory amendments incorporate revisions to federal rules regarding the Revised Total Coliform Rule (RTCR). These proposed amendments will not impose additional cost to PWSs when adopted, because PWSs are already complying with these federal requirements.

**Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:**

State and local governments that operate PWSs are affected in different ways by these federal requirements. All PWSs are subject to State or local health department (LHD) oversight. However, because these amendments incorporate existing federal requirements, there is no additional cost imposed.

**Local Government Mandates:**

LHDs will not be impacted by the proposed regulations because they are already in compliance.

**Paperwork:**

These revised regulations do not require new forms or other paperwork. Adoption of these regulations will actually reduce paperwork because it will eliminate the need for PWSs to conduct dual reporting to the State and federal government.

**Duplication:**

Adopting these revised regulations will reduce duplication of effort for PWSs by eliminating the need for dual reporting to the State and federal government.

**Alternatives:**

Declining to adopt these regulations would make compliance oversight of PWSs primarily the responsibility of the State, with oversight by the federal government. This option would require additional and unnecessary reporting and coordination for PWSs. The proposed rule revisions are the better alternative.

**Federal Standards:**

These revisions incorporate changes in federal standards.

**Compliance Schedule:**

Currently, PWSs must comply with RTCR pursuant to schedules established by EPA.

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

**Effect of Rule:**

Revisions to 10 NYCRR Subpart 5-1 of the State Sanitary Code are required to obtain primacy from the United States Environmental Protection Agency (EPA) for implementation of the Revised Total Coliform Rule (RTCR).

Local governments and small businesses operate most of the Public Water Systems (PWSs) in New York State. It is estimated that almost 93 percent of the PWSs impacted by any of the proposed revisions are either small businesses or local governments.

**Compliance Requirements:**

Currently, PWSs must comply with the federal RTCR.

**Professional Service:**

The proposed regulations will not change the requirements for professional services used by small businesses or local governments, because PWSs are already complying with these federal requirements.

**Compliance Costs:**

The proposed regulations incorporate federal regulations and will not impose an additional cost to small business or local governments that own or operate a PWS, because PWSs are already complying with these federal requirements. After the Department is granted primacy for the enforcement of these regulations, enforcement costs are expected to be minimal because the State and Local Health Departments (LHDs) already enforce current public water supply regulations, and compliance with the proposed amendments is already widespread.

**Economic and Technological Feasibility:**

Currently available technology is adequate to meet rule requirements. Notably, EPA also determined that compliance with the federal regulations, as incorporated by these regulations, was both economically and technologically feasible for small businesses and local governments.

**Minimizing Adverse Impact:**

The proposed revisions incorporate existing federal regulations.

**Small Business and Local Government Participation:**

The Department presented and discussed the proposed revisions at organizational meetings where small community water systems were represented. These meetings included the New York Rural Water Association, the American Water Works Association, the Conference of Environmental Health Directors, the New York Association of Towns, and the New York Conference of Mayors, among others.

**For Rules That Either Establish or Modify a Violation or Penalties Associated With a Violation:**

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement under the proposed regulation. This regulation creates no new penalty or sanction. Hence, no cure period is necessary.

## **RURAL AREA FLEXIBILITY ANALYSIS**

### **Types and Estimated Numbers of Rural Areas:**

Many PWSs are located in the 44 counties that are defined as rural and in the towns of the additional nine counties where there are rural towns. Although the revised regulations will impact PWSs in these rural areas, the revisions will have the same effect on a PWS regardless of whether it is in a rural area or an urban area.

Revisions to 10 NYCRR Subpart 5-1 of the State Sanitary Code are required to obtain primacy from the United States Environmental Protection Agency (EPA) for implementation of the Revised Total Coliform Rule (RTCR).

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

Currently, PWSs must comply with the federal RTCR, pursuant to schedules established by EPA. The proposed regulations will not change the requirements for professional services used by small businesses or local governments, because PWSs are already complying with these federal requirements.

### **Compliance Costs:**

The proposed amendments incorporate federal regulations and will not impose an additional cost to small business or local governments in rural areas that own or operate a PWS, because PWSs are already complying with these federal requirements. After the Department is granted primacy for the enforcement of these regulations, enforcement costs are expected to be minimal because

the State and LHDs already enforce current public water supply regulations, and compliance with the proposed amendments is already widespread.

**Minimizing Adverse Impact:**

These revisions to Subpart 5-1 incorporate federal mandates regarding the RTCR. Notably, the Department is already implementing these federal requirements through an agreement with EPA. Accordingly, the adoption of these regulations merely formalizes the existing regulatory arrangement and is expected to have no impact on PWSs.

**Rural Area Participation:**

The proposed revisions incorporate existing federal regulations into 10 NYCRR Subpart 5-1. Representatives of public and private interests in rural areas had an opportunity to participate in the rule making process while the federal regulations were being developed. Outreach was also conducted by the DOH's Bureau of Water Supply Protection in the form of presentations at various stakeholder meetings, such as the New York Section of the American Water Works Association and the New York Rural Water Association.

## **JOB IMPACT STATEMENT**

The Department of Health has determined that the proposed revisions will not have substantial adverse impact on jobs or employment opportunities, because they incorporate federal requirements with which public water systems are already complying.



Pursuant to the authority vested in the Commissioner of Health by sections 2803 and 2803-u(4) of the Public Health Law, sections 405.9, 405.18, 405.19, 405.20 and 407.5 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

Subparagraph (ii) of paragraph (11) of subdivision (b) of section 405.9 of Title 10 is amended to read as follows:

(ii) If a patient eligible for transfer to a hospital operated by the Veteran's Administration requests such transfer, hospital staff shall make such arrangements. Transfer shall be effected in accordance with paragraph [(f)(7)] (g)(7) of this section.

Subdivision (f) is relettered as (g) and a new subdivision (f) is added to section 405.9 of Title 10 to read as follows:

(f) Individuals with Substance Use Disorders. The hospital shall develop and maintain written policies and procedures for inpatient and outpatient care of individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders, as that term is defined in section 1.03 of the Mental Hygiene Law. Such policies and procedures shall, at a minimum, meet the following requirements:

(1) Policies and procedures shall provide for the use of an evidence-based approach to identify

and assess individuals for substance use disorders, and to refer individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders;

(2) Upon admission, treatment, or discharge of an individual with a documented substance use disorder or who appears to have or be at risk for a substance use disorder, including discharge or transfer from the emergency service of the hospital or assignment to observation services pursuant to paragraph (2) of subdivision (e) of section 405.19 of this Part, the hospital shall inform the individual of the availability of the substance use disorder treatment services that may be available to him or her through a substance use disorder services program. Such information may be provided verbally and/or in writing as appropriate;

(3) During discharge planning, the hospital shall provide to each individual with a documented substance use disorder or who appears to have or be at risk for a substance use disorder with educational materials, identified by the Office of Alcoholism and Substance Abuse Services in consultation with the Department and provided to the hospital pursuant to subdivision 1 of section 2803-u of the Public Health Law;

(4) Except where an individual has come into the hospital under section 22.09 of the Mental Hygiene Law, and where the hospital does not directly provide substance use disorder services, the hospital shall refer individuals in need of substance use disorder services to and coordinate with appropriate substance use disorder services programs that provide behavioral health services, as defined in section 1.03 of the Mental Hygiene Law; and

(5) The hospital shall establish and implement training, in addition to current training programs, for all individuals licensed or certified pursuant to title eight of the education law who provide direct patient care regarding the policies and procedures established in this paragraph.

Subdivision (g) of section 405.9 of Title 10 is relettered as (h) and subparagraph (ii) of paragraph (7) of the former subdivision (f), now relettered as subdivision (g), of section 405.9 of Title 10 is amended to read as follows:

(ii) Patients discharged from the hospital by their attending practitioner shall not be permitted to remain in the hospital without the consent of the chief executive officer of the hospital except in accordance with provisions of subdivision [(g)] (h) of this section.

Subparagraph (vi) of paragraph (2) of subdivision (b) of section 405.18 of Title 10 is amended to read as follows:

(vi) In accordance with the provisions of section [405.9(f)] 405.9(g) of this Part, rehabilitation therapy staff shall work with the attending practitioner, the nursing staff, other health care providers and agencies as well as the patient and the family, to the extent possible, to assure that all appropriate discharge planning arrangements have been made prior to discharge to meet the patient's identified needs.

New paragraph (5) is added to subdivision (c) of section 405.19 of Title 10 to read as follows and existing paragraphs (5) through (9) are renumbered (6) through (10):

(5) The emergency service shall provide for the identification, assessment and referral of individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders, as that term is defined in section 1.03 of the Mental Hygiene Law, as described in subdivision (f) of section 405.9 of this Part.

Paragraph (4) of subdivision (c) of section 405.20 of Title 10 is amended, paragraph (5) is renumbered (6) and a new paragraph (5) is added to read as follows:

(4) compliance with the domestic violence provisions of section 405.9(e) of this Part; [and]

(5) identification, assessment, and referral of individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders, as that term is defined in section 1.03 of the Mental Hygiene Law, as described in subdivision (f) of section 405.9 of this Part; and

Paragraph (6) of subdivision (b) of section 407.5 of Title 10 is amended to read as follows:

(6) Discharge/transfer. Hospitals shall comply with the provisions of paragraph (1) of subdivision [(g)] (h) of section 405.9 of this Title concerning discharge/transfer. In addition, PCHs and CAHs shall comply with the following:

\* \* \*

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law (PHL) § 2803 authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

PHL § 2803-u(4) provides that the Department of Health (DOH), in consultation with the Office of Alcoholism and Substance Abuse Services (OASAS), shall issue regulations as necessary to implement the provisions of the section, which requires general hospitals to establish and train staff in policies and procedures for the identification, assessment and referral of individuals with substance use disorders.

### **Legislative Objectives:**

Chapter 70 of the Laws of 2016 enacted Public Health Law (PHL) § 2803-u as part of a multi-pronged approach to address the prevalence of substance use, particularly heroin and opioids, that has become a serious public health crisis impacting communities throughout New York State. PHL § 2803-u requires general hospitals to establish policies and procedures for the identification, assessment and referral of individuals with or at risk of substance use disorders and to train staff in those policies and procedures. In particular, the statute provides for hospitals to refer individuals in need of substance use disorder services to appropriate programs and coordinate with such programs. This proposal will implement these requirements as described below.

### **Current Requirements:**

General hospitals are required by section 405.9 of Title 10 of the New York Compilation of Codes, Rules and Regulations of New York (NYCRR) to refer patients for appropriate follow-up care after discharge from the hospital. Similar provisions are set forth in 10 NYCRR §§ 405.19 and 405.20 pertaining to hospital emergency and outpatient services. However, the current regulations do not specifically reference individuals with substance use disorders.

### **Needs and Benefits:**

In New York State, approximately 1.4 million New Yorkers suffer from a substance use disorder.<sup>1</sup> The number of people affected in particular by opioid and heroin addiction has grown so dramatically over the last several years that it constitutes a public health crisis, impacting thousands of people and their families throughout New York State communities.<sup>2</sup> Heroin overdose is now the leading cause of accidental death in the state and 2,028 New Yorkers died of a drug overdose in 2014.<sup>3</sup> In 2015, approximately 107,300 New York residents received treatment for opioid substance use.<sup>4</sup>

To identify ways to combat this issue, the Governor convened the Heroin and Opioid Task Force. The Task Force issued a report setting forth a series of recommendations, many of which were included in Governor's Program Bills Nos. 31, 32, and 33 of 2016. Subsequently, the Governor signed Chapters 69, 70 and 71 of the Laws of 2016, which included several

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<sup>1</sup> *Heroin and Opioid Task Force Report*, June 9, 2016, "Combatting the Heroin and Opioid Crisis," available at [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/HeroinTaskForceReport\\_3.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/HeroinTaskForceReport_3.pdf), p. 2.

<sup>2</sup> *Id.* at p. 2.

<sup>3</sup> *Id.* at p. 2.

<sup>4</sup> *Id.* at p. 10.

initiatives to address heroin and opioid abuse across the state. Among other things, the new laws include measures to increase access to overdose reversal medication, limit opioid prescriptions for acute pain from 30 to 7 days, require ongoing education on addiction and pain management for prescribers, and eliminate insurance barriers for treatment and medication.

As part of this approach, new PHL § 2803-u was added by Chapter 70 of the Laws of 2016. As noted in the sponsor's memorandum, individuals who present at emergency rooms for treatment of an opioid overdose often are "simply stabilized and released, without the provision of treatment information or additional follow-up. However, continuous access to appropriate treatment and services is critical for an individual to have any chance to overcome an addiction." Accordingly, PHL § 2803-u requires general hospitals to establish policies and procedures and train staff in the identification, assessment and referral of individuals with or who appear to be at risk for substance use disorders.

Specifically, PHL § 2803-u(1) of the new statute requires OASAS, in consultation with DOH, to develop new or identify existing educational materials for general hospitals to disseminate to individuals who have or appear to have substance use disorders as part of discharge planning. The materials will include information such as: (1) the various types of treatment and recovery services such as inpatient, outpatient, and medication-assisted treatment; (2) how to recognize the need for treatment services; and (3) information for individuals to determine what type and level of treatment is most appropriate and what resources are available to them.

PHL § 2803-u(2)(a) requires hospitals to develop, maintain and disseminate written policies and procedures for the identification and assessment and referral of individuals with documented substance use disorders or who appear to have or be at risk for substance use

disorders. PHL § 2803-u(2)(b) requires hospitals to train their licensed and certified clinical staff members who provide direct patient care in such policies and procedures. Under PHL § 2803-u(2)(c), hospitals must refer individuals in need of substance use disorder services to appropriate programs and coordinate with such programs. PHL § 2803-u(3) provides that hospitals must inform individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders of the availability of treatment services that may be available through a substance use disorder services program. Finally, PHL § 2803-u(4) provides that the Commissioner of Health, in consultation with the Commissioner of OASAS, shall issue regulations as necessary to carry out the new section.

Consistent with these requirements, this proposed regulation will require general hospitals to: (1) provide individuals who have or appear to have substance use disorders with educational materials, to be developed by OASAS in consultation with DOH, as part of discharge planning; (2) establish written policies and procedures for the identification and assessment (using an evidence-based approach) as well as the referral of individuals who have or appear to have substance use disorders; (3) train licensed and certified staff in such policies and procedures; (4) refer individuals in need of substance use disorder services to appropriate programs and coordinate with such programs; and (5) inform individuals who have or appear to have substance use disorders of treatment services that may be available, which can be accomplished verbally and/or in writing as appropriate.

As noted above, the proposed regulation requires the identification and assessment of individuals with substance use disorders by using any approach that is evidence-based. One such evidence-based approach is the Screening, Brief Intervention and Referral to Treatment (SBIRT). SBIRT seeks to identify patients who use alcohol and other drugs at risky levels with



the goal of reducing and preventing related health consequences, disease, accidents and injuries. Risky substance use is a health issue and often goes undetected. Information on SBIRT is available on the OASAS website at <http://www.oasas.ny.gov/adMed/sbirt/index.cfm>, which includes a video introducing this approach.

Consistent with the statute, the regulations require hospitals to refer individuals in need of substance use disorder services to appropriate programs and “coordinate” with such programs. Coordination, at a minimum, requires a referral to the most appropriate level of care but as appropriate should also include activities such as securing admission to an on-site substance use disorder services program or making an appointment with a program in the community, or establishing a telehealth connection with a distant practitioner who can further engage with the individual to identify needed services.

## **COSTS:**

### **Costs to Private Regulated Parties:**

While the current regulations do not specifically refer to individuals with substance use disorders, hospitals are already required to have written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training encompasses the identification, assessment and referral of individuals with substance use disorders, as well as the provision of information related to substance use disorder services, consistent with the requirements of the statute. However, these efforts are expected to assist individuals in obtaining treatment that will help them avoid future emergency room visits and hospital admissions.

**Costs to Local Government:**

This proposal will not impact local governments unless they operate a general hospital, in which case the impact would be the same as outlined above for private parties.

**Costs to the Department of Health:**

The proposed regulatory changes will not result in any additional operational costs to DOH, as the new requirements will be incorporated into existing surveillance activities. The development of the educational materials to be distributed to individuals with substance use disorder during discharge planning to be developed in conjunction with OASAS, is expected to be managed within existing resources.

**Costs to Other State Agencies:**

The proposed regulatory changes will not result in any additional costs to other state agencies. OASAS, in consultation with DOH, will develop educational materials to be distributed to individuals with substance use disorders as part of the discharge planning process, which is expected to be managed within existing resources.

**Local Government Mandate:**

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

**Paperwork:**

General hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures, and refer patients to appropriate follow-up care. Therefore, the proposed regulations should not significantly increase their paperwork.

**Duplication:**

While existing regulations require hospitals to make appropriate referrals, those regulations do not specifically reference individuals with substance use disorders. There otherwise are no relevant State regulations which duplicate, overlap or conflict with the proposed regulations.

**Alternatives:**

There are no alternatives to the proposed regulations related to hospital policies and procedures, which are consistent with PHL § 2803-u, added by Chapter 70 of the Laws of 2016.

**Federal Standards:**

The proposed regulations do not duplicate or conflict with any federal regulations.

**Compliance Schedule:**

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

### **Effect of Rule:**

The proposed regulatory provisions related to substance use disorders will apply to all general hospitals in New York State. This proposal will not impact local governments or small business unless they operate a general hospital. In such case, the flexibility afforded by the regulations is expected to minimize any costs of compliance as described below.

### **Compliance Requirements:**

These regulations will require general hospitals to develop, maintain and disseminate written policies and procedures for the identification and assessment (using an evidence-based approach) as well as the referral of individuals with documented substance use disorders or who appear to have or be at risk for substance use disorders. Hospitals will be required to train their licensed and certified clinical staff members in such policies and procedures.

### **Professional Services:**

While the current regulations do not specifically refer to individuals with substance use disorders, hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care.

### **Compliance Costs:**

While the current regulations do not specifically refer to individuals with substance use

disorders, hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training encompasses the identification, assessment and referral of individuals with substance use disorder, as well as the provision of information related to substance use disorder services, consistent with the requirements of the statute. However, these efforts are expected to assist individuals in obtaining treatment that will help them avoid future emergency room visits and hospital admissions.

**Economic and Technological Feasibility:**

This proposal is economically and technically feasible. While existing regulations do not specifically refer to individuals with substance use disorders, hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care.

**Minimizing Adverse Impact:**

There are no alternatives to the proposed regulations related to hospital policies and procedures, which are consistent with PHL § 2803-u, added by Chapter 70 of the Laws of 2016.

**Small Business and Local Government Participation:**

Development of these regulations included input from organizations including those whose members include general hospitals that are operated by local governments or that constitute small businesses.

**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 a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

## RURAL AREA FLEXIBILITY ANALYSIS

### Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Approximately 17% of small health care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	



There are 47 general hospitals, approximately 90 diagnostic and treatment centers, 159 nursing homes, and 92 certified home health agencies in rural areas.

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

The proposed regulation is applicable to those general hospitals located in rural areas and is expected to impose only minimal costs upon hospitals, which are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. Because the proposed regulatory requirements can be incorporated into existing processes, they are not expected to substantially increase the administrative burden on these entities.

**Costs:**

While the current regulations do not specifically refer to individuals with substance use disorders, hospitals are already required to establish written policies and procedures related to various operational requirements, train staff in such policies and procedures and refer patients to appropriate follow-up care. The proposed regulations do require additional effort to ensure that the policies and training encompasses the identification, assessment and referral of individuals with substance use disorder, as well as the provision of information related to substance use disorder services, consistent with the requirements of the statute. However, these efforts are expected to assist individuals in obtaining treatment that will help them avoid future emergency room visits and hospital admissions.

**Minimizing Adverse Impact:**

There are no alternatives to the proposed regulation. The proposed regulations are consistent with PHL § 2803-u, added by Chapter 70 of the Laws of 2016 to require general hospitals to establish policies and procedures pertaining to individuals with substance use disorders.

**Rural Area Participation:**

Development of these regulations included input from organizations including those that include as members general hospitals located in rural areas.

## **STATEMENT IN LIEU OF JOB IMPACT STATEMENT**

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



**Project # 172161-C  
University Hospital SUNY Health Science Center**

**Program: Hospital  
Purpose: Construction**

**County: Onondaga  
Acknowledged: September 29, 2017**

**Executive Summary**

**Description**

University Hospital SUNY Health Science Center is a Public State, Article 28 Hospital Department of the State University of New York Upstate Medical University (SUNY Upstate) located in Syracuse (Onondaga County). The entity has two main campuses consisting of University Hospital (UH), a 409-bed acute care teaching hospital located downtown at 750 East Adams Street, and UPSTATE University Hospital at Community General, a 326-bed community hospital located at 4900 Broad Street approximately five miles to the south. SUNY Upstate requests approval to renovate a vacant unit at the UH campus consisting of 7,580 square feet on the 7<sup>th</sup> floor of the west wing of the hospital, for a new eight-bed adolescent psychiatry unit, which will increase their bed capacity to 417 beds. The new unit will provide high quality, evidence based mental health care to children between the ages of 12 and 17 who have acute psychiatric problems requiring hospitalization. The unit will provide for a shorter-term stabilization unit model that is not currently available in the community.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The creation of this adolescent psychiatric unit and the addition of eight beds will allow the facility to

address the current waiting lists of children who tend to remain in a med/surge unit until a suitable bed is available.

**Program Summary**

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

**Financial Summary**

Total project costs of \$3,197,777 will be met through equity from University Hospital's operations.

<u>Incremental Budget</u>	<u>Years 1 and 3</u>
Revenues	\$3,306,566
Expenses	<u>\$3,325,541</u>
Gain/(Loss)	(\$18,975)
 <u>Enterprise Incremental Budget</u>	 <u>Years 1 and 3</u>
Revenues	\$984,335,043
Expenses	<u>\$960,072,291</u>
Gain/(Loss)	\$24,262,752

The minimal loss from operations of the new unit will be covered by the operations the facility.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

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

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before February 8, 2018 and construction must be completed by November 15, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

**December 7, 2017**

# Need Analysis

## Background

University Hospital SUNY Health Science Center (Upstate), located in Syracuse, New York, at 750 East Adams Street, Syracuse, in Onondaga County, is a component of the State University of New York. Upstate serves as a regional referral center for professional education, patient care and biomedical research. Upstate has two main campuses consisting of a 409-bed inpatient teaching hospital on the Downtown Main Campus and a 326-bed hospital at the Community Campus approximately five miles to the south. Upstate represents 45% of hospital beds in Syracuse and provides many specialized services including a Level 1 Trauma Center and the region's only Children's Hospital. Additionally, Upstate is a NYS Designated Center for Stroke, AIDS, Trauma, Burn, SAFE; is the 54-county Poison Control Center; offers 77 specialty clinics; and operates the Rural Medical Scholars Program spanning 20 communities.

Upstate is seeking approval to renovate a vacant unit comprised of 7,580 square feet on the seventh floor of the west wing of University Hospital for a new eight (8) bed adolescent psychiatry unit. The population to be served by the unit will include children between the ages of 12 and 17 years of age, including all genders and ethnicities.

**Table 1: University Hospital SUNY Health Science Center Services**

AIDS Center	Medical Services - Primary Care
Ambulatory Surgery - Multi Specialty	Medical Social Services
Audiology O/P	Medical/Surgical
Burn Center	Nuclear Medicine - Diagnostic
Burns Care	Nuclear Medicine - Therapeutic
Cardiac Catheterization - Adult Diagnostic	Pediatric
Cardiac Catheterization - Electrophysiology (EP)	Pediatric Intensive Care
Cardiac Catheterization - Pediatric Diagnostic	Physical Medical Rehabilitation
Cardiac Catheterization - PCI	Psychiatric
Cardiac Surgery - Adult	Radiology - Diagnostic
Cardiac Surgery - Pediatric	Radiology-Therapeutic
Certified Mental Health Services O/P	Renal Dialysis - Acute
Clinic Part Time Services	Respiratory Care
Clinical Laboratory Service	SAFE Center
Coma Recovery	Stroke Center
Coronary Care	Therapy - Occupational O/P
Dental O/P	Therapy - Physical O/P
Emergency Department	Therapy - Speech Language Pathology
Intensive Care	Therapy - Vocational Rehabilitation O/P
Linear Accelerator	Transplant - Bone Marrow
Lithotripsy	Transplant - Kidney
Medical Services - Other Medical Specialties	Traumatic Brain Injury Program

Source: HFIS 2017

**Table 2: University Hospital SUNY Health Science Center Beds**

<b>Bed Type</b>	<b>Current Beds</b>	<b>Bed Change</b>	<b>Beds Upon Completion</b>
Bone Marrow Transplant	4		4
Burns Care	6		6
Coma Recovery	2		2
Coronary Care	8		8
Intensive Care	45		45
Medical / Surgical	215		215
Pediatric	46		46
Pediatric ICU	15		15
Physical Medicine & Rehabilitation	30		30
Prisoner	10		10
Psychiatric	24	8	32
Traumatic Brain Injury	4		4
<b>Total</b>	<b>409</b>	<b>8</b>	<b>417</b>

Source: HFIS 2017

In 2017, Upstate had at least 2,000 adolescents come through the emergency room who required a psychiatric consultation. There are typically several children waiting on standard medical units for placement into inpatient psychiatric units (usually in the Buffalo or Albany area). This year the facility claims it peaked at 20+ children awaiting placement at any given time. Distressed teens are held in med/surg units, sometimes for weeks, awaiting placement. The plan is to enhance a psychiatric consultation team to better serve the teens being held on the medical units and to open and staff an eight-bed inpatient unit.

#### Conclusion

The eight-bed unit will help address adolescents waiting for psychiatric beds.

#### Recommendation

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

## Program Analysis

#### Program Description

University Hospital SUNY Health Science Center, located at 750 East Adams Street in Syracuse (Onondaga County), seeks to renovate a vacant unit on the seventh floor of the west wing of University Hospital for a new eight-bed adolescent psychiatry unit.

The population to be served by the unit are adolescents between 12 and 17 years of age. The applicant anticipates that the proposed unit will fill a gap that exists in the community for patients suffering with mental health issues by providing a short stay inpatient unit that allows treatment closer to home rather than being transferred outside of the area.

Staffing will increase by 33.1 FTEs in the first year after completion and remain at that level through the third year of operation.

The unit was planned and designed to create a safe environment that provides immediate stabilizing interventions for children, while maintaining close proximity to their families. The unit will have eight private patient rooms with attached private toilet and shower combination rooms, and will be highly secured with sally port entrances at both entrances to the unit. The unit will also be configured to allow for separation of activity and bed zones to encourage patients to participate in daily group activities and treatment.

### Compliance with Applicable Codes, Rules and Regulations

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

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Total Project Cost and Financing

Total project costs, estimated at \$3,197,777, are as follows:

Renovation & Demolition	\$1,961,152
Asbestos Abatement or Removal	\$125,000
Design Contingency	\$194,956
Construction Contingency	\$194,956
Architect/Engineering Fees	\$226,261
Other Fees	\$66,550
Movable Equipment	\$232,641
Telecommunications	\$176,780
CON Application Fee	\$2,000
CON Processing Fee	<u>\$17,481</u>
Total Project Cost	\$3,197,777

Project costs are based on a start date of February 8, 2018, with a nine-month construction period. The applicant will finance to project via \$3,197,777 equity.

### Operating Budget

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

	<u>Years One and Three</u>	
	<u>Per Day</u>	<u>Total</u>
<u>Revenues</u>		
Medicaid FFS	\$862	\$290,494
Medicaid MC	\$862	\$1,099,050
Commercial	\$1,743	\$1,812,720
Private Pay	\$862	<u>\$290,494</u>
Total Revenues		\$3,306,566
<u>Expenses</u>		
Operating	\$1,119.41	\$3,104,112
Capital	<u>\$79.85</u>	<u>\$221,429</u>
Total Expenses	\$1,199.26	\$3,325,541
Net Income or (Loss)		<u>(\$18,975)</u>
Utilization (Days)		2,773



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

Medicaid FFS	12.15%
Medicaid MC	45.98%
Commercial	37.50%
Private Pay	<u>4.37%</u>
Total	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on existing Psychiatry payment rates, either specific for children or adjusted for children.
- Utilization projections are based on an assumed average occupancy of 95%,
- Expense assumptions are based upon assumed staffing levels for the unit, depreciation associated with renovation and equipment costs and current costs associated with running the facility's Psychiatric unit, adjusted for an adolescent patient population.
- Breakeven based on the projected utilization is approximately 95.51% or 2,789 days in years one and three.

The budget is reasonable.

#### Capability and Feasibility

The total project cost of \$3,197,777 will be satisfied entirely by equity from University Hospital's operations. BFA Attachment A is the 2015-2016 certified and 2017 internal financial statements for University Hospital, which show significant liquid assets to cover the total project cost for this application.

Working capital requirements are estimated at \$554,257 based on two months of third year expenses. The applicant will satisfy this requirement entirely by equity from University Hospital's operations. As shown on BFA Attachment A, the certified and internal financial statements for University Hospital, the facility has significant liquid assets to cover the working capital requirement.

SUNY Upstate Medical University projects a net loss of \$18,975 in the first and third years of operation. Revenues for Medicare, Medicaid, Commercial and Private Pay are based on existing Psychiatry rates, either specific for children or adjusted for children. The budget is reasonable. The loss will be covered by the operations of the facility.

BFA Attachment A is the 2015-2016 certified and the internal financial statements of University Hospital as of August 31, 2017. As shown, the entity achieved an average positive working capital position, an average positive net asset position and generated an average net income from operations of \$19,278,000 for the period 2015-2016 and \$4,118,000 for the period ending August 31, 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 2015-2016 Certified and 1/1/2017-8/31/2017 internal financial statements of University Hospital



**Project # 172083-C  
Specialists' One-Day Surgery Center, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Onondaga  
**Purpose:** Construction    **Acknowledged:** September 12, 2017

**Executive Summary**

**Description**

Specialists' One-Day Surgery, LLC (SODS) is a proprietary Article 28 freestanding ambulatory surgery center (FASC) located at 190 Intrepid Lane, Syracuse (Onondaga County). SODS requests approval to construct and certify a new FASC extension clinic to be located in leased space at 5801 East Taft Road in Syracuse, and to renovate and reconfigure its existing facility located at 190 Intrepid Lane. The Center is certified as a dual single-specialty FASC specializing in Orthopedics and Pain Management services. The Orthopedic practice will move to the new extension clinic site at 5801 East Taft Road, and Pain Management will remain at the 190 Intrepid Lane location under its existing lease, which expires on December 31, 2023.

The applicant indicated that the existing location cannot accommodate the current demand from its orthopedic medical staff members, and is not configured to handle more complex orthopedic cases projected to migrate from inpatient settings to outpatient settings in the next few years. In addition, the parking and waiting areas are overburdened and based on zoning and site constraints, expansion is not an option.

The new FASC extension clinic will include eight operating rooms, a prep/hold area with twelve patient stations, a twenty-seven station recovery area, twelve patient rooms for extended recovery, and requisite support areas. The current location has been in operation since 2002 and will be renovated and reconfigured for the convenience of its pain management patients.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The proposed extension clinic will have eight operating rooms. The number of operating rooms at the original site will drop to four rooms and pain management surgery services will continue to be performed there. The center's combined Medicaid and Charity Care utilization for 2014 was 8.94% and for 2015 was 9.25%.

The number of projected procedures is 9,882 in Year One with Medicaid at 11.2% and Charity Care at 0.2%.

**Program Summary**

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

**Financial Summary**

Total project costs of \$15,473,657 will be funded via \$1,625,332 in members' equity, a five-year equipment loan for \$3,007,798 at 4.89% interest, and a 15-year construction loan for \$10,840,527 at 4.89% interest. M&T Bank has provided a letter of interest. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$39,859,708	\$43,062,901
Expenses	<u>29,279,696</u>	<u>30,887,100</u>
Gain/(Loss)	\$10,580,012	\$12,175,801

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed project loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
5. Submission of MEP Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before February 1, 2018 and construction must be completed by April 30, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

**December 7, 2017**

# Need Analysis

## Analysis

The service area is Onondaga County. Specialists' One-Day Surgery has been in operation since 2002, and the current site cannot accommodate the current demand for OR time from its orthopedic medical staff and is not configured to handle more complex orthopedic cases such as spine, foot, ankle, and joint replacement surgeries which are projected to migrate from inpatient settings in the coming years. Rather than move its entire ambulatory surgery center, the applicant has decided to move just its orthopedic surgery services to the East Taft Road site.

The number of projected procedures is 9,521 in Year One and 10,283 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 for the new East Taft site.

East Taft Road Site Projections	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	78	0.82%	84	0.82%
Medicaid MC	1,108	11.64%	1,197	11.64%
Medicare FFS	1,525	16.02%	1,648	16.03%
Medicare Mc	918	9.64%	991	9.64%
Comm Ins- FFS	3,856	40.50%	4,164	40.49%
Comm Ins- MC	144	1.51%	155	1.51%
Private Pay	12	0.13%	13	0.13%
Charity Care	21	0.22%	23	0.22%
WC & Other	1,859	19.53%	2,008	19.53%
Total	9,521	100.00%	10,283	100.00%

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment. The applicant has a Financial Assistance Program that includes a sliding fee schedule. The patients are encouraged to submit applications for charity care discounts prior to or after receiving services. It is noted that Medicaid population represents 12% of the facility's visits and are projected to continue at that level.

## Conclusion

Approval of this project will accommodate the increasing demand being seen at the existing site.

## Recommendation

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

## Program Analysis

The Center aims to move its orthopedic service line to the new facility and renovate, reconfigure and downsize the Center located on Intrepid Lane to provide pain management services at that location.

<b>Proposed Operator</b>	Specialists' One-Day Surgery, LLC
<b>Extension Site Name</b>	Specialists' One-Day Surgery Center
<b>Extension Site Address</b>	5801 East Taft Road Syracuse, NY 13212
<b>Surgical Specialties</b>	Single Specialty: Orthopedics
<b>Operating Rooms</b>	8 (Class C)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday, 8:00 am to 5:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	86.9 FTEs / 92.1 FTEs
<b>Medical Director(s)</b>	J. Alan Lemley, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by St. Joseph's Hospital 8.1 miles / 15 minutes
<b>On-call service</b>	Access to the facility's on-call physician during hours when the facility is closed.

### Compliance with Applicable Codes, Rules and Regulations

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

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Lease Agreement

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

<b>Date:</b>	October 10, 2016 and modified on January 11, 2017
<b>Premises:</b>	Approximately 52,800 sq. ft. located at 5801 East Taft Road, Syracuse, NY
<b>Landlord/Owner:</b>	Notohio, LLC
<b>Lessee/Sub-lessor:</b>	SOS Realty Company, LLC
<b>Term:</b>	15 ½ years with renewal of up to three (3) 5-year terms
<b>Rental:</b>	\$448,800 annually for the first five (\$8.50 per sq. ft.) then a 10% increase in the 6 <sup>th</sup> , 10 <sup>th</sup> , 15 <sup>th</sup> , 20 <sup>th</sup> and 25 <sup>th</sup> years.
<b>Provisions:</b>	Utilities, maintenance, and taxes.

The applicant stated that this is an arm's length lease arrangement and has submitted a letter from a New York State licensed real estate broker attesting to the reasonableness of the per square foot rental.

#### Sub-Lease Agreement

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

Date:	July 1, 2017
Premises:	Approximately 52,800 sq. ft. located at 5801 East Taft Road, Syracuse, NY
Sub-landlord:	SOS Realty Company, LLC
Sub-lessee:	Specialists' One-Day Surgery, LLC
Term:	15 ½ years with renewal of up to three (3) 5-year terms (coterminous with prime lease)
Rental:	\$448,800 annually for the first five (\$8.50 per sq. ft.) then a 10% increase in the 6 <sup>th</sup> , 10 <sup>th</sup> , 15 <sup>th</sup> , 20 <sup>th</sup> and 25 <sup>th</sup> years.
Provisions:	Utilities, maintenance, and taxes. (all the terms of the prime lease)

The applicant stated that this sublease is a non-arm's length lease arrangement in that the sub-landlord and sub-lessee are affiliates based on common ownership. As previously noted, the applicant has submitted a letter from a real estate broker attesting to the reasonableness of the per square foot rental.

#### Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment is estimated at \$15,473,657, broken down as follows:

Renovation & Demolition	\$8,839,555
Site Development	437,750
Design Contingency	883,960
Construction Contingency	883,960
Architect/Engineering Fees	720,000
Construction Manager Fees	279,805
Movable Equipment	3,341,998
CON Application Fee	2,000
CON Processing Fee	<u>84,629</u>
Total Project Cost	\$15,473,657

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

The applicant's financing plan appears as follows:

Cash Equity	\$1,625,332
Equipment loan (4.89% interest, 5-year term)	3,007,798
Bank Loan (4.89% interest, 15-year term)	<u>10,840,527</u>
Total	\$15,473,657

M&T Bank has provided a letter of interest.

BFA Attachments B and C are, respectively, the 2015 and 2016 certified financial statements of Specialists' One-Day Surgery, LLC and their internal financial statements as of September 30, 2017, which show sufficient resources to meet the equity requirement.

## Operating Budget

The applicant has submitted the current year and the projected first and third years operating budgets (combined for the existing site and the proposed site), in 2017 dollars, as summarized below:

Revenues	Current (2016)		Year One		Year Three	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Medicaid FFS	\$780.71	\$92,904	\$1,268.46	\$167,437	\$1,273.46	\$180,832
Medicaid MC	\$792.96	1,339,305	\$1,290.10	2,413,768	\$1,289.89	2,606,869
Medicare FFS	\$896.93	2,393,915	\$1,094.10	2,987,992	\$1,010.66	3,227,031
Medicare MC	\$993.41	1,595,409	\$1,212.01	1,991,327	\$1,119.54	2,150,634
Commercial FFS	\$2,122.32	12,472,868	\$3,453.04	22,479,281	\$3,452.94	24,277,623
Commercial MC	\$1,947.17	426,430	\$3,162.70	768,535	\$3,168.01	830,018
Private	\$1,975.68	37,538	\$3,221.57	67,653	\$3,803.52	87,481
Charity & Discount	\$620.00	19,840	\$1,021.63	35,757	\$1,016.24	38,617
All Other & WC	\$1,752.51	<u>4,964,870</u>	\$2,851.48	<u>8,947,958</u>	\$2,850.68	<u>9,663,796</u>
Total Revenues		\$23,343,079		\$39,859,708		\$43,062,901
<b>Expenses</b>						
Operating	\$803.33	\$12,100,597	\$1,507.12	\$24,602,226	\$1,447.11	\$26,078,359
Capital	<u>\$61.49</u>	<u>926,185</u>	<u>\$286.54</u>	<u>4,677,470</u>	<u>\$266.84</u>	<u>4,808,741</u>
Total Expenses	\$864.82	\$13,026,782	\$1,793.66	\$29,279,696	\$1,713.95	\$30,887,100
Net Income (Loss)		<u>\$10,316,279</u>		<u>\$10,580,012</u>		<u>\$12,175,801</u>
Utilization FASC		15,063		16,324		18,021
Cost Per Visits		\$864.82		\$1,793.66		\$1,713.95

Utilization by payor source (combined for both sites) for the Current Year, and Years One and Three are summarized below:

Payor	Current Year		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Medicaid FFS	119	.79%	132	0.81%	142	0.79%
Medicaid MC	1,689	11.21%	1,871	11.46%	2,021	11.21%
Medicare FFS	2,669	17.72%	2,731	16.74%	3,193	17.72%
Medicare MC	1,606	10.66%	1,643	10.06%	1,921	10.66%
Commercial FFS	5,877	39.02%	6,510	39.88%	7,031	39.02%
Commercial MC	219	1.45%	243	1.49%	262	1.45%
Private	19	.13%	21	.13%	23	.13%
Charity	32	.21%	35	.21%	38	.21%
All Other	<u>2833</u>	<u>18.81%</u>	<u>3,138</u>	<u>19.22%</u>	<u>3,390</u>	<u>18.81%</u>
Total	15,063	100%	16,324	100%	18,021	100%

The following is noted with respect to the submitted budget:

- The Ambulatory Patient Group reimbursement rates reflect current and projected Federal and State government rates, with commercial and private payers reflecting adjustments based on experience in the region.
- Revenue and utilization assumptions are based upon the experience of the current members, the additional OR availability, and hiring additional clinical staff.
- Expense assumptions are based upon the experience of the members, which includes hiring 44.30 FTEs (primarily nurses, specialists, aides and therapists), as well as an increase in occupancy and supply costs.
- Breakeven is approximately 11,992 visits or 73.5% of first year projected visits.

## Capability and Feasibility

Total project costs of \$15,473,657 will be funded via \$1,625,332 in members' equity, a five-year equipment loan for \$3,007,798 at 4.89% interest, and a 15-year construction loan for \$10,840,527 at 4.89% interest. M&T Bank has provided a letter of interest.

The working capital requirement is estimated at \$2,976,720, based on two months of third year incremental expenses. Funding will come from SODS's internally generated funds including those that otherwise would be available for distribution to its members. Review of BFA Attachment B, the 2015-2016 certified financials, shows average positive working capital, average positive net assets and average positive net income of \$10,042,962. The internal financials as of September 30, 2017 (BFA Attachment C) shows positive working capital, positive net assets and net income of \$7,568,084.

The submitted budget indicates net income of \$10,580,012 and \$12,175,801 during the first and third years after certification of the extension clinic. The budget appears reasonable.

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

Recommendation

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

<b>Supplemental Information</b>
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**Surrounding Hospital Responses**

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (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.

St Joseph's Hospital Health Center -- **No Response**  
 301 Prospect Avenue  
 Syracuse, New York 13203

University Hospital SUNY Health Science Center -- **No Response**  
 750 East Adams Street  
 Syracuse, New York 13210

Crouse Hospital -- **See Below**  
 736 Irving Avenue  
 Syracuse, New York 13210

**Facility:** Crouse Hospital

Current OR Use (% of capacity)	Surgery Cases (Main Site)	Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
32 - 67% Main site 45 - 53% Off-site	Ambulatory: 43% Inpatient: 57%	Outpatient: 551 Inpatient: 1,409	Yes

Crouse Hospital opposes this application based on existing surgical capacity within the Syracuse market and the financial impact on their hospital. The associated physicians performed 551 outpatient orthopedic procedures at the Crouse sites in the last year, which if shifted to the ASC will have a negative annual impact of approximately \$1.1 million dollars. If the ASC performs total joint replacements in an ambulatory setting, this would have an additional financial impact on the hospital of approximately \$880,000.



Based on their certified financial statements the following was noted:

- In fiscal year 2015 Crouse had operating expenses of \$420,932,990 on revenue of \$417,305,511 for an operating loss of \$3,627,479. In 2016, operating expenses totaled \$421,059,009 and revenue was \$414,903,644, for an operating loss of \$6,155,365.
- Current assets in fiscal year 2015 were \$87,362,691 and current liabilities were \$56,488,243 for a working capital ratio of 1.547. In 2016, current assets were \$87,443,830, and current liabilities were \$65,472,535, for a working capital ratio of 1.336.
- In its fiscal year 2015, Crouse incurred bad debt of \$8.4 million and provided charity care in the amount of \$1.9 million. In 2016, the hospital incurred \$11.2 million in bad debt and provided \$2.3 million in charity care.

Supplemental Information from Applicant

**Need and Source of Cases:** The majority of the projected cases are current cases of the surgeons who perform procedures as the existing ASC. Due to the current demand for OR time at the existing ASC, as well as parking and waiting area inadequacies, the applicant is asking to move their current orthopedic surgical cases to this new site. The Center offers competitive salaries and benefits, maintains good human resource and communication systems and provides a positive working environment with flexible hours.

**Staff Recruitment and Retention:** New employees will be recruited from accredited schools and training programs, advertisements in local newspapers and professional publications and by word-of-mouth from existing employees.

**Office-Based Cases:** None of the projected cases are currently performed in an office-based setting.

DOH Comment

The applicant has indicated it does not intend to transition any outpatient surgeries currently performed at Crouse to their new ASC site. Rather, the cases to be performed at the new extension site are already being performed at the applicant's existing ASC site and will merely be transferred to the new site.

The hospital did not indicate which, if any, of their community-oriented services would be impacted. Additionally, while Crouse Hospital's revenues have not been keeping pace with their expenses, the reasons for such cannot be attributed solely to the loss of ambulatory surgery cases.

## Attachments

BFA Attachment A	Membership of Specialists' One-Day Surgery, LLC
BFA Attachment B	Certified Financial Statements of Specialists' One-Day Surgery, LLC for 2015 and 2016
BFA Attachment C	Internal Financial Statements of Specialists' One-Day Surgery, LLC as of September 30, 2017
BHFP Attachment	Map



**Project # 172211-C  
Brooks Memorial Hospital**

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

**County:** Chautauqua  
**Acknowledged:** October 11, 2017

**Executive Summary**

**Description**

Brooks Memorial Hospital, Inc. (Brooks), a 65-bed, voluntary not-for-profit, Article 28 acute care hospital located at 529 Central Avenue, Dunkirk (Chautauqua County), requests approval to build a replacement facility, decertify 36 total beds for net new total of 29 beds, and decertify therapeutic radiology, chronic renal dialysis, and home peritoneal dialysis training and support services. The two-story replacement facility will be constructed on approximately 25 acres located to the rear of 3710 and 3724 East Main Street in Fredonia (Chautauqua County).

Construction of the replacement facility is part of a Transformation Plan to merge Brooks with TLC Health Network Lake Shore Hospital (TLC), a 45-bed, voluntary, Article 28 hospital with a 60-bed residential health care facility located 13 miles northeast of Brooks. The merger of the two entities was contingently approved by the Public Health and Health Planning Council (PHHPC) on October 11, 2017 (CON 172071). The plan to merge the hospitals and construct a replacement facility is part of a right-sizing project aimed at creating a financially sustainable hospital entity in this Western New York region, with flexibility to accommodate current changes in technology, volume and operational constraints of rural healthcare providers.

Brooks and TLC are currently receiving State assistance through the Vital Access Provider Assurance Program (VAPAP) to maintain operations and implement this Transformation Plan to become one entity. Brooks is the recipient of a \$57,000,000 Essential Health Care

Provider Support Program (EHCPSP) grant to decertify 40 beds and construct the new 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 (SHCTP) grant through Kaleida Health's application to complete the new hospital project.

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 facilitate the creation of a sustainable system with Brooks and TLC through improving business operations and creating operational efficiencies.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

Through this project Brooks Memorial will right size their hospital by decertifying 36 inpatient beds, 14 stations for chronic renal dialysis treatment, home treatment/support, therapeutic radiology, and constructing a replacement facility.

**Program Summary**

Based on the results of this review, a favorable recommendation can be made regarding the

facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

#### Financial Summary

Project costs of \$67,166,994 will be met via equity of \$166,994, a \$57,000,000 Essential Health Care Provider Support Program (EHCPSP) grant, and a \$13,000,000 Statewide Health Care Transformation Program (SHCTP) grant. M&T Bank has provided a letter of interest to provide Bridge financing (on demand line of credit) of \$4,000,000 with interest at One Month LIBOR (1.23955% as of October 24,

2017) plus 3.5%, in conjunction with the Department of Health (DOH) grants that will fully finance the construction project. The proposed combined budget of Brooks and TLC is below

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$76,736,754	\$70,347,834	\$71,155,137
Expenses	<u>76,548,070</u>	<u>70,637,206</u>	<u>71,043,393</u>
Net Income	\$188,684	(\$289,372)	\$111,744

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation confirming final approval of the Essential Health Care Facility Transformation Program grant contract, acceptable to Department of Health. [BFA]
3. Submission of an executed bridge financing loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of the land appraisal value for the site on which the new replacement facility will be built, acceptable to the Department of Health. [BFA]
5. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]
6. Submission of Engineering (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]
7. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10NYCRR 97.12. [SEQ]

**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 April 15, 2018 and construction must be completed by October 15, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. Submission of documentation confirming final approval of the Statewide Health Care Facility Transformation Program grant contract, acceptable to Department of Health. [BFA]

Council Action Date

**December 7, 2017**

## Need Analysis

### Analysis

<b>Current Services at Brooks Memorial Hospital</b>	
Ambulatory Surgery - Multi Specialty	Medical Social Services
Clinical Laboratory Service	Medical/Surgical
Coronary Care	Nuclear Medicine - Diagnostic
Emergency Department	Radiology - Diagnostic
Home Peritoneal Dialysis Training	Radiology-Therapeutic
Intensive Care	Renal Dialysis - Acute
Level I Perinatal Care	Renal Dialysis - Chronic 14 Stations
Maternity	Therapy - Physical O/P
Medical Services - Other Medical Specialties	Therapy - Speech Language Pathology
Medical Services - Primary Care	

Source HFIS 2017

Brooks Memorial Hospital will be decertifying Home Peritoneal Dialysis Training, Chronic Renal Dialysis (14 stations), and therapeutic radiology.

Bed Type	Beds	Bed Change	Beds Upon Project Completion
Coronary Care	4	-4	0
Intensive Care	5	-1	4
Maternity	11	-7	4
Medical / Surgical	45	-24	21
<b>Total</b>	<b>65</b>	<b>-36</b>	<b>29</b>

Occupancy	Current Beds	2012	2013	2014	2015	2016
Med/Surg	54	48.0%	42.6%	40.0%	33.9%	20.7%
Pediatric	0	0.0%	0.0%	0.0%	0.0%	0.0%
Obstetric	11	31.9%	26.6%	26.9%	22.0%	8.4%
General Psychiatric	0	0.0%	0.0%	0.0%	0.0%	0.0%
Chemical Dependence	0	0.0%	0.0%	0.0%	0.0%	0.0%
High-Risk Neonates	0	0.0%	0.0%	0.0%	0.0%	0.0%
<b>Total</b>	<b>65</b>	<b>46.4%</b>	<b>40.9%</b>	<b>39.1%</b>	<b>32.4%</b>	<b>18.8%</b>

Source: SPARCS 2017

Utilization has been low throughout the past five years at Brooks Memorial Hospital. The right-sizing of this project will help align the facility for future initiatives.

### Conclusion

The healthcare market is making a shift from inpatient to outpatient services thus reducing the need for inpatient beds. Brooks Memorial is right sizing their facility through the reduction of the 36 inpatient beds.

### Recommendation

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

## Program Analysis

### Program Description

Brooks Memorial Hospital (Brooks), an existing 65-bed Article 28 hospital located at 529 Central Avenue in Dunkirk (Chautauqua County), seeks approval to build a 29-bed replacement facility to be located at 3710 and 3724 East Main Street in Fredonia (Chautauqua County). Additionally, the hospital seeks to decertify 36 total beds (for a new net total of 29 beds) and decertify therapeutic radiology, chronic renal dialysis and home peritoneal dialysis training and support. Through relocation into the new building, the Applicant aims to strengthen rural healthcare in the community that it serves by more efficiently and effectively managing services.

### Compliance with Applicable Codes, Rules and Regulations

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

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Total Project Cost and Financing

The total project cost is \$67,166,994, detailed as follows:

Land Acquisition	\$300,000
New Construction	\$41,000,000
Site Development	\$3,600,000
Design Contingency	\$4,460,000
Construction Contingency	\$2,230,000
Planning Consultant Fees	\$60,000
Architect/Engineering Fees	\$3,400,000
Construction Manager Fees	\$1,980,000
Other Fees	\$602,607
Movable Equipment	\$7,000,000
Telecommunications	\$1,165,000
Interim Interest Expense	\$1,000,000
Application Fee	\$367,387
Processing Fee	<u>\$2,000</u>
Total Project Cost	\$67,166,994

Project costs are based on a construction start date of April 15, 2018, and an eighteenth-month construction period.

The applicant's financing plan appears as follows:

Cash	\$166,994
EHCPS Grant	\$54,000,000
SHCTP Grant	<u>\$13,000,000</u>
Total Cost	\$67,166,994

M&T Bank has provided a letter of interest to provide Bridge financing (on demand line of credit) of \$4,000,000 with interest at One Month LIBOR (1.23955% as of October 24, 2017) plus 3.5% in conjunction with the DOH grants that will fully finance the construction project. Brooks is currently working with the DOH Grants Management team to finalize both the EHCPS and SHCTP Grants. Currently, no concerns have been identified regarding the applicant's ability to satisfy the grant requirements.

#### Land Purchase Agreement

The applicant has submitted an executed Land Purchase Agreement, summarized below:

Date:	September 15, 2017
Purchaser:	Lake Erie Regional Health Systems/Brook Memorial Hospital
Seller:	Country Side Sand & Gravel, Inc.
Land Acquired:	Approximately 25-26 acres located to the rear of 3710 and 3724 East Main Street, Fredonia, NY
Purchase Price:	\$300,000
Payment of the Purchase Price:	\$500 down payment paid at signing \$299,500 balance remaining to be paid upon delivery of deed.

#### Operating Budget

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

<u>Current Year – 2016</u>	<u>Brooks</u>	<u>TLC</u>	<u>Combined</u>
Operating Revenue	\$41,677,312	\$23,292,505	\$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)	<u>(\$1,338,330)</u>	<u>\$1,527,014</u>	<u>\$188,684</u>
<u>Combined</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Operating Revenue	\$65,969,817	\$70,480,897	\$71,238,200
Operating Expenses	<u>\$76,548,070</u>	<u>\$70,637,206</u>	<u>\$71,043,393</u>
Loss from operations	(\$10,578,253)	(\$156,309)	\$194,807
Government Grants/Assistance	\$8,229,368	\$0	\$0
All other Revenue/Expense	<u>\$2,537,569</u>	<u>(\$133,063)</u>	<u>(\$83,063)</u>
Total Net Income (Loss)	<u>\$188,684</u>	<u>(\$289,372)</u>	<u>\$111,744</u>

#### Capability and Feasibility

The total project cost is \$67,166,994 to be funded via equity of \$166,994, a \$57,000,000 EHCPS grant award and a \$13,000,000 SHCTP grant award. M&T Bank has provided a letter of interest to provide Bridge financing (on demand line of credit) of \$4,000,000 with interest at One Month LIBOR (1.23955% as of October 24, 2017) plus 3.5% in conjunction with the DOH grants that will fully finance the construction project.

The submitted budgets indicate a net loss (\$289,372) in the first year after the merger and construction, and a gain in the third year of \$111,744. 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 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 is 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





**Project # 172084-C  
Olean General Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Cattaraugus  
Acknowledged: August 18, 2017**

**Executive Summary**

**Description**

Olean General Hospital, Inc. (Olean, OGH), a 186-bed, voluntary not-for-profit, Article 28 acute care hospital located at 515 Main Street, Olean (Cattaraugus County), requests approval for the full asset merger of Bradford Regional Medical Center (Bradford, BRMC), a 107-bed, voluntary not-for-profit, acute care hospital located in Bradford, Pennsylvania, into OGH. Upon approval by the Public Health and Health Planning Council (PHHPC), OGH will become the successor corporate entity with an Olean division and a Bradford division. There are no bed or programmatic changes as a result of this application, and both hospitals will retain their respective State licenses.

Geographically, BRMC is located approximately three miles south of the New York State border and approximately 24 miles south of OGH. On March 31, 2009, the two hospitals entered into a Master Affiliation Agreement (MAA) with Upper Allegheny Health Systems (UAHS), whereby UAHS became the sole corporate member of OGH (active parent/co-operator establishment under CON 091090) and the sole corporate member of BRMC. The MAA empowered UAHS, acting through its Board of Directors, to approve a merger of OGH and BRMC. Upon PHHPC approval of this application, the MAA will no longer be necessary to the corporate structures and powers among UAHS, Olean and Bradford, and will be consensually terminated when the merger becomes effective. It is noted that the Board of Directors at OGH, BRMC and UAHS are all mirror Boards, which will continue after the proposed merger is finalized. There will be no change to the Board structure post

approval as the board members will remain the same.

On October 31, 2016, UAHS consummated an alignment agreement with Kaleida Health, a not-for-profit healthcare system in Western New York that provides comprehensive hospital, long-term care and home care services, whereby Kaleida Health became the sole corporate member of UAHS (grandparent to OGH). Kaleida Health will remain the sole corporate member of UAHS after approval, and UAHS will remain the active parent of OGH. BFA Attachments C and D are the organization chart of OGH and BRMC pre-merger and post-merger.

The anticipated benefits of the merger include: Medicare revenue enhancements with attainment of Sole Community Hospital status; efficiencies related to drug cost reductions under an expanded 340B program; reduction in debt principal and lower interest rate thereby lowering interest costs; and other operational expense savings due to economies of scale (combined entity audit fee and purchasing cost reductions). In addition to such direct financial benefits, liquidity is expected to improve with debt service reductions resulting in cash savings, and "extra collateral" of \$4M currently required by the BRMC Bond Insurer, which will be released for liquidity needs and capital funding.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will not be any change in beds or services and there is no anticipated change in utilization at either facility.

Program Summary

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

Financial Summary

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

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$181,052,776	\$183,023,092
Expenses	<u>184,743,323</u>	<u>182,614,770</u>
Net Income	(\$3,690,547)	\$408,332

## 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 Written Consent of the Board of Directors of Olean General Hospital, acceptable to the Department. [CSL]
2. Submission of a photocopy of the Written Consent of the Board of Directors of Bradford Hospital, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Restated Certificate of Incorporation of Olean General Hospital, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Plan of Merger of Bradford Hospital into Olean General Hospital, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Merger Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Merger of Bradford Hospital into Olean General Hospital, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Resolution of the Board of the Directors of the Upper Allegheny Health System, Inc., acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 7, 2017**

## Need Analysis

### Analysis

SPARCS utilization data is not available for Bradford Regional Medical Center because it is located out of state in Bradford Pennsylvania. Below data is for Olean General only.

	Current Beds	Occupancy				
		2012	2013	2014	2015	2016
Med/Surg	152	34.6%	34.8%	32.3%	33.0%	28.9%
Pediatric	6	7.9%	7.1%	5.6%	6.5%	5.5%
Maternity	14	36.7%	36.9%	34.6%	33.8%	33.7%
Psychiatric	14	1.6%	72.2%	71.3%	65.8%	57.7%
<b>Subtotal</b>	<b>186</b>	<b>31.6%</b>	<b>37.2%</b>	<b>35.1%</b>	<b>35.2%</b>	<b>31.5%</b>

Olean General Hospital Services	
Ambulatory Surgery - Multi Specialty	Medical Services - Other Medical Specialties
Cardiac Catheterization - Adult Diagnostic	Medical Services - Primary Care
Cardiac Catheterization - Electrophysiology (EP)	Medical Social Services
Cardiac Catheterization (PCI)	Medical/Surgical
Clinical Laboratory Service	Nuclear Medicine - Diagnostic
Coronary Care	Pediatric
Dental O/P	Psychiatric
Emergency Department	Radiology - Diagnostic
Intensive Care	Renal Dialysis - Acute
Level I Perinatal Care	Renal Dialysis - Chronic - 12 stations
Lithotripsy	SAFE Center
Maternity	Swing Bed Program

Source: HFIS 2017

### Conclusion

There will not be any impact on beds or services at either hospital. There are no anticipated changes in utilization due to the approval of this project.

### Recommendation

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

## Program Analysis

### Program Description

Upper Allegheny Health System (UAHS) is the sole member of the OGH and BRMC. UAHS's service area includes southwestern New York state and northwestern Pennsylvania.

There are no anticipated changes to beds or services at either hospital. The purpose of this transaction is to strengthen federal reimbursement improvements due to Sole Community Hospital status as well as enhancements to participation in the federal government's 340B Drug Discount Program.

## Compliance with Applicable Codes, Rules and Regulations

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

## Conclusion

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

## Recommendation

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

# Financial Analysis

## Plan of Merger

In accordance with the Plan of Merger, BRMC will merged into OGH forming a single corporate entity. There are no bed or programmatic changes to either hospital. Upon the effective date of merger, Olean's Certificate of Incorporation and By-laws will be amended and the MAA by and among UAHS, Olean and Bradford dated March 31, 2009, will terminate. UAHS will remain the sole member and active parent/co-operator of OGH. OGH will be the surviving corporate entity and the separate existence of BRMC will cease with the corporation's merger into Olean. The effective date of this Plan of Merger will be the date the Certificate is filed with the New York Secretary of State.

## Operating Budget

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

<u>2016 – Current Year</u>	<u>Olean</u>	<u>BRMC</u>
Operating Revenue	\$114,198,780	\$66,853,996
Operating Expenses	<u>117,400,719</u>	<u>67,342,604</u>
Loss from operations	(\$3,201,939)	(\$ 488,608)
<u>Combined</u>	<u>Current year</u>	<u>Year One</u>
Operating Revenue	\$181,052,776	\$183,023,902
Operating Expenses	<u>184,743,323</u>	<u>182,614,770</u>
Loss from operations	(\$3,690,547)	\$ 409,132

## Capability and Feasibility

There are no project costs associated with this application and no additional working capital requirements. The full asset merger of BRMC into OGH represents a corporate reorganization expected to provide revenue enhancement, cost efficiencies and opportunities for savings related to increased purchasing power, shared resources, and decreased salary and benefit costs.

BFA Attachment A is the 2015-2016 certified financial statements of Olean General Hospital. As shown, Olean had a positive working capital position and positive net asset position during 2015 and 2016, respectively. Also, Olean achieved an operating income of \$1,675,743 in 2015 and incurred an operating loss of \$3,201,939 in 2016. The loss was due to emergency room volume declining and a \$1,150,000 increase in salary and benefits. Also, some orthopedic related costs have increased. This proposed application will offset the losses by creating efficiencies in negotiating power with vendors and economies of scale with compensation and benefits through sharing staff and combining services.

BFA Attachment B is the 2015-2016 certified financial statements of Bradford Regional Medical Center. As shown, Bradford had a positive working capital position and positive net asset position during 2015 and 2016, respectively. Also, the entity achieved an operating income of \$83,786 in 2015 and incurred an operating loss of \$488,608 in 2016. The reason for the loss was higher insurance costs than anticipated and the start-up costs for hiring hospitalists 24 hours a day, 365 days a year which totaled \$524,000. To offset the loss, this proposed asset merger allows both hospitals to share in the cost and

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

Recommendation

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

## Attachments

- BFA Attachment A 2015-2016 Certified Financial Statements for OGH
- BFA Attachment B 2015-2016 Certified Financial Statements for BRMC
- BFA Attachment C Organization Chart OGH and BRMC pre-merger
- BFA Attachment D Organization Chart OGH post-merger



**Project # 172133-C**  
**The New York and Presbyterian Hospital**

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

**County: Westchester**  
**Acknowledged: September 6, 2017**

**Executive Summary**

**Description**

The New York and Presbyterian Hospital (NYPH), a voluntary not-for-profit corporation that operates a major academic medical center with four divisions in New York County and one division in Westchester County, requests approval to acquire New York-Presbyterian/Lawrence Hospital (NYP/LH), a 288-bed, voluntary not-for-profit, Article 28 acute care hospital located at 55 Palmer Avenue, Bronxville (Westchester County), and to certify NYP/LH as a new division of NYPH via a plan of merger.

The current active parent and co-operator of NYP/LH is NYP Community Programs, Inc. (NYPCP), which assumed that role effective November 22, 2016 (CON 162008). NYPCP will be dis-established as the active parent of NYP/LH as part of this application request.

Upon completion of the merger, NYPH will have six divisions as follows:

1. Columbia Presbyterian Center, (1,024 beds) located at 622 West 168th Street (New York County);
2. Allen Hospital, (196 beds) located at 5141 Broadway, (New York County);
3. New York Weill Cornell Center, (862 beds) located at 525 East 68th Street, (New York County);
4. Lower Manhattan Hospital, (180 beds) located at 170 William Street, (New York County);
5. Westchester Division, (265 beds) located at 21 Bloomingdale Road, White Plains (Westchester County); and

6. Lawrence Hospital, (288 beds) located at 55 Palmer Avenue, Bronxville (Westchester County)

The applicant indicated that the purpose of this transaction is to establish a coordinated, highly integrated system with the objective of improving quality, increasing access and lowering the costs of health care in the communities served by NYP/LH. There will be no change in either authorized services or the number or type of beds as a result of approval of this project. Also, there are no projected changes in the utilization, revenues or expenses of the NYP/LH as a direct result of this project. There is no assumption of increasing payor rates as a direct result of this project. Payor rates in the future will be subject to customary and routine negotiations.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

There will be no change in either authorized services or the number or type of beds at NYP/LH as a direct result of approval of this project.

**Program Summary**

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

## Financial Summary

There are no project costs associated with this application. The projected combined budget (in thousands) is as follows:

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$5,616,709	\$5,603,789
Expenses	<u>5,212,211</u>	<u>5,199,037</u>
Net Income	\$404,498	\$404,752



## 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 Plan of Merger agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the Plan of Merger by and between New York Presbyterian Hospital and New York-Presbyterian/Lawrence Hospital, which is acceptable to the Department. [CSL]
3. Submission of a photocopy of the Certificate of Merger of New York-Presbyterian/Lawrence Hospital into New York Presbyterian Hospital, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the By-laws of New York Presbyterian Hospital, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the Amended and Restated By-laws of NYP Community Programs, Inc., which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 7, 2017**

## Need Analysis

### Background

The New York and Presbyterian Hospital (NYPH), an existing not-for-profit corporation, is seeking approval to acquire NewYork-Presbyterian/Lawrence Hospital (NYP/LH), located at 55 Palmer Avenue, Bronxville (Westchester County), New York 10708 and to certify NYP/LH as a new division of NYPH via a plan of merger.

The purpose of the transaction is to further create a coordinated, highly integrated system with the objectives of improving quality, increasing access and lowering the costs of health care in the communities served by NYP/LH.

### Conclusion

This project will not have any impact regarding need. No changes will occur with beds or services. There are also no planned staffing or revenue and expenditure changes anticipated.

### Recommendation

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

## Program Analysis

### Program Description

Upon completion of the merger, NYPH will have six divisions as follows:

Columbia Presbyterian Center 622 West 168th Street New York, NY 10032	Allen Hospital 5141 Broadway, New York, NY 10034
New York Weill Cornell Center 525 East 68th Street New York, NY 10021	Lower Manhattan Hospital 170 William Street New York, NY 10038
Westchester Division 21 Bloomingdale Road White Plains, NY 10605	<b>To be added:</b> Lawrence Hospital 55 Palmer Avenue Bronxville, NY 10708

The goal of this transaction is to create a coordinated, highly integrated system that enhances quality, increases access and lowers costs of health care in the communities served by NYP/LH.

There will be no change in either authorized services or the number or type of beds at NYP/LH as a direct result of approval of this project.

### Character and Competence

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

## 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

## Merger Agreement

The applicant has submitted a draft Merger Agreement between New York-Presbyterian/Lawrence Hospital and The New York and Presbyterian Hospital. The terms of the agreement are summarized below:

Merging Entities:	New York-Presbyterian/Lawrence Hospital (NYP/LH) and The New York and Presbyterian Hospital (NYPH)
Surviving Entity:	NYPH
Asset Acquired:	All assets
Liabilities Acquired:	All liabilities
Purchase Price:	\$0

## Operating Budget

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

	2016 (000s)		
	<u>NYPH</u>	<u>NYP/LH</u>	<u>Combined</u>
Operating Revenue	\$5,203,616	\$266,253	\$5,469,869
Operating Expenses	<u>4,927,836</u>	<u>284,375</u>	<u>5,212,211</u>
Gain (loss) from operations	\$275,780	(\$18,122)	\$257,658
All Other Revenue/Expense	<u>145,835</u>	<u>1,005</u>	<u>146,840</u>
Total Net Income (Loss)	\$421,615	(\$17,117)	\$404,498

<u>Combined</u>	<u>Current Year</u>	<u>Year One</u>
Operating Revenue	\$5,469,869	\$5,457,571
Operating Expenses	<u>5,212,211</u>	<u>5,199,037</u>
Loss from operations	\$257,658	\$258,534
All Other Revenue/Expense	<u>146,840</u>	<u>147,218</u>
Total Net Income (Loss)	\$404,498	\$405,752

## Capability and Feasibility

There are no project costs associated with this application.

The submitted budgets indicate a net income of \$405,752,000 during the first year after the merger. 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 budgets are reasonable.

BFA Attachments A and B are, respectively, the 2015-2016 certified financial statements for The New York and Presbyterian Hospital (NYPH), and their internal financials as of June 30, 2017. NYPH has maintained a positive working capital, net equity, and net income in all periods shown.

BFA Attachments C and D are, respectively, the 2015-2016 certified financial statements for New York-Presbyterian/Lawrence Hospital (NYP/LH), and their internal financials as of June 30, 2017. NYP/LH has

maintained a positive working capital and net equity in all periods shown. In 2015, 2016, and thru June 30, 2017, the hospital has shown a net loss from operations. In 2016, the net loss was predominately due to investments needed to integrate into NYPH. Also, a new cancer center was expected to open in April 2016, but did not open until October 31, 2016. In 2017, the loss is attributable to the expected loss of eight surgeons who left to pursue other opportunities outside the NYP network.

BFA Attachment E is NYP/LH's organizational chart pre- and post-merger with NYPH.

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 – 2015 -2016 certified financial statements The New York and Presbyterian Hospital
BFA Attachment B	Financial Summary - Internal financial statements of The New York and Presbyterian Hospital
BFA Attachment C	Financial Summary – 2015 -2016 certified financial statements New York- Presbyterian/Lawrence Hospital
BFA Attachment D	Financial Summary - Internal financial statements of New York- Presbyterian/Lawrence Hospital
BFA Attachment E	Pre- and Post-Merger Organization Charts



**Project # 172129-E  
Sterling Surgical Center, LLC**

**Program:** Diagnostic and Treatment Center    **County:** Erie  
**Purpose:** Establishment    **Acknowledged:** September 5, 2017

**Executive Summary**

**Description**

Sterling Surgical Center, LLC, a proprietary, multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) located at 303 Sterling Drive, Orchard Park (Erie County), requests approval for the transfer of 40% ownership interest to one new member, the withdrawal of one existing member, and a transfer of membership interest between existing members. The proposal provides for an overall change of 44% in membership interest as follows:

- Current member Patricia Davis will sell 400 Units (40% membership interest) to CH Emmaus, Inc. (CHE) for a total purchase price of \$2,230,960 (\$5,577.40 per unit);
- Current member Albert Diaz-Ordaz, M.D. will sell 30 Units (3% membership interest) to Patricia Davis for a total purchase price of \$167,322 (\$5,577.40 per unit); and
- Current member Sidney Weiss will sell his 10 Units (1% membership interest) to Patricia Davis for a total purchase price of \$55,774 (\$5,577.40 per unit), resulting in divestiture of his ownership interest in the Center.

An executed Membership Interest Purchase Agreement and the respective Sale of Membership Interest Agreements (between existing members) have been submitted detailing the above transfers of ownership interest. The respective transactions will close concurrently upon Public Health and Health Planning Council (PHHPC) approval.

The FASC currently provides ophthalmology and gastroenterology services. There will be no change in services provided and the FASC will continue to operate at its current location under the terms of its existing lease dated August 30, 2013.

CHE is a newly established New York business corporation solely owned by Catholic Health Systems, Inc. (CHS), an integrated healthcare delivery system in Western New York whose subsidiaries include acute care hospitals, nursing homes, long-term care and home care entities. CHE's joining Sterling Surgical Center, LLC is intended to build the Catholic Health System's existing outpatient surgical footprint, help recruit physicians to practice at CHS facilities, and offer patients a lower cost alternative for ambulatory surgery procedures, while utilizing physicians that are already part of CHS.

Ownership of the Sterling Surgical Center, LLC before and after the requested change is as follows:

<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Patricia Davis	89%	53%
Albert Diaz-Ordaz, M.D.	10%	7%
Sidney Weiss	1%	0%
CH Emmanus, Inc.	0%	40%

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

There will be no Need recommendation of this application.

#### Program Summary

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

#### Financial Summary

There are no project costs associated with this application. Catholic Health System, Inc. is funding the purchase price with equity. Ms. Davis will fund the total \$223,196 amount due to existing members via equity from the funds she

receives at closing of the membership interest purchase agreement with CHE. All transactions are to close concurrently.

No budget analysis was necessary as this is a transfer of 4% ownership interest among existing members plus a 40% transfer to one new member, the current majority member is remaining in the ownership structure with ongoing majority interest, and the Center is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's executed and amended First Amendment to Premises Lease Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of Carpenter Employment 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

**December 7, 2017**

## Program Analysis

### Program Description

Other than the proposed changes in membership (and membership percentages), there are no changes anticipated as a result of this proposal.

### Character and Competence

The following table details the proposed change in ownership:

<b>Member Name</b>	<b>Current</b>	<b>Proposed</b>
Patricia Davis, <i>manager</i>	89%	53%
Albert Diaz-Ordaz, M.D.	10%	7%
Sidney Weiss	1%	-----
<b>*CH Emmaus, Inc.</b>	<b>0%</b>	<b>40%</b>
<b>*Nancy Sheehan</b>		
<b>*Mark Sullivan</b>		
<b>*James Dunlop</b>		
<b>TOTAL</b>	100%	100%

***\*Members Subject to Character & Competence Review***

The new proposed member, CH Emmaus, Inc. is a not-for-profit corporation owned solely by the Catholic Health System. It is comprised of three (3) individuals who have served or are serving in key positions (Senior VP/Chief Legal Officer, Executive VP/Chief Operating Officer, and Executive VP of Finance/CFO) in the Catholic Health System. Each of the directors of CH Emmaus has over 15 years of experience in the healthcare sector.

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.

Each of the directors of CH Emmaus, Inc. disclosed that the Catholic Health System, a large health care provider that submits millions of claims to Medicaid and Medicare each year, had been involved in investigations with the New York State Office of Medicaid Inspector General or the federal U.S. Office of the Inspector General/Department of Health and Human Services (HHS), and/or the Department of Justice for possible billing errors and overpayments. During the ten-year lookback period, the Catholic Health System disclosed eight instances (the majority involving self-disclosure) where there had been a Medicare and/or Medicaid overpayment. In nearly all instances, CHS revised policy, educated staff, set up ongoing internal monitoring and repaid the overpayment (ranging from \$3,558.77 to \$206,880.28).

In March 2014, CHS disclosed that it had entered into a monetary settlement and a 5-year Corporate Integrity Agreement with the Department of Justice and HHS as a result of a Qui Tam investigation related to overpayments received from Medicare for Therapy Services provided in a Skilled Nursing Facility.

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 applicants' 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 be effectuated upon PHHPC approval. The terms are summarized below:

Date:	August 24, 2017
Facility:	Sterling Surgical Center, LLC
Seller:	Patricia Davis (Member)
Buyer:	CH Emmaus, Inc.
Interest Acquired:	400 Units (40% interest)
Purchase Price:	\$2,230,960
Payment of Purchase Price	\$100,000 deposit at execution of agreement \$2,130,960 due at closing.

Catholic Health System, Inc. is funding the purchase price with equity. BFA Attachment A, Catholic Health System, Inc.'s 2015 and 2016 certified financial statements, shows sufficient equity for the transaction.

## Sale of Membership Interest Agreements

The applicant has submitted executed sale of membership interest agreements for the sale of membership interest from current members to Patricia Davis. The terms are summarized below:

Date:	May 31, 2017
Facility:	Sterling Surgical Center, LLC
Seller:	Sidney Weiss (Current Member)
Buyer:	Patricia Davis (Current Member)
Interest Acquired:	10 Units (1% interest)
Purchase Price:	\$55,774
Payment of Purchase Price	\$55,774 due at the closing

Date:	April 6, 2017
Facility:	Sterling Surgical Center, LLC
Seller:	Albert Diaz-Ordaz, M.D. (Current Member)
Buyer:	Patricia Davis (Current Member)
Interest Acquired:	3% interest (30 Units)
Purchase Price:	\$167,322
Payment of Purchase Price	\$167,322 due at closing

Patricia Davis will sell 40% of her current 89% membership interest to CHE, and will buy a total of 4% membership interest from the two other current members of the FASC, giving her a final 53% membership interest in the Center. Ms. Davis will fund the total 4% membership interest purchase price of \$223,096 via equity received from the CHE transaction. The transactions must close concurrently in accordance with Conditions to Transaction terms specified in the membership interest purchase agreement.

#### Capability and Feasibility

There are no project costs associated with this application. CHE's 40% membership interest purchase price of \$2,230,960 will be satisfied via equity from CHS. BFA Attachment A is Catholic Health System, Inc.'s 2015 and 2016 certified financial statements, which shows sufficient equity for the transaction. As shown, CHS has maintained a positive working capital position, a positive net asset position and had an average income from operations of \$7,340,500 for the 2015-2016 period. Ms. Patricia Davis will purchase 3% membership interest from current member Albert Diaz-Ordaz, M.D. for a purchase price of \$167,322, and 1% membership interest from current member Sidney Weiss for \$55,774. Ms. Davis will fund the total 4% membership interest purchase price of \$223,096 via equity received from the CHE transaction.

No budget analysis was necessary as this is a transfer of 4% ownership interest among existing members plus a 40% transfer to one new member. The current majority member is remaining in the ownership structure with ongoing 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 Sterling Surgical Center, LLC's 2016 Tax Basis Financial Statements, which shows a positive working capital position of \$279,756 and net income of \$242,552. The facility also has a negative net asset position of \$68,604. The negative net asset position is due to reinvestment into the business with computers and electronics that needed updating.

BFA Attachment C is Sterling Surgical Center, LLC's internal financial statements as of May 31, 2017, which shows the facility maintained a positive working capital position of \$283,224 and net income of \$150,609 indicating sufficient resources to meet all the equity requirements. Also, the facility shows a positive net asset position of \$42,005 to date.

BFA Attachment D is the membership interest organizational chart of Sterling Surgical Center, LLC after closure of all transactions.

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	Catholic Health System, 2015-2016 Certified Financial Statements
BFA Attachment B	Sterling Surgical Center, LLC 2016 Tax Basis Financial Statements
BFA Attachment C	Sterling Surgical Center, LLC, 2017 Internal Financial Statements
BFA Attachment D	Sterling Surgical Center, LLC, Post 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 7th day of December 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 40% ownership interest to one (1) new member, the withdrawal of one (1) member and a transfer between existing 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:

171229 E

Sterling Surgical Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's executed and amended First Amendment to Premises Lease Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of Carpenter Employment 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 # 172060-B**  
**Starling Diagnostics, LLC d/b/a Starling Diagnostic &  
 Imaging Center**

**Program:** Diagnostic and Treatment Center    **County:** Bronx  
**Purpose:** Establishment and Construction    **Acknowledged:** August 7, 2017

**Executive Summary**

**Description**

Starling Diagnostics, LLC d/b/a Starling Diagnostic & Imaging Center, a New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 1480 East Avenue, Bronx (Bronx County). The applicant requests certification for Medical Services - Primary Care, Medical Services - Other Medical Specialties, CT Scanner and Magnetic Resonance Imaging (MRI) services. The Center will provide diagnostic imaging services including Mammography, Diagnostic X-Ray, Ultrasound and PET Scans, as well as traditional diagnostic and treatment services to residents in the Morris Park and Parkchester sections of the Bronx. The D&TC will occupy approximately 12,547 square feet of leased space in the cellar and first floor of a nine-story commercial building that is undergoing renovations.

The proposed members of the Center and their ownership percentages are as follows:

<u>Proposed Operator</u>	
Starling Diagnostics, LLC	
<u>Members</u>	<u>%</u>
Abdul Chowdhury	95%
Farhana Chowdhury	5%

Morton J. Kleiner, M.D., a Board-Certified Nephrologist, is the proposed Medical Director of the facility. Dr. Kleiner is the current owner/operator of Island Rehabilitation Services

Corporation, a proprietary, Article 28 renal dialysis center located in Staten Island that was established in 1979.

OPCHSM Recommendation  
 Contingent Approval

**Need Summary**

The center will provide the following services: Medical Services – Primary Care, Medical Services-Other Medical Services, CT Scanner and Magnetic Resonance Imaging (MRI). The number of projected visits is 12,114 including 640 MRI scans in Year One.

**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 cost of \$9,878,027 will be met with equity of \$987,803 and a bank loan for \$8,890,224 at 6.25% interest for a ten-year term. JP Morgan Chase has provided a letter of interest for the financing. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,915,080	\$5,367,440
Expenses	<u>\$3,555,420</u>	<u>\$4,499,163</u>
Net Income	\$359,660	\$868,277

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed personal home equity loan commitment to be used to fund the project, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of Starling Diagnostics, LLC, which is acceptable to the department. [CSL]
6. Submission of a photocopy of the Operating Agreement of Starling Diagnostics, LLC, which is acceptable to the department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of Engineering (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before January 1, 2018 and construction must be completed by August 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

**December 7, 2017**

## Need Analysis

### Analysis

The primary service area is the neighborhoods of Morris Park and Parkchester which are in the zip code 10462. The secondary service area would be the remainder of Bronx County. The population of Bronx County in 2010 was 1,385,108. Per the Cornell Program on Applied Demographics (PAD) projection data, the population of Bronx County is estimated to grow to 1,482,731 by 2025, an increase of 7.0%.

Areas of Bronx County are designated as Health Professional Shortage Areas (HPSA) or as a Medically Underserved Area/Population as follows:

- Parkchester/Throgs Neck – HPSA for Primary Care
- Union Port Service Area – Medically Underserved

Currently, there are 25 Article 28 diagnostic and treatment centers operating in Bronx County which offer primary care and other medical services. The center proposes to provide diagnostic imaging services and traditional diagnostic and treatment services. The center will provide the following services: CT Scan, Magnetic Resonance Imaging (MRI), Diagnostic X-Ray, Ultrasound, Primary Medical Care and other Specialty Medical Care. The number of projected visits is 12,114 including 640 MRI scans in Year One and 15,949 including 960 MRI scans in Year Three.

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

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

### Conclusion

Approval of this project will provide for improved access to imaging services for the neighborhoods of Morris Park and Parkchester and the surrounding communities within Bronx County.

### Recommendation

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

## Program Analysis

### Program Description

<b>Proposed Operator</b>	Starling Diagnostics, LLC
<b>Doing Business As</b>	Starling Diagnostic & Imaging Center
<b>Site Address</b>	1480 East Avenue Bronx, NY (Bronx County)
<b>Services</b>	Medical Services – Primary Care Medical Services – Other Medical Specialties CT Scanner Magnetic Resonance Imaging
<b>Hours of Operation</b>	Monday through Friday from 8:00 am to 6:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	15.00 FTEs /23.83 FTEs
<b>Medical Director(s)</b>	Morton Kleiner, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by St. Barnabas Hospital Center 3.6 miles / 17 minutes

### Character and Competence

The members of Starling Diagnostics, LLC are:

<u>Name</u>	<u>Interest</u>
Abdul Chowdhury, Member/Manager	95%
Farhana Chowdhury, Member	5%

Mr. Abdul Chowdhury is the founder and managing director of Lexicon Pharmacy Inc. and Lexicon Pharmacy II, Inc., pharmacies located in the Bronx and New Rochelle, respectively. Mr. Chowdhury reports that he has become familiar with pharmacy and insurance requirements and other health codes through the development of the pharmacies from the ground up. Prior to Lexicon Pharmacy, Mr. Chowdhury worked for a large accounting firm in Stamford, Connecticut as a senior and supervisor auditor/consultant. He was involved in business processes and financial audits of several mid-sized health care companies. Mr. Chowdhury was also one of the co-founders and Chief Operating Officers of Nazdaq Technologies, a company that focused on financial services clients and health care companies. He sold the company in 2013 to focus on developing the pharmacy and other projects. In addition to the above experience, Mr. Chowdhury is the director and majority proxy holder for Lexicon Hospitality which holds five hotels in its portfolio and he is also the proprietor of a tax practice.

Ms. Farhana Chowdhury is a licensed pharmacist employed as a Supervising Pharmacist by Lexicon Pharmacy. Prior to her current position, she worked from 2009 to 2013 as a Pharmacy Intern at Rite Aid Pharmacy in the Bronx.

The proposed Medical Director is Morton J. Kleiner, M.D. Dr. Kleiner is board-certified in Internal Medicine and Nephrology. He received his medical degree from New York Medical College and completed a 2-year nephrology fellowship at the Rogosin Kidney Center. He has been in practice for over 40 years.

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



## Conclusion

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

## Recommendation

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

# Financial Analysis

## Lease Rental Agreement

The applicant submitted an executed lease rental agreement for the site to be occupied upon Public Health and Health Planning Council approval of this application, summarized below:

Date:	October 5, 2016 (execution/effective date) with commencement date to be 540 days after execution date.
Premises:	Approximately 12,547 sq. ft. located at 1480 East Avenue, Bronx, New York
Lessor:	Parkchester Preservation Company, L.P.
Lessee:	Starling Diagnostics, LLC
Term:	15 years with (3) 5-year renewal options
Rental:	Years 1-5: \$179,967.96 annually (\$14,997.33 monthly or \$28.12 per sq. ft.); Years 6-10: \$197,952 annually (\$16,496.00 monthly or \$30.93 per sq. ft.); Years 11-15: \$217,728 annually (\$18,144.00 monthly or \$34.02 per sq. ft.); with Renewal option for three (3) additional periods of five (5) years each
Provisions:	Lessee shall be responsible for maintenance, real estate taxes and utilities.

The lease is an arm's length agreement. The applicant submitted an affidavit indicating that there is no relationship between the lessor and the lessee. The applicant has submitted letters from two New York State licensed realtors attesting to the reasonableness of the per square foot rental.

## Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$9,878,027, broken down as follows:

Renovation and Demolition	\$3,839,382
Design Contingency	383,938
Construction Contingency	383,938
Fixed Equipment	4,091,063
Planning Consultant Fees	75,282
Architect/Engineering Fees	301,128
Other Fees (Consultant)	75,000
Moveable Equipment	247,275
Telecommunications	55,000
Financing Costs	270,000
Interim Interest Expense	100,000
CON Fee	2,000
Additional Processing Fee	<u>54,021</u>
Total Project Cost	\$9,878,027

Project costs are based on a construction start date of January 1, 2018, and a seven-month construction period.

The applicant's financing plan appears as follows:

Equity	\$987,803
Bank Loan (10 years. 6.25% interest)	\$8,890,224

## Operating Budget

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

<u>Revenue</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid FFS	\$329.62	\$199,749	\$343.39	\$109,540
Medicaid MC	\$329.79	\$1,158,544	\$343.38	\$1,862,173
Medicare FFS	\$329.89	\$399,498	\$343.60	\$273,849
Medicare MC	\$329.73	\$998,745	\$343.38	\$1,643,094
Commercial FFS	\$329.77	\$838,946	\$343.44	\$1,040,626
Private Pay	\$329.82	<u>\$319,598</u>	\$343.38	<u>\$438,158</u>
Total Revenues		\$3,915,080		\$5,367,440
 <u>Expenses</u>				
Operating	\$183.14	\$2,218,500	\$203.77	\$3,250,000
Capital	<u>\$110.36</u>	<u>\$1,336,920</u>	<u>\$78.32</u>	<u>1,249,163</u>
Total Expenses	\$293.50	\$3,555,420	\$282.10	\$4,499,163
Net Income		<u>\$359,660</u>		<u>\$868,277</u>
Utilization (Visits)		12,114		15,949

Revenue, expense and utilization assumptions are based on the actual experience of the proposed Medical Director who is currently involved in the operation of both a private medical practice and an Article 28 D&TC. Additionally, information was obtained from Medicaid AHCF cost reports for similar type Article 28 D&TCs to confirm assumptions.

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	5.00%	2.00%
Medicaid MC	29.00%	34.00%
Medicare FFS	10.00%	5.00%
Medicare MC	25.00%	30.00%
Commercial FFS	21.00%	19.00%
Private Pay	8.00%	8.00%
Charity Care	2.00%	2.00%

## Capability and Feasibility

Total project costs of \$9,878,027 will be met with equity of \$987,803 from the proposed members and a bank loan for \$8,890,224 at 6.25% interest for a ten-year term. JP Morgan Chase has provided a letter of interest for the project cost financing at the stated terms. BFA Attachment A is the personal net worth statements of the proposed members of Starling Diagnostics, LLC, which indicates insufficient liquid resources to cover the equity and working capital needs of the project. To fund the equity requirements, proposed majority owner Abdul Chowdhury has provided a letter of interest from JP Morgan Chase for a personal loan of up to \$1,000,000 at 5% interest for a five-year term, collateralized by the value of his real estate portfolio.

Working capital requirements are estimated at \$749,861, which is equivalent to two months of third year expenses. The applicant will finance \$374,931 via a working capital loan for a three-year term at 5% interest. JP Morgan Chase has provided a letter of interest. The remaining working capital requirement of \$ 374,930 will be provided via equity from the personal resources of the proposed members of Starling Diagnostics, LLC. Abdul Chowdhury, proposed majority member, has provided an affidavit confirming his willingness to contribute resources disproportionate to his ownership interest to fulfill the equity requirements for the project.

BFA Attachment B presents the pro forma balance sheet for Starling Diagnostics, LLC as of the first day of operation, which indicates a positive net asset position of \$1,362,733.

The submitted budget projects net income of \$359,660 and \$868,277 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for diagnostic and treatment services. The submitted budget is reasonable.

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

Recommendation

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

## Attachments

BFA Attachment A	Personal net worth statement for proposed members of Starling Diagnostic and Imaging Center
BFA Attachment B	Pro Forma Balance Sheet of Starling Diagnostic and Imaging Center
BHFP Attachment	Map

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of December 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 diagnostic and treatment center to be located at 1480 East Avenue, Bronx, 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:

172060 B

FACILITY/APPLICANT:

Starling Diagnostics, LLC  
d/b/a Starling Diagnostic & Imaging Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed personal home equity loan commitment to be used to fund the project, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of Starling Diagnostics, LLC, which is acceptable to the department. [CSL]
6. Submission of a photocopy of the Operating Agreement of Starling Diagnostics, LLC, which is acceptable to the department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of Engineering (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before January 1, 2018 and construction must be completed by August 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

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



Project # 171305-E  
Fishkill Dialysis Center

**Program:** Diagnostic and Treatment Center    **County:** Dutchess  
**Purpose:** Establishment    **Acknowledged:** May 9, 2017

**Executive Summary**

**Description**

Fishkill Dialysis Center, LLC, an Article 28 renal dialysis clinic located at 60 Merritt Park Blvd., Fishkill (Dutchess County), requests approval to transfer 100% membership interest in the facility from the current sole member Mercer Fishkill, LLC to Fishkill Partners, LLC, a Delaware limited liability company, for a purchase price of \$500,000.

Ownership of the Center before and after the requested membership transfer is as follows:

<u>Current Operator</u>	
Fishkill Dialysis Center, LLC	
<u>Member</u>	
Mercer Fishkill, LLC	100%
Mark Caputo (100%)	

<u>Proposed Operator</u>	
Fishkill Dialysis Center, LLC	
<u>Members</u>	
Fishkill Partners, LLC	100%
Mercer Fishkill, LLC (50.010%)	
Hamid Mian, M.D. (10%)	
Shawn Dhupar, M.D. (10%)	
Rachna Sahityani, M.D. (10%)	
Shifa, LLC (2.495%)	
Fahim Rahim M.D. (100%)	
MMUSA, LLC (2.495%)	
Naeem Rahim M.D. (100%)	
RTS Dialysis Investments, LLC (5%)	
Robert Santelli (100%)	
St. Luke's Cornwall Hospital	

The Center currently offers Home Hemodialysis Training and Support, Home Peritoneal Dialysis Training and Support and In-Center Renal Dialysis services. There will be no change in the number of dialysis stations or services provided as a result of this application. The applicant will continue to lease the premises from 60 LBC, LLC, under the terms of the lease agreement executed March 1, 2010. The lease has an initial term of ten years with options to renew for three additional five-year terms.

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**  
There will be no Need recommendation of this application

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

**Financial Summary**  
The purchase price for the 100% membership interests in Fishkill Dialysis Center, LLC is \$500,000 to be paid from the existing cash reserves of the proposed members of Fishkill Partners LLC. The proposed budget is as follows:

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$8,755,486	\$9,852,611
Expenses	<u>\$5,946,353</u>	<u>\$6,662,741</u>
Net Income	\$2,809,133	\$3,189,870

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicant's amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
2. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the Articles of Organization of Mercer Fishkill LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the Operating Agreement of Mercer Fishkill LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the Articles of Organization of Shifa LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the Operating Agreement of Shifa LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Articles of Organization of MMUSA LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the Operating Agreement of MMUSA LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the Articles of Organization of RTS Dialysis Investments LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the Operating Agreement of RTS Dialysis Investments LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the Articles of Organization of Fishkill Partners LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the Operating Agreement of Fishkill Partners LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of Fishkill Partners LLC Application for Authority to Do Business in the State of New York, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 7, 2017**



## Program Analysis

### Program Description

Currently, the Center offers Home Hemodialysis and Home Peritoneal Dialysis Training and Support, as well as in-center renal dialysis services. There will be no change in services or number of stations as a result of this application.

### Character and Competence

Upon approval, the 100% member of member of Fishkill Dialysis Center, LLC will be Fishkill Partners LLC. The members of Fishkill Partners, LLC will be:

<b>Fishkill Partners, LLC (100% member of Fishkill Dialysis Center, LLC) will have the following members</b>	
<b><u>Members</u></b>	<b><u>Interest</u></b>
Fishkill Partners, LLC	100%
Mercer Fishkill, LLC Mark Caputo (100%)	50.010%
Hamid Mian, M.D.	10.000%
Shawn Dhupar, M.D.	10.000%
Rachna Sahityani, M.D.	10.000%
Shifa, LLC Fahim Rahim M.D. (100%)	2.495%
MMUSA, LLC Naeem Rahim M.D. (100%)	2.495%
RTS Dialysis Investments, LLC Robert Santelli (100%)	5.000%
St. Luke's Cornwall Hospital	10.000%
<b>TOTAL</b>	<b>100%</b>

The proposed Medical Director is Shawn Dhupar, M.D. Dr. Dhupar is a physician in private practice specializing 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. Dr. Mian disclosed one malpractice case in Utah with a date of occurrence of January 2010. In December 2013, the case was resolved through mediation (settlement for "nuisance value").

Regarding the Directors of St. Luke's Cornwall, Mr. Glen Heller disclosed various malpractice claims against a law firm with which he was previously affiliated and an unemployment insurance claim against his current firm. Ms. Rider disclosed that she was a defendant in a malpractice action in the State of Florida which was subsequently settled.

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

The Applicant has indicated that New York Dialysis Services, Inc. will be providing Administrative Services. On October 16, 2015, a dialysis facility located in Lindenhurst was terminated as a supplier of dialysis services under Medicare by the Centers for Medicare & Medicaid Services. New York Dialysis Services, Inc. was the provider under contract of certain administrative and consulting services.

The applicant has also indicated that two of the four managers, Messrs. McCarthy and Lane, are employed by/affiliated with Fresenius. The Department has taken the following enforcement action against Fresenius-affiliated facilities:

- On December 6, 2016, the Department issued a Stipulation and Order (S&O) and \$10,000 fine to FMS - Living Center for an Immediate Jeopardy (IJ) situation identified during an inspection that concluded on March 17, 2016. The IJ involved the failure of the facility to ensure that staff were appropriately trained on the water system and that they could demonstrate competency related to water testing.
- On April 19, 2017, the Department issued a S&O and \$8,000 fine to FMS-Soundshore Dialysis Center for an Immediate Jeopardy situation identified during an inspection on March 18, 2016. Citations were issued in the following areas: Codes and Standards, Organization and Administration, Medical Director and Operating Policies and Procedures. Specifically, the center did not appropriately identify or isolate a patient who tested positive for the Hepatitis B virus. Subsequently, the patient received two hemodialysis treatments without required isolation and seven patients were identified as potentially exposed to the virus.

#### **Star Ratings - Dialysis Facility Compare (DFC)**

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

Messrs. Caputo and Santilli have disclosed relationships to the following dialysis centers in New York State:

Facility Name	Address	Star Rating
<b><u>Caputo-Affiliated Dialysis Facilities</u></b>		
Fishkill Dialysis Center	60 Merritt Blvd, Fishkill NY 12524	☆☆☆●●
Freedom Center of Buffalo	52 S. Union Rd, Williamsville NY 14221	☆☆☆●●
Freedom Center of Bronx	1776 Eastchester Rd, Bronx NY 10461	☆☆☆●●
Freedom Center of Queens	176 Union Tpk, Fresh Meadows NY 11366	Not open long enough to supply sufficient measure data
Vestal Healthcare	116 North Jensen Rd, Vestal NY 13850	☆☆☆●●
Vestal Healthcare - UHS Dialysis Pennsylvania Ave	65 Pennsylvania Ave, Binghamton NY 13903	☆☆☆●●
Vestal Healthcare - UHS Dialysis Park Ave	27 Park Ave, Binghamton NY 13903	☆☆☆☆●
Long Island Bay Shore Dialysis	929 Sunrise Highway, Bay Shore NY 11706	☆☆☆●●
Coram Dialysis	1500 Middle Country Rd Centereach NY 11720	Not enough quality measure data to calculate a star rating
Liberty Hudson Valley Dialysis	4 Corwin Ct, Newburgh NY 12550	☆☆●●●
Beacon Dialysis	1485 Route 52, Fishkill NY 12524	Approved, not yet constructed
South Shore Dialysis Center	615 Peninsula Blvd, Hepstead, NY 11550	☆☆☆☆●
South Shore Dialysis Center	250 Petit Ave, North Bellmore NY 11710	☆☆☆☆●
<b><u>Santilli-Affiliated Dialysis Centers</u></b>		
Liberty Dialysis - Hyde Park	386 Violet Ave, Hyde Park NY 12601	Not open long enough to supply sufficient measure data
<b>Info Retrived on 10/26/17 from:</b>	<a href="https://www.medicare.gov/dialysisfacilitycompare/#">https://www.medicare.gov/dialysisfacilitycompare/#</a>	

**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 for the change in ownership to be effectuated upon Public Health and Health Planning Council (PHHPC) approval of this application, as summarized below:

Date:	June 6, 2011
Seller:	Mercer Fishkill, LLC
Buyer:	Fishkill Partners, LLC
Asset Acquired:	100% membership interest in Fishkill Dialysis Center, LLC
Purchase Price:	\$500,000
Payment of Purchase Price:	Paid from the existing cash reserves of the proposed members of Fishkill Partners, LLC.

Fishkill Dialysis Center LLC was initially approved to operate with the following ownership structure: Mercer Fishkill, LLC (70%) and Hamid Mian, M.D. (30%). On June 6, 2011, Mercer Fishkill, LLC entered into the above noted Membership Interest Purchase Agreement pursuant to which Fishkill Partners, LLC agreed to purchase 100% of the membership interest of Fishkill Dialysis Center, LLC for \$500,000, contingent upon redemption of Dr. Mian's interests and receipt of all required regulatory approvals. On August 12, 2011, Dr. Mian entered into a Redemption Agreement through which Fishkill Dialysis Center, LLC would redeem Dr. Mian 30% interest in return for \$60,000. Notice of the proposed transfer was provided to the Department under CON 161169, and the transfer of Dr. Mian's 30% interest to Mercer Fishkill, LLC was approved April 6, 2016. On April 15, 2016, Fishkill Dialysis Center LLC redeemed Dr. Mian's interest, leaving Mercer Fishkill LLC as 100% owner of Fishkill Dialysis Center LLC.

### Independent Vendor Agreement

The applicant has submitted an executed amended and restated Independent Vendor Agreement with Fishkill Partners, LLC, to be effective upon PHHPC approval, summarized as follows:

Date:	March 16, 2017
Company:	Fishkill Partners, LLC
Licensed Operator:	Fishkill Dialysis Center, LLC ("the Established Operator")
Consulting & Administrative Services Provided:	Assist in equipment and supply selection, purchase, inventory maintenance, expense payments, vendor contract negotiation; provide billing and collection services; provide accounting and financial services; provide standard policy and procedure manuals for facility to operator; make available to operator access to Ultra Care Program and other programs of Fresenius Medical Care PSO LLC; negotiate execute and maintain contracts and arrangements in name of operator; provide project development and real estate services; perform medical record audits, utilization reviews, quality assurance/control reviews and other activities and procedures as requested and necessary; provide access to applicable software/licenses to use the standard software for patient statistical profile, clinical systems, and billing and accounting systems, that Fresenius Medical Care North America provides to its own facilities and operator will be responsible for asset, commercial liability, malpractice, and umbrella insurance policies.
Term:	March 16, 2017 through January 31, 2022, unless terminated per agreement.
Compensation:	Monthly service fee equal to \$60,000 per month for the first 12 months of the Initial term adjusted annually by either fair market value rate or the same percentage increase in the Consumer Price Index, plus the Company's direct expenses applicable to the Facility to the extent reimbursable under this Agreement.

### Independent Vendor Subcontract Agreement

The applicant has submitted an executed amended and restated Independent Vendor Subcontract Agreement between New York Dialysis Services, Inc., Fishkill Partners, LLC and Fishkill Dialysis Center, LLC, to be effective upon PHHPC approval. The terms are summarized as follows:

Date:	March 16, 2017
Company Provider:	New York Dialysis Services, Inc. (affiliate of Fresenius Medical Care)
Administrator:	Fishkill Partners, LLC ("the Administrator" and proposed sole member of the Established Operator)
Licensed Operator:	Fishkill Dialysis Center, LLC ("the Established Operator")
Consulting & Administrative Services Provided	Assist in equipment and supply selection, purchase, inventory maintenance, expense payments, vendor contract negotiation; provide billing and collection services; provide accounting and financial services; provide standard policy and procedure manuals for facility to operator; make available to operator access to Ultra Care Program and other programs of Fresenius Medical Care PSO LLC; negotiate execute and maintain contracts and arrangements in name of operator; provide project development and real estate services; perform medical record audits, utilization reviews, quality assurance/control reviews and other activities and procedures as requested and necessary; provide access to applicable software licenses to use the standard software for patient statistical profile, clinical systems, and billing and accounting systems, that Fresenius Medical Care North America provides to its own facilities; operator will be responsible for asset, commercial liability, malpractice, and umbrella insurance policies.
Term:	March 16, 2017 through January 31, 2022, unless terminated per agreement.
Compensation:	Monthly service fee equal to \$27,000 per month for the first 12 months of the Initial Term, adjusted annually by either fair market value rate or same percentage increase in the Consumer Price Index, plus the Company's direct expenses applicable to the Facility to the extent reimbursable under this Agreement.

The Agreements provide that the Established Operator will have ultimate authority, responsibility and control in all final decisions associated with the services (the Reserved Powers Clause per Section 1.2 of each Agreement).

### Operating Budget

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

	Current Year (2016)		Year One	
	Per Treatment	Total	Per Treatment	Total
<u>Revenues</u>				
Medicare FSS	\$247	\$3,767,962	\$247	\$4,133,601
Medicaid FSS	\$255	\$908,592	\$255	\$1,149,133
Commercial FSS	\$2,048	<u>\$4,078,932</u>	\$2,047	<u>\$4,569,878</u>
Total Revenues		\$8,755,486		\$9,852,612
<u>Expenses</u>				
Operating	\$268	\$5,569,588	\$268	\$6,279,781
Capital	<u>\$18</u>	<u>\$376,765</u>	<u>\$16</u>	<u>\$382,960</u>
Total Expenses	\$286	\$5,946,353	\$284	\$6,662,741
Net Income (Loss)		<u>\$2,809,133</u>		<u>\$3,189,871</u>
Utilization		20,808		23,473
Cost / Treatment		\$286		\$284

Utilization by payor source for the current year and year one after the change is summarized below:

<u>Payor</u>	<u>Current Year (2016)</u>		<u>Year One</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare FFS	15,248	73%	16,728	71%
Medicaid FFS	3,568	17%	4,513	19%
Commercial FFS	<u>1,992</u>	<u>10%</u>	<u>2,232</u>	<u>10%</u>
Total	20,808	100%	23,473	100%

Revenue assumptions are based on their actual historical rates of payment by payor. They noted that their commercial rate fluctuates from \$1,009 to \$2,369 per treatment due to a high percentage of out of network commercial patients at this center. They provided documentation of their monthly revenue and number of treatments by payor (P&L schedule) in support of the rates and projected revenues.

Utilization increases are based on historical increases in treatments. Expense assumptions are based upon the historical experience of the facility over the last five years.

#### Capability and Feasibility

The purchase price for 100% of the Membership Interests in Fishkill Dialysis Center, LLC is \$500,000 and will be paid via the proposed members' personal resources.

The submitted budget indicates net income of \$3,189,871 will be generated in the first year after the change in ownership. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachments A and B are the Net Worth Statements of the proposed members of Fishkill Partners, LLC and the 2016 certified financial statements of St. Luke's Cornwall Hospital. It is noted that St. Luke's Cornwall Hospital has maintained an average negative working capital position and an average positive net asset position in 2016. The negative working capital position is caused by \$50,270,000 in long term debt being reclassified to current debt. The debt was reclassified due to financial ratio loan covenants not being maintained. No action was taken by creditors and no default occurred. Also, the facility incurred a loss from operations of \$18,673,139 in 2016. The reason for the losses were an excess of operating costs. The hospital implemented the following steps to improve operations: (1) adoption of a multi-year stabilization plan to reduce costs and increase other revenue sources, and (2) effective January 14, 2016, Montefiore Health System became the sole corporate member (passive parent) of St. Luke's Cornwall Hospital to help maximize revenue streams, reduce administrative expenses, realize economies of scale in operations, and positioning in managed care and vendor contract bargaining. The hospital is participating in the Department's Value-Based Payment Quality Improvement Program (VBPQIP) and received \$14.0 million funding via this program during the period July 1, 2016 through March 31, 2017. The hospital's VBPQIP funding is budgeted at \$19.3 million for the State Fiscal Year ending March 31, 2018. The hospital's affiliation with the Montefiore Health System and their transformation plan initiatives are progressing on track.

BFA Attachment C is the 2016 certified financial statements of Fishkill Dialysis Center, LLC. The facility had positive working capital position and a positive net asset position for the year 2016. The facility achieved net income from operations of \$2,211,213 for the year 2016.

BFA Attachment D is the internal financial statements of Fishkill Dialysis Center, LLC as of August 31, 2017, which shows the facility had a positive working capital position, a positive net asset position and achieved net income from operations of \$2,226,762 for the eight months ending August 31, 2017.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Comparative Net Worth Statements of Members of Fishkill Partners, LLC
BFA Attachment B	2016 Certified Financial Statements of St. Luke's Cornwall Hospital
BFA Attachment C	2016 Certified Financial Statements of Fishkill Dialysis Center, LLC
BFA Attachment D	August 31, 2017 Internal Financial Statements of Fishkill Dialysis Center, LLC
BFA Attachment E	Current and Proposed Ownership Structure After Membership Change

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 7th day of December 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 100% ownership interest to a new member limited liability company, 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:

171305 E

Fishkill Dialysis Center



APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
2. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
3. Submission of a photocopy of the Articles of Organization of Mercer Fishkill LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the Operating Agreement of Mercer Fishkill LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the Articles of Organization of Shifa LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the Operating Agreement of Shifa LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Articles of Organization of MMUSA LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the Operating Agreement of MMUSA LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the Articles of Organization of RTS Dialysis Investments LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the Operating Agreement of RTS Dialysis Investments LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the Articles of Organization of Fishkill Partners LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the Operating Agreement of Fishkill Partners LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of Fishkill Partners LLC Application for Authority to Do Business in the State of New York, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within 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 # 171330-E  
Queens Dialysis at The Pavilion

**Program:** Diagnostic and Treatment Center    **County:** Queens  
**Purpose:** Establishment    **Acknowledged:** May 5, 2017

**Executive Summary**

**Description**

Queens Dialysis at The Pavilion, LLC (Queens Dialysis), the operator of a 12-station, Article 28 chronic renal dialysis center located at 36-17 Parsons Boulevard, Flushing (Queens County), requests approval to transfer 70% ownership interest to six new members from one withdrawing member and two remaining members. Pursuant to a Transfer Agreement dated January 9, 2017, Bernard Fuchs will transfer 10% ownership interest to each to four family members (for a total of 40%, leaving him with 10% interest), Richard Platschek will transfer his entire 25% ownership interest to two new members (and withdraw as a member of the operator), and Deena Hersh will transfer 5% ownership to a new member (leaving her with 20% ownership interest). The total purchase price for the 70% membership interest is \$10, receipt of which has been acknowledged by the sellers. There will be no change in services as a result of the membership interest transfers.

Queens Dialysis leases space in the basement of The Pavilion of Queens for Rehabilitation and Nursing, a 302-bed, Article 28 skilled nursing facility (SNF). There will be no change in the lease terms. Under CON 161200 and effective May 19, 2017, the applicant members became the new operator of the SNF.

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

<u>Current Ownership</u>	
<u>Members</u>	<u>%</u>
Queens Dialysis at The Pavilion, LLC	
Bernard Fuchs	50%
Deena Hersh	25%
Richard Platschek	25%

<u>Proposed Ownership</u>	
Queens Dialysis at the Pavilion, LLC	
<u>Members</u>	<u>%</u>
Deena Hersh	20%
Esther Farkovits	20%
Joel Edelstein	10%
Bernard Fuchs	10%
Gerald Fuchs	10%
Tova Fuchs	10%
Israel Freund	10%
Avraham Weits	10%

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**  
There will be no Need recommendation of this application.

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

**Financial Summary**  
There are no project costs associated with this application. The current members are transferring a total of 70% ownership interest pursuant to the Transfer Agreement for a purchase price of \$10, receipt of which is deemed paid. The proposed budget is as follows:

	<u>First Year</u>
Revenues	\$3,227,507
Expenses	<u>\$2,781,120</u>
Gain/(Loss)	\$446,387

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicant's Amended 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

**December 7, 2017**

# Program Analysis

## Program Description

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	Current	Proposed
Bernard Fuchs	50%	10%
Deena Hersh	25%	20%
Richard Platschek	25%	-----
* <b>Joel Edelstein</b>	-----	10%
* <b>Gerald Fuchs</b>	-----	10%
* <b>Tova Fuchs</b>	-----	10%
* <b>Israel Freund</b>	-----	10%
* <b>Esther Farkovits</b>	-----	20%
* <b>Avraham Weits</b>	-----	10%
<b>Total</b>	100%	100%

*\*Subject to Character and Competence Review*

Each of the proposed members has disclosed ownership interest in healthcare facilities.

**Joel Edelstein** is employed as the Chief Executive Officer of The Pavilion at Queens Rehabilitation and Nursing, a 302-bed nursing and rehab facility located in Flushing.

**Gerald Fuchs** is employed as the Chief Operating Officer of The Pavilion at Queens Rehabilitation and Nursing. He is a licensed nursing home administrator with license in good standing.

**Tova Fuchs** holds a Master's degree from Adelphi University and indicated that she has been retired since 2004.

Gerald and Tova Fuchs each disclosed the following healthcare ownership interest:

Bensonhurst Center for Rehab & Healthcare (5% member)	01/2012 to present
Hopkins Center for Rehabilitation & Healthcare (3% member)	03/2011 to present

**Israel Freund** is currently employed as the Chief Financial Officer at the Pavilion at Queens Rehabilitation and Nursing. Mr. Freund has a diploma from Yeshivah Mekor Chaim and is a licensed notary public.

**Esther Farkovits** is currently employed as a teacher in Mdreshet Torah V'Chesed in Israel. Among Ms. Farkovits' health facility ownership interests are:

Bronx Gardens Rehabilitation & Nursing Center (25% member)	11/2016 to present
Cold Spring Hills Center for Nursing and Rehab (25% member)	06/2016 to present
Little Neck Care Center (50% member)	04/2011 to 1/2013
Nassau Extended Care Facility (7.25% member)	07/2004 to present
Park Avenue Extended Care Facility (7.125% member)	07/2004 to present
Riverside Nursing & Rehabilitation Center (NJ) (3.645% member)	04/2012 to present
Seagate Rehabilitation and Nursing Center (10% member)	12/2014 to present
South Shore Rehabilitation and Nursing Center (45% member)	04/2014 to present
The Citadel Rehab & Nursing Center at Kingsbridge (25% member)	08/2015 to present
Throgs Neck Extended Care Facility (7.25% member)	07/2004 to present
Townhouse Extended Care Center (7.125% member)	07/2004 to present

**Avraham Weits** is the Chief Financial Officer of the Hopkins and Bensonhurst Centers for Rehabilitation and Healthcare. Among Mr. Weits' health facility ownership interests are:

Beach Terrace Care Center (40% member)	02/2017 to present
Oceanside Care Center (55% member)	02/2017 to present
Grandell Rehabilitation and Nursing Center (50% member)	02/2017 to present

In addition to individual membership interests (as previously mentioned), several members share combined interest in the healthcare facilities.

Joel Edelstein, Gerald Fuchs, Tova Fuchs, Israel Freund and Esther Farkovits each disclosed the following ownership interests:

The Pavilion at Queens for Rehabilitation & Nursing (Farkovits 20% member, all others 10% members)	5/2017 to present
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Joel Edelstein, Gerald Fuchs, Tova Fuchs, and Israel Freund each disclosed the following ownership interests (individual membership interest noted below):

Martin County Health Care (KY) (3% member)	11/2016 to present
Maysville Nursing & Rehabilitation (KY) (3% member)	11/2016 to present
Middlesboro Nursing & Rehab (3% member)	11/2016 to present
Oakmont Manor (KY) (3% member)	11/2016 to present
Roberston County Health Care (KY) (3% member)	11/2016 to present
Lechter Manor Nursing & Rehabilitation (KY) (3% member)	11/2016 to present
The Heritage Nursing & Rehab (KY) (3% member)	11/2016 to present
Somerset Nursing & Rehab (KY) (3% member)	11/2016 to present
Ridgeway Nursing & Rehab (KY) (3% member)	11/2016 to present
Terrace Nursing & Rehab (KY) (3% member)	11/2016 to present
Grandview Nursing & Rehab (KY) (3% member)	11/2016 to present
Woodland Oaks Healthcare Facility (KY) (3% member)	11/2016 to present
Hilltop Manor Residential Care (KY) (3% member)	11/2016 to present

Curriculum vitae was similarly submitted and reviewed for the Medical Director, Ritesh Raichoudhury, M.D. Dr. Raichoudhury is a physician in private practice with over 15 years of experience, He is board-certified in Internal Medicine with board-subcertification in Nephrology.

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

Additionally, the staff from the Division of Certification & Surveillance reviewed the surveillance history of all associated facilities for the periods indicated. 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.

A review of Hopkins Center for Nursing and Healthcare for the period identified above revealed the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-12-037 issued on August 24, 2012 for surveillance findings at the Immediate Jeopardy level on April 11, 2011. Deficiencies were cited under 10 NYCRR 415.12(h)(1)(2) Quality of Care-Accidents; and 415.26 Administration.
- The Centers for Medicare & Medicaid Services (CMS) assessed a civil money penalty of \$30,600.00 for the period April 8 through April 28, 2011 for the aforementioned deficiencies. It was determined that the facility and Administrator failed to ensure that systems were in place to

adequately monitor and supervise residents with unsafe wandering behaviors who had been identified at risk for elopement. Specifically, a resident was missing for four hours and was returned to the facility by a family member.

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-15-006 issued on June 24, 2015 for surveillance findings on February 29, 2012. Deficiencies were cited under 10 NYCRR 415.3(c)(l)(ii) – Right to Refuse; Formulate Advanced Directives.

A review of Nassau Rehabilitation and Nursing Center for the period identified above revealed the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order NH-14-007 issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were cited under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment; 415.5(a) Dignity; and 415.26 Administration.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-030 issued January 11, 2016 for surveillance findings on October 15, 2012. Deficiencies were cited under 10 NYCRR 415.12(c)(1) Quality of Care – Pressure Sores.

A review of The Citadel Rehab and Nursing Center at Kingsbridge for the period identified above revealed the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-205 issued November 29, 2016 for surveillance findings on August 1, 2016. Deficiencies were cited under 10 NYCRR 415.12(h)(1) Quality of Care-Accident Free Environment and 415.26 Administration.
- The Centers for Medicare & Medicaid Services (CMS) assessed a civil money penalty of \$20,737.60 for the period August 1 through September 9, 2016 for the aforementioned deficiencies. Specifically, during a Recertification Survey completed on August 1, 2016, Immediate Jeopardy was called when it was discovered that 50 resident beds had side-rail space exceeding the FDA recommendations and the administrator failed to ensure that there were systems in place to provide a safe environment and effectively supervise and monitor residents with side rails.

A review of Townhouse Center for Rehabilitation and Nursing for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-17-011 issued on January 11, 2017 for surveillance findings on July 18, 2016. Deficiencies were cited under 10 NYCRR 415.12(h)(1) Quality of Care-Accident Free Environment and 415.26 Administration.
- The Centers for Medicare & Medicaid Services (CMS) assessed a civil money penalty of \$51,006.80 for the period July 14 through August 22, 2016 for the aforementioned deficiencies at the Immediate Jeopardy level. Specifically, the Administrator failed to identify the potential for entrapment risk with side rails.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH 17-035 issued on May 22, 2017 for surveillance findings on January 10, 2017. Deficiencies were cited under 10 NYCRR 415.4(a)(2-7) Physical Restraints-Resident Behavior and Facility practice.

#### 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

### Transfer Agreement

An executed membership transfer agreement to be effectuated upon Public Health and Health Planning Council (PHHPC) approval has been submitted. The terms are detailed below:

Date:	January 9, 2017
Sellers:	Queens Dialysis at The Pavilion, LLC current members: Bernard Fuchs, Denna Hersh and Richard Platschek
Buyers:	Joel Edelstein (son-in-law), Gerald Fuchs (son), Tova Fuchs (daughter-in-law), Israel Freund (son-in-law), Esther Farkovits, and Avraham Weits.
% Transferred:	70% membership interest as follows: Joel Edelstein (10%), Gerald Fuchs (10%), Tova Fuchs (10%) Israel Freund (10%), Esther Farkovits (20%), and Avraham Weits (10%),
Purchase Price:	\$10 and other good and valuable consideration (deemed paid).

### Operating Budget

The applicant has provided the current year (2016) results and the first-year operating budget subsequent to the transfer in ownership, in 2017 dollars, summarized below:

Revenues	Current Year		Year One	
	Per Diem	Total	Per Diem	Total
Medicaid	\$380.11	\$223,883	\$380.11	\$223,883
Medicare	\$234.28	\$1,778,195	\$234.28	\$1,778,195
Private Pay/Other Ins.	\$358.73	<u>\$1,225,429</u>	\$358.73	<u>\$1,225,429</u>
Total		\$3,227,507		\$3,227,507
Expenses	Current Year		Year One	
Operating	\$206.35	\$2,392,580	\$206.35	\$2,392,580
Capital	<u>\$33.51</u>	<u>\$388,540</u>	<u>\$33.51</u>	<u>\$388,540</u>
Total Expenses	\$239.86	\$2,781,120	\$239.86	\$2,781,120
Net Income		<u>\$446,387</u>		<u>\$446,387</u>
Visits/Procedures		11,595		11,595

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

- The current year reflects the facility's 2016 revenue and expenses.
- Medicaid revenue is based on the facility's current 2016 Medicaid rate. The current year Medicare rate and private pay rate are the actual daily rate experienced by the facility during 2016.
- Expense and staffing assumptions are based on the operator's current model.
- Utilization by payor source for the first and third year after the change in ownership is summarized below:

Payor	Current Year		Year One	
	Visits	%	Visits	%
Medicaid FFS	589	5.08%	589	5.08%
Medicare FFS	7,590	65.46%	7,590	65.46%
Private Pay/Other Ins.	<u>3,416</u>	<u>29.46%</u>	<u>3,416</u>	<u>29.46%</u>
Total	11,595	100%	11,595	100%

- The breakeven utilization is projected at 9,991 visits for the first year.

### Capability and Feasibility

There are no project costs associated with this application. Current members Bernard Fuchs, Deena Hersh, and Richard Platschek are transferring 70% ownership interest to six new members for a total purchase price of \$10 (paid). Upon PHHPC approval, Mr. Platschek will withdraw as a member of the

operator. BFA Attachment A is a summary of the net worth statements of the proposed new members, which shows sufficient equity.

The facility is not proposing to change its business model. Net income is expected to be \$446,387 in the first and third years. Working capital will continue to be provided from ongoing operations.

BFA Attachment B is the 2016 certified financial statements of Queens Dialysis at the Pavilion, LLC. As shown, the facility had a positive working capital position and positive net asset position and the entity generated an operating income of \$446,433 during 2016. BFA Attachment C is the draft financial statements of Queens Dialysis at the Pavilion, LLC as of June 30, 2017, which demonstrates \$216,711 in net income for the period shown.

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

Recommendation

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

## Attachments

BFA Attachment A	Personal net worth statements of proposed new members
BFA Attachment B	2016 certified financial statement, Queens Dialysis at the Pavilion, LLC
BFA Attachment C	2017 Internal financial statement, Queens Dialysis at the Pavilion, 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 7th day of December 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 70% ownership interest to six (6) new members from one (1) withdrawing member and two (2) 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:

171330 E

Queens Dialysis at The Pavilion

APPROVAL CONTINGENT UPON:

1. 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 # 171447-B  
Freedom Center of Westmere, LLC

**Program:** Diagnostic and Treatment Center      **County:** Albany  
**Purpose:** Establishment and Construction      **Acknowledged:** July 14, 2017

**Executive Summary**

**Description**

Freedom Center of Westmere, LLC, a New York limited liability company, requests approval to be established as the new operator of FMS - Westmere Dialysis Center, a 12-station, proprietary, Article 28 chronic renal dialysis center located at 178 Washington Avenue Extension, Albany (Albany County), and to increase the number of certified stations to 17. The facility was established under CON 151056 as an extension clinic of FMS - Southern Manhattan Dialysis Center, which is operated by New York Dialysis Services, Inc., and became operational effective February 26, 2016. The Center is licensed to provide chronic renal dialysis, home peritoneal dialysis training and support, and home hemodialysis training and support services. New York Dialysis Services, Inc. is a wholly-owned subsidiary of Fresenius Medical Care Holdings, Inc., which operates outpatient dialysis clinics at various locations in New York State.

The proposed members of Freedom Center of Westmere, LLC are:

New York Dialysis Services, Inc.	51%
Renal Venture Group, LLC	49%
Vincent Carsillo, II, D.O.	(20%)
Jorge Cerda, M.D.	(16%)
James F. Horn, M.D.	(16%)
Mohammed A. Monzur, M.D.	(16%)
Thomas C. Schumacher, D.O.	(16%)
Page V. Salenger, M.D.	(16%)

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**  
Projected need supports the approval of the five additional stations. Albany County is seeing an increase in residents needing ESRD treatment.

**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**  
Project costs of \$71,088 for moveable equipment will be financed via equity from the proposed members. The proposed budget is as follows:

	<u>Third Year</u>
Revenues	\$4,318,472
Expenses	<u>3,314,147</u>
Gain	\$1,004,325

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed Special Bill of Sale - Assignment and Assumption Agreement (related to inventory, prepaid and other current assets under the Asset Purchase Agreement), acceptable to the Department of Health. [BFA]
3. Submission of an executed Lease Assignment Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Freedom Center of Westmere, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed First Amendment to the Operating Agreement of Freedom Center of Westmere, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Limited Administrative Services Agreement, acceptable to the Department. [CSL]
9. Submission of the applicant's executed Assignment of Lease, acceptable to the Department. [CSL]
10. Submission of a photocopy of the Article 28 Asset Purchase Agreement between Freedom Center of Westmere LLC and New York Dialysis Services, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Amended Articles of Organization of Renal Venture Group, LLC, acceptable to the Department. [CSL]
12. Submission of the Certificate of Incorporation of Fresenius Medical Care Holdings, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the amended Operating Agreement of Renal Venture Group, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the amended Certificate of Amendment of the Certificate of Incorporation of New York Dialysis Services, Inc. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 7, 2017**

## Need Analysis

### Analysis

The primary service area for the facility is Albany County, which had a population estimate of 308,846 for 2016. The percentage of the population aged 65 and over was 16%. The nonwhite population percentage was 23.5%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Albany County and New York State are shown below.

	Albany County	New York State
Ages 65 and Over:	16.0%	15.4%
Nonwhite:	23.5%	30.1%

Source: U.S. Census 2017

### Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is as follows:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free-standing station per year is 156.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, most of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.

Chronic End Stage Renal Disease (Dialysis) Resources / Need Projected Through 2021							
County	Existing Resources	Approved Resources	Total Current Resources	Projected Need 2021	Unmet Need 021	County-wide Stations Under Review	Additional Need After Approval
	a	b	c	d	e	f	g
			( a + b )		( d - c )		( e - f )
<b>Albany</b>	92	17	109	139	30	11	19
Column (a): Existing Resources: Stations in Operation							
Column (b): Approved Resources: Stations Approved but Not Yet Operating							
Column (d): Total Calculated Need							
Column (f): Submitted Projects Under Review							

The need for a local provider of services is critical in dialysis care, due to the amount of time spent in treatment. In addition, the increasing obesity rates and the higher than expected rates of diabetes (and that disease's relationship to End Stage Renal Disease), as well as the aging of the population in general, indicate that there will be a continued and increased need for dialysis services in the County in the future.

### Conclusion

The projected need supports the additional five stations.

### Recommendation

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

## Program Analysis

### Project Proposal

Freedom Center of Westmere, LLC, requests approval to become the new operator of FMS-Westmere Dialysis Center, a 12-station, Article 28 chronic renal dialysis center located at 178 Washington Avenue Extension in Albany (Albany County) and to increase the number of certified stations to 17 stations.

The facility is currently operated by New York Dialysis Services, Inc. (NYDS) as an extension clinic. NYDS is a wholly-owned subsidiary of Fresenius Medical Care Holdings, Inc., which operates outpatient dialysis clinics at various locations in New York State.

Staffing is expected to increase by 3.3 FTEs in year one and increase 11.3 FTEs by year three of the completed project.

### Character and Competence

The proposed membership of Freedom Center of Westmere, LLC is provided in the chart below.

<b>Member Name/Title</b>	<b>Interest</b>
<b>New York Dialysis Services, Inc.</b>	<b>51.0%</b>
William Valle, <i>Director and Vice President</i>	
Joseph Ruma, <i>Vice President</i>	
Mark Fawcett, <i>Treasurer</i>	
Karen Gledhill, <i>Secretary</i>	
Thomas Brouillard, <i>Asst. Treasurer</i>	
Ronald Rodgers, <i>Director</i>	
Ryan Valle, <i>Officer and Vice President</i>	
<b>Renal Venture Group, LLC</b>	<b>49.0%</b>
Vincent Carsillo, II, D.O. (20%)	
Jorge Cerda, M.D. (16%)	
James F. Horn, M.D. (16%)	
Mohammed A. Monzur, M.D. (16%)	
Thomas C. Schumacher, D.O. (16%)	
Page V. Salenger, M.D. (16%)	

The proposed managers of Freedom Center of Westmere, LLC have been identified as:

- Lane McCarthy
- Vincent Carsillo, II, D.O.
- Mark Kehoe
- Thomas Schumacher, D.O.

Fresenius is the parent company of New York Dialysis Services, Inc. Each of the members of New York Dialysis, Inc. is employed by Fresenius Medical Care. Each of the members of Renal Venture Group, LLC is a practicing Nephrologist. Mr. McCarthy is the Regional Vice President for Fresenius Management Services, Inc. Mr. Kehoe is the General Manager of the Northeast Group for Fresenius Medical Care.

Dr. Vincent Carsillo will continue as the Medical Director of the Center. Dr. Carsillo completed a nephrology fellowship at the Albert Einstein Medical Center and is a board-certified Internist with board sub-certification in Nephrology. He has over 13 years of experience in the field of nephrology and dialysis therapy.

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

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

On October 16, 2015, a dialysis facility located in Lindenhurst was terminated as a supplier of dialysis services under Medicare by the Centers for Medicare & Medicaid Services. New York Dialysis Services, Inc. was the provider under contract of certain administrative and consulting services.

The Department has taken the following enforcement action against Fresenius-affiliated facilities:

- On December 6, 2016, the Department issued a Stipulation and Order and \$10,000 fine to FMS - Living Center for an Immediate Jeopardy (IJ) situation identified during an inspection that concluded on March 17, 2016. The IJ involved the failure of the facility to ensure that staff were appropriately trained on the water system and that they could demonstrate competency related to water testing.
- On April 19, 2017, the Department issued a Stipulation and Order and \$8,000 fine to FMS-Soundshore Dialysis Center for an Immediate Jeopardy situation identified during an inspection on March 18, 2016. The center was cited in the following areas: Codes and Standards, Organization and Administration, Medical Director and Operating Policies and Procedures. Specifically, the center did not appropriately identify or isolate a patient who tested positive for the Hepatitis B virus. Subsequently, the patient received two hemodialysis treatments without required isolation and seven patients were identified as potentially exposed to the virus.

Related to Fresenius, Fresenius Medical Care Holdings (FMCH) disclosed lawsuits and investigations, several of which have been dismissed or concluded in FMCH's favor or without any action taken against FMCH or its subsidiaries. The following matters remain open and FMCH reported it is cooperating with the investigations:

- On February 15, 2011, a Whistleblower Action under the False Claims Act against FMCH was unsealed. The allegations in the action related to the company seeking and receiving reimbursement from government payors for medications and laboratory tests that were medically unnecessary.
- In July 2015, the Attorney General for Hawaii issued a civil complaint under the Hawaii False Claims Act alleging that subsidiaries of FMCH conspired to overbill Hawaii Medicaid for Epogen administrations between 2006 to 2010 (prior to FMCH's acquisition of the subsidiaries).
- On August 31 and November 25, 2015, respectively, FMCH received subpoenas from the U.S. Attorneys for the District of Colorado and the Eastern District of New York inquiring into FMCH's participation in and management of dialysis facility joint ventures in which physicians are partners.
- On October 6, 2015, The Office of Inspector General of the U.S. Department of Health and Human Services (OIG) subpoenaed FMCH seeking information about utilization and invoicing by Fresenius Vascular Care facilities.
- On June 30, 2016, the U.S. Attorney for the Northern District of Texas (Dallas) subpoenaed FMCH seeking information about the use and management of the pharmaceutical Velphoro and FMCH's interactions with DaVita Healthcare Partners, Inc.
- On November 18, 2016, the U.S. Attorney for the Eastern District of New York subpoenaed FMCH under the False Claims Act relating to operations of Shiel Medical Laboratory, Inc., which FMCH acquired in October 2013. FMCH discovered falsifications and misrepresentations in documents submitted by a Shiel salesperson. FMCH terminated the employee but may be subject to liability for overpayments and penalties.

- On January 3, 2017, the U.S. Attorney for the District of Massachusetts subpoenaed FMCH under the False Claims Act inquiring into the interactions, relationships and charitable contributions of the company with the American Kidney Fund.
- On March 20, 2017, the Western District of Tennessee subpoenaed FMCH inquiring into certain operation of dialysis facility joint ventures with the University of Tennessee Medical group and divestiture to Satellite Dialysis.
- In May 2017, the U.S. Attorney for the Middle District of Tennessee issued subpoenas to FMCH and two subsidiaries under the False Claims Act relating to allegations of improper inducements to dialysis patients to fill oral prescriptions through FMCH's pharmacy service and improper billing.

#### Star Ratings - Dialysis Facility Compare (DFC)

Fresenius operates over 2,000 dialysis centers (more than 40 of which are located in New York State). New York Dialysis Services, Inc. (NYDS) is a wholly-owned subsidiary of Fresenius Medical Care Holdings, Inc. A comprehensive list of the Star Ratings for all dialysis centers that NYDS operates or is affiliated with in New York State is provided in **HSP Attachment A**.

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

#### Conclusion

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

#### Recommendation

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



## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement (APA) for the operating interests of the Center. The agreement will become effectuated upon Public Health and Health Planning Council (PHHPC) approval of this CON application. The APA includes a Special Bill of Sale - Assignment and Assumption Agreement, which remains in draft. The terms of the agreement are summarized below:

Date:	May 2, 2016
Purchaser:	Freedom Center of Westmere, LLC
Seller:	New York Dialysis Services, Inc.
Transferred Assets:	All assets used in the operation of the facility. Cash and cash equivalents; transferrable warranties for construction; equipment and leasehold improvements; accounts receivable; and copies of patient lists, patient appointment books and other medical records to the extent permitted by applicable Legal Requirements (collectively, the "Medical Records"), but excluding the Excluded Assets.
Excluded Assets:	Excluded contacts; third-party software that is not assignable; income tax refunds and tax deposits; minute books or similar company records and tax returns of seller; insurance policies; and other assets of the seller that are not used exclusively in the Business.
Assumed Liabilities:	Any liability arising on or after the closing date of this agreement.
Rights Assigned:	Transferor sells, assigns, transfers and conveys to the transferee and its successors and assigns all the Transferor's rights, title and interest in and to the inventory, prepaid assets and other current assets free and clear of any liens, claims and encumbrances. (Subject to execution of the Special Bill of Sale - Assignment and Assumption Agreement).
Purchase Price:	\$3,928 plus the value of usable inventory and prepaid expenses and further adjusted for certain negligible balance sheet items.
Payment of Purchase Price:	\$3,928 Cash at closing.

The purchase price shall be paid from the existing cash reserves of Freedom Center of Westmere, LLC.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 3, 2017, the facility has no outstanding Medicaid overpayment liabilities.

### Limited Administrative Services Agreement

The applicant has submitted an executed Limited Administrative Services Agreement. The terms of the agreement are summarized below:

Date:	May 2, 2016
Company:	Fresenius Management Services, Inc.
Administrator:	Freedom Center of Westmere, LLC
Services Rendered:	Consulting and administrative services, selection of equipment, billing and collection, accounting and financial services, provide policy and procedure manuals, participation in the ultra-care program, negotiate and maintain service contracts, provide project development services, quality and utilization, home dialysis business and software systems.

Term:	20 years
Compensation:	\$3,036 per month (\$36,432 annually) for first 12 months and adjusted annually to reflect a fair market value rate.

While Fresenius Management Services, Inc. will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

#### Lease Agreement

The applicant will lease space on the first floor under the terms of the executed lease agreement summarized below:

Date:	March 5, 2015
Premises:	8,400 sq. ft. at 178 Washington Avenue Extension, Albany, New York
Landlord:	FC 178 WAE LLC
Tenant:	New York Dialysis Services, Inc.
Rent:	Years 1-5: \$246,120 (\$20,510/month) (\$29.30/sq. ft.); Years 6-10: \$252,924 (\$21,077/month) (\$30.11/sq. ft.); Years 10-15: \$238,644 (\$19,887/month) (\$28.41/sq. ft.).
Terms:	15 years with three five-year options to renew.
Provisions:	Taxes, utilities, maintenance and repair and insurances.

The lease is an arm's length agreement as there is no relationship between landlord and tenant.

#### Assignment of Lease

The applicant has submitted a draft lease assignment agreement for the site, summarized below:

Assignor:	New York Dialysis Services, Inc.
Assignee:	Freedom Center of Westmere, LLC
Premises:	8,000 sq. ft. located at 178 Washington Avenue Extension, Albany, New York
Consideration:	\$1.00 and other good and valuable consideration paid by Assignee to Assignor for all its right, title and interest in and to the lease entered into by and between assignor and the landlord.

#### Total Project Costs

Total project costs for movable equipment is estimated at \$71,088, detailed as follows:

Moveable Equipment	\$68,710
CON Application Fee	2,000
CON Additional Processing Fees	<u>378</u>
Total Project Cost	\$71,088

Total project costs are based on a construction start date of March 1, 2018, and completion date of a March 31, 2018. The applicant will be financing total project costs through equity.

## Operating Budget

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

	<u>First Year</u>		<u>Three Year</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$976.00	\$913,536	\$976.25	\$1,507,334
Medicare FFS	\$240.38	918,960	\$240.34	1,654,973
Medicaid FFS	\$335.06	<u>817,890</u>	\$335.12	<u>1,156,165</u>
Total Revenues		\$2,650,386		\$4,318,472
<u>Expense</u>				
Operating	\$306.63	\$2,207,729	\$271.34	\$3,223,479
Depreciation and Rent	<u>56.89</u>	<u>409,616</u>	<u>35.37</u>	<u>420,236</u>
Total Expenses	\$363.52	\$2,617,345	\$306.71	\$3,643,715
Net Income/(Loss)		<u>\$33,041</u>		<u>\$674,757</u>
Utilization (Treatments)		7,200		11,880
Cost per Treatment		\$363.52		\$306.71

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

	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	13.00%	13.00%
Medicare FFS	53.10%	57.96%
Medicaid FFS	33.90%	29.04%

The following is noted regarding the first and third year budgets:

- Expense and utilization assumptions are based on the historical experience of the existing dialysis center and extension clinic operation.
- The 2016 Medicaid APG rate for renal dialysis is reflected in the first and third year budgets. The APG rate is the base rate for New York Dialysis Services, Inc. plus additional investment and two-year phase-in capital.
- An increase in volume is projected due to the addition of the six new physician members into the operation of the renal dialysis center and the addition of five new stations.

## Capability and Feasibility

The project costs of \$71,880 associated with this application will be financed from proposed members' equity.

The working capital requirement is estimated at \$436,224 based on two months of first year expenses. Working capital will be provided through proposed members' equity. BFA Attachments A and B, Financial Summary of New York Dialysis Services, Inc. and Renal Venture Group, LLC, respectively, indicate sufficient funds available for estimated working capital. BFA Attachment C is the pro forma balance sheet of Freedom Center of Westmere, LLC as of the first day of operations.

The submitted budget projects a net income of \$33,041 and \$674,757 during the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies and contracted rates for dialysis services. The budget appears reasonable.

As shown on BFA Attachment B, New York Dialysis Services, Inc. has experienced negative working capital and a stockholder's deficit position as of as of June 30, 2017. However, the entity has maintained net income from operations of \$11,410,561 for the period. Fresenius Medical Care Holding, Inc., a publicly traded company, is the parent company of New York Dialysis, Inc. BFA Attachment D is Fresenius Medical Care's 2016 consolidated financials, which indicates the entity has maintained a positive working capital position, experienced a positive stockholder's position and generated \$1,548,851,000 in operating income in 2016, showing sufficient resources for needed capital.

Based on the preceding, and 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.**

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## Attachments

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BFA Attachment A	Net Worth statement for Renal Venture Group, LLC
BFA Attachment B	New York Dialysis Services, Inc.- internals as of June 30, 2017 financial statements
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	2016 Consolidated Financials of Fresenius Medical Care Holding, Inc.
HSP Attachment A	Star Rating Profile for New York Dialysis Services, Inc. Dialysis Centers

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of December 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 Freedom Center of Westmere, LLC as the new operator of the 12-station chronic renal dialysis center located at 178 Washington Avenue, Albany currently operated as FMS-Westmere Dialysis Center, and add five stations for a total of 17 stations, 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:

171447 B

Freedom Center of Westmere, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed Special Bill of Sale - Assignment and Assumption Agreement (related to inventory, prepaid and other current assets under the Asset Purchase Agreement), acceptable to the Department of Health. [BFA]
3. Submission of an executed Lease Assignment Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Freedom Center of Westmere, LLC, acceptable to the Department. [CSL]
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9. Submission of the applicant's executed Assignment of Lease, acceptable to the Department. [CSL]
10. Submission of a photocopy of the Article 28 Asset Purchase Agreement between Freedom Center of Westmere LLC and New York Dialysis Services, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of the Amended Articles of Organization of Renal Venture Group, LLC, acceptable to the Department. [CSL]
12. Submission of the Certificate of Incorporation of Fresenius Medical Care Holdings, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the amended Operating Agreement of Renal Venture Group, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the amended Certificate of Amendment of the Certificate of Incorporation of New York Dialysis Services, Inc. [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 # 172146-E
Roscoe Regional Healthcare, LLC d/b/a Roscoe Rehabilitation and Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Sullivan
Acknowledged: September 8, 2017

Executive Summary

Description

Roscoe Regional Healthcare, LLC, a New York limited liability company, requests approval to be established as the new operator of Roscoe Regional Rehabilitation & Residential Health Care Facility, a voluntary not-for-profit, 85-bed, Article 28 residential healthcare facility (RHCF) with two respite beds located at 420 Rockland Road, Roscoe (Sullivan County). The facility also operates a 30-slot adult day health care program (ADHCP) onsite, which will be part of this transaction request. Roscoe Community Nursing Home Co., Inc. is the current RHCF operator and realty owner. Upon approval, the facility will be known as Roscoe Rehabilitation and Nursing Center. There will be no change in beds or services provided.

On July 5, 2017, Roscoe Community Nursing Home Co., Inc. entered into an Asset Purchase Agreement (APA) with Roscoe Regional Healthcare, LLC for the sale and acquisition of the operating interests of the facility upon approval by the Public Health and Health Planning Council (PHHPC). In conjunction with the APA, Roscoe Community Nursing Home Co., Inc. entered into a Real Estate Purchase Agreement (REPA) with Roscoe Regional Holdings, LLC for the sale and acquisition of the RHCF's real property. The transactions contemplated by the APA and REPA will close simultaneously. The applicant will lease the premises from Roscoe Regional Holdings, LLC. There is a relationship between Roscoe Regional Healthcare, LLC and Roscoe Regional Holdings, LLC in that the entities have common membership. The members of Roscoe Regional

Holding, LLC are Farbenblum 2009 Irrevocable Trust (50%) and Joseph Yunger 2012 Trust (50%).

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

Table with 1 column: Current Operator. Roscoe Community Nursing Home Co., Inc. Voluntary not-for-profit

Table with 2 columns: Proposed Operator, Roscoe Regional Healthcare, LLC. Members: Edward Farbenblum (99%), Orly Lieberman (1%)

The seller decided to sell the facility due to financial difficulty they attribute to the restrictive nature of the reimbursement system and increasing regulatory requirements. They have been unable to pay New York State Assessments on a timely basis and to stay current with many other financial obligations, such as paying vendors per terms and total agreements. Attempts have been made to increase financial stability by eliminating staff positions, combining tasks and bidding for competitive pricing. While these efforts have been effective in allowing continued operation of the facility, they have not resulted in the facility attaining long-term financial success. Once the Board of Directors determined that selling the facility was in the best interest of Roscoe, they began to explore opportunities from interested multi-facility skilled nursing facility operators.



They searched for a new operator that owned multiple facilities, had a history of acquiring not-for-profit/governments facilities and had a commitment to provide quality care in an environment similar to Roscoe's. The proposed operator was selected based on a fair and reasonable purchase price offer, and Edward Farbenblum's experience as a well-known nursing home operator.

Roscoe Community Nursing Home Co., Inc. plans to convert to a foundation where the proceeds from the sale will be used to further benefit the community. The foundation will establish a scholarship fund to enhance staff training, and fund community members in need of obtaining long-term and short-term services, such as respite and adult day health care. There are no known restrictions on the property related to ownership or use.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

This project is a change in ownership. There will not be any changes to beds in the area. The last year of certified data shows the applicant operating at 96.7 percent.

#### 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. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership. It is the intent of the new operators to enter into an administrative and consulting services agreement with VestraCare, LLC. VestraCare is a related party with Edward Farbenblum holding a 66.66% interest.

#### Financial Summary

Pursuant to the terms of the APA, the estimated purchase price for the RHCF operations is \$1,962,332 calculated as follows: \$7,600,000 minus assumed Accounts Payable of \$666,526, minus Assumed Payroll Liabilities of \$56,392, plus Assumed Accounts Receivable of \$1,190,664, minus the assumed HUD loan of \$6,105,414. This results in an adjusted purchase price of \$1,962,332, which the proposed operating entity members will pay in cash to the Seller at Closing. This estimated purchase price was calculated as of June 30, 2017, and is subject to change dependent upon the balances of the assumed accounts as of the date of Closing. The proposed budget is as follows:

Revenues	\$7,663,852
Expenses	<u>7,613,122</u>
Net Income	\$50,730

## 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 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 asset purchase agreement that includes the final purchase price for the real estate and the operations, acceptable to the Department of Health. [BFA]
3. Submission of documentation of approval from the U.S. Department of Housing and Urban Development (HUD) for the change in operator of the nursing home, acceptable to the Department of Health. [BFA]
4. Submission of documentation of approval by HUD for the Health Care Facility Lease, 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 Operating Agreement of Roscoe Regional Healthcare, LLC., which is acceptable to the Department. [CSL]
7. Submission of a photocopy of the Consulting Agreement between VestraCare, LLC and Roscoe Regional Healthcare, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of Roscoe Community Nursing Home Co, Inc., or alternatively, a Certificate of Dissolution of Roscoe Community Nursing Home Co, Inc., which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

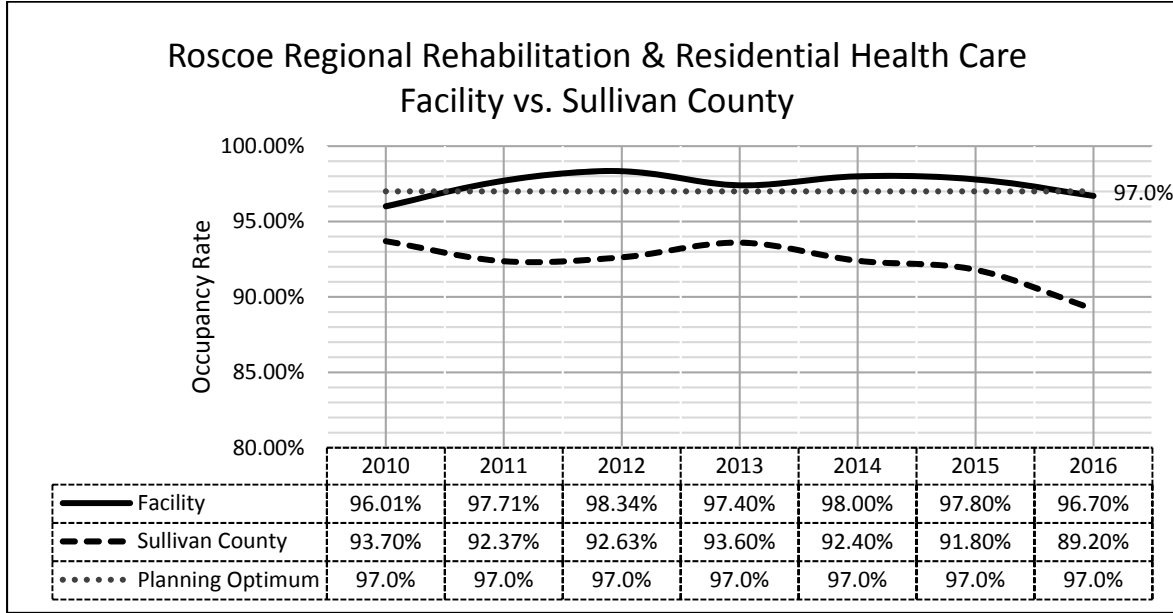
Council Action Date

**December 7, 2017**

# Need Analysis

## Analysis

The overall occupancy for Sullivan County was 89.2% for 2016 and 96.7% for Roscoe as indicated below:



Roscoe Regional Rehabilitation & Residential Health Care Facility has been operating around the 97 percent planning optimum since 2010.

## 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.

Roscoe Regional Rehabilitation & Residential Health Care Facility's Medicaid admissions exceeded the County's threshold for both 2015 and 2016 as indicated below.

	<u>2015</u>	<u>2016</u>
Roscoe Admissions	32.5%	51.2%
County Threshold	31.0%	32.2%

## Conclusion

There will be no change in beds or services and no impact on existing need or utilization in the county.

## Recommendation

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

## Program Analysis

### Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Roscoe Regional Rehabilitation and Residential Health Care Facility.	Roscoe Rehabilitation and Nursing Center
Address	420 Rockland Rd Roscoe, NY 12776	Same
RHCF Capacity	85 (+ 2 respite beds)	Same
ADHC Program Capacity	30	Same
Type of Operator	Not for Profit	LLC
Class of Operator	Voluntary	Proprietary
Operator	Roscoe Community Nursing Home Company Inc.	Roscoe Regional Healthcare, LLC Edward Farbenblum* 99.00% Orly Lieberman 1.00%
		*Managing Member

### Character and Competence - Background

#### Facilities Reviewed

Autumn View Health Care Facility, LLC	05/2017 to present
Brookhaven Health Care Facility, LLC	05/2017 to present
Garden Gate Health Care Facility, LLC	05/2017 to present
Harris Hill Nursing Facility, LLC	05/2017 to present
North Gate Health Care Facility, LLC	05/2017 to present
Seneca Health Care Center, LLC	05/2017 to present
Chautauqua Nursing and Rehabilitation Center	01/2015 to present
Golden Hill Nursing and Rehabilitation Center	10/2012 to present
Susquehanna Nursing & Rehabilitation Center	02/2005 to present
Privilege Care Diagnostic & Treatment Center	04/2008 to present
The Hamptons Center for Rehabilitation & Nursing	10/2007 to present
Autumn Woods Residential Health Care Facility LLC (MI)	05/2017 to present

#### Individual Background Review

**Edward Farbenblum** is employed at Golden Hill Advisors d/b/a VestraCare, Inc. as an advisor. He graduated from Cordoza Law School at the Yeshiva University with a Juris Doctorate degree. He is an Attorney at Law licensed through New York State with a license in good standing. Mr. Farbenblum discloses the following ownership interests in health facilities:

Autumn View Health Care Facility, LLC (10%)	05/2017 to present
Brookhaven Health Care Facility, LLC (10%)	05/2017 to present
Garden Gate Health Care Facility, LLC (10%)	05/2017 to present
Harris Hill Nursing Facility, LLC (10%)	05/2017 to present
North Gate Health Care Facility, LLC (10%)	05/2017 to present
Seneca Health Care Center, LLC (10%)	05/2017 to present
Chautauqua Nursing and Rehabilitation Center (21%)	01/2015 to present
Golden Hill Nursing and Rehabilitation Center (39.4898%)	10/2012 to present
Susquehanna Nursing & Rehabilitation Center (14.498%)	02/2005 to present
The Hamptons Center for Rehabilitation & Nursing (16%)	10/2007 to present
Privilege Care Diagnostic & Treatment Center (9.9%)	04/2008 to present
Autumn Woods Residential Health Care Facility LLC (10%) (MI)	05/2017 to present

**Orly Liberman** is employed as a Psychotherapist. She graduated from St. John's University with a Master's of Education degree. She holds a Mental Health Counseling Permit through New York State with a license in good standing.

Mrs. Lieberman discloses the following ownership interests in health facilities:

Autumn View Health Care Facility, LLC (10%)	05/2017 to present
Brookhaven Health Care Facility, LLC (10%)	05/2017 to present
Garden Gate Health Care Facility, LLC (10%)	05/2017 to present
Harris Hill Nursing Facility, LLC (10%)	05/2017 to present
North Gate Health Care Facility, LLC (10%)	05/2017 to present
Seneca Health Care Center, LLC (10%)	05/2017 to present
Autumn Woods Residential Health Care Facility LLC (10%) (MI)	05/2017 to present

Character and Competence - Analysis

A review of operations for The Hamptons Center for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order # 07-048 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, 415.12 - Quality of Care, 415.12(h)(2) - Quality of Care: Accidents, and 415.26 - Organization and Administration.
- The facility was fined \$4,000 pursuant to Stipulation and Order # 10-065 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 415.26 – Administration.
- The facility was fined \$10,000 pursuant to Stipulation and Order # 11-031 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 a reasonably prudent operator would take to prevent the recurrence of the violation.**

A review of the other facilities reveals no enforcements or civil money penalties.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	NYS Quintile
Autumn View Health Care Facility LLC	*****	****	*****	***	1
Brookhaven Health Care Facility LLC	*****	****	*****	*****	1
Garden Gate Health Care Facility	*****	****	*****	****	1
Harris Hill Nursing Facility LLC	*****	****	*****	***	1
North Gate Health Care Facility	*****	***	*****	****	1
Seneca Health Care Center	*****	****	*****	****	1
Chautauqua Nursing and Rehabilitation Center	*	**	****	*	2
Golden Hill Nursing and Rehabilitation Center	****	***	*****	***	3
Susquehanna Nursing and Rehab Center LLC	**	*	*****	***	5
The Hamptons Center for Rehabilitation and Nursing	***	***	*****	*	4

MI

Autumn Woods Residential Hlth	****	***	*****	****
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With regard to the nursing homes with a quality rating of 1 or 2, the applicant noted that for Susquehanna Nursing and Rehabilitation Center the rating is largely affected by the poor 2014 survey. They note their Quality Measures score in 2017 was 5 stars. They also are continually recruiting staff, and have put in place an employee satisfaction committee to decrease staff turnover.

For Chautauqua Nursing and Rehabilitation Center it is noted that the applicant(s) became owners in 2015, with the current rating affected by a 2014 harm level deficiency. Since 2015 there have been no harm level deficiencies.

**Project Review**

No changes in the program or physical environment are proposed in this application. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership. It is the intent of the new operators to enter into an administrative and consulting services agreement with VestraCare, LLC. VestraCare is a related party with Edward Farbenblum holding a 66.66% interest.

**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 RHC operating entity, summarized below:

Date:	July 5, 2017
Seller:	Roscoe Community Nursing Home Co., Inc.
Purchaser:	Roscoe Regional Healthcare, LLC
Assets Acquired:	Furniture, fixtures, equipment, instruments, supplies, inventories, vehicles, artwork, leasehold improvements, phone systems, computer hardware, machinery, tools, all of Seller's right, title, interest, held in any licenses, agreements, provider numbers, all books, documents and records maintained by Seller in connection with the Business, resident records and agreements maintained in connection with the Business, pre-paid expenses in connection with the Business, interest in the HUD escrow accounts, all of Seller's warrants rights and claims, all accounts receivable and notes receivable arising in the operation of the Business, interest with respect to amounts overpaid or underpaid to Seller, all of Seller's Medicare and Medicaid provider numbers relating to the Business and all of Seller's right, title and interest in bank accounts.
Excluded Assets	Seller's cash, money market accounts, cash equivalents and short-term investments as of the Closing Date, all Excluded Records, all bank account records, documents subject to subject to attorney client privilege and proprietary information owned by a third party, all of the refunds and other refunds arising out of periods prior to the Closing and all bank accounts of Seller, other than the Transferred Accounts.
Assumed Liabilities:	Any Medicare and Medicaid or other third-party payor liabilities or obligations of Seller, which after prior to, on or after the Closing Date as a result of Seller's participation in the Medicare or Medicaid programs. Any liabilities or other obligations arising or accruing under any assumed contracts, any liabilities for paid time off accrued by Seller's employees prior to Closing, any liabilities for accounts payable to Seller, the HUD mortgage and all accounting fees incurred by Seller in connection with its negotiation, execution and performance under this agreement.

Purchase Price:	Calculated as follows: \$7,600,000, plus the total amount of Accounts Receivable as of the Closing Date, less the total amount of Accounts Payable as of the Closing Date, less the amount of Accrued Employee Benefits as of the Closing Date less the HSNY Trust Workers Compensation Liability Amount as of the Closing Date and less the HUD Mortgage Amount as of the Closing Date. The applicant has estimated the purchase price to be \$1,962,332.
Payment of the Purchase Price:	\$1,962,332 cash at Closing (estimated as of June 30, 2017, subject to adjustment)

Pursuant to the terms of the APA, the estimated purchase price for the RHCF operations is \$1,962,332 calculated as follows: \$7,600,000 minus assumed Accounts Payable of \$666,526, minus Assumed Payroll Liabilities of \$56,392, plus Assumed Accounts Receivable of \$1,190,664, minus the assumed HUD loan of \$6,105,414. This results in an adjusted purchase price of \$1,962,332, which the proposed operating entity members will pay in cash to the Seller at Closing. This estimated purchase price was calculated as of June 30, 2017, and is subject to change dependent upon the balances of the assumed accounts as of the date of Closing.

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. As of October 18, 2017, the facility had an outstanding Medicaid overpayment liability of \$181,712.

#### Real Estate Purchase Agreement

The applicant has submitted an executed REPA, summarized below:

Date:	July 5, 2017
Premises:	The RHCF located at 420 Rockland Road, Roscoe, New York
Seller:	Roscoe Community Nursing Home Co., Inc.
Purchaser:	Roscoe Regional Holding, LLC
Purchase Price:	Assumption of the HUD Loan, which is approximately \$6,105,414.

The applicant indicated that the proposed realty entity has been in contact with the U.S. Department of Housing and Urban Development regarding assumption of the existing HUD loan.

#### Lease Rental Agreement

The applicant submitted an executed lease rental agreement for the site they will occupy, summarized below:

Date:	August 29, 2017
Premises:	An 85-bed nursing home located at 420 Rockland Road, Roscoe, New York
Lessor:	Roscoe Regional Holdings, LLC
Lessee:	Roscoe Regional Healthcare, LLC
Term:	30 years
Rental:	Year 1-5- \$550,000. The Base Rent shall be increased by 20% on the fifth anniversary of the Commencement Date, and every five years thereafter.

The lease agreement will be a non-arm's length lease arrangement in that the realty and operating entities have common ownership. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

## Consulting and Services Agreement

The applicant has submitted a draft consulting and services agreement, which is summarized below:

Purpose:	Provide consulting services to Roscoe Regional Rehabilitation & Residential Health Care Facility
Consultant:	Vestra Care, LLC
Facility:	Roscoe Regional Healthcare, LLC
Services Provided:	Advise the Facility Operator in the selection of equipment and supplies and the maintenance of the equipment of the Facility, the Consultant shall assist the Facility in billing and collection services, shall provide accounting and financial consulting services to the Facility, assist with the administration of the policies and procedures of the Facility, assist the Operator in performing such medical record audits and conducting utilization review and provide consultation and support with regard to information technology services.
Term:	3 years
Compensation:	The 1 <sup>st</sup> year of the term, service fee of \$25,000 per month or \$300,000 annually.

The applicant has indicated that the members of Vestra Care, LLC are Anthony Bacchi, MD. (33.33%) and Edward Farbenblum (66.66%). The agreement includes the Reserved Powers clause related to responsibilities and authorities to be retained by the established operator, which cannot be delegated, and includes an Attestation for Service Agreements dated October 3, 2017, further certifying the applicant's understanding of the statutory and regulatory requirements that cannot be delegated to a third party and that the applicant will not engage in any such illegal delegation.

## Operating Budget

The applicant has submitted an estimated 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	\$193.15	\$4,579,105	\$200.57	\$3,566,267
Medicaid MC	\$0	0	\$177.17	1,050,060
Medicare FFS	\$349.37	1,039,723	\$349.34	1,050,120
Medicare MC	\$349.37	71,970	\$349.47	72,690
Private Pay	\$290.85	929,570	\$290.85	938,866
Other		<u>7,269</u>		<u>0</u>
Total Revenues		\$6,627,637		\$6,678,003
<u>Expenses</u>				
Operating	\$223.06	\$6,711,058	\$217.54	\$6,558,688
Capital	<u>18.13</u>	<u>545,328</u>	<u>22.73</u>	<u>685,484</u>
Total Expenses	\$241.19	\$7,256,386	\$240.27	\$7,244,172
Net Income		<u>(\$628,749)</u>		<u>(\$566,169)</u>
Utilization (patient days)		30,086		30,150
Occupancy		96.97%		97.18%
Breakeven Occupancy				96.44%



The current year (2016) and first year budget for the ADHCP is as follows:

<u>ADHCP</u>	<u>Current Year</u>	<u>Year One</u>
Revenues	\$985,849	\$985,849
Expenses	<u>363,277</u>	<u>368,950</u>
Net Income	\$622,572	\$616,899
Visits	7,437	7,437
Cost Per Visit	\$48.85	\$49.61

The combined revenues and expenses for the facility are as follows:

<u>Combined</u>	<u>Current Year</u>	<u>Year One</u>
Revenues	\$7,613,486	\$7,663,852
Expenses	<u>7,619,663</u>	<u>7,613,122</u>
Net Income	<u>(\$6,177)</u>	<u>\$50,730</u>

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

- The applicant projected expense reductions for professional fees (\$35,682) and other direct expenses (\$193,149) in year one, which is due to the proposed members' experience with efficiently operating other skilled nursing facilities in New York State.
- The slight projected increase in utilization is based on the members experience and knowledge regarding the efficient, successful operation of other skilled nursing facilities in New York State.

Utilization broken down by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS	78.80%	58.98%
Medicaid MC	0%	19.66%
Medicare FFS	9.89%	9.97%
Medicare MC	.68%	.69%
Private Pay	10.63%	10.70%

Utilization for the adult day health care program is 100% Medicaid Fee for Service.

#### Capability and Feasibility

Pursuant to the terms of the APA, the estimated purchase price for the RHCF operations is \$1,962,332 calculated as follows: \$7,600,000 minus assumed Accounts Payable of \$666,526, minus Assumed Payroll Liabilities of \$56,392, plus Assumed Accounts Receivable of \$1,190,664, minus the assumed HUD loan of \$6,105,414. This results in an adjusted purchase price of \$1,962,332, which the proposed operating entity members will pay in cash to the Seller at Closing. This estimated purchase price is calculated as of June 30, 2017, and is subject to change dependent upon the balances of the assumed accounts as of the date of Closing.

Working capital requirements are estimated at \$1,268,854, which is equivalent to two months of first year expenses. The working capital requirement will be met from operations as follows: Accounts Receivable of \$1,190,664, less Assumed Accounts Payable of \$666,526, less assumed Payroll Liabilities of \$56,392, the remaining working capital of \$801,108 will be contributed by the proposed members. BFA Attachment A is the personal net worth statement of the proposed members of Roscoe Regional Healthcare, LLC, which indicates the availability of sufficient funds for the equity contribution to meet the purchase price and the working capital requirements. Also, the proposed members have sufficient resources to fund the equity requirements for CON 172264 for the change in operator of James Square Nursing and Rehabilitation Center, which is concurrently under review. BFA Attachment D is the pro forma balance sheet of Roscoe Regional Healthcare, LLC, which indicates a positive members' equity of \$2,763,440 as of the first day of operation. It is noted that assets include \$398,040 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposed. Excluding goodwill, members' equity would be \$2,365,400

The submitted budget projects \$50,730 of net income in year one after the change in ownership. Revenues are based on the current reimbursement methodologies. The submitted 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 is the financial summary of Roscoe Regional Rehabilitation & Residential Health Care Center. As shown, the entity had an average negative working capital position and an average negative net asset position from 2014 through 2016. The applicant indicated that the reasons for the negative positions are the result of retroactive reimbursement policies coupled with the inability to offer the services expected by today's consumer, the rural location of the facility and the general inefficiency of operating a small 85-bed stand-alone facility. The entity incurred average operating losses of \$82,606 from 2014 through 2016. The applicant indicated that the reason for the losses were as follows: the facility experienced a progressive reduction in patient days from 2013 through 2015, with a very slight increase in 2016; improvements in competitors' performance and reputation stiffened competition, which also impacted occupancy at Roscoe; the inability to offset holiday and weekend therapy further impaired Roscoe's financial position; and less attention was paid to the facility's environment contributing to further difficulties, which resulted in a progressive decline in revenue. The applicant implemented the following steps to improve operations: terminating and replacing the contract billing company, Director of Housekeeping/Laundry was eliminated and combined into a maintenance position, Director of Purchasing/Safety Officer was eliminated and the task was assumed by the Administrator, 1.5 FTE Certified Nurse Assistant position was eliminated from the evening shift, 1.0 FTE housekeeping position was eliminated, comparative buying practices were implemented, annual raises were eliminated and provided every third year, employee health benefits were adjusted to reduce the burden on the facility and food delivery was changed to a direct-to-table method to decrease waste and increase resident satisfaction.

BFA Attachment C is the internal financial statements of Roscoe Regional Rehabilitation & Residential Health Care Center as of June 30, 2017. As shown, the facility had a negative working capital position and a negative net asset position through June 30, 2017. The applicant indicated that the reason for the negative positions are the result of retroactive reimbursement policies, coupled with the inability to offer the services expected by today's consumer, the rural location and the general inefficiency of the operation of a small 85-bed stand-alone facility. The facility achieved an income from operations of \$281,242 through June 30, 2017.

BFA Attachment F is the financial summary of the proposed members' NY affiliated nursing homes. As shown, Chautauqua Nursing and Rehabilitation Center had an average positive working capital position and an average negative net asset position from 2015 through 2016. Also, the entity incurred average losses of \$568,548 from 2015 through 2016. The losses were the result of low utilization. Golden Hill Nursing had positive working capital, positive members' equity and positive income from operations, except for 2016, when it had an operating loss attributable mainly to increased accrued payroll and other operating expenses. Susquehanna Nursing had positive working capital and positive members' equity. Also, the facility had operating losses in 2014 and 2016, which were the result of increased payroll and other operating expenses. Finally, Hampton Center for Rehabilitation has had positive working capital, except for 2016, negative members' equity from 2014 through 2016, which has been reduced due to historical net income and the facility has had operating net income of \$1,800,000 per year from 2014 through 2016.

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

Recommendation

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

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## Attachments

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BFA Attachment A	Personal Net Worth Statement- Proposed Members of Roscoe Regional Healthcare, LLC
BFA Attachment B	Financial Summary- Roscoe Regional Rehabilitation & Residential Health Care Center
BFA Attachment C	June 30, 2017 internal financial statements of Roscoe Regional Rehabilitation & Residential Health Care Center
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	List of other owned nursing homes and ownership percentages.
BFA Attachment F	Financial Summary- Affiliated nursing homes

Edward Farbenblum  
and Orly Lieberman  
As of 7/10/2017

**ASSETS:**

Personal Accounts	\$450,000
Liquid assets In Farbenblum family entities	17,624,536
Nursing home investments	16,316,813
Real estate investments	1,452,000
Business property	300,000
Personal residence	900,000
Pension accounts	50,000
Personal items	<u>50,000</u>
TOTAL ASSETS	\$37,143,349

**LIABILITIES:**

Mortgage Payable	<u>\$35,000</u>
TOTAL LIABILITIES	\$35,000

**NET WORTH** \$37,108,349

James Square Nursing and Rehabilitation Centre		
	1/1/2017-7/31/2017 Internal	2016
ASSETS - CURRENT	\$7,187,471	\$7,367,403
ASSETS - FIXED AND OTHER	\$2,127,669	\$3,240,489
TOTAL ASSETS	\$9,315,140	\$10,607,892
LIABILITIES - CURRENT	\$13,745,538	\$11,121,593
LIABILITIES - LONG-TERM	\$648,498	\$336,935
TOTAL LIABILITIES	\$14,394,036	\$11,458,528
WORKING CAPITAL	(\$6,558,067)	(\$3,754,190)
INCOME	\$21,516,627	\$34,607,188
EXPENSE	\$23,761,653	\$36,132,262
NET INCOME	(\$2,245,026)	(\$1,525,074)
NET ASSET POSITION	(\$5,078,896)	(\$850,636)
NUMBER OF BEDS	440	440
PERCENT OCCUPANCY	88.36%	88.36%
MEDICAID	81.36%	81.36%
MEDICARE	11.95%	11.95%
PRIVATE PAY	6.69%	6.69%

\* 2016 data used for 2017

Clinton Square Operations, LLC  
Doing Business as  
Clinton Square Nursing and Rehabilitation Center

Pro Forma Balance Sheet

Assets

Cash and Cash Equivalents	\$6,664,425
Accounts Receivable	\$0
Total Assets	\$6,664,425

Liabilities and Equity

Liabilities

Accounts Payable	\$0
Accrued Payroll	\$0
Total Liabilities	\$0

Members Equity	\$6,664,425
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Total Liabilities and Members' Equity	\$6,664,425
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A portion of the purchase price of \$45M for the real estate will be allocated between the operating company and the realty company upon the closing of this transaction. The applicant is currently unable to provide a breakdown of this amount and is therefore unable to produce a balance sheet for the realty entity at this time. However, Clinton Square Operations, LLC and Clinton Square Realty, LLC have identical members and membership percentages.

Nursing Home	Edward Farbenblum % Ownership	Date Acquired	Orly Lieberman % Ownership	Date Acquired
Autumn View Health Care Facility, LLC	10%	May 2017	10%	May 2017
Brookhaven Health Care, LLC	10%	May 2017	10%	May 2017
Garden Gate Health Care Facility, LLC	10%	May 2017	10%	May 2017
Harris Hill Nursing Facility, LLC	10%	May 2017	10%	May 2017
North Gate Health Care, LLC	10%	May 2017	10%	May 2017
Seneca Health Care Center, LLC	10%	May 2017	10%	May 2017
Golden Hill Nursing & Rehabilitation	39.4898%	October 2012	0%	
Susquehanna Nursing & Rehabilitation	14.498%	February 2005	0%	
The Hampton Center for Rehabilitation & Nursing	16.000%	October 2007	0%	

**Chautauqua Nursing**

	<u><b>2016</b></u>	<u><b>2015</b></u>
Current Assets	\$3,839,195	\$3,945,166
Fixed Assets	4,422,116	4,421,576
Total Assets	\$8,261,311	\$8,366,742
Current Liabilities	1,130,214	902,137
Long Term Liabilities	8,268,192	8,289,784
Total Liabilities	9,398,406	9,191,921
Working Capital Position	(4,428,997)	3,043,029
Net Asset Position	(1,137,095)	(\$825,179)
Revenues	\$18,721,218	\$17,267,134
Expenses	19,032,634	18,092,813
Net Income	(\$311,416)	(\$825,679)



	<u>2016</u>	<u>2015</u>	<u>2014</u>
<b><u>Golden Hill Nursing</u></b>			
Current Assets	\$4,119,854	\$5,119,352	\$5,832,611
Fixed Assets	3,705,949	2,343,002	1,967,076
Total Assets	\$7,825,803	\$7,462,354	\$7,799,687
Current Liabilities	2,026,582	2,063,713	2,920,037
Long Term Liabilities	5,162,502	4,218,363	3,552,005
Total Liabilities	\$7,189,084	\$6,282,076	\$6,472,042
Working Capital Position	\$2,093,272	\$3,055,639	\$2,912,574
Net Asset Position	\$636,719	\$1,180,278	\$1,327,645
Revenues	\$25,281,443	\$25,494,557	\$22,457,797
Expenses	25,465,002	24,391,924	21,388,428
Net Income	(\$183,559)	\$1,102,633	\$1,069,369
<b><u>Susquehanna Nursing</u></b>			
Current Assets	\$3,630,217	\$3,402,090	\$2,702,195
Fixed Assets	5,972,275	6,197,461	6,096,264
Total Assets	\$9,602,492	\$9,599,551	\$8,798,459
Current Liabilities	2,976,772	1,954,179	2,236,609
Long Term Liabilities	3,871,939	3,193,538	2,551,661
Total Liabilities	\$6,848,711	\$5,147,717	\$4,788,270
Working Capital Position	\$653,445	\$1,447,911	\$465,586
Net Asset Position	\$2,753,781	\$4,451,834	\$4,010,189
Revenues	\$14,290,102	\$15,131,973	\$14,262,256
Expenses	15,987,946	14,441,385	14,293,527
Net Income	(\$1,697,844)	\$690,588	(\$31,271)
<b><u>The Hampton Center</u></b>			
Current Assets	\$7,869,585	\$7,978,090	\$8,620,432
Fixed Assets	7,686,809	6,969,312	2,371,901
Total Assets	\$15,556,394	\$14,947,402	\$10,992,333
Current Liabilities	8,143,804	7,729,916	8,184,956
Long Term Liabilities	8,925,800	9,770,225	9,525,261
Total Liabilities	\$17,069,604	\$17,500,141	\$17,710,217
Working Capital Position	(\$274,219)	\$248,174	\$435,476
Net Asset Position	(\$1,513,210)	(\$2,552,739)	(\$6,717,884)
Revenues	\$34,035,931	\$35,851,169	\$38,205,801
Expenses	32,171,402	33,686,774	33,749,689
Net Income	\$1,864,529	\$2,164,395	\$4,456,112

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 7th day of December 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 Roscoe Regional Healthcare, LLC as the new operator of the 85-bed residential health care facility located at 420 Rockland Road, Roscoe, 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:

172146 E

Roscoe Regional Healthcare, LLC d/b/a Roscoe  
Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that 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 asset purchase agreement that includes the final purchase price for the real estate and the operations, acceptable to the Department of Health. [BFA]
3. Submission of documentation of approval from the U.S. Department of Housing and Urban Development (HUD) for the change in operator of the nursing home, acceptable to the Department of Health. [BFA]
4. Submission of documentation of approval by HUD for the Health Care Facility Lease, 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 Operating Agreement of Roscoe Regional Healthcare, LLC., which is acceptable to the Department. [CSL]
7. Submission of a photocopy of the Consulting Agreement between VestraCare, LLC and Roscoe Regional Healthcare, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of Roscoe Community Nursing Home Co, Inc., or alternatively, a Certificate of Dissolution of Roscoe Community Nursing Home Co, Inc., which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 # 172264-E**  
**Clinton Square Operations, LLC d/b/a Clinton Square  
Nursing and Rehabilitation Center**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Onondaga  
**Acknowledged:** October 25, 2017

**Executive Summary**

**Description**

Clinton Square Operations, LLC, a New York limited liability company, requests approval to be established as the new operator of James Square Nursing and Rehabilitation Centre, a 440-bed, proprietary, Article 28 residential healthcare facility (RHCF) located at 918 James Street, Syracuse (Onondaga County). River Meadows, LLC is the current RHCF operator and Liberty Senior Holdings, LLC is the current realty owner. Upon Public Health and Health Planning Council (PHHPC) approval, the facility will be known as Clinton Square Nursing and Rehabilitation Center. There will be no change in beds or services provided.

On October 4, 2017, River Meadows, LLC entered into an Asset Purchase Agreement (APA) with Clinton Square Operating, LLC for the sale and acquisition of the operating interests of the facility. In conjunction with the APA, Liberty Senior Holdings, LLC, 100% owned by Eli Friedman, entered into a Real Estate Purchase Agreement (REPA) with Clinton Square Realty, LLC for the sale and acquisition of the RHCF's real property. The transactions contemplated by the APA and REPA will close simultaneously for a total purchase price of \$45,000,000. The purchase price will be allocated to the operations and real estate on or before the closing date, based on the applicant's assessment at that time of the monetary value associated with the assets being acquired. The applicant will lease the premises from Clinton Square Realty, LLC.

There is a relationship between Clinton Square Realty, LLC and Clinton Square Operations, LLC in that the entities have identical common membership.

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

<u>Current Operator</u>	
River Meadows, LLC	
<u>Members</u>	<u>%</u>
Abraham Gutnicki	50%
Judy Kushner	50%

<u>Proposed Operator</u>	
Clinton Square Operations, LLC	
<u>Members</u>	<u>%</u>
Edward Farbenblum	99%
Orly Lieberman	1%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will not be any changes to beds or services. The last year of certified data shows the applicant operating at 89.1 percent. The facility and the county are both below the planning optimum

**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 applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

#### Financial Summary

The overall purchase price for the RHCF operations and real estate is \$45,000,000 and will be allocated between the operations and realty at closing. The purchase price will be financed with members' equity of \$3,350,000 and a \$41,650,000 Bridge loan provided to the realty entity as the borrower. Arbor Realty Sr, Inc. has provided a term sheet for the proposed loan as follows:

- Initial 36-month term with borrower's option for an additional 12 months;
- Interest based on the One Month LIBOR rate plus 675 basis points (estimated at 7.99% based on the One Month LIBOR of 1.24% as of October 26, 2017); and

- Amortization based on a 30-year schedule, with monthly payments of principal to be deposited into a sinking fund with Arbor and held as additional collateral for the loan.

The Bridge loan is expected to be transferred to a U.S. Department of Housing and Urban Development (HUD) loan, which the realty entity intends to obtain within two years after the change in ownership. The proposed budget is as follows:

Revenues	\$42,776,246
Expenses	<u>39,986,547</u>
Net Income	\$2,789,699

## 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 asset purchase agreement that includes the final purchase price for the real estate and the operation, acceptable to the Department of Health. [BFA]
3. Submission of an executed bridge loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of a Certificate of Assumed Name for Clinton Square Operations, LLC to use the assumed name, Clinton Square Nursing and Rehabilitation Center, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the Operating Agreement of Clinton Square Operations, LLC, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of River Meadows LLC, or in the alternative, Articles of Dissolution of River Meadows 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]

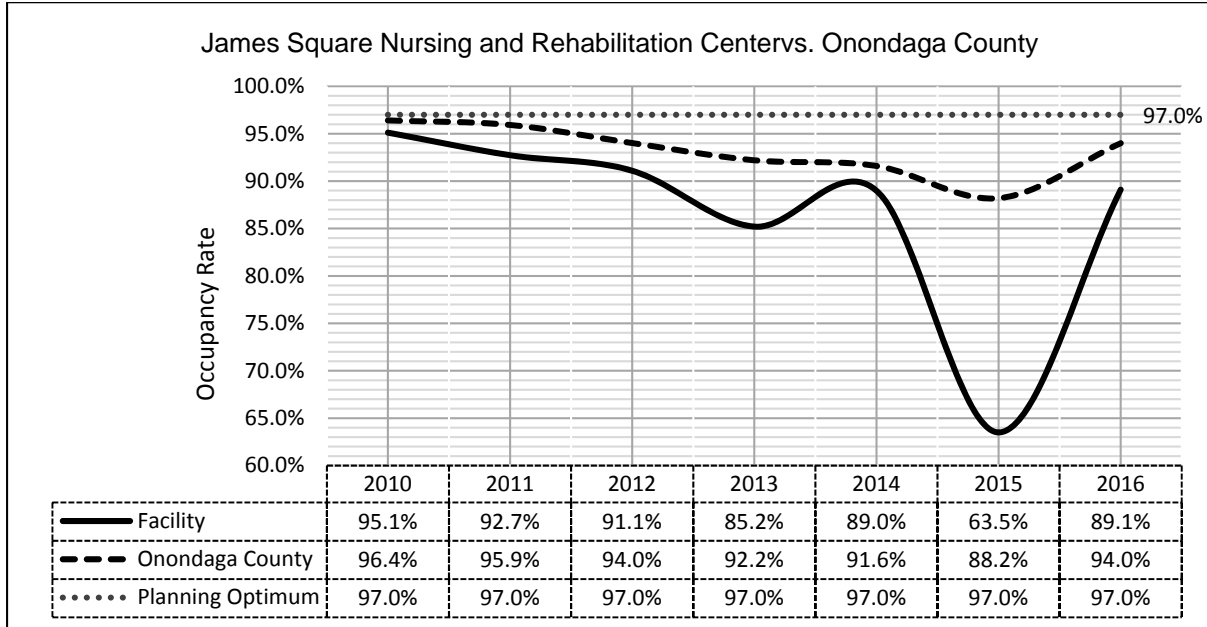
Council Action Date

**December 7, 2017**

# Need Analysis

## Analysis

The overall occupancy for Onondaga County was 94.0% for 2016 and 89.1% for James Square Nursing as indicated below.



Clinton Square Operations, LLC has developed a concrete plan for stabilizing operations at the facility. Similar plans have been implemented by the applicant's members at their other affiliated facilities, such as Chautauqua Rehabilitation and Nursing Center. Highlights of the applicant's plan to bring financial and operational stability to the facility and to bring occupancy levels back to Department optimums include the following:

- Revenue and occupancy enhancements through the development of census and enhancement of quality mix.
- The applicant will capitalize on the fact that the facility is located close to several large, high-volume hospitals. There are over 1,600 hospital beds within 1.2 miles of the facility, and these hospital beds account for over 5,000 discharges to area skilled nursing facilities per year.
- The applicant will implement a system to track referrals and admissions to ensure the facility is admitting new residents in the most efficient way possible;
- The applicant will implement a 24-hour-a-day, 7-day-a-week admissions protocol to ensure that hospital discharge planners have easy access to the facility when making discharge decisions; and
- The applicant will provide free transportation from area hospitals to the facility.
- As part of the effort to reposition the facility to be more competitive, the applicant plans to invest an additional \$4M for facility renovations in order to improve the cosmetics and function of the building. These renovations will include:
  - A hotel-like lobby;
  - A well-appointed suite for the Admissions Department that can be used to meet with families and prospective residents;
  - New state of the art therapy gym; and
  - General updating of all units.
- Development of robust marketing initiatives.
- Develop a close relationship with the Hospital Executive Council in Syracuse and work with the Council on their difficult-to-place (DTP) patient list, specifically as it relates to behavioral health patients once operations and staffing are stabilized. The applicant is also considering plans to create a dedicated, 60-resident behavioral unit for DTP residents within a few years.

- The applicant will bring in experienced staff to the facility to help stabilize operations. These staff members have previously assisted the applicant with stabilizing operations at Chautauqua Rehabilitation and Nursing Center and other affiliated facilities, and will include an experienced Administrator (from Chautauqua Rehabilitation and Nursing Center) and an Assistant Director of Nursing (from the Harris Hill Nursing Facility, a CMS five-(5)-star facility).

**Access**

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient’s admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

James Square Nursing and Rehabilitation Center’s Medicaid admissions for 2015 (25.8%) exceeded Onondaga counties threshold of 15.6%. In 2016 James Square Nursing and Rehabilitation Center saw 27.5% Medicaid admissions which was also above the counties threshold of 16.6%.

**Conclusion**

There will be no change in beds in Onondaga County through completion of this project. This change in ownership has no impact on existing need or utilization in this area of Onondaga 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	James Square Nursing and Rehabilitation Centre	Clinton Square Nursing and Rehabilitation Center
Address	918 James Street Syracuse NY	Same
RHCF Capacity	440 (5 Ventilator beds)	Same
ADHC Program Capacity	N/A	Same
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary
Operator	River Meadows, LLC	Clinton Square Operations, LLC  *Edward Farbenblum            99.00% Orly Lieberman                 1.00%  *Managing Member



## Character and Competence - Background

### Facility Reviewed

Autumn View Health Care Facility, LLC	05/2017 to present
Brookhaven Health Care Facility, LLC	05/2017 to present
Garden Gate Health Care Facility, LLC	05/2017 to present
Harris Hill Nursing Facility, LLC	05/2017 to present
North Gate Health Care Facility, LLC	05/2017 to present
Seneca Health Care Center, LLC	05/2017 to present
Chautauqua Nursing & Rehabilitation Center	01/2015 to present
Golden Hill Nursing & Rehabilitation Center	10/2012 to present
Susquehanna Nursing & Rehabilitation Center	02/2005 to present
The Hamptons Center for Rehabilitation & Nursing	10/2007 to present
Autumn Woods Residential Health Care Facility LLC (MI)	05/2017 to present
Privilege Care Diagnostic & Treatment Center	04/2008 to present

### Individual Background Review

**Edward Farbenblum** is employed at Golden Hill Advisors d/b/a VestraCare, Inc as an advisor. He graduated from Cordoza Law School at the Yeshiva University with a Juris Doctorate degree. He is an Attorney at Law licensed through New York State with a license in good standing. Mr. Farbenblum discloses the following ownership interests in health facilities:

Autumn View Health Care Facility, LLC (10%)	05/2017 to present
Brookhaven Health Care Facility, LLC (10%)	05/2017 to present
Garden Gate Health Care Facility, LLC (10%)	05/2017 to present
Harris Hill Nursing Facility, LLC (10%)	05/2017 to present
North Gate Health Care Facility, LLC (10%)	05/2017 to present
Seneca Health Care Center, LLC (10%)	05/2017 to present
Chautauqua Nursing & Rehabilitation Center (21%)	01/2015 to present
Golden Hill Nursing & Rehabilitation Center (39.4898%)	10/2012 to present
Susquehanna Nursing & Rehabilitation Center (14.498%)	02/2005 to present
Privilege Care Diagnostic & Treatment Center (9.9%)	04/2008 to present
The Hamptons Center for Rehabilitation & Nursing (16%)	10/2007 to present
Autumn Woods Residential Health Care Facility LLC (10%) (MI)	05/2017 to present

**Orly Lieberman** is employed as a Psychotherapist. She graduated from St. John's University with a Master's of Education degree. She holds a Mental Health Counseling Permit through New York State with a license in good standing. Mrs. Lieberman discloses the following ownership interests in health facilities:

Autumn View Health Care Facility, LLC (10%)	05/2017 to present
Brookhaven Health Care Facility, LLC (10%)	05/2017 to present
Garden Gate Health Care Facility, LLC (10%)	05/2017 to present
Harris Hill Nursing Facility, LLC (10%)	05/2017 to present
North Gate Health Care Facility, LLC (10%)	05/2017 to present
Seneca Health Care Center, LLC (10%)	05/2017 to present
Autumn Woods Residential Health Care Facility LLC (10%) (MI)	05/2017 to present

## Character and Competence - Analysis

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

A review of operations for The Hamptons Center for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order # 07-048 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, 415.12 - Quality of Care, 415.12(h)(2) - Quality of Care: Accidents, and 415.26 - Organization and Administration.
- The facility was fined \$4,000 pursuant to Stipulation and Order # 10-065 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 415.26 – Administration.

- The facility was fined \$10,000 pursuant to Stipulation and Order # 11-031 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 a reasonably prudent operator would take to prevent the recurrence of the violation.**

The review of operations of the remaining affiliated facilities 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	Staffing	NYS Quintile
Autumn View Health Care Facility LLC	*****	****	*****	***	1
Brookhaven Health Care Facility LLC	*****	****	*****	*****	1
Garden Gate Health Care Facility	*****	****	*****	****	1
Harris Hill Nursing Facility LLC	*****	****	*****	***	1
North Gate Health Care Facility	*****	***	*****	****	1
Seneca Health Care Center	*****	****	*****	****	1
Chautauqua Nursing and Rehabilitation Center	*	**	****	*	2
Golden Hill Nursing and Rehabilitation Center	****	***	*****	***	3
Susquehanna Nursing and Rehab Center LLC	**	*	*****	***	5
The Hamptons Center for Rehabilitation and Nursing	***	***	*****	*	4

#### MI

Autumn Woods Residential Hlth	****	***	*****	****
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With regard to the homes with a quality rating of 1 or 2, the applicant noted that for Susquehanna Nursing and Rehabilitation Center the rating is largely affected by the poor 2014 survey. They note their Quality Measures score in 2017 was 5 stars. They also are continually recruiting staff, and have put in place an employee satisfaction committee to decrease staff turnover.

For Chautauqua Nursing and Rehabilitation Center it is noted that the applicant(s) became owners in 2015, with the current rating affected by a 2014 harm level deficiency. Since 2015 there have been no harm level deficiencies.

#### 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 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 RHCf operating entity, summarized below:

Date:	October 4, 2017
Seller:	River Meadows, LLC
Purchaser:	Clinton Square Operating, LLC
Assets Acquired:	All tangible and intangible assets associated with the ongoing operations of the nursing home.
Excluded Assets	Real property and personal property leases not expressly assumed by buyer, business contracts not listed as assumed contracts, Union contracts of which the buyer is not involved in the negotiations, non-transferable permits and licenses, Corporate records, all personal items of seller, accounts receivable, nonunion pension plan and related assets.
Assumed Liabilities:	None
Purchase Price:	To be determined upon closing of the transaction
Payment of the Purchase Price:	To be paid at closing

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, the facility has a nominal outstanding Medicaid overpayment liability of \$14,683.

Real Estate Purchase Agreement

The applicant has submitted an executed REPA, summarized below:

Date:	October 4, 2017
Premises:	The RHCf located at 918 James Street, Syracuse (Onondaga County)
Seller:	Liberty Senior Holdings, LLC
Purchaser:	Clinton Square Realty, LLC
Purchase Price:	\$45,000,000

The applicant has indicated that the \$45,000,000 purchase price will be allocated between the operating company and the realty company upon closing of this transaction. The applicant's financing plan is as follows:

Equity	\$3,350,000
Realty Entity Bridge to HUD (est. 7.99%, two-years, two 12-month renewals)	<u>\$41,650,000</u>
Total	<u>\$45,000,000</u>

The proposed Bridge loan term sheet from Arbor Realty Sr, Inc. provides for an initial 36-month term with borrower's option for an additional 12 months, interest based on the One Month LIBOR rate plus 675 basis points (estimated at 7.99% based on the One Month LIBOR of 1.24% as of October 26, 2017), and amortization based on a 30-year schedule with monthly principal payments to be deposited into a sinking fund with Arbor and held as additional collateral for the loan. The Bridge loan is expected to be transferred to a HUD loan, which the realty entity intends to obtain within two years after the change in ownership.

#### Lease Rental Agreement

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

Date:	October 5, 2017
Premises:	A 440-bed nursing home located at 918 James Street, Syracuse (Onondaga County)
Lessor:	Clinton Square Realty, LLC
Lessee:	Clinton Square Operations, LLC
Term:	30 years
Rental:	Year 1-5 at \$3,550,000. The Base Rent shall be increased by 20% on the fifth anniversary of the Commencement Date, and every five years thereafter.
Provisions:	Lessee pays all real estate taxes, utilities, water and sewer charges, insurance and maintenance costs.

The lease agreement is a non-arm's length lease arrangement in that the realty and operating entities have common ownership. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

#### Operating Budget

The applicant has submitted an estimated operating budget, in 2017 dollars, for the first year after the change in operator, summarized below:

	Current Year (2016)		Year One	
	Per Diem	Total	Per Diem	Total
<u>Revenues</u>				
Medicaid FFS	\$231.73	\$21,736,046	\$250.94	\$20,624,646
Medicaid MC	\$231.73	\$4,395,362	\$250.94	\$8,887,004
Medicare FFS	\$567.37	\$6,280,763	\$588.43	\$5,102,850
Medicare MC	\$567.37	\$4,451,002	\$348.02	\$2,990,520
Private Pay	\$338.16	\$3,457,038	\$361.64	\$3,497,091
Other		<u>\$114,240</u>		<u>\$1,674,135</u>
Total Revenues		\$40,434,451		\$42,776,246
<u>Expenses</u>				
Operating	\$270.12	\$38,332,615	\$251.09	\$36,292,860
Capital	<u>\$25.56</u>	<u>\$3,626,910</u>	<u>\$25.55</u>	<u>\$3,693,687</u>
Total Expenses	\$295.68	\$41,959,525	\$276.65	\$39,986,547
Net Income/(Loss)		<u>(\$1,525,074)</u>		<u>\$2,789,699</u>
Utilization (patient days)		141,907		144,540
Occupancy		88.36%		90%
Breakeven Occupancy		91.70%		87.56%

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

- The Year One and Year Three Medicare Managed Care rate is more conservative than the facility's existing rate as it reflects the average Medicare Managed Care rate the applicant members have experienced at their other affiliated NY RHCs.

- The applicant projected expense reductions for professional fees (\$787,443), non-meds/surgical supplies (\$60,915), purchased services (\$62,298) and other direct expenses (\$1,586,456) in Year One due to the proposed members' experience operating other skilled nursing facilities in NY.
- Taking the expense reductions into consideration, breakeven utilization is 135,114 patient days (84% occupancy).

Utilization by payor source during the first year after the change in operator is as follows:

	<u>Current Year (2016)</u>	<u>Year One</u>
Medicaid FFS	66.10%	56.86%
Medicaid MC	13.37%	24.50%
Medicare FFS	7.80%	6.00%
Medicare MC	5.53%	5.95%
Private Pay	7.20%	6.69%

### Capability and Feasibility

The overall purchase price for the RHC operations and real estate is \$45,000,000 to be allocated between the operations and realty at closing. The purchase price will be financed with members' equity of \$3,350,000 and a \$41,650,000 Bridge loan from Arbor Realty Sr, Inc. to the realty entity. The proposed Bridge loan term sheet provides for an initial 36-month term with borrower's option for an additional 12 months, interest based on the One Month LIBOR rate plus 675 basis points (estimated at 7.99% based on the One Month LIBOR of 1.24% as of October 26, 2017), and amortization based on a 30-year schedule with monthly principal payments to be deposited into a sinking fund with Arbor and held as additional collateral for the loan. The Bridge loan is expected to be transferred to a HUD loan, which the realty entity intends to obtain within two years after the change in ownership.

Working capital requirements are estimated at \$6,664,425, which is equivalent to two months of first year expenses. The working capital requirement will be met from equity contributions from the applicant members. BFA Attachment A is the personal net worth statement of the proposed members of Clinton Square Operations, LLC, which indicates the availability of sufficient funds for the equity contribution to meet the purchase price and the working capital requirements. Also, the proposed members have sufficient funds to fund the equity requirements for CON#172146 for the change in operator of Roscoe Regional Rehabilitation & Residential Health Care Facility. BFA Attachment C is the pro forma balance sheet of Clinton Square Operations, LLC, which indicates a positive members' equity of \$6,664,425 as of the first day of operation.

The submitted budget projects \$2,789,699 of net income in Year One after the change in ownership. Revenues are based on the current reimbursement methodologies. The submitted 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 is a summary of James Square Nursing and Rehabilitation Centre's 2016 certified and internal financials of as of July 31, 2017. As shown, the entity had a negative working capital position and a negative net asset position for the respective periods. The entity incurred an operating loss of \$1,525,074 for 2016 and a loss of \$2,245,026 as of July 31, 2017. The negative working capital and the operating losses were related to quality of care issues experienced by the existing operator that led to a self-imposed new admissions limitation. This limitation was not counterbalanced by a reduction in expenses, which led to the overall operating loss and negative working capital position. This issue will be addressed by the proposed new operators of the facility.

BFA Attachment E is the financial summary of the proposed members' NY affiliated nursing homes. As shown, Chautauqua Nursing and Rehabilitation Center had an average positive working capital position and an average negative net asset position from 2015 through 2016. Also, the entity incurred average losses of \$568,548 from 2015 through 2016. The losses were the result of low utilization. Golden Hill Nursing had positive working capital, positive members' equity and positive income from operations, except for 2016, when it had an operating loss attributable mainly to increased accrued payroll and other operating expenses. Susquehanna Nursing had positive working capital and positive members' equity. Also, the facility had operating losses in 2014 and 2016, which were the result of increased payroll and other operating expenses. Finally, Hampton Center for Rehabilitation has had positive working capital, except for 2016, negative members' equity from 2014 through 2016, which has been reduced due to historical net income and the facility has had operating net income of \$1,800,000 per year from 2014 through 2016.

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

Recommendation

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

## Attachments

- BFA Attachment A Personal Net Worth Statement- Proposed Members of Clinton Square Operations, LLC
- BFA Attachment B 2016 certified and 1/1/2017-7/31/2017 internal Financial Summary of James Square Nursing and Rehabilitation Centre
- BFA Attachment C Pro Forma Balance Sheet Clinton Square Operations, LLC
- BFA Attachment D List of other owned nursing homes and ownership percentages.
- BFA Attachment E Financial Summary- Affiliated nursing homes

Edward Farbenblum  
and Orly Lieberman  
As of 7/10/2017

**ASSETS:**

Personal Accounts	\$450,000
Liquid assets In Farbenblum family entities	17,624,536
Nursing home investments	16,316,813
Real estate investments	1,452,000
Business property	300,000
Personal residence	900,000
Pension accounts	50,000
Personal items	<u>50,000</u>
TOTAL ASSETS	\$37,143,349

**LIABILITIES:**

Mortgage Payable	<u>\$35,000</u>
TOTAL LIABILITIES	\$35,000

**NET WORTH** \$37,108,349

James Square Nursing and Rehabilitation Centre		
	1/1/2017-7/31/2017 Internal	2016
ASSETS - CURRENT	\$7,187,471	\$7,367,403
ASSETS - FIXED AND OTHER	\$2,127,669	\$3,240,489
TOTAL ASSETS	\$9,315,140	\$10,607,892
LIABILITIES - CURRENT	\$13,745,538	\$11,121,593
LIABILITIES - LONG-TERM	\$648,498	\$336,935
TOTAL LIABILITIES	\$14,394,036	\$11,458,528
WORKING CAPITAL	(\$6,558,067)	(\$3,754,190)
INCOME	\$21,516,627	\$34,607,188
EXPENSE	\$23,761,653	\$36,132,262
NET INCOME	(\$2,245,026)	(\$1,525,074)
NET ASSET POSITION	(\$5,078,896)	(\$850,636)
NUMBER OF BEDS	440	440
PERCENT OCCUPANCY	88.36%	88.36%
MEDICAID	81.36%	81.36%
MEDICARE	11.95%	11.95%
PRIVATE PAY	6.69%	6.69%

\* 2016 data used for 2017



Clinton Square Operations, LLC  
Doing Business as  
Clinton Square Nursing and Rehabilitation Center

Pro Forma Balance Sheet

Assets

Cash and Cash Equivalents	\$6,664,425
Accounts Receivable	\$0
Total Assets	\$6,664,425

Liabilities and Equity

Liabilities

Accounts Payable	\$0
Accrued Payroll	\$0
Total Liabilities	\$0

Members Equity	\$6,664,425
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Total Liabilities and Members' Equity	\$6,664,425
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A portion of the purchase price of \$45M for the real estate will be allocated between the operating company and the realty company upon the closing of this transaction. The applicant is currently unable to provide a breakdown of this amount and is therefore unable to produce a balance sheet for the realty entity at this time. However, Clinton Square Operations, LLC and Clinton Square Realty, LLC have identical members and membership percentages.

Nursing Home	Edward Farbenblum % Ownership	Date Acquired	Orly Lieberman % Ownership	Date Acquired
Autumn View Health Care Facility, LLC	10%	May 2017	10%	May 2017
Brookhaven Health Care, LLC	10%	May 2017	10%	May 2017
Garden Gate Health Care Facility, LLC	10%	May 2017	10%	May 2017
Harris Hill Nursing Facility, LLC	10%	May 2017	10%	May 2017
North Gate Health Care, LLC	10%	May 2017	10%	May 2017
Seneca Health Care Center, LLC	10%	May 2017	10%	May 2017
Golden Hill Nursing & Rehabilitation	39.4898%	October 2012	0%	
Susquehanna Nursing & Rehabilitation	14.498%	February 2005	0%	
The Hampton Center for Rehabilitation & Nursing	16.000%	October 2007	0%	

Chautauqua Nursing

	<u>2016</u>	<u>2015</u>
Current Assets	\$3,839,195	\$3,945,166
Fixed Assets	4,422,116	4,421,576
Total Assets	\$8,261,311	\$8,366,742
Current Liabilities	1,130,214	902,137
Long Term Liabilities	8,268,192	8,289,784
Total Liabilities	9,398,406	9,191,921
Working Capital Position	(4,428,997)	3,043,029
Net Asset Position	(1,137,095)	(\$825,179)
Revenues	\$18,721,218	\$17,267,134
Expenses	19,032,634	18,092,813
Net Income	(\$311,416)	(\$825,679)

	<u>2016</u>	<u>2015</u>	<u>2014</u>
<b><u>Golden Hill Nursing</u></b>			
Current Assets	\$4,119,854	\$5,119,352	\$5,832,611
Fixed Assets	3,705,949	2,343,002	1,967,076
Total Assets	\$7,825,803	\$7,462,354	\$7,799,687
Current Liabilities	2,026,582	2,063,713	2,920,037
Long Term Liabilities	5,162,502	4,218,363	3,552,005
Total Liabilities	\$7,189,084	\$6,282,076	\$6,472,042
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Revenues	\$25,281,443	\$25,494,557	\$22,457,797
Expenses	25,465,002	24,391,924	21,388,428
Net Income	(\$183,559)	\$1,102,633	\$1,069,369
<b><u>Susquehanna Nursing</u></b>			
Current Assets	\$3,630,217	\$3,402,090	\$2,702,195
Fixed Assets	5,972,275	6,197,461	6,096,264
Total Assets	\$9,602,492	\$9,599,551	\$8,798,459
Current Liabilities	2,976,772	1,954,179	2,236,609
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Total Liabilities	\$6,848,711	\$5,147,717	\$4,788,270
Working Capital Position	\$653,445	\$1,447,911	\$465,586
Net Asset Position	\$2,753,781	\$4,451,834	\$4,010,189
Revenues	\$14,290,102	\$15,131,973	\$14,262,256
Expenses	15,987,946	14,441,385	14,293,527
Net Income	(\$1,697,844)	\$690,588	(\$31,271)
<b><u>The Hampton Center</u></b>			
Current Assets	\$7,869,585	\$7,978,090	\$8,620,432
Fixed Assets	7,686,809	6,969,312	2,371,901
Total Assets	\$15,556,394	\$14,947,402	\$10,992,333
Current Liabilities	8,143,804	7,729,916	8,184,956
Long Term Liabilities	8,925,800	9,770,225	9,525,261
Total Liabilities	\$17,069,604	\$17,500,141	\$17,710,217
Working Capital Position	(\$274,219)	\$248,174	\$435,476
Net Asset Position	(\$1,513,210)	(\$2,552,739)	(\$6,717,884)
Revenues	\$34,035,931	\$35,851,169	\$38,205,801
Expenses	32,171,402	33,686,774	33,749,689
Net Income	\$1,864,529	\$2,164,395	\$4,456,112

Edward Farbenblum  
and Orly Lieberman  
As of 7/10/2017

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Clinton Square Operations, LLC  
Doing Business as  
Clinton Square Nursing and Rehabilitation Center

Pro Forma Balance Sheet

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Expenses	32,171,402	33,686,774	33,749,689
Net Income	\$1,864,529	\$2,164,395	\$4,456,112

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 7th day of December 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 Clinton Square Operations, LLC as the new operator of James Square Nursing and Rehabilitation Centre, an existing 440-bed 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:

172264 E

Clinton Square Operations, LLC d/b/a Clinton Square 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 asset purchase agreement that includes the final purchase price for the real estate and the operation, acceptable to the Department of Health. [BFA]
3. Submission of an executed bridge loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of a Certificate of Assumed Name for Clinton Square Operations, LLC to use the assumed name, Clinton Square Nursing and Rehabilitation Center, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the Operating Agreement of Clinton Square Operations, LLC, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of River Meadows LLC, or in the alternative, Articles of Dissolution of River Meadows 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 # 172191-E
Otsego SNF Operations Associates LLC d/b/a Cooperstown Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Otsego
Acknowledged: October 2, 2017

Executive Summary

Description

Otsego SNF Operations Associates LLC d/b/a Cooperstown Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the operator of Focus Rehabilitation and Nursing Center at Otsego, a 174-bed (with 2 respite beds), Article 28 residential health care facility (RHCF) and the 80-slot Long Term Home Health Care Program (LTHHCP) located at 128 Phoenix Mills Cross Road, Cooperstown (Otsego County). CCRN Operator, LLC is the current operator of the RHCF and LTHHCP. There will be no change in beds or services provided.

On July 31, 2017, CCRN Operator, LLC entered into an Asset Purchase Agreement (APA) with Otsego SNF Operations Associates LLC for the sale and acquisition of the operating interests of the facility for \$10 and the assumption of certain liabilities. The sale and acquisition of the operating interest of the LTHHCP is included in the APA. There will be no change in ownership of the RHCF's real property as a result of this application. The property is owned by Phoenix Mills Realty LLC who closed on the property on October 14, 2014. Phoenix Mills Realty LLC, as owner/landlord, and Otsego SNF 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 Phoenix Mills Realty LLC and Otsego SNF Operations Associates LLC in that the members of each company have previous business relationships involving real estate transactions of nursing homes.

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

Table with 2 columns: Members, %
Current Operator: CCRN Operator, LLC
Members: Joseph Zupnick (99%), Elisa Zupnick (1%)

Table with 2 columns: Members, %
Proposed Operator: Otsego SNF Operations Associates LLC
Members: Kenneth Rozenberg (1.0%), Otsego KR Holding LLC (99.0%)
Sub-members: Kenneth Rozenberg (95%), Beth Rozenberg (5.0%)

Ownership of the RHCF realty is as follows:

Table with 2 columns: Members, %
Phoenix Mills Realty LLC
Members: Hillel Weinberger (46.72%), Miriam Zupnik (14.37%), SNF Partners LLC (38.91%)
Sub-members: Joseph Zupnik (50%), Yael Herman (50%)

OPCHSM Recommendation
Contingent Approval

Need Summary

There will not be any changes to beds in the area. The last year of certified data shows the applicant operating at 96.8 percent and the overall county average remains at the planning optimum.

### 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 holding a 50% ownership interest and acting as CEO.

### Financial Summary

There are no project costs associated with this application. The purchase price for the assets is \$10 with the assumption by Otsego Operations Associates LLC of certain liabilities of \$655,363. The proposed budget is as follows:

Revenues	\$16,396,822
Expenses	<u>\$15,961,106</u>
Net Income	\$435,716

## 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 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 the executed consulting services agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a copy of the certificate of assumed name, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

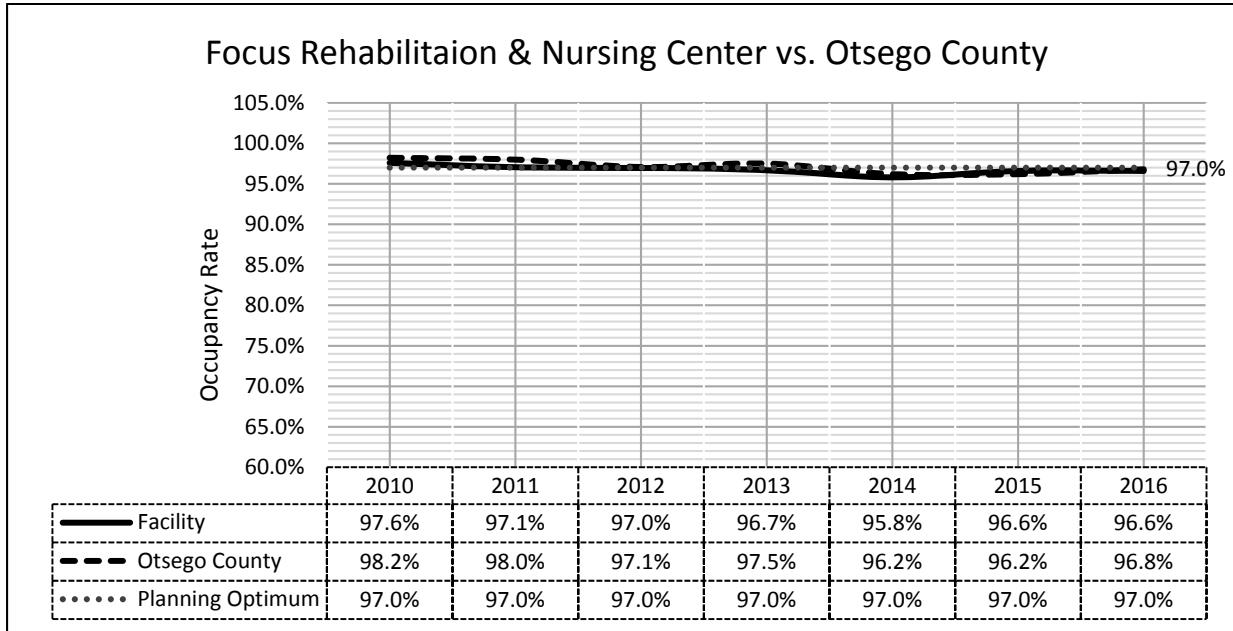
Council Action Date

**December 7, 2017**

# Need Analysis

## Analysis

The overall occupancy for Otsego County was 96.6% for 2016 and 96.8% for Focus Rehabilitation and Nursing Center as indicated below.



Focus Rehabilitation and Nursing Center at Otsego's utilization has remained constant over the last six years. The facility and county have been operating around the 97 percent planning optimum since 2010.

## 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 Otsego's Medicaid admissions for 2015 (23.8%) did not exceed Otsego county's threshold of 26.1%. However, in 2016 Focus Rehabilitation and Nursing Center at Otsego's Medicaid admissions (24.0%) were above the county's threshold of 20.7%.

## Conclusion

There will be no change in beds in Otsego County through completion of this project. This is a change in ownership with no impact on existing need or utilization in this area of Otsego County.

## Recommendation

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



# Program Analysis

## Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Focus Rehabilitation and Nursing Center at Otsego	Cooperstown Center for Rehabilitation and Nursing
Address	128 Phoenix Mills Cross Road Cooperstown, NY 13326	Same
RHCF Capacity	174	Same
ADHCP Capacity	N/A	Same
Type of Operator	Proprietary	Same
Class of Operator	Proprietary	Same
Operator	CCRN, LLC	Otsego SNF Operations Associates, LLC  Otsego KR Holding LLC           99% Kenneth Rozenberg (95% Beth Rozenberg       (5%) Kenneth Rozenberg                   1%

## 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 03/2016
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	04/2013 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 03/2016
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	08/2001 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

#### Rhode Island Nursing Homes

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

Dialysis Centers

Bronx Center for Renal Dialysis 01/2011 to present  
Bushwick Center for Renal Dialysis 06/2014 to present

Adult Homes

Argyle Center for Independent Living 02/2014 to present

Certified Home Health Agencies

Centers Home Health Revival-Bronx 07/2008 to present  
Centers Home Health Revival-Buffalo 09/2016 to present

Licensed Home Care Services Agency

Amazing Home Care (LHCSA) 05/2006 to present

Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS) 02/2006 to present

Managed Long Term Care Company

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 Rehab 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
Bannister Center for Rehab [RI](5%)	02/2016 to present
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
Nanuet Center for Rehabilitation and Nursing	Pending
Haverstraw Center for Rehabilitation and Nursing	Pending
Monsey Center for Rehabilitation and Nursing	Pending
Bannister Center for Rehab (5%)	02/2016 to present
Kingston Center for Rehab (5%)	10/2016 to present
Park View Center for Rehab (5%)	05/2016 to present

#### 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, 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 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.

A review of the remaining affiliated facilities, agencies, and companies reveals no enforcements.

#### Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	NYS 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 Ctr For Rehab and Residential Health Care	***	****	***	*	3
Buffalo Center for Rehabilitation and Nursing	**	*	*****	***	---
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 HIV and Nursing Care	*****	****	*****	*****	---
Indian River Rehab and Nursing Center	*	**	****	*	Special Focus Facility

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	NYS Quintile
Martine Center for Rehabilitation and Nursing	*****	*****	*****	*	---
Northwoods Rehab and ECF 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 Ctr for Rehabilitation and Health Care	*	*	***	***
Kingston Center for Rehabilitation and Health Care	**	*	**	****
Park View Ctr for Rehabilitation and Health Care	****	**	*****	****

*\*Indian River recently graduated from Special Focus. As a result, there is no current Quintile rating. The issues surrounding its designation as a Special Focus Facility predate the involvement of Mr. Rozenberg in the ownership.*

*\*\*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.*

With regard to the nursing homes with a quality rating of 1 or 2, the applicants have stated they have responded by putting into practice in-service trainings and staff education, and improved quality assurance. Additional staff has been added to the clinical teams at both the corporate level and the facility level. The applicant also notes that many of the low rated facilities exhibit Quality Measure ratings of 4 or 5 stars. However, the overall low star rating is a reflection of 3 prior years of poor survey data. Two of the facilities were purchased in early 2017, and the applicant indicates it takes time to implement institutional changes that will translate into higher STAR ratings. They expect rating improvements at many of the facilities when the findings from recent surveys is incorporated into the data.

## 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.

It is common for Kenneth Rozenberg to contract with Centers for the facilities for which he has ownership interests. He uses Centers as a resource to provide administrative and clinical support for his nursing homes located across the State. Centers utilizes a regional office type approach with central corporate and local resources available to provide timely services and regionally knowledgeable clinical staff for their clients.

This change of ownership will include Focus Home Care at Otsego, a Long Term Home Health Care Program.

**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). It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers is a related party with Kenneth Rozenberg holding a 50% ownership interest and acting as CEO.

**Recommendation**

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

**Financial Analysis**

**Asset Purchase Agreement**

The applicant has submitted an executed APA to acquire the RHCf's and LTHHCP'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:	July 31, 2017
Seller:	CCRN Operator, LLC
Buyer:	Otsego SNF Operations 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 Agreement, and unpaid obligations at closing that the Buyer is obligated to pay under the Agreement.
Purchase Price:	Assumption of Liabilities estimated at \$655,363 (Accrued Expenses and Taxes-\$139,400, Accrued Payroll-\$240,737 and Resident Funds-\$275,226) as of June 30, 2017, (estimated pre-closing amount to be reconciled at the date of Closing).
Payment of Purchase Price:	Liabilities assumed at Closing

The APA includes the 174-bed RHCf with 2 respite beds, and the Long Term Home Health Care Program.



The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of October 27, 2017, the facility had no outstanding Medicaid liabilities.

#### Consulting Services Agreement

Otsego SNF Operations Associates LLC d/b/a Cooperstown 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 Otsego
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:	128 Phoenix Mills Cross Road, Cooperstown, NY 13326 (Otsego County)
Landlord:	Phoenix Mills Realty LLC
Lessee:	Otsego SNF Operations Associates LLC
Term:	10 Years
Rental:	\$2,000,000 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. The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that they have had previous business relationships involving real estate transactions of nursing homes.

## 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	\$313.02	\$305,512	\$290.21	\$285,276
Medicare-FFS	\$539.41	3,268,807	\$518.81	3,174,080
Medicaid-FFS	\$234.97	9,423,795	\$211.55	8,563,756
Medicaid-Managed Care	\$193.04	1,196,272	\$225.00	1,407,375
Private Pay	\$419.80	3,096,883	\$300.00	2,233,200
Other	\$235.88	<u>223,611</u>	\$234.11	<u>224,277</u>
Total RHCF Revenue		\$17,514,880		\$15,887,964
<u>LTHHCP Revenue</u>				
Commercial-FFS	\$132.83	\$ 6,907	\$128.31	\$ 8,982
Commercial-Managed Care	\$88.57	430,031	\$70.68	347,741
Medicare-FFS	\$225.94	111,163	\$236.26	118,129
Medicare-Managed Care	\$314.07	4,711	\$139.10	2,782
Medicaid-FFS	\$85.50	30,779	\$86.10	29,225
Private Pay	\$89.25	<u>357</u>	\$99.95	<u>1,999</u>
Total LTHHCP Revenue		\$583,948		\$508,858
Other Operating Revenue		<u>\$256,564</u>		<u>0</u>
Total Revenues		\$18,355,392		\$16,396,822
<u>RHCF Expenses</u>				
Operating	\$221.81	\$13,677,643	\$215.53	\$13,414,417
Capital	<u>37.03</u>	<u>2,283,604</u>	<u>37.91</u>	<u>2,359,468</u>
Total RHCF Expenses	\$258.84	\$15,961,247	\$253.44	\$15,773,885
<u>LTHHCP Expenses</u>				
(operating)	\$33.82	<u>\$195,389</u>	\$31.68	<u>\$187,221</u>
Total Expenses		\$16,156,636		\$15,961,106
Net Income		<u>\$2,198,756</u>		<u>\$435,716</u>
Utilization (Patient Days)		61,665		62,239
Visits (LTHHCP)		5,778		5,910
Occupancy (Inpatient)		96.83%		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. The minor discrepancies between the 2016 certified financials and the reported current year budget are due to oversights in preparation of the cost report and other operating income.
- 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 two years has averaged 96.52% and current occupancy was 97.66% as of September 30, 2017.
- Breakeven utilization for the RHCF is projected at 97.3% or 61,793 patient days for the first year.

- Utilization by payor source for the current and first year after the change in ownership of the RHCF is summarized below:

	<u>Current Year and Year One</u>
Commercial-FFS	1.58%
Medicare-FFS	9.83%
Medicaid-FFS	65.04%
Medicaid-Managed Care	10.05%
Private Pay	11.96%
Other	<u>1.54%</u>
Total	100.0%

- Breakeven utilization for the RHCF is projected at 97.3% or 61,793 patient days for the first year.
- Utilization by payor source for the current and first year after the change in ownership of the LTHHCP is summarized below:

	<u>Current Year</u>	<u>Year One</u>
Commercial-FFS	0.90%	1.18%
Commercial-Managed Care	84.02%	83.25%
Medicare-FFS	8.52%	8.46%
Medicare-Managed Care	0.26%	0.34%
Medicaid-FFS	6.23%	6.43%
Private Pay	<u>0.07%</u>	<u>0.34%</u>
Total	100.0%	100.0%

#### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the assets is \$10 with the assumption by Otsego SNF Operations Associates LLC of certain liabilities of \$655,363.

The working capital requirement is estimated at \$2,660,184 based on two months of Year One expenses and will be met with \$1,345,694 proposed members' equity and a \$1,314,490 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 \$435,716 in Year One after the change in ownership. As of September 30, 2017, utilization was at 97.66%. BFA Attachment F is the budget sensitivity analysis based on current utilization of the facility as of September 30, 2017, which shows the budgeted revenues would increase by \$1,099,370 resulting in a net income in Year One of \$1,535,086. BFA Attachment B is Otsego SNF Operations Associates LLC's Pro Forma Balance Sheet, which shows the entity will start with \$5,871,557 in net members' equity. The budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is the Financial Summary of Focus Rehabilitation and Nursing Center at Otsego. As shown, the RHCF had a negative working capital position, net equity, and a net operating loss of \$309,000 for the 2015 period. The 2015 loss is due to the change in ownership in late 2014 whereas the new owner was in the process of implementing strategies to rectify the losses. Focus Rehabilitation and Nursing Center at Otsego has corrected these factors by 2016. The RHCF has maintained positive

working capital, net equity and a net income from operations of \$1,358,241 and \$438,593 as of December 31, 2016 and June 30, 2017, respectively.

BFA Attachments D, financial summary of the proposed members affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown.

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

Recommendation

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

## Attachments

BFA Attachment A	Net Worth of Proposed Members, Otsego SNF Operations Associates LLC
BFA Attachment B	Pro Forma Balance Sheet, Otsego SNF Operations Associates LLC
BFA Attachment C	Financial Summary of Focus Rehabilitation & Nursing Center at Otsego
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 7th day of December 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 Otsego SNF Operations Associates LLC as the new operator of the 174-bed residential health care facility and LTHHCP located at 128 Phoenix Mills Cross Road, Cooperstown currently operated as Focus Rehabilitation and Nursing Center at Otsego, 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:

172191 E

Otsego SNF Operations LLC  
d/b/a Cooperstown for Rehabilitation and  
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that 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 the executed consulting services agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a copy of the certificate of assumed name, 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 # 171408-E**  
**Personal Touch Home Aides of New York Inc**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** June 12, 2017

**Executive Summary**

**Description**

PTS of Westchester, Inc., a proprietary Article 36 certified home health agency (CHHA) located at 7-11 South Broadway, White Plains (Westchester County), requests approval to merge with Personal Touch Home Aides of New York, Inc., a proprietary Article 36 CHHA located at 3632 Nostrand Avenue, 4<sup>th</sup> Floor, Brooklyn (Kings County). Upon approval of the consolidation, Personal Touch Home Aides of New York, Inc. will be the surviving corporate entity and the CHHA operated by PTS of Westchester, Inc. will close. Both CHHAs are owned by PT Intermediate Holding, Inc. (parent), a wholly owned subsidiary of Personal Touch Holding Corporation (grandparent / ultimate parent).

Personal Touch Home Aides of New York, Inc. is currently authorized to serve Bronx, Kings, New York, Queens, Richmond, Nassau and Suffolk Counties, adding Westchester County to its service area upon approval of this merger. The CHHA is licensed to provide Home Health Aide, Medical Social Services, Medical Supplies/Equipment and Appliances, Nursing, Occupational Therapy, Physical Therapy, and Speech-Language Pathology services. There will be no change to the services provided.

On May 25, 2017, the applicant entered into an Agreement and Plan of Merger with the current operator of PTS of Westchester, Inc. to acquire the assets and all debts and liabilities of the CHHA, contingent upon obtaining all necessary approvals including the approval of the Public Health and Health Planning Council. There is no purchase price associated with the merger,

as the surviving entity is taking over all debts and liabilities of PTS of Westchester, Inc.

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**  
Upon approval of this project, PTS of Westchester, Inc. would close and the Applicant would continue to provide the services previously provided by the PTS of Westchester, Inc. and add Westchester County to its license.

**Program Summary**  
There is nothing in the background of the members of the board of directors and officers of the applicant Personal Touch Home Aides of New York, Inc. (Personal Touch CHHA), its parent company and sole stockholder PT Intermediate Holding, Inc., its parent company and sole stockholder, Personal Touch Holding Corp., or the sole ESOP Trustee, GreatBanc Trust Company, to adversely affect their positions with the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

**Financial Summary**  
There are no project costs or purchase prices associated with this application. The proposed budget is as follows:

Revenues	\$18,045,108
Expenses	<u>\$17,732,780</u>
Net Income	\$312,328

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicant's executed Certificate of Merger, acceptable to the Department. [CSL]
2. Submission of a photocopy of the bylaws of PTS of Westchester, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the Certificate of Incorporation for PTS of Westchester, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's Original Lease 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. Approval conditioned upon no employee, or any other individual or entity, owning and/or controlling 10% or more of the issued stock without first obtaining New York State Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [LTC]

Council Action Date

**December 7, 2017**



## Need Analysis

### Analysis

The services currently offered by the Applicant are listed below. PTS of Westchester, Inc. is certified to provide all these services within Westchester County. This proposal would add Westchester County to the operating certificate of the Applicant without adding new services. The Applicant would continue to provide these services within Westchester County.

- Baseline Services - CHHA
- Home Health Aide
- Medical Social Services
- Medical Supplies Equipment and Appliances
- Nursing
- Therapy - Occupational
- Therapy - Physical
- Therapy - Speech Language Pathology

### Conclusion

This proposal to merge PTS of Westchester, Inc. into Personal Touch Aides of New York, Inc. will allow the Applicant to realize operational and cost efficiencies while continuing to serve the patients in its care. Upon approval, there will be no service changes or disruptions in care, with Westchester CHHA patients continuing to receive services from the new operator.

### Recommendation

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

## Program Analysis

### Program Description

Personal Touch Home Aides of New York, Inc. (Personal Touch), a proprietary Article 36 certified home health agency (CHHA), proposes to acquire and merge PTS of Westchester, Inc. (PTS), a proprietary Article 36 certified home health agency (CHHA), into the existing Personal Touch CHHA.

Personal Touch CHHA is currently approved to serve Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk Counties, and is authorized for the services of Home Health Aide, Medical Social Service, Medical Supplies/Equipment/Appliances, Nursing, Therapy-Occupational, Therapy-Physical, and Therapy-Speech Language Pathology. PTS CHHA is currently approved to serve Westchester County only, and is also authorized for the services of Home Health Aide, Medical Social Service, Medical Supplies/Equipment/Appliances, Nursing, Therapy-Occupational, Therapy-Physical, and Therapy-Speech Language Pathology. As a result of the proposed acquisition and merger of the PTS CHHA, the Personal Touch CHHA will be adding (from the PTS CHHA) Westchester County to its approved geographic service area. Accordingly, upon acquisition and merger, PTS CHHA will officially close, surrender its operating certificate, and terminate its Home Health Agency Medicare Provider Number. A proposed PTS CHHA closure plan was submitted to NYSDOH Metropolitan Area Regional Office, and the proposed closure plan received NYSDOH approval on September 13, 2017. Upon legal acquisition and merger, the PTS CHHA sole practice location office at 7-11 South Broadway, Suite 404, White Plains, New York 10601 (Westchester County) will close.

Personal Touch CHHA will remain at its sole CHHA practice location office at 3632 Nostrand Avenue, Brooklyn, New York 11229 (Kings County), from which it will serve all its approved counties, including the to-be-acquired Westchester County. The CHHA's legal entity / corporate operator, Personal Touch Home Aides of New York, Inc., will remain at 222-15 Northern Boulevard, Bayside, New York 11361 (Queens County). In addition to its Article 36 CHHA, Personal Touch Home Aides of New York, Inc. also currently

operates an Article 36 Long Term Home Health Care Program (LTHHCP) under the assumed name (d/b/a) of PTS of Brooklyn LTHHCP, also located at 3632 Nostrand Avenue, Brooklyn, New York 11229 (Kings County), and approved to serve Kings County only. PTS of Brooklyn LTHHCP operated by Personal Touch CHHA will not be affected by the Personal Touch CHHA's acquisition and merger of the PTS CHHA, as the PTS CHHA does not currently operate a LTHHCP.

In addition to the two CHHAs and one LTHHCP in New York State identified above, Personal Touch is currently affiliated with three Licensed Home Care Services Agencies (LHCSAs), an Early Intervention Program (EIP), and a Managed Long Term Care Plan (MLTCP) in New York State, plus several Certified Home Health Agencies (CHHAs), Licensed Home Care Services Agencies (LHCSAs), and Hospices located outside of New York State, that are included in the organizational structure of its parent corporation PT Intermediate Holding, Inc., and its ultimate parent corporation, Personal Touch Holding Corp. (see Programmatic Attachment A - Current/Proposed Organizational Charts). Additionally, an individual board member is affiliated with an Assisted Living Program (ALP) in New York State.

#### **Certified Home Health Agencies Reviewed**

- Personal Touch Home Aides of New York, Inc. (CHHA)
- PTS of Westchester, Inc. (CHHA)
- Personal Touch Home Care of Florida, Inc. (CHHA **in FL**)
- Personal Touch Home Care of Indiana, Inc. (CHHA **in IN**)
- Personal Touch Home Care of Kentucky, Inc. (CHHA **in KY**)
- Personal Touch Home Care of Baltimore, Inc. (CHHA **in MD**)
- Personal Touch Home Care of Mass, Inc. (CHHA **in MA**)
- Personal Touch Home Care of S.E. Mass, Inc. (CHHA **in MA**)
- Personal Touch Home Aides, Inc. (CHHA **in MA**)
- Personal Touch Home Care of Missouri, Inc. (CHHA **in MO**)
- Personal Touch Home Care of Greater Portsmouth, Inc. (CHHA **in NH**)
- Personal Touch Home Aides of Greater Portsmouth, Inc. (CHHA **in NH**)
- Personal Touch Home Care of Ohio, Inc. (CHHA **in OH**)
- Personal Touch Home Care of PA, Inc. (CHHA **in PA**)
- PT Home Services of Dallas, Inc. (CHHA **in TX**)
- PT Home Services of San Antonio, Inc. (CHHA **in TX**)
- Personal Touch Home Care of Virginia, Inc. (CHHA **in VA**)

#### **Hospices Reviewed**

- PT Hospice of PA, Inc. (Hospice **in PA**)
- Personal Touch Hospice of Virginia, Inc. (Hospice **in VA**)

#### **Long Term Home Health Care Programs Reviewed**

- Personal Touch Home Aides of New York, Inc., d/b/a PTS of Brooklyn LTHHCP (LTHHCP)

#### **Licensed Home Care Services Agencies Reviewed**

- Personal Touch Home Care, Inc. (LHCSA)
- Personal Touch Home Care of Long Island, Inc. (LHCSA)
- Personal Touch Home Care of Westchester, Inc. (LHCSA)
- Personal Touch Home Aides of Baltimore, Inc. (LHCSA **in MD**)
- PT Home Services of Missouri, Inc. (LHCSA **in MO**)
- Personal Touch Home Care of New Jersey, Inc. (LHCSA **in NJ**)
- Personal Touch Home Care of N.C., Inc. (LHCSA **in NC**)
- Personal Touch Home Aides, Inc. (LHCSA **in PA**)
- Houston – Personal Touch Home Aides, Inc. (LHCSA **in TX**)
- Personal Touch Home Aides of Virginia, Inc. (LHCSA **in VA**)
- Personal Touch Home Care of West Virginia, Inc. (LHCSA **in WV**)

### Other Provider Types Reviewed

- Personal Touch Home Care of New York, Inc., Early Intervention Program (EIP)
- Queens Boulevard ALP, LLC, d/b/a Boulevard Assisted Living Program (ALP)
- Integra MLTC, Inc. (MLTCP)

At the current time, and as proposed by the applicant following the planned acquisition and merger of PTS of Westchester, Inc. (PTS CHHA), the applicant, Personal Touch Home Aides of New York, Inc. (Personal Touch), will continue to be authorized 200 shares of common stock. The sole stockholder will continue to be its parent corporation, PT Intermediate Holding, Inc., a proprietary business corporation, possessing 100 shares, with the remaining 100 shares remaining unissued. PT Intermediate Holding, Inc. will continue to be authorized 10,000 shares of common stock. The sole stockholder will continue to be its parent corporation, Personal Touch Holding Corp., a proprietary business corporation, possessing 1,000 shares, with the remaining 9,000 shares remaining unissued. Personal Touch Holding Corp. will continue to be authorized 40,000,000 shares of common stock (10,000,000 of which remain unissued), and 10,000,000 shares of preferred stock (all of which remain unissued). Of the 30,000,000 shares of common stock issued, the sole stockholder owning 10% or more of the issued stock will continue to be the Personal Touch Home Care Employee Stock Ownership Plan (ESOP) Trust, possessing 9,300,000 shares (31%). The applicant also identifies that the Felix L. Glaubach Children Trust will continue to possess 2,970,000 shares (9.9%), and the remaining 17,730,000 shares (59.1%) will continue to be held by other natural persons or other entities, none of which will possess 10% or more of the issued stock. The sole trustee of the ESOP Trust will continue to be GreatBanc Trust Company.

In 2011, PHHPC approved previous CON application # 102409-E requesting approval to establish the Personal Touch Home Care Employee Stock Ownership Plan (ESOP), and to establish the ESOP Trust as the majority stockholder (31%) of Personal Touch Holding Corp. That CON application had also approved Robert Marx (18.35%) and Felix Glaubach (18.35%) as additional more-than-10% stockholders at that time, with the remaining 32.3% stock held by other natural persons or other entities, none of which possessed 10% or more of the issued stock. As noted above, Mr. Marx and Mr. Glaubach no longer individually own at least 10% or more of the issued stock. In addition, CON application # 102409-E also approved GreatBanc Trust Company as the sole Trustee of the ESOP Trust, and approved its officers and board members at that time.

The members of board of directors of the applicant Personal Touch Home Aides of New York, Inc. (Personal Touch CHHA), are as follows:

**Robert Caione, Chairman, Chief Executive Officer**, is currently licensed in New York State as a Certified Public Accountant (but is not registered as he is not currently practicing as a Certified Public Accountant), who lists current employment as Chief Executive Officer of Personal Touch Holding Corp. Mr. Caione discloses the following additional board member affiliations:

- Personal Touch Home Aides of New York, Inc. (CHHA)
- PTS of Westchester, Inc. (CHHA)
- Personal Touch Home Aides of New York, Inc., d/b/a PTS of Brooklyn LTHHCP (LTHHCP)
- Personal Touch Home Care of Long Island, Inc. (LHCSA)
- Personal Touch Home Care of Westchester, Inc. (LHCSA)
- Integra MLTC, Inc. (MLTCP)
- Personal Touch Home Care of Indiana, Inc. (CHHA **in IN**)
- Personal Touch Home Care of Kentucky, Inc. (CHHA **in KY**)
- Personal Touch Home Care of Baltimore, Inc. (CHHA **in MD**)
- Personal Touch Home Aides of Baltimore, Inc. (LHCSA **in MD**)
- Personal Touch Home Care of Mass, Inc. (CHHA **in MA**)
- Personal Touch Home Care of S.E. Mass, Inc. (CHHA **in MA**)
- Personal Touch Home Aides, Inc. (CHHA **in MA**)
- Personal Touch Home Care of Greater Portsmouth, Inc. (CHHA **in NH**)
- Personal Touch Home Aides of Greater Portsmouth, Inc. (CHHA **in NH**)
- Personal Touch Home Care of New Jersey, Inc. (LHCSA **in NJ**)
- Personal Touch Home Care of Ohio, Inc. (CHHA **in OH**)

- Personal Touch Home Aides, Inc. (LHCSA in PA)
- PT Home Services of Dallas, Inc. (CHHA in TX)
- PT Home Services of San Antonio, Inc. (CHHA in TX)
- Houston – Personal Touch Home Aides, Inc. (LHCSA in TX)
- Personal Touch Home Care of Virginia, Inc. (CHHA in VA)
- Personal Touch Hospice of Virginia, Inc. (Hospice in VA)
- Personal Touch Home Aides of Virginia, Inc. (LHCSA in VA)

**Robert Marx, Esq., President, Chief Legal Officer**, is currently licensed and registered in New York State as an Attorney, a Real Estate Broker, and a Notary Public, who lists current employment as Executive Vice President and Chief Legal Officer of Personal Touch Holding Corp. Mr. Marx discloses the following additional board member affiliations:

- Personal Touch Home Aides of New York, Inc. (CHHA)
- PTS of Westchester, Inc. (CHHA)
- Personal Touch Home Aides of New York, Inc., d/b/a PTS of Brooklyn LTHHCP (LTHHCP)
- Personal Touch Home Care, Inc. (LHCSA)
- Personal Touch Home Care of Long Island, Inc. (LHCSA)
- Personal Touch Home Care of Westchester, Inc. (LHCSA)
- Personal Touch Home Care of New York, Inc., Early Intervention Program (EIP)
- Queens Boulevard ALP, LLC, d/b/a Boulevard Assisted Living Program (ALP)
- Integra MLTC, Inc. (MLTCP)
- Personal Touch Home Care of Florida, Inc. (CHHA in FL)
- Personal Touch Home Care of Indiana, Inc. (CHHA in IN)
- Personal Touch Home Care of Kentucky, Inc. (CHHA in KY)
- Personal Touch Home Care of Baltimore, Inc. (CHHA in MD)
- Personal Touch Home Aides of Baltimore, Inc. (LHCSA in MD)
- Personal Touch Home Care of Mass, Inc. (CHHA in MA)
- Personal Touch Home Care of S.E. Mass, Inc. (CHHA in MA)
- Personal Touch Home Aides, Inc. (CHHA in MA)
- Personal Touch Home Care of Missouri, Inc. (CHHA in MO)
- PT Home Services of Missouri, Inc. (LHCSA in MO)
- Personal Touch Home Care of Greater Portsmouth, Inc. (CHHA in NH)
- Personal Touch Home Aides of Greater Portsmouth, Inc. (CHHA in NH)
- Personal Touch Home Care of New Jersey, Inc. (LHCSA in NJ)
- Personal Touch Home Care of N.C., Inc. (LHCSA in NC)
- Personal Touch Home Care of Ohio, Inc. (CHHA in OH)
- Personal Touch Home Care of PA, Inc. (CHHA in PA)
- PT Hospice of PA, Inc. (Hospice in PA)
- Personal Touch Home Aides, Inc. (LHCSA in PA)
- PT Home Services of Dallas, Inc. (CHHA in TX)
- PT Home Services of San Antonio, Inc. (CHHA in TX)
- Houston – Personal Touch Home Aides, Inc. (LHCSA in TX)
- Personal Touch Home Care of Virginia, Inc. (CHHA in VA)
- Personal Touch Hospice of Virginia, Inc. (Hospice in VA)
- Personal Touch Home Aides of Virginia, Inc. (LHCSA in VA)
- Personal Touch Home Care of West Virginia, Inc. (LHCSA in WV)

**John Miscione**, is currently licensed and registered in New York State, California, Massachusetts, and Pennsylvania, as a FINRA registered / regulated Securities and Investment Broker and Agent, who lists current employment as a self-employed consultant, and recent retirement as Managing Director of Duff and Phelps Securities, LLC, (Corporate Finance / Investment Firm). Mr. Miscione discloses the following additional board member affiliations:

- Personal Touch Home Aides of New York, Inc. (CHHA)
- PTS of Westchester, Inc. (CHHA)
- Personal Touch Home Aides of New York, Inc., d/b/a PTS of Brooklyn LTHHCP (LTHHCP)

- Personal Touch Home Care, Inc. (LHCSA)
- Personal Touch Home Care of Long Island, Inc. (LHCSA)
- Personal Touch Home Care of Westchester, Inc. (LHCSA)
- Personal Touch Home Care of New York, Inc., Early Intervention Program (EIP)
- Personal Touch Home Care of New Jersey, Inc. (LHCSA **in NJ**)

Additional officers of the applicant Personal Touch CHHA are as follows:

**Yitzy Hollander, Chief Financial Officer**, is currently licensed and registered in New York State as a Certified Public Accountant and a Notary Public, who lists current employment as Chief Financial Officer of Personal Touch Holding Corp. Mr. Hollander discloses the following additional officer affiliations:

- Personal Touch Home Aides of New York, Inc. (CHHA)
- PTS of Westchester, Inc. (CHHA)
- Personal Touch Home Aides of New York, Inc., d/b/a PTS of Brooklyn LTHHCP (LTHHCP)
- Personal Touch Home Care, Inc. (LHCSA)
- Personal Touch Home Care of Long Island, Inc. (LHCSA)
- Personal Touch Home Care of Westchester, Inc. (LHCSA)
- Personal Touch Home Care of New York, Inc., Early Intervention Program (EIP)
- Integra MLTC, Inc. (MLTCP)
- Personal Touch Home Care of Indiana, Inc. (CHHA **in IN**)
- Personal Touch Home Care of Kentucky, Inc. (CHHA **in KY**)
- Personal Touch Home Care of Baltimore, Inc. (CHHA **in MD**)
- Personal Touch Home Aides of Baltimore, Inc. (LHCSA **in MD**)
- Personal Touch Home Care of Mass, Inc. (CHHA **in MA**)
- Personal Touch Home Care of S.E. Mass, Inc. (CHHA **in MA**)
- Personal Touch Home Aides, Inc. (CHHA **in MA**)
- Personal Touch Home Care of Greater Portsmouth, Inc. (CHHA **in NH**)
- Personal Touch Home Aides of Greater Portsmouth, Inc. (CHHA **in NH**)
- Personal Touch Home Care of New Jersey, Inc. (LHCSA **in NJ**)
- Personal Touch Home Care of Ohio, Inc. (CHHA **in OH**)
- Personal Touch Home Care of PA, Inc. (CHHA **in PA**)
- PT Hospice of PA, Inc. (Hospice **in PA**)
- Personal Touch Home Aides, Inc. (LHCSA **in PA**)
- PT Home Services of Dallas, Inc. (CHHA **in TX**)
- PT Home Services of San Antonio, Inc. (CHHA **in TX**)
- Houston – Personal Touch Home Aides, Inc. (LHCSA **in TX**)
- Personal Touch Home Care of Virginia, Inc. (CHHA **in VA**)
- Personal Touch Hospice of Virginia, Inc. (Hospice **in VA**)
- Personal Touch Home Aides of Virginia, Inc. (LHCSA **in VA**)
- Personal Touch Home Care of West Virginia, Inc. (LHCSA **in WV**)

The members of board of directors of the applicant's parent corporation and 100% stockholder, PT Intermediate Holding, Inc., are as follows:

**Robert Marx, Esq., President, Chief Legal Officer (disclosed above)**

**John Miscione (disclosed above)**

**John Calabro** is currently Retired, listing his former employment as Underwriting and Portfolio Manager for Healthcare Finance Group (Commercial Finance). Mr. Calabro discloses the following additional board member affiliations:

- Personal Touch Home Care of Mass, Inc. (CHHA **in MA**)
- Personal Touch Home Care of S.E. Mass, Inc. (CHHA **in MA**)
- Personal Touch Home Aides, Inc. (CHHA **in MA**)

- Personal Touch Home Care of Greater Portsmouth, Inc. (CHHA in **NH**)
- Personal Touch Home Aides of Greater Portsmouth, Inc. (CHHA in **NH**)
- Personal Touch Home Care of PA, Inc. (CHHA in **PA**)
- PT Hospice of PA, Inc. (Hospice in **PA**)
- Personal Touch Home Aides, Inc. (LHCSA in **PA**)

**Lawrence J. Waldman**, is currently licensed and registered in New York State as a Certified Public Accountant, who lists current employment as Senior Advisor at First Long Island Investors, LLC (Wealth Management), and Associate Adjunct Professor at Hofstra University School of Business. Mr. Waldman discloses the following additional board member affiliations:

- Integra MLTC, Inc. (MLTCP)
- Personal Touch Home Care of Indiana, Inc. (CHHA in **IN**)
- Personal Touch Home Care of Kentucky, Inc. (CHHA in **KY**)
- Personal Touch Home Care of Ohio, Inc. (CHHA in **OH**)
- Personal Touch Home Care of Virginia, Inc. (CHHA in **VA**)
- Personal Touch Hospice of Virginia, Inc. (Hospice in **VA**)
- Personal Touch Home Aides of Virginia, Inc. (LHCSA in **VA**)

Additional officers of the applicant's parent corporation and 100% stockholder, PT Intermediate Holding, Inc., are as follows:

**Yitzy Hollander, Chief Financial Officer (disclosed above)**

The members of board of directors of PT Intermediate Holding's parent corporation and 100% stockholder, Personal Touch Holding Corp., are as follows:

**Robert Marx, Esq., Executive Vice President, Chief Legal Officer, Corporate Secretary (disclosed above),**

**John Miscione (disclosed above)**

**John Calabro (disclosed above)**

**Lawrence J. Waldman (disclosed above)**

**Dr. Felix L. Glaubach, DDS**, is currently licensed in New York State as a Dentist (but is not registered as he is no longer practicing Dentistry), is Retired from Dentistry, and is currently employed as Founder and Managing Member of Custom Care Concierge, LLC (Concierge Services). Dr. Glaubach discloses the following additional board member affiliations:

- Personal Touch Home Aides of New York, Inc. (CHHA)
- PTS of Westchester, Inc. (CHHA)
- Personal Touch Home Aides of New York, Inc., d/b/a PTS of Brooklyn LTHHCP (LTHHCP)
- Personal Touch Home Care, Inc. (LHCSA)
- Personal Touch Home Care of Long Island, Inc. (LHCSA)
- Personal Touch Home Care of Westchester, Inc. (LHCSA)
- Personal Touch Home Care of New York, Inc., Early Intervention Program (EIP)
- Integra MLTC, Inc. (MLTCP)
- Personal Touch Home Care of Florida, Inc. (CHHA in **FL**)
- Personal Touch Home Care of Indiana, Inc. (CHHA in **IN**)
- Personal Touch Home Care of Kentucky, Inc. (CHHA in **KY**)
- Personal Touch Home Care of Baltimore, Inc. (CHHA in **MD**)
- Personal Touch Home Aides of Baltimore, Inc. (LHCSA in **MD**)
- Personal Touch Home Care of Mass, Inc. (CHHA in **MA**)
- Personal Touch Home Care of S.E. Mass, Inc. (CHHA in **MA**)
- Personal Touch Home Aides, Inc. (CHHA in **MA**)
- Personal Touch Home Care of Missouri, Inc. (CHHA in **MO**)

- PT Home Services of Missouri, Inc. (LHCSA in MO)
- Personal Touch Home Care of Greater Portsmouth, Inc. (CHHA in NH)
- Personal Touch Home Aides of Greater Portsmouth, Inc. (CHHA in NH)
- Personal Touch Home Care of New Jersey, Inc. (LHCSA in NJ)
- Personal Touch Home Care of N.C., Inc. (LHCSA in NC)
- Personal Touch Home Care of Ohio, Inc. (CHHA in OH)
- Personal Touch Home Care of PA, Inc. (CHHA in PA)
- PT Hospice of PA, Inc. (Hospice in PA)
- Personal Touch Home Aides, Inc. (LHCSA in PA)
- PT Home Services of Dallas, Inc. (CHHA in TX)
- PT Home Services of San Antonio, Inc. (CHHA in TX)
- Houston – Personal Touch Home Aides, Inc. (LHCSA in TX)
- Personal Touch Home Care of Virginia, Inc. (CHHA in VA)
- Personal Touch Hospice of Virginia, Inc. (Hospice in VA)
- Personal Touch Home Aides of Virginia, Inc. (LHCSA in VA)

**Robert E. Goff** is currently Retired, listing his former employment as Principal Consultant for The ABER Group, LLC (Consulting Firm), and Chief Executive Officer / Executive Director of University Physicians Network, LLC (Physicians Provider Organization). Mr. Goff discloses the following additional board member affiliations:

- Personal Touch Home Care, Inc. (LHCSA)
- Integra MLTC, Inc. (MLTCP)

Additional officers of PT Intermediate Holding's parent corporation and 100% stockholder, Personal Touch Holding Corp., are as follows:

**Robert Caione, Chief Executive Officer (disclosed above)**

**Yitzy Hollander, Chief Financial Officer (disclosed above)**

**Patricia A. Malm, RN, Chief Operating Officer – Certified Operations**, is currently licensed and registered in New York State as a Nurse, who lists current employment as Chief Operating Officer of Certified Operations for Personal Touch Holding Corp. Ms. Malm discloses the following additional officer affiliation:

- Personal Touch Home Care of West Virginia, Inc. (LHCSA in WV)

**Laura E. Dechen, Vice President of Marketing, Communications, and Business Development**, is currently employed as Vice President of Marketing, Communications, and Business Development for Personal Touch Holding Corp.

The board of directors of GreatBanc Trust Company, the sole trustee of the Personal Touch ESOP Trust, are as follows:

**Michael Welgat, Esq., Chairman (PHHPC previously reviewed and approved in Personal Touch CON #102409)**

**James E. Staruck, Esq., Chief Executive Officer**, is currently licensed and registered in the State of Illinois as an Attorney, but is not currently practicing law. Mr. Staruck is currently employed as President and Chief Executive Officer of GreatBanc Trust Company.

**Stephen J. Hartman, Senior Vice President (PHHPC previously reviewed and approved in Personal Touch CON #102409)**

**Elijah Vaughn Gordy (PHHPC previously reviewed and approved in Personal Touch CON #102409)**

**William S. Smith, Jr.**, has been Retired since 1991.

A search of all the above-named board members and officers, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List. The NYS Education Department Office of the Professions, the NYS Unified Court System, the NYS Department of State Division of Licensing, the NYS Department of State Occupational Licensing Management System, the Financial Industry Regulatory Authority, Inc., (FINRA) Broker Check Central Registration Depository, and the Supreme Court of the State of Illinois Attorney Registration and Disciplinary Commission, have all indicated that there are no adverse findings, or disciplinary actions or issues, regarding the licensure of the health professionals and other licensed professionals associated with this application. We have received current Certificates of Good Standing for the currently licensed, registered, and practicing attorneys being reviewed above.

**Facility Compliance / Enforcement**

The NYS Department of Health Division of Home and Community Based Services reviewed the compliance histories of all affiliated Certified Home Health Agencies, Long Term Home Health Care Programs, and Licensed Home Care Services Agencies, for the time-period 2010 to 2017, and reported that during that time-period, the affiliated Certified Home Health Agencies, Long Term Home Health Care Programs, and Licensed Home Care Services Agencies have all remained in compliance with no history of enforcement action taken.

The NYS Department of Health Division of Adult Care Facilities and Assisted Living reviewed the compliance history of the affiliated Adult Care Facility / Assisted Living Program, for the time-period 2010 to 2017, and reported that during that time-period, the affiliated Adult Care Facility / Assisted Living Program has remained in compliance with no history of enforcement action taken.

The NYS Department of Health Bureau of Early Intervention reviewed the compliance history of the affiliated Early Intervention Program for the time-period 2010 to 2017, and reported that during that time-period, the affiliated Early Intervention Program has remained in compliance with no history of enforcement action taken.

The NYS Department of Health Office of Health Insurance Programs, Bureau of Managed Long Term Care, reviewed the compliance history of the affiliated Managed Long Term Care Plan for the time-period 2010 to 2017, and reported that during that time-period, the affiliated Managed Long Term Care Plan has remained in compliance with no history of enforcement action taken.

Out-of-state compliance requests were sent to all the states identified above in which Personal Touch affiliated providers are located. To date, we have received responses indicating either current compliance, or currently closed, with no histories of enforcements, from the states of Indiana, Kentucky, Maryland, Missouri, Ohio, Pennsylvania, Texas, and Virginia. The State of Massachusetts responded that it does not have the resources to conduct reviews of compliance / enforcement histories, and will not provide such reports. To date, no responses have been received from the states of Florida, New Hampshire, New Jersey, North Carolina, and West Virginia.

<b>CHHA Quality of Patient Care Star Ratings</b>	
<b>(per <a href="https://www.medicare.gov/homehealthcompare/search.html">https://www.medicare.gov/homehealthcompare/search.html</a>, as of 10/31/2017)</b>	
<b>New York Average: 3 out of 5 stars    National Average: 3.5 out of 5 stars</b>	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Personal Touch Home Aides of New York, Inc.	4 out of 5 stars
PTS of Westchester, Inc.	2.5 out of 5 stars

**Conclusion**



A review of all personal qualifying information indicates there is nothing in the background of the members of the board of directors and officers of the applicant Personal Touch Home Aides of New York, Inc. (Personal Touch CHHA), its parent company and sole stockholder PT Intermediate Holding, Inc., its parent company and sole stockholder, Personal Touch Holding Corp., or the sole ESOP Trustee, GreatBanc Trust Company, to adversely affect their positions with the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

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

<h2>Financial Analysis</h2>
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Agreement and Plan of Merger

The applicant submitted an executed Agreement and Plan of Merger for the merger, summarized below:

Date:	May 25, 2017
Purpose:	Merge/consolidate all CHHA operations of Personal Touch Intermediate Holding, Inc. into one central office location.
Merging	PTS of Westchester, Inc.
Survivor	Personal Touch Home Aides of New York, Inc.
Assets Acquired:	All Assets associated with the operations of the CHHA
Assumed Liabilities:	All debts, liabilities and duties of the Merging entity
Purchase Price:	\$0

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid liabilities.

Lease Rental Agreement

The applicant submitted an executed and amended lease for the site that they will occupy, summarized below:

Date:	August 12, 2014, amended February 29, 2016
Premises:	3632 Nostrand Avenue, 4 <sup>th</sup> Floor, Brooklyn, New York with the addition of the 3 <sup>rd</sup> floor space per the amendment
Landlord:	AMIN Realty, LLC
Lessee:	Personal Touch Home Aides of New York, Inc.
Term:	7 years from initial date
Rent:	\$286,808 Annually (\$23,900.50 monthly) with an annual 3% increase
Provisions:	Triple Net

Operating Budget

The applicant submitted the CHHA's current results for 2016, and the projected first and third year operating budgets after the merger of the two entities, in 2017 dollars, summarized below:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare	\$5,812,169	\$8,454,841	\$8,705,041
Medicaid	\$7,282,049	\$5,831,551	\$6,364,800
Commercial	\$2,673,625	\$3,526,500	\$3,632,400
Charity Care	0	(\$632,661)	(\$657,133)
Total Revenues	\$15,767,843	\$17,180,231	\$18,045,108

<u>Expenses</u>			
Operating	\$15,642,013	\$16,608,233	\$17,291,421
Capital	<u>\$434,057</u>	<u>\$441,359</u>	<u>\$441,359</u>
Total Expenses	\$16,076,070	\$17,049,592	\$17,732,780
Net Income (Loss)	<u>(\$308,227)</u>	<u>\$130,639</u>	<u>\$312,328</u>
Utilization (Visits)*	107,750	122,896	126,584
Utilization (Hours)**	283,870	301,265	310,303
* <i>Nursing, PT, OT, SP, and Medical Social Services</i>			
** <i>Home Health Aid hours</i>			

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

	<u>Current Year</u>	<u>Years One and Three</u>
Medicare	35.38%	39.23%
Medicaid	45.31%	41.11%
Commercial	17.67%	17.61%
Charity Care	1.64%	2.05%

Charity care is expected to be 2.05%. The applicant stated that their policy is to assess individuals based on income to determine eligibility fee, reduced fees and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay. If the organization is unable to admit the patient or to continue charity care, every effort will be made to refer the patient for appropriate care with an alternate provider.

#### Capability and Feasibility

There is no purchase price or project cost associated with this application. There is no working capital need associated with this application, as both facilities have been in operation for many years. If the CHHA needs working capital in the future, they are backed by Personal Touch Holding Corp. and Subsidiaries, which has significant positive working capital of over \$17.8 million.

The submitted budget projects a positive net income of \$130,639 and \$312,328 in Years One and Three respectively. The submitted budget is reasonable.

BFA Attachment A is the 2015-2016 certified and the internal financial statements of Personal Touch Holding Corp and Subsidiaries as of August 31, 2017. As shown, the entity achieved an average positive working capital position, an average negative net asset position and generated an average net income from operations of \$3,470,000 for the period 2015-2016 and \$13,514,000 for the period ending August 31, 2017.

#### Recommendation

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

<h2>Attachments</h2>
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BFA Attachment A	2015-2016 Certified and 1/1/2017-8/31/2017 Internal Financial Statements of Personal Touch Holding Corp.
Programmatic Attachment A	Current/Proposed Organizational Charts

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of December, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to merge PTS of Westchester, Inc, an existing CHHA serving Westchester County, with Personal Touch Home Aides of New York Inc, resulting in the closure of PTS of Westchester, and the addition of Westchester County to Personal Touch license, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

171408 E

Personal Touch Home Aides of New York  
Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's executed Certificate of Merger, acceptable to the Department. [CSL]
2. Submission of a photocopy of the bylaws of PTS of Westchester, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the Certificate of Incorporation for PTS of Westchester, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's Original Lease Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Approval conditioned upon no employee, or any other individual or entity, owning and/or controlling 10% or more of the issued stock without first obtaining New York State Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [LTC]

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



**Project # 172049-E  
Gurwin Certified Home Health Agency**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Suffolk  
**Acknowledged:** July 31, 2017

**Executive Summary**

**Description**

Gurwin Healthcare System, Inc. (System) requests approval to be established as the sole corporate member of Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. (Gurwin Jewish), a voluntary corporation that operates Gurwin Certified Home Health Agency (CHHA), an Article 36 CHHA with its principal office located at 68 Hauppauge Road, Commack (Suffolk County). The CHHA is certified to serve Nassau and Suffolk Counties and is licensed to provide Nursing, Home Health Aide, Homemaker, Housekeeper, Personal Care, Medical Social Services, Medical Supply Equipment, Nutritional, Occupational Therapy, Physical Therapy, Audiology, Speech Pathology and Respiratory Therapy services. The proposed change will not result in a change to the CHHA's operating certificate, and there will be no change to the counties served or services offered by the CHHA.

There is no purchase agreement or acquisition costs involved in this transaction. The request represents a change in control without impact to the daily operations of the CHHA. The applicant indicated that the structure is intended to establish corporate control over System subsidiaries, which includes a residential health care facility operated by Gurwin Jewish, an adult home/senior housing entity, and a licensed home care service agency. While there are certain common needs and some shared services among the subsidiaries, their respective focus and activities are reasonably distinct. The parent model is viewed as a mechanism to properly interpret Gurwin Jewish's

mission and priorities, while also achieving increased efficiencies such as a single audit committee at the parent level without having to centralize reserve powers.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There will be no changes to the counties being served or to the services provided as a result of this transaction.

Program Summary  
A review of all personal qualifying information indicates there is nothing in the background of the members of the Board of Directors of Gurwin Healthcare System, Inc., or of The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc., to adversely affect their positions with the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Financial Summary  
There are no project costs, acquisition costs or purchase agreement associated with the establishment of the System as sole corporate member.

## 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 applicants amended and completed by-laws, which is acceptable to the Department. [CSL]
2. Submission of an executed copy of the transfer agreement of the applicant, which is acceptable to the Department. [CSL]
3. Submission of a copy of the executed and notarized Schedule 4B- Medical Affidavit of the applicant, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 7, 2017**

## Need Analysis

### Analysis

The establishment of Gurwin Healthcare System, Inc. as sole corporate member will have no immediate impact on the services provided, nor will there be a change to the counties served by the CHHA (Nassau and Suffolk). The services currently offered by Gurwin Certified Home Agency are: Audiology, Home Health Aide, Homemaker, Housekeeper, Medical Social Services, Medical Supplies Equipment and Appliances, Nursing, Nutritional, Personal Care, Therapy – Occupational, Therapy – Physical, Therapy – Respiratory, and Therapy – Speech Language Pathology.

### Conclusion

Gurwin Certified Home Health Agency. is an existing CHHA that has established relationships with hospitals and other health providers in its service area, and has an existing patient base. The establishment of Gurwin Healthcare Systems, Inc. as the sole corporate member will result in no changes to the services being provided by the CHHA.

### Recommendation

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

## Program Analysis

### Program Description

The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc., a voluntary not-for-profit corporation, currently operates an Article 28 Nursing Home and Adult Day Health Care Program (d/b/a Gurwin Jewish Nursing and Rehabilitation Center), and an Article 36 Certified Home Health Agency (d/b/a Gurwin Certified Home Health Agency). An Article 36 Long Term Home Health Care Program (d/b/a Gurwin Jewish Nursing and Rehabilitation Center LTHHCP) voluntarily closed, effective August 14, 2017. The current proposal is to establish Gurwin Healthcare System, Inc., a voluntary not-for-profit corporation, as the sole member corporation of The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. The proposed member corporation will be a passive member, with the authority to name the members of the Board of Directors of The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc.

Gurwin Certified Home Health Agency, the Article 36 CHHA, is currently approved to serve Nassau and Suffolk Counties, and is authorized for the services of Audiology, Home Health Aide, Homemaker, Housekeeper, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional Services, Personal Care, Therapy-Occupational, Therapy-Physical, Therapy-Respiratory, and Therapy-Speech Language Pathology. Gurwin Certified Home Health Agency will remain at its sole CHHA practice location office at 68 Hauppauge Road, Commack, New York 11725 (Suffolk County), which is also the address of the legal entity / corporate operator.

Although The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc., currently has no member corporation(s), it is affiliated with the following not-for-profit corporations:

- Gurwin Home Care Agency, Inc., an Article 36 Licensed Home Care Services Agency
- Gurwin Jewish – Fay J. Lindner Residences, Inc., an Article 7 (Social Services Law) Adult Care Facility/Assisted Living Residence and Enriched Housing Program.

Gurwin Healthcare System, Inc., is proposed to become the member corporation of these two additional health care corporations as well. Licensed Home Care Services Agency application # 172050 for Gurwin Home Care Agency, Inc., has been submitted to, and received by, NYSDOH for PHHPC review and approval.

The following Health Care Providers were reviewed:

- Gurwin Jewish Nursing and Rehabilitation Center (RHCF and ADHCP)
- Gurwin Certified Home Health Agency (CHHA)
- Gurwin Jewish Nursing and Rehabilitation Center LTHHCP (LTHHCP closed August 14, 2017)
- Gurwin Home Care Agency, Inc. (LHCSA)
- Gurwin Jewish – Fay J. Lindner Residences, Inc. (ACF/ALR and EHP)
- Huntington Hospital (Hospital)
- Huntington Hospital Dolan Family Health Center, Inc. (D&TC)
- Young Adult Institute (OPWDD)

#### Character and Competence

The Board of Directors of the proposed member corporation, Gurwin Healthcare System, Inc., is as follows:

**Bert E. Brodsky, Co-Chairman**, lists current employment as Chairman of Sandata Technologies (Healthcare Technology Solutions). Mr. Brodsky discloses the following affiliations:

- Gurwin Jewish Nursing and Rehabilitation Center (RHCF and ADHCP)
- Gurwin Certified Home Health Agency (CHHA)
- Gurwin Jewish Nursing and Rehabilitation Center LTHHCP (LTHHCP closed August 14, 2017)
- Gurwin Jewish – Fay J. Lindner Residences, Inc. (ACF/ALR and EHP)

**Lawrence J. Simon, Co-Chairman**, is currently Retired, listing former employment as President and CEO of Ivy Asset Management (Investment Firm). Mr. Simon discloses the following affiliations:

- Gurwin Jewish Nursing and Rehabilitation Center (RHCF and ADHCP)
- Gurwin Certified Home Health Agency (CHHA)
- Gurwin Jewish Nursing and Rehabilitation Center LTHHCP (LTHHCP closed August 14, 2017)
- Gurwin Jewish – Fay J. Lindner Residences, Inc. (ACF/ALR and EHP)

**Herbert H. Friedman, Assistant Secretary / Treasurer**, is currently licensed / registered in New York State as a Nursing Home Administrator, who lists current employment as CEO and Executive Vice President of Gurwin Jewish Nursing and Rehabilitation Center (RHCF and ADHCP). Mr. Friedman discloses the following affiliations:

- Gurwin Jewish Nursing and Rehabilitation Center (RHCF and ADHCP)
- Gurwin Certified Home Health Agency (CHHA)
- Gurwin Jewish Nursing and Rehabilitation Center LTHHCP (LTHHCP closed August 14, 2017)
- Gurwin Jewish – Fay J. Lindner Residences, Inc. (ACF/ALR and EHP)
- Gurwin Home Care Agency, Inc. (LHCSA)

The Board of Directors of the The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc., is as follows:

**Bert E. Brodsky, President (disclosed above)**

**Lawrence J. Simon, Chairman (disclosed above)**

**Barry E. Berg, Treasurer**, is currently licensed / registered in New York State as a Certified Public Accountant, who lists current employment as Managing Partner of Nussbaum, Yates, Berg, Klein, and Wolpow, LLP (Accounting Firm).

**Lee E. Launer, Secretary**, a Fellow with the American Society of Actuaries, is Retired, but is currently a consultant for American Institute of Certified Public Accountants (Professional Organization).

**Herbert Friedman, Assistant Secretary / Executive Vice President (disclosed above)**



**Frederic Z. Konigsberg, Vice-President**, is currently licensed / registered in New York State as an Attorney, who lists current employment as self-employed for Frederic Z. Konigsberg, PC (Law and Business Management Firm). Mr. Konigsberg discloses the following affiliation:

- Young Adult Institute (NYS OPWDD – Provider of Intermediate Care Facilities, Individualized Residential Alternatives, Day Habilitation Programs, and Community Based Waiver Services)

**Howard L. Phillips, Vice-President**, is currently licensed / registered in New York State as an Architect, who lists current employment as a self-employed Architect, Builder, and Building Owner. Mr. Phillips discloses the following affiliation:

- Gurwin Jewish – Fay J. Lindner Residences, Inc. (ACF/ALR and EHP)

**Phyllis N. Charash, Vice-President**, is currently Retired.

**Laura Gurwin Flug, Vice-President**, lists current employment in Sales for SLD Survivor, Inc. (Women's Apparel Manufacturing and Sales).

**Cary Wolf, Vice-President**, lists current employment as CEO of Bill Wolf Petroleum Corporation (Gasoline Distributor).

**Gerald I. Angowitz**, was formerly licensed / registered in New York State as an Attorney, who lists current employment as Managing Director of Lloyd Staffing, Inc. (Staffing Agency), and President of The Angowitz Company, Ltd. (Consulting Firm). Mr. Angowitz no longer practices law.

**Jonathan R. Blau** is currently licensed / registered in New York State as a Life Insurance Broker, who lists current employment as President and Chief Executive Officer of Fusion Family Wealth (Wealth Management).

**Matthews Calvin** is currently Retired.

**David H. Diamond**, was formerly licensed / registered in New York State, District of Columbia, New Jersey, and Virginia as an Attorney, who is currently Retired from his former position as Partner of Proskauer Rose (Law Firm). Mr. Diamond no longer practices law.

**Noah S. Finkel, MD**, is currently licensed / registered in New York State as a Physician, who lists current employment as an Orthopaedic Surgeon with ProHealth Care Associates (Medical Practice) and with Finkel Orthopaedics (Medical Practice). Dr. Finkel discloses the following affiliation:

- Huntington Hospital (Hospital)

**Gerald Furst** was formerly licensed / registered in New York State as an Attorney, who is currently Retired from his former position as a self-employed Attorney. Mr. Furst no longer practices law.

**Howard M. Gershowitz** lists current employment as Senior Vice President / Owner of Mktg, Inc. (Marketing Research). Mr. Gershowitz discloses the following affiliation:

- Gurwin Jewish – Fay J. Lindner Residences, Inc. (ACF/ALR and EHP)

**Bert P. Karlin** lists current employment as Chairman of Nemo Tile Company, Inc. (Tile, Glass, Marble, and Stone Distributor).

**Shirley B. Levitt** is currently Retired. Ms. Levitt discloses the following affiliations:

- Huntington Hospital (Hospital)
- Huntington Hospital Dolan Family Health Center, Inc. (D&TC)

**Joseph B. Rosenberg** is currently licensed / registered in New York State as an Attorney, who lists current employment as Principal of the Law Offices of Joseph B. Rosenberg (Law Firm).

**Scott A. Roteman, MD**, is currently licensed / registered in New York State as a Physician, who lists current employment as Medical Director of Eastern Island Medical Care, PC (Medical Practice).

**Teddy Selinger** is currently licensed / registered in New York State as a Certified Public Accountant, who lists current employment as Managing Partner of Margolin, Winer, and Evens, LLP (Accounting Firm).

**Fred P. Sloan** lists current employment as President / Executive of FCE Group, Inc. (Investment Advisory Firm).

**Elliott Waldman** was formerly licensed / registered in New York State as an Attorney, and is currently licensed / registered in New York State as a Life / Health / Accident Insurance Agent, who lists current employment as CEO of Pay Plans Corporation (Retirement Planning, Estate Planning, Life / Health / Accident Insurance Agency). Mr. Waldman no longer practices law.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, and with the consultation of legal counsel, it is concluded that proceeding with the proposal is appropriate.

A search of all the above-named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The NYS Education Department's Office of the Professions, NYSDOH Office of Professional Medical Conduct, NYSDOH Physician Profile, NYSDOH Bureau of Professional Credentialing, NYS Department of Financial Services, and NYS Unified Court System, have all indicated that there are no adverse findings, or disciplinary actions or issues, regarding the licensure of the health professionals and other licensed professionals associated with this application. We have received current Certificates of Good Standing for the two currently licensed / registered and practicing attorneys listed above.

#### Facility Compliance / Enforcement

The Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospital and Diagnostic and Treatment Center for the time-period 2010 through 2017, and reported that during that time-period, the affiliated Hospital and Diagnostic and Treatment Center had no enforcement actions taken.

The Division of Nursing Homes and Intermediate Care Facilities/IID reviewed the compliance histories of the affiliated Nursing Home and Adult Day Health Care Program for the time-period 2010 to 2017, and reported that during that time-period, the affiliated Nursing Home and Adult Day Health Care Program have remained in compliance with no history of enforcement action taken.

The Division of Home and Community Based Services reviewed the compliance histories of the affiliated Certified Home Health Agency, Long Term Home Health Care Program, and Licensed Home Care Services Agency, for the time-period 2010 to 2017, and reported that during that time-period, the affiliated Certified Home Health Agency, Long Term Home Health Care Program, and Licensed Home Care Services Agency have all remained in compliance with no history of enforcement action taken.

The Division of Adult Care Facilities and Assisted Living Programs reviewed the compliance histories of the affiliated Adult Care Facility/Assisted Living Program and Enriched Housing Program, for the time-period 2010 to 2017, and reported that during that time-period, the affiliated Adult Care Facility/Assisted Living Program and Enriched Housing Program have remained in compliance with no history of enforcement action taken.

The NYS Office for Persons with Developmental Disabilities reviewed the compliance history of the affiliated OPWDD-licensed provider of Intermediate Care Facilities, Individualized Residential Alternatives, Day Habilitation Programs, and Community Based Waiver Services, for the time-period 2010 to 2017, and reported that during that time-period, the affiliated OPWDD-licensed provider has remained in compliance with no history of enforcement action taken.

CHHA Quality of Patient Care Star Ratings (per <a href="https://www.medicare.gov/homehealthcompare/search.html">https://www.medicare.gov/homehealthcompare/search.html</a> , as of 10/16/2017) New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Gurwin Certified Home Health Agency	3 out of 5 stars

Recommendation

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

## Financial Analysis

Financial Analysis

There are no projected changes in the utilization, revenues or expenses of The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. as a direct result of this project.

Capability and Feasibility

There is no purchase agreement or acquisition costs involved in this transaction.

BFA Attachment A is The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc.'s 2014-2016 certified financial statements and their internal financials as of May 31, 2017. As shown, the entity achieved a positive working capital and net equity position for the period and had an average net income from operations of \$674,528 from the period 2013-2016. The entity shows a loss of \$821,731 for the 2017 period through May 31, 2017. The applicant has indicated that there is no separate balance sheet for the CHHA. The 2017 loss is due to significant occupancy issues and the facility has increased their marketing efforts to rectify the situation.

Recommendation

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

## Attachments

- BFA Attachment A 2013-2016 Certified and 1/1/2017-5/31/2017 internal Financial statements for The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc.
- BFA Attachment B Pre-and post Organization Charts

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of December, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Gurwin Healthcare System, Inc. as the sole corporate member of Rosalind & Joseph Gurwin Jewish Geriatric Center of Long Island 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 upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

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

NUMBER

APPLICANT/FACILITY

172049 E

Gurwin Certified Home Health Agency

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicants amended and completed by-laws, which is acceptable to the Department. [CSL]
2. Submission of an executed copy of the transfer agreement of the applicant, which is acceptable to the Department. [CSL]
3. Submission of a copy of the executed and notarized Schedule 4B- Medical Affidavit of the applicant, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

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

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



**Project # 172134-E  
Lawrence Home Care of Westchester**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Westchester  
**Acknowledged:** September 6, 2017

**Executive Summary**

**Description**

Lawrence Community Health Services (LCHS), a voluntary not-for-profit corporation, currently operates an Article 36 certified home health agency (CHHA) with the assumed name (d/b/a) of Lawrence Home Care of Westchester, and an Article 40 hospice with the assumed name (d/b/a) of Jansen Hospice and Palliative Care. The sole member corporation of Lawrence Community Health Services is Lawrence Care, Inc. (LC), a voluntary not-for-profit corporation, and the sole member corporation of Lawrence Care, Inc., is New York Presbyterian/Lawrence Hospital, a voluntary not-for-profit corporation. The current proposal is to dis-establish New York Presbyterian/Lawrence Hospital as the sole member corporation of Lawrence Care, Inc., which will ultimately have no member. Lawrence Care, Inc., would remain the sole member corporation of Lawrence Community Health Services, the operator of the CHHA and the Hospice.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The disestablishment of New York-Presbyterian/Lawrence Hospital as the sole corporate member of Lawrence Care, Inc will not result in any changes to services or daily operations of the CHHA or Hospice. Lawrence Care, Inc. is the sole member of Lawrence Community Health Services which operates Lawrence Home Care of Westchester.

**Program Summary**

There are no projected changes in the utilization, revenues or expenses of the programs operated by LCHS as a direct result of this project, and no changes to staffing related to approval of this application. There will be no change in certified services because of approval of this project.

**Financial Summary**

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

Revenues	\$12,920,167
Expenses	<u>\$12,461,534</u>
Gain	\$458,633

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the By-laws of Lawrence Care, Inc., which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 7, 2017**

## Need Analysis

### Analysis

The disestablishment of New York-Presbyterian/Lawrence Hospital as sole corporate member will have no immediate impact on the services provided, or counties served by the CHHA or Hospice.

### Conclusion

Lawrence Home Care of Westchester has established relationships with hospitals and other health providers in its service area, and has an existing patient base. The disestablishment of NYP/LH as the sole corporate member will result in no changes to the services being provided.

### Recommendation

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

## Program Analysis

### Review Summary

Under previous CHHA CON Project Number 971131 and Hospice CON Project Number 971132, the Public Health and Health Planning Council has already reviewed, approved, and established the voluntary corporations and their Boards of Directors for CHHA and Hospice operator Lawrence Community Health Services (whose corporate name at that time was Home Nursing Association of Westchester, Inc.), its sole member Lawrence Care, Inc., and Lawrence Care's sole member New York Presbyterian/Lawrence Hospital (whose corporate name at that time was Lawrence Hospital). The current application is requesting to merely dis-establish New York Presbyterian/Lawrence Hospital as the ultimate member. No other changes in the organizational structure are proposed. Accordingly, the remaining voluntary corporations of operator Lawrence Community Health Services (d/b/a Lawrence Home Care of Westchester, and d/b/a Jansen Hospice and Palliative Care), and sole member Lawrence Care, Inc., do not require further review, approval, and establishment at this time.

Both Lawrence Home Care of Westchester (CHHA) and Jansen Hospice and Palliative Care (Hospice) will continue to operate at their sole practice locations of 670 White Plains Road, Suite 213, Scarsdale, New York 10583. The CHHA will continue to serve the approved geographic service area of Westchester County, and will continue to offer the approved services of home health aide, medical social services, medical supplies/equipment/appliances, nursing, occupational therapy, physical therapy, and speech language pathology. The Hospice will continue to serve the approved geographic service areas of Bronx and Westchester Counties, and will continue to offer all twenty (20) required hospice services.

A search of all the remaining corporations listed above revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

CHHA Quality of Patient Care Star Ratings (per <a href="https://www.medicare.gov/homehealthcompare/search.html">https://www.medicare.gov/homehealthcompare/search.html</a> , as of 10/16/2017)	
New York Average: 3 out of 5 stars    National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Lawrence Home Care of Westchester	3.5 out of 5 stars



The Division of Home and Community Based Services reviewed the compliance histories of Lawrence Home Care of Westchester (CHHA), and Jansen Hospice and Palliative Care (Hospice), for the time-period 2010 to 2017, and reported that during that time-period, the Certified Home Health Agency and Hospice have both remained in compliance with no history of enforcement action taken.

Recommendation

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

<h2>Financial Analysis</h2>
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Operating Budget

The applicant has submitted a combined operating budget, in 2017 dollars for the CHHA and Hospice, during the first year after the disestablishment of NYP/LH, which is summarized below:

<u>Revenues</u>	
Total Revenues	\$12,920,167
<u>Expenses</u>	
Operating	\$12,074,220
Interest	184
Depreciation and Rent	<u>387,130</u>
Total Expenses	\$12,461,534
Gain	<u>\$458,633</u>
Utilization (Visits)	46,075

Utilization broken down by payor source during the first year for outpatient services is as follows:

<u>Payor</u>	
Commercial Managed Care	14.16%
Medicare Fee-for-Service	84.26%
Medicaid Fee-for-Service	1.56%
Charity Care	<u>.02%</u>
	100.00%

Utilization and expense assumptions are based on 2016 levels.

Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

The submitted budget projects an excess of revenues over expenses of \$458,633 during the first year after the disestablishment of NYP/LH as the sole member of LC. Budget assumptions are based on the historical experience of the CHHA and Hospice.

BFA Attachment A is the 2016 certified financial statements of Lawrence Community Health Services, which is the corporate entity that operates Jansen Hospice and Lawrence Home Care of Westchester. As shown, LCHS had a positive working capital position and a positive net asset position in 2016. Lawrence Home Care of Westchester and Jansen Hospice and Palliative Care experienced operating losses of \$192,000 and \$25,000, respectively, in 2016. They are both essentially operating divisions of LCHS. New York-Presbyterian/Lawrence Hospital is the primary referral source for both Lawrence Home Care of Westchester and Jansen Hospice and Palliative Care. The operating deficits incurred during 2016 were primarily related to lower referrals from the hospital due to new physicians coming on board with no referral base, and a start-up of a new cancer center program at the end of 2016, which would not have obtained referrals until sometime in 2017. Because of the decline in referrals, management

immediately placed a freeze on hiring all non-clinical staff and significantly curtailed non-patient related expenses. Continued focus is on growing volume in both programs.

BFA Attachment B is the internal financial statements of NYP/LH as of June 30, 2017. As shown, LCHS had a positive working capital position and net asset position through June 30, 2017. LCHS experienced an operating loss of \$422,000 through June 30, 2017, which is the combined loss of Jansen Hospice and Lawrence Home Care due to the continuation of lower referrals as experienced in 2016.

Recommendation

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

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## Attachments

BFA Attachment A	2016 certified financial statements - New York-Presbyterian/Lawrence Hospital and Subsidiaries, Lawrence Community Health Services
BFA Attachment B	Consolidated internal financial statements as of June 30, 2017 –New York-Presbyterian/Lawrence Hospital
BFA Attachment C	Organizational Chart, existing and proposed - New York-Presbyterian/Lawrence Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of December, 2017, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to disestablishment of New York Presbyterian/Lawrence Hospital (NYP/LH) as sole corporate member of Lawrence Care, Inc., the operator of a Certified Home Health Agency and a Hospice, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

172134 E

Lawrence Home Care of Westchester

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the By-laws of Lawrence Care, Inc., which is acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:


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

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



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** October 19, 2017

**Subject:** Beth Abraham Health Services (BAHS): Name and Purposes Changes Related to Project 161109-E and Pursuant to NY N-PCL §804(a)(i)

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BAHS's operations were formally transferred to the new established operator on March 15, 2017 subsequent to the PHHPC's final approval of June 2, 2016. However, an amended Certificate of Incorporation that eliminates the BAHS's Article 28 purposes was not included within the above-referenced application and therefore, PHHPC consent to filing was never received.

BAHS now wishes to file an amended Certificate of Incorporation to eliminate the authority to conduct Article 28 activities and to change the corporation's name from Beth Abraham Health Services to Beth Abraham Services. Pursuant to NY N-PCL §804(a)(i), PHHPC must consent to these changes prior to the filing of any amended certificate.

There is no objection to the name change, the purpose changes, and the Certificate of Amendment of the Certificate of Incorporation of Beth Abraham Health Services is in legally acceptable form.

Attachments.

**GARFUNKEL WILD, P.C.**

ATTORNEYS AT LAW

677 BROADWAY • ALBANY, NEW YORK 12207  
TEL (518) 242-7582 • FAX (518) 242-7586

www.garfunkelwild.com

MICHAEL M. STONE

Partner

Licensed in NY

Email: mstone@garfunkelwild.com

Direct Dial: (518) 242-7582

FILE NO.: 14166.0014

October 13, 2017

**By E-Mail**

Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza, Corning Tower  
Albany, New York 12237

Re: Project 161109-E - Beth Abraham Health Services  
Project 161110-E - Schnurmacher Center for Rehabilitation and Nursing

Dear Ms. Leonard:

The above referenced establishment applications each received final Public Health and Health Planning Council ("PHHPC") approval on June 2, 2016, and the subject nursing homes were transferred to the new established operators as of March 15, 2017. As you know, typically, applications such as these include the corporate seller's certificate of dissolution or certificate of amendment to remove from the seller's purposes the operation of a facility licensed under Public Health Law Article 28 (see item 3.a. of section II.A. of Schedule 4A of the CON application). This provides PHHPC with the opportunity to approve the changes to the seller's purposes and name at the same time that it approves the establishment of the new operator. Along with the final approval letter to the applicant, a letter is issued to the seller stating PHHPC's consent to the filing of the seller's certificate of dissolution or certificate of amendment.

Unfortunately, the Certificates of Amendment of Beth Abraham Health Services and of Schnurmacher Center for Rehabilitation and Nursing (the "Sellers") were not included in the above referenced applications, so no letters stating PHHPC's consent to the filing of the Sellers' Certificates of Amendment have been issued. Because the Sellers are not-for-profit corporations, PHHPC must, pursuant to Not-For-Profit Corporation Law § 804(a)(i), consent to the changes to the Sellers' names and purposes to remove the operation of a nursing home before the Certificates may be filed.

The Sellers therefore respectfully request letters stating that PHHPC consents to the filing of the attached Certificates of Amendment, which amend the name and purposes of each. In the interest of expediency, please consider issuing these letters based on PHHPC's June 2, 2016

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NEW YORK

NEW JERSEY

CONNECTICUT

Colleen Leonard  
October 13, 2017  
Page 2

approval of the above referenced applications, as normally would have happened, rather than requiring these Certificates of Amendment to be brought before PHHPC separately. Also attached are the most recent Certificate of Amendment of the Certificate of Incorporation Beth Abraham Health Services,<sup>1</sup> showing the corporation's current name and purposes, and the Certificate of Incorporation of Schnurmacher Center for Rehabilitation and Nursing with amendments.

Please review and let me know if you have any concerns. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Stone", with a horizontal line extending to the right from the end of the signature.

Michael M. Stone

Attachments

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<sup>1</sup> I have not submitted the entire Certificate of Incorporation file for Beth Abraham Health Services because it is voluminous. The corporation was formed in 1920, and many amendments to its Certificate of Incorporation have been made since.

**GARFUNKEL WILD, P.C.**

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ABRAHAM HEALTH SERVICES**

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the President of Beth Abraham Health Services, hereby certifies:

1. The name of the corporation is BETH ABRAHAM HEALTH SERVICES (the "Corporation"). The name under which the Corporation was formed was "Beth Abraham Home for Incurables", which name was changed by a Certificate of Change of Name, filed October 31, 1951, to "Beth Abraham Home", and further changed by a Certificate of Change of Name, filed May 25, 1965, to "Beth Abraham Hospital", and finally changed by a Certificate of Change of Name, filed January 4, 1996, to "Beth Abraham Health Services".

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on September 10, 1920 pursuant to the Membership Corporations Law of the State of New York.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York (the "NPCL").

4. The Certificate of Incorporation is hereby amended to effect the following changes as authorized under subparagraphs (b)(1), (b)(2) and (b)(7) of Section 801 of the NPCL.

(a) Paragraph FIRST of the Corporation's Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended in its entirety to read as follows:



“FIRST: The name of the Corporation is “BETH ABRAHAM SERVICES” (sometimes referred to herein as the “Corporation”).”

(b) Paragraph SECOND of the Certificate of Incorporation, regarding the purposes of the Corporation, is hereby amended in its entirety to read as follows:

“SECOND: The Corporation is a charitable corporation under section 201 of the NPCL. The purpose of Corporation is any purpose for which corporations may be organized under the NPCL as a charitable corporation, including the provision of support to the Program of All-Inclusive Care for the Elderly operated by CenterLight Health Care, Inc., a corporation formed under the NPCL, the sole member of which is the sole member of the Corporation. Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in NPCL Section 404 (a) – (v).”

(c) A new Paragraph SEVENTH is added to the Certificate of Incorporation to specify the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon her/him as follows:

“SEVENTH: The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon the Secretary of State is as follows:

CenterLight Health System, Inc.  
1250 Waters Place Tower 1, Suite 600  
Bronx, New York, 10461.”

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized by vote of the sole member of the Corporation.

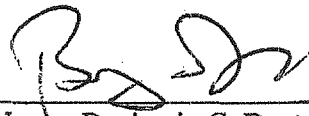
6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

CenterLight Health System, Inc.  
1250 Waters Place Tower 1, Suite 602  
Bronx , New York 10461

IN WITNESS WHEREOF this Certificate Amendment to the Certificate of Incorporation has  
been signed and the statements made herein affirmed as true under penalties of perjury this 6<sup>TH</sup>

day of ~~July~~, 2017:

*OCTOBER*



---

Name: Benjamin C. Duster IV

Title: President

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
BETH ABRAHAM HOSPITAL

19601 4000390  
CSC 45

Under Section 803 of the Not-for-Profit Corporation Law

Pursuant to the provisions of Section 803 of the Not-for-Profit Corporation Law, the undersigned, the Chairman of the Board and Assistant Secretary of BETH ABRAHAM HOSPITAL, a corporation organized under the New York Not-for-Profit Corporation Law (the "Corporation"), do hereby certify:

**FIRST:** That the name of the Corporation is BETH ABRAHAM HOSPITAL.

**SECOND:** That the Certificate of Incorporation of the Corporation was filed by the Department of State, Albany, New York on the 10th day of September, 1920. The Corporation was formed under the Membership Corporations Law of the State of New York. The name under which the Corporation was formed is "Beth Abraham Home for Incurables", which name was changed by a Certificate of Change of Name, filed October 31, 1951, to "Beth Abraham Home", and further changed by a Certificate of Change of Name, filed May 25, 1965, to "Beth Abraham Hospital".

**THIRD:** The Corporation 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, as defined in Section 201 of the Not-for-Profit Corporation Law and shall hereafter continue to be a Type B corporation under the Not-for-Profit Corporation Law.

**FOURTH:** Paragraph (1) of the Certificate of Incorporation which sets forth the name of the Corporation, is hereby amended to read:

(1) The name of the corporation is Beth Abraham Health Services.

**FIFTH:** These amendments to the Certificate of Incorporation were authorized by resolutions adopted by Unanimous Vote of the Board of Directors of the Corporation dated March 15, 1995.

**SIXTH:** 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 process against the Corporation served upon him is c/o 612 Allerton Avenue, Bronx, New York 10467.

IN WITNESS WHEREOF, this Certificate of Amendment has been subscribed by the undersigned this 17th day of August, 1995, and the statements contained herein are affirmed as true under penalties of perjury.

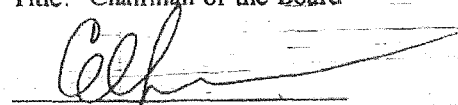
By:



Name: John A. Wiener

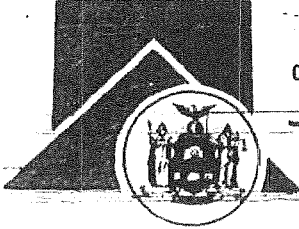
Title: Chairman of the Board

By:



Name: Celia C. Zuckerman

Title: Assistant Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

November 30, 1995

Mr. John J. Lynagh  
Kelley Drye & Warren  
101 Park Avenue  
New York, N.Y. 10178

Re: Certificate of Amendment of Certificate of Incorporation of Beth Abraham Hospital

Dear Mr. Lynagh:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 17th day of November, 1995, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of Beth Abraham Hospital hereafter to be known as Beth Abraham Health Services dated August 17, 1995 is approved.

Sincerely,

Karen S. Westervelt  
Executive Secretary

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 23, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State



FILED  
JAN 4 12 52 PM '96

960104000390

RECEIVED

96. JAN 24 4 08 PM '96  
KELLEY, DRYE & WARREN  
101 PARK AVENUE, SUITE 3101  
NEW YORK, NEW YORK 10178

RECEIVED

96. JAN 24 11 4 AM '96

Under Section 803 of the Not-for-Profit Corporation Law

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION

BETH ABRAHAM HOSPITAL

OF

ICC  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED JAN 04 1996  
TAXES  
BY: JAH  
Brooklyn

CSC 45

BILLED

960104000421

H

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CT-07

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
BETH ABRAHAM HEALTH SERVICES**

Under Section 803 of the Not-for-Profit Corporation Law

Pursuant to the provisions of Section 803 of the Not-for-Profit Corporation Law, the undersigned, the Chairman of the Board and Assistant Secretary of BETH ABRAHAM HEALTH SERVICES, a corporation organized under the New York Not-for-Profit Corporation Law (the "Corporation"), do hereby certify:

**FIRST:** The name of the Corporation is BETH ABRAHAM HEALTH SERVICES.

**SECOND:** That the Certificate of Incorporation of the Corporation was filed by the Department of State, Albany, New York on the 10th day of September, 1920. The Corporation was formed under the Membership Corporations Law of the State of New York. The name under which the Corporation was formed is "Beth Abraham Home Incurables", which name was changed by a Certificate of Change of Name, filed October 31, 1951, to "Beth Abraham Home," and further changed by a Certificate of Change of Name, filed May 25, 1965, to "Beth Abraham Hospital," and changed by a Certificate of Changed of Name, filed January 4, 1996, to "Beth Abraham Health Services".

**THIRD:** The Corporation 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, as defined in Section 201 of the Not-for-Profit



Corporation Law and shall hereafter continue to be a Type B corporation under the Not-for-Profit Corporation Law.

**FOURTH:** Paragraph **SECOND** of the Certificate of Incorporation which sets forth the purpose of the Corporation, is hereby amended as follows:

- 1.) To erect, operate, establish and maintain a skilled nursing facility, hospice, diagnostic and treatment center, and a home health agency;
- 2.) To provide the necessary nursing medical, and rehabilitative services for persons suffering from illnesses or disabilities requiring skilled nursing facility, hospice, diagnostic and treatment center, and a home health agency;
- 3.) To promote and carry on medical and scientific research and teaching related to the care of persons suffering from illnesses or disabilities requiring skilled nursing facility, hospice, diagnostic and treatment center, or home health care;
- 4.) To participate in any activity designed to promote the general health of the community as may be permitted by law and as may be consonant with the general purposes of a skilled nursing facility, hospice, diagnostic and treatment center, or a home health agency;
- 5.) To conduct a workshop for patients resident in the skilled nursing facility and to sell the products therefrom to the general public, provided that any profit therefrom shall not inure to the benefit of any member or officer of the Corporation;
- 6.) To do and perform all acts reasonably necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Corporation, its successors and Assigns, so long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development.

2

**FIFTH:** These amendments to the Certificate of Incorporation were authorized by resolutions adopted by Unanimous Vote of the Board of Directors of the Corporation dated June 21, 1995.

**SIXTH:** The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o 612 Allerton Avenue, Bronx, New York 10467.

IN WITNESS WHEREOF, this Certificate of Amendment has been subscribed by the undersigned this 7th day of September, 1995, and the statements contained herein are affirmed as true under penalties of perjury.

By: John A. Wiener  
John A. Wiener  
Chairman of the Board

By: Celia C. Zuckerman  
Celia C. Zuckerman  
Assistant Secretary

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE  
DENNIS C. VACCO, ATTORNEY GEN.  
STATE OF NEW YORK

DENNIS C. VACCO  
ATTORNEY GENERAL  
STATE OF NEW YORK

by: \_\_\_\_\_

by *Laura Werner*  
*1/17/97*  
Attorney General

Date: \_\_\_\_\_

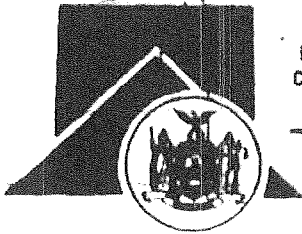
I, HOWARD R. SILVER, a Justice of the Supreme Court of the State of New York for the TWELFTH Judicial District do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Beth Abraham Hospital (former name) Beth Abraham Health Services and consent that the same be filed.

Date: 1/17/97

*[Signature]*  
\_\_\_\_\_  
JSC

HOWARD R. SILVER

4



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

RE-ISSUED

September 9, 1996

Ms. Alice Schiff  
Assistant Director  
Beth Abraham Hospital  
612 Allerton Avenue  
Bronx, New York 10467

Re: Certificate of Amendment of Certificate of Incorporation of Beth Abraham

Dear Ms. Schiff:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 24th day of May, 1996, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of Beth Abraham Hospital, dated September 7, 1995.

Sincerely,

Karen S. Westervelt  
Executive Secretary

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CT-07

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
BETH ABRAHAM HEALTH SERVICES

Under Section 803 of the Not-for-Profit Corporation Law  
OF  
NEW YORK

ICC  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED OCT 28 1997  
TAX \$ \_\_\_\_\_  
BY: M. M. R.

Bronyx

KELLEY DRYE & WARREN LLP  
101 PARK AVE.  
NEW YORK, NY 10178

971028000634

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*STATE OF NEW YORK*

*DEPARTMENT OF STATE*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 23, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of December 2017 approves the filing of the Certificate of Amendment of Certificate of Incorporation of Beth Abraham Health Service, dated October 6, 2017.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** October 19, 2017

**Subject:** Schnurmacher Center for Rehabilitation and Nursing (Schnurmacher): Name and Purposes Changes Related to Project 161110-E and Pursuant to NY N-PCL §804(a)(i)

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Schnurmacher's operations were formally transferred to the new established operator on March 15, 2017 subsequent to the PHHPC's final approval of June 2, 2016. However, an amended Certificate of Incorporation that eliminates the seller's Article 28 purposes was not included within the above-referenced application and therefore, PHHPC consent to filing was never received.

Schnurmacher now wishes to file an amended Certificate of Incorporation to eliminate the authority to conduct Article 28 activities and to change the corporation's name from Schnurmacher Center for Rehabilitation and Nursing to Schnurmacher CRN. Pursuant to NY N-PCL §804(a)(i), PHHPC must consent to these changes prior to the filing of any amended certificate.

There is no objection to the name change, the purpose changes and the Certificate of Amendment of the Certificate of Incorporation of Schnurmacher Center for Rehabilitation and Nursing is in legally acceptable form.

Attachments.



**GARFUNKEL WILD, P.C.**

ATTORNEYS AT LAW

677 BROADWAY • ALBANY, NEW YORK 12207  
TEL (518) 242-7582 • FAX (518) 242-7586

www.garfunkelwild.com

**MICHAEL M. STONE**

Partner

Licensed in NY

Email: mstone@garfunkelwild.com

Direct Dial: (518) 242-7582

FILE NO.: 14166.0014

October 13, 2017

**By E-Mail**

Colleen Leonard, Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza, Corning Tower  
Albany, New York 12237

Re: Project 161109-E - Beth Abraham Health Services  
Project 161110-E - Schnurmacher Center for Rehabilitation and Nursing

Dear Ms. Leonard:

The above referenced establishment applications each received final Public Health and Health Planning Council ("PHHPC") approval on June 2, 2016, and the subject nursing homes were transferred to the new established operators as of March 15, 2017. As you know, typically, applications such as these include the corporate seller's certificate of dissolution or certificate of amendment to remove from the seller's purposes the operation of a facility licensed under Public Health Law Article 28 (see item 3.a. of section II.A. of Schedule 4A of the CON application). This provides PHHPC with the opportunity to approve the changes to the seller's purposes and name at the same time that it approves the establishment of the new operator. Along with the final approval letter to the applicant, a letter is issued to the seller stating PHHPC's consent to the filing of the seller's certificate of dissolution or certificate of amendment.

Unfortunately, the Certificates of Amendment of Beth Abraham Health Services and of Schnurmacher Center for Rehabilitation and Nursing (the "Sellers") were not included in the above referenced applications, so no letters stating PHHPC's consent to the filing of the Sellers' Certificates of Amendment have been issued. Because the Sellers are not-for-profit corporations, PHHPC must, pursuant to Not-For-Profit Corporation Law § 804(a)(i), consent to the changes to the Sellers' names and purposes to remove the operation of a nursing home before the Certificates may be filed.

The Sellers therefore respectfully request letters stating that PHHPC consents to the filing of the attached Certificates of Amendment, which amend the name and purposes of each. In the interest of expediency, please consider issuing these letters based on PHHPC's June 2, 2016

---

NEW YORK

NEW JERSEY

CONNECTICUT

Colleen Leonard  
October 13, 2017  
Page 2

approval of the above referenced applications, as normally would have happened, rather than requiring these Certificates of Amendment to be brought before PHHPC separately. Also attached are the most recent Certificate of Amendment of the Certificate of Incorporation Beth Abraham Health Services,<sup>1</sup> showing the corporation's current name and purposes, and the Certificate of Incorporation of Schnurmacher Center for Rehabilitation and Nursing with amendments.

Please review and let me know if you have any concerns. Thank you for your assistance with this matter.

Sincerely,



Michael M. Stone

Attachments

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<sup>1</sup> I have not submitted the entire Certificate of Incorporation file for Beth Abraham Health Services because it is voluminous. The corporation was formed in 1920, and many amendments to its Certificate of Incorporation have been made since.

**GARFUNKEL WILD, P.C.**

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
SCHNURMACHER CENTER FOR REHABILITATION AND NURSING**

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the President of Schnurmacher Center for Rehabilitation and Nursing, hereby certifies:

1. The name of the corporation is SCHNURMACHER CENTER FOR REHABILITATION AND NURSING (the "Corporation"). The name under which the Corporation was formed was "Beth Israel Nursing Homes, Inc."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on January 10, 1989 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL").

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following changes as authorized under subparagraphs (b)(1), (b)(2) and (b)(7) of Section 801 of the NPCL.

(a) Paragraph FIRST of the Corporation's Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended in its entirety to read as follows:

"FIRST. The name of the Corporation is "SCHNURMACHER CRN" (sometimes referred to herein as the "Corporation")."

(b) Paragraph THIRD of the Certificate of Incorporation, regarding the purposes of the Corporation, is hereby amended in its entirety to read as follows:

“THIRD. The Corporation is a charitable corporation under section 201 of the NPCL. The purpose of Corporation is any purpose for which corporations may be organized under the NPCL as a charitable corporation, including the provision of support to the Program of All-Inclusive Care for the Elderly operated by CenterLight Health Care, Inc., a corporation formed under the NPCL, the sole member of which is the sole member of the Corporation.”

(c) Subparagraph (b) of Paragraph FOURTH of the Certificate of Incorporation, which limits the purposes of the Corporation to those activities for which it has received approval when such approval is necessary, is hereby amended in its entirety to read as follows:

“(b) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in NPCL Section 404 (a) – (v).”

(d) Paragraph EIGHTH of the Certificate of Incorporation, regarding the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon her/him, shall be amended in its entirety to read as follows:

“EIGHTH: The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon the Secretary of State is as follows:

CenterLight Health System, Inc.  
1250 Waters Place Tower 1, Suite 600  
Bronx, New York, 10461.”

5. This Amendment to the Certificate of Incorporation of the Corporation was authorized by vote of the sole member of the Corporation.

6. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail copies of process accepted on behalf of the Corporation is:

CenterLight Health System, Inc.  
1250 Waters Place Tower 1, Suite 602  
Bronx , New York 10461

IN WITNESS WHEREOF this Certificate Amendment to the Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 6<sup>TH</sup> day of ~~July~~, 2017:  
*OCTOBER*



\_\_\_\_\_  
Name: Benjamin C. Duster IV  
Title: President

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 23, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

f030805000 755

**CSC** **DRAWN** CERTIFICATE OF AMENDMENT  
TO THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL NURSING HOMES, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

The undersigned, being the President and Chief Executive Officer of Beth Israel Nursing Homes, Inc., hereby certifies:

**FIRST:** The name of the corporation is Beth Israel Nursing Homes, Inc. (the "Corporation")

**SECOND:** The Certificate of Incorporation was filed by the New York Department of State on January 10, 1989 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "N-PCL").

**THIRD:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL and is a Type B corporation under Section 201 of the N-PCL and the Corporation shall remain a Type B corporation after this amendment is effectuated

**FOURTH:** The Certificate of Incorporation of the Corporation is hereby amended to change the name of the Corporation to "Schnurmacher Center for Rehabilitation and Nursing."

**FIFTH:** Paragraph First of the Corporation's Certificate of Incorporation which sets forth the name of the Corporation is hereby amended to read as follows:

**"FIRST.** The name of the corporation is "SCHNURMACHER CENTER FOR REHABILITATION AND NURSING" (sometimes referred herein as the "Corporation")."

**FIFTH:** This Certificate of Amendment was authorized by unanimous written consent of the members of the Corporation, dated December 13, 2002.

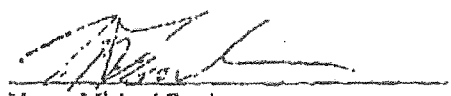
**SIXTH:** The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is:

Schnurmacher Center for Rehabilitation and Nursing  
12 Tibbuis Avenue  
White Plains, New York 10606 ..

AUG 4 2003 4 09PM GARFUNKEL

NO 0358 P 4/4

IN WITNESS WHEREOF, this certificate has been subscribed on this 13<sup>th</sup> day of December, 2002 by the undersigned who affirms that the statements made herein are true under penalties of perjury.



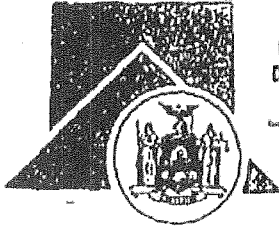
Name: Michael Fassler  
Title: President and Chief Executive Officer



4 3 4 2003 4 09PM

GARFUNKEL

NO 0358 P 2/4



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

RECEIVED

4 2003

GARFUNKEL WILD & TRAVIS

July 29, 2003

Mr. Greg E. Bloom  
Garfunkel, Wild & Travis, P.C  
111 Great Neck Road  
Great Neck, New York 11021

Re: Certificate of Amendment to the Certificate of Incorporation of Beth Israel Nursing Homes, Inc.

Dear Mr. Bloom:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 25<sup>th</sup> day of July, 2003, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of Beth Israel Nursing Homes, Inc., hereafter to be known as Schnurmacher Center for Rehabilitation and Nursing, dated December 13, 2002.

Sincerely,

Karen S. Westervelt  
Executive Secretary

/s/nd

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CSC 45  
DRAW DOWN

F030805000 755

CERTIFICATE OF AMENDMENT

OF

BETH ISRAEL NURSING HOMES, INC.

Under Section 803 of the Not-for-Profit Corporation Law

Filed by: GARFUNKEL WILD & TRAVIS P.C.  
(Name)

111 GREAT NECK ROAD  
(Mailing address)

GREAT NECK NY 11021  
(City, State and Zip code)

1944079KM

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STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED AUG 5 2003

TAX \$ \_\_\_\_\_  
BY: Lmb

Westchester

2003 AUG -5 04:3:17

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CERTIFICATE OF INCORPORATION

OF

BETH ISRAEL NURSING HOMES, INC.

(Under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, a natural person over the age of eighteen years, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York (the "NPCL"), hereby certifies that:

FIRST: The name of the corporation is BETH ISRAEL NURSING HOMES, INC. (sometimes referred to herein as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the NPCL.

THIRD: The purposes for which the Corporation is formed are as follows:

- (a) To acquire, own, lease, construct; operate, manage and maintain one or more nursing homes or other facilities in or through which are provided nursing

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care, lodging, board and health-related and other services, or any combination of the foregoing, to sick, infirm, disabled or convalescent persons, and to provide, manage, administer or otherwise make available nursing, health-related or other necessary services to any such persons whether or not they are then occupants of any such facility, provided, that before any such home or facility is acquired or operated, all prior approvals required by law including that of the Public Health Council, as appropriate, shall first be obtained; and

(b) To do any act or thing incidental to, connected with or in furtherance of the purposes enumerated in subparagraph (a) of this Article THIRD, and to have and exercise all of the powers now or hereafter conferred by the NFCL upon a corporation organized thereunder, including the power to solicit contributions, gifts and bequests to further its corporate purposes.

**FOURTH:** Notwithstanding any other provisions of this Certificate of Incorporation,

(a) The Corporation is organized exclusively for educational, charitable and scientific purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986 and shall not carry on any activities not permitted to be carried on (i) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding Law), or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law);

(b) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any other activities mentioned in the NPCL Sections 404(b)-(n), (p)-(s), and (u);

(c) The Corporation is not formed for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual; and

Revenue Law) as the Board of Trustees of the Corporation shall in its absolute discretion designate, subject to approval by a Justice of the Supreme Court of the State of New York.

IN WITNESS WHEREOF, I have executed and subscribed this certificate and do affirm the foregoing as true under the penalties of perjury this 18th day of May, 1988.

Kathryn Meyer  
Kathryn Meyer, Esq.  
10 Nathan D. Perlman Place  
New York, New York 10003

HON. ALVIN R. RUSKIN  
J.S.C.

I, \_\_\_\_\_, a Justice of the Supreme  
Court of the State of New York for the NINTH  
Judicial District, do hereby approve the foregoing Certificate of  
Incorporation of Beth Israel Nursing Homes, Inc. and consent that  
the same be filed.

Dated: DECEMBER 23, 1988

*Alvin R. Ruskin*

Justice of the Supreme Court  
of the State of New York  
HON. ALVIN R. RUSKIN  
J.S.C.

The undersigned has no objection to the granting of judicial  
approval hereon and waives statutory notice.

Dated: \_\_\_\_\_, 1988

Robert Abrams  
Attorney General of the State  
of New York

*December 21, 1988*

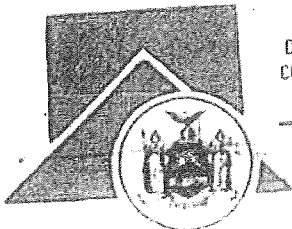
THE UNDERSIGNED HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL  
APPROVAL HEREON AND WAIVES  
STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.  
STATE OF NEW YORK

*by Howard Holt*

HOWARD HOLT  
Associated Attorney

By \_\_\_\_\_



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

Morton P. Hyman  
Chairman

December 8, 1988

Mr. Thomas J. Hayes  
Treasurer  
Beth Israel Nursing Homes, Inc.  
First Avenue and 16th Street  
New York, NY 10003

Re: Certificate of Incorporation of Beth Israel Nursing Homes, Inc.

Dear Mr. Hayes:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of September, 1988, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Beth Israel Nursing Homes, Inc. dated May 18, 1988.

Sincerely,

*Karen S. Westervelt*  
Karen S. Westervelt  
Executive Secretary

Attachment





*STATE OF NEW YORK*

*DEPARTMENT OF STATE*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 23, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of December, 2017 approves the filing of the Certificate of Amendment of Certificate of Incorporation of Schnurmacher Center for Rehabilitation and Nursing, dated October 6, 2017.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** October 20, 2017

**Subject:** The Women and Children's Hospital of Buffalo Foundation ("The Foundation"):  
Name Change

---

The Foundation supports the Women and Children's Hospital of Buffalo, which is due to be renamed pursuant to project #132313. Therefore, the Foundation seeks PHHPC approval to change its corporate name to "The Children's Hospital of Buffalo Foundation"<sup>1</sup>, which the corporation believes will be more reflective of its supported hospital facility.

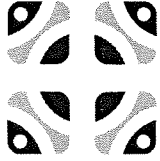
PHHPC approval of the corporate name change is required pursuant to 10 NYCRR § 600.11(a)(2), and Not-for-Profit Corporation Law § 804(a) and 404(o) and (t).

There is no objection to the name change and the Certificate of Amendment of the Certificate of Incorporation of The Women and Children's Hospital of Buffalo Foundation is in legally acceptable form.

### Attachments

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<sup>1</sup> The original name of the Foundation was the same as the proposed new name; its current name was approved by PHHPC in 2004 when The Women and Children's Health Research Foundation merged into the Foundation.



# Kaleida Health

May 15, 2017

Ms. Barbara DelCogliano  
Director, Bureau of Project Management  
Division of Health Facility Planning  
Office of Health Systems Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237

**Re: Kaleida Health- The Women and Children's Hospital of Buffalo Foundation  
(Erie County)  
Proposed Name Change/Approval of Assumed Name**

Dear Mr. DelCogliano:

Kaleida Health is proposing to change the name of the existing "The Women and Children's Hospital of Buffalo Foundation" to "The Children's Hospital of Buffalo Foundation". This Foundation supports the current Women and Children's Hospital of Buffalo, which, under approved CON #132313 will move, be replaced and renamed the John R. Oishei Children's Hospital in November of 2017.

The proposed new name is more generic and reflective of the hospital facility the foundation supports. Please find attached a draft certificate of amendment of the certificate of incorporation proposing this name change. Once we receive your approval, we will file the appropriate paperwork with the Department of State for their approval.

Should you have any questions, please feel free to contact me at your convenience by phone at (716) 859-8592 or email at [alang@kaleidahealth.org](mailto:alang@kaleidahealth.org).

Sincerely,

Ashlee Lang  
Senior Planner

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE WOMEN AND CHILDREN'S HOSPITAL OF BUFFALO  
FOUNDATION**

---

**Under Section 803 of the  
Not-for-Profit Corporation Law**

**FIRST:** The name of the corporation is The Women and Children's Hospital of Buffalo Foundation. The name under which the corporation was formed is The Children's Hospital of Buffalo Foundation.

**SECOND:** The Certificate of Incorporation was filed by the Department of State on April 13, 1988.

**THIRD:** The law the corporation was formed under is the Not-for-Profit Corporation Law.

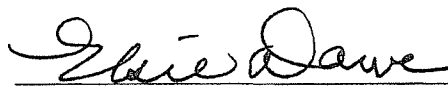
**FOURTH:** The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law

**FIFTH:** The Certificate of Incorporation is amended to change the name of the corporation. To effect such change Paragraph FIRST is hereby amended to read in its entirety as follows:

"FIRST: The name of the corporation is The Children's Hospital of Buffalo Foundation."

**SIXTH:** The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is Kaleida Health, Office of General Counsel, 726 Exchange Street, Buffalo, NY 14210.

**SEVENTH:** The Certificate of Amendment was authorized by the affirmative vote of a majority of the Board of Directors at a meeting of the directors followed by the written consent of the sole member of the corporation.



Name: Elsie Dawe

Title: Executive Director

---

RESOLUTION FOR ADOPTION BY THE BOARD OF DIRECTORS  
OF THE  
WOMEN AND CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION  
(THE "FOUNDATION")  
BOARD OF DIRECTORS MEETING HELD SEPTEMBER 14, 2017

Motion offered by Chris Kania, Vice Chair, to change the name of the Foundation.

RESOLVED, that the Foundation Board of Directors hereby gives its consent to change the name of the Foundation from WOMEN AND CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION to THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION, and hereby directs the Officers of The Foundation to file with the New York State Department of State a Certificate of Amendment of the Certificate of Incorporation setting forth this name change.

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR

ATTORNEYS AT LAW

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November 9, 1987

Peter J. Millock, Esq.  
General Counsel  
New York State Department of Health  
24th Floor - Corning Tower  
Empire State Plaza  
Albany, New York 12238

Dear Mr. Millock:

Re: The Children's Hospital of  
Buffalo Foundation

This firm is general counsel to The Children's Hospital of Buffalo (the "Hospital"), 1233 Main Street, Inc. (the "Holding Company") and their various related entities. At the direction of Frank Berry of your office, we submit the attached materials on behalf of one such related entity, The Children's Hospital of Buffalo Foundation (the "Foundation") and respectfully request that the New York Public Health Council approve the establishment of the Foundation.

It is proposed that the Foundation be established in connection with the corporate reorganization of the Hospital, an Article 28 facility. The Foundation will serve as the fund-raising entity for the Hospital and for The Women's and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc. (the "Research Foundation"), an affiliated



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entity that promotes medical research at the Hospital, at the State University of New York at Buffalo and at other teaching hospitals. The Foundation, the Hospital and the Research Foundation all are or will be controlled by the Holding Company, which will exercise such control by serving as the sole member of each of the three entities.

The Foundation's proposed Certificate of Incorporation (Exhibit A) and By-Laws (Exhibit B) are attached. The Foundation is proposed to be formed as a Type B corporation under Section 201 of the New York Not-for-Profit Corporation Law. It will include among its purposes providing financial support to, or for the benefit of, the Hospital and the Research Foundation by encouraging, soliciting, receiving, accepting and acquiring contributions on their behalf. It will also be responsible for administering these funds in furtherance of such purposes. The Foundation proposes to raise funds through a variety of means including, but not limited to, capital fund drives, direct mail solicitations, golf tournaments, auctions and other community fund raising activities and events. Please find attached letters from the President of the Hospital (Exhibit C) and the Chairman of the Board of the Research Foundation (Exhibit D), indicating that each beneficiary organization is aware of the proposed formation and purposes of the Foundation and that each will accept any and all funds raised on its behalf by the Foundation.

In addition to the control to be exercised by the Holding Company as common parent of the three entities, a majority of the Foundation's directors also will serve as directors of the Hospital and of the Research Foundation (see By-Laws: Article II, Section 2). A list of the proposed initial directors of the Foundation (Exhibit E), all of whom also currently serve as directors of the Holding Company and a majority of whom also currently serve as directors of the Hospital and of the Research Foundation, is attached. The list includes each person's address, occupation, nature of employment and affiliation with, or ownership of, any other health-related organization.

We trust that the attached materials are complete and that the Foundation's request for establishment approval can be considered at the next meeting of the Public Health Council. We understand from Mr. Berry that applications are voted on by the Establishment Committee of the Council at its monthly meetings and are then forwarded to the full Council for consideration. Would you please let us know the date on which the Foundation's application will be considered and when we may expect to be

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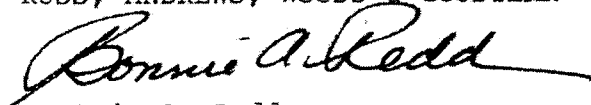
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informed of the results of these deliberations. Please call if you need any further documentation or have any questions in connection with this matter.

Very truly yours,

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR

By



Bonnie A. Redder

Copy to: Dr. J. E. Stibbards

CERTIFICATE OF INCORPORATION  
OF  
THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

Under Section 402 of the  
Not-For-Profit Corporation Law

THE UNDERSIGNED, being the sole incorporator, for the purpose of forming a corporation under Section 402 of the Not-For-Profit Corporation Law of the State of New York, does hereby certify:

FIRST: The name of the corporation is THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION.

SECOND: The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under Section 201 of the Not-For-Profit Corporation Law. The purposes for which the corporation is formed are:

(1) To support The Children's Hospital of Buffalo, a facility established under Article 28 of the New York Public Health Law, and The Women and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc., such corporations being located in Buffalo, New York (the "Beneficiary Organizations"), by providing financial support to, or for the benefit of, the Beneficiary Organizations.

(2) To encourage, solicit, receive, accept and acquire contributions by gift, grant, devise, bequest or otherwise, in the form of money, stocks, bonds or other securities, bills, notes and any and all other types of property, both real and personal; to hold and manage such property and collect the income generated therefrom; and to use such contributions and income for the purposes stated herein.

(3) To receive and administer funds in furtherance of the foregoing purposes and in advancement thereof, and to that end (i) to take and hold by bequest, devise, gift, grant, purchase, lease or otherwise, either absolutely or jointly with any other person, persons or corporations, any property, real, personal, tangible or intangible, or any undivided interest therein, without limitation as to amount or value, (ii) to sell, convey or otherwise dispose of any such property, and (iii) to invest, reinvest, or deal with the principal or income thereof, all in such manner as, in the judgment of the directors of the corporation, will best promote the purposes of the corporation without limitation, except such limitations, if any, as may be contained in the instrument under which such property is received, this certificate of incorporation or any laws applicable thereto.

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(4) To do any other act or thing incidental to or in connection with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of any of its members, trustees, directors, officers or employees.

(5) Nothing contained in this certificate of incorporation shall authorize the corporation to establish or operate a hospital or to provide hospital or health related services, a home care services agency, a hospice, a health maintenance organization, a comprehensive health services plan or a clinical laboratory as provided for by Articles 28, 36, 40, 44 and 5 respectively, of the New York Public Health Law.

(6) Nothing contained in this certificate of incorporation shall authorize the corporation to conduct any activities unless and until it has obtained all required licenses and permits.

(7) Nothing contained in this certificate of incorporation shall authorize the corporation to carry on any of the activities set forth in Section 404(b) through (n) and (p) through (u) of the Not-For-Profit Corporation Law.

(8) Notwithstanding any other provision of this certificate, the corporation is not empowered to engage in activities which in themselves are not in furtherance of one or more

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exempt purposes, nor is the corporation empowered to operate, support or benefit any organization other than the Beneficiary Organizations.

THIRD: (1) Notwithstanding any other provision of this Certificate, the corporation is organized exclusively for charitable and scientific purposes, and it shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, or by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or any successor section.

(2) No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no member, trustee, director or officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

(3) No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided

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by Section 501(h) of the Internal Revenue Code of 1986, as amended, or any successor section), or participating in or intervening in (including the publication or distribution of statements) any political campaign of any candidate for public office.

FOURTH: The office of the corporation is to be located in the County of Erie and the State of New York.

FIFTH: Upon liquidation or dissolution of the corporation, whether voluntary or involuntary, after payment of all debts and liabilities of the corporation of whatsoever kind or nature, its remaining funds and other property and rights shall be distributed, granted, conveyed and assigned to 1233 Main Street, Inc., a New York not-for-profit corporation, subject to the applicable provisions of the law, provided that such corporation or its successor shall then be in existence and shall be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section. In the event that such distribution and conveyance cannot be made, then such distribution and conveyance shall be made to such other not-for-profit corporation or association having general purposes similar to those for which 1233 Main Street, Inc. was organized and being exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, such corporation or association to be

selected by the directors of the corporation. In the event the directors fail to so select, the Supreme Court, Eighth Judicial District, shall select such corporation or association.

SIXTH: The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against the corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is c/o Hodgson, Russ, Andrews, Woods & Goodyear, 1800 One M & T Plaza, Buffalo, New York 14203.

SEVENTH: The names and addresses of the initial directors of the corporation are:

RICHARD E. HEATH  
1800 One M & T Plaza  
Buffalo, New York 14203

GERALD S. LIPPES  
700 Guaranty Building  
Buffalo, New York 14202

MRS. FRANKLYN S. BARRY, JR.  
7 Chase Road  
Orchard Park, New York 14127

WILLIAM G. GISEL  
58 Rumsey Road  
Buffalo, New York 14209

JOHN W. KOESSLER, JR.  
302 Grote Street  
Buffalo, New York 14207

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A. NEVILLE PROCTER  
30 Hallam Road  
Buffalo, New York 14206

ANTHONY H. GIOIA  
P.O. Box 237  
1700 Elmwood Avenue  
Buffalo, New York 14240

MRS. RAYMOND WARDYNSKI  
300 Brompton Road  
Williamsville, New York 14221

PAUL A. SCHOELLKOPF  
70 Niagara Street  
Buffalo, New York 14202

ROBERT J. LYLE  
1807 Elmwood Avenue  
Buffalo, New York 14207

WARREN E. EMBLIDGE, JR.  
6 Concord Drive  
Orchard Park, New York 14127

NINTH: The Certificate of Incorporation of the corporation and the By-Laws of the corporation may only be amended by the affirmative vote of two-thirds of the entire board of directors of the corporation.

TENTH: Prior to delivery of this Certificate of Incorporation to the the Department of State for filing, all approvals and consents required by law will be endorsed upon or annexed to this Certificate.

IN WITNESS Wersigned has hereunto subscribed this Certificate and affirmed it as true under the penalties of perjury this \_\_\_\_ day of \_\_\_\_, 1987.

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Robert B. Fleming, Jr., Esq.  
1800 One M & T Plaza  
Buffalo, New York 14203

**DRAFT**

EXHIBIT B

BY-LAWS

OF

THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

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A corporation governed by the  
Not-for-Profit Corporation Law of New York

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ARTICLE I  
MEMBERS

Section 1. Member. The sole member of The Children's Hospital of Buffalo Foundation (the "corporation"), being a Type B not-for-profit corporation as defined in paragraph (b) of section 201 of the New York Not-for-Profit Corporation Law, shall be 1233 Main Street, Inc.

Section 2. Action by Member. Action by the member of the corporation shall be at a meeting or by written consent in accordance with the provisions of the New York Not-For-Profit Corporation Law.

ARTICLE II  
Board of Directors

Section 1. Management of Corporate Affairs. Except as otherwise provided by law, the certificate of incorporation of the corporation or these by-laws, the activities, property and affairs of the corporation shall be managed by the board of directors.

Section 2. Number and Qualifications. The board of directors shall consist of not less than three and not more than fifteen persons. The initial board of directors shall consist of eleven (11) members. The directors may increase or decrease the number of directors of the corporation by a vote of two-thirds of the entire board. No decrease in the number of directors shall

shorten the term of any incumbent director. All of the directors shall be at least eighteen (18) years of age. A majority of the directors of the corporation shall be directors of The Women and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc. and trustees of The Children's Hospital of Buffalo.

Section 3. Classes of Directors and Term of Office.

The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall be as nearly equal in number as possible. At the 1987 initial meeting of the board of directors, Class I, Class I and Class III directors shall initially be elected for terms expiring at the 1988 annual meeting, 1989 annual meeting and 1990 annual meeting, respectively. At each succeeding annual meeting of the board of directors, successors to the class of directors whose terms then expire shall be elected for terms that shall expire at the third succeeding annual meeting of the board of directors. Newly created directorships or any decrease in directorships shall be so apportioned among the classes of directors as to make all classes as nearly equal in number as possible, but in no case will a decrease in the number of directors shorten the term of any incumbent director.

Section 4. Ex-Officio and Honorary Directors.

The board of directors may elect ex-officio and honorary directors for such periods and in such numbers as the board may determine. The Chairman of the Development Committee of the Hospital shall be appointed annually as a non-voting, ex-officio member of the board of directors. Ex-officio directors and honorary directors shall be given notice of all board meetings but shall not be required to attend, shall not be counted for the purpose of a quorum, and shall not vote or have any liability with respect to any action taken by the board of directors.

Section 5. Vacancies.

Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board of directors for any reason may be filled by vote of a majority of the directors then in office, although less than a quorum exists. A director elected to fill a vacancy shall hold office until the next meeting of directors at which the election of directors of the class of which the new or vacant directorship is a part is in the regular order of business, and until his or her successor has been elected and qualified.

Section 6. Resignation.

Any director of the corporation may resign at any time by giving his or her resignation to

the Chairman of the Board, the President or the Secretary. Such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. Removal. Any director may be removed at any time with or without cause by action of the members of the corporation or by the affirmative vote of a majority of the board of directors at any meeting of the board, notice of which shall refer to the proposed action.

Section 8. Contracts with Corporation. No member of the board shall be interested, directly or indirectly, in any contract relating to the operations of the corporation, nor in any contract for furnishing services or supplies thereto, unless authorized by the concurring vote of a majority of the entire board not including the vote(s) of the interested directors(s).

Section 9. Compensation. No director of the corporation shall receive, directly or indirectly, salary, compensation or emolument from the corporation, except reasonable compensation for services actually performed and reimbursement of expenses necessarily incurred in effecting one or more of the corporate purposes of the corporation.

Section 10. Special Advisors. From time to time, the board of directors may designate as special advisors a chosen number of outstanding persons from the community who are interested in the objectives of the corporation to assist the corporation in its operations. Selection as a special advisor shall not confer upon those selected any right to vote or to participate in the management of the corporation, nor any liability with respect thereto.

Section 11. Reports. The board of directors shall present at each annual meeting a report, verified by the President and Treasurer or by a majority of the directors, showing in appropriate detail the following:

- (a) The assets and liabilities, including the funds, of the corporation as of the end of the twelve month fiscal period of the corporation terminating not more than six months prior to said meeting.
- (b) The principal changes in assets and liabilities, including trust funds, during said fiscal period.

- (c) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, during said fiscal period.
- (d) The expenses or disbursements of the corporation, for both general and restricted purposes, during said fiscal period.

ARTICLE III  
Meetings of Directors

Section 1. Regular Meetings. Regular meetings of the board of directors of the corporation may be held without notice at such time and place as shall, from time to time, be determined by resolution of the board.

Section 2. Special Meetings. Special meetings of the board of directors may be called at any time by the Chairman of the Board or the President, or in their absence or disability, the Vice-President, and must be called by such officer on written request by three directors. Such request shall state the purpose or purposes for which the meeting is to be called. Each special meeting of the board of directors shall be held at such time and place as the person calling the meeting shall determine and the notice of the meeting shall specify.

Section 3. Annual Meeting. The annual meeting of the board of directors shall be held at such place, date and time in the first six months of each calendar year as the board of directors shall designate.

Section 4. Notice of Meetings. Notice of each regular or special meeting of the board of directors stating the time and place thereof shall be given by the Chairman of the Board, the President, the Vice President or the Secretary to each member of the board not less than three (3) days before the meeting, by mailing the notice, postage prepaid, addressed to each member of the board at his or her residence or usual place of business, or not less than one (1) day before the meeting, by delivering the notice to each member of the board personally, by telegraph or by telephone.

Section 5. Waiver of Notice. Whenever under any provision of these by-laws, the certificate of incorporation, the terms of any agreement or instrument, or law, the corporation,

the board of directors or any committee thereof are authorized to take any action after notice to any person or persons or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of such period of time, if at any time before or after such action is completed the person or persons entitled to such notice or entitled to participate in the action to be taken, or by his or her duly authorized attorney-in-fact, submit a signed waiver of such notice or time requirements.

Section 6. Quorum and Action by the Board. At all meetings of the board of directors, except as otherwise provided by law, the certificate of incorporation or these by-laws, a quorum shall be required for the transaction of business and shall consist of not less than forty percent (40%) of the entire board, and the vote of a majority of the directors present shall decide any question that may come before the meeting. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time or place without notice other than announcement at the meeting of the time and place to which the meeting is adjourned.

Section 7. Procedure. The order of business and all other matters of procedure at every meeting of voting members may be determined by the person presiding at the meeting.

Section 8. Action Without a Meeting. Any action required or permitted to be taken by the board or any committee thereof may be taken without a meeting if all members of the board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the board or committee shall be filed with the minutes of the proceedings of the board or committee.

Section 9. Presence at Meeting by Telephone. Members of the board of directors or any committee thereof may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation in a meeting by such means shall constitute presence in person at the meeting.

Section 10. Confidentiality. All matters discussed at board or committee meetings shall be considered confidential.

ARTICLE IV  
COMMITTEES OF DIRECTORS

Section 1. Designation of Committees. The board of directors, by resolution or resolutions adopted by a majority of the entire board, may designate from among its members an executive committee and other standing and special committees, each consisting of three or more directors with one director being designated as the committee chairman, and may designate one or more directors as alternate members of any such committee who may replace any absent member or members at any meeting of such committee. In the interim between meetings of the board of directors, the executive committee shall have all the authority of the board of directors except as otherwise provided by law and shall serve at the pleasure of the board of directors. Each other standing or special committee designated shall have such name as may be provided from time to time in the resolution or resolutions of the board of directors, shall serve at the pleasure of the board of directors and shall have, to the extent provided in such resolution or resolutions, all the authority of the board of directors except as otherwise provided by law.

Section 2. Acts and Proceedings. All acts done and power and authority conferred by the executive committee from time to time within the scope of its authority shall be, and may be deemed to be, and may be specified as being, an act under the authority of the board of directors. The executive committee and each other standing or special committee shall keep regular minutes of its proceedings and report its actions to the board of directors when required.

Section 3. Meetings of Committees. Committees of directors shall meet at such times and places as the chairmen of the committees shall determine and the notice of the meeting shall specify. Meetings of committees of directors shall be governed by the provisions of Sections 4, 5, 6, 7 and 8 of Article III of these by-laws, which govern meetings of the entire board of directors.

ARTICLE V  
OFFICERS

Section 1. Officers. The board of directors shall at its annual meeting, appoint or elect a Chairman of the Board who shall be chosen from among the directors, and may appoint or elect a Vice Chairman of the Board, a President, a Vice



President, a Secretary and a Treasurer who may, but need not, be chosen from among the directors. The board of directors may from time to time elect or appoint such additional officers as it may determine. Such additional officers shall have such authority and perform such duties as the board of directors may from time to time prescribe.

Section 2. Term of Office. The Chairman of the Board, the Vice Chairman of the Board, the President, the Vice President, the Secretary and the Treasurer shall, unless otherwise determined by the board of directors, hold office until the next annual meeting of the board and until their successors have been elected or appointed and qualified. Each additional officer appointed or elected by the board of directors shall hold office for such term as shall be determined from time to time by the board of directors and until his or her successor has been elected or appointed and qualified. Any officer, however, may be removed or have his or her authority suspended by the board of directors at any time, with or without cause. If the office of any officer becomes vacant for any reason, the board of directors shall have the power to fill such vacancy.

Section 3. Resignation. Any officer may resign at any time by notifying the board of directors, the President or the Secretary of the corporation in writing. Such resignation shall take effect at the time specified therein and unless otherwise specified in such resignation, the acceptance thereof shall not be necessary to make it effective.

Section 4. Duties of Officers May Be Delegated. In case of the absence or disability of an officer of the corporation, or for any other reason that the board may deem sufficient, the board, except where otherwise provided by law, may delegate the powers or duties of any officer to any other officer, or to any member of the board, for such period as the board shall determine to be necessary and appropriate.

Section 5. The Chairman of the Board. The Chairman of the Board shall be the chief executive officer of the corporation, shall preside at all meetings of the board of directors and shall perform such other duties as provided by the board of directors, in the By-laws or bylaw.

Section 6. The Vice Chairman of the Board. The Vice Chairman of the Board, in the absence or disability of the Chairman, shall preside at the meetings of the corporation, and shall perform such other duties as provided by the board of directors, in the By-laws or bylaw.

Section 7. The President. The President shall be the chief operating and administrative officer of the corporation and shall have the general powers and duties of supervision and management of the corporation and shall perform all such other duties as usually pertain to the office or are properly required by the board of directors. In the absence of the Chairman of the Board and the Vice Chairman of the Board, the President shall preside at all meetings of the board of directors.

Section 8. The Vice-President. The Vice-President shall, in the absence or at the request of the President, perform the duties and exercise the powers of the President. The Vice-President shall also have such powers and perform such duties as usually pertain to the office or as are properly required by the board of directors.

Section 9. The Secretary. The Secretary shall issue notices of all meetings of directors where notices of such meetings are required by law or these by-laws. The Secretary shall attend all meetings of the board of directors and keep the minutes thereof. The Secretary shall affix the corporate seal to and sign such instruments as require the seal or the Secretary's signature and shall perform such other duties as usually pertain to the office or are properly required by the board of directors.

Section 10. The Treasurer. The Treasurer shall have the care and custody of all the moneys and securities of the corporation. The Treasurer shall cause to be entered in the books of the corporation to be kept for that purpose full and accurate accounts of all moneys received and paid on account of the corporation. The Treasurer shall make and sign such reports, statements and instruments as may be required of him or her by the board of directors or by the laws of the United States or of any state or country, and shall perform such other duties as usually pertain to the office or as are properly required of the Treasurer by the board of directors.

Section 11. Officers Holding Two or More Offices. Any two or more offices, except those of President and Secretary, may be held by the same person, but no officer shall execute or verify any instrument in more than one capacity if such instrument is required by law or otherwise to be executed or verified by two or more officers.

Section 12. Duties of Officers May Be Delegated. In case of the absence of any officer of the corporation, or for any other reason that the board of directors may deem sufficient, the board of directors may delegate, for the time being, the powers or duties of any officer to any other officer, or to any director.

Section 13. Compensation. No officer of the corporation shall receive, directly or indirectly, salary, compensation or emolument from the corporation, except reasonable compensation for services actually performed and reimbursement of expenses necessarily incurred in effecting one or more of the corporate purposes of the corporation.

ARTICLE VI  
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right of Indemnity. The corporation shall indemnify to the full extent authorized or permitted by law any person made, or threatened to be made, a party to any action or proceeding (whether civil or criminal or otherwise) by reason of the fact that he, his testator or intestate, is or was a director or officer of the corporation or by reason of the fact that such director or officer, at the request of the corporation, is or was serving any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, in any capacity.

Section 2. Determination of Entitlement to Indemnification. Upon the request of any person who may be entitled to indemnification under this Article, the board of directors shall act promptly to determine whether the director or officer has met the standard of conduct required for indemnification and, if such standard of conduct has been met, to authorize indemnification under this Section. Such determination may be made in the discretion of the board of directors (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion. For purposes of this Article, determination of any civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any director or officer did not act, in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise, not opposed to, the best interests of the corporation or that he had reasonable cause to believe that his conduct was unlawful.

Section 3. Expenses. Expenses (including attorneys' fees) incurred in defending a civil or criminal action, suit or

proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an express undertaking in writing by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced by the corporation exceed the indemnification to which he is entitled; provided, however, that no such indemnification shall be made if a determination is made in the manner provided in Section 2 of this Article that indemnification is not proper in the circumstances because he has not met the applicable standard of conduct.

Section 4. Indemnification with Respect to Internal Investigations. The corporation shall indemnify to the full extent authorized or permitted by law, any director or officer made the subject of an internal investigation by the corporation against reasonable costs and expenses, including attorneys' fees actually and necessarily incurred as a result of such investigation, unless it is determined that such person did not act in good faith, for a purpose which he reasonably believed to be in, or, in the case of service for any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise which such person served in any capacity at the request of the corporation, not opposed to, the best interest of the corporation. Any such determination as to good faith and purpose which would prevent indemnification under this Section must be made by the board of directors acting by a quorum consisting of directors who are not the subject of the same internal investigation, or if such a quorum is not obtainable with due diligence, by the board of directors upon the opinion in writing of independent legal counsel that indemnification is not proper in the circumstances because the applicable standard of conduct has not been met. Any determination made by the board of directors that indemnification under this Section is not permitted by law must be made on the basis of the opinion in writing of independent legal counsel. In addition, any indemnification under this Section shall be conditioned upon receipt of a written agreement in form satisfactory to the corporation and its legal counsel obligating the indemnified person to repay upon demand all or so much of any amount paid pursuant to this Section as may be determined not to have been paid in accordance with applicable law. Indemnification in respect of an action or proceeding, or threatened action or proceeding, shall not be provided under this Section.

Section 5. Non-Exclusivity of Article VI. The

indemnification provided by this Article VI shall continue as to a person who has ceased to be a director or officer of the corporation and shall inure to the benefit of the heirs, executors and administrators of such a person. The right of indemnification herein provided shall not be deemed exclusive of any other rights to which any such director, officer or other person may now or hereafter be otherwise entitled and specifically, without limiting the generality of the foregoing, shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any such director, officer or other person in any such action or proceeding to have awarded or allowed in his or her favor, against the corporation or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

ARTICLE VII  
CORPORATE FINANCE

Section 1. Corporate Funds. The funds of the corporation shall be deposited in its name with such banks, trust companies or other depositories or financial institutions as the board of directors may from time to time designate. All checks, notes, drafts and other negotiable instruments of the corporation shall be signed by such officer or officers, agent or agents, employee or employees as the board of directors from time to time may designate. No officers, agents or employees of the corporation, alone or with others, shall have the power to make any checks, notes, drafts or other negotiable instruments in the name of the corporation or to bind the corporation thereby, except as provided in this section.

Section 2. Fiscal Year. The fiscal year of the corporation shall be the calendar year unless otherwise provided by the board of directors.

Section 3. Loans to Directors and Officers. No loans shall be made by the corporation to its directors and officers.

Section 4. Gifts. The board of directors, the executive committee or any authorized officer, employee or agent of the corporation may accept on behalf of the corporation any contribution, gift, bequest or devise for any general or special purpose or purposes of the corporation.

Section 5. Voting of Securities Held by the Corporation. Stocks or other securities owned by the corporation may be voted, and any voting rights that the corporation may have as a partner in a partnership or joint venture or as a member of

a corporation organized under the Not-For-Profit Corporation Law of the State of New York may be exercised, in person or by proxy as the board of directors or the executive committee shall specify. In the absence of any direction by the board of directors or executive committee, such stocks or securities shall be voted, and such other voting rights may be exercised, by the Chairman of the Board as he or she shall determine.

ARTICLE VIII  
CORPORATE SEAL

Section 1. Form of Seal. The seal of the corporation shall be in such form as may be determined from time to time by the board of directors.

ARTICLE IX  
AMENDMENTS

Section 1. Procedure for Amending By-Laws. By-laws of the corporation may be adopted, amended or repealed at any meeting of the board of directors, notice of which shall have included specification of the proposed action, by the vote of two-thirds of the entire board of directors.



*The*  
**Children's Hospital  
of Buffalo**

219 Bryant Street, Buffalo, New York 14222  
716 878-7285

Office of the President

October 20, 1987

Peter J. Millock, Esq.  
General Counsel  
New York State Department of Health  
24th Floor - Corning Tower  
Empire State Plaza  
Albany, New York 12238

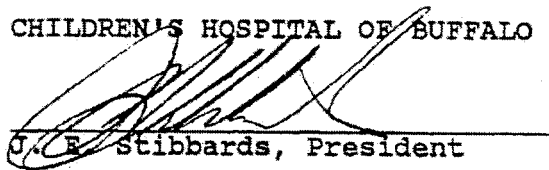
Dear Mr. Millock:

In connection with the application of The Children's Hospital of Buffalo Foundation (the "Foundation") for establishment approval from the New York Public Health Council, please be advised that The Children's Hospital of Buffalo, being the Foundation's sole member, is aware of the formation of the Foundation for the purpose of raising funds for the Hospital and will accept any and all funds raised by the Foundation on the Hospital's behalf.

Very truly yours,

THE CHILDREN'S HOSPITAL OF BUFFALO

BY:

  
J. R. Stibbards, President

JES/ss

EXHIBIT D

THE WOMEN & CHILDREN'S

# HEALTH RESEARCH FOUNDATION

OF THE CHILDREN'S HOSPITAL OF BUFFALO, INC.

219 BRYANT ST., BUFFALO, NY 14222

(716) 878-7215

October 20, 1987

**BOARD OF DIRECTORS**

**Anthony H. Gioia**

*Chairman*

Mr. William G. Gisell

*Vice Chairman*

J.E. Stibbards

*Secretary*

Paul W. Sweet

*Treasurer*

Robert E. Cooke, M.D.

Donald R. Cooney, M.D.

Dr. Carl Ehmann

M.M. Hreshchyshyn, M.D.

Mr. John W. Koessler, Jr.

Mr. Robert J. Lyle

John Naughton, M.D.

Mr. A. Neville Procter

Mr. Paul A. Schoellkopf

Mrs. Raymond Wardynski

Elliot F. Ellis, M.D.

*Scientific Director*

**Peter J. Millock, Esq.**

**General Counsel**

**New York State Department of Health**

**24th Floor - Corning Tower**

**Empire State Plaza**

**Albany, New York 12238**

**Dear Mr. Millock:**

In connection with the application of The Children's Hospital of Buffalo Foundation (the "Foundation") for establishment approval from the New York Public Health Council, please be advised that The Women's and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc. is aware of the formation of the Foundation for the purpose of raising funds for this organization and will accept any and all funds raised by the Foundation on its behalf.

Very truly yours,

THE WOMEN'S AND CHILDREN'S HEALTH RESEARCH  
FOUNDATION OF THE CHILDREN'S HOSPITAL OF  
BUFFALO, INC.

By



---

Anthony H. Gioia,  
Chairman of the Board

AHG/ss



EXHIBIT E

THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

PROPOSED INITIAL DIRECTORS

**RICHARD E. HEATH**

1800 One M&T Plaza  
Buffalo, New York 14203

Occupation: Attorney

Nature of  
Employment: General Partner  
Hodgson, Russ, Andrews, Woods & Goodyear  
1800 One M&T Plaza  
Buffalo, New York 14203

Offices held in health facilities/agencies:  
Trustee, The Children's Hospital of Buffalo  
Director, 1233 Main Street, Inc.\*

Ownership in any health and social service facilities/agencies:  
None

**GERALD S. LIPPES**

28 Church Street  
Suite 700  
Buffalo, New York 14202

Occupation: Attorney

Nature of  
Employment: Partner  
Lippes, Kaminsky, Silverstein, Porter,  
Mathias & Wexler  
28 Church Street  
Suite 700  
Buffalo, New York 14202

Offices held in health facilities/agencies:  
Trustee, The Children's Hospital of Buffalo  
Director, 1233 Main Street, Inc.\*

Ownership in health and social service facilities/agencies:  
None

**ANN S. BARRY (MRS. FRANKLYN S., JR.)**

7 Chase Road  
Orchard Park, New York 14127

Occupation: Community Volunteer/Homemaker

Offices held in health facilities/agencies:

Trustee, The Children's Hospital of Buffalo  
Director, 1233 Main Street, Inc.\*

Ownership of health or social service facilities/agencies:  
None

**WILLIAM G. GISEL**

58 Rumsey Road  
Buffalo, New York 14209

Occupation: Retired Business Executive

Nature of

Employment: (Former President of Bell Aerospace - Textron,  
Buffalo, New York)

Offices held in health facilities/agencies:

Trustee, The Children's Hospital of Buffalo  
Director, 1233 Main Street, Inc.\*  
Director, Women's and Children's Health  
Research Foundation of The Children's  
Hospital of Buffalo, Inc.

Ownership of health or social service facilities/agencies:  
None

JOHN W. KOESSLER, JR.  
S6122 Old Lake Shore Road  
Lakeview, New York 14085

Occupation: Business Executive

Nature of  
Employment: Chairman of the Board  
Greater Buffalo Press  
302 Grote Street  
Buffalo, New York 14207

Offices held in health facilities/agencies:  
Director, 1233 Main Street, Inc.\*  
Director, Women's and Children's Health  
Research Foundation of The Children's  
Hospital of Buffalo, Inc.

Ownership of health or social service facilities/agencies:  
None

A. NEVILLE PROCTER  
30 Hallam Road  
Buffalo, New York 14216

Occupation: Retired Business Executive

Nature of  
Employment: (Former President and C.E.O. of Dunlop Tire  
and Rubber Corp., Buffalo, New York)

Offices held in health facilities/agencies:  
Director, 1233 Main Street, Inc.\*  
Director, Women's and Children's Health  
Research Foundation of The Children's  
Hospital of Buffalo, Inc.  
Director, Kenmore Mercy Hospital,  
Kenmore, New York  
Director, Health Systems Agency of W.N.Y.

Ownership of health or social service facilities/agencies:  
None

**ANTHONY H. GIOIA**

1700 Elmwood Avenue  
Buffalo, New York 14207

Occupation: Business Executive

Nature of  
Employment: President  
Gioia Pasta Company, Inc.  
1700 Elmwood Avenue  
Buffalo, New York 14207

Offices held in health facilities/agencies:  
Trustee, The Children's Hospital of Buffalo  
Director, 1233 Main Street, Inc.\*  
Director and Chairman of the Board,  
Women's and Children's Health Research  
Foundation of The Children's Hospital  
of Buffalo, Inc.

Ownership of health or social service facilities/agencies:  
None

**SUE M. WARDYNSKI (MRS. RAYMOND)**

300 Brompton Road  
Buffalo, New York 14221

Occupation: Community Volunteer/Homemaker

Offices held in health facilities/agencies:  
Trustee, The Children's Hospital of Buffalo  
Director, 1233 Main Street, Inc.\*  
Director, Women's and Children's Health Research  
Foundation of The Children's Hospital of  
Buffalo, Inc.  
Former Trustee, Sheehan Hospital, Buffalo,  
New York

Ownership of health or social service facilities/agencies:  
None

**PAUL A. SCHOELLKOPF**  
70 Niagara Street  
Buffalo, New York 14202

Occupation: Business Executive

Nature of  
Employment: Chairman  
Niagara Share Corporation  
70 Niagara Street  
Buffalo, New York 14202

Offices held in health facilities/agencies:  
Trustee, The Children's Hospital of Buffalo  
Director, 1233 Main Street, Inc.\*  
Director, Women's and Children's Health  
Research Foundation of The Children's  
Hospital of Buffalo, Inc.  
Treasurer and Trustee, Niagara Falls Memorial  
Medical Center, Niagara Falls, New York  
Chairman and Director, Niagara Falls Memorial  
Nursing Home, Niagara Falls, New York

Ownership of health or social service facilities/agencies:  
None

**ROBERT J. LYLE**  
43 Clarendon Place  
Buffalo, New York 14209

Occupation: Business Executive

Nature of  
Employment: Executive Director  
James H. Cummings Foundation  
1807 Elmwood Avenue  
Buffalo, New York 14207

Offices held in health facilities/agencies:  
Director, 1233 Main Street, Inc.\*  
Director, Women's and Children's Health  
Research Foundation of The Children's  
Hospital of Buffalo, Inc.

Ownership of health or social service facilities/agencies:  
None

**WARREN E. EMBLIDGE, JR.**

6 Concord Drive  
Orchard Park, New York 14127

Occupation: Business Executive

Nature of  
Employment: President  
S.J. McCullagh, Inc.  
245 Swan Street  
Buffalo, New York 14203

Chairman  
Joseph Malecki Corp.  
2320 Clinton Street  
Cheektowaga, New York 14227

Offices held in health facilities/agencies:  
Trustee, The Children's Hospital of Buffalo  
Director, 1233 Main Street, Inc.\*

Ownership of health or social service facilities/agencies:  
None

\*1233 Main Street, Inc. = Holding Company of The Children's  
Hospital of Buffalo and affiliated entities.

FILING RECEIPT

ENTITY NAME : THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

DOCUMENT TYPE : AMENDMENT (DOMESTIC NFP)  
PURPOSES PROCESS PROVISIONS

COUNTY: ERIE

SERVICE COMPANY : \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00

FILED: 04/01/1998 DURATION: \*\*\*\*\* CASH #: 980401000724 FILM #: 980401000687

ADDRESS FOR PROCESS

C/O HODGSON RUSS ANDREWS WOODS & GOODYEAR LLP  
1800 ONE M & T PLAZA  
BUFFALO, NY 14203

REGISTERED AGENT



FILER	FEE	AMOUNT	PAYMENTS	AMOUNT
HODGSON RUSS ANDREWS WOODS & GOODYEAR 1800 ONE M & T PLAZA BUFFALO, NY 14203	FILING TAX CERT COPIES HANDLING	30.00 0.00 0.00 10.00 25.00	CASH CHECK BILLED REFUND	65.00 0.00 0.00 0.00

DOS-1025 (11/89)

State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

Witness my hand and seal of the Department of State on **APR 03 1998**



A handwritten signature in cursive script, appearing to read "J. Leach", followed by a horizontal line.

*Special Deputy Secretary of State*

DOS-1266 (5/96)



F 980401000687

RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

---

Under Section 805 of the Not-For-Profit Corporation Law

THE UNDERSIGNED, Joseph A. Ruffolo and Ann Barry, being the President and Secretary, respectively, of The Children's Hospital of Buffalo Foundation, do hereby certify:

(1) The name of the corporation is:

THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

(2) The Certificate of Incorporation of The Children's Hospital of Buffalo

Foundation was filed by the New York State Department of State on April 13, 1988.

(3) The Certificate of Incorporation is amended to effect the following amendments or changes authorized by Article 8 of the Not-For-Profit Corporation Law:

A. Article SECOND of the Certificate concerning the purposes for which the corporation is formed is amended to reflect the fact that The Children's Hospital of Buffalo has merged into CGF Health System and, as successor to The Children's Hospital of Buffalo, CGF Health System will be one of the two beneficiaries of the corporation. To effect such amendment, Article Second, Paragraph (1) is amended to read in its entirety as follows:

"(1) To solicit contributions from the public for charitable purposes including, but not limited to, operating and maintaining CGF Health System, as successor to The Children's Hospital of Buffalo, a facility established under article 28 of the New York Public Health Law, and The Women and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc., such corporations having their principal offices in Buffalo, New York (the "Beneficiary Organizations") and to otherwise support, by providing financial support to or for the benefit of, the Beneficiary Organizations."

B. Article FIFTH of the Certificate, concerning to whom assets shall be distributed upon liquidation of the corporation, is amended to change all references to 1233 Main Street, Inc. to CGF Health System, 1233 Main Street, Inc. being the former name of the sole member of the corporation, which member is also merging into CGF Health System. To effect such amendment, Article FIFTH is amended to read in its entirety as follows:

"FIFTH: Upon liquidation or dissolution of the corporation, whether voluntary or involuntary, after payment of all debts and liabilities of the corporation of whatsoever kind or nature, its remaining funds and other property and rights shall be distributed, granted, conveyed and assigned to CGF Health System, a New York not-for-profit corporation, provided that such corporation or its successor shall then be in existence and shall be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, subject to an order of a Justice of the Supreme Court, and subject to the right of the Attorney General of the State of New York to assert objections, if any, in the proceeding to obtain such order, including, but not limited to, objections on the ground that the proposed distribution is not consistent with the governing law regarding the dissolution of not-for-profit corporations. In the event that such distribution and conveyance cannot be made, then such distribution and conveyance shall be made to such other not-for-profit corporation or association having general purposes similar to those for which CGF Health System was organized and being exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, such corporation or association to be selected by the directors of the corporation, subject to an order of a Justice of the Supreme Court, and subject to the right of the Attorney General of the State of New York to assert objections, if any, in the proceeding to obtain such order, including, but not limited to, objections on the ground that the proposed distribution is not consistent with the governing law regarding the dissolution of not-for-profit corporations. In the event the directors fail to so select, the Supreme Court, Eighth Judicial District, shall select such corporation or association and subject to the right of the Attorney General of the State of New York to assert objections, if any, in the proceeding to obtain such order, including, but not limited to, objections on the ground that the proposed distribution is not consistent with the governing law regarding the dissolution of not-for-profit corporations."

C. Article SEVENTH concerning the first directors of the Corporation is deleted.

D. Article TENTH concerning the initial filing of the Certificate of Incorporation is deleted.

E. Article NINTH is renumbered Paragraph SEVENTH.

(4) The text of the Certificate of Incorporation of the corporation is hereby restated as amended to read in its entirety as follows:

RESTATED CERTIFICATE OF INCORPORATION  
OF  
THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

FIRST: The name of the corporation is THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION.

SECOND: The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under Section 201 of the Not-For-Profit Corporation Law. The purposes for which the corporation is formed are:

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(1) To solicit contributions from the public for charitable purposes including, but not limited to, operating and maintaining CGF Health System, as successor to The Children's Hospital of Buffalo, a facility established under article 28 of the New York Public Health Law, and The Women and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc., such corporations having their principal offices in Buffalo, New York (the "Beneficiary Organizations") and to otherwise support, by providing financial support to or for the benefit of, the Beneficiary Organizations.

(2) To encourage, solicit, receive, accept and acquire contributions by gift, grant, devise, bequest or otherwise, in the form of money, stocks, bonds or other securities, bills, notes and any and all other types of property, both real and personal; to hold and manage such property and collect the income generated therefrom; and to use such contributions and income for the purposes stated herein.

(3) To receive and administer funds in furtherance of the foregoing purposes and in advancement thereof, and to that end (i) to take and hold by bequest, devise, gift, grant, purchase, lease or otherwise, either absolutely or jointly with any other person, persons or corporations, any property, real, personal, tangible or intangible, or any undivided interest therein, without limitation as to amount or value, (ii) to sell, convey or otherwise dispose of any such property, and (iii) to invest, reinvest, or deal with the principal or income thereof, all in such manner as, in the judgment of the directors of the corporation, will best promote the purposes of the

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corporation without limitation, except such limitations, if any, as may be contained in the instrument under which such property is received, this certificate of incorporation or any laws applicable thereto.

(4) To do any other act or thing incidental to or in connection with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of any of its members, trustees, directors, officers or employees.

(5) Nothing contained in this certificate of incorporation shall authorize the corporation to establish or operate a hospital or to provide hospital or health related services, a home care services agency, a hospice, a health maintenance organization, a comprehensive health services plan or a clinical laboratory as provided for by Articles 28, 36, 40, 44 and 5 respectively, of the New York Public Health Law.

(6) Nothing contained in this certificate of incorporation shall authorize the corporation to conduct any activities unless and until it has obtained all required licenses and permits.

(7) Nothing contained in this certificate of incorporation shall authorize the corporation to carry on any of the activities set forth in Section 404(b) through (n) and (p) through (u) of the Not-For-Profit Corporation Law.

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(8) Notwithstanding any other provision of this certificate, the corporation is not empowered to engage in activities which in themselves are not in furtherance of one or more exempt purposes, nor is the corporation empowered to operate, support or benefit any organization other than the Beneficiary Organizations.

THIRD: (1) Notwithstanding any other provision of this Certificate, the corporation is organized exclusively for charitable and scientific purposes, and it shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, or by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or any successor section.

(2) No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director or officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no member, trustee, director or officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

(3) No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended, or any successor section), or

participating in or intervening in (including the publication or distribution of statements) any political campaign of any candidate for public office.

FOURTH: The office of the corporation is to be located in the County of Erie and the State of New York.

FIFTH: Upon liquidation or dissolution of the corporation, whether voluntary or involuntary, after payment of all debts and liabilities of the corporation of whatsoever kind or nature, its remaining funds and other property and rights shall be distributed, granted, conveyed and assigned to CGF Health System, a New York not-for-profit corporation, provided that such corporation or its successor shall then be in existence and shall be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, subject to an order of a Justice of the Supreme Court, and subject to the right of the Attorney General of the State of New York to assert objections, if any, in the proceeding to obtain such order, including, but not limited to, objections on the ground that the proposed distribution is not consistent with the governing law regarding the dissolution of not-for-profit corporations. In the event that such distribution and conveyance cannot be made, then such distribution and conveyance shall be made to such other not-for-profit corporation or association having general purposes similar to those for which CGF Health System was organized and being exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, such corporation or association to be selected by the directors of the corporation, subject to an order of a Justice of the Supreme Court, and subject to the right of the Attorney General of the State of New York to assert objections, if any,

in the proceeding to obtain such order, including, but not limited to, objections on the ground that the proposed distribution is not consistent with the governing law regarding the dissolution of not-for-profit corporations. In the event the directors fail to so select, the Supreme Court, Eighth Judicial District, shall select such corporation or association and subject to the right of the Attorney General of the State of New York to assert objections, if any, in the proceeding to obtain such order, including, but not limited to, objections on the ground that the proposed distribution is not consistent with the governing law regarding the dissolution of not-for-profit corporations.

SIXTH: The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against the corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is c/o Hodgson, Russ, Andrews, Woods & Goodyear, LLP, 1800 One M&T Plaza, Buffalo, New York 14203.

SEVENTH: The Certificate of Incorporation of the corporation and the By-Laws of the corporation may only be amended by the affirmative vote of two-thirds of the entire board of directors of the corporation.


(5) This Restated Certificate of Incorporation was authorized by the affirmative vote of more than two-thirds of the entire Board of Directors of the corporation at a meeting of the Board of Directors of the Corporation and was approved by the written consent of the sole member of the corporation.





IN WITNESS WHEREOF, the undersigned has hereunto subscribed this  
Restated Certificate of Incorporation and affirmed it as true under the penalties of perjury  
this 3rd day of October, 1997.

  
\_\_\_\_\_  
Joseph A. Ruffolo, President

  
\_\_\_\_\_  
Ann Barry, Secretary

STATE OF NEW YORK )  
 )  
COUNTY OF ERIE ) SS:

On this 3rd day of October, 1997 personally appeared Joseph A. Ruffolo, to me known and known to me to be the President of The Children's Hospital of Buffalo Foundation, and acknowledged that he executed the above instrument on behalf of said corporation pursuant to authority duly received.

*Bonnie A. Redder*

Notary Public

BONNIE A. REDDER  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Jan. 31, 1998

STATE OF NEW YORK )  
 )  
COUNTY OF ERIE ) SS:

On this 3rd day of October, 1997 personally appeared Ann Barry, to me known and known to me to be the Secretary of The Children's Hospital of Buffalo Foundation, and acknowledged that he executed the above instrument on behalf of said corporation pursuant to authority duly received.

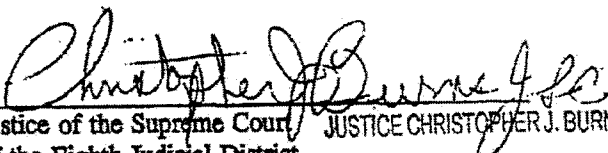
*Bonnie A. Redder*

Notary Public

BONNIE A. REDDER  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Jan. 31, 1998

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The foregoing Restated Certificate of Incorporation of THE CHILDREN'S  
HOSPITAL OF BUFFALO FOUNDATION is hereby approved.

  
Justice of the Supreme Court JUSTICE CHRISTOPHER J. BURNS  
of the Eighth Judicial District  
of the State of New York

CORPORATE:136899\_1 (2XMR\_1)

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STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

DENNIS C. VACCO  
Attorney General

ERIN M. PERADOTTO  
Assistant Attorney General in Charge

March 26, 1998

Telephone: (716) 853-8480

Robert B. Fleming, Jr., Esq.  
1800 One M & T Plaza  
Buffalo, NY 14203

Re: **The Children's Hospital of Buffalo Foundation**  
**Proposed Restated Certificate of Incorporation**

Dear Mr. Fleming:

This letter will confirm receipt by this office of a copy of the proposed restated certificate of incorporation of the above-referenced not-for-profit corporation.

Based upon our review of the foregoing, please be advised that the Attorney General has no objection to the filing of the restated certificate with the Secretary of State.

Please forward a copy of the judicially-approved restated certificate of incorporation together with proof of its filing with the Secretary of State so that we may complete our file in this matter. If you have any questions, please feel free to contact me at the above number.

Thank you for your cooperation.

Very truly yours,

WILLIAM D. MALDOVAN  
Assistant Attorney General

WDM:sam  
cc: Bernard Toomin, AAG

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

March 20, 1998

Mr. James L. Magavern  
Attorney at Law  
Magavern, Magavern and Grimm, L.L.P.  
1100 Rand Building  
14 Lafayette Square  
Buffalo, New York 14203

Re: Restated Certificate of Incorporation of The Children's Hospital of Buffalo Foundation.

Dear Mr. Magavern:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of March, 1998, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of The Children's Hospital of Buffalo Foundation, dated October 3, 1997.

Sincerely,

Karen S. Westervelt  
Executive Secretary

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RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

-----  
UNDER SECTION 805 OF THE NOT-FOR-PROFIT  
CORPORATION LAW

HODGSON, RUSS, ANDREWS, WOODS & GOODYEAR, LLP  
1800 ONE M&T PLAZA  
BUFFALO, NEW YORK 14203

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED APR 01 1998  
TAXS  
BY: [Signature]

*[Handwritten signature]*

*PTC*

*ERIE*

*lcl*

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AIDE-24

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**CERTIFICATE OF MERGER  
OF  
THE WOMEN AND CHILDREN'S HEALTH RESEARCH  
FOUNDATION OF THE CHILDREN'S HOSPITAL OF BUFFALO, INC.  
INTO  
THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION**

**UNDER SECTION 904 OF THE NOT-FOR-PROFIT  
CORPORATION LAW**

The undersigned, Sue M. Wardynski, being the Chair of the Board of The Women and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc., and Gerard T. Mazurkiewicz, being the Chair of the Board of The Children's Hospital of Buffalo Foundation, hereby certify:

1. The constituent corporations to the merger are as follows:
  - a. The Women and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc.; a New York not-for-profit corporation; and
  - b. The Children's Hospital of Buffalo Foundation, a New York not-for-profit corporation.
2. The surviving corporation is The Children's Hospital of Buffalo Foundation. The name of the surviving corporation, on the effective date of the merger, will become The Women and Children's Hospital of Buffalo Foundation.
3. The membership and holders of certificates evidencing capital contributions and subventions, including their number, classification, and voting rights, as to each constituent corporation, are as follows:
  - a. Kaleida Health is the sole member of The Women and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc. The by-laws of The Women and Children's Health Research Foundation of The Children's Hospital of Buffalo, Inc. provide that the corporation shall have one member, which has full voting rights. There are no holders of certificates evidencing any capital contribution or subvention.
  - b. Kaleida Health is the sole member of The Children's Hospital of Buffalo Foundation. The by-laws of The Children's Hospital of Buffalo Foundation provide that the corporation shall have one member, which has full voting rights. There are no holders of certificates evidencing any capital contribution or subvention.

4. The following amendments to the certificate of incorporation of The Children's Hospital of Buffalo Foundation, the surviving corporation, are effected by the merger:

a. Article FIRST, which sets forth the name of the Corporation, is amended to read in its entirety as follows:

"FIRST: The name of the corporation is The Women and Children's Hospital of Buffalo Foundation."

b. Article SECOND, which describes the purposes of the corporation, is amended as follows:

(1) Paragraph (1) is amended to read in its entirety as follows:

"(1) To solicit contributions from the public for charitable purposes including, but not limited to, operating and maintaining Kaleida Health, as successor to The Children's Hospital of Buffalo, and to otherwise support, by providing financial support to or for the benefit of, Kaleida Health; to advance, coordinate, and support the continuous active conduct of medical research relating to the health of women and children; to collaborate with Kaleida Health, the State University of New York at Buffalo and other teaching hospitals and academic centers in order to foster the development of Western New York as a center for such research; to assist persons desirous of advancing their scientific knowledge through such research; to serve as the institutional base for activities related to such research that are funded by other agencies, to the extent desirable and feasible; to make financial assistance grants for conducting such research to investigators who are associated with the School of Medicine or School of Dentistry of the State University of New York at Buffalo and located at Kaleida Health; and to disseminate information to the general public concerning the objectives and purposes of the corporation."

(2) Paragraph (8) is amended to read in its entirety as follows:

"(8) Notwithstanding any other provision of this certificate, the corporation is not empowered to engage in



activities that in themselves are not in furtherance of one or more exempt purposes.

- c. Article FIFTH, which describes distribution of the corporation's assets upon dissolution, is amended to change all "CGF Health System" references to "Kaleida Health" and to read in its entirety, as follows:

"FIFTH: Upon liquidation or dissolution of the corporation, whether voluntary or involuntary, after payment of all debts and liabilities of the corporation of whatsoever kind or nature, its remaining funds and other property and rights shall be distributed, granted, conveyed and assigned to Kaleida Health, a New York not-for-profit corporation, provided that such corporation or its successor shall then be in existence and shall be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, subject to an order of a Justice of the Supreme Court, and subject to the right of the Attorney General of the State of New York to assert objections, if any, in the proceeding to obtain such order, including, but not limited to, objections on the ground that the proposed distribution is not consistent with the governing law regarding the dissolution of not-for-profit corporations. In the event that such distribution and conveyance cannot be made, then such distribution and conveyance shall be made to such other not-for-profit corporation or association having general purposes similar to those for which Kaleida Health was organized and being exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, such corporation or association to be selected by the directors of the corporation, subject to an order of a Justice of the Supreme Court, and subject to the right of the Attorney General of the State of New York to assert objections, if any, in the proceeding to obtain such order, including, but not limited to, objections on the ground that the proposed distribution is not consistent with the governing law regarding the dissolution of not-for-profit corporations. In the event the directors fail to so select, the Supreme Court, Eighth Judicial District, shall select such corporation or association and subject to the

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13 February 2004

THE CHILDREN'S HOSPITAL OF BUFFALO  
FOUNDATION

Name: Sue M. Wardynski  
Title: Chair of the Board

IN WITNESS WHEREOF, the undersigned have, on behalf of each constituent corporation, subscribed this certificate and hereby affirm it as true under penalties of perjury this 13<sup>th</sup> day of February, 2004.

THE WOMEN AND CHILDREN'S HEALTH  
RESEARCH FOUNDATION OF THE  
CHILDREN'S HOSPITAL OF BUFFALO, INC.

By: Sue M. Wardynski 13 February 2004  
Name: Sue M. Wardynski  
Title: Chair of the Board

THE CHILDREN'S HOSPITAL OF BUFFALO  
FOUNDATION

By: Gerald T. Mazurkiewicz  
Name: Gerald T. Mazurkiewicz  
Title: Chair of the Board

CHILDREN'S HOSPITAL OF BUFFALO (520641DOC)

CHILDREN'S HOSPITAL OF BUFFALO (520641DOC)

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

...action taken at  
...by  
...Research Foundation  
...Children's Hospital of Buffalo Foundation.

July 7, 2004

Ms. Sharon M. Kelly, Partner  
Hodgson Russ Attorneys  
One M&T plaza - Suite 2000  
Buffalo, New York 14203-2391

Re: Certificate of Merger of The Women and Children's Health Research Foundation of the  
Children's Hospital of Buffalo, Inc. into The Children's Hospital of Buffalo Foundation

Dear Ms. Kelly:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at  
a meeting of the Public Health Council held on the 25<sup>th</sup> day of June, 2004, I hereby  
certify that the Certificate of Merger of The Women and Children's Health Research Foundation  
of the Children's Hospital of Buffalo, Inc. into The Children's Hospital of Buffalo Foundation,  
dated February 13, 2004, is approved.

Sincerely,

Karen S. Westervelt  
Executive Secretary

/md

6

STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT  
Albany, New York

Accelerated

Re: **THE WOMEN AND CHILDREN'S HEALTH RESEARCH FOUNDATION  
OF THE CHILDREN'S HOSPITAL OF BUFFALO, INC.**  
Merged with  
**THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION**, as surviving  
corporation  
Change of Name to:  
**THE WOMEN AND CHILDREN'S HOSPITAL OF BUFFALO  
FOUNDATION**

Dear Sir or Madam:

Consent is hereby given to the filing of the annexed Certificate of Merger of the Certificates of Incorporation of **THE WOMEN AND CHILDREN'S HEALTH RESEARCH FOUNDATION OF THE CHILDREN'S HOSPITAL OF BUFFALO, INC.** and **THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION**, with the surviving corporation being **THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION**; pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State or New York or the State Education Department in its publications or advertising matter.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

RICHARD P. MILLS  
Commissioner of Education

By:

*Susan A. Naccarato*  
Richard N. Nabozny  
or Susan A. Naccarato  
(Commissioner's designee)

Oct. 27, 2005  
Date

7

APP

At a Special Term of the Supreme Court of the State of New York, held in and for the County of Erie, at 50 DELAWARE AVE, Buffalo, New York, on September 27, 2005

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application

of

THE WOMEN AND CHILDREN'S HEALTH RESEARCH FOUNDATION OF THE CHILDREN'S HOSPITAL OF BUFFALO, INC. and THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

ORDER APPROVING PLAN OF MERGER AND CERTIFICATE OF MERGER FOR FILING

In Support of an Order Approving Their Plan of Merger and Authorizing the Filing of a Certificate of Merger Pursuant to Section 901 of the Not-for-Profit Corporation Law

Index No. \_\_\_\_\_

Upon reading the Petition and Joint Affidavit of THE WOMEN AND CHILDREN'S HEALTH RESEARCH FOUNDATION OF THE CHILDREN'S HOSPITAL OF BUFFALO, INC. and THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION, dated the 13<sup>th</sup> day of February, 2004, and the exhibits attached thereto, and the members of both corporations having approved the Plan of Merger, and the New York State Public Health Council having approved the Plan of Merger, and the Attorney General having waived notice and a hearing and certified no objection to the entry of this Order, and the Court having given due consideration hereto, and it appearing to the satisfaction of the Court that the provisions of Section 907 of the Not-for-Profit Corporation Law have been complied with, and that the interests of the constituent corporations and the public interests would not be adversely affected by the merger of the petitioning corporations;

Now, on motion of Sharon M. Kelly, Esq., attorney for the constituent corporations, it is hereby

ORDERED, that the plan of merger of The Women and Children's Health Research Foundation of the Children's Hospital of Buffalo, Inc. into The Children's Hospital of Buffalo Foundation, adopted by the constituent corporations, be and hereby is approved; and it is further

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ORDERED, that the said corporations be and hereby are authorized to file with the Secretary of State the Certificate of Merger dated February 13, 2004 and executed and acknowledged by The Women and Children's Health Research Foundation of the Children's Hospital of Buffalo, Inc. and The Children's Hospital of Buffalo Foundation, in the form annexed to their Affidavit; and it is further

ORDERED, that upon filing of the said Certificate of Merger together with a certified copy of this order as required, all the assets of The Women and Children's Health Research Foundation of the Children's Hospital of Buffalo, Inc. shall thereby be transferred and conveyed to The Children's Hospital of Buffalo Foundation; and be it further

ORDERED, that the merger of the corporations shall have the effect provided by Section 905(b) of the Not-for-Profit Corporation Law of the State of New York.

ENTER,

J.S.C.

Dated: 10/17 2005

GRANTED

October 5, 2005  
John P. Henderson  
COURT CLERK

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,  
HAS NO OBJECTION TO THE GRANTING OF  
JUDICIAL APPROVAL HEREON ACKNOWLEDGES  
RECEIPT OF STATUTORY NOTICE AND DEMANDS  
SERVICE ON ALL PARTIES SUBMITTED HEREIN  
INCLUDING ALL ORDERS JUDGMENTS AND IS  
ENDORSEMENTS OF THE COURT AND NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE MATTER  
TO THE COURT WITHIN 30 DAYS HEREAFTER.  
Will Child 9-20-05  
ASSISTANT ATTORNEY GENERAL DATE

BFLODOCSM321M (07V)(11000)

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051031000242

AIDF-24

CERTIFICATE OF MERGER

OF

THE WOMEN AND CHILDREN'S HEALTH RESEARCH FOUNDATION OF THE CHILDREN'S HOSPITAL OF BUFFALO, INC.

(INTO)

THE CHILDREN'S HOSPITAL OF BUFFALO FOUNDATION

UNDER SECTION 904 OF THE NOT-FOR-PROFIT CORPORATION LAW

FILED 2005 OCT 31 AM 10:50

RECEIVED

2005 OCT 28 PM 4:00

STATE OF NEW YORK DEPARTMENT OF STATE

FILED OCT 31 2005

TAX \$ BY: Eric

Eric

AIDF-24

Drawdown

Filed by: Hodgson Russ LLP One M & T Plaza, Suite 2000 Buffalo, NY 14203-2891

CUSTOMER REFERENCE #: 3084

10

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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of December 2017 approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Women and Children's Hospital of Buffalo Foundation, dated at attached.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** November 3, 2017

**Subject:** Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital (d/b/a Bassett Medical Center)

---

The Mary Imogene Bassett Hospital (the "Hospital") desires to refinance its long-term debt with a lender through the U.S. Department of Housing and Urban Development ("HUD") mortgage insurance program. As a condition for closing, HUD requires the Hospital to amend its Certificate of Incorporation to include HUD's boilerplate clauses.

Public Health and Health Planning Council approval for the changes made to said certificate is required by Not-for-Profit Corporation Law § 804(a) and Public Health Law § 2801-a.

There is no legal objection to the proposed Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and it is in legally acceptable form.

Attachments

# PERSUN & HAMLIN, P.C.

Attorneys at Law

IRS NO. 26-3786257  
717-620-2440  
FAX: 717-620-2442

1700 Bent Creek Boulevard  
Suite 160  
Mechanicsburg, PA 17050

MATTHEW E. HAMLIN  
717-620-2635  
mehamlin@persunhamlin.com

Please reply to:  
P.O. Box 659  
Mechanicsburg, PA 17055-0659

[HTTP://WWW.PERSUNHAMLIN.COM](http://www.persunhamlin.com)

November 3, 2017

## **VIA E-MAIL and FEDERAL EXPRESS (518-473-3303)**

Eric J. Mantey, Esquire  
Senior Attorney  
New York State Department of Health  
Division of Legal Affairs  
2462 Corning Tower  
Empire State Plaza  
Albany, NY 12237-0031

**Re: The Mary Imogene Bassett Hospital d/b/a Bassett Medical  
Center – Corporate Matters  
Our File No. 10067-0520**

Dear Mr. Mantey:

The undersigned represents The Mary Imogene Bassett Hospital doing business as Bassett Medical Center (“Bassett”). On behalf of Bassett, we respectfully request that this application for the consent to file the attached Certificate of Amendment of the Certificate of Incorporation of The Mary Imogene Bassett Hospital (“Certificate of Amendment”) be placed on the agenda for the December 7, 2017 meeting of the Public Health and Health Planning Council (“PHHPC”).

In the Certificate of Amendment, Bassett seeks to add certain “boilerplate” provisions to its Certificate of Incorporation that are required by the U.S. Department of Housing and Urban Development (“HUD”) in anticipation of a refinancing loan closing to occur in either December, 2017 or January, 2018.

By way of background, Bassett is considering the refinancing of its long-term debt with KeyBank, N.A. through the mortgage insurance program administered by HUD under Section 242 pursuant to Section 223(f) of Title II of the National Housing Act.

The refinancing of Bassett’s long-term debt is anticipated to result in significant financial savings to Bassett by reducing its current and near-term debt service payments. The refinancing does not involve either new construction or renovation to any health care facilities or a change in Bassett’s services.

November 3, 2017

Page 2

As a condition to closing, Bassett will be required to provide HUD a certified copy of the attached Certificate of Amendment as filed with the State of New York Department of State.

The HUD required amendments contained in the Certificate of Amendment attached hereto as Exhibit A relate to the identification of Bassett as corporation that shall provide nonprofit hospital services, grants authority to pledge its real and personal property as security for the loan and enter into a HUD Hospital Regulatory Agreement, requires that upon dissolution, Bassett's assets shall be distributed to another organization operated for nonprofit purposes similar to those of Bassett and requires HUD's prior approval for future amendments to Bassett's organizational documents. Attached as Exhibit B is a copy of the Certificate of Amendment in which the HUD required amendments are highlighted in yellow. Also, attached as Exhibit C, collectively, are certified copies of Bassett's original Certificate of Incorporation filed in 1921 and subsequent amendments thereto. To-date, Bassett has not filed a Restated Certificate of Incorporation.

As you can appreciate, time is of the essence in closing the refinancing loan in light of the rising interest rate environment. The government backed mortgage security debt instrument resulting from the loan closing will be placed on the Ginnie Mae Bond Market. The lower the interest rate "locked in" for the closing means substantial interest rate savings to Bassett over the term of the loan. As such, if Bassett decides to proceed with a loan closing in December 2017 or January, 2018 in order to take advantage of lower fixed interest rates, it will have to be in a position to file the Certificate of Amendment in December 2017, following receipt of the written consents of PHHPC and New York State Attorney General, pursuant to Section 804 of the Not-for-Profit Corporation Law.

Thank you in advance for whatever courtesy your office and PHHPC can extend to Bassett to place this application on the December 7, 2017 meeting agenda.

The undersigned is available to answer any questions you have concerning this application.

Sincerely,

*Matthew E. Hamlin*

Matthew E. Hamlin

MEH/pg  
Attachments

# **Exhibit A**

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE MARY IMOGENE BASSETT HOSPITAL  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

**FILED BY:**

**PERSUN & HAMLIN, P.C.  
1700 Bent Creek Boulevard  
Suite 160  
P.O. Box 659  
Mechanicsburg, PA 17055-0659**

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE MARY IMOGENE BASSETT HOSPITAL**

**UNDER SECTION 803 OF THE  
NOT-FOR-PROFIT CORPORATION LAW**

**(Pursuant to Section 803 of the Not-For-Profit Corporation Law)**

We, the undersigned, Vance M. Brown, M.D., President and William T. Burdick, Secretary of The Mary Imogene Bassett Hospital, a corporation duly existing under the Not-for-Profit Corporation Law of the State of New York, do hereby make, sign and acknowledge this certificate and do certify as follows:

1. The name of the corporation is The Mary Imogene Bassett Hospital (the "Corporation").
2. The certificate of incorporation of the Corporation was filed in the office of the Secretary of State on November 26, 1921.
3. The law the Corporation was formed under is the Membership Corporations Law.
4. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

5. Article SIXTH of the certificate of incorporation presently provides the following:

SIXTH: The objects, purposes and powers of the corporation are:

The maintenance and operation within the Counties of Otsego, Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York, of hospitals, including dispensaries, one or more clinics and out patient departments, for the medical, surgical and psychiatric aid, care and treatment of persons in need thereof provided however, that before any such facility is constructed or operated all approvals required by law, including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including, without thereby limiting the generality of the foregoing, the maintenance and operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches.

In furtherance, and not in limitation, of the objects above described said corporation shall have the power:

1. To acquire by purchase, lease, donation, bequest or otherwise, land and buildings within said Counties of Otsego,



Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York necessary and convenient for the establishing and maintaining of said hospitals.

2. To acquire by gift, devise, bequest or otherwise, real and personal property without limitation as to amount, except such limitation, if any, as is now, or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the corporation.

3. To arrange by contract, or otherwise, for the services of doctors, surgeons and other persons necessary for the carrying out of the objects and powers of said corporation and to pay proper compensation therefor.

4. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be exercised by the corporation, whether heretofore specifically enumerated or not.

6. The first amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment consists of an amendment to Article SIXTH dealing with the objects, purposes and powers of the Corporation so that the same shall read as follows:

SIXTH: The objects, purposes and powers of the corporation are:

The maintenance and operation within the Counties of Otsego, Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York, of hospitals, including dispensaries, one or more clinics and out patient departments, for the medical, surgical and psychiatric aid, care and treatment of persons in need thereof provided however, that before any such facility is constructed or operated all approvals required by law, including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including, without thereby limiting the generality of the foregoing, the maintenance and operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches.

The corporation shall provide on a nonprofit basis hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

In furtherance, and not in limitation, of the objects above described said corporation shall have the power:

1. To acquire by purchase, lease, donation, bequest or otherwise, land and buildings within said Counties of Otsego, Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York necessary and convenient for the establishing and maintaining of said hospitals.
2. To acquire by gift, devise, bequest or otherwise, real and personal property without limitation as to amount, except such limitation, if any, as is now, or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the corporation.
3. To arrange by contract, or otherwise, for the services of doctors, surgeons and other persons necessary for the carrying out of the objects and powers of said corporation and to pay proper compensation therefor.

4. To mortgage or otherwise hypothecate its real and personal property and to do and perform all acts reasonably necessary to accomplish the purposes of the corporation including the execution of a Hospital Regulatory Agreement – Borrower with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and understandings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Hospital Regulatory Agreement – Borrower and other instruments and undertakings shall remain binding on the corporation, its successors and assigns so long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development.

5. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be exercised by the corporation, whether heretofore specifically enumerated or not.

7. Article NINTH of the certificate of incorporation presently provides the following:

NINTH: In the event of voluntary dissolution of said corporation pursuant to the laws of the State of New York or in the event of dissolution due to such other circumstances as are permitted or required by law, the funds and assets of said corporation then belonging to it shall, after proper payment of liabilities, be distributed with the approval of the Supreme Court of the State of New York in accordance with law, to such tax-exempt charitable organizations (within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provision of any successor federal tax law (the "Code") organized for the purposes set forth in SIXTH HEREOF; provided, in addition, that said distribution of all funds and assets of said corporation (after proper payment of all liabilities) shall only be for one or more exempt purposes, within the meaning of Section 501(c)(3) of the Code, or such property shall be distributed for a public purpose to the federal government, the State of New York or the Village of Cooperstown.

8. The second amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment consists of an amendment to Article NINTH dealing with the voluntary dissolution of the Corporation so that the same shall read as follows:

NINTH: In the event of voluntary dissolution of said corporation pursuant to the laws of the State of New York or in the event of dissolution due to such other circumstances as are permitted or required by law, the funds and assets of said corporation then belonging to it shall, after proper payment of liabilities, be distributed with the approval of the Supreme Court of the State of New York or the New York State Attorney General in accordance with law, to such tax-exempt non-profit charitable organizations (within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provision of any successor federal tax law (the "Code") organized for the purposes set forth in SIXTH HEREOF; provided, in addition, that said distribution of all funds and assets of said corporation (after proper payment of all liabilities) shall only be for one or more exempt purposes, within the meaning of Section 501(c)(3) of the Code, or such property shall be distributed for a public purpose to the federal government, the State of New York or the Village of Cooperstown.

In the event of the dissolution of the corporation or the winding up of its affairs, or other liquidation of its assets, the corporation's property shall not be conveyed to any organization created or operated for-profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the corporation's debt shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the corporation; provided, however that the corporation shall at all times have the power to convey any or all of its property to the Secretary of the Department of Housing and Urban Development or his or her nominee.

9. The third amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment is the adding of a new Article TENTH as follows:

TENTH: So long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development, this certificate of incorporation may not be amended without the prior written approval of the said Secretary.

10. The fourth amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment is the adding of a new Article ELEVENTH as follows:

ELEVENTH: In the event of a conflict between any of the provisions of this certificate of incorporation and any of the provisions of the Hospital Note, Mortgage, Security Instrument, or the Hospital Regulatory Agreement – Borrower (the “HUD Loan Documents”), the provisions of the HUD Loan Documents shall govern and be controlling in all aspects.

11. The fifth amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment is the adding of a new Article TWELFTH as follows:

TWELFTH: The corporation may adopt bylaws or amend its bylaws at any regular meeting of the corporation or at any special meeting called for that purpose, so long as they are not inconsistent with the certificate of incorporation or with the Hospital Regulatory Agreement-Borrower between the corporation and the Secretary of Housing and Urban Development.



12. The sixth amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment is the adding of a new Article THIRTEENTH as follows:

THIRTEENTH: The corporation may indemnify its directors and officers to the extent permitted or required by State law. However, if the corporation elects to indemnify its directors and officers, the primary vehicle for indemnification must be insurance. Whether or not the corporation elects to corporately indemnify its directors and officers, the corporation shall secure directors and officers insurance and maintain such insurance at all times. Such directors and officers insurance shall be of a type and amount customary in the health care industry and determined by an independent insurance consultant to be adequate to protect the interest of the corporation, the mortgagee and the Department of Housing and Urban Development.

13. This amendment to the certificate of incorporation of the Corporation was authorized by the sole member of the Corporation on October 19, 2017.

14. The Secretary of the State of New York is hereby designated the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

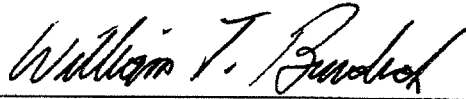
The Mary Imogene Bassett Hospital  
One Atwell Road  
Cooperstown, NY 13326-1394

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and affirmed the statements herein as true under the penalties of perjury this 30<sup>th</sup> day of October, 2017.



---

Vance M. Brown, M.D. President




---

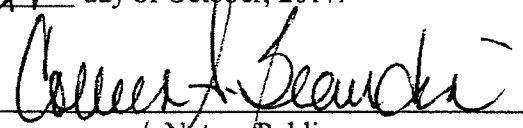
William T. Burdick, Secretary

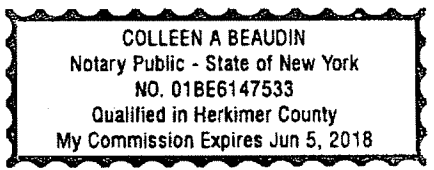
VERIFICATION

STATE OF NEW YORK            )  
  )  
COUNTY OF OTSEGO         )        ss.:

VANCE M. BROWN, M.D., being duly sworn, deposes and says: I am the President of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my knowledge.

  
\_\_\_\_\_  
Vance M. Brown, M.D.

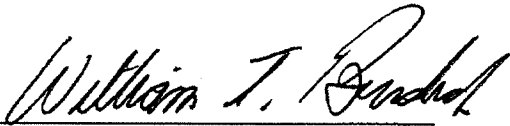
Sworn to before me this  
27th day of October, 2017.  
  
\_\_\_\_\_  
Notary Public



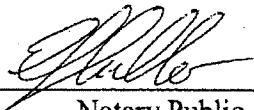
VERIFICATION

STATE OF NEW YORK            )  
  )  
COUNTY OF NEW YORK        )        ss.:

WILLIAM T. BURDICK, being duly sworn, deposes and says: I am the Secretary of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my knowledge.

  
\_\_\_\_\_  
William T. Burdick

Sworn to before me this  
30<sup>th</sup> day of October, 2017.

  
\_\_\_\_\_  
Notary Public

EDWARD J. ANELLO  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01AN4989754  
Qualified in Putnam County  
Commission Expires July 23, 2018

# **Exhibit B**

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE MARY IMOGENE BASSETT HOSPITAL  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

**FILED BY:**

**PERSUN & HAMLIN, P.C.  
1700 Bent Creek Boulevard  
Suite 160  
P.O. Box 659  
Mechanicsburg, PA 17055-0659**

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE MARY IMOGENE BASSETT HOSPITAL**

**UNDER SECTION 803 OF THE  
NOT-FOR-PROFIT CORPORATION LAW**

**(Pursuant to Section 803 of the Not-For-Profit Corporation Law)**

We, the undersigned, Vance M. Brown, M.D., President and William T. Burdick, Secretary of The Mary Imogene Bassett Hospital, a corporation duly existing under the Not-for-Profit Corporation Law of the State of New York, do hereby make, sign and acknowledge this certificate and do certify as follows:

1. The name of the corporation is The Mary Imogene Bassett Hospital (the "Corporation").
2. The certificate of incorporation of the Corporation was filed in the office of the Secretary of State on November 26, 1921.
3. The law the Corporation was formed under is the Membership Corporations Law.
4. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.

5. Article SIXTH of the certificate of incorporation presently provides the following:

SIXTH: The objects, purposes and powers of the corporation are:

The maintenance and operation within the Counties of Otsego, Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York, of hospitals, including dispensaries, one or more clinics and out patient departments, for the medical, surgical and psychiatric aid, care and treatment of persons in need thereof provided however, that before any such facility is constructed or operated all approvals required by law, including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including, without thereby limiting the generality of the foregoing, the maintenance and operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches.

In furtherance, and not in limitation, of the objects above described said corporation shall have the power:

1. To acquire by purchase, lease, donation, bequest or otherwise, land and buildings within said Counties of Otsego,



Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York necessary and convenient for the establishing and maintaining of said hospitals.

2. To acquire by gift, devise, bequest or otherwise, real and personal property without limitation as to amount, except such limitation, if any, as is now, or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the corporation.

3. To arrange by contract, or otherwise, for the services of doctors, surgeons and other persons necessary for the carrying out of the objects and powers of said corporation and to pay proper compensation therefor.

4. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be exercised by the corporation, whether heretofore specifically enumerated or not.

6. The first amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment consists of an amendment to Article SIXTH dealing with the objects, purposes and powers of the Corporation so that the same shall read as follows:

SIXTH: The objects, purposes and powers of the corporation are:

The maintenance and operation within the Counties of Otsego, Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York, of hospitals, including dispensaries, one or more clinics and out patient departments, for the medical, surgical and psychiatric aid, care and treatment of persons in need thereof provided however, that before any such facility is constructed or operated all approvals required by law, including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including, without thereby limiting the generality of the foregoing, the maintenance and operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches.

The corporation shall provide on a nonprofit basis hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

In furtherance, and not in limitation, of the objects above described said corporation shall have the power:

1. To acquire by purchase, lease, donation, bequest or otherwise, land and buildings within said Counties of Otsego, Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York necessary and convenient for the establishing and maintaining of said hospitals.
2. To acquire by gift, devise, bequest or otherwise, real and personal property without limitation as to amount, except such limitation, if any, as is now, or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the corporation.
3. To arrange by contract, or otherwise, for the services of doctors, surgeons and other persons necessary for the carrying out of the objects and powers of said corporation and to pay proper compensation therefor.

4. To mortgage or otherwise hypothecate its real and personal property and to do and perform all acts reasonably necessary to accomplish the purposes of the corporation including the execution of a Hospital Regulatory Agreement – Borrower with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and understandings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Hospital Regulatory Agreement – Borrower and other instruments and undertakings shall remain binding on the corporation, its successors and assigns so long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development.

5. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be exercised by the corporation, whether heretofore specifically enumerated or not.

7. Article NINTH of the certificate of incorporation presently provides the following:

NINTH: In the event of voluntary dissolution of said corporation pursuant to the laws of the State of New York or in the event of dissolution due to such other circumstances as are permitted or required by law, the funds and assets of said corporation then belonging to it shall, after proper payment of liabilities, be distributed with the approval of the Supreme Court of the State of New York in accordance with law, to such tax-exempt charitable organizations (within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provision of any successor federal tax law (the "Code") organized for the purposes set forth in SIXTH HEREOF; provided, in addition, that said distribution of all funds and assets of said corporation (after proper payment of all liabilities) shall only be for one or more exempt purposes, within the meaning of Section 501(c)(3) of the Code, or such property shall be distributed for a public purpose to the federal government, the State of New York or the Village of Cooperstown.

8. The second amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment consists of an amendment to Article NINTH dealing with the voluntary dissolution of the Corporation so that the same shall read as follows:

NINTH: In the event of voluntary dissolution of said corporation pursuant to the laws of the State of New York or in the event of dissolution due to such other circumstances as are permitted or required by law, the funds and assets of said corporation then belonging to it shall, after proper payment of liabilities, be distributed with the approval of the Supreme Court of the State of New York or the New York State Attorney General in accordance with law, to such tax-exempt non-profit charitable organizations (within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provision of any successor federal tax law (the "Code") organized for the purposes set forth in SIXTH HEREOF; provided, in addition, that said distribution of all funds and assets of said corporation (after proper payment of all liabilities) shall only be for one or more exempt purposes, within the meaning of Section 501(c)(3) of the Code, or such property shall be distributed for a public purpose to the federal government, the State of New York or the Village of Cooperstown.

In the event of the dissolution of the corporation or the winding up of its affairs, or other liquidation of its assets, the corporation's property shall not be conveyed to any organization created or operated for-profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the corporation's debt shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the corporation; provided, however that the corporation shall at all times have the power to convey any or all of its property to the Secretary of the Department of Housing and Urban Development or his or her nominee.

9. The third amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment is the adding of a new Article TENTH as follows:

TENTH: So long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development, this certificate of incorporation may not be amended without the prior written approval of the said Secretary.

10. The fourth amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment is the adding of a new Article ELEVENTH as follows:

**ELEVENTH: In the event of a conflict between any of the provisions of this certificate of incorporation and any of the provisions of the Hospital Note, Mortgage, Security Instrument, or the Hospital Regulatory Agreement – Borrower (the “HUD Loan Documents”), the provisions of the HUD Loan Documents shall govern and be controlling in all aspects.**

11. The fifth amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment is the adding of a new Article TWELFTH as follows:

**TWELFTH: The corporation may adopt bylaws or amend its bylaws at any regular meeting of the corporation or at any special meeting called for that purpose, so long as they are not inconsistent with the certificate of incorporation or with the Hospital Regulatory Agreement-Borrower between the corporation and the Secretary of Housing and Urban Development.**



12. The sixth amendment to the certificate of incorporation intended to be effected by the execution and filing of this certificate of amendment is the adding of a new Article THIRTEENTH as follows:

**THIRTEENTH:** The corporation may indemnify its directors and officers to the extent permitted or required by State law. However, if the corporation elects to indemnify its directors and officers, the primary vehicle for indemnification must be insurance. Whether or not the corporation elects to corporately indemnify its directors and officers, the corporation shall secure directors and officers insurance and maintain such insurance at all times. Such directors and officers insurance shall be of a type and amount customary in the health care industry and determined by an independent insurance consultant to be adequate to protect the interest of the corporation, the mortgagee and the Department of Housing and Urban Development.

13. This amendment to the certificate of incorporation of the Corporation was authorized by the sole member of the Corporation on October 19, 2017.

14. The Secretary of the State of New York is hereby designated the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

The Mary Imogene Bassett Hospital  
One Atwell Road  
Cooperstown, NY 13326-1394

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and affirmed the statements herein as true under the penalties of perjury this \_\_\_\_ day of October, 2017.

---

Vance M. Brown, M.D. President

---

William T. Burdick, Secretary

VERIFICATION

STATE OF NEW YORK            )  
  )     ss.:  
COUNTY OF OTSEGO         )

VANCE M. BROWN, M.D., being duly sworn, deposes and says: I am the President of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my knowledge.

\_\_\_\_\_  
Vance M. Brown, M.D.

Sworn to before me this  
\_\_\_\_\_ day of October, 2017.

\_\_\_\_\_  
Notary Public

VERIFICATION

STATE OF NEW YORK            )  
  )     ss.:  
COUNTY OF NEW YORK        )

WILLIAM T. BURDICK, being duly sworn, deposes and says: I am the Secretary of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my knowledge.

\_\_\_\_\_  
William T. Burdick

Sworn to before me this  
\_\_\_\_\_ day of October, 2017.

\_\_\_\_\_  
Notary Public

# Exhibit C

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 20, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State



State of New York  
**State Board of Charities**

The Capitol at Albany

In the Matter of the Incorporation  
of

The Mary Imogene Bassett Hospital

Whereas Application has been made to the State Board of Charities for its approval of the incorporation of

The Mary Imogene Bassett Hospital

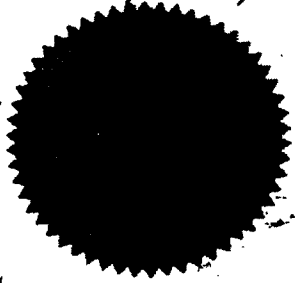
and

Whereas On due inquiry and investigation it appears to said Board desirable and proper that such hospital shall be so incorporated.

Now Therefore In pursuance of and in conformity with the provisions of Chapter forty of the Laws of the State of New York enacted February 17, 1909 the said State Board of Charities hereby certifies that it approves of the incorporation of the said The Mary Imogene Bassett Hospital, principal office, Cooperstown, N. Y.,

the certificate of incorporation of which is herewith annexed.

In Witness Whereof the said Board has this ninth day of November 1921 caused these presents to be subscribed by its President and attested by its Secretary and its official seal to be herewith affixed.



M. R. Stewart

PRESIDENT

ATTEST:

Charles H. ...

SECRETARY

CERTIFICATE OF INCORPORATION

OF

THE MARY IMOGENE BASSETT HOSPITAL

We, the undersigned, all being persons of full age and at least two-thirds being citizens of the United States, and at least one being a resident of the State of New York, for the purpose of becoming a hospital corporation pursuant to the provisions of the Membership Corporations Law, do make, sign, acknowledge and file this certificate as follows:

First. The name of the proposed corporation is  
"THE MARY IMOGENE BASSETT HOSPITAL"

Second. The Village in which its principal office is to be located is the Village of Cooperstown, Otsego County, New York.

Third. The number of its directors is to be five.

Fourth. The names and places of residence of the persons to be its directors until its first annual meeting are as follows:

<u>Names</u>	<u>Residences</u>
Edward Severin Clark,	Cooperstown, Otsego County, N.Y.
Lee E. Cruttenden,	Cooperstown, Otsego County, N.Y.
Waldo C. Johnston,	Cooperstown, Otsego County, N.Y.
Alexander S. Phinney,	Cooperstown, Otsego County, N.Y.
Samuel L. Warrin,	Cooperstown, Otsego County, N.Y.

Fifth. The time for holding its annual meetings shall be the first Wednesday of July in each year.

Sixth. The particular object for which the corporation is to be formed is as follows:

The establishing, maintaining and operating of a hospital within the County of Otsego and State of New York, for the care and treatment of the sick, but the corporation shall also accept patients for mental diseases by admission, or for the care of the aged or disabled.



In furtherance, and not in limitation, of the object above described said corporation shall have the power

1. To acquire by purchase, lease, donation, bequest or otherwise, land and buildings within said County of Otsego necessary and convenient for the establishing and maintaining of said hospital.
2. To acquire by gift, devise, bequest or otherwise real and personal property without limitation as to amount, except such limitation, if any, as is now, or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the corporation.
3. To determine and change from time to time the particular classes of cases to be treated in said hospital, and to limit its activities to the treatment of one or more such classes, but, nothing in this paragraph contained shall be construed as permitting said corporation to treat patients for mental diseases or disorders, tuberculosis, or diseases or disorders resulting from the excessive use of drugs.
4. To establish, maintain and operate in connection with the said hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches
5. To arrange by contract, or otherwise, for the services of doctors, surgeons and other persons necessary for the carrying out of the objects and powers of said corporation and to pay proper compensation therefor.
6. To charge, and receive from its patients, a reasonable and proper compensation for services and supplies rendered or supplied, and in its discretion admit, and treat free of expense, such patients as to it shall seem proper, but nothing herein contained shall be construed to require the corporation to receive and treat patients without compensation.

3

7. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be exercised by the corporation, whether heretofore specifically enumerated or not.

Seventh. No officer, member or employee of this corporation shall receive, or shall be lawfully entitled to receive, any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of the purposes thereof, or as proper beneficiaries of its strictly charitable purposes.

Eighth. No contract, agreement or dealing between this corporation and any other corporation concluded, or had, in good faith shall be void or voidable by reason of the fact that any officer, member or employee of this corporation shall be an officer, member or employee of, or interested in, such other corporation.

IN WITNESS WHEREOF, We have made and signed this certificate, in duplicate, this 11<sup>th</sup> day of October, 1921.

Edward Severin Clark  
Leo B. Britton  
Waldo C. Johnston  
Alexander Phinney  
Samuel L. Harris

State of New York,  
County of Otsego,        :        :        :  
Village of Cooperstown. :        :        :

On this 17<sup>th</sup> day of October, 1921, before me, the undersigned, personally came Edward Severin Clark to me personally known, and known to me to be one of the persons named in and who executed the foregoing instrument.

he acknowledged to me that he executed the same.

Fred P. Fuller  
Notary Public Otsego Co

State of New York, :  
County of Otsego, :ss:  
Village of Cooperstown. :

On this 11<sup>th</sup> day of October, 1921, before me,  
the subscriber, personally came Les B. Cruttenden to me per-  
sonally known, and known to be one of the persons described  
in and who executed the foregoing instrument, and he acknow-  
ledged to me that he executed the same.

Fred P. Fuller  
Notary Public Otsego Co

State of New York, :  
County of Otsego, :ss:  
Village of Cooperstown. :

On this 11<sup>th</sup> day of October, 1921, before me,  
the subscriber, personally came Waldo C. Johnston to me per-  
sonally known, and known to me to be one of the persons  
described in and who executed the foregoing instrument, and  
he acknowledged to me that he executed the same.

Fred P. Fuller  
Notary Public Otsego Co

State of New York, :  
County of Otsego, :ss:  
Village of Cooperstown. :

On this 12<sup>th</sup> day of October, 1921, before me,  
the subscriber, personally came Alexander S. Phinney, to me  
personally known, and known to me to be one of the persons  
described in and who executed the foregoing instrument, and he  
acknowledged to me that he executed the same.

Fred P. Fuller

State of New York, :  
County of Orange, :ss:  
Village of Cooperstown :

On this 7th day of October, 1921, before me,  
the subscriber, personally came Samuel L. Warrin, to me per-  
sonally known, and known to me to be one of the persons  
described in and who executed the foregoing instrument, and  
he acknowledged to me that he executed the same.

Walter L. ...  
Notary Public in and for the State of New York

~~I hereby approve the foregoing certificate pursuant to~~  
~~the provisions of Section 130 of the Membership Corporations~~  
~~Law.~~

~~Dated: October 7, 1921~~

Samuel L. Warrin  
~~Subscriber of the ...~~

I hereby approve the foregoing certificate pursuant to  
the provisions of Section 130 of the Membership Corporations  
Law.

Dated,

Walter L. ...  
Justice of the Supreme Court of  
the State of New York for the  
Sixth Judicial District

92,113  
1919  
1922

CERTIFICATE OF INCORPORATION

OF

THE MARY IMOGENE BASSETT  
HOSPITAL

Duplicate Original

Dated

STATE OF NEW YORK  
CLERK OF SECRETARY OF STATE

FILED NOV 26 1921

*Handwritten:*  
2607  
17-2-1921  
17-2-1921

7

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on May 20, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT TO THE  
CERTIFICATE OF INCORPORATION OF  
THE MARY IMOGENE BASSETT HOSPITAL UNDER  
SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

Pursuant to Section 803 of the New York  
Not-For-Profit Corporation Law

We, DR. WILLIAM STRECK, President and, WILLIAM  
BURDICK, Secretary, of The Mary Imogene Bassett Hospital, a  
corporation duly existing under the Not-For-Profit  
Corporation Law of the State of New York, do hereby make,  
sign and acknowledge this Certificate and do certify as  
follows:

1. The name of this corporation is THE MARY IMOGENE  
BASSETT HOSPITAL.

2. Its Certificate of Incorporation was filed in  
the office of the Secretary of State on November 26, 1921  
pursuant to the provisions of the Membership Corporations Law.

3. Article THIRD of said Certificate of  
Incorporation presently provides as follows:

THIRD: The number of its directors, to be known as  
trustees, shall hereafter be not less than five nor more  
than twenty-five.

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8712812

4. The first amendment to the Certificate of Incorporation proposed and intended to be effected by the execution and filing of this Certificate consists of an amendment to article THIRD dealing with the number of authorized directors so that the same shall read as follows:

THIRD: The number of its directors, to be known as trustees, shall hereafter be fixed in accordance with the by-laws of the corporation.

5. Article SIXTH of said Certificate of Incorporation presently provides as follows:

SIXTH: The objects, purposes and powers of the corporation are:

The maintenance and operation within the County of Otsego, State of New York, of a general hospital, including a dispensary, a clinic and an out patient department, for the medical, surgical and psychiatric aid, care and treatment of persons in need thereof and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including, without thereby limiting the generality of the foregoing, the maintenance and operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending



and applying knowledge of medicine and surgery in all their branches.

In furtherance, and not in limitation, of the objects above described said corporation shall have the power:

1. To acquire by purchase, lease, donation, bequest or otherwise, land and buildings within said County of Otsego necessary and convenient for the establishing and maintaining of said hospital.

2. To acquire by gift, devise, bequest or otherwise, real and personal property without limitation as to amount, except such limitation, if any, as is now, or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the corporation.

3. To arrange by contract, or otherwise, for the services of doctors, surgeons and other persons necessary for the carrying out of the objects and powers of said corporation and to pay proper compensation therefor.

4. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be

exercised by the corporation, whether heretofore specifically enumerated or not.

6. The second amendment to the Certificate of Incorporation proposed and intended to be effected by the execution and filing of this Certificate consists of amendments to Article SIXTH dealing with the objects, purposes and powers of the corporation so that the same shall read as follows:

SIXTH: The objects, purposes and powers of the corporation are:

The maintenance and operation within the Counties of Otsego, Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York, of hospitals, including dispensaries, one or more clinics and out patient departments, for the medical, surgical and psychiatric aid, care and treatment of persons in need thereof provided however, that before any such facility is constructed or operated all approvals required by law, including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including, without thereby limiting the generality of the foregoing, the maintenance and

operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches.

In furtherance, and not in limitation, of the objects above described said corporation shall have the power:

1. To acquire by purchase, lease, donation, bequest or otherwise, land and buildings within said Counties of Otsego, Chenango, Madison, Oneida, Herkimer, Fulton, Montgomery, Schoharie, Delaware and Sullivan, State of New York necessary and convenient for the establishing and maintaining of said hospitals.

2. To acquire by gift, devise, bequest or otherwise, real and personal property without limitation as to amount, except such limitation, if any, as is now, or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the corporation.

3. To arrange by contract, or otherwise, for the services of doctors, surgeons and other persons necessary for the carrying out of the objects and powers of said corporation and to pay proper compensation therefor.

4. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be exercised by the corporation, whether heretofore specifically enumerated or not.

7. The proposed amendments to the Certificate of Incorporation were authorized by unanimous consent in lieu of meeting of the membership of the corporation dated the 7th day of October, 1988.

8. The Mary Imogene Bassett Hospital 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 the Not-For-Profit Corporation Law and will continue to be a Type B corporation after the filing of the proposed amendments of the Certificate of Incorporation.

9. The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The post office address of the corporation to which the Secretary of State shall mail a copy of any process ~~or notice~~ required by law is 30 Wall Street, New York, N.Y. 10005.

~~10. The approvals of the State Board of Charities and of a Justice of the Supreme Court of the State of New~~

~~York were annexed to the Certificate of Incorporation of The  
Mary Imogene Bassett Hospital.~~

~~Prior to the delivery of this Certificate of  
Amendment to the Department of State for filing, approvals of  
the Public Health Council of the Department of Health and of  
Justice of the Supreme Court of the State of New York will be  
annexed hereto.~~

IN WITNESS WHEREOF, we have made, signed and  
acknowledged this Certificate this 14th day of November, 1988.

*William F. Streck*

President

William F. Streck M.D.

*William T. Burdick*

Secretary

William T. Burdick



VERIFICATION

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF OSTEGO )

WILLIAM T. BURDICK, being duly sworn, deposes and says: I am the Secretary of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my own knowledge.

William T. Burdick  
William T. Burdick

Sworn to before me this  
17<sup>th</sup> day of November 1988

Barbara J. Salino  
Notary Public

BARBARA J. SALINO  
Notary Public, State of New York  
No. 4724192  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires December 31, 1988

I, STEPHEN SMYK, Justice of the Supreme Court of the State of New York, Sixth Judicial District, do hereby approve the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and consent that the same be filed.

  
STEPHEN SMYK  
Justice, Supreme Court

Supreme Court, BROOME County  
Binghamton, New York

Dated: November 30th, 1988





STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. MCSPARRON  
DEPUTY FIRST ASSISTANT  
ATTORNEY GENERAL

Telephone: (518) 474-7206

November 15, 1988

Leo T. Crowley, Esq.  
Winthrop, Stimson, Putnam & Roberts, Esqs.  
40 Wall Street  
New York, New York 10005

Dear Mr. Crowley:

RE: THE MARY IMOGENE BASSETT HOSPITAL

Due and timely service of the notice of application for the approval of the proposed certificate of amendment to 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

BY

  
RICHARD S. REDLO  
Assistant Attorney General



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

Morton P. Hyman  
Chairman

November 28, 1988

Mr. David Boucher  
Vice President/Planning  
Mary Imogene Bassett Hospital  
One Atwell Road  
Cooperstown, NY 13326

Re: Certificate of Amendment to the Certificate of Incorporation of The  
Mary Imogene Bassett Hospital

Dear Mr. Boucher:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 18th day of November, 1988, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital, dated November 14, 1988.

Sincerely,

Karen S. Westervelt  
Executive Secretary

12

8712812-13

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED NOV 30 1968
AMT. OF CHECK \$ 50
FILING FEE \$
TAX \$
COUNTY FEE \$ 10
COPIES
CEBS
REBUND \$ 10
SPE. HANDLE
MC

**FILED**  
**STATE**  
**DEPT**

CERTIFICATE OF AMENDMENT TO THE  
CERTIFICATE OF INCORPORATION OF

THE MARY IMOGENE BASSETT HOSPITAL

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

Winthrop, Stimson, Putnam & Roberts  
40 Wall Street  
New York, New York 10005  
(212) 943-0700

*11/26/68* *OTSG/CL*

*NOT ADDITIONAL*  
*REPLY 10005*

*20/9-68*  
*2/16/68*

*02/11/70*

293332

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 20, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

911011700413

CT

- CT

CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
THE MARY IMOGENE BASSETT HOSPITAL UNDER  
SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

Pursuant to Section 803 of the New York Not-For-Profit Corporation Law

We, PAUL A. DONNELLY, Senior Vice President and, WILLIAM BURDICK, Secretary, of The Mary Imogene Bassett Hospital, a corporation duly existing under the Not-For-Profit Corporation Law of the State of New York, do hereby make, sign and acknowledge this Certificate and do certify as follows:

1. The name of this corporation is THE MARY IMOGENE BASSETT HOSPITAL.
2. Its Certificate of Incorporation was filed in the office of the Secretary of State on November 26, 1921 pursuant to the provisions of the Membership Corporation Law.

#H0016137

3. No article is to be eliminated or changed, however, the Certificate of Incorporation shall be amended by adding the following as a new Article NINTH:

NINTH: In the event of voluntary dissolution of said corporation pursuant to the laws of the State of New York or in the event of dissolution due to such other circumstances as are permitted or required by law, the funds and assets of said corporation then belonging to it shall, after proper payment of liabilities, be distributed, with the approval of the Supreme Court of the State of New York in accordance with law, to such tax-exempt charitable organizations (within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or corresponding provision of any successor federal tax law (the "Code")) organized for the purposes set forth in SIXTH, HEREOF; provided, in addition, that distribution of all funds and assets of said corporation (after proper payment of all liabilities) shall only be for one or more exempt purposes, within the meaning of section 501(c)(3) of the Code, or such property shall be distributed for a public purpose to the federal government, the State of New York or the Village of Cooperstown.

4. The proposed amendments to the Certificate of Incorporation were authorized by unanimous consent in lieu of meeting of the membership of the corporation dated the 14th day of December, 1990.

5. The Mary Imogene Bassett Hospital 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 the Not-For-Profit Corporation Law and will continue to be a Type B corporation after the filing of the proposed amendments of the Certificate of Incorporation.

2

The Secretary of State is designated as a  
agent of the corporation upon whom process against it may  
be served. The post office address of the corporation to  
which the Secretary of State shall mail a copy of any  
process is 30 Wall Street, New York, N.Y. 10005.

IN WITNESS WHEREOF, we have made, signed and  
acknowledged this Certificate the 28th day of December,  
1990.

*Paul A. Donnelly*  
Senior Vice President  
Paul A. Donnelly

*William T. Burdick*  
Secretary  
William Burdick

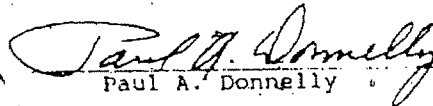
#H0016137

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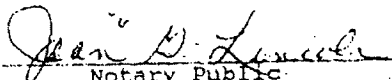
-4-  
VERIFICATION

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF OSTEGO )

PAUL A. DONNELLY, being duly sworn, deposes and says: I am the Senior Vice President of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my knowledge.

  
Paul A. Donnelly

Sworn to before me this  
28th day of December, 1990

  
Notary Public  
JEAN G. LINCOLN  
Notary Public, State of New York  
Commission Expires 12/31/92

4



VERIFICATION

STATE OF NEW YORK )  
                  *New York* ) ss.:  
COUNTY OF ~~COTEC~~ )

WILLIAM T. BURDICK, being duly sworn, deposes and says: I am the Secretary of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my knowledge.

*William T. Burdick*  
William T. Burdick

Sworn to before me this  
28<sup>th</sup> day of December, 1990

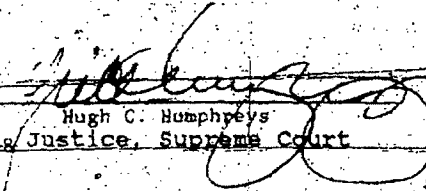
*Barbara T. Saulino*  
Notary Public

BARBARA T. SAULINO  
Notary Public, State of New York  
No. 478152  
Qualified in Nassau County  
Qualifying Exam at New York County  
Administrative Services Oct. 31, 1988

5

#H0016137

I, Hugh C. Humphreys, Acting Justice of the  
Supreme Court of the State of New York, Sixth Judicial  
District, do hereby approve the foregoing Certificate of  
Amendment to the Certificate of Incorporation of The Mary  
Imogene Bassett Hospital and consent that the same be  
filed.

  
Hugh C. Humphreys  
Acting Justice, Supreme Court

Madison  
Supreme Court, ~~Madison~~ County  
~~Elizabethtown~~, New York  
Wampsville

Dated: January 14, 1991



STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. MCSPARRON  
DEPUTY ATTORNEY GENERAL

(518) 473-3683

January 8, 1991

Michele A. Masucci, Esq.  
Winthrop, Stimson, Putnam & Roberts  
One Battery Park Plaza  
New York, New York 10004-1490

Dear Ms. Masucci:

RE: THE MARY IMOGENE BASSETT HOSPITAL

Due and timely service of the notice of application for the approval of the proposed certificate of amendment to 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

By   
RICHARD S. REDLO  
Assistant Attorney General

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STATE OF NEW YORK  
DEPARTMENT OF  
JAN 1 1950

*none*  
*11/10/50*  
*015250*

**BILLED**

65712

16, 11, 2, 1950

FILE NO. .... YEAR .....

SUPREME COURT OF THE  
STATE OF NEW YORK

Application of The Mary  
Imogene Bassett Hospital

Certificate of Amendment  
to the Certificate of  
Incorporation of The  
Mary Imogene Bassett  
Hospital Pursuant to  
Section 803 of the  
Not-for-Profit Corporation  
Law

WINTHROP, STIMMON, PUTNAM & ROBERTS  
ATTORNEYS FOR  
The Mary Imogene  
Bassett Hospital  
One Battery Park Plaza  
BOROUGH OF MANHATTAN  
NEW YORK, N. Y. 10004-1430

Telephone  
858-1900

*d*

RECEIVED  
11 10 AM '50

98400011015

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 9, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE MARY IMOGENE BASSETT HOSPITAL**

**UNDER SECTION 803 OF THE  
NOT-FOR-PROFIT CORPORATION LAW**

**(Pursuant to Section 803 of the Not-For-Profit Corporation Law)**

We, the undersigned, Vance M. Brown, M.D., President and William T. Burdick, Secretary of The Mary Imogene Bassett Hospital, a corporation duly existing under the Not-for-Profit Corporation Law of the State of New York, do hereby make, sign and acknowledge this certificate and do certify as follows:

1. The name of the corporation is The Mary Imogene Bassett Hospital (the "Corporation").
2. The certificate of incorporation of the Corporation was filed in the office of the Secretary of State on November 26, 1921.
3. The law the Corporation was formed under is the Membership Corporations Law.
4. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
5. The certificate of incorporation is hereby amended by adding a new Article SIXTH-A as follows:

SIXTH-A: Pursuant to Section 701 of the Not-for-Profit Corporation Law, the management of the affairs of the corporation shall be vested in a board of trustees, except that the sole member of the corporation, Bassett Healthcare Network, shall be delegated the following powers:

1. appointment and removal with or without cause of all persons that serve on the corporation's board of trustees;

2. appointment of the chairperson of the corporation's board of trustees;
  3. appointment of the president of the corporation, who will serve in a chief executive role for the corporation;
  4. approval of any new mission statement or change to an existing mission statement of the corporation;
  5. general oversight of the governance of the corporation, including approval of all investment policies;
  6. coordination of the policies and procedures of the corporation;
  7. approval of all operating and capital budgets of the corporation;
  8. approval of all capital expenditures that exceed budgeted capital expenditures by five percent (5%) or more or the reallocation of capital expenditures contained in an approved budget by five percent (5%) or more;
  9. approval of all indebtedness of the corporation other than vendor indebtedness not otherwise included in the corporation's approved budget;
  10. approval of all third-party payer agreements, including managed care contracts, for the corporation;
  11. as determined by the Bassett Healthcare Network's chief executive officer, approval of all substantive clinical program changes of the corporation;
  12. approval of all mergers, consolidations, divisions, liquidations, dissolutions and conversions involving the corporation;
  13. approval of all certificate of need applications of the corporation;
- and

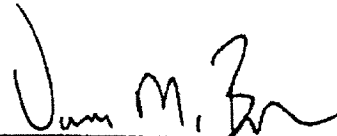
14. approval of all amendments to the certificate of incorporation and bylaws of the corporation.

6. This amendment to the certificate of incorporation of the Corporation was authorized by the sole member of the Corporation on April 18, 2017.

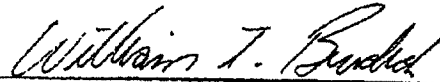
7. The Secretary of the State of New York is hereby designated the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

The Mary Imogene Bassett Hospital  
One Atwell Road  
Cooperstown, NY 13326-1394

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and affirmed the statements herein as true under the penalties of perjury this 15<sup>th</sup> day of MAY, 2017.



Vance M. Brown, M.D. President



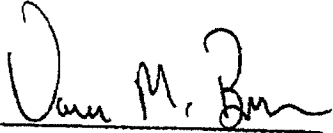
William T. Burdick, Secretary



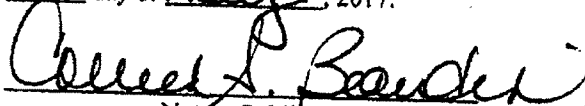
VERIFICATION

STATE OF NEW YORK            )  
  )  
COUNTY OF OTSEGO         )        ss.:

VANCE M. BROWN, M.D., being duly sworn, deposes and says: I am the President of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my knowledge.

  
\_\_\_\_\_  
Vance M. Brown, M.D.

Sworn to before me this  
10 day of May, 2017.

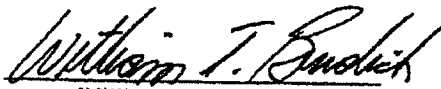
  
\_\_\_\_\_  
Notary Public

COLLEEN A BEAUDIN  
Notary Public - State of New York  
NO. 01BE6147533  
Qualified in Herkimer County  
My Commission Expires Jun 5, 2018


VERIFICATION

STATE OF NEW YORK            )  
  )     ss.:  
COUNTY OF NEW YORK        )

WILLIAM T. BURDICK, being duly sworn, deposes and says: I am the Secretary of The Mary Imogene Bassett Hospital, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of The Mary Imogene Bassett Hospital and know the contents thereof and the same is true of my knowledge.

  
William T. Burdick

Sworn to before me this  
1<sup>ST</sup> day of MAY, 2017.

  
\_\_\_\_\_  
Notary Public

**EDWARD J. ANELLO**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01AN4969754  
Qualified in Putnam County  
Commission Expires July 23, 2018



***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.ny.gov

June 13, 2017

Christina Staples  
Coordinator Operations & Capital Development  
Corporate Support Services and Facilities Planning  
Bassett Healthcare Network  
One Atwell Road  
Cooperstown NY 13326

Re: Certificate of Amendment of the Certificate of Incorporation of The Mary Imogene Bassett Hospital

Dear Ms. Staples:

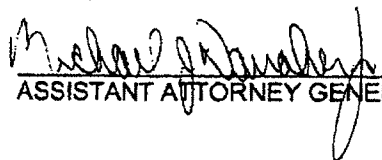
AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 8th day of June, 2017, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of The Mary Imogene Bassett Hospital, dated May 1, 2017.

Sincerely,

*Colleen M. Leonard*  
Colleen M. Leonard  
Executive Secretary

/c/

THE ATTORNEY GENERAL HEREBY APPROVES  
THE FOREGOING CERTIFICATE OF AMENDMENT  
FOR FILING WITH THE DEPARTMENT OF STATE.

  
\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

  
\_\_\_\_\_  
DATE

600

CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE MARY IMOGENE BASSETT HOSPITAL  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

FILED BY:  
PERSUN & HAMLIN, P.C.  
1700 Bent Creek Boulevard  
Suite 160  
P.O. Box 659  
Mechanicsburg, PA 17055-0659

10  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED AUG 08 2017  
TAX \$  
EX:

**DRAWDOWN ACCOUNT #52**  
Vanguard Corporate Services, Ltd.  
Customer Reference: 131790A

662

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of December, 2017 approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Mary Imogene Bassett Hospital dated October 30, 2017.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** October 26, 2017

**Subject:** The Kingston Hospital Foundation – Restated Certificate of Incorporation

---

The Kingston Hospital Foundation (Foundation) is seeking approval to file a Restated Certificate of Incorporation to change its corporate name to the "HealthAlliance Foundation" and to update the purposes of the Foundation to reflect current corporate relationships.

Approval of the purposes change is required pursuant to Not-for-Profit Corporation Law § 804 and approval of the corporate name change is required pursuant to 10 NYCRR § 600.11(a)(1).

There is no legal objection to the proposed Restated Certificate of Incorporation for The Kingston Hospital Foundation, nor is there an objection to the name change. The proposed Restated Certificate of Incorporation is in legally acceptable form.

Attachments.

**GARFUNKEL WILD, P.C.**

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

FILE NO.: 12555.0058.

July 28, 2017

**VIA FEDEX**

Public Health and Health Planning Council

Empire State Plaza

Corning Tower, Room 1805

Albany, New York 12237

Attn: Colleen M. Leonard, Executive Secretary

Re: The Kingston Hospital Foundation

Dear Ms. Leonard:

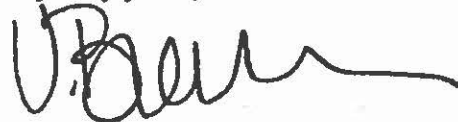
Our firm is legal counsel to The Kingston Hospital Foundation (the "Foundation"). Enclosed on behalf of the Foundation is an executed copy of the proposed Restated Certificate of Incorporation of the Foundation for your review and approval.

In addition, we enclose a complete copy of all documents on file with the New York State Department of State.

The Certificate of Incorporation of the Foundation is being restated in connection with the change of the name of the Foundation to HealthAlliance Foundation and to update the purposes of the Foundation to reflect the current corporate relationships.

Please review the proposed Restated Certificate of Incorporation and, if acceptable, enclose the appropriate consent and return the Restated Certificate of Incorporation to us in the enclosed, postage-paid, self-addressed envelope so that we may complete the filing process.

Very truly yours,



Vanessa Bourboulis  
Corporate Paralegal

/vb

---

NEW YORK

NEW JERSEY

CONNECTICUT



**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE KINGSTON HOSPITAL FOUNDATION**

Under Section 805 of the New York Not-for-Profit Corporation Law

The undersigned, being the Chairman of the Board of Directors of THE KINGSTON HOSPITAL FOUNDATION, hereby certifies:

**FIRST:** The name of the corporation is The Kingston Hospital Foundation (the "Corporation"). The name under which the Corporation was formed is Ulster Health Foundation of Kingston Hospital, Inc.

**SECOND:** The Certificate of Incorporation of the Corporation was filed by the Department of State on April 26, 1982.

**THIRD:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPCL").

**FOURTH:** The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the NPCL:

1. Paragraph "FIRST", stating the name of the Corporation, is hereby amended to change the name to "HealthAlliance Foundation" and as amended and restated shall read in full as follows:

**"FIRST:** The name of the corporation is HEALTHALLIANCE FOUNDATION (the "Corporation")."

2. Paragraph "THIRD", stating the purposes of the Corporation, is hereby amended to reflect the current corporate relationships and names and to correct a paragraph reference and as amended and restated shall read in full as follows:

**"THIRD:** The purposes for which the Corporation is formed shall be to operate exclusively for charitable, scientific or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), without regard to race, color or creed as follows:

- (a) To promote the interests of, and raise and provide funds to or for the benefit of the following organizations: HealthAlliance, Inc. ("HealthAlliance"), HealthAlliance Hospital Broadway Campus, HealthAlliance Hospital Mary's Avenue Campus, Margaretville Memorial Hospital, HealthAlliance's affiliates and other not-for-profit organizations formally affiliated with any of the foregoing organizations that fall within the category of Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).
- (b) To own, lease, donate or otherwise deal with all property, real and personal, to be used in furtherance of these purposes.
- (c) To contract with other organizations, for-profit and not-for-profit, with individuals and with governmental agencies in furtherance of these purposes.
- (d) To solicit and receive money and property for the foregoing purposes and to receive and accept for charitable purposes gifts, donations, bequests and devises of money and property.
- (e) In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the NPCL, together with the power to solicit grants and contributions for any corporate purpose, the power to maintain a fund of real or personal property for any corporate purposes, the power to borrow money, contract debts and issue notes and secure the payment of the performance of its obligations and to do all other acts necessary or expedient for the administration of the affairs, and in general shall have all such powers as are incidental to the attainment of the purposes of the Corporation. The Corporation shall have the right, subject to such limitations and conditions as may be prescribed by law, to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this paragraph THIRD, the Corporation shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code, as amended, or the corresponding provision of any future United States Internal Revenue Law. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other 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.
- (f) 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.

- (g) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the New York Not-for-Profit Corporation Law, Section 404(a) - (v), except for Sections 404(o) and 404(t).
- (h) Nothing contained in the Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the New York Public Health Law, to provide hospital service or maintain an adult care facility, as provided for by Article 7 of the New York Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility.
- (i) This paragraph THIRD shall not be amended without the consent of HealthAlliance, Inc."

3. Paragraph "SIXTH", relating to the distribution of assets upon the Corporation's dissolution, is hereby amended to reflect the current corporate relationships and amendments to the NPCL and as amended and restated shall read in full as follows:

"SIXTH: In the event of the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall distribute, in any proportions considered prudent, all of the assets of the Corporation to HealthAlliance, Inc. if then in existence and if qualified under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), or otherwise in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, or to such other organizations to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York and/or the Attorney General of the State of New York, will best accomplish the general purposes for which this Corporation was formed."

4. Paragraph "SEVENTH", relating to service of process upon the Secretary of State of the State of New York, is hereby amended to reflect the current corporate relationships and as amended and restated shall read in full as follows.

"The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against it may be served. The address to which

the Secretary of State shall mail a copy of any such process served upon him or her is in care of HealthAlliance, Inc., 396 Broadway, Kingston, New York 12401."

**FIFTH:** The text of the Certificate of Incorporation of the Corporation is hereby restated as amended to read in full as follows:

**RESTATED**

**CERTIFICATE OF INCORPORATION**

**OF**

**HEALTHALLIANCE FOUNDATION**

**FIRST:** The name of the corporation is HEALTHALLIANCE FOUNDATION (the "Corporation").

**SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to or inures to the benefit of its directors or officers or any private person except to the extent permissible under the New York Not-for-Profit Corporation Law.

**THIRD:** The purposes for which the Corporation is formed shall be to operate exclusively for charitable, scientific or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), without regard to race, color or creed as follows:

- (a) To promote the interests of, and raise and provide funds to or for the benefit of the following organizations: HealthAlliance, Inc. ("HealthAlliance"), HealthAlliance Hospital Broadway Campus, HealthAlliance Hospital Mary's Avenue Campus, Margaretville Memorial Hospital, HealthAlliance's affiliates and other not-for-profit organizations formally affiliated with any of the foregoing organizations that fall within the category of Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

- (b) To own, lease, donate or otherwise deal with all property, real and personal, to be used in furtherance of these purposes.
- (c) To contract with other organizations, for-profit and not-for-profit, with individuals and with governmental agencies in furtherance of these purposes.
- (d) To solicit and receive money and property for the foregoing purposes and to receive and accept for charitable purposes gifts, donations, bequests and devises of money and property.
- (e) In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the NPCL, together with the power to solicit grants and contributions for any corporate purpose, the power to maintain a fund of real or personal property for any corporate purposes, the power to borrow money, contract debts and issue notes and secure the payment of the performance of its obligations and to do all other acts necessary or expedient for the administration of the affairs, and in general shall have all such powers as are incidental to the attainment of the purposes of the Corporation. The Corporation shall have the right, subject to such limitations and conditions as may be prescribed by law, to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this paragraph THIRD, the Corporation shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code, as amended, or the corresponding provision of any future United States Internal Revenue Law. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other 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.
- (f) 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.
- (g) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the New York Not-for-Profit Corporation Law, Section 404(a) - (v), except for Sections 404(o) and 404(t).

- (h) Nothing contained in the Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the New York Public Health Law, to provide hospital service or maintain an adult care facility, as provided for by Article 7 of the New York Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility.
- (i) This paragraph THIRD shall not be amended without the consent of HealthAlliance, Inc."

**FOURTH:** The office of the Corporation is to be located at 396 Broadway, in the City of Kingston, County of Ulster, New York.

**FIFTH:** The territory in which the activities of the Corporation are principally to be conducted are the Counties of Ulster, Greene, Orange, Delaware, Dutchess, Columbia, Sullivan and Westchester in the State of New York.

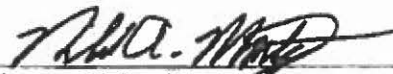
**SIXTH:** In the event of the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall distribute, in any proportions considered prudent, all of the assets of the Corporation to HealthAlliance, Inc. if then in existence and if qualified under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), or otherwise in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, or to such other organizations to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York and/or the Attorney General of the State of New York, will best accomplish the general purposes for which this Corporation was formed.

**SEVENTH** The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against it may be served. The address

to which the Secretary of State shall mail a copy of any such process served upon him or her is in care of HealthAlliance, Inc., 396 Broadway, Kingston, New York 12401.

**SIXTH:** This Restated Certificate of Incorporation of THE KINGSTON HOSPITAL FOUNDATION was authorized at a meeting of the Board of Directors of the Corporation and at a meeting of HealthAlliance Hospital Broadway Campus.

**IN WITNESS WHEREOF**, the undersigned, being at least eighteen (18) years of age, have subscribed and affirmed this restated certificate of incorporation as true under the penalties of perjury on the date indicated next to his name:

  
Name : Richard A. Mantey  
Title: Chairman of the Board of Directors  
Dated: June 19, 2017

State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**February 3, 2004**



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed title.

*Secretary of State*



CERTIFICATE OF INCORPORATION

OF

ULSTER HEALTH FOUNDATION  
OF KINGSTON HOSPITAL, INC.

Under Section 402 of the Not-For-Profit Corporation Law.

1. The name of the corporation is Ulster Health Foundation of Kingston Hospital, Inc.
2. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation is distributable to, or enures to the benefit of its members, director or officers or any private person except to the extent permissible under the Not-for-Profit Corporation Law.
3. The purpose for which the corporation is formed and the general nature of its business shall be:
  - a. To accept, hold, invest, reinvest and administer any gifts, bequests, devise, benefits of trusts (but not to act as trustee of any trust) and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income or principal thereof for exclusively charitable, scientific and educational purposes.
  - b. To give, convey or assign any of its property outright, or upon lawful terms regarding the use thereof, to other organizations, provided that: (i) such organization shall be organized and operate exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; (ii) transfers of property to such organizations shall, to the extent then permitted under the statutes of the United States Government, be exempt

1662538

from gift, succession, inheritance, estate or death taxes (by whatever name called) imposed by the United States Government; and (iii) such organizations shall, to the extent then permitted under the statutes of the United States Government, be exempt from income taxes imposed by the United States Government.

c. To the extent permitted by law, to exercise its rights, powers and privileges, to hold meetings of its Board of Directors, to have one or more offices, and to keep the books of the Corporation, in any part of the world.

d. Alone or in cooperation with other persons or organizations to do any and all lawful acts and things which may be necessary, useful, suitable or proper for the furtherance, accomplishment or attainment of any or all of the purposes or powers of the Corporation.

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).

The corporation shall be a type "B" corporation under Section 201 of the Not-For-Profit Corporation Law, the purpose of which is to establish a foundation for charitable, scientific and educational purposes.

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).

4. The office of the corporation is to be located at 396 Broadway, in the City of Kingston, Ulster County, New York.

5. The territory in which the activities of the corporation are principally to be conducted are the Counties of Ulster, Greene, Orange, Delaware, Dutchess, Columbia, Sullivan and Westchester in the State of New York.

6. The names and addresses of the initial directors

William E. Darling, King Top Road  
Kingston, New York.

Amos R. Nagcorbe, Manor Avenue  
Kingston, New York.

Richard D. Pappal, 61 Arnold Drive  
Kingston, New York.

Earle H. Foster, c/o Kingston Trust Company  
27 Main Street  
Kingston, New York.

Elbert H. Louhran, Hurley, New York.

S. James Matthews, 1 Grandview Avenue  
Kingston, New York.

7. The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against it may be served, and the address to which the Secretary of State shall mail a copy of any such process served upon them is in care of the Kingston Hospital, 296 Broadway, Kingston, New York 12401.

8. The approval of the Hon. Aaron E. Klein, Supreme Court Justice, is annexed hereto.

IN WITNESS WHEREOF, We have made, signed and acknowledged this Certificate this 22nd day of December, 1981.

*William K. Darling*  
WILLIAM K. DARLING  
Ring Top Road  
Kingston, New York 12401

*Amos R. Newcombe*  
AMOS R. NEWCOMBE  
Maner Avenue  
Kingston, New York 12401

*Roland D. Pampe*  
ROLAND D. PAMPE  
61 Arnold Drive  
Kingston, New York 12401

*Earle H. Foster*  
EARLE H. FOSTER  
c/o Kingston Trust Company  
27 Main Street  
Kingston, New York 12401

*Albert F. Loughran*  
ALBERT F. LOUGHRAN  
Hurley, New York

*S. James Matthews*  
S. JAMES MATTHEWS  
1 Grandview Avenue  
Kingston, New York 12401

STATE OF NEW YORK )  
COUNTY OF ULSTER )

On the 22nd day of December, 1981, before me, the subscriber, personally appeared WILLIAM K. DARLING, to me known and known to me to be the same person described in, and who executed the within instrument, and he duly acknowledged to me that he executed the same.

4 *S. James Matthews*  
S. JAMES MATTHEWS  
Notary Public

NOTARY PUBLIC, State of New York

My Comm. Expires March 30, 1982

STATE OF NEW YORK)

ss.:  
COUNTY OF ULSTER )

On the 22nd day of December, 1981, before me, the subscriber, personally appeared AMOS R. NEWCOMBE, to me known and known to me to be the same person described in, and who executed the within instrument, and he duly acknowledged to me that he executed the same.

*[Handwritten Signature]*  
Notary Public

STATE OF NEW YORK)

ss.:  
COUNTY OF ULSTER )

On the 22nd day of December, 1981, before me, the subscriber, personally appeared ROLAND D. PAMPAL, to me known and known to me to be the same person described in, and who executed the within instrument, and he duly acknowledged to me that he executed the same.

*[Handwritten Signature]*  
Notary Public

STATE OF NEW YORK)

ss.:  
COUNTY OF ULSTER )

On the 22nd day of December, 1981, before me, the subscriber, personally appeared EARLE H. FOSTER, to me known and known to me to be the same person described in, and who executed the within instrument, and he duly acknowledged to me that he executed the same.

*[Handwritten Signature]*  
Notary Public



STATE OF NEW YORK

ss.:

COUNTY OF ULSTER )

On the 22nd day of December, 1981, before me, the subscriber, personally appeared ELBERT H. LOUGHRAN, to me known and known to me to be the same person described in, and who executed the within instrument, and he duly acknowledged to me that he executed the same.

*[Signature]*  
Notary Public

S. JAMES MATTHEWS  
Notary Public, State of New York  
133 14E2

STATE OF NEW YORK

COUNTY OF ULSTER )

On the 22nd day of December, 1981, before me, the subscriber, personally appeared S. JAMES MATTHEWS, to me known and known to me to be the same person described in, and who executed the within instrument, and he duly acknowledged to me that he executed the same.

*[Signature]*  
Notary Public

S. JAMES MATTHEWS  
Notary Public, State of New York  
133 14E2

I, AARON E. KLEIN, Justice of the Supreme Court of the  
Third Judicial District, do hereby approve the foregoing  
Certificate of Incorporation and consent that the same be filed:



JUSTICE OF THE SUPREME COURT

DATED: February 17, 1982  
Kingston, New York

AARON E. KLEIN  
J. S. D.

✓

7



STATE OF NEW YORK  
DEPARTMENT OF LAW

ALBANY, N.Y. 12242

JAMES D. McSWANSON  
ASSISTANT ATTORNEY GENERAL  
IN CHARGE  
LITIGATION BUREAU

ROBERT ABRAMS  
ATTORNEY GENERAL

Telephone: 474-7206

February 8, 1982

S. James Matthews, Esq.  
Eighty-Nine John Street  
Kingston, New York 12401

Dear Mr. Matthews:

RE: ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

Due and timely service of the notice of application  
for the approval of the proposed certificate of incorporation  
of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the  
time of application.

Very truly yours,

ROBERT ABRAMS  
Attorney General

By

*Richard G. Redlo*  
RICHARD G. REDLO  
Assistant Attorney General





**THE KINGSTON HOSPITAL**

Anthony R. Triulzi, Administrator

March 9, 1982

State of New York  
Department of State  
162 Washington Avenue  
Albany, New York 12231

ATTN: Ms. Denise Lauer  
Principal Clerk  
Search Unit

Dear Ms. Lauer:

We hereby grant permission to the Ulster Health Foundation  
of the Kingston Hospital to use the name of The Kingston Hos-  
pital in its title.

Sincerely,

Anthony R. Triulzi  
Chief Executive Officer

308 BROADWAY - KINGSTON - NEW YORK 12401 - TELEPHONE (514) 331-3101

Accredited by Joint Commission on Accreditation of Hospitals  
Licensed by New York State Department of Health  
Sponsoring Institution: Ulster County Rural Family Practice Program, affiliated with N. Y. Medical College

9

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 28 1982

AMT. OF CHECK \$ 50  
FILING-FEE \$ 50  
TAX \$  
COUNTY FEE \$  
CIP. \$  
CERT. \$  
RECORD \$  
SPEC HANDLE \$

BY

*mk*  
*Pulister*  
*City B*

ALU 558

CERTIFICATE OF INCORPORATION

OF

CLUSTER HEALTH FOUNDATION  
OF KINGSTON HOSPITAL, INC.

IS JAMES MARRIETTA  
ATTORNEY AND COUNSELOR AT LAW  
KINGSTON, NEW YORK.

010204

State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**February 3, 2004**



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed title.

*Secretary of State*

CERTIFICATE OF AMENDMENT TO THE  
CERTIFICATE OF INCORPORATION OF  
THE ULSTER HEALTH FOUNDATION  
of  
KINGSTON HOSPITAL, INC.

The undersigned hereby certify:

1. The name of the corporation is THE ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

2. Its Certificate of Incorporation was filed by the Department of State on April 26, 1982, under the Not-for-Profit Corporation Law.

3. The Ulster Health Foundation of Kingston Hospital, Inc. is a corporation as defined in sub-paragraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law. The Ulster Health Foundation of Kingston Hospital, Inc. is a Type B corporation as defined in Section 201 (Purposes) of the Not-for-Profit Corporation Law and shall continue to be a Type B corporation.

4. The corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of process in any action or proceeding against the corporation which may be served on him is in care of the Kingston Hospital, 396 Broadway, Kingston, New York 12401.

5. The Certificate of Incorporation is amended as follows:

a) Article 2 is amended by adding the following subparagraph thereto:

Notwithstanding any other provision of these Articles, the Corporation is organized exclusively for one or more of the following purposes:

1251038

Religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports, competition (but only if no part of its activities involves the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, as specified in Sec. 501(c)(3) of the Internal Revenue Code of 1954 as amended, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Sec. 501(c)(3) of the Internal Revenue Code of 1954 as amended.

No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no member, trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any corporate assets on dissolution of the corporation.

No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise permitted by Internal Revenue Code Sec. 501(h), or participating in or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidates in public office.

b) The Certificate of Incorporation is amended by adding the following thereto as Article 9:

In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Sec. 501(c)(3) of the Internal Revenue Code of 1954 as amended, or to such other organizations to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York, will best accomplish the general purposes for which this corporation was formed.

6. The above amendments to the Certificate of Incorporation were authorized by a unanimous vote of all of the members entitled to vote thereon at a meeting of the members.

IN WITNESS WHEREOF, this Amendment to the Certificate of Incorporation has been subscribed this 5<sup>th</sup> day of February 1985, by the undersigned who affirm that the statements made herein are true under the penalties of perjury.

*Alan F. DeGroot*  
Alan F. DeGroot, President

*James E. Richards*  
James E. Richards, Secretary

3

STATE OF NEW YORK )

COUNTY OF ULSTER ) ss.:  
On the 5<sup>th</sup> day of Feb 1985, before me personally came Ann De Fower, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

*[Signature]*  
Notary Public

Lewis C. Kirschner  
My Commission Expires 3-30-86

STATE OF NEW YORK )

COUNTY OF ULSTER ) ss.:  
On the 5<sup>th</sup> day of Feb 1985, before me personally came Joe T. Williams, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

*[Signature]*  
Notary Public

Lewis C. Kirschner  
My Commission Expires 3-30-86

STATE OF NEW YORK )

COUNTY OF ULSTER ) ss.:  
On the \_\_\_\_\_ day of \_\_\_\_\_ 1985, before me personally came \_\_\_\_\_, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.

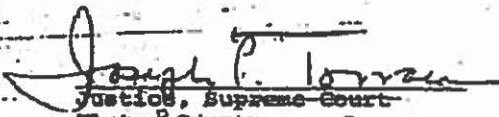
*[Handwritten mark]*



APPROVAL OF JUSTICE OF  
THE SUPREME COURT

I, Hon. Joseph P. Torrance, Justice of the Supreme Court  
of the State of New York, Third Judicial District, do hereby  
approve the foregoing Certificate of Amendment of the Certifi-  
cate of Incorporation of The Ulster Health Foundation of Kingston  
Hospital, Inc.

Dated: Kingston, New York  
November 5th 1985

  
Justice, Supreme Court  
Ulster County





STATE OF NEW YORK  
 DEPARTMENT OF LAW  
 ALBANY 12224  
 Telephone: (518) 474-7206

ROBERT ABRAMS  
 ATTORNEY GENERAL

JAMES G. McSPARRON  
 DEPUTY ATTORNEY GENERAL  
 ATTORNEY GENERAL

October 29, 1985

Steven L. Tarshis, Esq.  
 Draks, Sommers, Loeb & Tarshis, P.C.  
 873 Union Avenue  
 Post Office Box 1479  
 Newburgh, New York 12550

Dear Mr. Tarshis:

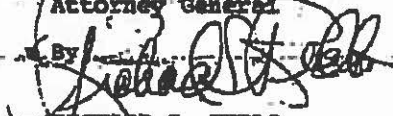
RE: THE ULSTER HEALTH FOUNDATION OF THE KINGSTON  
 HOSPITAL, INC.

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

By 

RICHARD S. REDLO  
 Assistant Attorney General

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED NOV 21 1985

FILED  
NOV 21 1985  
COUNTY OF  
NEW YORK  
STATE OF NEW YORK

*W. J. ...*  
*Myers*

57-11-1-1129

<p>11-28</p> <p>—</p> <p>7</p>	<p>CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF INCORPORATION OF THE EASTERN HERALD FOUNDATION</p> <p>OF</p> <p>KINGSBORN HOSPITAL, INC.</p>	<p>Dated: February 5, 1985</p>	<p>DRACI, JOHNSON, LOEB &amp; TARRIS, P.C. ATTORNEYS AT LAW 672 UNION AVENUE POST OFFICE BOX 1070 ALBANY, NEW YORK 12211</p>
--------------------------------	--	--------------------------------	--

Nov 14 11 41 AM '85

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FILED

*W. J. ...*

*State of New York }  
Department of State } ss:*

*I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**February 3, 2004**



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed title.

*Secretary of State*

MFH/dz

KINCRMR.

12/3/85

CERTIFICATE OF MERGER

CERTIFICATE OF MERGER OF THE KINGSTON PROPERTIES FOUNDATION  
INTO  
ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.  
(Under Section 904 of the Not-for-Profit Corporation Law)

1/6/86  
855159  
The undersigned, being respectively the President and Secretary of THE KINGSTON PROPERTIES FOUNDATION and the President and Secretary of ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC., certify:

I. (a) The name of the constituent corporation to the merger is THE KINGSTON PROPERTIES FOUNDATION.

(b) The name of the surviving corporation is ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

II. (a) THE KINGSTON PROPERTIES FOUNDATION has no members and has issued no capital certificates.

(b) ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC. has eighteen (18) members entitled to one vote each. It has not issued any capital certificates. Its members constitute the Board of Directors of the Corporation.

(c) The number of voting members aforementioned is subject to change prior to the effective date of the merger. Simultaneously with the adoption of this Plan of Merger, the Bylaws of the surviving corporation are being amended to provide that the surviving corporation shall have as its sole member the

~~K H HOLDING COMPANY~~, a not-for-profit corporation to be qualified under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended. In addition, the present members of ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC., the surviving corporation, together with such other individuals as may be nominated in accordance with the Bylaws of the surviving corporation, shall be nominated to serve as members of the Board of Directors of the surviving corporation.

III. The Certificate of Incorporation of ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC., the surviving corporation, is hereby amended as follows:

(a) Article 3 is amended by adding the following subparagraphs thereto:

"e. To promote the interests of the following organizations: WILTYCK CARE SYSTEMS, THE KINGSTON HOSPITAL, CONTINUUM OF CARE, INC., K H HOLDING COMPANY, and other organizations formally affiliated with any of the foregoing organizations which fall within the category of §501(c)(3) of the Internal Revenue Code of 1954, as amended."

"f. To receive, accept, hold, invest, reinvest, maintain and administer funds and properties of any sort, and to expend principal and income therefrom in furtherance of the corporation's purposes provided all requisite approvals, if any, from the proper authorities have been obtained."

"g. <sup>to</sup> To own, lease, donate or otherwise deal with all property, real and personal, to

be used in furtherance of the corporation's purposes."

"h. To contract with other organizations, for-profit and not-for-profit, with individuals, and with governmental agencies in furtherance of the corporation's purposes."

(b) Article 9 is amended to read as follows:

"9. In the event of the dissolution of the corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the corporation, shall distribute, in any proportions considered prudent, all of the assets of the corporation to the KINGSTON HOLDING COMPANY, if then in existence and if qualified under §501(c)(3) of the Internal Revenue Code of 1954, as amended, otherwise in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under §501(c)(3) of the Internal Revenue Code of 1954, as amended, (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, or to such other organization to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York, will best accomplish the general purposes for which this corporation was formed."

IV. Notwithstanding authorization by members of ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC. and the Board of Directors of THE KINGSTON PROPERTIES FOUNDATION, at any time prior to the filing of a Certificate of Merger by the Department of State, this Plan of Merger may be abandoned by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors of either corporation, if such Board shall, in its exclusive

discretion, determine that to proceed with the merger would adversely affect the corporation or its members.

V. The effective date of this Plan in New York shall be the date a Certificate of Merger is filed by the Secretary of State of New York, pursuant to Sections 904 and 906 of the Not-for-Profit Corporation Law of the State of New York.

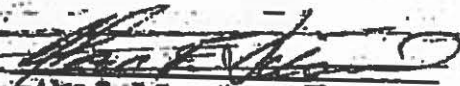
VI. The effective date of the merger is the date of the filing of this Certificate.


VII. The Certificate of Incorporation of ULSTER HEALTH FOUNDATION OF THE KINGSTON HOSPITAL, INC. was filed by the Department of State on April 26, 1982, and the Certificate of Incorporation of THE KINGSTON PROPERTIES FOUNDATION was filed by the Department of State on May 13, 1985.

VIII. The merger was authorized at a meeting of the members of ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC. by vote of two-thirds (2/3) of all members entitled to vote thereon and by the unanimous written consent of all members of the Board of Directors of THE KINGSTON PROPERTIES FOUNDATION. The Plan of Merger has not been abandoned.




IN WITNESS WHEREOF, we have signed this Certificate of  
Merger this 17<sup>th</sup> day of December, 1965.

  
Alan J. DeForest  
President, ULSTER HEALTH  
FOUNDATION OF KINGSTON  
HOSPITAL, INC.

  
Rev. Charles Stanley  
Secretary, ULSTER HEALTH  
FOUNDATION OF KINGSTON  
HOSPITAL, INC.

  
Jack L. Spess  
President, THE KINGSTON  
PROPERTIES FOUNDATION

  
Mary Gold  
Secretary, THE KINGSTON  
PROPERTIES FOUNDATION



AFFIDAVIT OF AUTHORIZATION

STATE OF NEW YORK

1985

COUNTY OF ULSTER

Alan E. DeBeest and Rev. Charles Stuckley being severally duly sworn, depose and say and each for himself deposes and says that:

Re. the said Alan E. DeBeest is the President of ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC., and he, Rev. Charles Stuckley, is the Secretary thereof; that they have been authorized to execute and file the foregoing Certificate of Merger, as indicated by the votes cast by two-thirds of the members of such Corporation entitled to vote thereon, in person or by proxy, at a meeting held upon notice as prescribed in Section 605 of the Not-for-Profit Corporation Law, held on the 17th day of December, 1985, at which a quorum of the members entitled to vote with respect to merger was present, in person or by proxy.

The said ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC., has and at the date of execution of the foregoing Certificate of Merger, had fewer than five (500) hundred members.

Sworn to before me this  
17th day of December, 1985

Maria F. Helchorn  
Notary Public

Alan E. DeBeest  
President

Rev. Charles Stuckley  
Secretary

MARIA F. HELCHORN  
Notary Public, State of New York  
No. 11888  
Qualified in Ulster County  
Commission Expires March 30, 1986

AFFIDAVIT OF AUTHORIZATION

STATE OF NEW YORK )

COUNTY OF ULSTER )

Jack Rouse and Harry Gold, being  
severally duly sworn, depose and say and each for himself deposes  
and says that:

He, the said Jack Rouse, is the President of THE  
KINGSTON PROPERTIES FOUNDATION, and he, Harry Gold,  
is the Secretary thereof; that they have been authorized to  
execute and file the foregoing Certificate of Merger, by the  
unanimous written consent of the members of the Board of  
Directors of said Corporation dated December 5, 1985.

THE KINGSTON PROPERTIES FOUNDATION, at the date of execution  
of the foregoing Certificate of Merger, had no members.

Jack L. Rouse  
President

Harry Gold  
Secretary

Sworn to before me this  
17<sup>th</sup> day of December, 1985

Maria T. DeLachon  
Notary Public

MARIA T. DELACHON  
Notary Public, State of New York  
No. 788820  
Qualified in Ulster County  
Commission Expires March 30, 1987

VERIFICATION

STATE OF NEW YORK )

COUNTY OF ULSTER )

Keneth G. Johnson being duly sworn, deposes  
and says: I am the Vice-President of ULSTER HEALTH FOUNDATION OF  
KINGSTON HOSPITAL, INC. I have read the contents of the annexed  
Certificate of Merger and the same are true to my knowledge.

Keneth G. Johnson  
Vice-President

Sworn to before me this  
11<sup>th</sup> day of December, 1985.

Maria F. Melchiori  
Notary Public

MARIA F. MELCHIORI  
Notary Public, State of New York  
No. 7082820  
Office in Ulster County  
Commission Expires March 30, 1988

VERIFICATION

STATE OF NEW YORK

COUNTY OF ULSTER ) ss.:

Anthony R. Krulz being duly sworn, deposes and says: I am the Vice-President of THE KINGSTON PROPERTIES FOUNDATION. I have read the contents of the annexed Certificate of Merger and the same are true to my knowledge.

*[Handwritten Signature]*

Vice-President

Sworn to before me this  
17<sup>th</sup> day of December, 1985.

Maria F. Mealy  
Notary Public

MARIA F. MEALY  
Notary Public, State of New York  
No. 708830  
Qualified in Orange County  
Commission Expires March 20, 1986

At a Special Term of the Supreme Court of the State of New York, held in and for the County of Ulster, at the Supreme Court Courthouse, Main Street, City of Kingston, State of New York, on the 25<sup>th</sup> day of February, 1986.

HON. JOSEPH P. TORRACA  
J.S.C.

PRESENT: Hon. Justice of the Supreme Court

In the Matter of the Application of THE KINGSTON PROPERTIES FOUNDATION

Into

ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

Under the Name of

ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

ORDER

For an Order Approving their Plan of Merger and Authorizing the Filing of a Certificate of Merger of THE KINGSTON PROPERTIES FOUNDATION into ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

Pursuant to Section 307 of the Not-for-Profit Corporation Law.

ORDER APPROVING MERGER AND GRANTING AUTHORIZATION TO FILE CERTIFICATE OF MERGER

Upon reading the petition of THE KINGSTON PROPERTIES FOUNDATION and ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC., dated the 21<sup>st</sup> day of January, 1986, and duly verified by each of the petitioners on the 21<sup>st</sup> day of January, 1986, and the exhibits attached thereto, including the Plan of Merger of said corporations dated December 17, 1985, and the financial statements with respect to each corporation, and no votes having

been cast by either the members or directors of either corporation against the adoption of the resolutions approving the Plan of Merger, and the Attorney General having waived notice and a hearing and certified no objection to the entry of this Order, and the Court having given due consideration hereto, and it appearing to the satisfaction of the Court that the provisions of Section 907 of the Not-for-Profit Corporation Law have been complied with, and that the interests of the constituent corporations and the public interests would not be adversely affected by the Merger of the Petitioning Corporations.

NOW, on motion of RIDER, WEINER, LEWIS & MELCHIORI, P.C., attorney for the petitioners, it is hereby

ORDERED, that the Plan dated December 17, 1985, for the Merger of THE KINGSTON PROPERTIES FOUNDATION into ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC., be and it hereby is approved, and it is further

ORDERED that the said corporations be and they hereby are authorized to file with the Secretary of State the Certificate of Merger executed and acknowledged by them the 17th day of December, 1985, in the form annexed to the petition, and it is further

ORDERED, that upon filing of the said Certificate of Merger together with a certified copy of this Order as required, all the assets of THE KINGSTON PROPERTIES FOUNDATION shall thereby be transferred and conveyed to the ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC., and it is further

ORDERED, that the Merger of the corporations shall have the effect provided by Section 905 of the Not-for-Profit Corporation Law of the State of New York.

E N D

*Dated: March 5, 1986  
H. J. P. TORRACA*

*Joseph P. Torraca*  
Justice of the Supreme Court.  
HON. JOSEPH P. TORRACA



FEB 6 - 1986



STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12284

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. McSPARRON  
DEPUTY FIRST ASSISTANT  
ATTORNEY GENERAL

Telephone: (518) 474-7206

January 29, 1986

Marie P. Melchiori, Esq.  
Rider, Weiner, Lewis & Melchiori, P.C.  
427 Little Britain Road  
P.O. Box 2280  
Newburgh, New York 12550

Dear Ms. Melchiori:


RE: THE KINGSTON PROPERTIES FOUNDATION AND ULSTER  
HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC. INTO  
ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

Due and timely service of the plan of merger and certificate of merger with reference to the above-entitled matter is hereby admitted.

The Attorney General does not intend to appear at the time of application and consents to the entry of an order for the merger.

Very truly yours,

ROBERT ABRAMS  
Attorney General

BY   
RICHARD S. REDIO  
Assistant Attorney General

12

Index No.

Year 19

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER

In the Matter of The Application of THE KINGSTON PROPERTIES  
FOUNDATION into ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL,  
INC. Under the Name of ULSTER HEALTH FOUNDATION OF KINGSTON  
HOSPITAL, INC. for an Order Approving their Plan of Merger  
and Authorizing the Filing of a Certificate of Merger of THE  
KINGSTON PROPERTIES FOUNDATION into ULSTER HEALTH FOUNDATION  
OF KINGSTON HOSPITAL, INC. Pursuant to Section 907 of the  
Not-For-Profit Corporation Law.

ORDER

RIDER, WEINER, LEWIS & MELCHIORI, P. C.  
Attorneys for Petitioner

427 LITTLE BRITAIN ROAD (ROUTE 207)  
POST OFFICE BOX 2280  
NEWBURGH, NEW YORK 12550  
(914) 563-6200

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

that the within is a (certified) true copy of a  
NOTICE OF ENTRY entered in the office of the clerk of the within named Court on 19

that an Order of which the within is a true copy will be presented for settlement to the Hon.  
NOTICE OF SETTLEMENT of one of the judges of the within named Court,

at 19, at M.

Dated:

RIDER, WEINER, LEWIS & MELCHIORI, P. C.  
Attorneys for

427 LITTLE BRITAIN ROAD-ROUTE 207  
POST OFFICE BOX 2280  
NEWBURGH, NEW YORK 12550

To:

Attorney(s) for

13



14

8 3 4 41

Mar 27 12 PM '88

THE KINGSTON PROPERTIES FOUNDATION

INTO

ULSTER HEALTH FOUNDATION OF THE KINGSTON HOSPITAL, INC. (UNDER SECTION 904 OF THE NOT-FOR-PROFIT CORPORATION LAW OF THE STATE OF NEW YORK)

STATE OF NEW YORK DEPARTMENT OF STATE CERTIFICATE OF MERGER

FILED MAR 28 1988

NO. OF CHECK \$ 50

FILED FEE \$ 2.00

CITY

STATE

FILED MAR 28 1988

*Ulster*

RIDER, WEINER, LEVIN & MCDONALD, P.C.  
ATTORNEYS AT LAW  
150 N. W. 11th St.  
MIAMI, FL 33136

14  
Kingston  
Ulster Health Foundation  
86232-10  
Kingston Hospital  
C/O Hosp. Administration  
392 Broadway  
Kingston, NY 12401

②  
4/16/88  
Cub. Co.

17 86232-10

FILED  
MAR 28 1988  
AM '88

346

State of New York )  
Department of State ) ss:

*I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*      **February 3, 2004**



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed name of the Secretary of State.

*Secretary of State*

CSC 45

960517000524

CERTIFICATE OF AMENDMENT TO THE  
CERTIFICATE OF INCORPORATION  
OF  
ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned hereby certify:

1. The name of the Corporation is Ulster Health Foundation of Kingston Hospital, Inc.
2. The Corporation was formed under section 402 of the Not-For-Profit Corporation Law, and its certificate of incorporation was filed by the Department of State on April 26, 1982.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-For-Profit Corporation Law, and is a Type B corporation under section 201 of the Not-For-Profit Corporation Law, and shall remain a Type B corporation under section 201 of the Not-For-Profit Corporation Law after the filing of this certificate of amendment to its certificate of incorporation.
4. Paragraph "3" of the certificate of incorporation sets forth the Corporation's purposes, and subparagraph "a" of paragraph "3" of the certificate of incorporation is amended so as to delete therefrom the words "(but not to act as trustee of any trust)," so that subparagraph "a" of paragraph "3" of the certificate of incorporation shall read as follows:

"a. To accept, hold, invest, reinvest and administer any gifts, bequests, devises, benefits or trusts, and property of any sort, without limitation as to amount or value, and to use, disburse or donate the income or principal thereof for exclusively charitable, scientific and educational purposes."
5. The manner in which this amendment of the certificate of incorporation was authorized is by a majority vote of all of the members entitled to vote thereon at a meeting of the members.
6. 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 or without this

state to which the Secretary of State shall mail a copy of any process against it served upon him or her is in care of The Kingston Hospital, 396 Broadway, Kingston, New York 12401.

IN WITNESS WHEREOF this certificate has been subscribed this 29<sup>th</sup> day of February, 1996, by the undersigned who affirm that the statements made herein are true under the penalties of perjury.

Clifford M. Miller  
Clifford M. Miller, President

Robert Hieronimus  
Robert Hieronimus, Secretary

APPROVAL OF JUSTICE OF THE SUPREME COURT

I, VINCENT BRADLEY, Justice of the Supreme Court of the State of New York in the Third Judicial District, do hereby approve the foregoing Certificate of Amendment to the Certificate of Incorporation of Ulster Health Foundation of Kingston Hospital, Inc., and consent that the same be filed.

Dated: 10 May, 1996  
at: Kingston, NY

Vincent B. Bradley  
Justice of the Supreme Court

J.S.C.

DENNIS C. VACCO  
Attorney General



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
(518) 473-0951

JOHN H. CAGLEY  
Deputy Attorney General

May 3, 1996

Mr. Daniel B. Byrne  
Corporation Service Company  
500 Central Ave  
Albany, NY 12206

Re: Ulster Health Foundation of Kingston Hospital, Inc.  
Certificate of Amendment

Dear Mr. Byrne:

Our office is in receipt of the proposed certificate of amendment for the above not-for-profit corporation.

Based upon review of the foregoing, please be advised that the Attorney General has no objection to the filing of the certificate of amendment with the Secretary of State.

Please forward proof of filing of the duly approved certificate of amendment with the Secretary of State so that we may close our file in this matter.

Thank you for your attention herein.

Very truly yours

DAVID E. SIEGFELD  
Assistant Attorney General

Encl.

3

*State of New York* }  
*Department of State* } ss:

*I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**February 3, 2004**



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed name of the Secretary of State.

*Secretary of State*

F 000829000000

CSC 45

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION  
OF

ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the president of Ulster Health Foundation Of Kingston Hospital, Inc., does hereby certify and set forth:

1. The name of the corporation is Ulster Health Foundation Of Kingston Hospital, Inc., and the name under which the corporation was formed is Ulster Health Foundation Of Kingston Hospital, Inc.

2. The certificate of incorporation of Ulster Health Foundation Of Kingston Hospital, Inc., was filed by the Department of State on April 26, 1982.

3. The corporation is a corporation as defined in subparagraph (a)(5) of section 102, and it is a type B corporation under section 201. The corporate purposes are not changed by this amendment and it shall remain a type B corporation under section 201.

4. The certificate of incorporation of Ulster Health Foundation Of Kingston Hospital, Inc., is hereby amended to effect a change in the corporate name pursuant to section 803 of the Not-For-Profit Corporation Law, and paragraph 1 of the certificate of incorporation is hereby amended to read as follows:

1. The name of the corporation is Kingston Regional Health Care Foundation.

5. This amendment of the certificate of incorporation was authorized pursuant to subparagraph (a)(1) of section 802 by a majority vote of the members at a meeting as provided in paragraph (c) of section 613.

6. The Secretary of State is designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served on him or her is Kingston Regional Health Care Foundation in care of The Kingston Hospital, 396 Broadway, Kingston, New York 12401.

IN WITNESS WHEREOF, this certificate has been subscribed this 21st day of June, 2000, by  
the undersigned who affirms that the statements made herein are true under the penalties of  
perjury.

  
\_\_\_\_\_  
JAMES DAVENPORT, President



F 000629000558

CSC 45

RECEIVED

JUN 29 12 49 PM '00

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION  
OF  
ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.  
Under Section 803 of the Not-For-Profit Corporation Law

JUN 29 1 40 PM '00

FILED

Filed by:

SAMOFF & BENTON, PLLC  
24 John Street - PO Box 3870  
Kingston, New York 12402  
(914) 331-4977

cust ref 748855/AJC  
Brandon

ICE  
STATE OF NEW YORK  
DEPARTMENT OF STATE

JUN 29 2000  
FILED  
TAXES  
BY: JARA  
Ulster

4

000629000577

FILING RECEIPT

ENTITY NAME: KINGSTON REGIONAL HEALTH CARE FOUNDATION

DOCUMENT TYPE: NAME RESERVATION (NCH) (DOM. NFP)

SERVICE COMPANY: CSC NETWORKS/PRENTICE HALL

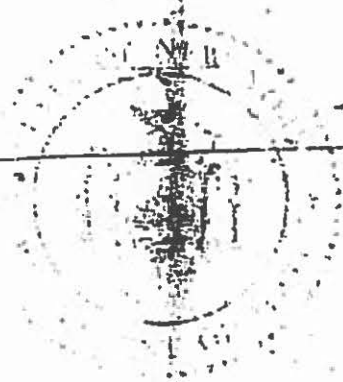
SERVICE CODE: 45

APPLICANT NAME : ULSTER HEALTH FOUNDATION OF KINGSTON HOSPITAL, INC.

FILED: 06/16/2000 DURATION: 08/16/2000 CASE#: 000616000079 FILM #: 000616000074

ADDRESS FOR PROCESS

REGISTERED AGENT



\*\*\* SUBMIT RECEIPT WHEN FILING CERTIFICATE \*\*\*

FILER	FEES		PAYMENTS	
		35.00		35.00
ULSTER HEALTH FOUNDATION KINGSTON	FILING	10.00	CASH	0.00
HOSP INC/JAY L SAMOFF/SAMOFF BENTON	TAX	0.00	CHECK	0.00
PO BOX 3870 - 24 JOHN STREET	CERT	0.00	CHARGE	0.00
KINGSTON, NY 12401	COPIES	0.00	DRAWDOWN	35.00
	HANDLING	25.00	BILLED	0.00
			REFUND	0.00

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 15, 2009.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

FILING RECEIPT

=====

ENTITY NAME: THE KINGSTON HOSPITAL FOUNDATION

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)  
PROCESS NAME PROVISIONS RESTATED

COUNTY: ULST

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FILED:05/14/2009 DURATION:\*\*\*\*\* CASH#:090514000365 FILM #:090514000339

FILER:

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GARFUNKEL WILD & TRAVIS, P.C.  
111 GREAT NECK ROAD

GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

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C/O THE KINGSTON HOSPITAL  
396 BROADWAY  
KINGSTON, NY 12401

REGISTERED AGENT:



=====

SERVICE COMPANY: EMPIRE CORPORATE & INFORMATION SERVICE SERVICE CODE: 12

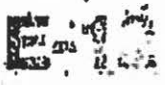
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FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	90.00
HANDLING	50.00	OPAL	0.00
		REFUND	0.00

=====

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**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
KINGSTON REGIONAL HEALTH CARE FOUNDATION**

Under Section 805 of the New York Not-for-Profit Corporation Law

The undersigned, being the Chairman of the Board of Directors of KINGSTON REGIONAL HEALTH CARE FOUNDATION, hereby certifies:

**FIRST:** The name of the corporation is Kingston Regional Health Care Foundation (the "Corporation"). The name under which the Corporation was formed is Ulster Health Foundation of Kingston Hospital, Inc.

**SECOND:** The Certificate of Incorporation of the Corporation was filed by the Department of State on April 26, 1982.

**THIRD:** The Corporation is a corporation as defined in Subparagraph (a)(3) of Section 102 of the Not-for-Profit Corporation Law ("NPCL"). The Corporation is a Type B corporation as defined in Section 201 of the NPCL and shall remain a Type B corporation after this Restated Certificate of Incorporation is effectuated.

**FOURTH:** The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the NPCL:

1. Article "1", stating the name of the Corporation, is hereby renumbered as Paragraph "FIRST" and the name is changed to "The Kingston Hospital Foundation," and as amended and restated shall read in full as follows:

**"FIRST: The name of the corporation is THE KINGSTON HOSPITAL FOUNDATION (the "Corporation")."**

2. Article "2", stating that the Corporation is a Type B corporation under the NPCL, is hereby renumbered as Paragraph "SECOND," and is otherwise hereby restated without any amendments or changes.

3. Article "3", stating the purposes of the Corporation, is hereby renumbered as Paragraph "THIRD" and updated to reflect the current corporate relationships and as amended and related shall read in full as follows:

"THIRD: The purposes for which the Corporation is formed shall be to operate exclusively for charitable, scientific or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), without regard to race, color or creed as follows:

- (a) To promote the interests of, and raise and provide funds to or for the benefit of the following organizations: The Kingston Hospital ("TKH"), Forthell Ambulatory Surgery Center, TKH's affiliates, Health Alliance, Inc. and other not-for-profit organizations formally affiliated with any of the foregoing organizations that fall within the category of Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).
- (b) To own, lease, donate or otherwise deal with all property, real and personal, to be used in furtherance of these purposes.
- (c) To contract with other organizations, for-profit and not-for-profit, with individuals and with governmental agencies in furtherance of these purposes.
- (d) To solicit and receive money and property for the foregoing purposes and to receive and accept for charitable purposes gifts, donations, bequests and devises of money and property.
- (e) In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the NPCL, together with the power to solicit grants and contributions for any corporate purpose, the power to maintain a fund of real or personal property for any corporate purpose, the power to borrow money, contract, debts and issue notes and secure the payment of the performance of its obligations and to do all other acts necessary or expedient for the administration of its affairs, and in general shall have all such powers as are incidental to the attainment of the purposes of the Corporation. The Corporation shall have the right, subject to such limitations and conditions as may be prescribed by law, to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conferee to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this Article THIRD, the Corporation shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code, as amended, or the corresponding provision of any future United States Internal Revenue Law. No part of

the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other 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.

(f) 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.

(g) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the New York Not-for-Profit Corporation Law, Section 404(a) - (v), except for Sections 404(e) and 404(f).

(h) Nothing contained in the Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the New York Public Health Law, to provide hospital services or maintain an adult care facility, as provided for by Article 7 of the New York Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility.

(i) This Article THIRD shall not be amended without the consent of The Kingston Hospital."

4. Article "4" and Article "5" are renumbered, as Paragraph "FOURTH" and Paragraph "FIFTH," respectively, and are otherwise hereby related without any amendments or changes.

5. Article "6", setting forth the initial directors of the Corporation, is hereby deleted in its entirety.

6. Article "9", relating to the distribution of assets upon the Corporation's dissolution, is renumbered as Paragraph "SIXTH" and as amended and related shall read in full as follows:

"SIXTH: In the event of the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall distribute, in any proportions considered prudent, all of the assets of the Corporation to The Kingston Hospital, if then in existence and if qualified under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), or otherwise in such manner, or to such organization or organizations organized and operated exclusively for



charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, or to such other organizations to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York, will best accomplish the general purposes for which this Corporation was formed."

7. Article "7", relating to service of process upon the Secretary of State of the State of New York, is renumbered as Paragraph "SEVENTH" and as amended and restated shall read in full as follows.

"The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any such process served upon him or her is in care of The Kingston Hospital, 396 Broadway, Kingston, New York 12401."

**FIFTH:** The text of the Certificate of Incorporation of the Corporation is hereby restated as amended to read in full as follows:

**RESTATED**

**CERTIFICATE OF INCORPORATION**

**OF**

**THE KINGSTON HOSPITAL FOUNDATION**

**FIRST:** The name of the corporation is **THE KINGSTON HOSPITAL FOUNDATION** (the "Corporation").

**SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to or inures to the benefit of its directors or officers or any private person except to the extent permissible under the New York Not-for-Profit Corporation Law.



**THIRD:** The purposes for which the Corporation is formed shall be to operate exclusively for charitable, scientific or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), without regard to race, color or creed as follows:

- (a) To promote the interests of, and raise and provide funds to or for the benefit of the following organizations: The Kingston Hospital ("TKH"), Foxhall Ambulatory Surgery Center, TKH's affiliates, Health Alliance, Inc. and other not-for-profit organizations formally affiliated with any of the foregoing organizations that fall within the category of Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).
- (b) To own, lease, donate or otherwise deal with all property, real and personal, to be used in furtherance of these purposes.
- (c) To contract with other organizations, for-profit and not-for-profit, with individuals and with governmental agencies in furtherance of these purposes.
- (d) To solicit and receive money and property for the foregoing purposes and to receive and accept for charitable purposes gifts, donations, bequests and devises of money and property.
- (e) In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the NPCL, together with the power to solicit grants and contributions for any corporate purpose, the power to maintain a fund of real or personal property for any corporate purposes, the power to borrow money, contract debts and issue notes and secure the payment of the performance of its obligations and to do all other acts necessary or expedient for the administration of the affairs, and in general shall have all such powers as are incidental to the attainment of the purposes of the Corporation. The Corporation shall have the right, subject to such limitations and conditions as may be prescribed by law, to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this Article THIRD, the Corporation shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code, as amended, or the corresponding provision of any future United States Internal Revenue Law. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other 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.

- (f) 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.
- (g) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the New York Not-for-Profit Corporation Law, Section 404(a) - (v), except for Sections 404(o) and 404(l).
- (h) Nothing contained in the Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36, 40 and 44, respectively, of the New York Public Health Law, to provide hospital service or maintain an adult care facility, as provided for by Article 7 of the New York Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility.
- (i) This Article THIRD shall not be amended without the consent of The Kingston Hospital.

**FOURTH:** The office of the Corporation is to be located at 396 Broadway, in the City of Kingston, County of Ulster, New York.

**FIFTH:** The territory in which the activities of the Corporation are principally to be conducted are the Counties of Ulster, Greene, Orange, Delaware, Dutchess, Columbia, Sullivan and Westchester in the State of New York.


**SIXTH:** In the event of the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall distribute, in any proportions considered prudent, all of the assets of the Corporation to The Kingston Hospital, if then in existence and if qualified under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), or otherwise in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific

purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine, or to such other organizations to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York, will best accomplish the general purposes for which this Corporation was formed:

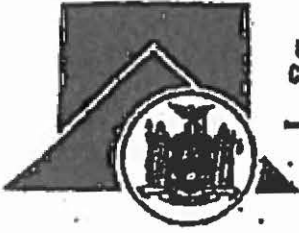
**SEVENTH** The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any such process served upon him or her is in care of The Kingston Hospital, 395 Broadway, Kingston, New York 12401.

**SIXTH:** This Restated Certificate of Incorporation of KINGSTON REGIONAL HEALTH CARE FOUNDATION was authorized by the unanimous vote of Kingston Regional Health Care System, its sole member.

IN WITNESS WHEREOF, the undersigned, being of least eighteen (18) years of age, have subscribed and affirmed this restated certificate of incorporation as true under the penalties of perjury on the date indicated next to his name:



Name: Thomas Collins  
Office: Chairman  
Dated: March 13, 2008



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

March 17, 2009

Susan Klein  
Legal Assistant  
Garfunkel, Wild & Travis, P.C.  
111 Great Neck Road  
Great Neck, New York 11021

Re: Restated Certificate of Incorporation of Kingston Regional Health Care Foundation

Dear Ms. Klein:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 13th day of March, 2009, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Incorporation of Kingston Regional Health Care Foundation, dated March 13, 2008.

Sincerely,

Colleen M. Frost  
Executive Secretary

/of

09051400039

RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
KINGSTON REGIONAL HEALTH CARE FOUNDATION  
Under Section 805 of the New York Not-for-Profit Corporation Law

FILED BY:

**GARFUNKEL WILD & TRAVIS, P.C.**

*Attorneys at Law*

111 GREAT NECK ROAD

GREAT NECK, NY 11021

FILED  
2009 MAY 14 AM 11:01  
E-12

DRAWDOWN

ICC  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY 14 2009

TAX \$ \_\_\_\_\_  
BY JW  
ULSTER

*JW*

*365*

2009 MAY 13 PM 1:08

RECEIVED


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of December, 2017, approves the filing of the Restated Certificate of Incorporation of the Kingston Hospital Foundation, dated June 19, 2017.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** September 25, 2017

**Subject:** Dissolution: Reconstruction Home and Health Care Center, Inc. (f/k/a Beechtree Care Center)

---

Reconstruction Home and Health Care Center, Inc. (the "Corporation") was the established operator of a licensed Article 28 nursing home facility until 2014 when the corporation sold the facility to BTRNC, LLC. This change in ownership received PHHPC contingent approval on 10/10/2014 and all contingencies were satisfied on 02/17/2015 (see project # 142050).

The Corporation is now winding up its affairs and seeks PHHPC approval to formally dissolve. As of July 31, 2017, the Corporation has remaining cash assets in the amount of \$30,519.37, which is planned to be disbursed to their remaining unsecured creditors.

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.

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

# BYRNE, COSTELLO & PICKARD, P.C.

ATTORNEYS AT LAW

MATTHEW V. BYRNE III\*\*  
JOHN R. BRENNAN\*\*\*  
F. SCOTT MOLNAR\*\*\*  
ZEA M. WRIGHT  
JORDAN R. PAVLUS\*\*\*\*  
GREGORY P. BAZAN

MATTHEW V. BYRNE, JR.  
(1920-2000)

JOHN J. COSTELLO  
(1929-2015)

TERRY R. PICKARD\*  
(OF COUNSEL)

MICHAEL J. BYRNE  
(OF COUNSEL)

\*\*ALSO MEMBER OF FLORIDA BAR  
\*\*ALSO MEMBER FLORIDA BAR  
JUDICIAL DISTRICT OF COLLEGE PARK  
\*\*\*ALSO MEMBER MASSACHUSETTS BAR  
\*\*\*\*ALSO MEMBER DELAWARE BAR AND  
NEW JERSEY BAR

AUGUST 18, 2017

TOWER I, SUITE 1600  
100 MADISON STREET  
SYRACUSE, NEW YORK 13202-2721  
TELEPHONE: 315/474-6448  
TELECOPIER: 315/424-8556  
E-MAIL: JBRENNAN@BCPLLEGAL.COM  
[WWW.BCPLEGAL.COM](http://WWW.BCPLEGAL.COM)

New York State Public Health and Health Planning Council  
(Att: Colleen Leonard, Executive Secretary)  
Coming Tower, Room 1805  
Empire State Plaza  
Albany, New York 12237

New York State Department of Health  
Division of Legal Affairs  
Corning Tower, Room 2464  
Empire State Plaza  
Albany, New York 12237

*Re: Dissolution of Reconstruction Home and Health Care Center, Inc.*

Dear Ladies and Gentlemen:

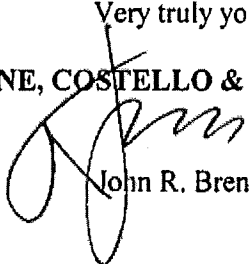
Reconstruction Home and Health Care Center, Inc. (the "Corporation") sold its facilities in 2014 with the consent and approval of the New York State Department of Health, the New York State Attorney General's Office and New York State Supreme Court. The Corporation has worked since the sale to wind-up its affairs. The Corporation now requests Public Health and Health Planning Council consent to dissolve.

Enclosed with this cover is a copy of the Verified Petition submitted to the New York State Attorney General requesting consent to dissolve. The proposed Plan of Dissolution is Exhibit "I" of the Petition. The proposed Certificate of Dissolution of the Corporation is Exhibit "J".

Should you require any additional information please do not hesitate to contact me. Thank you in advance for your time and attention to this matter.

Very truly yours,

BYRNE, COSTELLO & PICKARD, P.C.

  
John R. Brennan

JRB/hs  
Enclosures  
cc: Anthony Votaw





12227-0852, at least twenty days in advance of the date set forth in the immediately preceding paragraph shall be deemed sufficient service under subsection c of § 1104 of the Not-For-Profit Corporation Law; and it is further

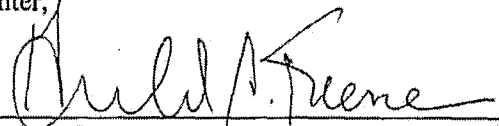
ORDERED, that service by first class mail to the parties identified in Exhibit "1" annexed to this Order of a copy of the Notice of Petition annexed to this Order as Exhibit "2" shall be deemed sufficient service under subsection c of § 1104 of the Not-For-Profit Corporation Law; and it is further

ORDERED, that pursuant to subsections b of § 1104 of the Not-For-Profit Corporation Law, a copy of this Order to Show Cause shall be published in the Tompkins Weekly at least once in each of the three weeks before the time appointed for the hearing herein and that proof of said publication shall be filed with the Clerk of this Court prior to the hearing; and it is further

ORDERED, that opposing papers, if any, be filed and served on or before the 20<sup>th</sup> day of Sept, 2017.

Dated: September 6, 2017  
Ithaca, New York

Enter,



Hon. Gerald A. Keene

Acting Justice of the Supreme Court

EXHIBIT "1" TO  
ORDER TO SHOW CAUSE

\*ACE SECURITY CONTROL INC  
720 W. Green Street  
Ithaca , NY 14850

\*ACTIVITY CONNECTION.COM  
818 SW Third Ave  
#222  
Portland , OR 97204

\*ADI SOFTWARE, LLC  
110 Wild Basin Rd.  
Suite 100  
Austin, TX 78746

\*AFLAC NEW YORK  
REMITTANCE PROCESSING SERVICES  
1932 WYNNTON RD.  
COLUMBUS, GA 31999-6005

BIMBO FOODS, INC.  
P.O. BOX 827810  
PHILADELPHIA, P A 19182-7810

\*ITHACA AGWAY/TRUE VALUE  
213 S. Fulton St  
Ithaca, NY 14850

\*ALEXANDRA CLINTON  
404 CASCADILLA ST  
APT A  
ITHACA, NY 14850

\*ALIMED INC  
P.O.Box 9135  
Dedham, MA 02027

\*ALL EARS AUDIOLOGY OF ITHACA  
200 Pleasant Grove Rd.  
Ithaca, NY 14850

\*AMERICAN FOOD AND VENDING  
124 Metropolitan Park Drive  
Syracuse, NY 13088

\*AMES LINEN SERVICE  
67 Huntington St  
Cortland, NY 13045

\*AMPULA, AARON  
3639 Lorme Dr  
Endwell, NY 13760

\*HEALTH FACILITY ASSESSMENT  
OFFICE OF POOL ADMINISTRATION  
P.O. BOX 4757  
SYRACUSE, NY 13221-4757

\*BAILEY HASKELL LALONDE  
5232 WITZ DRIVE  
NORTH SYRACUSE, NY 13212

\*BANFIELD PET HOSPITAL  
742 S.MEADOW STREET  
ITHACA, NY 14850-5321

\*BATTERY WAREHOUSE  
1495 DRYDEN RD  
FREEVILLE, NY 13068

\*BERKADIA  
Lockbox #9067  
P.O. Box 8500  
Philadelphia, PA 19178-9067

\*BERT SALMIRS  
P.O. Box 166  
Hector, NY 14841

\*J D BOOTH, INC  
P.O. BOX 579  
ELMIRA, NY 14902-0579

\*THE BUSINESS COUNCIL  
INSURANCE FUND  
12 CORPORATE WOODS BLVD.  
ALBANY, NY 12212-2390

\*BUTTER KRUST  
18225 Route 6  
Mansfield, PA 16933

\*B&W SUPPLY  
510 THIRD ST  
ITHACA, NY 14850

\*CALL CARE  
1370 Arcadia Rd  
P.O. BOX 4651  
LANCASTER, PA 17604-4651

\*CASELLA  
P.O. Box 1372  
Williston, VT 05495-1372

\*CAYUGA EMERGENCY PHYS LLP  
75 REMIT DR #1248  
CHICAGO, IL 60675-1248

\*CAYUGA MEDICAL CENTER  
101 Dates Drive  
Ithaca, NY 14850

\*CAYUGA MEDICAL ASSOCIATES  
1001 W. Fayette St  
Ste 400  
Syracuse, NY 13204-2866

\*TOMPKINS COUNTY CHAMBER OF CO  
904 East Shore Drive  
Ithaca, NY 14850

\*CINTAS  
P. O Box 633842  
cincinnati , OH 45263

\*CITY OF ITHACA  
City of Ithaca  
108 E Green St  
Ithaca, NY 14850

\*CHAMBERLAIN CLIMATE CONTROL  
70 Gunderman Rd  
Ithaca, NY 14850

\*CAYUGA MEDICAL CENTER  
101 Dates Drive  
Ithaca, NY 14850

\*CENTERS FOR MEDICARE & MEDICA  
DIVISION ACCOUNTING OPERATIONS  
PO BOX 7520  
BALTIMORE, MD 21207

\*CNY ELEVATOR INSPECTIONS  
Suit 400  
327 W. Fayerre St  
Syracuse, NY 13202

\*COMMISSIONER OF TAXATION & FI  
NYS ASSESSMENT RECEIVABLES  
GENERAL PO BOX 4128  
BINGHAMTON, NY 13902-4128

\*THE COMPUTING CENTER  
15 Thornwood Drive  
Ithaca, NY 14850

\*THE CORTLAND AREA TRIBUNE  
P.O. Box 67  
Dryden, NY 13053

\*CPE INTERLINK  
357 E. 5th St  
Elmira, NY 14901

\*CRISTIN BAKER  
117 North Sunset Dr  
Ithaca, NY 14850

\*DARIEN LAKE  
PO BOX 91  
9993 ALLEGHENY RD.  
DARIEN CENTER, NY 14040

\*DAVID BROWN'S FOOD EQUIPMENT  
5337 Voorheis Rd  
Trumansburg, NY 14886

\*DAVIS ULMER SPRINKLER CO  
300 METRO PARK  
ROCHESTER, NY 14623

\*EXCELLUS BC/BS Group  
P.O.Box 5255  
Binghamton, NY 13902-5255

\*DIRECT SUPPLY  
Box 88201  
Milwaukee, WI 53288-0201

\*NYS DOH NARCOTIC ENFORCEMENT  
Riverview Center  
150 Broadway  
Albany, NY 12204

\*EARTHLINK BUSINESS  
P.O.Box 88104  
Chicago, IL 60680-1104

\*ECOLAB  
P.O. BOX 905327  
CHARLOTTE, NC 28290-5327

\*ECONOLINE  
398 LAKESIDE RD  
HOP BOTTOM, PA 18824

\*EMERALD RESOURCES INC  
320 Gateway Park Drive  
N. Syracuse, NY 13212

\*EMPIRE NATURAL GAS CORP  
173 Airport Rd  
Greene, NY 13778

\*EXCELLUS HEALTH PLAN-GROUP  
P.O.Box 5266  
Binghamton, NY 13902-5266

\*FIRST HEALTHCARE PRODUCTS  
6125 Lendell Drive  
Sanborn, NY 14132-9199

\*FIRST REHABILITATION LIFE  
PO BOX 220727  
GREAT NECK, NY 11021

\*FREED MAXICK  
P.O. BOX 8000  
DEPT. 644  
BUFFALO, NY 14267

\*C. FREIHOFFER INC  
GEORGE WESTON BAKERY  
PO BOX 827810  
PHILADELPHIA, PA 19182-7810

\*GADABOUT TRANSPORTATION SVCS  
737 WILLOW AVE  
ITHACA, NY 14850

\*GANNETT CENTRAL NEW YORK NEWS  
GANNETT CENTRAL NY NEWSPAPERS  
P.O. BOX 822802  
PHILADELPHIA, PA 19182-2802

\*GENTELL  
2701 BARTRAM RD  
BRISTOL, PA 19007

\*GEORGE MANN  
P.O. Box 435  
Ithaca, NY 14851

\*SHERRY GOLDEN  
361 S. VAN DORN RD  
ITHACA, NY 14850

\*GRAINGER  
DEPT 828933473  
PALATINE, IL 60038-0001

\*GREASE BUSTERS  
120 RIDGE CREST RD  
ITHACA, NY 14850

\*GUTHRIE CLINIC LTD  
1 Guthrie Square  
Sayre, PA 18840

\*CATHERINE HAINES  
111 EASTWOOD AVE.  
ITHACA, NY 14850

\*HAROLD BUSH  
P.O. BOX 154  
OVID, NY 14521

\*HD SUPPLY  
P.O.Box 509058  
San Diego, CA 92150-9058

\*HEALTH TRAC  
P.O.Box 8000-445  
Buffalo , NY 14267

\*HERSHEYS ICECREAM  
1370 upper lenox ave  
oneida, NY 13421-2640

\*HILL & MARKES  
1997 State Hwy. 5S  
Amsterdam, NY 12010  
and  
Craig H. Norman, Esq.  
Wilhelm & Norman PLLC  
122 Remsen Street  
Cohoes, New York 12047

\*HUMAN SERVICES COALITION  
100 W. Seneca St  
Suite 300  
Ithaca, NY 14850

\*ILEEN KAPLAN PIANO SERVICE  
97 Fir Tree Point Rd  
Rock Stream, NY 14878

\*INSTANT WHIP  
1859 Momentum place  
chicago, IL 60689-5318

\*INTERNAL REVENUE SERVICE  
CINCINNATI, OH 45999-0149

\*ITHACA DISPATCH  
400 SPENCER ROAD  
ITHACA, NY 14850

\*IVANS  
P.O.Box 850001  
Orlando, FL 32885-0033

\*JERRY DROLESKI  
317 CLEVELAND ST  
ELMIRA , NY 14903

\*JFS CURTZE  
15 Airline Drive  
Rochester , NY 14624

\*KALEIDA HEALTH  
ATTN: LOUIS SCIARRINO  
1031 MICHIGAN AVENUE  
BUFFALO, NY 14203

\*FREDERIC KARDON  
2 Peiry Lane  
Ithaca, NY 14850

\*KJs PROPERTY CARE  
5437 Chicken Coop Rd  
Trumansburg, NY 14886

\*LABEL TAPE SYSTEMS  
5563 Marquesas Cicle  
SARASOTA, FL 34233

\*LAI SEYLER  
92 Mount Pleasant Rd  
Ithaca, NY 14850



\*LANSING RHYTHM WORKSHOP  
135 Northview Rd  
Ithaca, NY 14850

\*MEGGAN LAWSON  
2215 N. TRIPHAMMER RD  
ITHACA, NY 14850

\*LEADING AGE NEW YORK  
FLTC  
13 British American Blvd Ste 2  
Latham, NY 12110-1431

\*LOWES COMMERCIAL SERVICES  
P.O. BOX 530954  
Atlanta, GA 30353-0954

\*M&T Bank LOC  
P.O. Box 62146  
Baltimore, MD 21264-2146

\*MAINES PAPER AND FOOD SERVICE  
P.O.Box 642530  
Pittsburg, PA 15264-2530

\*MASS MUTUAL VA  
PO BOX 92714  
CHICAGO, IL 60675-2714

\*MCKESSON  
P.O.Box 630693  
Cincinnati, OH 45263-0693

\*MELDRIMS PAINT CENTER  
3975 West Rd  
route 281  
Cortland , NY 13045

\*MEMIC  
MEMIC Indemnity Co  
P.O. Box 9500  
Lewiston, ME 04243-9500

\*MERRIFIELD FARMS INC  
P.O. BOX 634  
AUBURN, NY 13021

\*ELIZABETH PIA-MILLER  
4420 MCINTYRE RD  
TRUMANSBURG, NY 14886

\*MOBILEXUSA  
P.O. BOX 17462  
BALTIMORE, MD 21297-0518

\*MODULAR MECHANICAL SERVICES  
5860 Belle Isle Rd  
Syracuse, NY 13209

\*NORTHEAST MEDICAL REPAIRS  
6143 Van Alstine Road  
Camillus, NY 13031

\*NY PENN NUTRITION SERVICES  
74 La Grange St  
Binghamton, NY 13905-1718

\*NYS CHILD SUPPORT  
PROCESSING CENTER  
PO BOX 15363  
ALBANY, NY 12212-5363

\*NYS DEPARTMENT OF LABOR  
CACS-INCOME EXECUTION  
STATE CAMPUS BLDG 12 - RM 256  
ALBANY, NY 12240-0001

\*NYS HIGHER EDUCATION SERVICES  
PO BOX 645182  
Cincinnati, OH 45264-5182

\*NYS UNEMPLOYMENT INS  
P.O.Box 4301  
Binghamton, NY 13902-4301

\*NYSEG  
P.O.Box 11745  
Newark, NJ 07101-4745  
and  
Solomon and Solomon P.C.  
Columbia Circle  
P.O. Box 15019  
Albany NY 12212-5019

\*THE OBSERVER  
PO BOX 127  
DUNDEE, NY 14837

\*OMNICARE  
P.O. Box 715268  
Columbus, OH 43271-5268

\*ORKIN  
139 Dwight Park Cir  
Syracuse, NY

\*PATTERSON MEDICAL  
1000 REMINGTON BLVD  
SUITE 210  
BOLINGBROOK, IL 60440

\*NANCY PECKENPAUGH  
1216 Trumansburg Rd  
Ithaca, NY 14850

\*PERSONAL CONCEPTS  
P.O. BOX 5750  
CAROL STREAM, IL 60197

\*PHILIP NEISSER  
4863 COUNTY RD. 24  
CANTON, NY 13617

\*PITNEY BOWES  
P.O. Box 371887  
Pittsburgh, PA 15250-7887

\*PODIATRY SERVICES OF ITHACA  
408 E. UPLAND RD  
ITHACA, NY 14850

\*POPE, SCHRADER, LLP  
2 COURT ST., 4TH FLOOR  
P.O. BOX 510  
BINGHAMTON, NY 13902

\*POVINELLI  
3810 Union Rd  
Cheektowaga, NY 14225

\*PRIME SERVICES INC  
6400 SHERIDAN DRIVE  
SUITE 112  
WILLIAMSVILLE , NY 14221

\*PROMETRIC  
ATTN: NYS NURSE AIDE REGISTRY  
1260 ENERGY LANE  
ST. PAUL, MN 55108

\*R HOMER CARPETS  
880 RTE 13  
CORTLAND, NY 13045

\*RADIOLOGY ASSOCIATES OF ITHAC  
P.O. Box 7142  
ITHACA, NY 14851-7142

\*ROBERT PACKER HOSPITAL  
P.O. BOX 900  
SAYRE, PA 18840-1625

\*DORIS ROOT  
C/O SUN TRUST BANK 559BP  
PO BOX 85129  
RICHMOND, VA 23285-5129

\*S&S WORLDWIDE  
P.O.Box 210  
Hartford, CT 06141-0210

\*SANICO  
P.O. Box 2037  
Binghamton, NY 13902

\*JENNA SANTUCCI  
3180 Dubois Rd  
Ithaca, NY 14850

\*SARA MATHENEY  
P.O.Box 10040  
Charleston, WV 25357

\*SECURITY MUTUAL LIFE INS CO.  
PO BOX 1625  
BINGHAMTON, NY 13902

\*SIMPLEX GRINNELL  
Simplex Grinnell  
Dept. CH 10320  
Palatine, IL 60055-0320

\*SALSBURY INDUSTRIES  
1010 East 62nd St  
Los Angeles, CA 90001-1598

\*SOUND CIRCLES  
135 Northview Rd  
Ithaca, NY 14850

\*STANLEY ACCESS TECH LLC  
P.O. BOX 0371595  
PITTSBURGH, PA 15251-7595

\*STAPLES BUSINESS ADVANTAGE  
P.O. Box 415256  
Boston, MA 02241-5256

\*STATEWIDE MACHINERY INC  
60 Pixley Industrial Parkway  
Rochester, NY 14624

\*STERICYCLE  
Stericycle Inc  
P.O. Box 6582  
Carol Stream, IL 60197-6582

\*SYRACUSE ORTHOPEDIC SPEC  
5719 WIDEWATERS PKWY  
SYRACUSE, NY 13214-1880

\*TAVES, J. VALDEZ  
39 Cayuta St  
Trumansburg, NY 14886

\*THYSSENKRUPP  
ELEVATOR  
P.O. Box 933004  
Atlanta, GA 31193-3007

\*TIME WARNER CABLE  
Time Warner Cable  
P.O. Box 11825  
Newark, NJ 07101-8125

and  
Southwest Credit Systems, I.P.  
4120 International Pkwy, Suite 1100  
Carrollton, TX 75007-1958

\*TOMPKINS DENTAL  
2309 N. Triphammer Rd  
Ithaca, NY 14850

\*TODAYS OPTIONS  
P.O. BOX 505057  
63150-2127

\*TOMPKINS COUNTY SHERIFF'S DEP  
CIVIL DIVISION  
779 WARREN RD.  
ITHACA, NY 14850

\*TOSHIBA BUSINESS SOLUTIONS  
TOSHIBA BUSINESS SOLUTIONS USA  
P.O. BOX 927  
BUFFALO, NY 14240-0927

\*TOSHIBA FINANCIAL  
P.O.Box 790448  
St. Louis, MO 63179-0448

and  
U.S. Bank Equipment Finance  
1310 Madrid Street  
Marshall, MN 56258

\*TRAVELERS HEALTHCARE D&O  
ADMIN - G.J. Sulliva Co.  
625 The City Drive, Suite 400  
Orange, CA 92868

\*TREASURER OF VIRGINIA  
DIVISION OF CHILD SUPPORT  
PO BOX 570  
RICHMOND, VA 0570

\*ULTRA CHEM INC  
P.O.Box 3717  
Shawnee Mission, KS 66203-0827

\*UNIFORM PROFESSIONALS  
PO BOX 180  
CINCINNATUS, NY 13040

\*DISTRICT 65, IAMAW  
C/O EUN LAMB SECRETARY - TREAS  
PO BOX 2020  
JAMESTOWN, NY 14702-2020

\*UNIVERSAL HOSPITAL SERVICES  
SDS 12-0940  
P.O.Box 86  
Minneapolis, MN 55486-0940

\*US FOODS INC  
P.O. BOX 644547  
PITTSBURG, PA 15264-4547

\*VERIZON WIRELESS  
P.O.Box 408  
Newark, NJ 07101-0408

and  
Joseph M. Shur, Esq.  
Relin, Goldstein & Crane, LLP  
28 East Main Street, Suite 1800  
Rochester, New York 14614

\*JENNIFER WEINRAUB  
121 Cayuga Park Rd  
Ithaca, NY 14850

\*CAYUGA CENTER FOR WOUNDS  
CAYUGA CENTER FOR WOUNDS  
101 DATES DRIVE  
ITHACA, NY 14850

\*JOSEPH ZANFORDINO  
131 E. Green St  
Apt 508  
Ithaca, NY 14850

Judy Thayer, as Executrix of the Estate of Isabelle M. Swingle  
c/o William S. Friedlander, Esq.  
Friedlander, Friedlander, and Arcesi, P.C.  
103 W. Seneca Street, Suite 201  
Ithaca, NY 14850

Dell Grover, as Executor of the Estate of Emma L. Grover  
c/o William S. Friedlander, Esq.  
Friedlander, Friedlander, and Arcesi, P.C.  
103 W. Seneca Street, Suite 201  
Ithaca, NY 14850

Healthcare of New York Workers' Compensation Trust  
c/o SAFE, LLC  
620 Erie Blvd. West  
Suite 100  
Syracuse, New York 13204

**EXHIBIT "2" TO  
ORDER TO SHOW CAUSE**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

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In the matter of the Petition of Reconstruction  
Home and Health Care Center, Inc., a New  
York not-for-profit corporation, for Order of  
Judicial of Dissolution pursuant to Section  
1109 of the Not-for-Profit Corporation Law  
of the State of New York

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**NOTICE OF PETITION**

Index No. 2013-0990

R.J.I. No. 2013-0521-M

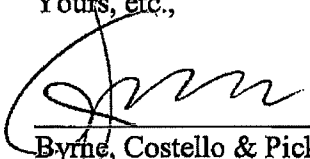
Assigned Justice:  
Hon. Gerald A. Keene

PLEASE TAKE NOTICE that upon the Petition of Petitioner Reconstruction Home and Health Care Center, Inc., verified August 28, 2017, an application will be held at the Tioga County Courthouse, 20 Court Street, Owego, New York 13827, on the 13th day of November, 2017, at 11 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to § 1109 of the Not-for-Profit Corporation Law of the State of New York to dissolve Petitioner Reconstruction Home and Health Care Center, Inc., and for such other and further relief as may be just and proper. PLEASE TAKE FURTHER NOTICE that the complete Petition herein and all exhibits attached thereto may be downloaded at <http://bcplegal.com/news/>.

PLEASE TAKE FURTHER NOTICE that answering papers, if any, shall be filed and served on the undersigned by the date set forth in the Order to Show Cause appended hereto.

Dated: September 6, 2017.

Yours, etc.,



---

Byrne, Costello & Pickard, P.C.  
(John R. Brennan, Esq., Registration Number 2095420)  
Attorneys for Petitioner  
Reconstruction Home and Health Care Center, Inc.  
Tower I, Suite 1600  
100 Madison Street  
Syracuse, New York 13202  
Telephone: 315-474-6448  
Fax: 315-424-8556  
E-mail: [jbrennan@bcplegal.com](mailto:jbrennan@bcplegal.com)



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF TOMPKINS

_____ )	<b>VERIFIED PETITION</b>
In the matter of the Petition of Reconstruction )	
Home and Health Care Center, Inc., a New )	Index No. 2013-0990
York not-for-profit corporation, for Order of )	
Judicial of Dissolution pursuant to Section )	R.J.I. No. 2013-0521-M
1109 of the Not-for-Profit Corporation Law )	
of the State of New York )	Assigned Justice:
_____ )	Hon. Gerald A. Keene

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner Reconstruction Home and Health Care Center, Inc. ("**Petitioner**") by its attorneys Byrne, Costello & Pickard, P.C. (John R. Brennan, Esq.) for its Petition herein respectfully shows to this Court:

1. That Petitioner is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York.
2. That the principal office of Petitioner is located in Tompkins County, New York.
3. That Petitioner's Certificate of Incorporation was filed by the Department of State on May 14, 2004 (a copy of the Certificate of Incorporation of Petitioner is attached hereto and made part hereof as **Exhibit "A"**).
4. That Petitioner was formed prior to the Non-Profit Revitalization Act (2013 N.Y. Laws ch. 549).
5. That its Certificate of Incorporation provides that Petitioner is a Type "B" corporation as (formerly) defined in Subsection b of § 201 the Not-For-Profit Corporation Law.
6. That Subsection c of § 201 of the Not-For-Profit Corporation Law as amended by

Non-Profit Revitalization Act provides that Type “B” corporations are classified as charitable corporations.

7. That charitable corporations are subject to the requirements of Article 11 (Judicial Dissolution) of the Not-for-Profit Corporation Law, as amended.

8. That as permitted under Subsection a of § 601 of the Not-for-Profit Corporation Law, Petitioner has no members.

9. That the By-Laws of Petitioner are attached hereto and made part hereof as **Exhibit “B”**.

10. That as set forth in said By-Laws, the business, property and assets of Petitioner are managed and controlled by a Board of Directors.

11. That the Directors of Petitioner are set forth in **Exhibit “C”** attached hereto and made part hereof.

12. That as stated in its Certificate of Incorporation, the purpose for which Petitioner was formed was to own and operate a certain 120-bed nursing home identified as Beechtree Care Center (f/k/a Reconstruction Home) and located at 310-318 South Albany St. in the City of Ithaca, Tompkins County, New York 14850-5406 (the “**Nursing Home**”).

13. That following a Petition dated October 7, 2013, filed by Petitioner pursuant to Section 511 of the Not-for-Profit Corporation Law, the Nursing Home was sold to 318 South Albany Street LLC (the “**Buyer**”) by Order of the Supreme Court of the State of New York in and for Tompkins County (Hon. Phillip R. Rumsey, JSC) entered in the Tompkins County Clerk’s Office pursuant to Section 510 of the Not-for-Profit Corporation Law and recorded on January 7, 2014, as Instrument No. 2014-00153 (copy of the Order is attached hereto as **Exhibit “D”**).

14. That upon the sale, with the consent of the New York State Department of Health, the Buyer leased the Nursing Home to BTRNC, LLC (the “**New Operator**”) which is a New York limited liability company affiliated with the Buyer.

15. That as set forth in the aforesaid Petition, Petitioner contemplated dissolution after the sale to the Buyer and New York State Department of Health establishment approval of the New Operator as the permanent operator of the Nursing Home.

16. That the aforesaid Petition provided that Petitioner’s assets remaining after the sale would be applied to Petitioner’s outstanding liabilities.

17. That Petitioner heretofore applied Petitioner’s remaining assets to pay costs of patient care and sums owed to New York State (see **Exhibit “E”** attached hereto) and to pay or settle all sums owed to Petitioner’s secured creditors.

18. That the New York State Department of Health heretofore approved the establishment of the New Operator as the permanent operator of the Nursing Home.

19. That Petitioner now desires to apply its remaining assets to ratably pay Petitioner’s remaining unsecured creditors and to subsequently dissolve.

20. That Petitioner sole remaining assets consist (a) cash reserves of \$30,519.37 (see **Exhibit “F”** attached hereto) released to Petitioner by a secured creditor of the Petitioner after the settlement of Petitioner’s mortgage debt, and (b) sums paid and payable to Petitioner under the “Universal Settlement” respecting Medicaid rate appeals and reimbursement litigation brought by nursing homes against the State of New York.

21. That total payments of \$850,000,000 will be paid to facilities by the State of Ne York under the Universal Settlement (see subparagraph 2.1 on page 3 of the Universal Settlement Term

Sheet approved by the State of New York attached hereto as **Exhibit “G”**).

22. That New York State will pay the Universal Settlement in annual installments over five years (see subparagraph 2.1 on page 3 of the Universal Settlement Term Sheet attached hereto as **Exhibit “G”**).

23. That two (2) installments under the Universal Settlement, each in the amount of \$48,584.23, have been paid with respect to the Nursing Home, for a total sum paid to date by New York State of \$97,168.46.

24. That said \$97,168.46 was paid by New York State to the New Operator for the benefit of Petitioner.

25. That the remaining three (3) installments to be paid by New York State under the Universal Settlement with respect to the Nursing Home are each expected to be in the amount of \$48,584.23, for a total of \$145,752.69.

26. That said \$145,752.69 is expected to be paid by New York State to the New Operator for the benefit of Petitioner.

27. That consequently \$242,921.15 in total is expected to be paid by New York State under the Universal Settlement with respect to Petitioner’s prior ownership and operation of the Nursing Home.

28. That funds due facilities pursuant to the Universal Settlement are subject to offset and recoupment by New York State for debts that are (or may be) due and owing from facilities to the State (see paragraph 4 on page 4 of the Universal Settlement Term Sheet attached hereto as **Exhibit “G”**).

29. That New York State will to pursue recoupment against a facility’s Medicaid rate

before recouping against payments due under the Universal Settlement (see subparagraph 4.3 on page 4 of the Universal Settlement Term Sheet attached hereto as **Exhibit “G”**).

30. That New York State can consequently hold a current owner responsible for debts that are (or may be) due and owing from a prior owner to the State.

31. That as a result, the New Operator can consequently be held responsible for, among other things, excess Medicaid payments subsequently determined to be due to New York State with respect to Petitioner’s prior ownership and operation of the Nursing Home.

32. That the New Operator claims that the costs of patient care and sums previously owed by Petitioner to New York State exceeded Petitioner’s then remaining assets (see **Exhibit “E”** attached hereto).

33. That the New Operator has retained the \$97,168.46 heretofore paid by New York State under the Universal Settlement to cover its claimed excess costs of patient care.

34. That the New Operator has also advised Petitioner of its intent to lay claim to the remaining \$145,752.69 that is expected to be paid by New York State under the Universal Settlement to cover potential recoupments against the New Operator’s Medicaid rate for excess Medicaid payments that may hereafter be determined to be due to New York State with respect to Petitioner’s prior ownership and operation of the Nursing Home.

35. That the New Operator and Petitioner heretofore entered in to settlement negotiations with respect to the New Operator’s claims.

36. That as a result of such negotiations, Petitioner has agreed to accept and the New Operator has agreed to pay \$75,000 in cash to Petitioner in full settlement of all claims between the parties.

37. That upon receipt of the \$75,000 settlement payment, Petitioner's total assets (including Petitioner's remaining cash reserves of \$30,519.37 as set forth on **Exhibit "F"** attached hereto) will be \$105,519.37.

38. That at the time of the Order of the Supreme Court authorizing the sale of the Nursing Home, the unpaid debts and liabilities owed to Petitioner's unsecured creditors totaled \$353,521.66 (a list of Petitioner's then unsecured creditors is attached hereto as **Exhibit "H"**).

39. That in light of the fact that Petitioner's unsecured debt of \$353,521.66 exceeds Petitioner's total assets of \$105,519.37, this Petition is authorized under Section 1102(a)(1)(A) of the Not-for-Profit Corporation Law on the ground that the assets of Petitioner are not sufficient to discharge its liabilities.

40. That this Petition was authorized by unanimous written consent of Petitioner's Board of Directors (a copy of the written consent of Petitioner's Board of Directors is attached hereto as **Exhibit "I"**).

41. That pursuant to this Petition, Petitioner desires to distribute its total remaining assets of \$105,519.37 to pay all administrative costs of dissolution (including the costs of this Petition) and to thereafter ratably pay Petitioner's remaining unsecured creditors.

42. That concurrent with the filing of this Petition and pursuant to subsection b of Section 1102 of the Not-For-Profit Corporation Law, Petitioner has served this Petition upon the Binghamton Regional Office (Michael J. Danaher, Esq.) of the New York State Attorney General.

43. That concurrent with the filing of this Petition and pursuant to subsection c of Section 1104 of the Not-For-Profit Corporation Law, Petitioner has served this Petition upon the New York State Department of Taxation and Finance.

44. That the New York State Charities Registration Number for Petitioner is 21-48-67 and that all filings required by the Charities Bureau of the Attorney General respecting Petitioner have been made to date.

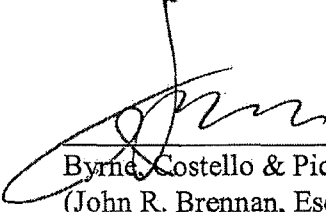
45. That as set forth in attached hereto as **Exhibit "J"**, Petitioner has requested the approval of the New York State Department of Health to the dissolution of Petitioner.

46. That by reason of the foregoing, dissolution of Petitioner would be in the best interests of Petitioner.

47. That no prior application has been made for the relief requested for herein.

WHEREFORE, Reconstruction Home and Health Care Center, Inc., respectfully requests that this Court, in its discretion, entertain this Petition and thereupon make an Order requiring all persons interested in Reconstruction Home and Health Care Center, Inc., to show cause before it at a time and place specified by this Court, but not less than four weeks after the granting of the Order, why Petitioner should not be dissolved and why this Court should not grant Reconstruction Home and Health Care Center, Inc., such other and further relief as to this Court may seem just and proper.

Dated: August 28, 2017



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Byrne, Costello & Pickard, P.C.  
(John R. Brennan, Esq., Registration Number 2095420)  
Attorneys for Petitioner  
Reconstruction Home and Health Care Center, Inc.  
Tower I, Suite 1600  
100 Madison Street  
Syracuse, New York 13202  
Telephone: 315-474-6448  
Fax: 315-424-8556  
E-mail: [jbrennan@bcplegal.com](mailto:jbrennan@bcplegal.com)

**VERIFICATION**

STATE OF NEW YORK            )  
COUNTY OF TOMPKINS        ) ss.:

Anthony Votaw, being duly sworn deposes and says:

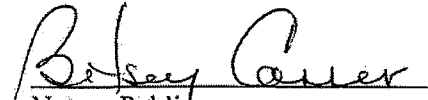
1. I am the President of the Board of Directors of Reconstruction Home and Health Care Center, Inc., the Petitioner named in the above Petition, and make this verification at the direction of its Board of Directors.

2. I have read the foregoing Petition and know the contents thereof, and the same is true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.



\_\_\_\_\_  
Anthony Votaw

Sworn to before me  
the 28 day of August, 2017

  
\_\_\_\_\_  
Notary Public

**BETSEY CONNER**  
Notary Public, State of New York  
Appointed in Cayuga Co.  
Official #01CO5072278  
Commission expires 11/26/19



*EXHIBIT “A”*

Certificate of Incorporation of  
Reconstruction Home and Health  
Care Center, Inc.

State of New York )  
Department of State ) ss:

*I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.*

Witness my hand and seal of the Department of State on

**October 01, 2004**



A handwritten signature in black ink, appearing to read "R. A. ...", is written over the printed title.

Secretary of State

00000000000000000000000000000000

FO40514000078

CERTIFICATE OF INCORPORATION

OF

RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.

Under Section 402 of the  
Not-For-Profit Corporation Law

THE UNDERSIGNED, for the purpose of forming a corporation under Section 402 of the  
Not-For-Profit Corporation Law, hereby certifies:

FIRST: The name of the corporation is Reconstruction Home and Health Care Center,  
Inc.

SECOND: The corporation is not formed for pecuniary profit or financial gain. All  
income and earnings of the corporation shall be used exclusively for its corporate purposes. The  
corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the  
Not-For-Profit Corporation Law.

THIRD: The purposes for which the corporation is to be formed are as follows:

(a) To serve aged, disabled and chronically impaired persons by establishing  
and operating a residential health care facility consisting of skilled nursing home beds pursuant to  
Article 28 of the Public Health Law of the State of New York;

(b) To buy, own, sell, convey, assign, mortgage, or lease any interest in real  
estate and personal property and to construct, maintain and operate improvement thereon  
necessary or incident to the foregoing purposes;

(c) To borrow money and issue evidence of indebtedness in furtherance of any  
or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on  
the corporation's property;

(d) To do any other act or thing incidental to or in connection with the foregoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its individual members, directors or officers, except as provided under Article 5 of the Not-For-Profit Corporation Law; and

(e) To operate exclusively for charitable and benevolent purposes as defined by Section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provisions of any future United States Internal Revenue Law).

(f) To do and perform all acts necessary to accomplish the purposes of the corporation, including the execution of the regulatory agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and such other instruments and undertakings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such regulatory agreement and other instruments and undertakings shall remain binding upon the corporation, its successors and assignees, so long as the Corporation's mortgage is insured or held by the Secretary of Housing and Urban Development.

(g) To provide, on a nonprofit basis, nursing home facilities and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care where no adequate housing exists for such groups pursuant to section 232 of the National Housing Act, as amended.

FOURTH: This corporation, pursuant to section 201 of the Not-For-Profit Corporation Law, shall be a Type "B" corporation.

FIFTH: The office of the corporation is to be located in the County of Tompkins, State of New York.

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SIXTH: The names and addresses of the directors of the corporation until the first annual meeting are:

<u>Name</u>	<u>Address</u>
Linda Bruckner	5720 Updike Road, Trumansburg, NY 14886
Joseph Fitzgerald	42 Bradley Street, Trumansburg, NY 14886
Marguerite Johnson	2002 Ellis Hollow Road, Ithaca, NY 14850
Marilyn Kinner	7 Pease Street, Trumansburg, NY 14886
Scott Pronti	19 Conion Road, Lansing, NY 14882

SEVENTH: The name and residence of the incorporator to this Certificate of Incorporation is as follows: Joseph Fitzgerald, 42 Bradley Street, Trumansburg, NY 14886

The incorporator is of the age of 18 years or over and each person named as a Director of the corporation is 18 years of age or older.

EIGHTH: The duration of the corporation shall be perpetual.

NINTH: The corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay any dividends, and shall be operated exclusively for the purposes enumerated in Paragraph Third hereof, thereby to lessen the burdens of government and promote social welfare.

TENTH: No part of the net income or net earnings of the corporation shall inure to the benefit or profit of any individual member, or any trustee, director or officer of the corporation. No director, officer or employee of the corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services to or for the corporation.

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ELEVENTH: No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, or participating in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

TWELFTH: In the event of dissolution, liquidation or winding up of the corporation, whether voluntary or involuntary, the funds, property, or other assets then held legally or beneficially by the corporation shall be distributed to charitable corporations or institutions within the County of Tompkins, State of New York entitled to the exemption status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, as determined by the Board of Directors of the corporation and subject to approval of a Justice of the Supreme Court of the State of New York, Sixth Judicial District.

THIRTEENTH: Reconstruction Home and Health Care Center, Inc. designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him is as follows: 318 South Albany Street, Ithaca, NY 14850

FOURTEENTH: Notwithstanding any other provision of this Certificate of Incorporation, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue law).

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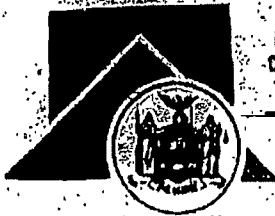
IN WITNESS WHEREOF, this certificate has been signed by the incorporator this 3<sup>rd</sup>  
day of Sept. 2003. *Lorie A. Skurka*

LORIE A. SKURKA  
Notary Public, State of New York  
No. 01SK4953193  
Qualified in Tompkins County  
Commission Expires July 3, 2007

B. *Joseph Fitzgerald*

Name: Joseph Fitzgerald, Incorporator  
42 Bradley Street  
Trumansburg, NY 14886

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

RECEIVED

APR 26 2004

April 19, 2004

Ms. Irene Rathke  
Reconstruction Home and Health  
Care Center, Inc.  
318 South Albany Street  
Ithaca, New York 14850

Re: Certificate of Incorporation of Reconstruction Home and Health Care Center, Inc.

Dear Ms. Rathke:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23<sup>rd</sup> day of January, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Reconstruction Home and Health Care Center, Inc. dated September 3, 2003.

Sincerely,

Karen S. Westervelt  
Executive Secretary

/md

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040514000 of

CERTIFICATE OF INCORPORATION

OF

RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.

Under Section 402 of the Not-For-Profit Corporation Law  
of the State of New York

Filed by: Levene Gouldin & Thompson, LLP  
450 Plaza Drive  
Vestal, New York 13850

STATE OF NEW YORK  
DEPARTMENT OF STATE

MAY 14 2004

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*EXHIBIT “B”*

By-Laws of Reconstruction Home  
and Health Care Center, Inc.

BY LAWS  
OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.

ARTICLE I

Name, Seal and Offices

1. Name. The name of this not-for-profit corporation (hereinafter "Corporation") is Reconstruction Home and Health Care Center, Inc.
2. Seal. The Corporation shall have a corporate seal and shall use such seal personally, but the use of same shall be necessary only as required by law.
3. Offices. The principal office of the Corporation shall be in the County of Tompkins. The Corporation may also have offices at such other places as the Board of Directors may from time to time appoint or the purposes of the Corporation may require.

ARTICLE II

Purpose

1. Purpose. The purposes of the Corporation are as set forth in the Corporation's Certificate of Incorporation, as same may be amended from time to time.

ARTICLE III

Directors

1. Election. The business, property and assets of the Corporation shall be managed and controlled by a Board of Directors who shall be elected to hold office until the expiration of their respective terms of office and until the election and qualification of their respective successors, except as hereinafter or otherwise provided for filling vacancies.
2. Number. The Board of Directors shall consist of not less than three (3) nor more than fifteen (15) directors. The number of directors shall be set by majority vote of the Board of Directors at any annual or special meeting of the Board of Directors but no decrease shall shorten the term of an incumbent director.
3. Term. The directors of the Corporation shall be divided into three classes with an equal number of directors in each class, or as nearly equal as possible. The term of office of the first class shall expire at the first annual meeting of the Corporation after their election. The terms of office of the second class shall expire at the second succeeding annual meeting and third class at the third succeeding annual meeting. At each annual meeting after the election of the first classified board, directors shall be elected for a term of three years to replace those whose terms shall expire.

RECORDED - 2009

RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.

4. Honorary Directors. Upon recommendation of the Nominating Committee and majority vote of the directors present at an Annual Meeting, a person may be elected as an honorary director. The person must have shown continued outstanding contribution and exceptional interest in Reconstruction Home and Health Care Center, Inc. . The person being considered does not need to be a previous board member. Notice of the nominations should be given at least 30 days prior to the Annual Meeting. A past board member being considered for any honorary director position can be nominated at any regular board meeting of the year, not necessarily just an annual meeting. Honorary directors will have the privilege of attending board meetings with voice but not vote. In no event shall an officer or director of Reconstruction Home, Inc. serve as an honorary director of Reconstruction Home and Health Care Center, Inc.
  
5. Resignation. Any director may resign at any time by giving written notice of such resignation to the Board of Directors.
  
6. Removal. Any director may at any time be removed with cause by a majority vote of the Board of Directors or without cause by a two-thirds vote of the Board of Directors.
  
7. Vacancies. Any vacancy occurring among the directors, including any vacancy to be filled by reason of an increase in the number of directors, may be filled by the Board of Directors of the Corporation, unless otherwise required by law, the Certificate of Incorporation or these Bylaws. A director elected to fill a vacancy shall serve until the next succeeding annual meeting of the Board of Directors and until his successor shall have been elected and qualified.
  
8. Annual Meeting. The annual meeting of the Board of Directors shall be held in January of each year for the purpose of the election of directors, the election of officers and the transaction of such other business as may properly come before the meeting. The annual meeting shall be held at the Corporation's principal office on a date and time determined by the Board of Directors.
  
9. Special Meetings. Special meetings of the Board of Directors may be called by the President, and must be called by the President on the written request of three (3) members of the Board.
  
10. Notice of Meetings. Notice, Financial Reports, and Planned Agenda of all directors' meetings except as herein otherwise provided, shall be given at least three (3) days before the meeting to the usual business or residence address of each director, but such notice may be waived in writing by any director. At any meeting at which every director shall be present even though without any notice or waiver thereof, any business may be transacted.
  
11. Quorum. At all meetings of the Board of Directors, a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these Bylaws.

012000-000049

12. Participation by Conference Telephone. Any one or more members of the Board of Directors, or any committee thereof, may participate in any meeting of the Board or such committee by means of a conference telephone or similar equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence of such person at such a meeting.

13. Contracts and Services. The directors and officers of the Corporation may be interested directly or indirectly in any contract relating to or incidental to the operations conducted by the transaction, notwithstanding that they may also be acting as individuals, or as trustees of trusts, or as agents for other persons or corporations, or may be interested in the same matters as shareholder, director or otherwise; provided, however, that any contract, transaction, or act on behalf of the Corporation in a matter which the directors or officers are personally interested as shareholders, directors or otherwise shall be at arm's length and not violate the proscription in the Certificate of Incorporation against the Corporation's use or application of its funds for private benefit; and provided further that no contract, transaction, or act shall be taken on behalf of the Corporation if such contract, transaction or act is a prohibited transaction or would result in the denial of the tax exemption under the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended. Each year immediately following the annual meeting a disclosure statement identifying such transactions, contracts or acts in which the directors and officers or their immediate family members are personally interested, shall be submitted to the President of the Board of Directors.

14. Compensation. Directors shall not receive any payment for their services as such, but by resolution of the Board of Directors a fixed reasonable sum for expenses for attendance at each regular or special meeting of the Board of Directors may be allowed.

15. Powers. All the corporate powers, except as are otherwise provided for in these Bylaws and in the laws of the State of New York, shall be and are hereby vested in and shall be exercised by the Board of Directors. The Board of Directors may by general resolution delegate to committees of their own number, or to officers of the Corporation, such powers as they may see fit.

16. General Management. The general management of the affairs of the Corporation shall be vested in the Board of Directors unless otherwise specifically provided for in the Corporation's Certificate of Incorporation.

17. Indemnification. The Corporation shall defend, indemnify and hold harmless its officers, directors, committee members, agents and administrative personnel, and each of them in accordance with and to the full extent permitted by law, from and against all claims, actions, judgments, settlement amounts, costs and expenses, including without limitation reasonable attorneys' fees arising out of or resulting from actions or claims against them (including, without limitation, civil and criminal actions and proceedings, instituted or threatened and appeals therein) by reason of being or having been officers, directors, committee members, agents or administrative personnel of this corporation or having served any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity at the request of the

Corporation. To the extent available, the Corporation shall carry directors' and officers' liability insurance in such amounts and with such companies as are acceptable to the Board of Directors.

## ARTICLE IV

### Officers

1. Number. The officers of the Corporation shall be the President, Secretary, Treasurer and such other officers with such powers and duties not inconsistent with these Bylaws as may be appointed and determined by the Board of Directors. The offices of President and Secretary may not be held by the same person.
2. Election, Terms of Office and Qualifications. The officers shall be elected annually by the Board of Directors from among such persons as the Board of Directors shall determine at the annual meeting of the Board of Directors. The President shall hold office for no more than three (3) consecutive one (1) year terms.
3. Vacancies. In case any office of the Corporation becomes vacant by death, resignation, requirement, disqualification, or any other cause, the majority of the directors then in office may elect an officer to fill such vacancy, and the officer so elected shall hold office and serve until the next succeeding annual meeting of the Board of Directors and until the election and qualification of his successor.
4. President. The President shall preside at all meetings of the Board of Directors. He shall have and exercise general charge and supervision of the affairs of the Corporation and shall do and perform such other duties as may be assigned to him/her by the Board of Directors.
5. Secretary. The Secretary shall be responsible for such books, documents and papers as the Board of Directors may determine. He/she shall attend and cause the minutes of all the meetings of the Board of Directors of the Corporation to be kept. He/she may sign with the President in the name and on behalf of the Corporation, any contracts or agreements authorized by the Board of Directors, and when so authorized or ordered by the Board of Directors, he/she may affix the seal of the Corporation. He/she shall, in general, perform all the duties incident to the office of Secretary, subject to the control of the Board of Directors, and shall do and perform such other duties as may be assigned to him/her by the Board of Directors.
6. Treasurer. The Treasurer shall have custody of all funds, property, and securities of the Corporation, subject to such regulations as may be imposed by the Board of Directors. He may be required to give bond for the faithful performance of his duties, in such sums and with such sureties as the Board of Directors may require. When necessary or proper he/she may endorse on behalf of the Corporation for collection checks, notes and other obligations and shall deposit, or cause them to be deposited by delegation of authority and he/she shall cause payments as may be necessary or proper to be made on behalf of the Corporation. He/she shall cause the books of the Corporation to be kept for the purpose of full and accurate account of all monies and obligations received and paid or incurred for or on account of the Corporation and he/she shall exhibit such books at all reasonable times to any Director on application at the Offices of the Corporation.

He/she shall, in general, perform all the duties incident to the office of Treasurer, subject to the control of the Board of Directors.

7. Removal. Any officer may be removed with cause by the affirmative vote of a majority of the entire Board of Directors or without cause by a two-thirds vote of the entire Board of Directors at any regular or special meeting called for that purpose.

## ARTICLE V

### Agents and Representatives

The Board of Directors may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board of Directors may see fit, so far as may be consistent with these Bylaws, to the extent authorized or permitted by law.

## ARTICLE VI

### Contracts

The Board of Directors, except as in these Bylaws otherwise provided, may authorize any officer, agent or employee to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless as authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the corporation by any such contract or engagement, or to pledge its credit, or render it liable pecuniarily for any purpose or to any amount.

## ARTICLE VII

### Committees

1. Executive Committee. There may exist an Executive Committee of the Board of Directors. The membership of the Executive Committee shall consist of the President, the Secretary and the Treasurer of the Corporation.

(a) The President of the Board of Directors shall serve as Chairperson of the Executive Committee.

(b) The Executive Committee may act on behalf of the Corporation in any manner when the Board of Directors is not in session, except as prohibited by statute. Actions undertaken by the Executive Committee shall be reported to the Board of Directors at the next regular or special meeting of the Board.

(c) A majority of the entire Executive Committee shall constitute a quorum for the transaction of all business that may properly come before it. Except as otherwise required by law

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or these Bylaws, the act of a majority of the members of the entire Executive Committee present at a meeting at which a quorum is present shall be an act of the Executive Committee.

(d) Each member of the Executive Committee shall be entitled to one vote. There shall be no voting by proxy.

(e) The term of office of each member of the Executive Committee shall be co-extensive with his/her term of office as an officer of the corporation. Any member of the Executive Committee who shall cease to be an officer of the Corporation shall ipso facto cease to be a member of the Executive Committee.

(f) Vacancies in the membership of the Executive Committee shall be filled by such officer's successor in office.

2. Standing Committees. The Standing Committees of the Corporation are the Nominating and Finance.

(a) The Nominating Committee shall be appointed by the President. The Committee shall recommend a slate of candidates for the Board of Directors of this Corporation for the class of Directors whose term is expiring at the given annual meeting and to fill vacancies in the Board of Directors, and shall recommend a slate of candidates for officers of this Corporation.

(b) The Finance Committee shall consist of the Treasurer and others appointed by the President. This committee will assure that this not-for-profit organization is managed in a financially competent manner. The committee will monitor and provide guidance on specific issues, review the budget and internal and external financial statements. Committee members shall receive copies of cash flow statements, financial statements, accounts payable analysis, accounts receivable analysis, bank account balances, mandated reports due and insurance/wage/fringe benefits analysis.

(c) Each Standing Committee shall consist of not less than three (3) directors. Non-directors can sit as members of a Standing Committee without voting rights.

A majority of the voting members of the Standing Committee shall constitute a quorum for the transaction of all business that may properly come before it. The act of the majority of the voting members of a Standing Committee present at a meeting at which a quorum is present shall be the act of the Standing Committee.

Each voting member of the Standing Committee shall be entitled to one (1) vote. There shall be no voting by proxy.

The term of office of each voting member of a Standing Committee shall be co-extensive with the term of his/her office as a Director, unless the President of the Board of Directors at the time of his/her designation shall affix a shorter period of term of office.



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3. Special Committees. The Board of Directors by resolution adopted by a majority of the Board may create special committees:

(a) Personnel Committee shall conduct/review employee relations matters for recommendation to the Board of Directors, (i.e., employee handbook, union negotiations, employee bonuses, employer policies and procedures).

(b) The medical Advisory Committee/Quality Assurance Committee shall monitor and ensure continued quality assurance in programs; develop/amend medical policies; review medical services; advise the Board of Directors regarding medical and related problems; establish procedure for matters such as physician visits, records, consultant and other related services. This committee shall meet quarterly.

(c) Building and grounds committee shall meet with the appropriate staff supervisor to review results of maintenance inspection and operation within the facility - to include interior and exterior maintenance, grounds, parking areas and any needs that should be addressed for repair or replacement.

(d) All Special Committees shall report to the Board of Directors at the next meeting following the committee's meeting.

4. Advisory Committee. In addition to the above, the Board of Directors may appoint from its number, or from among such persons as the Board may see fit, one or more advisory committees, and at any time may appoint additional members thereto. Such advisory committees shall advise with and aid the officers of the Corporation in all matters designated by the approval of the Board of Directors, prescribe rules and regulations for the call and conduct of meetings of the committee and other matters relating to its procedure.

The members of any of the above committees shall not receive any payment for their services as such, but by resolution of the Board of Directors a fixed reasonable sum for expenses for attendance at each regular or special meeting of such committee may be allowed.

ARTICLE VIII

Fiscal Year

The fiscal year of the Corporation shall commence on January 1 of each year and end on December 31.

ARTICLE IX

Prohibition Against Sharing in Corporate Earnings

No director, officer or employee of or member of a committee of or person connected with the Corporation, or any other private individual shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this shall not

prevent the payment to any such person of such reasonable compensation for services rendered to or for the Corporation in effecting any of its purposes as shall be fixed by the Board of Directors and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation.

## ARTICLE X

### Investments

The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors, provided, however, that no action taken is a prohibited transaction or would result in the denial of the tax exemption under the Internal Revenue Code and its regulations as they now exist or they may hereafter be amended.

## ARTICLE XI

### Voting Upon Shares of Other Corporation

Unless otherwise ordered by the Board of Directors, the President shall have full power and authority on behalf of the Corporation to vote in person at any meeting of shareholders of any corporation in which this Corporation may hold shares, and at any such meeting may possess and exercise all of the rights and powers incident to the ownership of such shares which, as the owner thereof, this Corporation might have possessed and exercised if present. The Board of Directors may confer like powers upon any other person and may revoke any such powers as granted at its pleasure.

## ARTICLE XII

### Shared Services or Services Between Related Corporations

Any shared services between the Corporation or any organization related to the Corporation shall be charged to the Corporation in an amount and in a manner consistent with generally accepted accounting practices and applicable rules and/or regulations of any then existing third-party reimbursement agencies.

## ARTICLE XIII

The Bylaws may be amended by an affirmative vote of two-thirds of the entire Board of Directors at any meeting of the Board provided that at least ten (10) days written notice of the proposed amendment is given.

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*EXHIBIT “C”*

Board of Directors of  
Reconstruction Home and  
Health Care Center, Inc.

BOARD OF DIRECTORS AND OFFICERS OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.

Sarah Galbreath  
Project Manager  
HOLT Architects, P.C.  
217 N. Aurora St.  
Ithaca, New York 14850

Donna George (Secretary)  
Hospicare  
Coordinator of Bereavement Services  
172 E. King Rd.  
Ithaca, New York 14850

Amy Iles (Treasurer)  
Sciarabba, Walker & Co., LLP  
200 E. Buffalo St.  
Ithaca, New York 14850

Kara G. Pass, Sr. Vice President (Board Vice President)  
Tompkins Financial Advisors  
119 East Seneca Street  
Ithaca, New York 14850

Anthony Votaw, VP (Board President)  
Cayuga Medical Center at Ithaca  
101 Dates Drive  
Ithaca, New York 14850

Jeffrey Walker, Esq.  
Schlather, Stumbar, Parks & Salk, LLP  
200 East Buffalo Street  
Ithaca, New York 14850

*EXHIBIT “G”*

Universal Settlement Term Sheet  
approved by the State of New York

**TERM SHEET FOR SETTLEMENT OF CERTAIN  
MEDICAID RATE-RELATED APPEALS & LITIGATION  
DECEMBER 19 , 2014**

**WHEREAS**, the Nursing Home Facilities located in New York State (the "Facilities") have, indirectly through their associations and/or directly on their own behalf, enjoyed a mutually beneficial longstanding cooperative business relationship with the Department of Health ("DOH"), the Division of Budget ("DOB") and the Office of the Medicaid Inspector General ("OMIG") (collectively, the "State");

**WHEREAS**, the Facilities currently have pending rate appeals and pending litigation that constitute a considerable burden and risk for both the Facilities and the State to perpetuate;

**WHEREAS**, effective January 1, 2012, New York State's reimbursement methodology evolved into a different statewide pricing methodology implemented by subdivision 2-c of section 2808 of the Public Health Law;

**WHEREAS**, the Facilities and the State have participated in full discussion and good faith negotiations to eliminate their respective aforementioned burdens and risks; and collectively seek to move forward into the new statewide pricing methodology as seamlessly, efficiently and productively as possible without potential disruption by pending rate appeals and pending litigation concerning the prior reimbursement methodology;

**WHEREAS**, the Facilities desire to cease, through this Settlement Agreement, (i) pending rate appeals and pending litigation that dispute or contest all aspects of the prior reimbursement methodology, unless specifically excluded as set forth in this Settlement Agreement, and (ii) certain other matters as described in Section 1, including the introductory paragraph set forth in Section 1 and all of its enumerated subparagraphs;

**WHEREAS**, the State desires, in exchange for the cessation of the Facilities' pending rate appeals and pending litigation that dispute or contest all aspects of the prior reimbursement methodology, unless specifically excluded as set forth in this Settlement Agreement, to settle any claims or counter claims it may have against the Facilities relating to the prior reimbursement methodology, unless specifically excluded as set forth in this Settlement Agreement, and to pay to the Facilities' current and former owners, as appropriate, \$850 million, less any recoupments and all amounts allocated to any proposed Distributee that does not participate in the Settlement Agreement, as such sum is allocated among the Nursing Home Facilities themselves, over FY 2014-2015 through 2018-2019, provided that this Settlement Agreement is universally accepted by all Facilities;

**WHEREAS**, the State agrees to continue working in good faith to implement this Settlement Agreement consistent with the express terms set forth herein; and

**WHEREAS**, the Facilities agree to continue working in good faith to implement this Settlement Agreement consistent with the express terms set forth herein.

**TERM SHEET FOR SETTLEMENT OF CERTAIN  
MEDICAID RATE-RELATED APPEALS & LITIGATION  
DECEMBER 19, 2014**

**NOW, THEREFORE**, the State of New York, and the Facilities, including current and former owners of the Facilities (collectively, the "Distributees") desire that the following terms shall form the basis of a settlement agreement to be approved by the parties (the "Settlement Agreement"):

1. **Claims, Appeals, and Litigation:** Except as expressly excluded herein, the Distributees, in exchange for the payments described below, shall withdraw, discontinue and release with prejudice any known or unknown claims, rate appeals or litigation brought: (i) or could be brought on or before the effective date of the Settlement Agreement (defined as the date that DOH affixes its signature to the Settlement Agreement); or (ii) could be brought after the effective date of the Settlement Agreement, by any Distributee, relating to:
  - 1.1 Any Medicaid reimbursement rates and/or any reimbursement methodology utilized for Facilities for rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law, regardless of whether such claim, appeal or litigation: (i) was filed prior or subsequent to January 1, 2012; (ii) did, or may have resulted in a favorable decision for the Facility, former or current owner or the State; or (iii) would or may have resulted in adjustments in favor of a Facility, former owner, current owner and/or the State; and
  - 1.2
    - (i) Wage Equalization Factor claims by Facilities, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims by Facilities, in connection with any Medicaid rate reimbursement methodology;
    - (ii) Case Mix adjustments claims by Facilities related to rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;
    - (iii) Rebasing issues, including hold harmless claims and the \$210 million scale back;
    - (iv) DOH being compelled to consider a rate appeal under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law prior to the date of the last installment payment made under section 6 herein; and
    - (v) Notwithstanding subparagraphs (i) through (iv) of this Section, the State will correct computational errors for the issues identified in those subparagraphs. Computational errors shall mean solely errors in mathematical operations. Computational errors shall not include alleged errors such as the inclusion of reserved bed days in the definition of patient days, the classification of regions by counties, or any other alleged error pertaining to judgment, classification, or data usage; and
  - 1.3 The Medicaid Global Cap, as such term is defined in sections 91 and 92 of Part H of chapter 59 of the laws of 2011, as amended.

**TERM SHEET FOR SETTLEMENT OF CERTAIN  
MEDICAID RATE-RELATED APPEALS & LITIGATION  
DECEMBER 19, 2014**

**2. Payments**

**2.1 Amount:**

- (i) Contingent upon the complete satisfaction of all other terms set forth herein, the State shall pay to eligible Distributees or the Distributee's designated professional, subject to Appropriation, Assessment and Recoupment, up to a total of \$170 million in funds annually per State fiscal year for 5 fiscal years commencing with State Fiscal Year (FY) 2014-15 as set forth in Section 6 of this Settlement Agreement.
- (ii) The total amount of funds eligible for payment under the Settlement Agreement over the 5 year period shall be \$850 million, less: (a) any recoupments; and (b) all amounts allocated to any proposed Distributee that does not participate in the Settlement Agreement.

**2.2 Source of Funds:** The funds distributed (not to exceed a total of \$850 million) shall be derived annually in each of State FYs 2014-15, 2015-16, 2016-17 and 2017-18 (and if necessary in accordance with the Distribution Schedule below, 2018-19) from the following sources:

- (i) \$50 million in resources otherwise set aside for litigation;
- (ii) \$50 million in resources set aside under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law, otherwise known as the "appeals cap"; and
- (iii) \$70 million in resources collected from a portion of the payments made by the nursing home industry as an alternative method of cost containment authorized by section 38 of Part C of chapter 60 of the laws of 2014.

**2.3 Amount Allocated to Each Facility:** Allocations of payments to the Distributees or the Distributee's designated professional shall be made pursuant to a schedule agreed to by the Distributees and the State, and attached hereto as Exhibit 1.

**2.4 Form of Payment:**

- (i) Payments to Distributees that provide Releases acceptable to the State and satisfy all other terms set forth herein, shall be in the form of lump sum "offline" payments ("lump sum payments"), separate and discrete from any other Medicaid reimbursement payments, including Fee-For-Service rates.



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MEDICAID RATE-RELATED APPEALS & LITIGATION  
DECEMBER 19, 2014**

- (ii) Such lump sum payments shall be made directly to the Distributee or the Distributee's designated professional over a five fiscal year period as described below, subject to Appropriation, Assessment and Recoupment.
- (iii) Such lump sum payments shall not be included in any benchmark rates calculated for the purposes of Managed Care rates.

**3. Appropriation:**

- 3.1 The obligations of the State under the Settlement Agreement shall not constitute a debt of the State within the meaning of the New York State Constitution or any New York statute, and may only be undertaken by the State using funds that have been appropriated for such purpose or otherwise lawfully available as set forth in Section 41 of the State Finance Law.
- 3.2 The State, through the Governor, agrees to propose an appropriation in order to fulfill the obligations of the State under the Settlement Agreement in the Executive Budget each year during the term of the Settlement Agreement commencing with State Fiscal Year 2015-16 in an amount sufficient to meet its obligations under the Settlement Agreement, and will use best efforts to obtain legislative approval.

**4. Recoupment:**

- 4.1 The State has provided the Distributees with a list of all debts that are claimed to be owed to the State by any Distributee as of December 1, 2014, and the State will provide the Distributees with a list of net payments to be made to each Distributee with respect to the installment referred to in Section 6.1(i) and (ii) below (both such lists are attached hereto as Exhibit 2).
- 4.2 At the State's discretion, up to 70% of the distribution to a Distributee for FY 2014-2015 pursuant to Section 6.1 shall be offset by amounts owed to the State by such Distributee, as such amounts are set forth in Exhibit 2 attached hereto. All other distributions to Distributees in the four remaining installments shall be offset by the amounts owed by the Distributees to the State as of the date the installment is paid.
- 4.3 Before offsetting any installment payment under the Settlement Agreement, the State shall first reduce amounts owed by a Distributee through such Distributee's Medicaid rates; provided that, any remaining balance may be recouped by the State from payments made under the Settlement Agreement at the percentage identified herein, or by an alternative percentage agreed to by the parties, through a debt repayment plan.
- 4.4 A Distributee may submit a debt repayment plan to reduce the amount of recoupment by the State; provided, however, the State shall have sole discretion to approve, reject or modify such a plan.

**TERM SHEET FOR SETTLEMENT OF CERTAIN  
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DECEMBER 19, 2014**

- 4.5 In all instances, the foregoing shall be without prejudice to the State's collection of the balance of any monies owed to the State by any Distributee, where such recoupment of settlement payments is not in full satisfaction of all monies owed to the State by such Distributee.
- 4.6 Subject to any applicable statute of limitations, the foregoing is without prejudice to the Distributee's right to contest the validity and basis of the State's recoupment from distributions in those four remaining installment payments.
- 4.7 The State shall not offset any liabilities incurred by a new owner of a Facility against a former owner Distributee that held a former provider number for the Facility.
- 4.8 Where the Distributee disputes or contests any item on the list of debts referred to in Section 4.1 above and/or any other debt not appearing on that list that the State claims to be owed in the future, that Distributee may, consistent with current practice, contact the State and attempt to resolve the dispute or contest. The State agrees to attempt to resolve the dispute or contest in good faith.
5. **Cash Assessments:** Payments made by the State to current owner Distributees shall be counted as revenues prior to any recoupment or offset from the Facility and shall be subject to the cash assessment of section 2807-d of the Public Health Law; provided, however, that any payments made by the State to former owner Distributees, or made to the designated professionals of such former owner Distributees, shall not be subject to such assessment.
6. **Distribution Schedule:**
- 6.1 Such payments shall be distributed in five installments, representing the calendar years 2013-2017. Such installments shall be paid according to the following schedule, subject to Appropriation, Assessment and Recoupment, and as necessary to preserve the integrity of the Medicaid Global Cap as described herein:
- (i) Up to \$170 million for calendar year 2013 shall be paid in the fourth quarter of the State FY 2014-15, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap.
  - (ii) Up to \$170 million for calendar year 2014 shall be paid in the fourth quarter of the State FY 2014-15, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap; provided, however, that such payment may be delayed at the State's discretion until the end of FY 2015-16.

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- (iii) Up to \$170 million for calendar year 2015 shall be paid in the fourth quarter of the State FY 2015-16 fiscal year, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap; provided, however, that such payment may be delayed at the State's discretion until the end of FY 2016-17.
  - (iv) Up to \$170 million for calendar year 2016 shall be paid in the fourth quarter of the State FY 2016-17, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap; provided, however, that such payment may be delayed at the State's discretion until the end of FY 2017-18.
  - (v) Up to \$170 million for calendar year 2017 shall be paid in the fourth quarter of the State FY 2017-18 fiscal year, or earlier at the State's discretion should such funds be available under the Medicaid Global Cap; provided, however, that such payment may be delayed at the State's discretion until the end of FY 2018-19.
- 6.2 Payments shall be made to Distributees pursuant to the annual schedule, including deferrals to the next succeeding year, described in section 6.1 herein, and such payments when made shall fall within the "Medicaid Global Cap," as such term is described in sections 91 and 92 of part H of chapter 59 of the laws of 2011, as amended.
7. **Equity Withdrawals:** Equity withdrawals on payments made pursuant to the Settlement Agreement shall be permissible only in accordance with subdivision 5 of section 2808 of the Public Health Law and subject to the DOH's approval.
8. **Excluded Rate Appeals:** The following categories of rate appeals shall be excluded from the Settlement Agreement:
- 8.1 A Facility's Adult Day Health Care Medicaid rate appeals.
  - 8.2 A Facility's Medicaid rate appeals for the initial processing of 12 month cost reports for eligible rebasings.
  - 8.3 Appeals of the capital component of a Facility's Medicaid reimbursement rate covering rate periods from and after calendar year 2012.
  - 8.4 Appeals of the capital component of a Facility's Medicaid reimbursement rate covering rate periods from and before calendar year 2011 related to:
    - (i) Changes in bed capacity
    - (ii) Changes in ownership

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- (iii) Interim and Approved Project Costs
  - (iv) MATPs
  - (v) New Facilities
  - (vi) Refinancings
- 8.5 A Facility's cash receipts assessment reconciliations.
- 8.6 Initial Medicaid rate appeals related to the consolidation of Facilities.
- 8.7 Negotiated Medicaid rate settlements signed by a Distributee and DOH prior to the effective date of the Settlement Agreement but awaiting, as of the effective date of the Settlement Agreement, OMIG and/or DOB approval that are set forth in a schedule approved by the State Parties and attached to the Settlement Agreement.
- 8.8 A Facility's Medicaid rate appeals for initial base year operations.
- 8.9 A Facility's Medicaid rate appeals related to dropped services.
- 8.10 Medicaid rate appeals brought by Specialty Facilities, as such Facility is described under subdivision 2-c of section 2808 of the Public Health Law, and discretely reimbursed specialty units within Facilities subject to such subdivision of such section.
- 8.11 Medicaid rate appeals filed by any Facility subsequent to January 1, 2012 that challenge the rates established pursuant to subdivision 2-c of section 2808 of the Public Health Law, otherwise known as the statewide pricing methodology with the exception of any rate appeals filed by any Facility related to:
- (i) Wage Equalization Factor claims by Facilities, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims by Facilities, in connection with any Medicaid rate reimbursement methodology;
  - (ii) Case Mix adjustments claims by Facilities related to rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;
  - (iii) Rebasing issues, including hold harmless claims and the \$210 million scale back; and

**TERM SHEET FOR SETTLEMENT OF CERTAIN  
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- (iv) Notwithstanding subparagraphs (i) through (iii) of this Section, the State will correct computational errors for the issues identified in those subparagraphs. Computational errors shall mean solely errors in mathematical operations. Computational errors shall not include alleged errors such as the inclusion of reserved bed days in the definition of patient days, the classification of regions by counties, or any other alleged error pertaining to judgment, classification, or data usage; and

9. **Excluded Litigation:** The following categories of litigation shall be excluded from the Settlement Agreement:

9.1 Medicaid rate litigation and the settlement thereof associated with the base price reduction adjustment, including, but not limited to, those actions commenced in the County Court of Albany County with such Index Numbers as identified by Exhibit 3, attached hereto.

9.2 Litigation filed by Facilities subsequent to January 1, 2012 that challenge the rates established pursuant to subdivision 2-c of section 2808 of the Public Health Law, otherwise known as the statewide pricing methodology, with the exception of any litigation by Facilities related to:

- (i) Wage Equalization Factor claims, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims related to any pricing methodology;
- (ii) Case Mix adjustments claims by Facilities related to rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;
- (iii) Rebasing issues, including hold harmless claims and the \$210 million scale back;
- (iv) DOH being compelled to consider a rate appeal under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law prior to the date of the last installment payment made under section 6 herein;
- (v) The Medicaid Global Cap, as such term is defined in sections 91 and 92 of Part H of chapter 59 of the laws of 2011, as amended;
- (vi) Notwithstanding subparagraphs (i) through (v) of this Section, the State will correct computational errors for the issues identified in those subparagraphs. Computational errors shall mean solely errors in mathematical operations. Computational errors shall not include alleged errors such as the inclusion of reserved bed days in the definition of patient days, the classification of regions by counties, or any other alleged error pertaining to judgment, classification, or data usage.

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9.3 Litigation brought by Specialty Facilities, as such Facility is described under subdivision 2-c of section 2808 of the Public Health Law and discretely reimbursed specialty units within Facilities subject to such subdivision of such section.

10. **Process for Determining Excluded Rate Appeals and Litigation:**

10.1 The State has provided the Distributees with a list of open rate appeals.

10.2 The Distributees shall identify, as of the effective date of the Settlement Agreement, any existing claims, rate appeals and litigation, including specifically identified claims or causes of action within each litigation, to be excluded from the Settlement Agreement. If the Distributees have other rate appeals they believe are "excluded" but are not identified on the list provided by the State, the Distributees shall add them to the list. Any existing claim, rate appeal or litigation, including specifically identified claims or causes of action within each litigation, that is not identified as "excluded" by the Distributee shall automatically be deemed withdrawn, discontinued and released with prejudice pursuant to the Settlement Agreement.

10.3 Claims, rate appeals and litigation, including specifically identified claims or causes of action within each litigation, believed by such Distributee to be excluded from the Settlement Agreement, shall be identified by index or rate appeal number, as applicable, claim and issue to be excluded, and the corresponding category of exclusion that applies to such claim, rate appeal or litigation, including specifically identified claims or causes of action within each litigation.

10.4 All claims, rate appeals or litigation placed on the list by any Distributee shall be deemed by the State, in its sole discretion, to either be excluded or included within the Settlement Agreement prior to its execution. The State agrees that if a Facility or its designee has a good faith concern relating to the inclusion or exclusion of any claim, rate appeal or litigation matter, it may contact the State in order to attempt to resolve the dispute. The State agrees to attempt to resolve the dispute in good faith, but will retain sole discretion as to what claims, rate appeals, or litigation is excluded.

10.5 Where a Facility has not asserted or filed a claim, rate appeal, or litigation matter related to the matters identified Section 1.2 as of the effective date of the Settlement Agreement, the Facility may, consistent with current practice, contact the State prior to the effective date of the Settlement Agreement and raise an issue related to those matters that the Facility is concerned about. The State agrees to attempt to resolve that issue in good faith but that issue shall continue to be deemed withdrawn, discontinued and released with prejudice pursuant to the Settlement Agreement.

**TERM SHEET FOR SETTLEMENT OF CERTAIN  
MEDICAID RATE-RELATED APPEALS & LITIGATION  
DECEMBER 19, 2014**

**11. Office of Medicaid Inspector General (“OMIG”):**

- 11.1** OMIG will be a party to the Settlement Agreement.
- 11.2** OMIG will not commence any review, investigation, or audit of any matter that is being withdrawn, discontinued and released with prejudice under this Settlement Agreement.
- 11.3** OMIG will discontinue any current review, investigation or audit of any matter that is being withdrawn, discontinued and released with prejudice under this Settlement Agreement.
- 11.4** OMIG reserves the right to:
- (i)** Review, investigate and/or audit any of the categories of rate appeals or litigation excluded from Sections 8 and 9 of the Settlement Agreement, respectively.
  - (ii)** Review, investigate and/or audit fraud and abuse, as those terms are defined in applicable laws, rules and regulations, even if within any of the categories of rate appeal or litigation identified in Sections 11.2 or 11.3 above.
  - (iii)** Pursuant to 42 CFR 455.23, review, investigate and/or audit and make referrals relating to a credible allegation of fraud as that term is defined in 42 CFR 455.23, even if within one of the categories of rate appeals or litigation identified in Sections 11.2 or 11.3 above.
  - (iv)** Commence any review, investigation or audit of any other matter that is not being withdrawn, discontinued and released with prejudice under this Settlement Agreement.
  - (v)** Continue any review, investigation or audit of any other matter that is not being withdrawn, discontinued and released with prejudice under this Settlement Agreement.
- 11.5** With respect to reviews, investigations, and audits conducted by OMIG that are consistent with Section 11.4 above, the Facilities shall retain all statutory and regulatory rights and defenses, including, but not limited to, the right to contest, appeal and litigate the results of any such audits, and to commence any appeal that may be raised pursuant to 10 NYCRR 86-2.13(b), provided, however, that any relief shall not exceed any liability arising from such audit, and OMIG shall retain any and all statutory and regulatory rights and defenses.

**TERM SHEET FOR SETTLEMENT OF CERTAIN  
MEDICAID RATE-RELATED APPEALS & LITIGATION  
DECEMBER 19 , 2014**

12. **Referrals of Collection and Enforcement:** DOH and OMIG further agree not to refer the collection or enforcement of any matter that has been withdrawn, discontinued and released with prejudice under the Settlement Agreement (a "discontinued matter") to any other agency or instrumentality of the State, including but not limited to the Office of Attorney General's Civil Recoveries Bureau, for purposes of collecting or enforcing a discontinued matter, and DOH and OMIG further agree to withdraw the referral of any such discontinued matter previously so referred.
13. **Releases:** Each Distributee, including a Distributee that is a Facility that is now closed, shall sign a Release, in a format acceptable to the State, agreeing to the withdrawal, discontinuance and release with prejudice of any known or unknown claims, rate appeals or litigation relating to:
- 13.1 Medicaid reimbursement rates and/or any reimbursement methodology utilized for Facilities prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law, regardless of whether such claim, rate appeal or litigation: (i) was filed prior or subsequent to January 1, 2012; (ii) did, or may have resulted in a favorable decision for the Facility, former or current owner of a Facility or the State; or (iii) would or may have resulted in adjustments in favor of a Facility, former owner of a Facility, current owner of a Facility and/or the State, and
- 13.2 (i) Wage Equalization Factor claims by Facilities, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims by Facilities, in connection with any Medicaid rate reimbursement methodology;
- (ii) Case Mix adjustments claims by Facilities related rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;
- (iii) Rebasing issues, including hold harmless claims and the \$210 million scale back; and
- (iv) DOH being compelled to consider a rate appeal under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law prior to the date of the last installment payment made under section 6 herein.
- 13.3 The Medicaid Global Cap, as such term is defined in sections 91 and 92 of Part H of chapter 59 of the laws of 2011, as amended.
14. **Indemnification:** Distributees that currently own or operate a Facility shall indemnify the State against any claims by former owners or operators of such Facility related to any claims, rate appeals, or litigation matters withdrawn, discontinued, and released by the current owner Distributees under the terms of this Settlement Agreement.



**TERM SHEET FOR SETTLEMENT OF CERTAIN  
MEDICAID RATE-RELATED APPEALS & LITIGATION  
DECEMBER 19 , 2014**

15. **CMS involvement:** The Settlement Agreement is conditioned upon federal financial participation and written approval of the Settlement Agreement by CMS.
16. **Industry Participation:** The Settlement Agreement is contingent upon universal participation by the industry, as determined solely by the State.
17. **No new rights or obligations:** The Settlement Agreement does not create any Medicaid rate appeal, litigation or other rights or obligations inconsistent with the provisions of subdivision 2-c of section 2808 of the Public Health Law and regulations enacted thereunder, nor shall this settlement be deemed to impose any additional restrictions upon challenges to rates established for any rate period beginning on or after January 1, 2012 with the exception of any challenges related to:
  - (i) Wage Equalization Factor claims, Medicare Part B offset appeals and any associated reconciliation audits, and Reserve Bed Day claims related to any Medicaid rate reimbursement methodology;
  - (ii) Case Mix adjustments related to rate periods in effect prior to the implementation of subdivision 2-c of section 2808 of the Public Health Law;
  - (iii) Rebasing issues, including hold harmless claims and the \$210 million scale back;
  - (iv) DOH being compelled to consider a rate appeal under paragraph (b) of subdivision 17 of section 2808 of the Public Health Law prior to the date of the last installment payment made under section 6 herein; and
  - (v) The Medicaid Global Cap, as such term is defined in sections 91 and 92 of Part H of chapter 59 of the laws of 2011, as amended.
18. **Reservation of the State's Rights:** The State reserves the right to decline to enter into this Settlement Agreement if any proposed Distributees do not participate in this Settlement Agreement.
19. **Failure to Enter Into a Settlement Agreement:** Should the parties fail to reach a Settlement Agreement the terms and conditions listed herein shall be unenforceable against the respective parties and shall not be admissible in the various courts of New York.

**TERM SHEET FOR SETTLEMENT OF CERTAIN  
MEDICAID RATE-RELATED APPEALS & LITIGATION  
DECEMBER 19, 2014**

20. **Proposed Legislation:** The State, through the Governor, agrees to propose legislation with an effective date of April 1, 2015 and an expiration date of March 31, 2019, that will extend paragraph (b) of subdivision 17 of section 2808 of the Public Health Law with identical provisions with the only exceptions being: (i) that of the \$80 million aggregate annual appeals cap currently provided therein, only \$30 million shall be attributable to rate appeals and, the remaining \$50 million being set aside annually in accordance with Section 2.2(ii) herein, and (ii) that the commissioner shall not be required to revise certified rates of payment established pursuant to Article 28 of the Public Health Law for rate periods prior to April 1, 2019 based on consideration of rate appeals filed by residential health care facilities or based upon adjustment to capital cost reimbursement as a result of approval by the commissioner of an application for construction under Section 2802 in excess of an aggregate annual amount of \$30 million for each state fiscal year. The Governor shall use best efforts to obtain legislative approval of such statutory amendment.

*EXHIBIT “D”*

Order of the Supreme Court  
of the State of New York in  
and for Tompkins County  
(Hon. Phillip R. Rumsey, JSC)



# Tompkins County Clerk Recording Page

**Return To**

STEWART TITLE INSURANCE CORP

**Aurora R. Valenti, County Clerk**

Tompkins County Clerk  
320 North Tioga Street  
Ithaca, NY 14850  
(607) 274-5431

Document Type: **MISC**

Receipt Number: 14-49651

<b>Party 1</b>
RECONSTRUCTION HOME AND HEALTH CARE CENTER INC

<b>Party 2</b>

<b>Fees</b>	
Recording Fee	\$20.00
Pages Fee	\$35.00
State Surcharge	\$20.00
<b>Total Fees Paid:</b>	<b>\$75.00</b>

Instrument #: 2014-00153

State of New York  
County of Tompkins

Filed on January 7th, 2014 at 9:38:12 AM with a total page count of 7.

\_\_\_\_\_  
Tompkins County Clerk

*This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York*





NOW, upon reading and filing the Petition dated October 7, 2013, together with the the Affidavits of Anthony Votaw, sworn to November 6, 2013 (with exhibits) and \* *PR*  
accompanying exhibits of the Petitioner, and Byrne, Costello & Pickard, P.C. (John R. Brennan,

Esq., of counsel) attorneys for the Petitioner, having appeared on the date hereof in support of the Petition, and the Attorney General of the State of New York having raised no objection to the relief sought in the Petition and, after said hearing and due deliberation having been had thereon, and it appearing that the consideration and the terms of the transaction described in the Petition herein are fair and reasonable to Petitioner and that the purposes of Petitioner will be promoted thereby,

NOW, upon motion of Byrne, Costello & Pickard, P.C., attorneys for the Petitioner, it is

ORDERED, that the Petitioner Reconstruction Home and Health Care Center, Inc., be and it hereby is authorized to (1) immediately sell and convey Beechtree Care Center (f/k/a Reconstruction Home) being a 120-bed nursing home licensed by the New York State Department of Health and located at 310-318 South Albany St. in the City of Ithaca, Tompkins County, New York 14850-5406, including all real property, furnishings, fixtures, equipment and all other personal and intangible property incident thereto, to 318 South Albany Street LLC all as described in the Petition herein, and (2) transfer the operating certificate respecting said nursing home to BTRNC, LLC, upon the approval of the New York State Department of Health and the New York State Public Health and Health Planning Council, all as described in the Petition herein, and it is further

ORDERED, that a copy of the signed Order of this Court shall be served on the Attorney

General of the State of the New York, Binghamton Regional Office (Michael Danaher, Esq.) at State and on William S. Friedlander, Esq. and Adam J. Harris, Esq., *PR*  
Office Building, 17th Floor, 44 Hawley Street, Binghamton, New York 13901, and that the Attorney

General shall receive written notice that the above transactions have been completed or are still pending within 120 days after the Order of this Court, and it is further

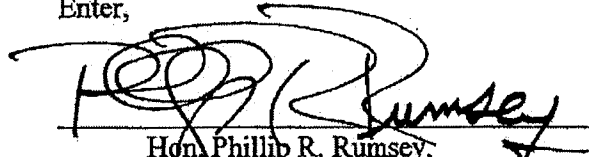
\* *PR* November 22, 2013, and the Affidavit of Stephen D. Holt, sworn to November 21, 2013 (with exhibit),

ORDERED, that subsequent to providing the Attorney General of the State of the New York with written notice that the transactions have been completed, that Petitioner apply to this Court for such other and further relief as may be just and proper, including the subsequent dissolution of Petitioner pursuant to § 1109 of the Not-For-Profit Corporation Law, and it is further

ORDERED, ADJUDGED AND DECREED that the Clerk of this Court is directed to enter the judgment of this Court as aforesaid.

*PH*  
Dated: <sup>December</sup> ~~November~~ 2, 2013  
~~Ithaca~~, New York  
Cortland,

Enter,

  
Hon. Phillip R. Rumsey,  
Justice of the Supreme Court



THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,  
HAS NO OBJECTION TO THE GRANTING OF  
JUDICIAL APPROVAL HEREON, ACKNOWLEDGES  
RECEIPT OF STATUTORY NOTICE AND DEMANDS  
SERVICE OF ALL PAPERS SUBMITTED HEREIN  
INCLUDING ALL ORDERS, JUDGMENTS AND  
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE MATTER  
TO THE COURT WITHIN 30 DAYS HEREAFTER.

  
\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

10/15/18  
\_\_\_\_\_  
DATE

*SCHEDULE "A"*

Real Property Description

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Ithaca, County of Tompkins and State of New York and being bounded and described as follows, viz:

BEGINNING at an iron pin set at the intersection of the south line of Clinton Street with the east line of Fayette Street, proceeding;

thence in an easterly direction along the south line of Clinton Street 198.29 feet to an iron pin, said pin set at the intersection of the south line of Clinton Street with the west line of South Albany Street;

thence at an interior angle to the right of  $89^{\circ} 48'$  along the west line of South Albany Street passing through an iron pin set at 260.83 feet, a total distance of 374.06 feet;

thence at an interior angle to the right of  $90^{\circ} 15'$  along the north line of Centre Street 198.67 feet to an iron pin, said pin set at the intersection of the north line of Centre Street with the east line of Fayette Street;

thence at an interior angle to the right of  $89^{\circ} 41' 30''$  along the east line of Fayette Street, passing through an iron pin set at 93.23 feet, a total distance of 374.23 feet to the place of beginning.

*EXHIBIT “E”*

Disposition of Petitioner’s  
Remaining Assets and Liabilities

**Beechtree Center for Rehabilitation and Nursing  
True-Up  
12/31/2015**

A/R taken over on 9/1/13	1,110,273.57
Prepaid workers comp taken over on 9/1/13	24,324.60
Accrued vacation taken over on 9/1/13	(158,283.44)
6/25/13 Loan from Upstate SK to Reconstruction (Beechtree repaid Upstate SK and took over the loan)	(31,000.00)
Sept 2013 - April 2014 Deposits into Reconstruction bank account that have not yet been transferred	(114,433.00)
July & August 2013 Mortgage payments made on behalf of Reconstruction	(130,839.45)
A/P liabilities taken over from Reconstruction:	
Freed Maxick CPA's (paid through Beechtree A/P)	(38,183.50)
Payment for D & O insurance for Reconstruction (2014)	(7,637.00)
Adj to A/R for resident refund issued to Daniel Rift in April 2014 for July 2013	(1,516.84)
Reconstruction portion of Memic refund	24,036.00
Adj to A/R for voiding Phyliss Grant balance forward in June 2014	(8,307.91)
Dividend received for 2004 commercial liability policy	220.38
Additional A/R collected in Sept 2014	1,050.35
NYS Unemployment paid for Reconstruction	(8,826.13)
NYS Unemployment paid for Reconstruction	(6,648.93)
CHAR500 fee paid for Reconstruction	(50.00)
NYS Unemployment paid for Reconstruction	(1,832.91)
Interest on NYS Unemployment paid for Reconstruction	(3.67)
Adjustment to Olga Solomon A/R balance as of 9/1/13	(14,093.20)
CHAR500 fee paid for Reconstruction	(25.00)
Adj to A/R for receipt on account of Arlene Saltzman	15,115.60
A/R taken over on 9/1/13 - still outstanding on 2/15/16	(72,122.73) A
2013 Loss	(223,096.00)
2014 Profit	10,088.00
2015 Profit (through end of receivership on 2/17/15)	72,522.00
Payoff of Cayuga Medical Center line of credit	(250,000.00)
Payoff of OMIG audit	(589,782.00)
Payoff of Medicaid retro	(207,690.50)
Allowance for 2009 - 2013 OMIG	(589,782.00)
Allowance for outstanding receivables (during receivership period)	(191,861.69) B
	<hr/>
Total	(1,388,385.40)

**Note:**

- A 122,706 of A/R (accounts receivable) taken over is still outstanding 2.5 years later.  
21,540 of the A/R has been identified as uncollectible and a 50% allowance was estimated for the remaining A/R as it is at least two and a half years old
- B \$444,797 of A/R is still outstanding from the dates of the receivership period (9/1/13 - 2/17/15)  
86,460 of the A/R has been identified as uncollectible and a 30% allowance was estimated for the remaining A/R as it is at least a year old

*EXHIBIT "F"*

Petitioner's remaining cash  
reserves of \$30,519.37

*EXHIBIT “H”*

List of Unsecured Creditors

\*ACE SECURITY CONTROL INC  
720 W. Green Street  
Ithaca , NY 14850

\*ACTIVITY CONNECTION.COM  
818 SW Third Ave  
#222  
Portland , OR 97204

\*ADI SOFTWARE, LLC  
110 Wild Basin Rd.  
Suite 100  
Austin, TX 78746

\*AFLAC NEW YORK  
REMITTANCE PROCESSING SERVICES  
1932 WYNNTON RD.  
COLUMBUS, GA 31999-6005

BIMBO FOODS, INC.  
P.O. BOX 827810  
PHILADELPHIA, PA 19182-7810

\*ITHACA AGWAY/TRUE VALUE  
213 S. Fulton St  
Ithaca, NY 14850

\*ALEXANDRA CLINTON  
404 CASCADILLA ST  
APT A  
ITHACA, NY 14850

\*ALIMED INC  
P.O.Box 9135  
Dedham, MA 02027

\*ALL EARS AUDIOLOGY OF ITHACA  
200 Pleasant Grove Rd.  
Ithaca, NY 14850

\*AMERICAN FOOD AND VENDING  
124 Metropolitan Park Drive  
Syracuse, NY 13088

\*AMES LINEN SERVICE  
67 Huntington St  
Cortland, NY 13045

\*AMPULA, AARON  
3639 Lorme Dr  
Endwell, NY 13760

\*HEALTH FACILITY ASSESSMENT  
OFFICE OF POOL ADMINISTRATION  
P.O. BOX 4757  
SYRACUSE, NY 13221-4757

\*BAILEY HASKELL LALONDE  
5232 WITZ DRIVE  
NORTH SYRACUSE, NY 13212

\*BANFIELD PET HOSPITAL  
742 S.MEADOW STREET  
ITHACA, NY 14850-5321

\*BATTERY WAREHOUSE  
1495 DRYDEN RD  
FREEVILLE, NY 13068

\*BERKADIA  
Lockbox #9067  
P.O. Box 8500  
Philadelphia, PA 19178-9067

\*BERT SALMIRS  
P.O. Box 166  
Hector, NY 14841

\*J D BOOTH, INC  
P.O. BOX 579  
ELMIRA, NY 14902-0579

\*THE BUSINESS COUNCIL  
INSURANCE FUND  
12 CORPORATE WOODS BLVD.  
ALBANY, NY 12212-2390

\*BUTTER KRUST  
18225 Route 6  
Mansfield, PA 16933

\*B&W SUPPLY  
510 THIRD ST  
ITHACA, NY 14850

\*CALL CARE  
1370 Arcadia Rd  
P.O. BOX 4651  
LANCASTER, PA 17604-4651

\*CASELLA  
P.O. Box 1372  
Williston, VT 05495-1372

\*CAYUGA EMERGENCY PHYS LLP  
75 REMIT DR #1248  
CHICAGO, IL 60675-1248

\*CAYUGA MEDICAL CENTER  
101 Dates Drive  
Ithaca, NY 14850

\*CAYUGA MEDICAL ASSOCIATES  
1001 W. Fayette St  
Ste 400  
Syracuse, NY 13204-2866

\*TOMPKINS COUNTY CHAMBER OF CO  
904 East Shore Drive  
Ithaca, NY 14850



\*CINTAS  
P. O Box 633842  
cincinnati , OH 45263

\*CITY OF ITHACA  
City of Ithaca  
108 E Green St  
Ithaca, NY 14850

\*CHAMBERLAIN CLIMATE CONTROL  
70 Gunderman Rd  
Ithaca, NY 14850

\*CAYUGA MEDICAL CENTER  
101 Dates Drive  
Ithaca, NY 14850

\*CENTERS FOR MEDICARE & MEDICA  
DIVISION ACCOUNTING OPERATIONS  
PO BOX 7520  
BALTIMORE, MD 21207

\*CNY ELEVATOR INSPECTIONS  
Suit 400  
327 W. Fayerre St  
Syracuse, NY 13202

\*COMMISSIONER OF TAXATION & FI  
NYS ASSESSMENT RECEIVABLES  
GENERAL PO BOX 4128  
BINGHAMTON, NY 13902-4128

\*THE COMPUTING CENTER  
15 Thornwood Drive  
Ithaca, NY 14850

\*THE CORTLAND AREA TRIBUNE  
P.O. Box 67  
Dryden, NY 13053

\*CPE INTERLINK  
357 E. 5th St  
Elmira, NY 14901

\*CRISTIN BAKER  
117 North Sunset Dr  
Ithaca, NY 14850

\*DARIEN LAKE  
PO BOX 91  
9993 ALLEGHENY RD.  
DARIEN CENTER, NY 14040

\*DAVID BROWN'S FOOD EQUIPMENT  
5337 Voorheis Rd  
Trumansburg, NY 14886

\*DAVIS ULMER SPRINKLER CO  
300 METRO PARK  
ROCHESTER, NY 14623

\*EXCELLUS BC/BS Group  
P.O.Box 5255  
Binghamton, NY 13902-5255

\*DIRECT SUPPLY  
Box 88201  
Milwaukee, WI 53288-0201

\*NYS DOH NARCOTIC ENFORCEMENT  
Riverview Center  
150 Broadway  
Albany, NY 12204

\*EARTHLINK BUSINESS  
P.O.Box 88104  
Chicago, IL 60680-1104

\*ECOLAB  
P.O. BOX 905327  
CHARLOTTE, NC 28290-5327

\*ECONOLINE  
398 LAKESIDE RD  
HOP BOTTOM, PA 18824

\*EMERALD RESOURCES INC  
320 Gateway Park Drive  
N. Syracuse, NY 13212

\*EMPIRE NATURAL GAS CORP  
173 Airport Rd  
Greene, NY 13778

\*EXCELLUS HEALTH PLAN-GROUP  
P.O.Box 5266  
Binghamton, NY 13902-5266

\*FIRST HEALTHCARE PRODUCTS  
6125 Lendell Drive  
Sanborn, NY 14132-9199

\*FIRST REHABILITATION LIFE  
PO BOX 220727  
GREAT NECK, NY 11021

\*FREED MAXICK  
P.O. BOX 8000  
DEPT. 644  
BUFFALO, NY 14267

\*C. FREIHOFFER INC  
GEORGE WESTON BAKERY  
PO BOX 827810  
PHILADELPHIA, PA 19182-7810

\*GADABOUT TRANSPORTATION SVCS  
737 WILLOW AVE  
ITHACA, NY 14850

\*GANNETT CENTRAL NEW YORK NEWS  
GANNETT CENTRAL NY NEWSPAPERS  
P.O. BOX 822802  
PHILADELPHIA, PA 19182-2802

\*GENTELL  
2701 BARTRAM RD  
BRISTOL, PA 19007

\*GEORGE MANN  
P.O. Box 435  
Ithaca, NY 14851

\*SHERRY GOLDEN  
361 S. VAN DORN RD  
ITHACA, NY 14850

\*GRAINGER  
DEPT 828933473  
PALATINE, IL 60038-0001

\*GREASE BUSTERS  
120 RIDGE CREST RD  
ITHACA, NY 14850

\*GUTHRIE CLINIC LTD  
1 Guthrie Square  
Sayre, PA 18840

\*CATHERINE HAINES  
111 EASTWOOD AVE.  
ITHACA, NY 14850

\*HAROLD BUSH  
P.O. BOX 154  
OVID, NY 14521

\*HD SUPPLY  
P.O.Box 509058  
San Diego, CA 92150-9058

\*HEALTH TRAC  
P.O.Box 8000-445  
Buffalo , NY 14267

\*HERSHEYS ICECREAM  
1370 upper lenox ave  
oneida, NY 13421-2640

\*HILL & MARKES  
1997 State Hwy. 5S  
Amsterdam, NY 12010  
and  
Craig H. Norman, Esq.  
Wilhelm & Norman PLLC  
122 Remsen Street  
Cohoes, New York 12047

\*HUMAN SERVICES COALITION  
100 W. Seneca St  
Suite 300  
Ithaca, NY 14850

\*ILEEN KAPLAN PIANO SERVICE  
97 Fir Tree Point Rd  
Rock Stream, NY 14878

\*INSTANT WHIP  
1859 Momentum place  
chicago, IL 60689-5318

\*INTERNAL REVENUE SERVICE  
CINCINNATI, OH 45999-0149

\*ITHACA DISPATCH  
400 SPENCER ROAD  
ITHACA, NY 14850

\*IVANS  
P.O.Box 850001  
Orlando, FL 32885-0033

\*JERRY DROLESKI  
317 CLEVELAND ST  
ELMIRA , NY 14903

\*JFS CURTZE  
15 Airline Drive  
Rochester , NY 14624

\*KALEIDA HEALTH  
ATTN: LOUIS SCIARRINO  
1031 MICHIGAN AVENUE  
BUFFALO, NY 14203

\*FREDERIC KARDON  
2 Perry Lane  
Ithaca, NY 14850

\*KJs PROPERTY CARE  
5437 Chicken Coop Rd  
Trumansburg, NY 14886

\*LABEL TAPE SYSTEMS  
5563 Marquesas Cicle  
SARASOTA, FL 34233

\*LAI SEYLER  
92 Mount Pleasant Rd  
Ithaca, NY 14850

\*LANSING RHYTHM WORKSHOP  
135 Northview Rd  
Ithaca, NY 14850

\*MEGGAN LAWSON  
2215 N. TRIPHAMMER RD  
ITHACA, NY 14850

\*LEADING AGE NEW YORK  
FLTC  
13 British American Blvd Ste 2  
Latham, NY 12110-1431

\*LOWES COMMERCIAL SERVICES  
P.O. BOX 530954  
Atlanta, GA 30353-0954

\*M&T Bank LOC  
P.O. Box 62146  
Baltimore, MD 21264-2146

\*MAINES PAPER AND FOOD SERVICE  
P.O.Box 642530  
Pittsburg, PA 15264-2530

\*MASS MUTUAL VA  
PO BOX 92714  
CHICAGO, IL 60675-2714

\*MCKESSON  
P.O.Box 630693  
Cincinnati, OH 45263-0693

\*MELDRIMS PAINT CENTER  
3975 West Rd  
route 281  
Cortland , NY 13045

\*MEMIC  
MEMIC Indemnity Co  
P.O. Box 9500  
Lewiston, ME 04243-9500

\*MERRIFIELD FARMS INC  
P.O. BOX 634  
AUBURN, NY 13021

\*ELIZABETH PIA-MILLER  
4420 MCINTYRE RD  
TRUMANSBURG, NY 14886

\*MOBILEXUSA  
P.O. BOX 17462  
BALTIMORE, MD 21297-0518

\*MODULAR MECHANICAL SERVICES  
5860 Belle Isle Rd  
Syracuse, NY 13209

\*NORTHEAST MEDICAL REPAIRS  
6143 Van Alstine Road  
Camillus, NY 13031

\*NY PENN NUTRITION SERVICES  
74 La Grange St  
Binghamton, NY 13905-1718

\*NYS CHILD SUPPORT  
PROCESSING CENTER  
PO BOX 15363  
ALBANY, NY 12212-5363

\*NYS DEPARTMENT OF LABOR  
CACS-INCOME EXECUTION  
STATE CAMPUS BLDG 12 - RM 256  
ALBANY, NY 12240-0001

\*NYS HIGHER EDUCATION SERVICES  
PO BOX 645182  
Cincinnati, OH 45264-5182

\*NYS UNEMPLOYMENT INS  
P.O.Box 4301  
Binghamton, NY 13902-4301

\*NYSEG  
P.O.Box 11745  
Newark, NJ 07101-4745  
and  
Solomon and Solomon P.C.  
Columbia Circle  
P.O. Box 15019  
Albany NY 12212-5019

\*THE OBSERVER  
PO BOX 127  
DUNDEE, NY 14837

\*OMNICARE  
P.O. Box 715268  
Columbus, OH 43271-5268

\*ORKIN  
139 Dwight Park Cir  
Syracuse, NY

\*PATTERSON MEDICAL  
1000 REMINGTON BLVD  
SUITE 210  
BOLINGBROOK, IL 60440

\*NANCY PECKENPAUGH  
1216 Trumansburg Rd  
Ithaca, NY 14850

\*PERSONAL CONCEPTS  
P.O. BOX 5750  
CAROL STREAM, IL 60197

\*PHILIP NEISSER  
4863 COUNTY RD. 24  
CANTON, NY 13617

\*PITNEY BOWES  
P.O. Box 371887  
Pittsburgh, PA 15250-7887

\*PODIATRY SERVICES OF ITHACA  
408 E. UPLAND RD  
ITHACA, NY 14850

\*POPE, SCHRADER, LLP  
2 COURT ST., 4TH FLOOR  
P.O. BOX 510  
BINGHAMTON, NY 13902

\*POVINELLI  
3810 Union Rd  
Cheektowaga, NY 14225

\*PRIME SERVICES INC  
6400 SHERIDAN DRIVE  
SUITE 112  
WILLIAMSVILLE , NY 14221

\*PROMETRIC  
ATTN: NYS NURSE AIDE REGISTRY  
1260 ENERGY LANE  
ST. PAUL, MN 55108

\*R HOMER CARPETS  
880 RTE 13  
CORTLAND, NY 13045

\*RADIOLOGY ASSOCIATES OF ITHAC  
P.O. Box 7142  
ITHACA, NY 14851-7142

\*ROBERT PACKER HOSPITAL  
P.O. BOX 900  
SAYRE, PA 18840-1625

\*DORIS ROOT  
C/O SUN TRUST BANK 559BP  
PO BOX 85129  
RICHMOND, VA 23285-5129

\*S&S WORLDWIDE  
P.O.Box 210  
Hartford, CT 06141-0210

\*SANICO  
P.O. Box 2037  
Binghamton, NY 13902

\*JENNA SANTUCCI  
3180 Dubois Rd  
Ithaca, NY 14850

\*SARA MATHENEY  
P.O.Box 10040  
Charleston, WV 25357

\*SECURITY MUTUAL LIFE INS CO.  
PO BOX 1625  
BINGHAMTON, NY 13902

\*SIMPLEX GRINNELL  
Simplex Grinnell  
Dept. CH 10320  
Palatine, IL 60055-0320

\*SALSBURY INDUSTRIES  
1010 East 62nd St  
Los Angeles, CA 90001-1598

\*SOUND CIRCLES  
135 Northview Rd  
Ithaca, NY 14850

\*STANLEY ACCESS TECH LLC  
P.O. BOX 0371595  
PITTSBURGH, PA 15251-7595

\*STAPLES BUSINESS ADVANTAGE  
P.O. Box 415256  
Boston, MA 02241-5256

\*STATEWIDE MACHINERY INC  
60 Pixley Industrial Parkway  
Rochester, NY 14624

\*STERICYCLE  
Stericycle Inc  
P.O. Box 6582  
Carol Stream, IL 60197-6582

\*SYRACUSE ORTHOPEDIC SPEC  
5719 WIDEWATERS PKWY  
SYRACUSE, NY 13214-1880

\*TAVES, J. VALDEZ  
39 Cayuta St  
Trumansburg, NY 14886

\*THYSSENKRUPP  
ELEVATOR  
P.O. Box 933004  
Atlanta, GA 31193-3007



\*TIME WARNER CABLE  
Time Warner Cable  
P.O. Box 11825  
Newark, NJ 07101-8125

and  
Southwest Credit Systems, I.P.  
4120 International Pkwy, Suite 1100  
Carrollton, TX 75007-1958

\*TOMPKINS DENTAL  
2309 N. Triphammer Rd  
Ithaca, NY 14850

\*TODAYS OPTIONS  
P.O. BOX 505057  
63150-2127

\*TOMPKINS COUNTY SHERIFF'S DEP  
CIVIL DIVISION  
779 WARREN RD.  
ITHACA, NY 14850

\*TOSHIBA BUSINESS SOLUTIONS  
TOSHIBA BUSINESS SOLUTIONS USA  
P.O. BOX 927  
BUFFALO, NY 14240-0927

\*TOSHIBA FINANCIAL  
P.O.Box 790448  
St. Louis, MO 63179-0448

and  
U.S. Bank Equipment Finance  
1310 Madrid Street  
Marshall, MN 56258

\*TRAVELERS HEALTHCARE D&O  
ADMIN - G.J. Sullivan Co.  
625 The City Drive, Suite 400  
Orange, CA 92868

\*TREASURER OF VIRGINIA  
DIVISION OF CHILD SUPPORT  
PO BOX 570  
RICHMOND, VA 0570

\*ULTRA CHEM INC  
P.O.Box 3717  
Shawnee Mission, KS 66203-0827

\*UNIFORM PROFESSIONALS  
PO BOX 180  
CINCINNATUS, NY 13040

\*DISTRICT 65, IAMAW  
C/O EUN LAMB SECRETARY - TREAS  
PO BOX 2020  
JAMESTOWN, NY 14702-2020

\*UNIVERSAL HOSPITAL SERVICES  
SDS 12-0940  
P.O.Box 86  
Minneapolis, MN 55486-0940

\*US FOODS INC  
P.O. BOX 644547  
PITTSBURG, PA 15264-4547

\*VERIZON WIRELESS  
P.O.Box 408  
Newark, NJ 07101-0408

and  
Joseph M. Shur, Esq.  
Relin, Goldstein & Crane, LLP  
28 East Main Street, Suite 1800  
Rochester, New York 14614

\*JENNIFER WEINRAUB  
121 Cayuga Park Rd  
Ithaca, NY 14850

\*CAYUGA CENTER FOR WOUNDS  
CAYUGA CENTER FOR WOUNDS  
101 DATES DRIVE  
ITHACA, NY 14850

\*JOSEPH ZANFORDINO  
131 E. Green St  
Apt 508  
Ithaca, NY 14850

Judy Thayer, as Executrix of the Estate of Isabelle M. Swingle  
c/o William S. Friedlander, Esq.  
Friedlander, Friedlander, and Arcesi, P.C.  
103 W. Seneca Street, Suite 201  
Ithaca, NY 14850

Dell Grover, as Executor of the Estate of Emma L. Grover  
c/o William S. Friedlander, Esq.  
Friedlander, Friedlander, and Arcesi, P.C.  
103 W. Seneca Street, Suite 201  
Ithaca, NY 14850

Healthcare of New York Workers' Compensation Trust  
c/o SAFE, LLC  
620 Erie Blvd. West  
Suite 100  
Syracuse, New York 13204

*EXHIBIT "I"*

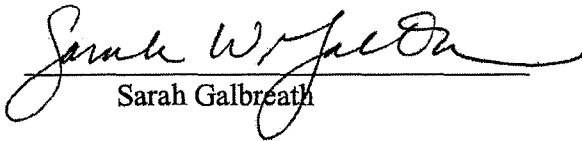
Unanimous Written Consent of  
Board of Directors of Petitioner

**WRITTEN CONSENT AND RESOLUTION  
OF THE BOARD OF DIRECTORS OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.**

The undersigned, being all of the Directors of Reconstruction Home and Health Care Center, Inc. (the "**Corporation**"), and acting for and on behalf of the Corporation, do hereby adopt the Resolution attached hereto without a meeting pursuant to § 708 of the Not-for-Profit Corporation Law.

The undersigned hereby acknowledge and consent that these presents may be executed in counterparts by the Directors by signing below or by electronic transmission, each of which shall be an original. Regardless of number, all counterparts shall constitute only one undertaking. It shall not be necessary in the making of any proof of this Resolution to produce or account for more than one counterpart.

IN WITNESS WHEREOF the undersigned Directors have caused these presents to be executed as of August 1, 2017.

  
\_\_\_\_\_  
Sarah Galbreath

\_\_\_\_\_  
Donna George

\_\_\_\_\_  
Amy Iles

\_\_\_\_\_  
Kara Pass

\_\_\_\_\_  
Anthony Votaw

\_\_\_\_\_  
Jeffrey Walker

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Sarah Galbreath

*Donna George*  
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Amy Iles

\_\_\_\_\_  
Kara Pass

\_\_\_\_\_  
Anthony Votaw

\_\_\_\_\_  
Jeffrey Walker

**WRITTEN CONSENT AND RESOLUTION  
OF THE BOARD OF DIRECTORS OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.**

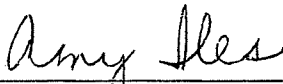
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Donna George



\_\_\_\_\_  
Amy Iles

\_\_\_\_\_  
Kara Pass

\_\_\_\_\_  
Anthony Votaw

\_\_\_\_\_  
Jeffrey Walker

**John Brennan**

---

**To:** John Brennan  
**Subject:** RE: Beechtree Resolution

---

**From:** Kara Pass [<mailto:kpass@tompkinsfinancial.com>]  
**Sent:** Tuesday, August 22, 2017 8:24 AM  
**To:** Votaw, Tony  
**Subject:** RE: Beechtree Resolution

**WARNING: This email originated outside of CMC.  
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.**

This message was sent securely using ZixCorp.

Approved.

**Kara Garner Pass**  
Senior Vice President, Managing Director

119 E. Seneca Street | PO Box 6437 | Ithaca, NY 14851 | [kpass@tompkinsfinancial.com](mailto:kpass@tompkinsfinancial.com)  
Phone: 607.273.0037 | Toll Free: 800.274.4003 | Fax 607.273.0024



The information contained in this email message is being transmitted to and is intended for the use of only the individual(s) to whom it is addressed. If the reader of this message is not the intended recipient, you are hereby advised that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this message in error, please immediately delete.

**From:** Votaw, Tony [<mailto:tvotaw@CAYUGAMED.org>]  
**Sent:** Tuesday, August 22, 2017 8:07 AM  
**To:** Kara Pass; 'dgeorge@hospicare.org'; 'aai@sciarabbawalker.com'; 'jeff@ithacalaw.com'; 'Sarah Galbreath'  
**Subject:** RE: Beechtree Resolution

This message was sent securely using ZixCorp.

As it turns out, you can simply reply that you approve the resolution by email and that can count as an electronic signature. So far I have only heard from Sarah.

Thanks,  
Tony

---

**From:** Votaw, Tony  
**Sent:** Monday, August 21, 2017 1:08 PM  
**To:** Kara Pass ([kpass@tompkinsfinancial.com](mailto:kpass@tompkinsfinancial.com)); 'dgeorge@hospicare.org'; [aai@sciarabbawalker.com](mailto:aai@sciarabbawalker.com); 'jeff@ithacalaw.com'; 'Sarah Galbreath'  
**Subject:** Beechtree Resolution



**WRITTEN CONSENT AND RESOLUTION  
OF THE BOARD OF DIRECTORS OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.**

The undersigned, being all of the Directors of Reconstruction Home and Health Care Center, Inc. (the "**Corporation**"), and acting for and on behalf of the Corporation, do hereby adopt the Resolution attached hereto without a meeting pursuant to § 708 of the Not-for-Profit Corporation Law.

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Sarah Galbreath

\_\_\_\_\_  
Donna George

\_\_\_\_\_  
Amy Iles

\_\_\_\_\_  
Kara Pass

  
\_\_\_\_\_  
Anthony Votaw

\_\_\_\_\_  
Jeffrey Walker

**John Brennan**

---

**To:** John Brennan  
**Subject:** RE: Beechtree Resolution

---

**From:** Jeffrey Walker [mailto:jeff@ithacalaw.com]  
**Sent:** Tuesday, August 22, 2017 12:33 PM  
**To:** Votaw, Tony; 'Kara Pass (kpass@tompkinsfinancial.com)'; 'dgeorge@hospicare.org'; 'aai@sciarabbawalker.com'; 'Sarah Galbreath'  
**Subject:** RE: Beechtree Resolution

**WARNING:** This email originated outside of CMC.  
**DO NOT CLICK** links or attachments unless you recognize the sender and know the content is safe.

Hi everyone. I have been in trial since Monday morning.  
I approve the resolution and do so via this electronic email.  
If you need more from me, please let me know.

Jeff Walker

---

**From:** Votaw, Tony [mailto:tvotaw@CAYUGAMED.org]  
**Sent:** Tuesday, August 22, 2017 8:07 AM  
**To:** 'Kara Pass (kpass@tompkinsfinancial.com)' <kpass@tompkinsfinancial.com>; 'dgeorge@hospicare.org' <dgeorge@hospicare.org>; 'aai@sciarabbawalker.com' <aai@sciarabbawalker.com>; Jeffrey Walker <jeff@ithacalaw.com>; 'Sarah Galbreath' <swg@holt.com>  
**Subject:** RE: Beechtree Resolution

As it turns out, you can simply reply that you approve the resolution by email and that can count as an electronic signature. So far I have only heard from Sarah.

Thanks,  
Tony

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**From:** Votaw, Tony  
**Sent:** Monday, August 21, 2017 1:08 PM  
**To:** Kara Pass (kpass@tompkinsfinancial.com); 'dgeorge@hospicare.org'; aai@sciarabbawalker.com; 'jeff@ithacalaw.com'; 'Sarah Galbreath'  
**Subject:** Beechtree Resolution

Beechtree Board Members,

The time is finally come to dissolve Beechtree. I have attached a resolution with a separate signature page. I need each of you to print and sign the signature page (in blue ink) and scan it back to me. The collection of all signatures on separate pages is fine for filing the petition. We will end up paying somewhere in the vicinity of 25% of the liability amounts to each creditor. To put it in comparison, CMC received 16% on its loan. I feel pretty good about what we are able to pay. Please call or email me if you have any questions.

Thanks,  
Tony Votaw

**RESOLUTION OF THE BOARD OF DIRECTORS OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.**

WHEREAS Reconstruction Home and Health Care Center, Inc. (the “**Corporation**”) is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York;

WHEREAS the Corporation previously owned a certain 120-bed nursing home identified as Beechtree Care Center (f/k/a Reconstruction Home) and located at 310-318 South Albany St. in the City of Ithaca, Tompkins County, New York 14850-5406 (the “**Nursing Home**”), the sale of which was subject to a Petition to the Tompkins County Supreme Court (the “**Court**”) that was approved by an Order of the Court entered in the Tompkins County Clerk’s Office and recorded on January 7, 2014, as Instrument No. 2014-00153;

WHEREAS as set forth in the aforesaid Petition, the Corporation contemplated dissolution after the sale of the Nursing Home and New York State Department of Health establishment approval of a new permanent operator of the Nursing Home;

WHEREAS pursuant to the aforesaid Petition and Order of the Court, the Corporation’s assets remaining after the sale were applied, and are to be applied, to Corporation’s outstanding liabilities;

WHEREAS the Corporation heretofore applied its remaining assets to pay costs of patient care, sums owed to New York State and settle all sums owed to the Corporation’s secured creditors;

WHEREAS the New York State Department of Health heretofore approved the establishment of a new permanent operator of the Nursing Home;

WHEREAS the Board of Directors have considered the advisability of voluntarily dissolving the Corporation; and

WHEREAS, the Board of Directors, after due consideration, have deemed it advisable and in the best interests of the Corporation to adopt and approve a Plan of Dissolution and authorize the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

NOW THEREFORE, it is

RESOLVED that the Corporation shall dissolve voluntarily; and it is further

RESOLVED that the Board of Directors does hereby adopt and approve the Plan of Dissolution in the form attached hereto; and it is further

RESOLVED that the Board of Directors hereby authorizes the filing of a Certificate of Dissolution

with the New York State Department of State, subject to the consent of the Attorney General of the State of New York; and it is further

RESOLVED that the officers of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, nonmaterial amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions; and it is further

RESOLVED that this Resolution be filed with the minutes of the proceedings of the Corporation.

## ATTACHMENT

### PLAN OF DISSOLUTION OF RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.

The Board of Directors of Reconstruction Home and Health Care Center, Inc. (the "**Corporation**"), by action of the Board of Directors, having considered the advisability of voluntarily dissolving the Corporation, and it being the determination of the Board of Directors that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, the Board of Directors does hereby resolve that the Corporation be dissolved in accordance with the following Plan of Dissolution and that its remaining assets be distributed in accordance therewith:

#### PROCEDURE FOR DISSOLUTION

- A. Following the Board of Directors adopting this Plan of Dissolution, the Board shall submit this Plan of Dissolution to the New York State Attorney General for approval, which approval shall be attached hereto.
- B. Approval of the dissolution of the Corporation is also required to be obtained from the New York State Department of Health and the Public Health and Health Planning Council, which approval shall be attached hereto.
- C. Following the approval of the New York State Attorney General, the Corporation's remaining assets shall be used to pay the Corporation's costs of winding up its affairs and the balance expended to ratably pay Corporation's remaining unsecured creditors.
- D. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-For-Profit Corporation Law shall be attached thereto.

*EXHIBIT “J”*

New York State Department of  
Health and New York State  
Public Health and Health Planning  
Council acknowledgment of request  
to dissolve Petitioner

# PHHPC

## *PUBLIC HEALTH AND HEALTH PLANNING COUNCIL*

---

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.state.ny.us

August 22, 2017

Mr. John R. Brennan  
Byrne, Costello & Pickard, P.C.  
Tower 1, Suite 1600  
100 Madison Street  
Syracuse, NY 13202-2721

Re: Certificate of Dissolution of Reconstruction Home and Health Care Center, Inc.

Dear Mr. Brennan:

I have received your letter dated April 18, 2017, requesting approval of Certificate of Dissolution of Reconstruction Home and Health Care Center, Inc. under section 1003 of Not-for-Profit Corporation Law of the State of New York. Your letter has been forwarded to the Division of Legal Affairs, Bureau of Health Facility Planning and Development for review and approval.

You will be notified when this request has been approved, or if additional information is required. Division of Legal Affairs staff may be reached at (518) 473-3303 if you have any questions.

Sincerely,

*Colleen M. Leonard*  
Colleen M. Leonard  
Executive Secretary

cc: DLA

/cl

**CERTIFICATE OF DISSOLUTION OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.**

Under § 1003 of the Not-for-Profit Corporation Law

.....

The undersigned, being the President and Secretary of Reconstruction Home and Health Care Center, Inc. (the “**Corporation**”), and being the persons entitled to sign this Certificate of Dissolution pursuant to § 104(d) of the Not-for-Profit Corporation Law for and on behalf of the Corporation, being a domestic not-for-profit corporation organized and existing under and by virtue of the laws of the State of New York, hereby certify:

1. The name of this Corporation is Reconstruction Home and Health Care Center, Inc.
2. The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of New York on May 14, 2004.
3. The name and address of the directors and officers of the Corporation are as follows:

Sarah Galbreath  
Project Manager  
HOLT Architects, P.C.  
217 N. Aurora St.  
Ithaca, New York 14850

Donna George (Secretary)  
Hospicare  
Coordinator of Bereavement Services  
172 E. King Rd.  
Ithaca, New York 14850

Amy Iles (Treasurer)  
Sciarabba, Walker & Co., LLP  
200 E. Buffalo St.  
Ithaca, New York 14850

Kara G. Pass, Sr. Vice President (Board Vice President)  
Tompkins Financial Advisors  
119 East Seneca Street  
Ithaca, New York 14850

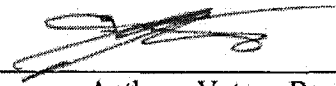
Anthony Votaw, VP (Board President)  
Cayuga Medical Center at Ithaca  
101 Dates Drive  
Ithaca, New York 14850



Jeffrey Walker, Esq.  
Schlather, Stumbar, Parks & Salk, LLP  
200 East Buffalo Street  
Ithaca, New York 14850

4. The Corporation is a charitable corporation.
5. At the time of authorization of the Corporation's Plan of Dissolution, the Corporation did not hold any assets required to be used for a restricted purpose. The Corporation's remaining assets were used to pay the Corporation's costs of winding up its affairs and the balance expended to the Corporation's liabilities pursuant to the Plan of Dissolution approved by the Attorney General.
6. The Corporation elects to dissolve.
7. The dissolution of the Corporation was authorized by unanimous written consent of the entire Board of Directors.
8. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing, the Plan of Dissolution and the distribution of the Corporation's remaining assets were approved by the Attorney General.
9. The endorsement of the Attorney General and all approvals and consents required under the Not-for-Profit Corporation Law of the State of New York with respect to the filing of this Certificate of Dissolution with the Secretary of State, or as otherwise required, are attached hereto.

IN WITNESS WHEREOF, the undersigned, on behalf of the Corporation have subscribed this Certificate of Dissolution and hereby affirm it as true under the penalties of perjury of September 1, 2017.



---

Anthony Votaw, Board President

---

Donna George, Secretary

Jeffrey Walker, Esq.  
Schlather, Stumbar, Parks & Salk, LLP  
200 East Buffalo Street  
Ithaca, New York 14850

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IN WITNESS WHEREOF, the undersigned, on behalf of the Corporation have subscribed this Certificate of Dissolution and hereby affirm it as true under the penalties of perjury of September 1, 2017.

---

Anthony Votaw, Board President

  
\_\_\_\_\_  
Donna George, Secretary

CERTIFICATE OF DISSOLUTION OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.

Under Section 1003 of the Not-for-Profit Corporation Law

Filed by:

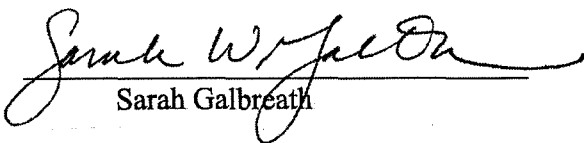
Byrne, Costello & Pickard, P.C.  
(John R. Brennan, Esq.)  
Tower I, Suite 1600  
100 Madison St.  
Syracuse, New York 13202-2721

**WRITTEN CONSENT AND RESOLUTION  
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\_\_\_\_\_  
Sarah Galbreath

\_\_\_\_\_  
Donna George

\_\_\_\_\_  
Amy Iles

\_\_\_\_\_  
Kara Pass

\_\_\_\_\_  
Anthony Votaw

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Kara Pass

\_\_\_\_\_  
Anthony Votaw

\_\_\_\_\_  
Jeffrey Walker

**WRITTEN CONSENT AND RESOLUTION  
OF THE BOARD OF DIRECTORS OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.**

The undersigned, being all of the Directors of Reconstruction Home and Health Care Center, Inc. (the "Corporation"), and acting for and on behalf of the Corporation, do hereby adopt the Resolution attached hereto without a meeting pursuant to § 708 of the Not-for-Profit Corporation Law.

The undersigned hereby acknowledge and consent that these presents may be executed in counterparts by the Directors by signing below or by electronic transmission, each of which shall be an original. Regardless of number, all counterparts shall constitute only one undertaking. It shall not be necessary in the making of any proof of this Resolution to produce or account for more than one counterpart.

IN WITNESS WHEREOF the undersigned Directors have caused these presents to be executed as of August 1, 2017.

\_\_\_\_\_  
Sarah Galbreath

\_\_\_\_\_  
Donna George

*Amy Iles*

\_\_\_\_\_  
Amy Iles

\_\_\_\_\_  
Kara Pass

\_\_\_\_\_  
Anthony Votaw

\_\_\_\_\_  
Jeffrey Walker

## John Brennan

---

**To:** John Brennan  
**Subject:** RE: Beechtree Resolution

---

**From:** Kara Pass [<mailto:kpass@tompkinsfinancial.com>]  
**Sent:** Tuesday, August 22, 2017 8:24 AM  
**To:** Votaw, Tony  
**Subject:** RE: Beechtree Resolution

**WARNING: This email originated outside of CMC.**  
**DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.**

This message was sent securely using ZixCorp.

Approved. ☺

**Kara Garner Pass**  
Senior Vice President, Managing Director

119 E. Seneca Street | PO Box 6437 | Ithaca, NY 14851 | [kpass@tompkinsfinancial.com](mailto:kpass@tompkinsfinancial.com)  
Phone: 607.273.0037 | Toll Free: 800.274.4003 | Fax 607.273.0024

**TOMPKINS**   
Financial Advisors

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**From:** Votaw, Tony [<mailto:tvotaw@CAYUGAMED.org>]  
**Sent:** Tuesday, August 22, 2017 8:07 AM  
**To:** Kara Pass; 'dgeorge@hospicare.org'; 'aai@sciarabbawalker.com'; 'jeff@ithacalaw.com'; 'Sarah Galbreath'  
**Subject:** RE: Beechtree Resolution

This message was sent securely using ZixCorp.

As it turns out, you can simply reply that you approve the resolution by email and that can count as an electronic signature. So far I have only heard from Sarah.

Thanks,  
Tony

---

**From:** Votaw, Tony  
**Sent:** Monday, August 21, 2017 1:08 PM  
**To:** Kara Pass ([kpass@tompkinsfinancial.com](mailto:kpass@tompkinsfinancial.com)); 'dgeorge@hospicare.org'; 'aai@sciarabbawalker.com'; 'jeff@ithacalaw.com'; 'Sarah Galbreath'  
**Subject:** Beechtree Resolution

**WRITTEN CONSENT AND RESOLUTION  
OF THE BOARD OF DIRECTORS OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.**

The undersigned, being all of the Directors of Reconstruction Home and Health Care Center, Inc. (the "**Corporation**"), and acting for and on behalf of the Corporation, do hereby adopt the Resolution attached hereto without a meeting pursuant to § 708 of the Not-for-Profit Corporation Law.

The undersigned hereby acknowledge and consent that these presents may be executed in counterparts by the Directors by signing below or by electronic transmission, each of which shall be an original. Regardless of number, all counterparts shall constitute only one undertaking. It shall not be necessary in the making of any proof of this Resolution to produce or account for more than one counterpart.

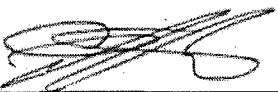
IN WITNESS WHEREOF the undersigned Directors have caused these presents to be executed as of August 1, 2017.

\_\_\_\_\_  
Sarah Galbreath

\_\_\_\_\_  
Donna George

\_\_\_\_\_  
Amy Iles

\_\_\_\_\_  
Kara Pass

  
\_\_\_\_\_  
Anthony Votaw

\_\_\_\_\_  
Jeffrey Walker



## John Brennan

---

**To:** John Brennan  
**Subject:** RE: Beechtree Resolution

---

**From:** Jeffrey Walker [<mailto:jeff@ithacalaw.com>]  
**Sent:** Tuesday, August 22, 2017 12:33 PM  
**To:** Votaw, Tony; 'Kara Pass ([kpass@tompkfinancial.com](mailto:kpass@tompkfinancial.com))'; 'dgeorge@hospicare.org'; 'aai@sciarabbawalker.com'; 'Sarah Galbreath'  
**Subject:** RE: Beechtree Resolution

**WARNING:** This email originated outside of CMC.  
**DO NOT CLICK** links or attachments unless you recognize the sender and know the content is safe.

Hi everyone. I have been in trial since Monday morning.  
I approve the resolution and do so via this electronic email.  
If you need more from me, please let me know.

Jeff Walker

---

**From:** Votaw, Tony [<mailto:tvotaw@CAYUGAMED.org>]  
**Sent:** Tuesday, August 22, 2017 8:07 AM  
**To:** 'Kara Pass ([kpass@tompkfinancial.com](mailto:kpass@tompkfinancial.com))' <[kpass@tompkfinancial.com](mailto:kpass@tompkfinancial.com)>; 'dgeorge@hospicare.org' <[dgeorge@hospicare.org](mailto:dgeorge@hospicare.org)>; 'aai@sciarabbawalker.com' <[aai@sciarabbawalker.com](mailto:aai@sciarabbawalker.com)>; Jeffrey Walker <[jeff@ithacalaw.com](mailto:jeff@ithacalaw.com)>; 'Sarah Galbreath' <[swg@holt.com](mailto:swg@holt.com)>  
**Subject:** RE: Beechtree Resolution

As it turns out, you can simply reply that you approve the resolution by email and that can count as an electronic signature. So far I have only heard from Sarah.

Thanks,  
Tony

---

**From:** Votaw, Tony  
**Sent:** Monday, August 21, 2017 1:08 PM  
**To:** Kara Pass ([kpass@tompkfinancial.com](mailto:kpass@tompkfinancial.com)); 'dgeorge@hospicare.org'; [aai@sciarabbawalker.com](mailto:aai@sciarabbawalker.com); 'jeff@ithacalaw.com'; 'Sarah Galbreath'  
**Subject:** Beechtree Resolution

Beechtree Board Members,

The time is finally come to dissolve Beechtree. I have attached a resolution with a separate signature page. I need each of you to print and sign the signature page (in blue ink) and scan it back to me. The collection of all signatures on separate pages is fine for filing the petition. We will end up paying somewhere in the vicinity of 25% of the liability amounts to each creditor. To put it in comparison, CMC received 16% on its loan. I feel pretty good about what we are able to pay. Please call or email me if you have any questions.

Thanks,  
Tony Votaw

**RESOLUTION OF THE BOARD OF DIRECTORS OF  
RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.**

WHEREAS Reconstruction Home and Health Care Center, Inc. (the “**Corporation**”) is a not-for-profit corporation organized and existing under the Not-for-Profit Corporation Law and Article 28 of the Public Health Law of the State of New York;

WHEREAS the Corporation previously owned a certain 120-bed nursing home identified as Beechtree Care Center (f/k/a Reconstruction Home) and located at 310-318 South Albany St. in the City of Ithaca, Tompkins County, New York 14850-5406 (the “**Nursing Home**”), the sale of which was subject to a Petition to the Tompkins County Supreme Court (the “**Court**”) that was approved by an Order of the Court entered in the Tompkins County Clerk’s Office and recorded on January 7, 2014, as Instrument No. 2014-00153;

WHEREAS as set forth in the aforesaid Petition, the Corporation contemplated dissolution after the sale of the Nursing Home and New York State Department of Health establishment approval of a new permanent operator of the Nursing Home;

WHEREAS pursuant to the aforesaid Petition and Order of the Court, the Corporation’s assets remaining after the sale were applied, and are to be applied, to Corporation’s outstanding liabilities;

WHEREAS the Corporation heretofore applied its remaining assets to pay costs of patient care, sums owed to New York State and settle all sums owed to the Corporation’s secured creditors;

WHEREAS the New York State Department of Health heretofore approved the establishment of a new permanent operator of the Nursing Home;

WHEREAS the Board of Directors have considered the advisability of voluntarily dissolving the Corporation; and

WHEREAS, the Board of Directors, after due consideration, have deemed it advisable and in the best interests of the Corporation to adopt and approve a Plan of Dissolution and authorize the filing of a Certificate of Dissolution with the New York State Department of State subject to the approval of the Attorney General of the State of New York, and any other necessary governmental authority, to dissolve.

NOW THEREFORE, it is

RESOLVED that the Corporation shall dissolve voluntarily; and it is further

RESOLVED that the Board of Directors does hereby adopt and approve the Plan of Dissolution in the form attached hereto; and it is further

RESOLVED that the Board of Directors hereby authorizes the filing of a Certificate of Dissolution

with the New York State Department of State, subject to the consent of the Attorney General of the State of New York; and it is further

RESOLVED that the officers of the Corporation are hereby authorized and empowered to execute such documents, to make any necessary, nonmaterial amendments to such documents and to do any and all acts necessary to effectuate the foregoing resolutions; and it is further

RESOLVED that this Resolution be filed with the minutes of the proceedings of the Corporation.

## ATTACHMENT

### PLAN OF DISSOLUTION OF RECONSTRUCTION HOME AND HEALTH CARE CENTER, INC.

The Board of Directors of Reconstruction Home and Health Care Center, Inc. (the “**Corporation**”), by action of the Board of Directors, having considered the advisability of voluntarily dissolving the Corporation, and it being the determination of the Board of Directors that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, the Board of Directors does hereby resolve that the Corporation be dissolved in accordance with the following Plan of Dissolution and that its remaining assets be distributed in accordance therewith:

#### PROCEDURE FOR DISSOLUTION

- A. Following the Board of Directors adopting this Plan of Dissolution, the Board shall submit this Plan of Dissolution to the New York State Attorney General for approval, which approval shall be attached hereto.
- B. Approval of the dissolution of the Corporation is also required to be obtained from the New York State Department of Health and the Public Health and Health Planning Council, which approval shall be attached hereto.
- C. Following the approval of the New York State Attorney General, the Corporation’s remaining assets shall be used to pay the Corporation’s costs of winding up its affairs and the balance expended to ratably pay Corporation’s remaining unsecured creditors.
- D. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-For-Profit Corporation Law shall be attached thereto.



**Reconstruction Home and Health Care Center Inc.**  
**Balance Sheet**  
**As of June 30, 2017**

**Assets:**

Current Assets

Cash & Equivalents 30,519

Total Assets 30,519

**Liabilities & Equity:**

Current Liabilities

Accounts Payable 328,644

Total Liabilities 328,644

Net Assets

Unrestricted (298,125)

Total Net Assets (298,125)

Total Liabilities and Net Assets -

For Internal Management Review Only

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of December, 2017, approves the filing of the Certificate of Dissolution of Reconstruction Home and Health Care Center, Inc., dated September 1, 2017.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel

**Date:** October 4, 2017

**Subject:** Dissolution: Tri Town Regional Healthcare (d/b/a Tri-Town Regional Hospital)

---

Tri Town Regional Healthcare ("TRH") operated an Article 28 facility in Sidney, New York as a subsidiary of Bassett Healthcare Network. Pursuant to CON application #171054, TRH transferred operations to Aurelia Osborn Fox Memorial Hospital; this project received PHHPC contingent approval on April 7, 2017.

A contingency on said application called for TRH to submit an amended Certificate of Incorporation, or in the alternative, submit a Certificate of Dissolution to the Department. TRH has elected to dissolve and hereby submits a Verified Petition for Dissolution, Plan of Dissolution, and Certificate of Dissolution for PHHPC's approval which will allow TRH to dissolve in a legally acceptable manner and so that TRH may satisfy the related contingency for application #171054.

TRH's remaining net assets as of June 30, 2017 is \$5,246,024.00. In accordance with the Plan of Dissolution and Distribution of Assets, TRH intends to distribute its assets to Aurelia Osborn Fox Memorial Hospital Society.

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.

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



# PERSUN & HAMLIN, P.C.

Attorneys at Law

IRS NO. 26-3786257  
717-620-2440  
FAX: 717-620-2442

1700 Bent Creek Boulevard  
Suite 160  
Mechanicsburg, PA 17050

MATTHEW E. HAMLIN  
717-620-2635  
mehamlin@persunhamlin.com

Please reply to:  
P.O. Box 659  
Mechanicsburg, PA 17055-0659

[HTTP://WWW.PERSUNHAMLIN.COM](http://www.persunhamlin.com)

September 22, 2017

## VIA E-MAIL

Eric J. Mantey, Esquire  
Senior Attorney  
New York State Department of Health  
Division of Legal Affairs  
Empire State Plaza, Corning Tower  
Room 2482  
Albany, NY 12237-0031

**Re: Tri Town Regional Healthcare d/b/a Tri-Town Regional Hospital  
DOH Operating Certificate No.: 1227001H  
Our File No. 10067-0576**

Dear Attorney Mantey:

The undersigned represents Tri Town Regional Healthcare doing business as Tri-Town Regional Healthcare (TRH). Our client wishes to seek the written approval of the Public Health and Health Planning Council to voluntarily dissolve, pursuant to Section 1002 of the Not-for-Profit Corporation Law (NPCL).

Under NPCL Section 1003, the approval of PHHPC is required for the voluntary non-judicial dissolution of TRH. Pursuant to 10 NYCRR 650.1, TRH wishes to file with PHHPC the attached Verified Application with exhibits. TRH is seeking PHHPC approval at the December 7, 2017 meeting.

By way of background, effective January 1, 2018, Aurelia Osborn Fox Memorial Hospital Society (A.O. Fox Hospital) will assume the operations of TRH at the facility located at 43 Pearl Street West, Sidney, New York.

Under the TRH's Plan of Dissolution and Distribution of Assets, the TRH's net assets are to be distributed to A.O. Fox Hospital to support the latter's operations at the TRH facility site. A.O. Fox Hospital was previously authority to operate that off-campus site under certificate of need file #171054C.

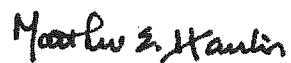
September 22, 2017

Page 2

After you have examined the attachments, please contact the undersigned about placing the matter on the PHHPC agenda for the December 7 meeting.

Thank you for your assistance and guidance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Matthew E. Hamlin". The signature is written in a cursive style with a large initial 'M'.

Matthew E. Hamlin

MEH/pg

Attachments

cc: Jeffery Joyner, President

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

---

In the Matter of the Application of  
**TRI TOWN REGIONAL HEALTHCARE**  
doing business as Tri-Town Regional Hospital  
for Approval of Plan of Dissolution and Distribution of Assets  
Pursuant to Section 1002 of the Not-for-Profit Corporation Law

---

**VERIFIED  
APPLICATION**

PHHPC No.

**TO: THE STATE OF NEW YORK  
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

Applicant, Tri Town Regional Healthcare doing business as Tri-Town Regional Hospital (hereinafter the "Corporation") by Jeffery Joyner, President of the Corporation for its Verified Application herein respectfully states:

1. That this Application is filed to seek the approval of the Public Health and Health Planning Council ("PHHPC") for the Corporation to voluntarily dissolve under New York Not-for-Profit Corporation Law Section 1002 and 10 NYCRR 650.1, pursuant to a Plan of Dissolution and Distribution of Assets attached hereto as Exhibit "D".
2. That the Corporation is a New York charitable not-for-profit corporation. A certified copy of the Corporation's filed Certificate of Incorporation, Certificates of Amendment, Certificate of Assumed Name and Corporate By-Laws are attached hereto, collectively, as Exhibit "A".
3. That the Corporation was previously established as a general hospital under Article 28 of the New York Public Health Law operating at 43 Pearl Street West, Sidney, New York. A copy of the Corporation's State of New York Department of Health Operating Certificate is attached hereto as Exhibit "B".

4. That by letter dated April 7, 2017 the New York State Department of Health approved the application of Aurelia Osborn Fox Memorial Hospital Society (hereinafter "A.O. Fox Hospital") to certify the Corporation, as a division of A.O. Fox Hospital and to de-certify the Corporation's inpatient beds to create an off-campus emergency department and to maintain outpatient services. A copy of the letter (CON File #171054C) is attached hereto as Exhibit "C".

5. That effective January 1, 2018 A.O. Fox Hospital will assume the operations of the Corporation's facility located at 43 Pearl Street West, Sidney, New York.

6. That Contingency 4 in the Department of Health's letter allows for the submittal to this Council of a Certificate of Dissolution for the Corporation. See Exhibit "C".

7. That there is a public need to voluntarily dissolve the Corporation since as of January 1, 2018 the Corporation's inpatient beds will be de-certified, and the Corporation will no longer be operating or providing healthcare services.

8. That, in accordance with the Plan of Dissolution and Distribution of Assets, dated August 23, 2017 (hereinafter the "Plan") adopted by the Corporation's governing board, the assets of the Corporation after payment of all liabilities are to be distributed to A.O. Fox Hospital to be used to support the off-campus emergency department and outpatient services at the facility located in Delaware County, State of New York. A copy of the Corporation's Plan with exhibits appended thereto is attached hereto as Exhibit "D".

9. That on August 23, 2017 the Corporation's governing board met pursuant to duly given notice and by unanimous vote approved the Plan and recommended its adoption to the Corporation's co-members, Bassett Healthcare Network and Bassett Regional Corporation. A copy of the Corporation's governing board resolution dated August 23, 2017 without exhibits is attached hereto as Exhibit "E".

10. That on September 14, 2017 the governing boards of the Corporation's members met pursuant to duly given notice and by unanimous vote approved the Plan. A copy of the governing board resolutions of the members, dated September 14, 2017 without exhibits are attached hereto, collectively, as Exhibit "F".

11. That the governing board of A.O. Fox Hospital met pursuant to duly given notice and passed by unanimous vote a resolution on August 23, 2017 agreeing to assume the operations of the Corporation on January 1, 2018 and accepting the net assets of Corporation in accordance with the Plan. A copy of the resolution of A.O. Fox Hospital governing board, dated August 23, 2017 without exhibits is attached hereto as Exhibit "G".

12. That on August 23, 2017 the Corporation and A.O. Fox Hospital governing boards approved the terms of a written agreement under which A.O. Fox Hospital would accept the Corporation's net assets and restrict the use of those assets solely for the purpose of providing healthcare services for medical care and treatment of persons in need thereof within the County of Delaware, State of New York. A copy of the Agreement is attached hereto as Exhibit "H".

13. That a copy of the Corporation's proposed Certificate of Dissolution Under Section 1003 of the Not-for-Profit Corporation Law, dated August 23, 2017 is attached hereto as Exhibit "I".

14. That a copy of the Corporation's draft Petition seeking the approval of the New York State Attorney General to dissolve, pursuant to Not-for-Profit Law Section 1002, is attached hereto without exhibits as Exhibit "J".

15. That no previous application for approval of the PHHPC for dissolution of the Corporation has been filed.

WHEREFORE, Applicant respectfully requests that the Public Health and Health Planning Council approve the dissolution of Tri Town Regional Healthcare doing business as Tri-Town Regional Hospital in accordance with the Plan of Dissolution and Distribution of Assets, dated August 23, 2017 attached hereto as Exhibit "D" and the filing of the Certificate of Dissolution attached hereto as Exhibit "I", pursuant to Section 1002 of the Not-for-Profit Corporation Law and 10 NYCRR 650.1.

IN WITNESS WHEREOF, the Corporation has caused this Application to be executed this 22<sup>nd</sup> day of September, 2017.


  
\_\_\_\_\_  
Jeffrey Joyner  
President

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF OTSEGO    )

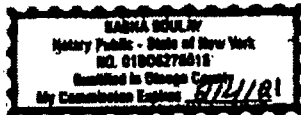
Jeffery Joyner, President, being duly sworn, deposes and says the following:

I am the President of Tri Town Regional Healthcare, the corporation named in the above Application. I make this verification at the direction of the Board of Directors. I have read the foregoing Application and now 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.

  
\_\_\_\_\_  
Jeffery Joyner  
President

Sworn to before me  
this 22 day of September, 2017

  
Notary Public



# **EXHIBIT A**



***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 20, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

070425000202

**CERTIFICATE OF INCORPORATION  
OF  
TRI TOWN REGIONAL HEALTHCARE  
UNDER SECTION 402 OF THE  
NOT-FOR-PROFIT CORPORATION LAW**

The undersigned, for the purpose of forming a not-for-profit corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies that:

1. Name of Corporation.

The name of this corporation is Tri Town Regional Healthcare (the "Corporation").

2. Nature of the Corporation.

The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law and is not formed, conducted or operated for purposes of pecuniary profit or financial gain. The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

3. Duration of the Corporation.

The Corporation shall have perpetual existence.

4. Purposes and Powers.

The purposes for which the Corporation is formed are as follows:

(a) To accept, hold, invest, manage and otherwise administer funds exclusively for charitable purposes, and to expend and apply the income or principal thereof by donating or contributing the same to corporations, trusts, or other organizations that qualify as exempt charitable organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and as publicly supported organizations within the meaning of either

paragraph (1) or (2) of Section 509(a) of the Code and that conduct their principal activities within the County of Delaware. The Corporation shall be operated so as to prevent any unnecessary or undesirable duplication of function or costs with any other charitable organizations conducting activities within the County of Delaware;

(b) To acquire real and personal property by bequest, devise, gift, purchase, lease or otherwise and to hold, invest and reinvest the same, and to sell, mortgage or otherwise convey or to lease any of such property, and to expend the proceeds and income thereof, all in furtherance of the charitable purposes described hereinabove;

(c) To administer such real and personal property in furtherance of such purposes; and

(d) Nothing herein contained shall authorize the Corporation to engage in any purposes or activities described in Sections 404(a) through 404(v) the Not-for-Profit Corporation Law of the State of New York to the extent that such activity is prohibited by said section.

In furtherance, and not in limitation, of the objects and purposes above described the Corporation shall have all the general powers enumerated under Section 202 of the Not-for-Profit Corporation Law and any other powers now or hereafter permitted by law for a corporation organized for the foregoing purposes, subject to any limitations provided in the Not-for-Profit Corporation Law or any other statute of the State of New York.

5. Obligations and Prohibitions.

Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for one or more of the purposes as specified in Sections 501(c)(3) and 509(a)(1) of the Code and shall not carry on any activities not permitted to be carried on by a corporation that is exempt from US Federal income taxation under Section 501(c)(3) of the Code and that is not a private foundation under Section 509(a)(1) of the Code; and

(a) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributed to, any member, trustee, director, officer or any private individual (except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to reimburse reasonable expenses incurred by members, trustees, directors and officers in effecting the purposes of the Corporation) and no member,

trustee, director, officer of the Corporation of any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

(b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation to an extent that would disqualify the Corporation as an entity described in Section 501(c)(3) of the Code.

(c) In the event of dissolution or termination of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of all liabilities and necessary expenses, be distributed to such organizations exempt under Section 501(c)(3) of the Code as would be eligible to receive support and benefit from the Corporation consistent with Article 4 hereof.

(e) In any year in which the Corporation is classified as a private foundation under the Code, it (i) shall distribute its income for such taxable year at such time and manner as not to be come subject to the tax on undistributed income under Section 4942 of the Code; (ii) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code; (iii) shall not retain any excess business holdings as defined in Section 4943(c) of the Code; (iv) shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and (v) shall not make any taxable expenditures as defined in Section 4945 of the Code.

6. Location of the Corporation.

The county in which the Corporation's principal office to be located is Delaware County, New York.

7. Directors.

The number of the Corporation's directors, to be known as trustees, shall hereafter be fixed in accordance with the bylaws of the Corporation. The names and addresses of persons to be the Corporation's directors until its first annual meeting are as follows:

Gerald D. Groff, MD  
PO Box 614  
Cooperstown, NY 13326

Scott McLean  
8 Haynes Blvd.  
Sidney, NY 13838

James Meno  
10 Haynes Blvd.  
Sidney, NY 13838

Joseph Mirabito  
13 Haynes Blvd.  
Sidney, NY 13838

Nicholas Nicoletta  
47 Canadarago Street  
PO Box 663  
Richfield Springs, NY 13439

Jeffrey Woepfel  
Bassett Healthcare  
One Atwell Road  
Cooperstown, NY 13326

8. Annual Meeting.


The time for holding the Corporation's annual meetings shall be the Saturday following the second Friday in May in each year or such other date as may from time to time be fixed by the bylaws.

9. Agent for Service of Process.

The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation is:

Tri Town Regional Healthcare  
39 Pearl Street West  
Sidney, NY 13838

IN WITNESS WHEREOF, the undersigned incorporator, being at least eighteen years of age, has signed this certificate this 13<sup>th</sup> day of April, 2007, and hereby affirms the truth of the statements contained herein under penalty of perjury.



Jeffrey Woepfel  
Tri Town Regional Healthcare  
39 Pearl Street West  
Sidney, NY 13838

070425000.202

CERTIFICATE OF INCORPORATION  
OF  
TRI TOWN REGIONAL HEALTHCARE

Section 402 of the Not-for-Profit Corporation Law

lcc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 25 2007

TAXS: DELAWARE  
YE: DELAWARE

Filer: Pillsbury Winthrop Shaw Pittman LLP  
1540 Broadway  
New York, NY 10036-4039  
Cust. Ref#862141CMJ

DRAWDOWN  
CSC 45  
DRAW DOWN

Tubes  
B

2007 APR 25 AM 11:03

FILED

2007 APR 24 PM 2:09

2007 APR 23 PM 12:18

233

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 20, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State



080205000121

CSC 45  
DRAW DOWN

CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
TRI TOWN REGIONAL HEALTHCARE  
UNDER SECTION 803 OF THE  
NOT-FOR-PROFIT CORPORATION LAW

Pursuant to Section 803 of the New York Not-For-Profit Corporation Law,

We, Bruce Wilhelm, President, and James Meno, Secretary, of Tri Town Regional Healthcare, a corporation duly existing under the Not-For-Profit Corporation Law of the State of New York, do hereby make, sign and acknowledge this Certificate and do certify as follows:

1. The name of this corporation is TRI TOWN REGIONAL HEALTHCARE (hereinafter called the "Corporation").
2. Its Certificate of Incorporation was filed in the office of the Secretary of State on April 25, 2007 pursuant to the provisions of the New York Not-for-Profit Corporation Law.
3. Article FOURTH of said Certificate of Incorporation presently provides as follows:

FOURTH: The purposes for which it is formed are as follows:

- (a) To accept, hold, invest, manage and otherwise administer funds exclusively for charitable purposes, and to expend and apply the income or principal thereof by donating or contributing the same to corporations, trusts, or other organizations that qualify as exempt charitable organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and as publicly supported organizations within the meaning of either paragraph (1) or (2) of Section 509(a) of the Code and that conduct their principal activities within the County of Delaware. The

Corporation shall be operated so as to prevent any unnecessary or undesirable duplication of function or costs with any other charitable organizations conducting activities within the County of Delaware;

(b) To acquire real and personal property by bequest, devise, gift, purchase, lease or otherwise and to hold, invest and reinvest the same, and to sell, mortgage or otherwise convey or to lease any of such property, and to expend the proceeds and income thereof, all in furtherance of the charitable purposes described hereinabove;

(c) To administer such real and personal property in furtherance of such purposes; and

(d) Nothing herein contained shall authorize the Corporation to engage in any purposes or activities described in Sections 404(a) through 404(v) the Not-for-Profit Corporation Law of the State of New York to the extent that such activity is prohibited by said section.

In furtherance, and not in limitation, of the objects and purposes above described the Corporation shall have all the general powers enumerated under Section 202 of the Not-for-Profit Corporation Law and any other powers now or hereafter permitted by law for a corporation organized for the foregoing purposes, subject to any limitations provided in the Not-for-Profit Corporation Law or any other statute of the State of New York.

4. The Certificate of Incorporation is hereby amended by deleting Article Fourth in its entirety, relating to the purposes and powers of the Corporation, and replacing with the following:

(a) The maintenance and operation within the County of Delaware, State of

New York, of hospital facilities including dispensaries, one or more clinics and outpatient departments, for the medical, surgical and psychiatric aid, care and treatment of persons in need thereof provided, however, that before any such facility is constructed or operated all approvals required by law, including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including the maintenance and operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches;

(b) To acquire real and personal property by bequest, devise, gift, purchase, lease or otherwise and to hold, invest and reinvest the same, and to sell, mortgage or otherwise convey or to lease any of such property, and to expend the proceeds and income thereof, all in furtherance of the charitable purposes described hereinabove;

(c) To administer such real and personal property in furtherance of such purposes; and

(d) Nothing herein contained shall authorize the Corporation to engage in any purposes or activities described in Sections 404(a) through 404(n), Sections 404(p) through 404(s) and Sections 404(u) through 404(v) of the Not-for-Profit Corporation Law of the State of New York to the extent that such activity is prohibited by said section.

In furtherance, and not in limitation, of the objects and purposes above described the Corporation shall have all the general powers enumerated under Section 202 of the Not-for-Profit Corporation Law and any other powers now or hereafter permitted by law for a

corporation organized for the foregoing purposes, subject to any limitations provided in the Not-for-Profit Corporation Law or any other statute of the State of New York.

5. The proposed amendment to the Certificate of Incorporation was authorized by unanimous written consent in lieu of a meeting of the board of directors of the Corporation dated as of the 14th day of December, 2007.

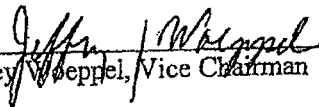
6. Tri Town Regional Healthcare is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under Section 201 of the Not-For-Profit Corporation Law and will continue to be a Type B corporation after the filing of the proposed amendment to its Certificate of Incorporation.

7. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address of the Corporation to which the Secretary of State shall mail a copy of any process or notice required by law is Tri Town Regional Healthcare, 39 Pearl Street West, Sidney, New York, NY 13838.

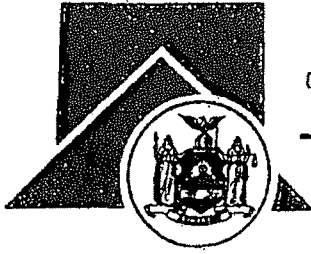
IN WITNESS WHEREOF, we have signed this Certificate and affirm the statements herein as true under penalty of perjury this 14th day of December, 2007, and this 14th day of December 2007, respectively.

  
\_\_\_\_\_

Bruce Wilhelm, Chief Executive Officer

  
\_\_\_\_\_

Jeffrey Woepffel, Vice Chairman



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

December 17, 2007

Joe R. Middleton  
Vice President Corporate Supply Services  
The Mary Imogene Bassett Hospital  
One Atwell Road  
Cooperstown, New York 13326

Re: Certificate of Amendment of the Certificate of Incorporation of  
Tri Town Regional Healthcare

Dear Mr. Middleton:

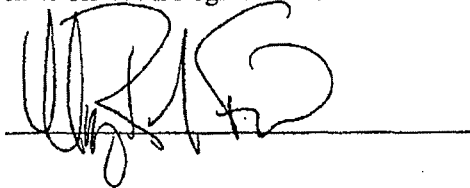
AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 7th day of September, 2007, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Tri Town Regional Healthcare, dated December 14, 2007.

Sincerely,

Colleen M. Frost  
Executive Secretary

/cf

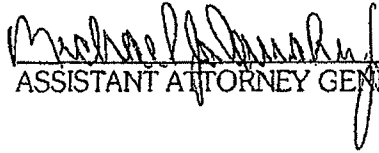
I, Molly R. Fitzgerald, Justice of the Supreme Court of the State of  
New York, [ 6<sup>th</sup> ] Judicial District, do hereby approve the foregoing Certificate of  
Amendment of the Certificate of Incorporation of Tri Town Regional Healthcare and consent  
that the same be filed.



Dated: January 14, 2008

Supreme Court, Delaware County  
at Binghamton, New York

THE ATTORNEY GENERAL HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL APPROVAL  
HEREON, ACKNOWLEDGES RECEIPT OF  
STATUTORY NOTICE AND DEMANDS SERVICE  
OF THE FILED CERTIFICATE. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE  
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

  
ASSISTANT ATTORNEY GENERAL

  
DATE



080205000 121

CSC 45  
DRAW DOWN

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
TRI TOWN REGIONAL HEALTHCARE  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

FILED BY:

PILLSBURY WINTHROP SHAW PITTMAN LLP  
1540 BROADWAY  
NEW YORK, NY 10036

RPD  
MWA

1cc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FEB 05 2008

CUSTOMER REF. #

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BY:

MWA

Delaware

2008 FEB -5 AM 9:06

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***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 20, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CSC 45

20080320056

**Certificate of Assumed Name**  
Pursuant to General Business Law, §130

NYS Department of State  
Division of Corporations, State Records and UCC  
41 State Street, Albany, NY 12231-0001  
www.dos.state.ny.us

1. NAME OF ENTITY

TRI TOWN REGIONAL HEALTHCARE

1A. FOREIGN ENTITIES ONLY. If applicable, the fictitious name the entity agreed to use in New York State is:

2. NEW YORK LAW FORMED OR AUTHORIZED UNDER (CHECK ONE):

Business Corporation Law

Limited Liability Company Law

Education Law

Not-for-Profit Corporation Law

Insurance Law

Revised Limited Partnership Act

Other (specify law):

3. ASSUMED NAME

TRI-TOWN REGIONAL HOSPITAL

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST BE NUMBER AND STREET, IF NONE, INSERT OUT-OF-STATE ADDRESS)

39 Pearl Street West Sidney, NY 13838

5. COUNTIES IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME

ALL COUNTIES (if not, circle county[ies] below)

Albany	Clinton	Greene	Montgomery	Oswego	Schenectady	Ulster
Allegany	Columbia	Hamilton	Nassau	Otsego	Schoharie	Warren
Bronx	Cortland	Herkimer	New York	Putnam	Schuyler	Washington
Broome	<u>Delaware</u>	Jefferson	Niagara	Queens	Seneca	Wayne
Cattaraugus	Dutchess	Kings	Oneida	Rensselaer	Steuben	Westchester
Cayuga	Erle	Lewis	Onondaga	Richmond	Suffolk	Wyoming
Chautauqua	Essex	Livingston	Ontario	Rockland	Sullivan	Yates
Chemung	Franklin	Madison	Orange	St. Lawrence	Tioga	
Chenango	Fulton	Monroe	Orleans	Saratoga	Tompkins	
	Genesee					

6. INSERT THE ADDRESS OF EACH LOCATION WHERE BUSINESS WILL BE CARRIED ON OR TRANSACTED UNDER THE ASSUMED NAME.  
Use a continuous sheet, if needed. (The address must be set forth in terms of a number and street, city, state and zip code. Please note that the address(es) reflected in paragraph 6 must be within the county[ies] checked in paragraph 5. If the entity does not have a specific location where it will conduct business under the assumed name please check the statement below.)

39 Pearl Street West Sidney, NY 13838

No New York State Business Location

200803200 66

INSTRUCTIONS FOR SIGNATURE: If corporation, by an officer; if limited partnership, by a general partner; if limited liability company, by a member or manager or by an authorized person or attorney-in-fact for such corporation, limited partnership, or limited liability company. If the certificate is signed by an attorney-in-fact, include the name and title of the person for whom the attorney-in-fact is acting. (Example, John Smith, attorney-in-fact for Robert Johnson, president.)

Nicholas J. Nicoletta  
Name and Title  
President

[Signature]  
Signature

CERTIFICATE OF ASSUMED NAME  
OF

TRI TOWN REGIONAL HEALTHCARE  
(Insert Entity Name)

Pursuant to §130, General Business Law

FILED

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Hillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, NY 10036  
FILER'S NAME AND MAILING ADDRESS

CSC 45

CUSTOMER REF. #  
4914123

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$25 fee. The Department of State also collects the following, additional, county clerk fees for each county in which a corporation does or transacts business: \$100 for each county within New York City (Bronx, Kings, New York, Queens and Richmond) and \$25 for each county outside New York City. All checks over \$500 must be certified.

(For office use only)

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STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED MAR 20 2008  
TAXS 195196  
BY: FR

C-070425000205

FILING RECEIPT

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ENTITY NAME: TRI TOWN REGINAL HEALTHCARE

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)  
PROCESS PROVISIONS

COUNTY: DELA

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FILED:08/08/2017 DURATION:\*\*\*\*\* CASH#:170808000676 FILM #:170808000612

FILER:

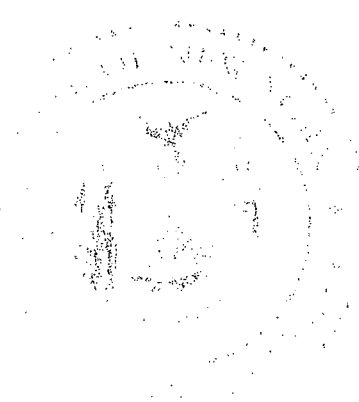
-----  
PERSUN & HAMLIN PC  
1700 BENT CREEK BOULEVARD  
SUITE 160 PO BOX 659  
MECHANICSBURG, PA 17055-0659

ADDRESS FOR PROCESS:

-----  
THE CORPORATION  
43 PEARL STREET WEST  
SIDNEY, NY 13838

REGISTERED AGENT:

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SERVICE COMPANY: VANGUARD CORPORATE SERVICES, LTD. - 52      SERVICE CODE: 52

FEEs	60.00	PAYMENTS	60.00
	-----		-----
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	30.00	DRAWDOWN	60.00
HANDLING	0.00	OPAL	0.00
		REFUND	0.00

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 9, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

612

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF  
TRI TOWN REGIONAL HEALTHCARE  
UNDER SECTION 803 OF THE  
NOT-FOR-PROFIT CORPORATION LAW**

**(Pursuant to Section 803 of the Not-For-Profit Corporation Law)**

We, the undersigned, Jeffery Joyner, President and Gail Hoffman, Secretary of Tri Town Regional Healthcare, a corporation duly existing under the Not-for-Profit Corporation Law of the State of New York, do hereby make, sign and acknowledge this certificate and do certify as follows:

1. The name of the corporation is Tri Town Regional Healthcare (the "Corporation").
2. The certificate of incorporation of the Corporation was filed in the office of the Secretary of State on April 25, 2007.
3. The law the Corporation was formed under is the Not-for-Profit Corporation Law.
4. The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
5. The certificate of incorporation is hereby amended by adding a new Article FOURTH-A as follows:

FOURTH-A: Pursuant to Section 701 of the Not-for-Profit Corporation Law, the management of the affairs of the corporation shall be vested in a board of trustees, except that the sole member of the corporation, Bassett Healthcare Network, shall be delegated the following powers:

- (a) appointment and removal with or without cause of all persons that serve on the corporation's board of trustees;

- (b) appointment of the chairperson of the corporation's board of trustees;
  - (c) appointment of the president of the corporation, who will serve in a chief executive role for the corporation;
  - (d) approval of any new mission statement or change to an existing mission statement of the corporation;
  - (e) general oversight of the governance of the corporation, including approval of all investment policies;
  - (f) coordination of the policies and procedures of the corporation;
  - (g) approval of all operating and capital budgets of the corporation;
  - (h) approval of all capital expenditures that exceed budgeted capital expenditures by five percent (5%) or more or the reallocation of capital expenditures contained in an approved budget by five percent (5%) or more;
  - (i) approval of all indebtedness of the corporation other than vendor indebtedness not otherwise included in the corporation's approved budget;
  - (j) approval of all third-party payer agreements, including managed care contracts, for the corporation;
  - (k) as determined by the Bassett Healthcare Network's chief executive officer, approval of all substantive clinical program changes of the corporation;
  - (l) approval of all mergers, consolidations, divisions, liquidations, dissolutions and conversions involving the corporation;
  - (m) approval of all certificate of need applications of the corporation;
- and



(n) approval of all amendments to the certificate of incorporation and bylaws of the corporation.


6. This amendment to the certificate of incorporation of the Corporation was authorized by the unanimous vote of the members of the Corporation on April 18, 2017.

7. The Secretary of the State of New York is hereby designated the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Tri Town Regional Healthcare  
43 Pearl Street West  
Sidney, NY 13838

IN WITNESS WHEREOF, the undersigned has subscribed this certificate and affirmed the statements herein as true under the penalties of perjury this 1<sup>st</sup> day of May, 2017.

  
\_\_\_\_\_  
Jeffrey Joynes, President

  
\_\_\_\_\_  
Gail Hoffman, Secretary


VERIFICATION

STATE OF NEW YORK            )  
  )    ss.:  
COUNTY OF DELAWARE        )

JEFFERY JOYNER, being duly sworn, deposes and says: I am the President of Tri Town Regional Healthcare, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of Tri Town Regional Healthcare and know the contents thereof and the same is true of my knowledge.

  
\_\_\_\_\_  
Jeffery Joyner

Sworn to before me this  
1 day of March, 2017.

  
\_\_\_\_\_  
Notary Public

CAROL A. BOWKER  
Notary Public - State of New York  
No. 01BO5044099  
Qualified in Delaware County  
My Commission Expires 5/22 2019

VERIFICATION

STATE OF NEW YORK            )  
  )     ss.:  
COUNTY OF DELAWARE        )

GAIL HOFFMAN, being duly sworn, deposes and says: I am the Secretary of Tri Town Regional Healthcare, I have read the foregoing Certificate of Amendment to the Certificate of Incorporation of Tri Town Regional Healthcare and know the contents thereof and the same is true of my knowledge.

Gail Hoffman  
Gail Hoffman

Sworn to before me this  
1 day of May, 2017.

Carol A. Bowker  
Notary Public

**CAROL A. BOWKER**  
Notary Public - State of New York  
No. 01805044099  
Qualified in Delaware County  
My Commission Expires 5/22 2019



***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.ny.gov

June 13, 2017

Christina Staples  
Coordinator Operations & Capital Development  
Corporate Support Services and Facilities Planning  
Bassett Healthcare Network  
One Atwell Road  
Cooperstown NY 13326

Re: Certificate of Amendment of the Certificate of Incorporation of Tri Town Regional  
Healthcare

Dear Ms. Staples:

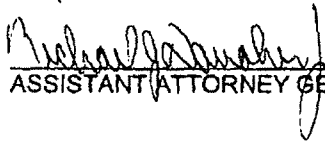
AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 8th day of June, 2017, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Tri Town Regional Healthcare, dated May 1, 2017.

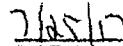
Sincerely,

*Colleen M. Leonard*  
Colleen M. Leonard  
Executive Secretary

/cl

THE ATTORNEY GENERAL HEREBY APPROVES  
THE FOREGOING CERTIFICATE OF AMENDMENT  
FOR FILING WITH THE DEPARTMENT OF STATE.

  
\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

  
\_\_\_\_\_  
DATE

612

**CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
OF  
TRI TOWN REGIONAL HEALTHCARE  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

**FILED BY:**

**PERSUN & HAMLIN, P.C.  
1700 Bent Creek Boulevard  
Suite 160  
P.O. Box 659  
Mechanicsburg, PA 17055-0659**

300  
**STATE OF NEW YORK  
DEPARTMENT OF STATE**  
**FILED AUG 08 2017**  
**TAX BY:** \_\_\_\_\_

**DRAWDOWN ACCOUNT #52  
Vanguard Corporate Services, Ltd.  
Customer Reference: 131790F**

676

Corporate By-Laws of  
TRI TOWN REGIONAL HEALTHCARE

The following constitutes the By-Laws of TRI TOWN REGIONAL  
HEALTHCARE, hereinafter referred to as "the Corporation" or "the Hospital."

Amended – December 21, 2016

## **ARTICLE I**

### **Purpose**

Subject to the powers of the Member set forth in Article II, Section 2, the objects, purposes and powers of the Corporation are as follows:

A. The maintenance and operation within the County of Delaware, State of New York, of hospital facilities including dispensaries, one or more clinics and outpatient departments, for the medical, surgical, dental and psychiatric aid, care and treatment of persons in need thereof and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient, or proper in connection therewith, including, without thereby limiting the generality of the foregoing, the maintenance and operation of hospital laboratories and departments of medical, surgical, pathological, and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches.

B. In furtherance, and not in limitation, of the objects above described the Corporation shall have the power:

1. To acquire by purchase, lease, donation, bequest, or otherwise, land and buildings within said County of Delaware, State of New York, necessary and convenient for the establishing and maintaining of said hospital facilities.

2. To acquire by gift, devise, bequest, or otherwise, real and personal property without limitation as to amount, except such limitation, if any, as is now or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the Corporation.

3. To arrange by contract, or otherwise, for the services of doctors, surgeons, and other persons necessary for the carrying out of the objects and powers of the Corporation and to pay proper compensation therefor.

4. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be exercised by the Corporation, whether heretofore specifically enumerated or not.

## **ARTICLE II**

### **Member**

Section 1. Member: The sole member of the Hospital shall be Bassett Healthcare Network, a not-for-profit corporation organized and existing under the laws of the State of New York (the "Member") and such other organizations and persons as may be appointed by the Member at a meeting of the Member.

Section 2. Powers of the Member: The member shall have the following powers:



- a. Appointment and removal with or without cause of all persons that serve on the Board of Trustees;
- b. Appointment of the chairperson of the Board of Trustees;
- c. Appointment of the president of the Hospital, who will serve in a chief executive role for the Hospital;
- d. Approval of any new mission statement or change to an existing mission statement of the Hospital;
- e. General oversight of the governance of the Hospital, including approval of all investment policies;
- f. Coordination of the policies and procedures of the Hospital;
- g. Approval of all operating and capital budgets of the Hospital;
- h. Approval of all capital expenditures that exceed budgeted capital expenditures by five percent (5%) or more or the reallocation of capital expenditures contained in an approved budget by five percent (5%) or more;
- i. Approval of all indebtedness of the Hospital other than vendor indebtedness not otherwise included in the Hospital's approved budget;
- j. Approval of all third-party payer agreements, including managed care contracts, for the Hospital;
- k. As determined by the Member's chief executive officer, approval of all substantive clinical program changes of the Hospital;
- l. Approval of all mergers, consolidations, divisions, liquidations, dissolutions and conversions involving the Hospital;
- m. Approval of all certificate of need applications of the Hospital; and
- n. Approval of all amendments to the certificates of incorporation and bylaws of the Hospital.

### **ARTICLE III**

#### **Board of Trustees**

##### **Section 1. Management (Powers and Duties):**

Subject to the powers of the Member set forth in Article II, Section 2, all powers of the Corporation shall be exercised by and under the authority of the Board of Trustees (the "Board"), and the property, business, and affairs of the Corporation shall be managed by or under the direction of the Board. The Board shall approve By-Laws, rules and regulations for the Medical Staff (as defined herein) and shall appoint, suspend or remove any physician or other practitioner from the Medical Staff,

following the provisions of these By-Laws and the By-Laws of the Medical Staff. The Board shall also provide for the orientation and continuing education of its Members.

Section 2. Number, Election and Terms of Trustees:

The Board of the Corporation shall consist of not less than five (5) nor more than fifteen (15) persons ("Trustees"). The exact number shall be fixed by the Board at any meeting of the Corporation. No decrease in the number of Trustees shall have the effect of shortening the term of any incumbent Trustee. The President of the Hospital and the President of the Medical Staff shall be ex-officio members of the Board of Trustees and shall serve without voting rights. Each member of the Board of Trustees shall be selected on the basis of a demonstrated interest in the objectives of the Hospital as set forth in its Mission Statement, as well as the ability of the candidate to participate effectively in fulfilling those objectives. The Governance Committee (as defined herein) shall meet, at least one (1) month prior to the annual meeting, and as necessary to fill a vacancy, present to the Board a list of nominees to fill the vacancies on the Board of Trustees. The Board decision will be forwarded to the Member for its (their) approval. Trustees shall be appointed by the Member and shall hold office until the following annual meeting and until their successors have been appointed and qualified, unless sooner removed in accordance with Section 3 hereof. All Board members shall be divided into three classes, each class consisting of approximately one-third of the number of elected trustees. Trustees shall be appointed by the Member for a term of three years, or until his or her successor is elected. No elected Trustee may serve more than three (3) consecutive three-year terms.

Section 3. Removal; Vacancies:

Any or all of the Trustees may be removed, with or without cause, at any time by the Member. Vacancies occurring on the Board, including those by resignation, removal, death, disability and increase in the number of board seats, or any other cause, shall be filled at any meeting of the Members following the process outlined in Section 2. The Board of Trustees can recommend to the Member the removal of a Trustee for cause by a vote of two-thirds of the Board of Trustees. The recommendation shall be advisory and not binding on the Member.

Section 4. Resignation of Trustees:

A Trustee may resign at any time by tendering a resignation in writing to the Corporation which shall become effective upon receipt by the Corporation at its principal place of business.

Section 5. Compensation of Board Members and Committee Members:

No Trustee or member of a committee shall receive, directly or indirectly, any salary, compensation, or emolument from the Corporation for services rendered as a Trustee, but any Trustee may be employed by the Corporation in any other capacity, and may receive such reasonable compensation for services in effecting one or more of the purposes of the Corporation as may be authorized by the concurring vote of a majority of all Trustees.

Section 6. Trustee Emeritus:

The Member of the Corporation, by a majority vote, may elect any former Trustee who has rendered faithful and distinctive service to the Corporation to the office of Trustee Emeritus. A Trustee Emeritus may attend the meetings of the Board and take part in discussion, but shall have no vote.

Section 7. Self-Evaluation:

As a part of the ongoing organization process of quality improvement, the Governance Committee of the Board shall be responsible for the annual review of the Board and its performance. A written report outlining the Board of Trustees' efforts is to be presented to the Board.

**ARTICLE IV**

**Meetings of the Board of  
Trustees**

Section 1. Annual Meeting; Regular Meetings:

The Board shall meet in May each year or as otherwise scheduled, at a place and time to be determined. The Board may conduct regular meetings at such times and places as it may fix.

Section 2. Special Meetings:

Special meetings of the Board shall be held at any place within or without the State of New York upon written request directed to the Secretary by the Chairperson of the Board or by any Trustee. Such request shall specify the purpose or purposes of such meeting. At such meetings there shall be transacted only such business as shall have been stated in the notice of such meeting or as shall be connected with or incidental to the business stated therein, provided, however, that if at such meeting all of the Trustees of the Corporation shall be present, any business may be transacted thereat.

Section 3. Notice of Meetings:

Notice of each annual or regular or special meeting stating the place, date and hour of the meeting and, in the case of a special meeting, indicating that the notice is being issued by or at the direction of the person or persons calling the meeting, shall be given by first class mail, telegram or hand delivery not less than two (2) days before the date set for such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to each Trustee at his/her address as it appears on the records of the Corporation.

#### Section 4. Quorum:

Except to the extent explicitly set forth herein, a majority of the entire Board then in office shall constitute a quorum for the transaction of any business. Any one (1) or more Members of the Board may participate in a meeting of the Board by conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting. After a quorum has been established at a meeting of the Board, the subsequent withdrawal of Trustees from the meeting so as to reduce the number of Trustees present to fewer than the number required for a quorum shall not affect the validity of any action taken by the Board at the meeting or any adjournment thereof. A majority of the Trustees present, whether or not a quorum exists, may adjourn any meeting of the Board to another time and place. Notice of any such adjourned meeting shall be given to the Trustees who are not present at the time of adjournment.

#### Section 5. Action by the Board:

Except to the extent explicitly set forth in these By-Laws, the Board may act by majority vote of the Trustees present at a meeting at which a quorum is present. Subject to the powers of the Member set forth in Article II, Section 2, the Board shall not take any of the following actions except upon a two-thirds (2/3) vote of all Trustees cast in favor of the action: (i) incur more than \$1,000,000 in debt outside the ordinary course of business in any one (1) calendar year, provided that any sale/ leaseback involving one (1) or more items of equipment shall be considered to be in the ordinary course of business with respect of any item of equipment having a purchase price of less than \$1,500,000; or (ii) sell, convey, lease, exchange, transfer or otherwise dispose of, or create a security interest in, all or any of its real property, or any interest therein, wherever situated. The notice for any meeting at which any of the matters listed above is to be presented to the meeting for action shall specify the action proposed. A copy of such notice shall also be given to each of the members of the Board of the Corporation not less than two (2) days before the date set for such meeting. No authorization or direction by the Board to take action with respect to the matters listed above shall become effective until twenty (20) days after the meeting at which the Board authorized or directed such action and only if such authorization or direction by the Board has not been rescinded or amended during such twenty (20) day period. No action requiring a two-thirds (2/3) vote of all the Trustees in favor of such action shall be taken at any time that a vacancy exists on the Board. Whenever under the Not-For-Profit Corporation Law or these By-Laws the Board is required or permitted to take any action (including any of the actions listed above as requiring a two-thirds (2/3) vote of all Trustees in favor of any such action), such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all of the Trustees entitled to vote thereon. This paragraph shall not be construed to alter or modify the provisions of any section of the Not-For-Profit Corporation Law. Written consent thus given by all Trustees entitled to vote shall have the same effect as a unanimous vote of all Trustees taken at a meeting where all Trustees were present.

## Section 6. Procedures:

Unless otherwise determined by the presiding Chairperson and/or an affirmative vote by a majority of the Trustees in attendance, the order of Business at the Annual Meeting and/or Regular Meeting(s) of the Board of Trustees shall be as follows:

1. Call to order
2. Presentation of Notice of Meeting
3. Board of Trustee Education
4. Approval of Minutes of Previous Meetings
5. Election of Officers other than the Chairperson and President (Annual Meeting)
6. Recommendation to the Member the Chairperson and President (Annual Meeting)
7. Appointment of Committees (Annual Meeting)
8. Report of Medical Staff President
9. Reports of Committees
10. Financial Reports
11. CEO Report
12. Old Business
13. Transaction of other business that may properly brought before the meeting
14. Correspondence
14. Adjournment

## **ARTICLE V**

### **Officers; Duties of Officers**

#### Section 1. Officers:

The Officers of the Corporation shall consist of the Chairperson of the Board, the Vice Chairperson, the Secretary, the Treasurer, and President and such other Officers as the Board shall deem advisable, each of whom, except for the Chairperson, shall be elected by the Board at the next regular meeting following the Annual Meeting of the Corporation. The Chairperson shall be appointed by the Member upon the recommendation of the Board. Such recommendation shall be advisory and not binding on the Member. Such Officers shall hold office for the term of [one (1) year], or until their successors are elected and qualified, except in the event of their earlier death, resignation or removal. The Chairperson of the Board and the Vice Chairperson, if any, shall be a Trustee but the other Officers of the Corporation are not required to be Trustees. Additional Officers may be created at any Board meeting and filled by action of the Board.

#### Section 2. Vacancies:

A vacancy in any office because of death, resignation or removal shall be filled by the Board for the unexpired term of such office.

### Section 3. Resignation or Removal of Officers:

An Officer of the Corporation may resign at any time by tendering his/her resignation in writing to the Chairperson of the Board. The resignation becomes effective immediately upon receipt. An Officer may be removed at any time with or without cause by a vote of not less than the majority of the entire Board at any meeting of the Board.

### Section 4. Chairperson of the Board:

The Chairperson of the Board shall preside at all meetings of the Board and of the Corporation and shall have all of the duties and powers usually pertaining to this office in a business corporation. The Chairperson shall have the power to make and execute contracts in the ordinary course of business of the Hospital, to execute, with the Vice Chairperson and the Secretary, all deeds, mortgages, bonds, and other obligations or instruments when authorized by the Board of Trustees; and to execute, with the treasurer, all annual or other reports or statements of the Hospital which may be required by law. This power and authority to execute documents and instruments may also be delegated under these By-Laws, by the Chairperson or the Board, to the Vice Chairperson or other officers or agents of the Hospital. The chairman shall appoint committee chairmen and, after consultation with the committee chairmen, the members of the committees. He/she shall appoint all committees and their chairpersons in accordance with these By-Laws. He/she shall have such other duties and responsibilities as shall be delegated to him/her by these By-Laws and by the Board from time to time.

### Section 5. Vice Chairperson:

At the request of or in the absence of the Chairperson of the Board, the Vice Chairperson designated by the Chairperson of the Board of Trustees shall perform the duties of Chairperson. Each Vice Chairperson shall have such powers and perform such duties as may be assigned to them by the Chairperson or by the Board.

### Section 6. Secretary:

The Secretary shall keep or cause to be kept all of the records of the Corporation except the financial records, shall record the minutes of the meetings of the Corporation and of the Board, send out all notices of meetings, attest to the seal of the Corporation where necessary or required, and perform such other duties as may be prescribed by the Board or the Chairperson of the Board. The Secretary shall also keep or cause to be kept a register of the names and addresses of each [Member/Trustee] of the Corporation.

### Section 7. Treasurer:

The Treasurer shall have general supervision, charge and custody of all of the funds, financial records and securities of the Corporation (except as expressly provided otherwise) and shall keep full and accurate accounts of receipts and

disbursements and render accounts thereof at the annual meetings of the Board and of the Corporation and whenever else required by the Board, or the Chairperson of the Board, and shall perform such other duties as may be prescribed by the Board, or the Corporation, shall ensure that a true and accurate accounting of the financial transactions of the Corporation is made and that such accounting is presented and made available to the Board. The Treasurer shall prepare, execute and file, with the Chairperson, any annual report or statement which may be required by law.

Section 8. Other Officers:

The Board of Trustees may appoint one (1) or more Assistant Secretaries or Assistant Treasurers and such other Officers having such duties and responsibilities as the Board shall deem advisable. Such Officers need not be members of the Board or of the Corporation.

Section 9. Compensation of Officers:

No Officer of the Corporation shall receive directly or indirectly, any salary, compensation or emolument from the Corporation, either for the services rendered as such Officer or in any other capacity, unless authorized by the concurring vote of a majority of all the Trustees and then only reasonable compensation for services in effecting one or more of the purposes of the Corporation.

**ARTICLE VI**

**President**

Section 1. Appointment:

The Member shall appoint the President of the Hospital who shall serve in the chief executive officer role of the Hospital. The board of trustees shall establish a Search Committee for the selection of an individual to serve as President. The Chief Executive Officer of the Member shall serve on the Search Committee. The Search Committee shall also recommend to the board of trustees the individual selected to serve as President. Such recommendations shall be advisory and not binding on the Member. The Board may also appoint one or more assistants or Vice Presidents who shall assist the President in the performance of his/her duties.

Section 2. Duties of the President:

The President shall be responsible at all times for directing, coordinating and supervising the administration of the Hospital and the Medical Staff and for carrying out the policies of the Board. The President shall attend all meetings of the Board, the Executive and Finance Committee, and other Board meetings. He/she shall be responsible for the quality of medical care at the Hospital and a program for continuous quality improvement for all Hospital activities and shall report to the Chairperson of the Board and the Board thereon. The President shall serve in an administrative liaison capacity between the Medical Staff and the Board and shall be responsible for making

recommendations to the Board concerning appointments and reappointments to the Medical Staff and the granting of clinical privileges. In addition, the President shall have the power to summarily suspend all or any portion of the clinical privileges of any physician or other practitioner whenever such action must be taken immediately in the best interest of patient care or safety in the Hospital or to prevent disruption of the Hospital's operation. He/she may appoint such assistants and Vice Presidents, and such committees of the staff as he/she may deem desirable and may assign them such duties as he/she may deem proper. He/she shall attend such meetings of the standing and Special Committees of the Medical Staff as he/she deems appropriate. The President shall present to the Executive and Finance Committee the annual operating budgets, and the annual and long-range capital budgets as may be required from time to time by law, governmental regulations, or accrediting agencies. He/she shall present to the Executive and Finance Committee and the Board, concise and substantiated plan proposals for the future of the Hospital. In the preparation of these budgets and plans he/she shall be assisted by special management committees composed of members of the medical and administrative staffs.

In coordination with the Board, the President will coordinate the development of and implement the long and short term plans for the Hospital.

In his/her absence, the Member shall appoint a substitute as Acting President.

The President shall have all of the additional duties, responsibilities and authority as set forth in Appendix I attached hereto.

### Section 3. Evaluation of President's Performance:

The Executive and Finance Committee will evaluate the President's performance and make a written report to the Board of Trustees and Chief Executive Officer of the Member at least once a year.

## **ARTICLE VII**

### **Committees of the Board of Trustees**

#### Section 1. Committees of the Board:

The Chairperson of the Board of Trustees shall appoint the Member upon the recommendation of the Board. Such recommendation shall be advisory and not binding on the Member. The Board shall appoint the Chairpersons of such standing committees of the Board of Trustees as are provided for in these By-laws and such special committees as the Board shall authorize, subject to the approval of the Board. Unless otherwise specified, committee members may include, in addition to Trustees, members of the Medical Staff, Officers of the Corporation and members of the community. The Chairperson of the Board shall be a member of all committees.

#### Section 2. Standing Committees:

Standing committees shall be those named in subsequent sections of this Article and shall have and may exercise all of the powers provided for in these By-Laws.



Section 3. Special Committees:

Special committees shall be created as required, by resolution of the Board. The purpose, duties, number of members and reporting requirements of the committee shall be specified in the resolution creating the committee.

Section 4. Executive and Finance Committee:

A. Composition: The composition of the Executive and Finance Committee shall consist of the Chairperson of the Board, the Vice Chairperson, (the Treasurer) and additional members of the Board as deemed appropriate by the Chairperson. The President will serve in a non-voting capacity and provide such appropriate staff as necessary to accomplish the committee's responsibilities.

B. Duties: The duties of the Executive and Finance Committee are:

(1.) During the intervals between the meetings of the Board, the Executive and Finance Committee shall have, and may exercise, subject to such limitations as may be provided by resolution of the Board or by these By-Laws, all of the powers of the Board that may be so delegated under the provisions of any statute, the Certificate of Incorporation or these By-Laws and that have not been specifically delegated to other standing or Special Committees.

(2.) The Executive and Finance Committee shall have special and general charge and control, subject to the control of the Board, of the monies and securities of the Corporation and all financial affairs of the Corporation including the authority to invest and reinvest the funds of the Corporation. It shall keep a record of its proceedings and shall report all action taken by it to the Board.

(3.) The Executive and Finance Committee shall review and make recommendations to the Board concerning annual operating and capital budgets, and such long-range operating and capital budgets as are required by law, governmental regulations and accrediting agencies. Such budgets will be presented by the President who shall be assisted in their preparation by appropriate management committees composed of members of the medical and administrative staff.

(4.) The Executive and Finance Committee shall also be responsible for the annual evaluation of the President's performance.

(5.) The Strategic Planning Committee shall be a subcommittee of the Executive and Finance Committee. It shall conduct long range plans which identify community needs, market opportunities and facility changes and resources.

B. Meetings, Reports and Recommendations: The Executive and Finance Committee shall meet at least quarterly or more often, as necessary, shall maintain a permanent record of its proceedings and actions, and shall make a report thereof to the Board.

Section 5. Joint Advisory Committee:

A. Composition: The Joint Advisory Committee shall consist of the following: three (3) members of the Board appointed by the Board (one of whom shall be newly appointed annually); the President of the Medical Staff, Vice President of the Medical Staff and one (1) additional member of the Medical Staff of the Hospital elected by the Medical Staff and approved by the Board and the President of the Hospital. At the option of the Board it may include one (1) or more additional officers and/or one (1) or more members of the administrative staff.

B. Meetings and Reports: The Joint Advisory Committee shall meet at least 2 times a year, shall maintain a permanent record of its proceedings, and shall make a report thereof to the Board. The dates for such meetings shall, unless otherwise determined by the Joint Advisory Committee, be fixed by the Chairperson at least thirty (30) days in advance thereof.

C. Duties: The duties of the Joint Advisory Committee shall be to develop and maintain suitable formal liaison between the Board and the Medical Staff.

Section 6. Governance Committee:

A. Composition: Governance Committee shall consist of not less than three (3) Trustees.

B. Duties: The Governance Committee shall propose candidates for vacancies on the Board of Trustees to be filled at the annual meeting of the Corporation and candidates for any other vacancy on the Board to be filled for any interim period prior to the next annual meeting of the Corporation and shall submit them to the Board. Recommendations of the Governance Committee for election as Trustees shall be considered by the Board in determining the Board's nominations for Trustees to be acted upon by the Member. The Board shall not be bound by any recommendation of the Governance Committee for nomination as a Trustee. The Member shall not be bound by any recommendation of the Board.

Subject to the powers of the Member set forth in Article II, Section 2, the Governance Committee shall also be responsible for developing and implementing an orientation program for all new members of the Board; and developing and implementing a continuing education program for the Board that extends throughout the year and covers such areas of interest as the Corporation's purposes and missions, new laws and regulations that affect the delivery of health care, patients' rights, the Corporation's quality assurance program, the Board's role and responsibility as to the delivery of patient care and the effective operation of the Corporation; and establishing criteria for the evaluation of the Board's performance and the evaluation of the Board's and its committees' performance on an annual basis.

As a part of the ongoing organization process of quality improvement, the Governance Committee of the Board of Trustees shall be responsible for the annual review of the Board of Trustees and its performance based upon a standard survey prepared by the Member. A written report outlining the Board of Trustees' efforts is to be presented to the Board of Trustees and Chief Executive Officer of the Member.

C. Meetings, Reports and Recommendations: The Governance Committee shall meet at least annually and as necessary to transact its business, maintain a permanent record of its proceedings and actions and make a report thereof to the Board.

Section 7. Board Quality and Performance Improvement Committee:

A. Composition: The Board Quality and Performance Improvement Committee shall consist of the following: Board members appointed by the Board, Medical Staff representation and support staff to include the President, Director of Nursing and QA Coordinator.

B. Meetings and Reports: The Board Quality and Performance Improvement Committee shall meet at least four times a year, or when necessary at the call of the committee chairperson.

C. Duties: The Quality and Performance Improvement Committee is responsible for recommending to the full board policies, plans and goals that maintain and improve the quality of care and customer service provided throughout the organization. The committee also reviews organization-wide performance against established targets and reports in a summary fashion to the full board.

Section 8. Committee Members' Terms of Office:

Each member of a committee, including the chairperson, shall be appointed for a year (unless otherwise specified in these By-Laws), and shall continue in office until the next annual meeting of the Board and until a successor is appointed unless the committee shall be sooner terminated by the Board or until the death, resignation or removal of the member or chairperson, whichever first occurs.

Section 9. Committee Meetings:

Meetings of any committee of the Board may be called by the chairperson of such committee or by the chairperson of the Board of Trustees by giving notice of such meeting, setting forth its time and place and delivered personally or by mail or telephone to the residence or place of business of the committee member as it appears on the books or records of the Corporation at least two (2) days prior to such meeting. Unless otherwise provided in these By-Laws, a majority of the members of any committee shall constitute a quorum for the transaction of business. After a quorum has been established at a committee meeting, the subsequent withdrawals of committee members from the meeting so as to reduce the number of committee members present to fewer than the number required for a quorum shall not affect the validity of any action taken at the meeting. Each committee shall keep minutes of its meetings and report to the Board as necessary with recommendations. No committee shall have the authority to take any action which is required by these By-Laws to be taken by a two-thirds (2/3) vote of all Trustees.

Section 10. Resignation of Committee Members:

A member of any committee of the Board may resign at any time by tendering his/her resignation in writing to the Chairperson of the Board. Resignation as a Trustee shall also constitute resignation as a member of any committee of the Board.

**ARTICLE VIII**

**Medical Staff**

Section 1. Organization of the Medical Staff:

The Board shall appoint a Medical Staff composed of physicians, dentists and other doctorates in fields closely related to medicine as well as non-doctoral assistants and practitioners and shall see that they are organized into a responsible administrative unit under the President. The Medical Staff shall operate as an internal part of the Hospital and, through the President, shall be responsible and accountable to the Board for the discharge of those duties and responsibilities as may be delegated to it by the Board from time to time. Specifically, the Medical Staff shall have the responsibility of keeping the President, and through him/her the Board, advised of the quality of medical care in the Hospital and of making recommendations to the President with regard thereto.

Section 2. By-Laws of the Medical Staff:

The Medical Staff shall adopt By-Laws, rules and regulations for the governance of their professional duties, responsibilities and privileges in the Hospital, and recommend them to the Board. These By-Laws, rules and regulations, shall be reviewed at least every two years by the Medical Staff, and any amendments thereto shall become effective only after approval by the Board and the Board shall retain the right to make any amendments, after consultation with the Medical Staff, that shall in its opinion be in the best interests of the Hospital.

Section 3. Appointment of Members of the Medical Staff, and Assignment of Clinical Privileges:

After considering the recommendations of the Medical Staff, the Board shall appoint members of the Medical Staff who are graduates of recognized medical schools meeting the minimum personal and professional qualifications prescribed in the Medical Staff By-Laws and shall assign clinical privileges to them. The Board shall also appoint as members of the Medical Staff other doctorates as well as non-doctoral assistants and practitioners. Appointments shall be for no more than two (2) years, renewable in accordance with the reappointment procedures set forth in the Medical Staff and Hospital By-Laws. Initial appointments shall be provisional for at least a period of one (1) year and no more than two (2) years. All reappointments to the Medical Staff, after the initial appointment, shall be for a period of no longer than two (2) years and shall be at the complete discretion of the Board.

The appointment of a member of the full-time active staff may be terminated prior to its expiration and the reappointment of a member may be denied only by a majority vote of the members of the Board present at a regular or special meeting of the Board at which a quorum is present and only after the member has been offered an opportunity to present his/her case to the Board in accordance with the procedures outlined in the Medical Staff By-Laws.

A licensed physician appointed to the Medical Staff shall be responsible for the admission, baseline history, physical examination and treatment of each patient admitted to the Hospital. Such responsibility shall include supervision of adjunct staff assigned to care of the patient, subject only to such limitations as the Board and its designees may impose and to the By-Laws, rules and regulations of the Medical Staff as approved and adopted by the Board.

Other doctorates, non-doctoral assistants and practitioners appointed to the Medical Staff by virtue of their position shall provide only those medically related services assigned to them by action of the Board and its designees, subject to the By-laws, rules and regulations of the Medical Staff as approved and adopted by the Board.

Each appointee to the Medical Staff shall sign a statement that he/she has read and understood the By-Laws and the rules and regulations of the Hospital and the Medical Staff, that he/she agrees to be bound by them during the term of his/her appointment, that he/she specifically agrees that he/she has an obligation to provide continuous clinical care and supervision as appropriate to all Hospital patients for whom he/she has responsibility and that he/she will observe all ethical principles of the medical, research, and/or education profession.

#### Section 4. Medical Director:

After consultation with the Medical Staff and the President, the Board shall appoint a Medical Director. The duties of the Medical Director shall be established by the Board.

### **ARTICLE IX**

#### **Indemnification**

Any person made or threatened to be made a party to any action or proceeding, whether civil or criminal, by reason of the fact that he/she, his/her testator or intestate, is or was a Member, Trustee, an Officer, or an agent of the Corporation including physicians acting in their capacity as medical Staff officers, Clinical Chiefs, committee members, or serves or served any other corporation or other entity or organization in any capacity at the request of the Corporation while he/she was a Member, Trustee, officer or agent of the Corporation, shall be and hereby is indemnified by the Corporation against all judgments, fines, amounts paid in settlement and reasonable expenses including attorney's fees actually and necessarily incurred as a result of any such action or proceedings, or any appeal therein, to the full extent permitted and in the manner prescribed by the Not-For-Profit Corporation Law of the State of New York, as it may be amended from time to time, or such other law or laws as may be applicable to

the extent such other law or laws are not inconsistent with the Not-For-Profit Corporation Law.


The foregoing provisions of this Article shall be deemed to be a contract between the Corporation and each Member, Trustee, Officer, and agent of the Corporation who serves in such a capacity at any time while this Article and the relevant provisions of the Not-For-Profit Corporation Law are in effect and any repeal or modification of this Article or such provisions of the Not-For-Profit Corporation Law shall not affect any rights or obligations then existing as it relates to any action or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts. However, the right of indemnification provided in this Article shall not be deemed exclusive of any other rights to which any Member, Trustee, Officer, or agent of the Corporation may now be or hereafter become entitled apart from this Article.

#### **ARTICLE X**

##### **Amendments to the By-Laws**

These By-Laws shall be reviewed and if necessary amended at least every two (2) years. The Board of Trustees may propose in writing amendments to these By-Laws to the Member. Such proposed amendments shall be advisory and not binding on the Member. These By-Laws may be amended at any annual or special meeting of the member of the Corporation.

Approved by the Board of Trustees on December 21, 2016.

  
\_\_\_\_\_  
Gail Hoffman, Secretary

## APPENDIX I

### Duties, Responsibilities and Authority of the President

- To implement the policies established by the Board affecting operations of the Hospital, and to keep the Board apprised about internal and external developments and issues.
- To provide leadership, exercising delegated authority from the Member in the chief executive role of the Hospital.
- Under direction of the Member, to direct continuous planning for the future of the Hospital, to identify goals, to assess the value of existing services, to create and take advantage of opportunities for new services and activities, and to communicate effectively the Hospital's services and policies to patients and other publics.
- To organize and direct the clinical services and administrative departments as they can best serve the missions of the Hospital and in support of the Member and its subsidiaries functioning as an integrated health system.
- To evaluate Hospital services and activities to assure that they are of high quality and are appropriate to the best interests of the institution and its patients.
- To assure that all departments and services of the Hospital function together on a well coordinated, cooperative, and mutually supportive basis, resolving interpersonal and interdepartmental conflicts where necessary.
- To assure that the institution is strong financially and financial resources are spent in the most effective manner possible.
- To assure effective management of human resources, including recruitment, retention, compensation, and productivity, to influence the selection of individuals for key positions, and to assure that the Hospital is fair and deals consistently with all those who work there.
- To assure that those who work at the Hospital are informed about institutional goals, policies, and operations and that their opinions are heard and considered with regard to such subjects.
- To allocate space and assure the effective maintenance of the physical plant, site and facilities.
- To assure that operations are in compliance with the laws, rules, and standards of those who regulate the Hospital (government, quasi-governmental agencies, and voluntary accrediting agencies). Further, to influence the legislative and rule-making process toward favorable results for the Hospital, within legal boundaries.

# **EXHIBIT B**



Facility Id. 8554  
Certificate No. 1227001H

Certified Beds - Total 4  
Medical / Surgical 4

State of New York  
Department of Health  
Office of Primary Care and Health Systems Management



OPERATING CERTIFICATE

Hospital

Effective Date: 02/08/2017  
Expiration Date: NONE

Tri Town Regional Healthcare  
43 Pearl Street West  
Sidney, New York 13838

Operator: Tri Town Regional Healthcare, Inc.  
Co-Operator: Bassett Healthcare Network  
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Emergency Department

Medical Services - Other Medical Specialties    Medical Services - Primary Care

Medical/Surgical

Nuclear Medicine - Diagnostic

*Keith W. Lewis*

20170310

Deputy Director Office of Primary Care and  
Health Systems Management

This certificate must be conspicuously displayed on the premises.

*Howard Zucker M.D.*

Commissioner

# **EXHIBIT C**



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

April 7, 2017

Mark J. Wright  
Vice President/Finance  
Aurelia Osborn Fox Memorial Hospital  
One Norton Avenue  
Oneonta, New York 13820

Re: 171054 C  
Aurelia Osborn Fox Memorial Hospital  
(Delaware County)  
Certify Tri Town Regional Healthcare, an  
existing hospital located at 43 Pearl Street West,  
Sidney, as a division of the hospital and decertify  
all inpatient beds to create an off-campus  
emergency department and maintain outpatient  
services.

Dear Mr. Wright:

The Department of Health proposes to approve the above application in accordance with the full review provisions set forth in 10 NYCRR section 710.1(c)(2). Approval of this application is subject to the enclosed contingencies first being satisfied.

In addition to contingencies, the Department proposes to approve this application with the enclosed conditions. You are expected to comply with these conditions throughout the operation of this project, including any and all conditions pertaining to specified timeframes.

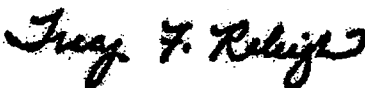
Pursuant to the provisions of 10 NYCRR Parts 86 and 710, you may not begin the construction or operation of any aspect of this project, or receive reimbursement for any associated costs, unless all required written approvals are obtained. Before beginning any aspect of this project, you must complete the following steps:

- submit written materials to satisfy the enclosed contingencies and receive written approval from the Division of Health Facility Planning (DHFP) indicating satisfaction of all contingencies;
- If the subject facility is currently in operation, you must develop a plan to ensure the health and safety of all patients and staff during construction. This plan must comply with all applicable sections of the National Fire Prevention Association (NFPA) 101 Life Safety Code (2000 Edition) and all applicable sections of the State Hospital Code during construction. The plan may require you to separate residents, patients, staff and essential support services from the construction site and/or provide them with an alternative means of egress. Please have the plan available to regional office staff at the time of their on-site visit.

You are responsible for ensuring that this project complies with all applicable statutes, codes, rules and regulations. Should violations be found when reviewing documents, or at the time of on-site inspections or surveys, you will be required to correct them. Additional costs incurred to address any violations will not be eligible for reimbursement without prior approval by the Department. Also, in accordance with 10 NYCRR section 710.5, any change in the scope of this project must receive prior approval from the Department and may require a new or amended application.

If you have any questions concerning this letter, please contact the Bureau of Project Management at (518) 402-0911.

Sincerely,



Tracy F. Raleigh  
Director  
Center for Health Care Facility Planning,  
Licensure and Finance.

Enclosures

171054 C Aurelia Osborn Fox Memorial Hospital

**Approval contingent upon:**

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of a detailed plan, acceptable to the Bureau of Emergency Medical Services, which clarifies:
  - a. How Aurelia Osborn Fox Memorial Hospital plans to ensure that only BLS patients are transported by ambulance to the Off-Campus site.
  - b. The provision for on/off line medical control, communication systems, regional protocol issues and public education.
  - c. That if EMS is transporting a critically ill or injured patient, Tri Town Regional Healthcare shall not be considered the closest Emergency Department, and that site shall be bypassed for the next closest appropriate hospital-based emergency department.
  - d. That if a patient requiring resuscitation presents to the Off-Campus Emergency Department, the site shall have appropriate staffing, training, equipment, and medication to provide care and transport that patient by ambulance to another health care facility.
  - e. That transportation of patients from the Off-Campus Emergency Department by ambulance shall not be provided by accessing the 911 system.
  - f. The names of the ambulance services with which Aurelia Osborn Fox Memorial Hospital will be contracting.
  - g. How timely transport of patients shall be accomplished for patients who present to the ED at this site but are in need of admission or a higher level of care and a definition of "timely" in this context. [HSP]
3. Submission of a photocopy of the applicant's evidence of site control, acceptable to the Department. [CSL]
4. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation or, alternatively a Certificate of Dissolution, for Tri Town Regional Healthcare, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Compliance with 10 NYCRR 405.19 (Emergency Services), as well as additional Part 405 sections, including those for the governing body, quality assurance, and medical records. [HSP]
3. Compliance with applicable CMS Conditions of Participation (CoPs), including those for governing body, medical staff, nursing staff, laboratory services, quality assurance, medical records, infection control. [HSP]
4. Full integration of all operations with the Aurelia Osborn Fox Memorial Hospital main site hospital. Medical staff of the off-campus ED should be part of the single medical staff of Aurelia Osborn Fox Memorial Hospital. [HSP]
5. Compliance with all EMTALA obligations. [HSP]
6. Employment of a triage system of care, one linked to the community's primary care delivery system. [HSP]

7. Linkage of the ED to a primary care "medical home," with protocols for referral, enrollment and tracking. [HSP]
8. Use of a health information exchange (HIE) to enhance clinical decision-making by providing appropriately private and secure patient encounter history at the time and point of care, creating a platform for community-wide coordination of care. [HSP]
9. Establishment of agreements and protocols with the EMS community to provide transfer to the off-campus ED for appropriate patients. [HSP]
10. Establishment of an agreement with an ambulance company to provide timely transportation to the main site ED or closest hospital that meets the needs of the patient. [HSP]
11. Submission of a signed agreement to provide annual reports to the Department beginning in the second year of operation. These reports shall include:
  - a. Data showing utilization, including emergency and non-emergency cases;
  - b. Data showing number of transfers to hospitals and subsequent inpatient admissions from the ED;
  - c. Data showing number of referrals to primary care, (including primary care health home);
  - d. Data on efforts in patient education regarding appropriate conditions for ED treatment;
  - e. Data showing a breakdown of visits by payor source; and
  - f. Data showing percentage of charity care provided. [HSP]

# **EXHIBIT D**

**PLAN OF DISSOLUTION AND  
DISTRIBUTION OF ASSETS OF  
TRI TOWN REGIONAL HEALTHCARE**

The Board of Directors (“Directors”) of Tri Town Regional Healthcare doing business as Tri-Town Regional Hospital ( the “Corporation”) do hereby resolve to recommend to the members of the Corporation, Bassett Healthcare Network and Bassett Regional Corporation (the “Members”) that the Corporation be dissolved. The Directors agreed to this resolution at a Regular Meeting duly convened on the 23<sup>rd</sup> day of August, 2017, pursuant to notice given in accordance with law. At the meeting, a quorum was present at all times, and the Directors considered the advisability of voluntarily dissolving the Corporation. The Directors unanimously determined that dissolution was advisable and in the best interests of the Corporation. They adopted the following Plan of Dissolution and Distribution of Assets (“the Plan”).

**Procedure for Dissolution**

1. Upon resolution of the Board of Directors adopting the Plan, the Directors shall submit the Plan to a vote of the Members for approval.
2. The dissolution of the Corporation will satisfy one of the contingencies in the certificate of need issued by the New York State Department of Health to Aurelia Osborn Fox Memorial Hospital Society so as to allow for the de-certification of the Corporation’s inpatient beds and creation of an off-campus emergency department while maintaining outpatient services. A copy of the certificate of need approval letter, dated April 7, 2017 (DOH file #171054C) is attached hereto as Exhibit “A”.
3. Aurelia Osborn Fox Memorial Hospital Society will assume the healthcare operations of the Corporation at 43 Pearl Street West, Sidney, New York on January 1, 2018, including the assignment of the Corporation’s assignable assets and written Lease Agreement between the Corporation and Town of Sidney, New York granting the Corporation possession of the facility. A copy of the Lease Agreement, as amended, is attached hereto as Exhibit “B”.
4. Approvals of the State of New York Public Health and Health Planning Council, either the New York State Attorney General or New York State Supreme Court and consent of the New York State Department of Taxation and Finance are required to dissolve the Corporation.
5. The Certificate of Incorporation with all amendments, Certificate of Assumed Name and Bylaws of the Corporation are attached hereto, collectively, as Exhibit “C”.
6. The net assets of the Corporation and their fair value are described in the Corporation’s unaudited Balance Sheet for the period ending June 30, 2017 attached to this Plan as Exhibit “D” and made a part hereof. Based upon the unaudited Balance Sheet the fair value of the Corporation’s net assets is \$5,246,024.00 as of June 30, 2017. The Corporation’s debts or



liabilities and all accounting and legal fees incurred in connection with this dissolution procedure shall be paid by the Corporation from its assets.

7. The net assets of the Corporation to be assigned to Aurelia Osborn Fox Memorial Hospital Society will not be subject to any unpaid liabilities of the Corporation, and are not subject or required to be distributed by any gift instrument to any third-party. The net assets to be transferred will include up to \$22,567.00 that are temporarily restricted.

8. A copy of the most recent audited financial statements of the Corporation for 2016 is attached hereto as Exhibit "E".

9. The Directors recommend the following plan be approved by the Members:

- a. The Corporation shall fulfill and discharge all of its contracts and discharge or pay its liabilities, if any, in lieu of all other acts appropriate to liquidate its business;
- b. All outstanding debts owing to the Corporation shall be collected as expeditiously as possible. Any assignable debts owing to the Corporation under written agreement shall be assigned to Aurelia Osborn Fox Memorial Hospital Society to be used exclusively to provide healthcare services in the County of Delaware, State of New York described in subparagraph "d" below;
- c. Any assets distributable under this Plan to a creditor who is unknown or cannot be found, shall be distributed to the Comptroller of the State of New York pursuant to the Abandoned Property Law of such state within six (6) months from the date fixed for the payment of the final liquidating distribution as provided below, pursuant to Not-for-Profit Corporation Law Section 1002-a(d);
- d. The assignable net assets owned by the Corporation that remain after paying or providing for the payment of its liabilities, if any, shall be transferred to Aurelia Osborn Fox Memorial Hospital Society under written agreement and shall be used exclusively to continue to provide healthcare services in Delaware County, New York in keeping with the Corporation's purpose set forth in the Corporation's Certificate of Incorporation, as amended (See - Exhibit "C") as follows:

The maintenance and operation within the County of Delaware, State of New York, of hospitals including dispensaries, one or more clinics and outpatient departments, for the medical, surgical, and psychiatric aid, care and treatment of persons in need thereof provided, however, that before any such facility is constructed or operated all approvals required by law,

including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including the maintenance and operation of hospital laboratories and departments of medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches; and

- e. The distribution of the Corporation's net assets to Aurelia Osborn Fox Memorial Hospital Society will allow that hospital to continue to provide hospital emergency department services and outpatient services at the Corporation's facility located at 43 Pearl Street West, Sidney, New York or such other suitable location in Delaware County, pursuant to the Department of Health's certificate of need approval letter.

10. The Corporation shall carry out the Plan as expeditiously as possible, but in any event within two hundred seventy (270) days from the date of this Plan, as approved by either the Attorney General or the Supreme Court, or such additional extended period of time not less than thirty (30) days and no more than one (1) year as the Attorney General of the State of New York may allow upon a showing of good cause of the Corporation that the plan cannot be carried out within the prescribed time.

11. After distribution of the net assets within the time period prescribed in paragraph 10 above of this Plan, a Certificate of Dissolution in the form attached hereto as Exhibit "F" shall be executed, and all approvals required under the Not-for-Profit Corporation Law Section 1002 shall be obtained prior to the filing of the Certificate of Dissolution with the New York State Department of State as required by law.



# **EXHIBIT A**



Department  
of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

April 7, 2017

Mark J. Wright  
Vice President/Finance  
Aurelia Osborn Fox Memorial Hospital  
One Norton Avenue  
Oneonta, New York 13820

Re: 171054 C  
Aurelia Osborn Fox Memorial Hospital  
(Delaware County)  
Certify Tri Town Regional Healthcare, an  
existing hospital located at 43 Pearl Street West,  
Sidney, as a division of the hospital and decertify  
all inpatient beds to create an off-campus  
emergency department and maintain outpatient  
services.

Dear Mr. Wright:

The Department of Health proposes to approve the above application in accordance with the full review provisions set forth in 10 NYCRR section 710.1(c)(2). Approval of this application is subject to the enclosed contingencies first being satisfied.

In addition to contingencies, the Department proposes to approve this application with the enclosed conditions. You are expected to comply with these conditions throughout the operation of this project, including any and all conditions pertaining to specified timeframes.

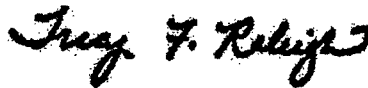
Pursuant to the provisions of 10 NYCRR Parts 86 and 710, you may not begin the construction or operation of any aspect of this project, or receive reimbursement for any associated costs, unless all required written approvals are obtained. Before beginning any aspect of this project, you must complete the following steps:

- submit written materials to satisfy the enclosed contingencies and receive written approval from the Division of Health Facility Planning (DHFP) indicating satisfaction of all contingencies;
- If the subject facility is currently in operation, you must develop a plan to ensure the health and safety of all patients and staff during construction. This plan must comply with all applicable sections of the National Fire Prevention Association (NFPA) 101 Life Safety Code (2000 Edition) and all applicable sections of the State Hospital Code during construction. The plan may require you to separate residents, patients, staff and essential support services from the construction site and/or provide them with an alternative means of egress. Please have the plan available to regional office staff at the time of their on-site visit.

You are responsible for ensuring that this project complies with all applicable statutes, codes, rules and regulations. Should violations be found when reviewing documents, or at the time of on-site inspections or surveys, you will be required to correct them. Additional costs incurred to address any violations will not be eligible for reimbursement without prior approval by the Department. Also, in accordance with 10 NYCRR section 710.5, any change in the scope of this project must receive prior approval from the Department and may require a new or amended application.

If you have any questions concerning this letter, please contact the Bureau of Project Management at (518) 402-0911.

Sincerely,



Tracy F. Raleigh  
Director  
Center for Health Care Facility Planning,  
Licensure and Finance

Enclosures

171054 C Aurelia Osborn Fox Memorial Hospital

Approval contingent upon:

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of a detailed plan, acceptable to the Bureau of Emergency Medical Services, which clarifies:
  - a. How Aurelia Osborn Fox Memorial Hospital plans to ensure that only BLS patients are transported by ambulance to the Off-Campus site.
  - b. The provision for on/off line medical control, communication systems, regional protocol issues and public education.
  - c. That if EMS is transporting a critically ill or injured patient, Tri Town Regional Healthcare shall not be considered the closest Emergency Department, and that site shall be bypassed for the next closest appropriate hospital-based emergency department.
  - d. That if a patient requiring resuscitation presents to the Off-Campus Emergency Department, the site shall have appropriate staffing, training, equipment, and medication to provide care and transport that patient by ambulance to another health care facility.
  - e. That transportation of patients from the Off-Campus Emergency Department by ambulance shall not be provided by accessing the 911 system.
  - f. The names of the ambulance services with which Aurelia Osborn Fox Memorial Hospital will be contracting.
  - g. How timely transport of patients shall be accomplished for patients who present to the ED at this site but are in need of admission or a higher level of care and a definition of "timely" in this context. [HSP]
3. Submission of a photocopy of the applicant's evidence of site control, acceptable to the Department. [CSL]
4. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation or, alternatively a Certificate of Dissolution, for Tri Town Regional Healthcare, acceptable to the Department. [CSL]

Approval conditional upon:

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2. Compliance with 10 NYCRR 405.19 (Emergency Services), as well as additional Part 405 sections, including those for the governing body, quality assurance, and medical records. [HSP]
3. Compliance with applicable CMS Conditions of Participation (CoPs), including those for governing body, medical staff, nursing staff, laboratory services, quality assurance, medical records, infection control. [HSP]
4. Full integration of all operations with the Aurelia Osborn Fox Memorial Hospital main site hospital. Medical staff of the off-campus ED should be part of the single medical staff of Aurelia Osborn Fox Memorial Hospital. [HSP]
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6. Employment of a triage system of care, one linked to the community's primary care delivery system. [HSP]

7. Linkage of the ED to a primary care "medical home," with protocols for referral, enrollment and tracking. [HSP]
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  - a. Data showing utilization, including emergency and non-emergency cases;
  - b. Data showing number of transfers to hospitals and subsequent inpatient admissions from the ED;
  - c. Data showing number of referrals to primary care, (including primary care health home);
  - d. Data on efforts in patient education regarding appropriate conditions for ED treatment;
  - e. Data showing a breakdown of visits by payor source; and
  - f. Data showing percentage of charity care provided. [HSP]



# **EXHIBIT B**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (hereinafter the "Lease") made this 17 day of January 2017, by and between the following parties:

**Landlord:**

TOWN OF SIDNEY, NEW YORK, a general municipal corporation having its principal place of business located at Civic Center, 21 Liberty Street, Sidney, New York 13838 (hereinafter the "Landlord").

**Tenant:**

TRI TOWN REGIONAL HEALTHCARE doing business as TRI-TOWN REGIONAL HOSPITAL, a New York State not-for-profit corporation with its principal place of business located at 43 Pearl Street West, Sidney, New York 13835 (hereinafter "Tenant").

**ARTICLE 1**  
**DEMISED PREMISES**

**1.01 – Demised Premises - Leased Space:**

Landlord hereby leases to Tenant, and Tenant leases from Landlord a portion of the Landlord's former hospital building consisting of 15,006 square feet located at 43 Pearl Street West, Sidney, New York, (hereinafter "Building") depicted in color on the floor plans attached hereto, collectively, as Exhibit "A", together with the common areas, stairs and elevators, in the Building, and adjacent parking areas with the interior building common areas including hallways depicted on Exhibit "A" (hereinafter "Demised Premises"). The real property on which the Building is located together with all improvements shall hereinafter be referred to as the "Premises".

Landlord covenants and represents that it holds good and marketable title to the Demised Premises free and clear of all liens and encumbrances.

**1.02 - Use of Space:**

Tenant will use the Demised Premises for the purpose of providing healthcare services including, but not limited to urgent and/or emergency care, physician services, radiology, laboratory, offices, storage and other ancillary and support medical services and related services provided by affiliates, including affiliated organizations and subtenants of the Tenant. Such clinic and program services may include full-time and part-time specialized medical practitioners.

**ARTICLE 2**  
**TERM OF LEASE**

**2.01 - Term:**

The term of the lease shall be for one (1) year commencing on the 1st day of February, 2017 and terminate at 12:01 a.m. on February 1, 2018 (hereinafter "Lease Term").

**2.02 - Surrender of Demised Premises**

At the expiration of the term of this Lease or any extensions thereof, Tenant shall surrender the Demised Premises in good condition and broom clean, reasonable wear and tear, and damage by fire or casualty excepted.

**ARTICLE 3**  
**RENT**

**3.01 - Rent During The Term:**

Tenant agrees to pay the Landlord at the offices of Landlord, or at any other place designated by Landlord, without any prior demand therefore monthly rent of \$32,825.63 representing \$26.25 per square foot, and annual rent of \$393,907.50 for the Demised Premises and during the term of the Lease.

Each installment of rent to be paid by Tenant to Landlord shall be paid in advance, by the first day of each month by check, draft, or like instrument payable to the order of Landlord or such other persons, firm or corporation as shall have been designated by Landlord, in writing, to receive such payment from time to time during the term of this Lease.

In the event the Landlord fails to provide the services and utilities required hereunder, Tenant, at its option, may provide such services and deduct as a credit against the rent, the cost of providing such services and/or terminate this Lease Agreement upon thirty (30) days prior written notice to the Landlord.

**3.02 - Past Due Rent:**

If during the term of this Lease, Tenant shall fail to pay the rent or additional rent or any other charge hereunder when the same is due and payable or within ten (10) calendar days thereafter, then interest at the monthly rate of one percent (1.00%) shall accrue from and after the date of which any such sum shall be due and payable and such interest shall be paid to Landlord as additional rent at the time of payment of the delinquent sum. Landlord shall have the right to apply any payments made by Tenant first to any deficiency in the payment of the interest provided for in this Section 3.02.

**3.03 - Purchase Option:**

During the Lease Term, Tenant or its designee shall have the right to purchase from the Landlord the Demised Premises and the Clinic Building located at 39 Pearl Street West, Sidney, New York (both parcels described in the deeds attached hereto, collectively, as Exhibit "B", hereinafter the "Property") for a combined purchase price of \$350,000.00. Tenant shall exercise the purchase option upon not less than sixty (60) days written notice to the Landlord. Following Tenant's exercise of the purchase option the parties shall negotiate in good faith a written purchase agreement(s) for the parcels of real property. The purchase agreement(s) shall contain customary contingencies, including, but not limited to, the Landlord's satisfaction of the requirements under Town Law Section 64 requiring the passage of a town board resolution and permissive referendum, financing, government and zoning approvals, board approvals and conveyance of good and marketable title to Tenant or its designee. Tenant may designate the third party to exercise this purchase option or enter into the written purchase agreements with the Landlord.

**3.04 - Right of First Refusal:**

During the Initial Lease Term, Landlord grants Tenant or its designee a right of first refusal for the purchase of the Property. Landlord and Tenant agree that if Landlord receives a bona fide written offer from a third party for the purchase of all or any part of the Property, which offer Landlord is willing to accept, Landlord will give Tenant written notice thereof, and will send Tenant a copy of the proposed contract of sale from such third party. Tenant shall have the right for thirty (30) days after the receipt of such notice and contract of sale to enter into an agreement to purchase the Property at the same price but not to exceed \$350,000.00 as provided in Section 3.03 above, which right of Tenant shall be paramount to the rights of the third party. If Tenant fails to exercise any such preemptive right within the time herein specified, Landlord shall be at liberty to enter into a contract for the sale of the Property with the third party at the same price and on the same terms as contained in the proposed contract of sale sent to Tenant.

### 3.05 - Right to Offset Against Rent:

Should the Landlord or its successors or assigns fail to fully perform all of the terms and conditions of this Lease or Clinic Lease, upon five (5) days' prior written notice to Landlord, Tenant shall have the right to off-set against the rent and additional rent due and payable under the Lease and/or Clinic Lease for costs Tenant has incurred associated with fulfilling Landlord's obligations under this Lease including, but not limited to payment of utilities, water and sewer charges, repair and maintenance of common systems and other services under Article 4, insurance under Article 5, real estate taxes under Article 6 and repairs and maintenance under Article 7.

Tenant's right of offset is without prejudice to its other rights and remedies against the Landlord arising out of Landlord's breach of the Lease including, but not limited to the right to terminate the Lease.

## **ARTICLE 4** **UTILITIES and OTHER SERVICES**

### 4.01 - Utilities:

Landlord shall pay for all maintenance and repair of Building, its systems and other improvements (except for Tenant shall reimburse Landlord for the monthly maintenance cost for the Building's three elevators as provided for in Section 4.03 below), parking lot maintenance and repairs, lawn mowing, gas, electricity, water, sewer, heating, ventilation, and air conditioning consumed in connection with the Demised Premises. Tenant is responsible for all oxygen used by the central oxygen system located in the Building. Tenant shall pay all telephone and television/cable charges.

Tenant, at its option and added sole cost and expense, may have the Demised Premises separately metered for utilities.

The temperature and ventilation requirements for the Demised Premises to be provided by Landlord shall meet or exceed the standards set forth in Table 7.2 of the AIA/HHS Guidelines for Design and Construction of Hospitals and Healthcare Facilities. The operating temperatures shall be continuously adjustable in the range of 68-73 degrees Fahrenheit. Areas that are not leased and are not part of the Demised Premises may be maintained at 55 degrees Fahrenheit in the winter and 85 degrees Fahrenheit in the Summer per the Energy Conservation Construction Code of New York State.

### 4.02 - Housekeeping and Medical Waste:

Tenant shall provide housekeeping and general cleaning services, including trash removal. Tenant shall provide removal and disposal services for medical waste.

### 4.03 - Common Systems:

Except for Tenant reimbursing Landlord for the monthly maintenance cost for the Building's three elevators as provided in Section 4.01 above, Landlord shall provide and be responsible for the repair, maintenance and replacement of the Building's elevators, boiler, electrical and HVAC systems and fire protection systems including, but not limited to fire detectors and sprinkler system (hereinafter, collectively, "Systems") during the term of the Lease and any extension. Landlord shall regularly maintain and test such Systems in accordance with applicable NEC, NFPA and ASHRAE standards and provide Tenant with written reports and documentation for such maintenance and testing.

Tenant shall repair and maintain the central oxygen, vacuum, medical air and nurse's communications systems. If Tenant installs any new systems including, but not limited to compressors, vacuum pumps, manifolds, regulators and control valves or any other improvements, upon vacating the Demised Premises, Tenant may remove such items from the Demised Premises at its cost and expense. Landlord shall provide to Tenant 24 hour access seven days a week to the Building to allow Tenant to

repair and maintain the said systems.

Tenant shall reimburse Landlord up to an amount equal to the monthly elevator maintenance cost under the Landlord's bronze maintenance agreement with ThyssenKrupp covering the maintenance of the three (3) elevators in the Building. Tenant's obligation to reimburse Landlord for the cost of monthly elevator maintenance shall cease without any further obligation or responsibility of the Tenant upon the happening of any of the following events: (1) Tenant vacates the Demised Premises; (2) the Lease is terminated by either party; (3) the Term or any renewal thereof expires; (4) the Landlord sells, leases or otherwise transfers the Building to a third party. Tenant's responsibility to reimburse Landlord for the monthly maintenance cost under this paragraph is limited to the monthly maintenance cost and does not extend to reimbursing the Landlord for other elevator maintenance costs, repairing or replacing any of the elevators.

#### 4.04 - Parking and Driving Areas:

Tenant shall use the Demised Premises, the parking and driving areas of the property for normal vehicular traffic. Tenant shall remove all vehicles in the event of a declared Snow Emergency.

#### 4.05 - Fences, Barriers and Barricades:

Tenant shall not erect or construct any fences, barriers, or barricades upon the property and shall not store anything outside of the Demised Premises.

#### 4.05 - Snow Removal:

Tenant shall be responsible for all snow plowing and snow removal from the Demised Premises and sanding/salting the Demised Premises including all parking lots and sidewalks.

### **ARTICLE 5** **INSURANCE**

#### 5.01 - Property Insurance:

At all times during the term of this Lease, Landlord shall keep the Demised Premises leased to Tenant insured against any loss or damage by any risks now or hereafter embraced by "All Risk" coverage that shall insure against fire and provide extended coverage for physical loss or damage arising out of theft, vandalism, malicious mischief and collapse.

At all times during the term of this Lease, Tenant shall keep its equipment and personal property located on the Demised Premises insured against any loss or damage by any risks now or hereafter embraced by "All Risk" coverage that shall insure against fire and provide extended coverage for physical loss or damage arising out of theft, vandalism, malicious and mischief.

The amount applicable to the "All Risk" coverage provided hereunder by Landlord shall be not less than full replacement cost (being the cost of replacing the Building on the Demised Premises exclusive of the cost of excavation and footings below the lowest grade level).

#### 5.02 - Liability Insurance - Tenant:

At all times during the term of this Lease, Tenant at its sole cost and expense shall maintain bodily injury and property damage liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Demised Premises during the term of this Lease of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) aggregate. In the event that Tenant shall not have delivered such policy, or certificate of insurance to Landlord at the time of occupancy and thirty (30) days prior to the expiration dates or each expiring policy, and Landlord shall have given Tenant ten (10) days notice of demand therefor, Landlord may obtain such insurance as

it may reasonably require to protect its interest. The cost for such policies shall be paid by Tenant to Landlord upon demand. Landlord shall be named as additional insured on this policy.

**5.03 - Liability Insurance - Landlord:**

At all times during the term of this Lease, Landlord shall maintain bodily injury and property damage insurance, against any liability arising out of the ownership, use, occupancy, or maintenance of the Demised Premises and all areas appurtenant thereto in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate. Tenant shall be named as additional insured on this policy.

**5.04 - Policies:**

All insurance provided in this Article 5 shall be effected under valid and enforceable policies issued by insurers authorized to do business in the State of New York. Tenant may satisfy the insurance requirements under this Article 5 through insurance policies, membership in a reciprocal risk retention group or through a program of self-insurance or any combination thereof. Upon the execution of this Lease and thereafter not less than fifteen (15) days prior to the expiration dates of each expiring policy theretofore furnished pursuant to this Article of this Lease, the certificate of insurance and proof of payment of premiums shall be delivered by Tenant to Landlord and by Landlord to Tenant. A Certificate of Insurance can be substituted for any policy.

All policies or insurance provided in this Article shall name Landlord and Tenant as the insured as their respective interest may appear. Each such policy shall contain a provision that it shall not be canceled or changed without at least ten (10) days prior written notice to the Landlord, Tenant and any third-party to whom a loss thereunder may be payable.

**ARTICLE 6**  
**REAL PROPERTY TAXES**

**6.01 - Payment of Taxes, Assessments, Etc.:**

a. During the term of this Lease the Landlord shall pay all Real Estate Taxes as hereinafter defined.

b. The term "Real Estate Taxes" shall be deemed to include all real property taxes (which shall be deemed to include all property taxes and assessments, water and sewer rents, rates and charges, parking any other governmental charges, general and special, ordinary and extraordinary), which may be levied or assessed by any lawful authority against the Demised Premises and the underlying land.

c. Tenant shall at all times be responsible for and pay, before delinquency, all municipal, county, state and federal taxes assessed against its leasehold interest or any fixtures, furnishings, equipment, stock-in-trade or other personal property of any kind owned, installed in or on the Demised Premises by either Landlord or Tenant.

**ARTICLE 7**  
**REPAIRS AND MAINTENANCE**

**7.01 - Repairs and Maintenance:**

Tenant shall give to Landlord prompt written notice of any damage to, or defective condition in, any part of or appurtenance to the Building's plumbing, electrical, heating, air conditioning or other systems serving, located in, or passing through the Demised Premises. Landlord shall, at Landlord's own expense, keep the Demised Premises, including everything therein (including the heating and air conditioning systems) in good order, condition and repair during the term. Landlord shall also, at

Landlord's expense, maintain the foundation, outside walls, outside windows, floors, utility laterals and service connections, site surface drainage, and roof of the Building in good order and repair. Repairs made by Landlord required due to negligence or fault of Tenant, its contractors, agents or employees shall be made at Tenant's expense.

Tenant shall have the right to construct interior doors, gates or barricades to segregate the Demised Premises from other areas of the Building. Tenant shall provide Landlord with a master key to the locks into the Demised Premises so that Landlord can maintain and repair the Demised Premises.

7.02 - Regulatory Compliance:

Landlord's maintenance and repairs to the Demised Premises and Systems as herein described shall comply with the requirements of the New York State Hospital Code contained in Article 28 of New York's Public Health Law and regulations issued thereunder.

**ARTICLE 8**  
**CHANGES, ALTERATIONS AND NEW CONSTRUCTION BY TENANT**

8.01 - Changes, Alterations and New Construction by Tenant

Tenant during the term of this Lease, as extended, shall not make material structural changes or alterations in and to the Demised Premises without the prior written consent of the Landlord which consent shall not be unreasonably conditioned, delayed or withheld.

**ARTICLE 9**  
**EMINENT DOMAIN**

9.01 - Eminent Domain:

In the event that the Demised Premises, or any part thereof, shall be taken by exercise of the right of condemnation or eminent domain or by agreement between Landlord and those authorized to exercise such right (collectively herein referred to as "Condemnation Proceedings") Landlord and Tenant shall be entitled to collect from any condemnor that portion of the award that may be legally entitled to receive in any such proceeding.

Parties agree to execute any and all further documents that may be required in order to facilitate collection by each party of any and all such awards. Tenant, in cooperation with Landlord, shall have the right to participate in any condemnation proceedings only for the purpose of Protecting Tenant's interest hereunder.

9.02 - Termination of Lease:

If at any time during the term of this Lease title to the part of the Demised Premises shall be taken in Condemnation Proceedings, this Lease shall terminate on the date on which Tenant is deprived of possession thereby and the fixed monthly rent provided to be paid by Tenant shall be apportioned and paid to such date. In such event, Tenant shall be entitled to receive an apportionment of any other changes theretofore paid or payable by Tenant hereunder.

**ARTICLE 10**  
**BANKRUPTCY AND DEFAULT PROVISIONS**

10.01 - Conditional Limitations:

This Lease is subject to the limitation that if, at any time prior to or during the term, any one or more of the following events (an "Event of Default") shall occur, that is to say:

- a. If Tenant shall make an assignment for the benefit of its creditors, or
- b. If the leasehold estate hereby created shall be taken on execution or by other process of law, or
- c. If any petition shall be filed against Tenant in any court, whether or not pursuant to any statute of the United States of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Tenant shall thereafter be adjudicated bankrupt, or such petition shall be approved by the court, or the court shall assume jurisdiction of the subject matter and if such proceedings shall not be dismissed within ninety (90) days after the institution of the same; or if any such petition shall be filed by the Tenant; or
- d. If any proceedings a receiver or trustee be appointed for Tenant's property, and such receivership or trusteeship shall not be vacated or set aside within ninety (90) days after the appointment of such receiver or trustee; or
- e. If Tenant shall vacate or abandon the Demised Premises and permit the same to remain unoccupied or closed for business for more than thirty (30) days; or
- f. If Tenant shall fail to pay any installment of the rent any part thereof when the same shall become due and payable, and such failure shall continue for fifteen (15) days after receipt of written notice from Landlord to Tenant; or
- g. If Tenant shall fail to pay any other charge required to be paid by Tenant, and failure shall continue for twenty (20) days after written notice from Landlord to Tenant; or

Landlord shall have the right to declare the lease in default and may elect to terminate Tenant's possessory rights and all other rights of Tenant without thereby terminating this lease and may without notice reenter the premises and remove Tenant and all other persons and property and store such property in a public warehouse or elsewhere at the expense of Tenant without Landlord being deemed guilty of trespass or becoming liable in any way for any loss or damage occasioned thereby.

Upon such termination, Landlord shall undertake reasonable efforts to relet the Demised Premises or any part thereof, for such term or terms (which may be greater or lesser than the period which would otherwise have constituted the lease term or any extension thereof). Upon reletting the Demised Premises or any portion thereof, Tenant's obligations for unpaid rent shall be reduced by the amount of rent collected by Landlord, less all reasonable costs, fees and expenses including without limitation brokers' and attorneys' fees, and repair costs incurred by Landlord in reletting the Demised Premises.

If this Lease is terminated for an event of default as set forth above, Tenant shall nevertheless remain liable for any rent and damages which may be due or sustained prior to such termination, and all reasonable costs, fees and expenses, including without limitation brokers' and attorneys' fees, and repair costs incurred by Landlord in pursuit of its remedies and/or in connection with reletting the premises.



In the alternative, Landlord may give twenty days notice of breach and upon failure to cure, Landlord may immediately commence action for all unpaid rent and damages for breach under the lease, and all rent remaining to be paid until the end of the lease term or any extension term thereof.

10.02 - New York State Department of Health Notification:

Notwithstanding the foregoing, pursuant to Section 600.2 of NYCRR Title 10, the Landlord acknowledges that its rights of reentry into the Demised Premises set forth in the lease do not confer on it the authority to operate a hospital as defined in Article 28 of the Public Health Law on the Demised Premises and agrees that it will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237, notification by certified mail of its intent to reenter the Demised Premises or to initiate dispossess proceedings or that the Lease is due to expire, at least 30 days prior to the date on which the Landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of the Lease. Upon receipt of notice from the Landlord of its intent to exercise its right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of the Lease, the Tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237, of the receipt of such notice or service of such process or that the Lease is about to expire.

**ARTICLE 11**  
**MORTGAGES, ASSIGNMENTS, SUBLEASES**  
**AND TRANSFERS OF TENANT'S INTEREST**

11.01 - Limitation of Tenant's Rights:

Except as hereinafter otherwise provided, during the term of this Lease, in each case, without the prior written consent of the Landlord first had and received, neither this Lease nor the interest of Tenant in the Lease, or in any sublease or in any rents under any sublease shall be sold, assigned, transferred, mortgaged, pledged, hypothecated or otherwise disposed of, whether by operation of law or otherwise, nor shall the Demised Premises be sublet. The Landlords consent shall not be unreasonably withheld, delayed or conditioned.

No consent by Landlord to assignment of this Lease and no assignment made as hereafter permitted shall be effective until there shall have been delivered to Landlord (a) an agreement, in recordable form, executed by Tenant and the proposed assignee, wherein such assignee assumes due performance of the obligations on Tenant's part to be performed under this Lease to the end of the term hereof and (b) the written consent to such assignment of the holder of any fee or leasehold mortgage to which this Lease is then subject shall have been obtained and delivered to Landlord, if so required by the terms of such fee or leasehold mortgage.

Tenant may assign or sublease all or a portion of the Demised Premises to a tax-exempt not-for-profit corporation and/or government agency without the consent of Landlord.

Upon the assumption by such assignee of due performance, Tenant shall be relieved of the responsibility for the due performance of the obligations hereunder.

Any assignment, mortgage, pledge, sublease or hypothecation of this Lease or of the interest of Tenant hereunder, without full compliance with any and all requirements set forth in this Lease shall be a breach of this Lease and a default hereunder.

Landlord acknowledges and consents to Tenant leasing a portion of the Demised Premises to Ronnie Kapur-Pado, M.D.

11.02 - Effect of Landlord's Consent:

Any consent by Landlord to a sale, assignment, mortgage, pledge, hypothecation, or transfer of this Lease shall apply only to the specific transaction thereby authorized and shall not relieve Tenant from the requirement of obtaining prior written consent of Landlord to any further sale, assignment, mortgage, pledge, hypothecation or other transfer of this Lease. In instances where the consent of Landlord is required hereunder to any proposed assignment or sublease of this Lease, or to the mortgaging, pledging or hypothecation of this Lease, contemporaneously with the request of Tenant therefor, Tenant shall submit, in writing, information reasonably sufficient to enable Landlord to decide with respect thereto. Landlord shall reply to Tenant within ten (10) days after receipt of the request as aforementioned.

**ARTICLE 12**  
**COMPLIANCE WITH GOVERNMENTAL ORDERS**

12.01 - Tenant to Comply:

The parties at their own expense shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and local governments and of any and all other departments and bureaus applicable to the Demised Premises for the correction, prevention and abatement of all nuisances, violations or other grievances in, upon or connected with the Demised Premises (herein referred to as "Government Order") during the term of this Lease and shall also comply promptly with and execute all rules, orders and regulations of the Board of Fire Underwriters, rating board and insurance company for the prevention of fires and exposure to liability risks. Tenant agrees at its expense to furnish and maintain in good order an adequate number and type of fire extinguisher on the Demised Premises at all times.

12.02 - Failure to Comply:

In case either party shall fail or neglect to comply with the aforementioned Government Orders or any of them herein required of such party or in case Tenant shall fail or neglect to make any necessary repairs as herein required of Tenant, the other party or its agents may enter the Demised Premises and make said repairs and comply with any and all of the said Government Orders at the cost and expenses of the non-complying party, and in case of such non-complying party's failure to pay therefor upon notice and failure to comply within fifteen (15) business days thereafter, the said cost and expense shall be (a) in case the non-complying party is the Tenant, added to the next months rent installment and be due and payable as such, or Landlord may deduct the same from any balance remaining in Landlord's hands, or (b) in the case the non-complying party is the Landlord, deducted from or offset against any amount owing or thereafter owing by Tenant to Landlord. This provision is in addition to the right of the Landlord to terminate this Lease by reasons of default on the part of Tenant.

**ARTICLE 13**  
**INSPECTION OF DEMISED PREMISES**

13.01 - Inspection of Demised Premises by Landlord:

Landlord shall have the right to enter the Demised Premises at all reasonable advance notice to tenant, except in case of emergency, for the purpose of:

- a. inspecting the same;
- b. making any repairs to the Demised Premises and performing any work that may be required to be performed by Landlord under the Lease or that may be necessary by reasons of Tenant's default under the terms of this Lease continuing beyond any applicable period of notice and opportunity to cure;
- c. exhibiting the Demised Premises for the purpose of sale, ground lease or mortgage; or

- d. exhibiting the Demised Premises (within two months prior to the expiration of the term of this Lease) to prospective tenants.

**ARTICLE 14**  
**NOTICES AND CERTIFICATES**

14.01 - Notices and Certificates

Any notice, statement, certificate, request or demand required or permitted to be given in this Lease shall be in writing, delivered or sent by registered or certified mail, postage prepaid, return receipt requested, addressed, as the case may be, to Landlord and Tenant at the addresses hereinafter set forth, or to such other addresses as Landlord or Tenant shall designate in the manner herein provided. Notice to any other office, department or employee of Tenant shall not constitute notice. Such notice, statement, certificate, request or demand shall be deemed to have been given five (5) business days after the date mailed as aforesaid in any post office, or branch post office regularly maintained by the United States Government, except for notice of change of address or revocation of a prior notice, which shall only be effective upon receipt, or immediately, if delivered.

All notices, statement, certificates, requests or demands of any kind which Landlord or Tenant may be required to be served upon the other shall be given to the following persons:

To Landlord: Lisa French, Town Clerk  
Town of Sidney, NY  
Civic Center, 21 Liberty Street  
Sidney, New York 13838

To Tenant: Kendra Beers-Capraro  
Director of Facilities Operations  
Bassett Healthcare Network  
One Atwell Road  
Cooperstown, New York 13326-1394

14.02 - Certificate by Landlord:

Within fifteen (15) days after requested by Tenant, Landlord, from time to time and without charge shall deliver to Tenant or to a person, firm or corporation specified by Tenant a duly executed and acknowledged instrument, certifying:

- a. that this Lease is unmodified and in full force and effect or if there has been any modification that the same is in full force and effect as modified and identifying the date of any such modification; and
- b. whether Landlord knows or does not know, as the case may be, of any default by Tenant in the performance by Tenant of the terms, covenants and conditions of this Lease, and specifying the nature of such defaults, if any.

Such certification shall not estop Landlord from thereafter asserting any existing default of which Landlord did not have actual knowledge on the date of execution thereof.

14.03 - Certificate by Tenant:

Within fifteen (15) days after request by Landlord, Tenant, from time to time and without charge shall deliver to Landlord or to a person, firm or corporation, specified by Landlord, a duly executed and acknowledged instrument certifying:

- a. that this Lease is unmodified and in full force and effect; or if there has been any modification, that the same is in full force and effect as modified and identifying the date of any such modification; and
- b. whether knows or does not know, as the case may be, of any default by Landlord in the performance by Landlord of the terms, covenants knows or does not know, as the case may be, of any Landlord in the performance by Landlord or the terms, conditions of this Lease, and specifying the nature of such defaults if any; and
- c. whether or not there are any then existing set-offs of defenses by Tenant to the enforcement by Landlord of the terms, covenants and conditions of this Lease and if so specifying them; and
- d. the dates to which the fixed monthly rent has been paid.

Such certification shall not estop Tenant from thereafter asserting any existing default, set-offs or defenses of which Tenant did not have actual knowledge on the date of execution thereof.

**ARTICLE 15**  
**COVENANT OR QUIET ENJOYMENT**

15.01 - Covenant of Quiet Enjoyment:

Tenant, subject to the terms and provisions of this Lease on payment of the rent and observing, keeping and performing all of the terms and provisions of this Lease on its part to be observed, kept and performed shall lawfully peaceably and quietly have, hold and enjoy the Demised Premises during the term hereof on and after the commencement date of this Lease without hindrance or ejection by any persons lawfully claiming under Landlord.

**ARTICLE 16**  
**MISCELLANEOUS PROVISIONS**

16.01 - Holdover:

Should the Tenant continue to occupy the Demised Premises after the expiration of the term hereof or after a forfeiture incurred, whether with or against the consent of the Landlord, such tenancy shall be from month-to-month and such month-to-month tenancy shall be under all the terms, covenants and conditions of this Lease.

16.02 - Restriction on Leasing, Using or Transferring the Demised Premises:

During the Initial Term, for either the Building or Clinic Building, Landlord its successors in title and assigns shall not sell, lease, transfer or permit the occupancy, use or subletting of the Building, Clinic Building and Demised Premises, their parking lots and surrounding real estate described in the Deeds attached as Exhibit "B" to the Lease Agreement for use by United Health Services, Inc., Chenango Memorial Hospital and Delaware Valley Hospital, or any related entity, their affiliates and subsidiaries or to any third party for use as a physician office, healthcare office, diagnostic imaging center, laboratory, any other health related use, or any other use that competes with services rendered by Tenant or Tenant's assignee or, where applicable, Tenant's affiliated organizations within Bassett Healthcare Network without Tenant's and assignee's prior written consent.

16.03 - Force Majeure:

The period of time during which either party is prevented or delayed in the performance of the making of any improvements or repairs of fulfilling any obligation other than the payment of fixed monthly rent or additional rent required under this Lease due to unavoidable delays caused by fire, catastrophe,

strikes or labor trouble, civil commotion, Acts of God or the public enemy, governmental prohibitions or regulations or inability to obtain materials by reason thereof, or other causes beyond such party's reasonable control, shall be added to such party's time for performance thereof, and such party shall have no liability by reason thereof.

**16.04 - Attornment of Tenant:**

If at any time during the remainder of this Lease, the Landlord hereunder shall be the holder of a leasehold estate covering premises which include the Demised Premises and if such leasehold estate shall be canceled or otherwise terminated prior to the expiration date thereof and prior to the expiration of the term of this Lease or in the event of the surrender thereof whether voluntary, involuntary or by operation of law, the Tenant shall make full and complete attornment to the lessor of such leasehold estate for the balance of the term of this Lease, upon the same covenants and conditions as are contained herein so as to establish direct privity between such lessor and the Tenant and with the same force and effect as though this Lease was made directly from such lessor to the Tenant. The Tenant shall make all rent payments thereafter directly to such lessor.

**16.05 - Landlord May Pay Tenant's Obligations:**

a. All costs and expenses which Tenant assumes or agrees to pay under the provisions of this Lease shall at Landlord's election be treated as additional rent and, in the event of non-payment; Landlord shall have all the rights and remedies herein provided for in case of non-payment of rent or of a breach of covenant. If Tenant shall default in making any payment required to be made by Tenant (other than the payment or rent as provided by Article 3 above) or shall default in performing any term, covenant or condition of this Lease on the part of the Tenant to be performed which shall involve the expenditure of money by Tenant, Landlord at Landlord's option may, but shall not be obligated to, on three (3) days' written notice to Tenant on behalf of Tenant, expend such sum as may be necessary to perform and fulfill such term, covenant or condition, and any and all sums so expended by Landlord shall be and be deemed to be additional rent, and in addition to the rent provided in Article 3 above, and shall be repaid by Tenant to Landlord, on demand, but no such payment by Landlord shall be deemed a waiver of Tenant's default nor shall it affect any other remedy of Landlord by reason of such default.

b. In the event of any default hereunder by Landlord, Tenant may, upon ten (10) days written notice to Landlord, cure any defects of Landlord, and Landlord shall reimburse Tenant forthwith for any cost incurred by Tenant.

**16.06 - Effect of Captions:**

The captions or legends in this Lease are inserted only for convenient reference or identification of the particular paragraphs. They are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Lease, or any paragraph or provision thereof.

**16.07 - Tenant Authorized to Do Business in New York:**

Tenant represents and covenants that it is and throughout the term of this Lease shall be authorized to do business in the State of New York.

**16.08 - Signs:**

Tenant shall have the right to install such signs as it deems necessary on and outside the Demised Premises at Tenant's expense.

16.09 - Execution in Counterparts:

Several copies of this Lease shall be signed on behalf of the Landlord and Tenant. Each signed copy shall be deemed an original (including facsimile or .pdf format signature pages), but all signed copies together shall be deemed one and the same instrument.

16.10 - Memorandum of Lease:

If either party requests the same, Landlord and Tenant agree to simultaneously herewith execute a Memorandum of Lease in recordable form pursuant to Section 291-c of the Real Property Law of the State of New York.

16.11 - Law Governing, Effect and Gender:

This Lease shall be construed in accordance with the laws of the State of New York and shall be binding upon the parties and their respective legal representatives, successors and assigns, except as expressly provided otherwise. Use of the neuter gender shall be deemed to include the masculine and feminine as the sense requires.

16.12 - Complete Agreement:

This Lease contains and embraces the entire agreement between the parties hereto and it or any part of it may not be changed altered, modified, limited, terminated, or extended orally or by any written agreement between the parties unless such agreements be expressed in writing, signed and acknowledged by the parties hereto, their legal preventatives, successors or assigns, except as may be expressly otherwise provided herein.

16.13 - Approvals:

Landlord represents warrants and covenants that it has authority to enter into this Lease and that all governmental, zoning or other required approvals have been obtained. Landlord further represents that the person executing this Lease has been duly authorized by the governing board of the Town of Sidney, New York, to enter into this Lease. Landlord agrees to indemnify and hold Tenant harmless from and against all losses, damages, costs and expenses whatsoever, including legal expenses and reasonable attorneys fees, incurred as a result of Landlord's failure to obtain such approvals.

16.14 - Subsequent Transferees Shall Take Subject to the Lease:

Should Tenant fully perform all of the terms and conditions of this Lease, any transferee, purchaser or other entity that takes title to the real estate upon which the Demised Premises is located, shall take subject to the Lease. The parties acknowledge that Tenant may purchase an interest in the underlying real estate. Any subsequent transferees or purchasers from Tenant shall be subject to the Lease and shall execute a written agreement joining in as Landlord under the Lease. The terms and conditions of the Lease shall survive Tenant taking title to the said real estate.

From: Person & Hamlin

RECEIVED 01/09/2017 3:08PM  
717-620-2442 01/09/2017 16:21 #082 P 018/041

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on the date first above written.

Landlord:  
Town of Sidney, New York

By: 

Gene Pigford, Supervisor

Tenant:  
Tri Town Regional Healthcare  
d/b/a Tri-Town Regional Hospital

By: \_\_\_\_\_

Carlton J. Rule, M.D., President

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on the date first above written.

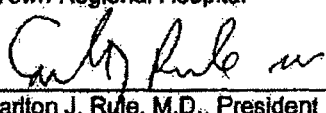
Landlord:  
Town of Sidney, New York

By: \_\_\_\_\_

\_\_\_\_\_  
Gene Pigford, Supervisor

Tenant:  
Tri Town Regional Healthcare  
d/b/a Tri-Town Regional Hospital

By: \_\_\_\_\_

  
Carlton J. Rife, M.D., President



STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF DELAWARE )

On this 30th day of January, 2017, before me personally came Gene Pigford, to me personally known, who, being by me duly sworn, did depose and say that he resides in Sidney, New York, that he is the Supervisor of the Town of Sidney, the general municipal corporation described in and which executed the above instrument, that he knows the seal of the aforesaid corporation that the seal was affixed to said instrument in 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.

  
Notary Public

**LISA FRENCH #01FR5053927**  
**Notary Public, State of New York**  
**Qualified in Delaware County**  
**Commission Expires Jan 2, 2018**

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF OTSEGO )

On this \_\_\_\_\_ day of January, 2017, before me personally came Carlton J. Rule, M.D., to me personally known, who, being by me duly sworn, did depose and say that he resides in Cooperstown, New York, that he is the President of The Mary Imogene Bassett Hospital, described in and which executed the above instrument, that he knows the seal of the aforesaid corporation that the seal was affixed to said instrument in such corporate seal; that it was so affixed by like order of the Board of Directors of said corporation and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public


STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF DELAWARE     )

On this \_\_\_\_ day of January, 2017, before me personally came Gene Pigford, to me personally known, who, being by me duly sworn, did depose and say that he resides in Sidney, New York, that he is the Supervisor of the Town of Sidney, the general municipal corporation described in and which executed the above instrument, that he knows the seal of the aforesaid corporation that the seal was affixed to said instrument in 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.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF OTSEGO        )

On this 17 day of January, 2017, before me personally came Carlton J. Rule, M.D., to me personally known, who, being by me duly sworn, did depose and say that he resides in Cooperstown, New York, that he is the President of The Mary Imogene Bassett Hospital, described in and which executed the above instrument, that he knows the seal of the aforesaid corporation that the seal was affixed to said instrument in such corporate seal; that it was so affixed by like order of the Board of Directors of said corporation and that he signed his name thereto by like order.

  
\_\_\_\_\_  
Notary Public

**CAROL A. BOWKER**  
Notary Public - State of New York  
No. 01BO5044099  
Qualified in Delaware County  
My Commission Expires 5/22 2019

# **EXHIBIT A**

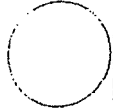


Notes:

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS AND ORDINANCES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

# THE HOSPITAL

STONET, NEW YORK



Scale: 1/8" = 1'-0"

Architect

**HSP**  
HealthCare Systems Architect  
The Schenck Group, LLC  
100 West 10th Street, Suite 1000  
New York, NY 10011  
Tel: (212) 921-1111  
Fax: (212) 921-1112  
www.hsparchitect.com

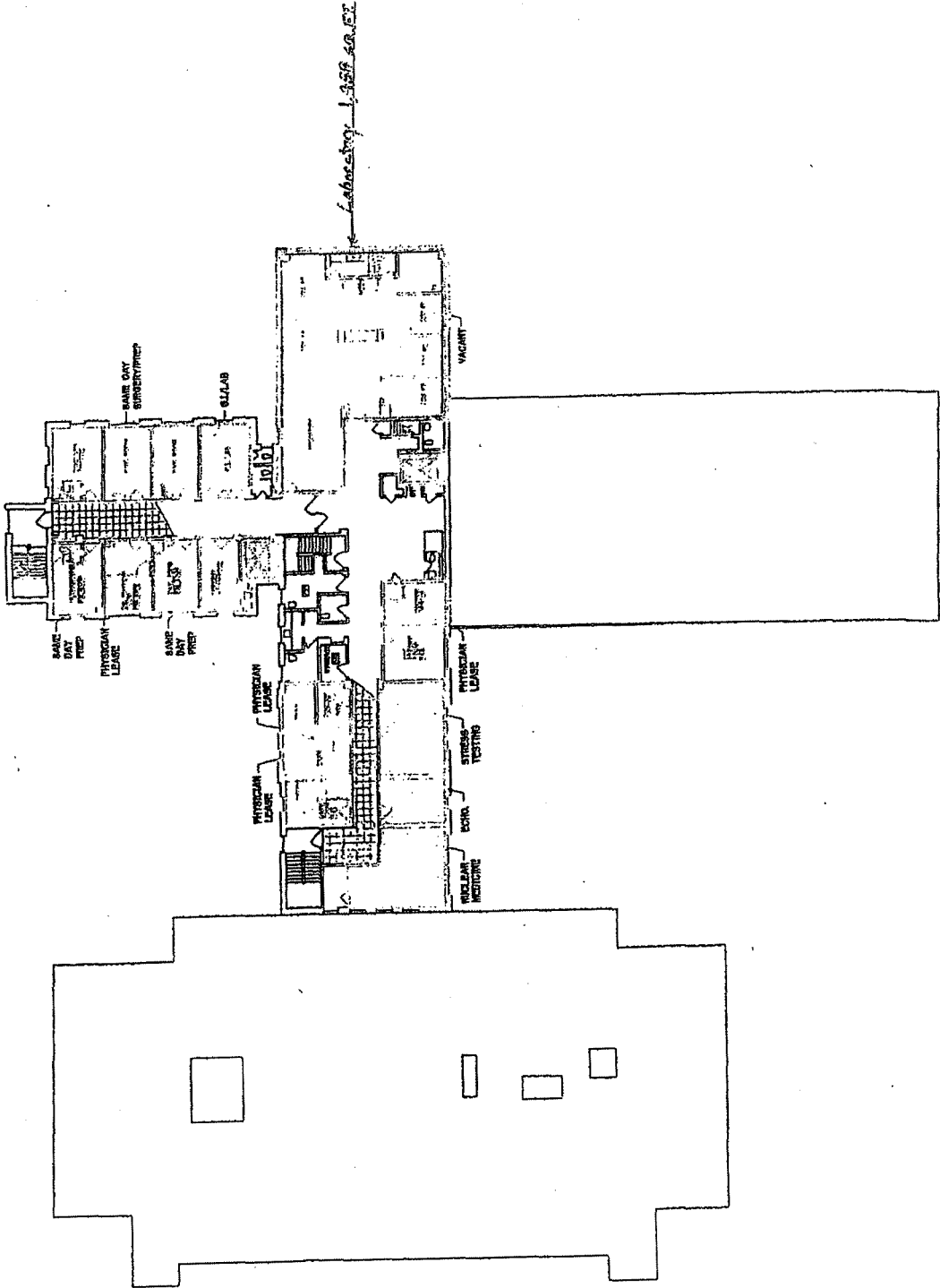
Mechanical Engineer

## Drawing Title THIRD FLOOR PLAN

Scale: 1/8" = 1'-0"  
Date: 01/30/2001  
Project No. 9431.00  
Con.

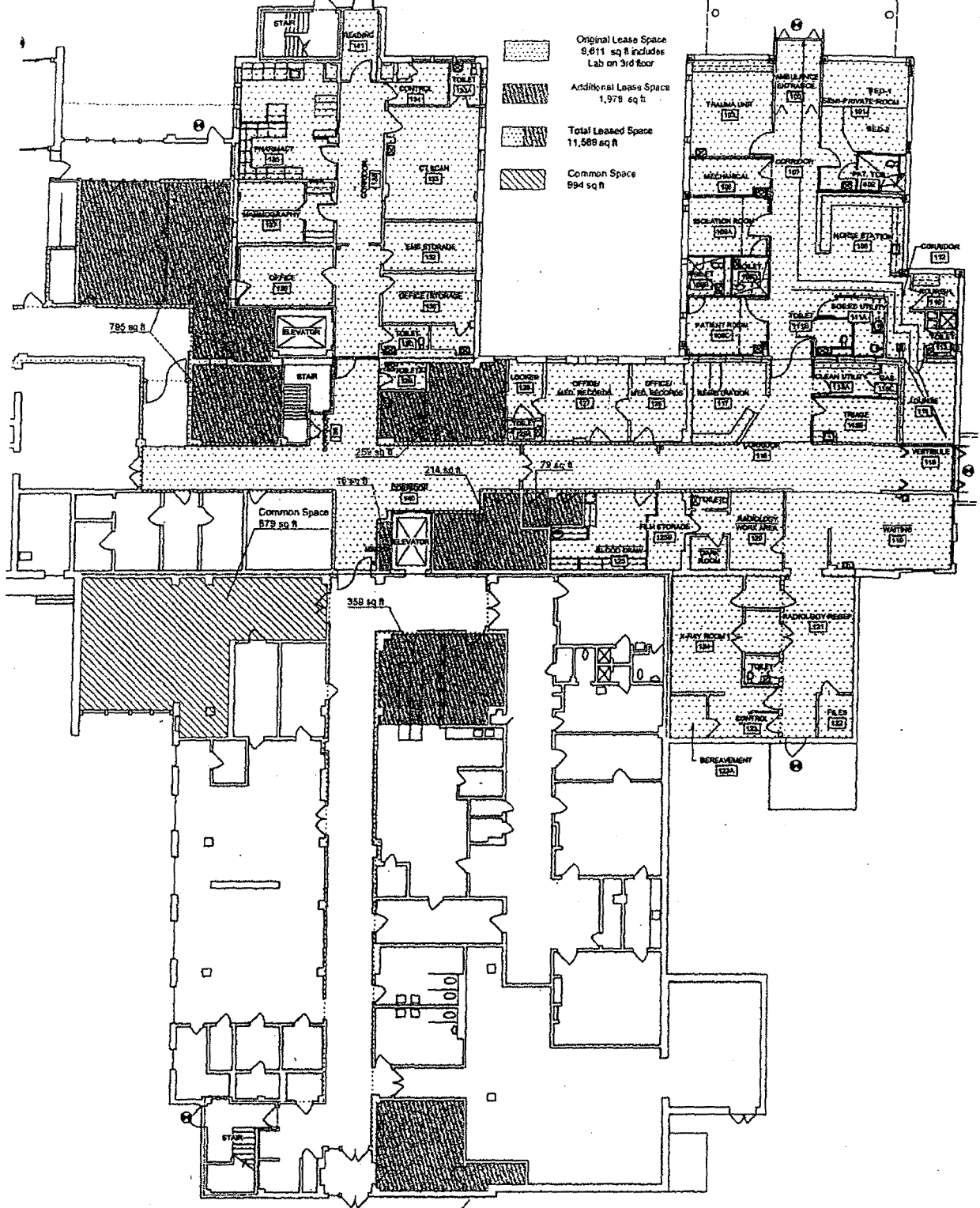
Drawing No.

A-3



EXISTING CONDITIONS  
THIRD FLOOR PLAN

### Sidney First Floor



- Original Lease Space  
9,611 sq ft includes  
Lab on 3rd floor
- Additional Lease Space  
1,978 sq ft
- Total Leased Space  
11,589 sq ft
- Common Space  
994 sq ft

785 sq ft

250 sq ft

18 sq ft

214 sq ft

79 sq ft

358 sq ft

Common Space  
878 sq ft

Notes:

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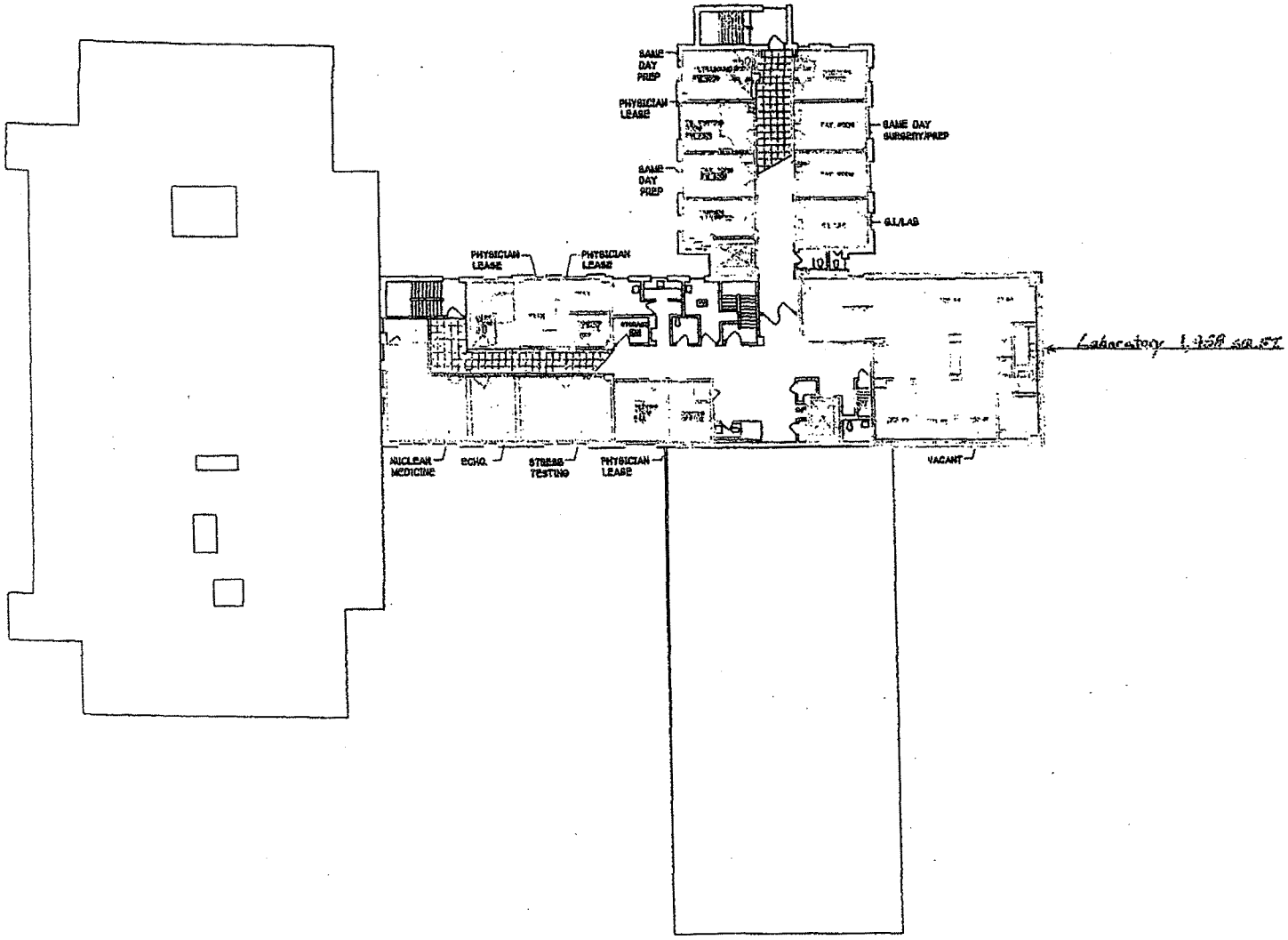


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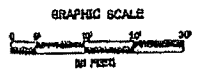


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ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF ALL APPLICABLE CODES AND REGULATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.



**EXISTING CONDITIONS  
THIRD FLOOR PLAN**



**THE HOSPITAL**  
SIDNEY, NEW YORK

Seal:

Architect:  
**HSP**  
Health Care Systems Architects

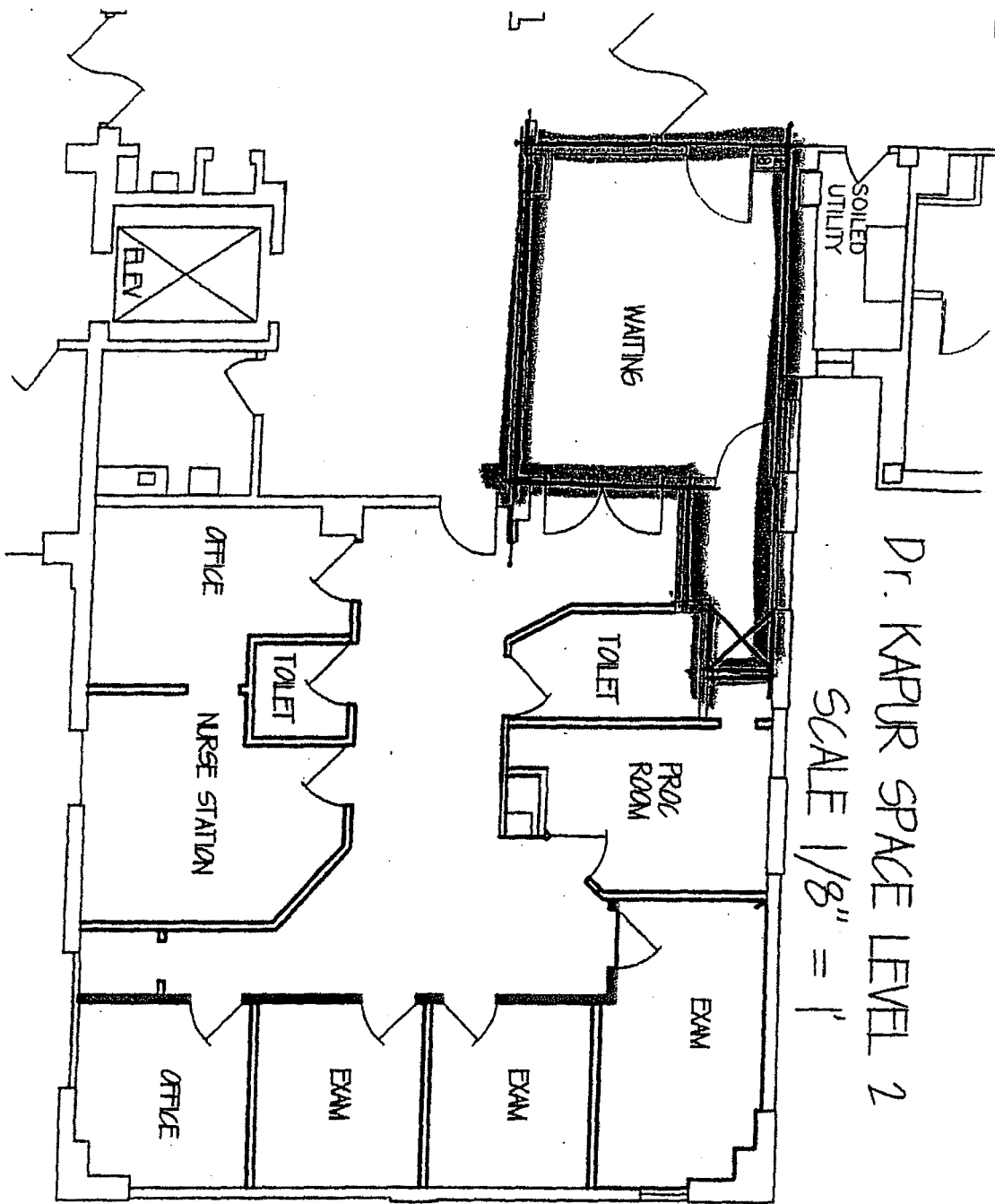
The Architectural Firm: L.P.  
338 Broadway, New York, NY 10013  
Tel: (212) 693-7900  
Fax: (212) 693-8111  
www.hsparchitect.com

Mechanical Engineer

Drawing Title  
**THIRD FLOOR  
PLAN**

Scale:  
Date: 04/30/2001  
Project No. 0422.00  
Con.

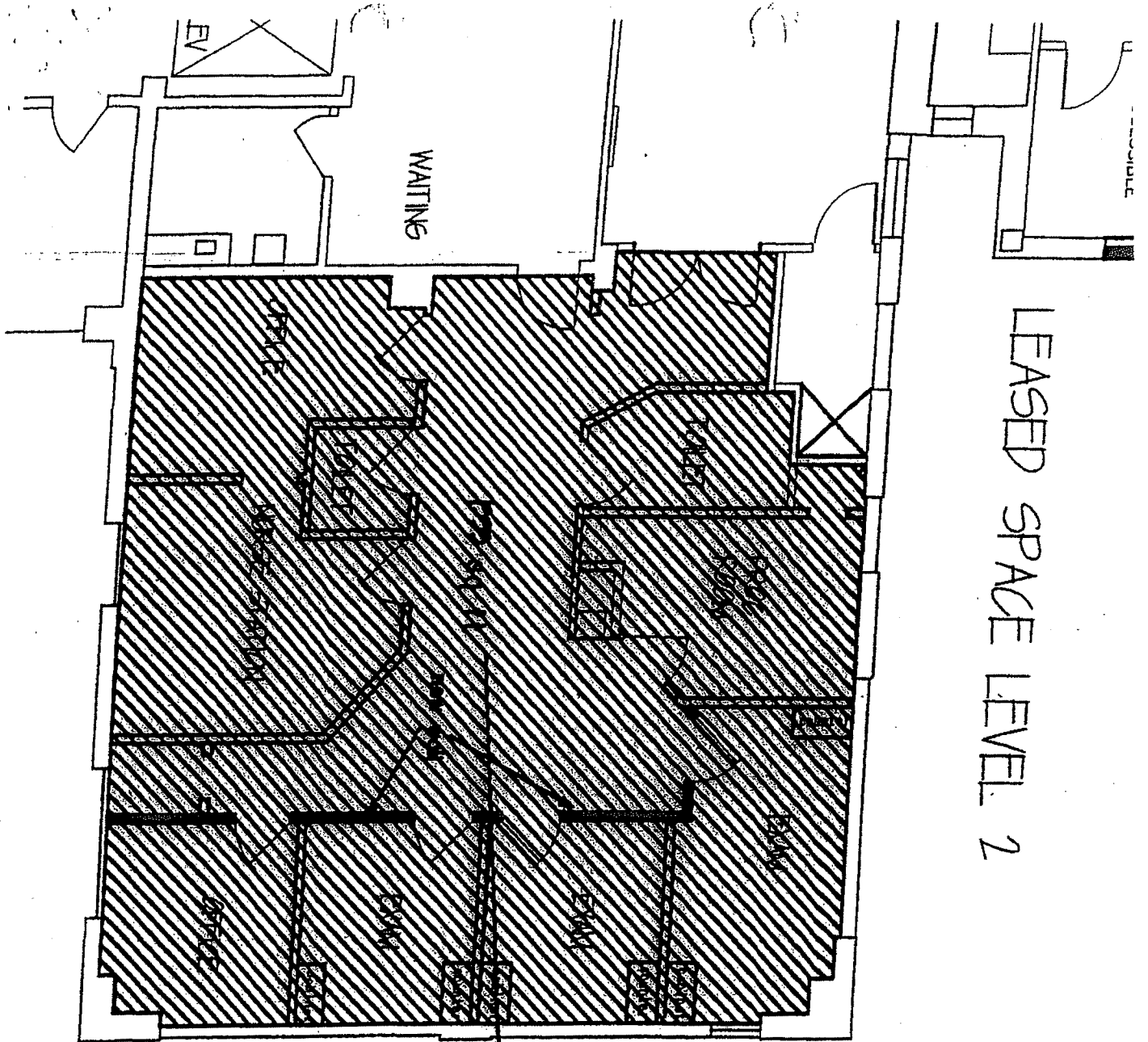
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DR. KAPUR SPACE LEVEL 2

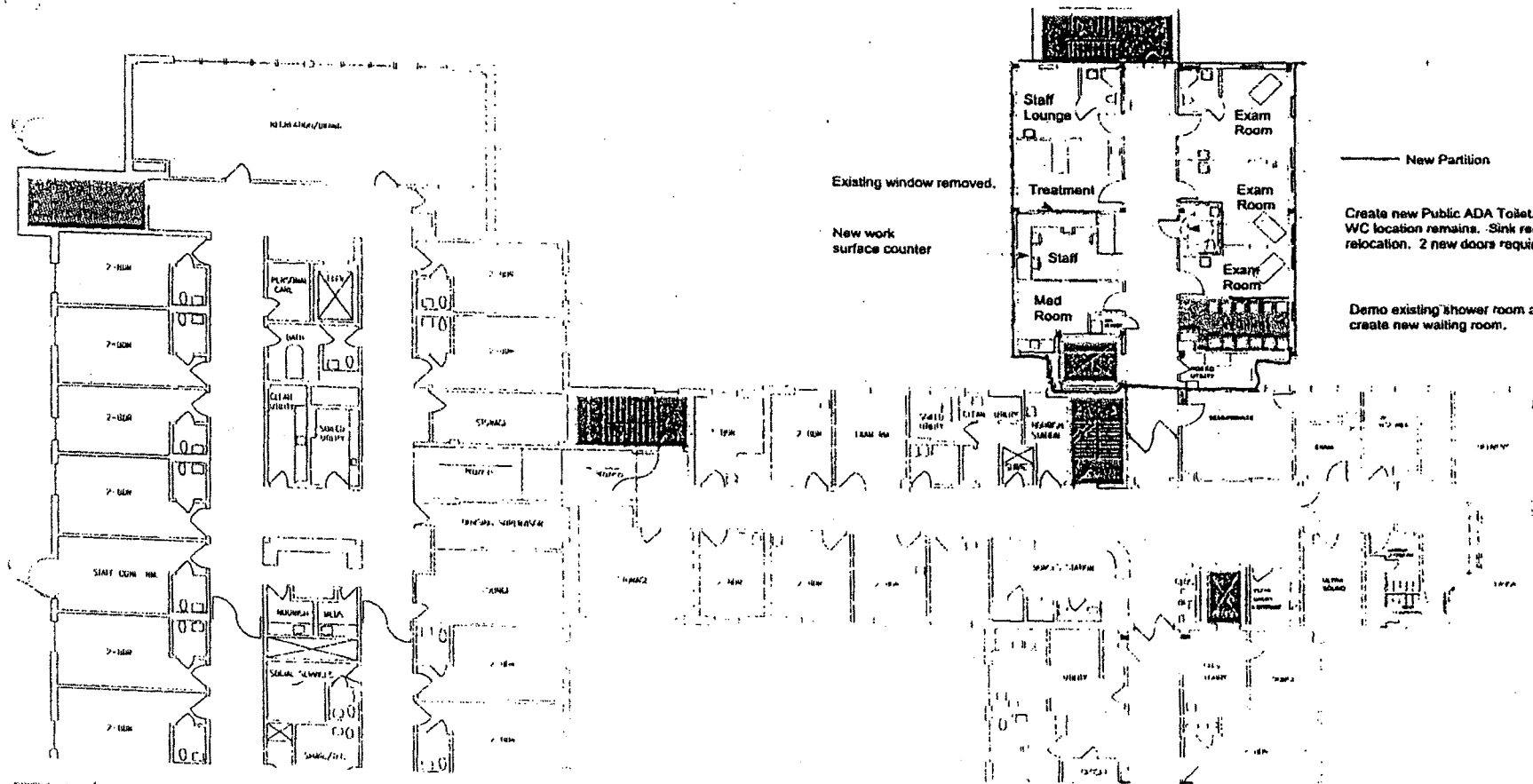
SCALE 1/8" = 1'





LEASED SPACE LEVEL 2

1128 sq ft



Existing window removed.

New work surface counter

— New Partition

Create new Public ADA Toilet.  
WC location remains. Sink requires relocation. 2 new doors required.

Demo existing shower room and create new waiting room.

**Potential Renovations Study - OB Clinic**  
Second Floor Plan

F:\TRH\_201105\_Study\Tri Town Hospital.cvx

23 Nov 2011 04:4:10



**Tri-Town Regional Hospital**  
Sidney, NY

**Thomas Switzer**

# **EXHIBIT B**

QUITCLAIM DEED

THIS INDENTURE, made this \_\_\_ day of January 2008, between TOWN OF SIDNEY, NEW YORK, a general municipal corporation organized and existing under the laws of the State of New York, with its principal office located at the Civic Center, 21 Liberty Street, Sidney, New York 13838, party of the first part and THE MARY IMOGENE BASSETT HOSPITAL doing business as BASSETT HEALTHCARE, with its principal office located at One Atwell Road, Cooperstown, New York 13326 and TRI-TOWN REGIONAL HEALTHCARE, with its principal office located at 43 Pearl Street West, Sidney, New York 13838, both entities being not-for-profit hospital corporations duly organized and existing under the laws of the State of New York, collectively, parties of the second part,

WITNESSETH, that party of the first part, in consideration of Two Million and 00/100ths Dollars (\$2,000,000.00) lawful money of the United States, paid by the parties of the second part, does remise, release and quitclaim unto the parties of the second part, their successors and assigns forever,

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town and Village of Sidney, County of Delaware and State of New York, bounded and described as follows: Beginning at a point in the center line of Pearl Street which point is located as follows: South 06 degrees 58' West 1683.66 feet from the west street line of West Main Street and is also the North West corner of lands of Engel and is also located halfway between the East line of Lot 75 and the East line of Lot 76 of the Gilbert Estate Map of 1914 as filed in the Delaware County Clerk's Office: Thence South 3 degrees .02' East passing over an iron pin driven in the ground at the South line of Pearl Street, 165 feet to an iron pin driven in the ground: Thence North 86 degrees 50' East to an iron pin driven in the ground 200.5 feet: Thence South 5 degrees .08' West to an iron pin driven in the ground 404.5 feet: Thence South 87 degrees 21' West to an iron pin driven in the ground 557 feet: Thence North 3 degrees 44' West to an iron pin driven in the ground 400 feet: Thence North 86 degrees 58' East to an iron pin driven in the ground 58 feet: Thence North 3 degrees .02' West passing over an iron pin driven in the ground at the South line of Pearl Street, 165 feet to the center line of Pearl Street: Thence North 86 degrees 50' East along the center line of Pearl Street to the point or place of beginning 287 feet.

Being the same premises conveyed to the party of the first part from Julius Rigg by Warranty Deed, dated April 11, 1942 and recorded in the Delaware County Clerk's office on May 27, 1942 in Book 251 of Deeds at page 406.

PARCEL II

AL THAT TRACT OR PARCEL OF LAND situate in the Town and Village of Sidney, County of Delaware and State of New York, briefly described as follows: Beginning at a point at the center line of Pearl Street which point is approximately 1524.65' westerly from the west street line of West Main Street and which point is also the northwest corner of lands of Wiesshaupt and is also the northeast corner of lot 74 as set out on the Gilbert Estate map dated August, 1914, running thence south 3° 2' east along the west lands of Wiesshaupt, passing over an iron pin at the south side of the south boundary of Pearl Street 165' to a pin driven in the ground, said point being the southeast corner of lot 74 in said map and the southwest corner of lands of Wiesshaupt; thence south 86° 58' west 99' to an iron; thence north 3° 2' west 165' to the center line of Pearl Street; thence north 86° 58' east along the center line of Pearl Street 99' to the place of beginning, being lot 74 on the Gilbert Estate map and also half of lot 75.

ALL THAT TRACT OR PARCEL OF LAND situate in the Village of Sidney County of Delaware and State of New York, bounded and described as follows: Beginning in the center of Pearl Street, at the northeast corner of lands of the party of the second part, described in a deed recorded in Delaware County Clerk's Office in Liber 246 of Deeds at page 554, and running thence southerly along the east line of said Engel lot one hundred sixty five feet to an iron pin driven in the ground at the Engel southeast corner; thence easterly on the same course as the Engel south line ninety three feet, thence northerly through the lands of Zurbrueggs, one hundred sixty five feet, to the center of Pearl Street, thence westerly along the center of Pearl Street, seventy two feet to the place of beginning, reserving to the public the rights of travel in Pearl Street.

Being the same premises conveyed to the party of the first part from Michael Charsky and Christine Charsky by Warranty Deed, dated October 2, 1981 and recorded in the Delaware County Clerk's office on October 6, 1981 in Book 612 of Deeds at page 478.

The premises does not constitute all or substantially all of the assets of the party of the first part.

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises granted unto the parties of the second part, their successors and assigns forever.

AND said party of the first part covenants that in compliance with Section 13 of the Lien Law, the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement before having any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has caused by these presents to be signed by its duly authorized officer the day and year above written.

TOWN OF SIDNEY, NEW YORK

By: Joseph A. Maddalone  
Joseph A. Maddalone,  
Town Supervisor

STATE OF NEW YORK            )  
  )ss.:  
COUNTY OF DELAWARE        )

On the 2<sup>nd</sup> day of January, 2008, before me, the undersigned, personally appeared Joseph A. Maddalone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Paul F. Eaton, Jr.  
Notary Public

Record and Return To:  
Matthew E. Hamlin, Esq.  
Mette, Evans & Woodside  
3401 North Front Street  
P.O. Box 5950  
Harrisburg, PA 17110-0950

PAUL F. EATON, JR.  
Notary Public, State of New York  
No. 02EA9822962  
Qualified in Delaware County  
Commission Expires November 30, 2010

**FIRST AMENDMENT TO  
LEASE AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT (hereinafter the "Amendment"), effective  
this 21 day of May, 2017, by and between the following parties:

**Landlord:**

TOWN OF SIDNEY, NEW YORK, a general municipal corporation having its principal place of  
business located at Civic Center, 21 Liberty Street, Sidney, New York 13835 (hereinafter the "Landlord").

**Tenant:**

TRU TOWN REGIONAL HEALTHCARE doing business as TRI-TOWN REGIONAL HOSPITAL, a  
New York State not-for-profit corporation with its principal place of business located at 43 Pearl Street  
West, Sidney, New York 13835 (hereinafter "Tenant").

**WITNESSETH:**

WHEREAS, the parties entered into a written Lease Agreement, dated January 17, 2017  
(hereinafter "Lease Agreement") covering the lease of a portion of the premises at 43 Pearl Street West,  
Sidney, New York; and

WHEREAS, the parties are desirous of amending the Lease Agreement to extend the lease term  
to August 31, 2018 and insert a provision that the parties will engage in good faith discussions regarding  
the abating of any extraordinary expenses incurred by the Landlord to maintain or repair the building in  
which the Tenant's leased premises is located.

NOW, THEREFORE, in exchange for the terms and covenants contained herein and for good  
and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the terms and  
conditions of the Lease Agreement are amended as follows:

1. Article 2 of the Lease Agreement is amended to provide the following:

**ARTICLE 2  
TERM OF LEASE**

**2.01 - Term:**

The term of the lease shall be for thirty (30) months commencing on the 1st day of February,  
2017 and terminate at 12:01 a.m. on the 31<sup>st</sup> day of August, 2018 (hereinafter "Lease Term").

**2.02 - Surrender of Damaged Premises**

At the expiration of the term of this Lease or any extensions thereof, Tenant shall surrender the  
Damaged Premises in good condition and broom clean, reasonable wear and tear, and damage by fire or  
casualty excepted.

2. A new Section 16.15 shall become part of the Lease Agreement and provide the following:

16.15 - Extraordinary Expenses:

Should the Landlord incur an extraordinary expense to maintain or repair the Building, upon written notice from the Landlord to Tenant the parties shall promptly engage in good faith discussions whether Tenant should share in such expense.

3. Several copies of this Amendment shall be signed on behalf of the Landlord and Tenant. Each signed copy shall be deemed an original (including facsimile or .pdf format signature pages), but all signed copies together shall be deemed one and the same instrument.

4. This Amendment contains and embraces the entire agreement between the parties hereto concerning the subject matter hereof and it or any part of it may not be changed, altered, modified, limited, terminated, or extended orally or by any written agreement between the parties unless such agreements be expressed in writing, signed and acknowledged by the parties hereto, their legal representatives, successors or assigns, except as may be expressly otherwise provided herein.

5. Landlord represents warrants and covenants that it has authority to enter into this Amendment and that all governmental or other required approvals have been obtained. Landlord further represents that the person executing this Amendment has been duly authorized by the governing board of the Town of Sidney, New York, to enter into this Amendment. Landlord agrees to indemnify and hold Tenant harmless from and against all losses, damages, costs and expenses whatsoever, including legal expenses and reasonable attorneys fees, incurred as a result of Landlord's failure to obtain such approvals.

6. All other terms and conditions of the Lease Agreement are retained and remain in full force and effect.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Amendment on the effective date first above written.

Landlord:  
Town of Sidney, New York

By:   
R. Eugene Pogford, Town Supervisor

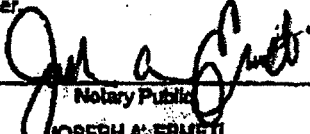
Tenant:  
Tri-Town Regional Healthcare  
d/b/a Tri-Town Regional Hospital

By:   
Jeffrey G. Fisher, President



STATE OF NEW YORK }  
COUNTY OF DELAWARE } ss.:

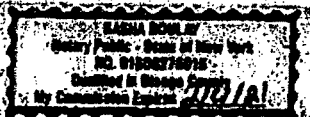
On this 31<sup>st</sup> day of May, 2017, before me personally came R. Eugene Pigford, to me personally known, who, being by me duly sworn, did depose and say that he resides in Sidney, New York, that he is the Supervisor of the Town of Sidney, the general municipal corporation described in and which executed the above instrument, that he knows the seal of the aforesaid corporation that the seal was affixed to said instrument in 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.

  
Notary Public  
JOSEPH A. ERMETI  
Notary Public, State of New York  
Delaware County Reg. No. 4982578  
Commission Expires Feb. 24, 2018

STATE OF NEW YORK }  
COUNTY OF OTSEGO } ss.:

On this 31<sup>st</sup> day of May, 2017, before me personally came Jeffery Joyner, to me personally known, who, being by me duly sworn, did depose and say that he resides in Oriskany, New York, that he is the President of Tri Town Regional Healthcare, described in and which executed the above instrument, that he knows the seal of the aforesaid corporation that the seal was affixed to said instrument in such corporate seal; that it was so affixed by like order of the Board of Directors of said corporation and that he signed his name thereto by like order.

  
Notary Public



# **EXHIBIT C**

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 20, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

070425000202

**CERTIFICATE OF INCORPORATION  
OF  
TRI TOWN REGIONAL HEALTHCARE  
UNDER SECTION 402 OF THE  
NOT-FOR-PROFIT CORPORATION LAW**

The undersigned, for the purpose of forming a not-for-profit corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies that:

1. Name of Corporation.

The name of this corporation is Tri Town Regional Healthcare (the "Corporation").

2. Nature of the Corporation.

The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law and is not formed, conducted or operated for purposes of pecuniary profit or financial gain. The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

3. Duration of the Corporation.

The Corporation shall have perpetual existence.

4. Purposes and Powers.

The purposes for which the Corporation is formed are as follows:

(a) To accept, hold, invest, manage and otherwise administer funds exclusively for charitable purposes, and to expend and apply the income or principal thereof by donating or contributing the same to corporations, trusts, or other organizations that qualify as exempt charitable organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and as publicly supported organizations within the meaning of either

paragraph (1) or (2) of Section 509(a) of the Code and that conduct their principal activities within the County of Delaware. The Corporation shall be operated so as to prevent any unnecessary or undesirable duplication of function or costs with any other charitable organizations conducting activities within the County of Delaware;

(b) To acquire real and personal property by bequest, devise, gift, purchase, lease or otherwise and to hold, invest and reinvest the same, and to sell, mortgage or otherwise convey or to lease any of such property, and to expend the proceeds and income thereof, all in furtherance of the charitable purposes described hereinabove;

(c) To administer such real and personal property in furtherance of such purposes; and

(d) Nothing herein contained shall authorize the Corporation to engage in any purposes or activities described in Sections 404(a) through 404(v) the Not-for-Profit Corporation Law of the State of New York to the extent that such activity is prohibited by said section.

In furtherance, and not in limitation, of the objects and purposes above described the Corporation shall have all the general powers enumerated under Section 202 of the Not-for-Profit Corporation Law and any other powers now or hereafter permitted by law for a corporation organized for the foregoing purposes, subject to any limitations provided in the Not-for-Profit Corporation Law or any other statute of the State of New York.

5. Obligations and Prohibitions.

Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for one or more of the purposes as specified in Sections 501(c)(3) and 509(a)(1) of the Code and shall not carry on any activities not permitted to be carried on by a corporation that is exempt from US Federal income taxation under Section 501(c)(3) of the Code and that is not a private foundation under Section 509(a)(1) of the Code; and

(a) No part of the net earnings of the Corporation shall inure to the benefit of, or be distributed to, any member, trustee, director, officer or any private individual (except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to reimburse reasonable expenses incurred by members, trustees, directors and officers in effecting the purposes of the Corporation) and no member,

trustee, director, officer of the Corporation of any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

(b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation to an extent that would disqualify the Corporation as an entity described in Section 501(c)(3) of the Code.

(c) In the event of dissolution or termination of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of all liabilities and necessary expenses, be distributed to such organizations exempt under Section 501(c)(3) of the Code as would be eligible to receive support and benefit from the Corporation consistent with Article 4 hereof.

(e) In any year in which the Corporation is classified as a private foundation under the Code, it (i) shall distribute its income for such taxable year at such time and manner as not to be come subject to the tax on undistributed income under Section 4942 of the Code; (ii) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code; (iii) shall not retain any excess business holdings as defined in Section 4943(c) of the Code; (iv) shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and (v) shall not make any taxable expenditures as defined in Section 4945 of the Code.

6. Location of the Corporation.

The county in which the Corporation's principal office to be located is Delaware County, New York.

7. Directors.

The number of the Corporation's directors, to be known as trustees, shall hereafter be fixed in accordance with the bylaws of the Corporation. The names and addresses of persons to be the Corporation's directors until its first annual meeting are as follows:

Gerald D. Groff, MD  
PO Box 614  
Cooperstown, NY 13326

Scott McLean  
8 Haynes Blvd.  
Sidney, NY 13838

James Meno  
10 Haynes Blvd.  
Sidney, NY 13838

Joseph Mirabito  
13 Haynes Blvd.  
Sidney, NY 13838

Nicholas Nicoletta  
47 Canadarago Street  
PO Box 663  
Richfield Springs, NY 13439

Jeffrey Woeppel  
Bassett Healthcare  
One Atwell Road  
Cooperstown, NY 13326

8. Annual Meeting.

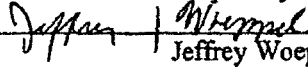
The time for holding the Corporation's annual meetings shall be the Saturday following the second Friday in May in each year or such other date as may from time to time be fixed by the bylaws.

9. Agent for Service of Process.

The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation is:

Tri Town Regional Healthcare  
39 Pearl Street West  
Sidney, NY 13838

IN WITNESS WHEREOF, the undersigned incorporator, being at least eighteen years of age, has signed this certificate this 13<sup>th</sup> day of April, 2007, and hereby affirms the truth of the statements contained herein under penalty of perjury.



Jeffrey Woepfel  
Tri Town Regional Healthcare  
39 Pearl Street West  
Sidney, NY 13838



070425000.202

CERTIFICATE OF INCORPORATION  
OF  
TRI TOWN REGIONAL HEALTHCARE

Section 402 of the Not-for-Profit Corporation Law

lcc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 25 2007

TAXS

Y:

DELAWARE

Filer: Pillsbury Winthrop Shaw Pittman LLP  
1540 Broadway  
New York, NY 10036-4039  
Cust. Ref#862141CMJ

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2007 APR 23 PM 12:18

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***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 20, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

080205000 121

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CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
TRI TOWN REGIONAL HEALTHCARE  
UNDER SECTION 803 OF THE  
NOT-FOR-PROFIT CORPORATION LAW

Pursuant to Section 803 of the New York Not-For-Profit Corporation Law,

We, Bruce Wilhelm, President, and James Meno, Secretary, of Tri Town Regional Healthcare, a corporation duly existing under the Not-For-Profit Corporation Law of the State of New York, do hereby make, sign and acknowledge this Certificate and do certify as follows:

1. The name of this corporation is TRI TOWN REGIONAL HEALTHCARE (hereinafter called the "Corporation").

2. Its Certificate of Incorporation was filed in the office of the Secretary of State on April 25, 2007 pursuant to the provisions of the New York Not-for-Profit Corporation Law.

3. Article FOURTH of said Certificate of Incorporation presently provides as follows:

FOURTH: The purposes for which it is formed are as follows:

(a) To accept, hold, invest, manage and otherwise administer funds exclusively for charitable purposes, and to expend and apply the income or principal thereof by donating or contributing the same to corporations, trusts, or other organizations that qualify as exempt charitable organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and as publicly supported organizations within the meaning of either paragraph (1) or (2) of Section 509(a) of the Code and that conduct their principal activities within the County of Delaware. The

Corporation shall be operated so as to prevent any unnecessary or undesirable duplication of function or costs with any other charitable organizations conducting activities within the County of Delaware;

(b) To acquire real and personal property by bequest, devise, gift, purchase, lease or otherwise and to hold, invest and reinvest the same, and to sell, mortgage or otherwise convey or to lease any of such property, and to expend the proceeds and income thereof, all in furtherance of the charitable purposes described hereinabove;

(c) To administer such real and personal property in furtherance of such purposes; and

(d) Nothing herein contained shall authorize the Corporation to engage in any purposes or activities described in Sections 404(a) through 404(v) the Not-for-Profit Corporation Law of the State of New York to the extent that such activity is prohibited by said section.

In furtherance, and not in limitation, of the objects and purposes above described the Corporation shall have all the general powers enumerated under Section 202 of the Not-for-Profit Corporation Law and any other powers now or hereafter permitted by law for a corporation organized for the foregoing purposes, subject to any limitations provided in the Not-for-Profit Corporation Law or any other statute of the State of New York.

4. The Certificate of Incorporation is hereby amended by deleting Article Fourth in its entirety, relating to the purposes and powers of the Corporation, and replacing with the following:

(a) The maintenance and operation within the County of Delaware, State of

New York, of hospital facilities including dispensaries, one or more clinics and outpatient departments, for the medical, surgical and psychiatric aid, care and treatment of persons in need thereof provided, however, that before any such facility is constructed or operated all approvals required by law, including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including the maintenance and operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches;

(b) To acquire real and personal property by bequest, devise, gift, purchase, lease or otherwise and to hold, invest and reinvest the same, and to sell, mortgage or otherwise convey or to lease any of such property, and to expend the proceeds and income thereof, all in furtherance of the charitable purposes described hereinabove;

(c) To administer such real and personal property in furtherance of such purposes; and

(d) Nothing herein contained shall authorize the Corporation to engage in any purposes or activities described in Sections 404(a) through 404(n), Sections 404(p) through 404(s) and Sections 404(u) through 404(v) of the Not-for-Profit Corporation Law of the State of New York to the extent that such activity is prohibited by said section.

In furtherance, and not in limitation, of the objects and purposes above described the Corporation shall have all the general powers enumerated under Section 202 of the Not-for-Profit Corporation Law and any other powers now or hereafter permitted by law for a

corporation organized for the foregoing purposes, subject to any limitations provided in the Not-for-Profit Corporation Law or any other statute of the State of New York.

5. The proposed amendment to the Certificate of Incorporation was authorized by unanimous written consent in lieu of a meeting of the board of directors of the Corporation dated as of the 14th day of December, 2007.

6. Tri Town Regional Healthcare 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 the Not-For-Profit Corporation Law and will continue to be a Type B corporation after the filing of the proposed amendment to its Certificate of Incorporation.

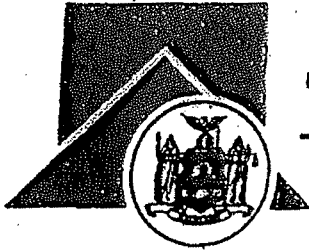
7. The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address of the Corporation to which the Secretary of State shall mail a copy of any process or notice required by law is Tri Town Regional Healthcare, 39 Pearl Street West, Sidney, New York, NY 13838.

IN WITNESS WHEREOF, we have signed this Certificate and affirm the statements herein as true under penalty of perjury this 14th day of December, 2007, and this 14th day of December 2007, respectively.



Bruce Wilhelm, Chief Executive Officer

  
Jeffrey Weppel, Vice Chairman



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

December 17, 2007

Joe R. Middleton  
Vice President Corporate Supply Services  
The Mary Imogene Bassett Hospital  
One Atwell Road  
Cooperstown, New York 13326

Re: Certificate of Amendment of the Certificate of Incorporation of  
Tri Town Regional Healthcare

Dear Mr. Middleton:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 7th day of September, 2007, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Tri Town Regional Healthcare, dated December 14, 2007.

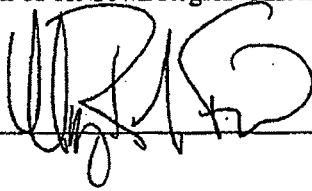
Sincerely,

Colleen M. Frost  
Executive Secretary

/cf



I, Molly R. Fitzgerald, Justice of the Supreme Court of the State of  
New York, [ 6<sup>th</sup> ] Judicial District, do hereby approve the foregoing Certificate of  
Amendment of the Certificate of Incorporation of Tri Town Regional Healthcare and consent  
that the same be filed.

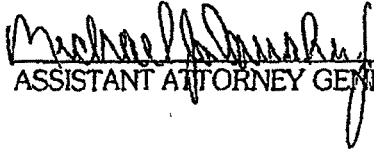


A handwritten signature in black ink, appearing to read 'Molly R. Fitzgerald', is written over a horizontal line.

Dated: January 14, 2008

Supreme Court, Delaware County  
at Binghamton, New York

THE ATTORNEY GENERAL HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL APPROVAL  
HEREON, ACKNOWLEDGES RECEIPT OF  
STATUTORY NOTICE AND DEMANDS SERVICE  
OF THE FILED CERTIFICATE. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE  
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

  
ASSISTANT ATTORNEY GENERAL

  
DATE

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
TRI TOWN REGIONAL HEALTHCARE  
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

FILED BY:

PILLSBURY WINTHROP SHAW PITTMAN LLP  
1540 BROADWAY  
NEW YORK, NY 10036

*MRD  
M. W. K.*

1cc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FEB 05 2008

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*W. W. K.*

*Delaware*

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***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on May 20, 2016.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CSC 45

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NYS Department of State  
Division of Corporations, State Records and UCC  
41 State Street, Albany, NY 12231-0001  
www.dos.state.ny.us

**Certificate of Assumed Name**  
Pursuant to General Business Law, §130

1. NAME OF ENTITY

TRI TOWN REGIONAL HEALTHCARE

1a. FOREIGN ENTITIES ONLY. If applicable, the fictitious name the entity agreed to use in New York State is:

2. NEW YORK LAW FORMED OR AUTHORIZED UNDER (CHECK ONE):

Business Corporation Law

Limited Liability Company Law

Education Law

x Not-for-Profit Corporation Law

Insurance Law

Revised Limited Partnership Act

Other (specify law):

3. ASSUMED NAME

TRI-TOWN REGIONAL HOSPITAL

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST BE NUMBER AND STREET. IF NONE, INSERT OUT-OF-STATE ADDRESS)

39 Pearl Street West Sidney, NY 13838

5. COUNTIES IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME

ALL COUNTIES (if not, circle county[ies] below)

Albany	Clinton	Greene	Montgomery	Oswego	Schenectady	Ulster
Allegany	Columbia	Hamilton	Nassau	Otsego	Schoharie	Warren
Bronx	Cortland	Herkimer	New York	Putnam	Schuyler	Washington
Broome	<u>Delaware</u>	Jefferson	Niagara	Queens	Seneca	Wayne
Cattaraugus	Dutchess	Kings	Oneida	Rensselaer	Steuben	Westchester
Cayuga	Erie	Lewis	Oranoga	Richmond	Suffolk	Wyoming
Chautauqua	Essex	Livingston	Ontario	Rockland	Sullivan	Yates
Chemung	Franklin	Madison	Orange	St. Lawrence	Tioga	
Chenango	Fulton	Monroe	Orleans	Saratoga	Tompkins	
	Genesee					

6. INSERT THE ADDRESS OF EACH LOCATION WHERE BUSINESS WILL BE CARRIED ON OR TRANSACTED UNDER THE ASSUMED NAME.  
Use a separate sheet, if needed. (The address must be set forth in terms of a number and street, city, state and zip code. Please note that the address(es) reflected in paragraph 6 must be within the county(ies) listed in paragraph 5. If the entity does not have a specific location where it will conduct business under the assumed name please check the statement below.)

39 Pearl Street West Sidney, NY 13838

No New York State Business Location

20080320056

INSTRUCTIONS FOR SIGNATURE: If corporation, by an officer; if limited partnership, by a general partner; if limited liability company, by a member or manager or by an authorized person or attorney-in-fact for such corporation, limited partnership, or limited liability company. If the certificate is signed by an attorney-in-fact, include the name and title of the person for whom the attorney-in-fact is acting. (Example, John Smith, attorney-in-fact for Robert Johnson, president.)

Nicholas J. Nicoletta  
Name and Title  
President

[Signature]  
Signature

CERTIFICATE OF ASSUMED NAME  
OF

TRI TORN REGIONAL HEALTHCARE  
(Insert Entity Name)

Pursuant to §190, General Business Law

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Willsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York, NY 10036  
FILER'S NAME AND MAILING ADDRESS

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CUSTOMER REF. #  
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NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$25 fee. The Department of State also collects the following, additional, county clerk fees for each county in which a corporation does or transacts business: \$100 for each county within New York City (Bronx, Kings, New York, Queens and Richmond) and \$25 for each county outside New York City. All checks over \$500 must be certified.

(For office use only)

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**Corporate By-Laws of  
TRI TOWN REGIONAL HEALTHCARE**

**The following constitutes the By-Laws of TRI TOWN REGIONAL  
HEALTHCARE, hereinafter referred to as "the Corporation" or "the Hospital."**

**Amended – December 21, 2016**

## **ARTICLE I**

### **Purpose**

Subject to the powers of the Member set forth in Article II, Section 2, the objects, purposes and powers of the Corporation are as follows:

A. The maintenance and operation within the County of Delaware, State of New York, of hospital facilities including dispensaries, one or more clinics and outpatient departments, for the medical, surgical, dental and psychiatric aid, care and treatment of persons in need thereof and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient, or proper in connection therewith, including, without thereby limiting the generality of the foregoing, the maintenance and operation of hospital laboratories and departments of medical, surgical, pathological, and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches.

B. In furtherance, and not in limitation, of the objects above described the Corporation shall have the power:

1. To acquire by purchase, lease, donation, bequest, or otherwise, land and buildings within said County of Delaware, State of New York, necessary and convenient for the establishing and maintaining of said hospital facilities.

2. To acquire by gift, devise, bequest, or otherwise, real and personal property without limitation as to amount, except such limitation, if any, as is now or may hereafter be fixed by law, and to apply said property, or the income thereof, to the purposes of the Corporation.

3. To arrange by contract, or otherwise, for the services of doctors, surgeons, and other persons necessary for the carrying out of the objects and powers of the Corporation and to pay proper compensation therefor.

4. The enumeration of the foregoing powers shall not be a limitation upon the general powers conferred by law upon hospital corporations, but such general powers, and each of them, may be exercised by the Corporation, whether heretofore specifically enumerated or not.

## **ARTICLE II**

### **Member**

Section 1. Member: The sole member of the Hospital shall be Bassett Healthcare Network, a not-for-profit corporation organized and existing under the laws of the State of New York (the "Member") and such other organizations and persons as may be appointed by the Member at a meeting of the Member.

Section 2. Powers of the Member: The member shall have the following powers:



- a. Appointment and removal with or without cause of all persons that serve on the Board of Trustees;
- b. Appointment of the chairperson of the Board of Trustees;
- c. Appointment of the president of the Hospital, who will serve in a chief executive role for the Hospital;
- d. Approval of any new mission statement or change to an existing mission statement of the Hospital;
- e. General oversight of the governance of the Hospital, including approval of all investment policies;
- f. Coordination of the policies and procedures of the Hospital;
- g. Approval of all operating and capital budgets of the Hospital;
- h. Approval of all capital expenditures that exceed budgeted capital expenditures by five percent (5%) or more or the reallocation of capital expenditures contained in an approved budget by five percent (5%) or more;
- i. Approval of all indebtedness of the Hospital other than vendor indebtedness not otherwise included in the Hospital's approved budget;
- j. Approval of all third-party payer agreements, including managed care contracts, for the Hospital;
- k. As determined by the Member's chief executive officer, approval of all substantive clinical program changes of the Hospital;
- l. Approval of all mergers, consolidations, divisions, liquidations, dissolutions and conversions involving the Hospital;
- m. Approval of all certificate of need applications of the Hospital; and
- n. Approval of all amendments to the certificates of incorporation and bylaws of the Hospital.

### **ARTICLE III**

#### **Board of Trustees**

##### **Section 1. Management (Powers and Duties):**

Subject to the powers of the Member set forth in Article II, Section 2, all powers of the Corporation shall be exercised by and under the authority of the Board of Trustees (the "Board"), and the property, business, and affairs of the Corporation shall be managed by or under the direction of the Board. The Board shall approve By-Laws, rules and regulations for the Medical Staff (as defined herein) and shall appoint, suspend or remove any physician or other practitioner from the Medical Staff,

following the provisions of these By-Laws and the By-Laws of the Medical Staff. The Board shall also provide for the orientation and continuing education of its Members.

Section 2. Number, Election and Terms of Trustees:

The Board of the Corporation shall consist of not less than five (5) nor more than fifteen (15) persons ("Trustees"). The exact number shall be fixed by the Board at any meeting of the Corporation. No decrease in the number of Trustees shall have the effect of shortening the term of any incumbent Trustee. The President of the Hospital and the President of the Medical Staff shall be ex-officio members of the Board of Trustees and shall serve without voting rights. Each member of the Board of Trustees shall be selected on the basis of a demonstrated interest in the objectives of the Hospital as set forth in its Mission Statement, as well as the ability of the candidate to participate effectively in fulfilling those objectives. The Governance Committee (as defined herein) shall meet, at least one (1) month prior to the annual meeting, and as necessary to fill a vacancy, present to the Board a list of nominees to fill the vacancies on the Board of Trustees. The Board decision will be forwarded to the Member for its (their) approval. Trustees shall be appointed by the Member and shall hold office until the following annual meeting and until their successors have been appointed and qualified, unless sooner removed in accordance with Section 3 hereof. All Board members shall be divided into three classes, each class consisting of approximately one-third of the number of elected trustees. Trustees shall be appointed by the Member for a term of three years, or until his or her successor is elected. No elected Trustee may serve more than three (3) consecutive three-year terms.

Section 3. Removal; Vacancies:

Any or all of the Trustees may be removed, with or without cause, at any time by the Member. Vacancies occurring on the Board, including those by resignation, removal, death, disability and increase in the number of board seats, or any other cause, shall be filled at any meeting of the Members following the process outlined in Section 2. The Board of Trustees can recommend to the Member the removal of a Trustee for cause by a vote of two-thirds of the Board of Trustees. The recommendation shall be advisory and not binding on the Member.

Section 4. Resignation of Trustees:

A Trustee may resign at any time by tendering a resignation in writing to the Corporation which shall become effective upon receipt by the Corporation at its principal place of business.

Section 5. Compensation of Board Members and Committee Members:

No Trustee or member of a committee shall receive, directly or indirectly, any salary, compensation, or emolument from the Corporation for services rendered as a Trustee, but any Trustee may be employed by the Corporation in any other capacity, and may receive such reasonable compensation for services in effecting one or more of the purposes of the Corporation as may be authorized by the concurring vote of a majority of all Trustees.

Section 6. Trustee Emeritus:

The Member of the Corporation, by a majority vote, may elect any former Trustee who has rendered faithful and distinctive service to the Corporation to the office of Trustee Emeritus. A Trustee Emeritus may attend the meetings of the Board and take part in discussion, but shall have no vote.

Section 7. Self-Evaluation:

As a part of the ongoing organization process of quality improvement, the Governance Committee of the Board shall be responsible for the annual review of the Board and its performance. A written report outlining the Board of Trustees' efforts is to be presented to the Board.

**ARTICLE IV**

**Meetings of the Board of  
Trustees**

Section 1. Annual Meeting; Regular Meetings:

The Board shall meet in May each year or as otherwise scheduled, at a place and time to be determined. The Board may conduct regular meetings at such times and places as it may fix.

Section 2. Special Meetings:

Special meetings of the Board shall be held at any place within or without the State of New York upon written request directed to the Secretary by the Chairperson of the Board or by any Trustee. Such request shall specify the purpose or purposes of such meeting. At such meetings there shall be transacted only such business as shall have been stated in the notice of such meeting or as shall be connected with or incidental to the business stated therein, provided, however, that if at such meeting all of the Trustees of the Corporation shall be present, any business may be transacted thereat.

Section 3. Notice of Meetings:

Notice of each annual or regular or special meeting stating the place, date and hour of the meeting and, in the case of a special meeting, indicating that the notice is being issued by or at the direction of the person or persons calling the meeting, shall be given by first class mail, telegram or hand delivery not less than two (2) days before the date set for such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to each Trustee at his/her address as it appears on the records of the Corporation.

#### Section 4. Quorum:

Except to the extent explicitly set forth herein, a majority of the entire Board then in office shall constitute a quorum for the transaction of any business. Any one (1) or more Members of the Board may participate in a meeting of the Board by conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting. After a quorum has been established at a meeting of the Board, the subsequent withdrawal of Trustees from the meeting so as to reduce the number of Trustees present to fewer than the number required for a quorum shall not affect the validity of any action taken by the Board at the meeting or any adjournment thereof. A majority of the Trustees present, whether or not a quorum exists, may adjourn any meeting of the Board to another time and place. Notice of any such adjourned meeting shall be given to the Trustees who are not present at the time of adjournment.

#### Section 5. Action by the Board:

Except to the extent explicitly set forth in these By-Laws, the Board may act by majority vote of the Trustees present at a meeting at which a quorum is present. Subject to the powers of the Member set forth in Article II, Section 2, the Board shall not take any of the following actions except upon a two-thirds (2/3) vote of all Trustees cast in favor of the action: (i) incur more than \$1,000,000 in debt outside the ordinary course of business in any one (1) calendar year, provided that any sale/ leaseback involving one (1) or more items of equipment shall be considered to be in the ordinary course of business with respect of any item of equipment having a purchase price of less than \$1,500,000; or (ii) sell, convey, lease, exchange, transfer or otherwise dispose of, or create a security interest in, all or any of its real property, or any interest therein, wherever situated. The notice for any meeting at which any of the matters listed above is to be presented to the meeting for action shall specify the action proposed. A copy of such notice shall also be given to each of the members of the Board of the Corporation not less than two (2) days before the date set for such meeting. No authorization or direction by the Board to take action with respect to the matters listed above shall become effective until twenty (20) days after the meeting at which the Board authorized or directed such action and only if such authorization or direction by the Board has not been rescinded or amended during such twenty (20) day period. No action requiring a two-thirds (2/3) vote of all the Trustees in favor of such action shall be taken at any time that a vacancy exists on the Board. Whenever under the Not-For-Profit Corporation Law or these By-Laws the Board is required or permitted to take any action (including any of the actions listed above as requiring a two-thirds (2/3) vote of all Trustees in favor of any such action), such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all of the Trustees entitled to vote thereon. This paragraph shall not be construed to alter or modify the provisions of any section of the Not-For-Profit Corporation Law. Written consent thus given by all Trustees entitled to vote shall have the same effect as a unanimous vote of all Trustees taken at a meeting where all Trustees were present.

Section 6. Procedures:

Unless otherwise determined by the presiding Chairperson and/or an affirmative vote by a majority of the Trustees in attendance, the order of Business at the Annual Meeting and/or Regular Meeting(s) of the Board of Trustees shall be as follows:

1. Call to order
2. Presentation of Notice of Meeting
3. Board of Trustee Education
4. Approval of Minutes of Previous Meetings
5. Election of Officers other than the Chairperson and President (Annual Meeting)
6. Recommendation to the Member the Chairperson and President (Annual Meeting)
7. Appointment of Committees (Annual Meeting)
8. Report of Medical Staff President
9. Reports of Committees
10. Financial Reports
11. CEO Report
12. Old Business
13. Transaction of other business that may properly brought before the meeting
14. Correspondence
14. Adjournment

**ARTICLE V**

**Officers; Duties of Officers**

Section 1. Officers:

The Officers of the Corporation shall consist of the Chairperson of the Board, the Vice Chairperson, the Secretary, the Treasurer, and President and such other Officers as the Board shall deem advisable, each of whom, except for the Chairperson, shall be elected by the Board at the next regular meeting following the Annual Meeting of the Corporation. The Chairperson shall be appointed by the Member upon the recommendation of the Board. Such recommendation shall be advisory and not binding on the Member. Such Officers shall hold office for the term of [one (1) year], or until their successors are elected and qualified, except in the event of their earlier death, resignation or removal. The Chairperson of the Board and the Vice Chairperson, if any, shall be a Trustee but the other Officers of the Corporation are not required to be Trustees. Additional Officers may be created at any Board meeting and filled by action of the Board.

Section 2. Vacancies:

A vacancy in any office because of death, resignation or removal shall be filled by the Board for the unexpired term of such office.

Section 3. Resignation or Removal of Officers:

An Officer of the Corporation may resign at any time by tendering his/her resignation in writing to the Chairperson of the Board. The resignation becomes effective immediately upon receipt. An Officer may be removed at any time with or without cause by a vote of not less than the majority of the entire Board at any meeting of the Board.

Section 4. Chairperson of the Board:

The Chairperson of the Board shall preside at all meetings of the Board and of the Corporation and shall have all of the duties and powers usually pertaining to this office in a business corporation. The Chairperson shall have the power to make and execute contracts in the ordinary course of business of the Hospital, to execute, with the Vice Chairperson and the Secretary, all deeds, mortgages, bonds, and other obligations or instruments when authorized by the Board of Trustees; and to execute, with the treasurer, all annual or other reports or statements of the Hospital which may be required by law. This power and authority to execute documents and instruments may also be delegated under these By-Laws, by the Chairperson or the Board, to the Vice Chairperson or other officers or agents of the Hospital. The chairman shall appoint committee chairmen and, after consultation with the committee chairmen, the members of the committees. He/she shall appoint all committees and their chairpersons in accordance with these By-Laws. He/she shall have such other duties and responsibilities as shall be delegated to him/her by these By-Laws and by the Board from time to time.

Section 5. Vice Chairperson:

At the request of or in the absence of the Chairperson of the Board, the Vice Chairperson designated by the Chairperson of the Board of Trustees shall perform the duties of Chairperson. Each Vice Chairperson shall have such powers and perform such duties as may be assigned to them by the Chairperson or by the Board.

Section 6. Secretary:

The Secretary shall keep or cause to be kept all of the records of the Corporation except the financial records, shall record the minutes of the meetings of the Corporation and of the Board, send out all notices of meetings, attest to the seal of the Corporation where necessary or required, and perform such other duties as may be prescribed by the Board or the Chairperson of the Board. The Secretary shall also keep or cause to be kept a register of the names and addresses of each [Member/Trustee] of the Corporation.

Section 7. Treasurer:

The Treasurer shall have general supervision, charge and custody of all of the funds, financial records and securities of the Corporation (except as expressly provided otherwise) and shall keep full and accurate accounts of receipts and

disbursements and render accounts thereof at the annual meetings of the Board and of the Corporation and whenever else required by the Board, or the Chairperson of the Board, and shall perform such other duties as may be prescribed by the Board, or the Corporation, shall ensure that a true and accurate accounting of the financial transactions of the Corporation is made and that such accounting is presented and made available to the Board. The Treasurer shall prepare, execute and file, with the Chairperson, any annual report or statement which may be required by law.

Section 8. Other Officers:

The Board of Trustees may appoint one (1) or more Assistant Secretaries or Assistant Treasurers and such other Officers having such duties and responsibilities as the Board shall deem advisable. Such Officers need not be members of the Board or of the Corporation.

Section 9. Compensation of Officers:

No Officer of the Corporation shall receive directly or indirectly, any salary, compensation or emolument from the Corporation, either for the services rendered as such Officer or in any other capacity, unless authorized by the concurring vote of a majority of all the Trustees and then only reasonable compensation for services in effecting one or more of the purposes of the Corporation.

**ARTICLE VI**

**President**

Section 1. Appointment:

The Member shall appoint the President of the Hospital who shall serve in the chief executive officer role of the Hospital. The board of trustees shall establish a Search Committee for the selection of an individual to serve as President. The Chief Executive Officer of the Member shall serve on the Search Committee. The Search Committee shall also recommend to the board of trustees the individual selected to serve as President. Such recommendations shall be advisory and not binding on the Member. The Board may also appoint one or more assistants or Vice Presidents who shall assist the President in the performance of his/her duties.

Section 2. Duties of the President:

The President shall be responsible at all times for directing, coordinating and supervising the administration of the Hospital and the Medical Staff and for carrying out the policies of the Board. The President shall attend all meetings of the Board, the Executive and Finance Committee, and other Board meetings. He/she shall be responsible for the quality of medical care at the Hospital and a program for continuous quality improvement for all Hospital activities and shall report to the Chairperson of the Board and the Board thereon. The President shall serve in an administrative liaison capacity between the Medical Staff and the Board and shall be responsible for making

recommendations to the Board concerning appointments and reappointments to the Medical Staff and the granting of clinical privileges. In addition, the President shall have the power to summarily suspend all or any portion of the clinical privileges of any physician or other practitioner whenever such action must be taken immediately in the best interest of patient care or safety in the Hospital or to prevent disruption of the Hospital's operation. He/she may appoint such assistants and Vice Presidents, and such committees of the staff as he/she may deem desirable and may assign them such duties as he/she may deem proper. He/she shall attend such meetings of the standing and Special Committees of the Medical Staff as he/she deems appropriate. The President shall present to the Executive and Finance Committee the annual operating budgets, and the annual and long-range capital budgets as may be required from time to time by law, governmental regulations, or accrediting agencies. He/she shall present to the Executive and Finance Committee and the Board, concise and substantiated plan proposals for the future of the Hospital. In the preparation of these budgets and plans he/she shall be assisted by special management committees composed of members of the medical and administrative staffs.

In coordination with the Board, the President will coordinate the development of and implement the long and short term plans for the Hospital.

In his/her absence, the Member shall appoint a substitute as Acting President.

The President shall have all of the additional duties, responsibilities and authority as set forth in Appendix I attached hereto.

**Section 3. Evaluation of President's Performance:**

The Executive and Finance Committee will evaluate the President's performance and make a written report to the Board of Trustees and Chief Executive Officer of the Member at least once a year.

**ARTICLE VII**

**Committees of the Board of Trustees**

**Section 1. Committees of the Board:**

The Chairperson of the Board of Trustees shall appoint the Member upon the recommendation of the Board. Such recommendation shall be advisory and not binding on the Member. The Board shall appoint the Chairpersons of such standing committees of the Board of Trustees as are provided for in these By-laws and such special committees as the Board shall authorize, subject to the approval of the Board. Unless otherwise specified, committee members may include, in addition to Trustees, members of the Medical Staff, Officers of the Corporation and members of the community. The Chairperson of the Board shall be a member of all committees.

**Section 2. Standing Committees:**

Standing committees shall be those named in subsequent sections of this Article and shall have and may exercise all of the powers provided for in these By-Laws.



Section 3. Special Committees:

Special committees shall be created as required, by resolution of the Board. The purpose, duties, number of members and reporting requirements of the committee shall be specified in the resolution creating the committee.

Section 4. Executive and Finance Committee:

A. Composition: The composition of the Executive and Finance Committee shall consist of the Chairperson of the Board, the Vice Chairperson, (the Treasurer) and additional members of the Board as deemed appropriate by the Chairperson. The President will serve in a non-voting capacity and provide such appropriate staff as necessary to accomplish the committee's responsibilities.

B. Duties: The duties of the Executive and Finance Committee are:

(1.) During the intervals between the meetings of the Board, the Executive and Finance Committee shall have, and may exercise, subject to such limitations as may be provided by resolution of the Board or by these By-Laws, all of the powers of the Board that may be so delegated under the provisions of any statute, the Certificate of Incorporation or these By-Laws and that have not been specifically delegated to other standing or Special Committees.

(2.) The Executive and Finance Committee shall have special and general charge and control, subject to the control of the Board, of the monies and securities of the Corporation and all financial affairs of the Corporation including the authority to invest and reinvest the funds of the Corporation. It shall keep a record of its proceedings and shall report all action taken by it to the Board.

(3.) The Executive and Finance Committee shall review and make recommendations to the Board concerning annual operating and capital budgets, and such long-range operating and capital budgets as are required by law, governmental regulations and accrediting agencies. Such budgets will be presented by the President who shall be assisted in their preparation by appropriate management committees composed of members of the medical and administrative staff.

(4.) The Executive and Finance Committee shall also be responsible for the annual evaluation of the President's performance.

(5.) The Strategic Planning Committee shall be a subcommittee of the Executive and Finance Committee. It shall conduct long range plans which identify community needs, market opportunities and facility changes and resources.

B. Meetings, Reports and Recommendations: The Executive and Finance Committee shall meet at least quarterly or more often, as necessary, shall maintain a permanent record of its proceedings and actions, and shall make a report thereof to the Board.

Section 5. Joint Advisory Committee:

A. Composition: The Joint Advisory Committee shall consist of the following: three (3) members of the Board appointed by the Board (one of whom shall be newly appointed annually); the President of the Medical Staff, Vice President of the Medical Staff and one (1) additional member of the Medical Staff of the Hospital elected by the Medical Staff and approved by the Board and the President of the Hospital. At the option of the Board it may include one (1) or more additional officers and/or one (1) or more members of the administrative staff.

B. Meetings and Reports: The Joint Advisory Committee shall meet at least 2 times a year, shall maintain a permanent record of its proceedings, and shall make a report thereof to the Board. The dates for such meetings shall, unless otherwise determined by the Joint Advisory Committee, be fixed by the Chairperson at least thirty (30) days in advance thereof.

C. Duties: The duties of the Joint Advisory Committee shall be to develop and maintain suitable formal liaison between the Board and the Medical Staff.

Section 6. Governance Committee:

A. Composition: Governance Committee shall consist of not less than three (3) Trustees.

B. Duties: The Governance Committee shall propose candidates for vacancies on the Board of Trustees to be filled at the annual meeting of the Corporation and candidates for any other vacancy on the Board to be filled for any interim period prior to the next annual meeting of the Corporation and shall submit them to the Board. Recommendations of the Governance Committee for election as Trustees shall be considered by the Board in determining the Board's nominations for Trustees to be acted upon by the Member. The Board shall not be bound by any recommendation of the Governance Committee for nomination as a Trustee. The Member shall not be bound by any recommendation of the Board.

Subject to the powers of the Member set forth in Article II, Section 2, the Governance Committee shall also be responsible for developing and implementing an orientation program for all new members of the Board; and developing and implementing a continuing education program for the Board that extends throughout the year and covers such areas of interest as the Corporation's purposes and missions, new laws and regulations that affect the delivery of health care, patients' rights, the Corporation's quality assurance program, the Board's role and responsibility as to the delivery of patient care and the effective operation of the Corporation; and establishing criteria for the evaluation of the Board's performance and the evaluation of the Board's and its committees' performance on an annual basis.

As a part of the ongoing organization process of quality improvement, the Governance Committee of the Board of Trustees shall be responsible for the annual review of the Board of Trustees and its performance based upon a standard survey prepared by the Member. A written report outlining the Board of Trustees' efforts is to be presented to the Board of Trustees and Chief Executive Officer of the Member.

C. Meetings, Reports and Recommendations: The Governance Committee shall meet at least annually and as necessary to transact its business, maintain a permanent record of its proceedings and actions and make a report thereof to the Board.

Section 7. Board Quality and Performance Improvement Committee:

A. Composition: The Board Quality and Performance Improvement Committee shall consist of the following: Board members appointed by the Board, Medical Staff representation and support staff to include the President, Director of Nursing and QA Coordinator.

B. Meetings and Reports: The Board Quality and Performance Improvement Committee shall meet at least four times a year, or when necessary at the call of the committee chairperson.

C. Duties: The Quality and Performance Improvement Committee is responsible for recommending to the full board policies, plans and goals that maintain and improve the quality of care and customer service provided throughout the organization. The committee also reviews organization-wide performance against established targets and reports in a summary fashion to the full board.

Section 8. Committee Members' Terms of Office:

Each member of a committee, including the chairperson, shall be appointed for a year (unless otherwise specified in these By-Laws), and shall continue in office until the next annual meeting of the Board and until a successor is appointed unless the committee shall be sooner terminated by the Board or until the death, resignation or removal of the member or chairperson, whichever first occurs.

Section 9. Committee Meetings:

Meetings of any committee of the Board may be called by the chairperson of such committee or by the chairperson of the Board of Trustees by giving notice of such meeting, setting forth its time and place and delivered personally or by mail or telephone to the residence or place of business of the committee member as it appears on the books or records of the Corporation at least two (2) days prior to such meeting. Unless otherwise provided in these By-Laws, a majority of the members of any committee shall constitute a quorum for the transaction of business. After a quorum has been established at a committee meeting, the subsequent withdrawals of committee members from the meeting so as to reduce the number of committee members present to fewer than the number required for a quorum shall not affect the validity of any action taken at the meeting. Each committee shall keep minutes of its meetings and report to the Board as necessary with recommendations. No committee shall have the authority to take any action which is required by these By-Laws to be taken by a two-thirds (2/3) vote of all Trustees.

Section 10. Resignation of Committee Members:

A member of any committee of the Board may resign at any time by tendering his/her resignation in writing to the Chairperson of the Board. Resignation as a Trustee shall also constitute resignation as a member of any committee of the Board.

**ARTICLE VIII**

**Medical Staff**

Section 1. Organization of the Medical Staff:

The Board shall appoint a Medical Staff composed of physicians, dentists and other doctorates in fields closely related to medicine as well as non-doctoral assistants and practitioners and shall see that they are organized into a responsible administrative unit under the President. The Medical Staff shall operate as an internal part of the Hospital and, through the President, shall be responsible and accountable to the Board for the discharge of those duties and responsibilities as may be delegated to it by the Board from time to time. Specifically, the Medical Staff shall have the responsibility of keeping the President, and through him/her the Board, advised of the quality of medical care in the Hospital and of making recommendations to the President with regard thereto.

Section 2. By-Laws of the Medical Staff:

The Medical Staff shall adopt By-Laws, rules and regulations for the governance of their professional duties, responsibilities and privileges in the Hospital, and recommend them to the Board. These By-Laws, rules and regulations, shall be reviewed at least every two years by the Medical Staff, and any amendments thereto shall become effective only after approval by the Board and the Board shall retain the right to make any amendments, after consultation with the Medical Staff, that shall in its opinion be in the best interests of the Hospital.

Section 3. Appointment of Members of the Medical Staff, and Assignment of Clinical Privileges:

After considering the recommendations of the Medical Staff, the Board shall appoint members of the Medical Staff who are graduates of recognized medical schools meeting the minimum personal and professional qualifications prescribed in the Medical Staff By-Laws and shall assign clinical privileges to them. The Board shall also appoint as members of the Medical Staff other doctorates as well as non-doctoral assistants and practitioners. Appointments shall be for no more than two (2) years, renewable in accordance with the reappointment procedures set forth in the Medical Staff and Hospital By-Laws. Initial appointments shall be provisional for at least a period of one (1) year and no more than two (2) years. All reappointments to the Medical Staff, after the initial appointment, shall be for a period of no longer than two (2) years and shall be at the complete discretion of the Board.

The appointment of a member of the full-time active staff may be terminated prior to its expiration and the reappointment of a member may be denied only by a majority vote of the members of the Board present at a regular or special meeting of the Board at which a quorum is present and only after the member has been offered an opportunity to present his/her case to the Board in accordance with the procedures outlined in the Medical Staff By-Laws.

A licensed physician appointed to the Medical Staff shall be responsible for the admission, baseline history, physical examination and treatment of each patient admitted to the Hospital. Such responsibility shall include supervision of adjunct staff assigned to care of the patient, subject only to such limitations as the Board and its designees may impose and to the By-Laws, rules and regulations of the Medical Staff as approved and adopted by the Board.

Other doctorates, non-doctoral assistants and practitioners appointed to the Medical Staff by virtue of their position shall provide only those medically related services assigned to them by action of the Board and its designees, subject to the By-laws, rules and regulations of the Medical Staff as approved and adopted by the Board.

Each appointee to the Medical Staff shall sign a statement that he/she has read and understood the By-Laws and the rules and regulations of the Hospital and the Medical Staff, that he/she agrees to be bound by them during the term of his/her appointment, that he/she specifically agrees that he/she has an obligation to provide continuous clinical care and supervision as appropriate to all Hospital patients for whom he/she has responsibility and that he/she will observe all ethical principles of the medical, research, and/or education profession.

#### Section 4. Medical Director:

After consultation with the Medical Staff and the President, the Board shall appoint a Medical Director. The duties of the Medical Director shall be established by the Board.

### **ARTICLE IX**

#### **Indemnification**

Any person made or threatened to be made a party to any action or proceeding, whether civil or criminal, by reason of the fact that he/she, his/her testator or intestate, is or was a Member, Trustee, an Officer, or an agent of the Corporation including physicians acting in their capacity as medical Staff officers, Clinical Chiefs, committee members, or serves or served any other corporation or other entity or organization in any capacity at the request of the Corporation while he/she was a Member, Trustee, officer or agent of the Corporation, shall be and hereby is indemnified by the Corporation against all judgments, fines, amounts paid in settlement and reasonable expenses including attorney's fees actually and necessarily incurred as a result of any such action or proceedings, or any appeal therein, to the full extent permitted and in the manner prescribed by the Not-For-Profit Corporation Law of the State of New York, as it may be amended from time to time, or such other law or laws as may be applicable to

the extent such other law or laws are not inconsistent with the Not-For-Profit Corporation Law.

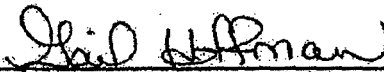
The foregoing provisions of this Article shall be deemed to be a contract between the Corporation and each Member, Trustee, Officer, and agent of the Corporation who serves in such a capacity at any time while this Article and the relevant provisions of the Not-For-Profit Corporation Law are in effect and any repeal or modification of this Article or such provisions of the Not-For-Profit Corporation Law shall not affect any rights or obligations then existing as it relates to any action or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts. However, the right of indemnification provided in this Article shall not be deemed exclusive of any other rights to which any Member, Trustee, Officer, or agent of the Corporation may now be or hereafter become entitled apart from this Article.

#### **ARTICLE X**

##### **Amendments to the By-Laws**

These By-Laws shall be reviewed and if necessary amended at least every two (2) years. The Board of Trustees may propose in writing amendments to these By-Laws to the Member. Such proposed amendments shall be advisory and not binding on the Member. These By-Laws may be amended at any annual or special meeting of the member of the Corporation.

Approved by the Board of Trustees on December 21, 2016.

  
\_\_\_\_\_  
Gail Hoffman, Secretary

## APPENDIX I

### Duties, Responsibilities and Authority of the President

- To implement the policies established by the Board affecting operations of the Hospital, and to keep the Board apprised about internal and external developments and issues.
- To provide leadership, exercising delegated authority from the Member in the chief executive role of the Hospital.
- Under direction of the Member, to direct continuous planning for the future of the Hospital, to identify goals, to assess the value of existing services, to create and take advantage of opportunities for new services and activities, and to communicate effectively the Hospital's services and policies to patients and other publics.
- To organize and direct the clinical services and administrative departments as they can best serve the missions of the Hospital and in support of the Member and its subsidiaries functioning as an integrated health system.
- To evaluate Hospital services and activities to assure that they are of high quality and are appropriate to the best interests of the institution and its patients.
- To assure that all departments and services of the Hospital function together on a well coordinated, cooperative, and mutually supportive basis, resolving interpersonal and interdepartmental conflicts where necessary.
- To assure that the institution is strong financially and financial resources are spent in the most effective manner possible.
- To assure effective management of human resources, including recruitment, retention, compensation, and productivity, to influence the selection of individuals for key positions, and to assure that the Hospital is fair and deals consistently with all those who work there.
- To assure that those who work at the Hospital are informed about institutional goals, policies, and operations and that their opinions are heard and considered with regard to such subjects.
- To allocate space and assure the effective maintenance of the physical plant, site and facilities.
- To assure that operations are in compliance with the laws, rules, and standards of those who regulate the Hospital (government, quasi-governmental agencies, and voluntary accrediting agencies). Further, to influence the legislative and rule-making process toward favorable results for the Hospital, within legal boundaries.

# **EXHIBIT D**



TRI-TOWN REGIONAL HOSPITAL

BALANCE SHEET  
June 30, 2017 and 2016

ASSETS

CURRENT:	<u>2017</u>	<u>2016</u>
CASH AND EQUIVALENTS	\$ 1,540,432	\$ 2,051,008
NET ACCOUNTS RECEIVABLE	2,170,985	1,263,703
INVENTORIES	113,100	113,838
OTHER RECEIVABLES	220,394	244,180
PREPAID EXPENSES AND ADVANCES	33,114	41,655
THIRD PARTY PAYABLE	<u>120,275</u>	<u>216,342</u>
TOTAL CURRENT ASSETS	4,198,300	3,930,726
PROPERTY, PLANT AND EQUIPMENT: NET PROPERTY, PLANT AND EQUIPMENT	2,002,706	1,777,303
 <b>TOTAL ASSETS</b>	 <b><u>\$ 6,201,006</u></b>	 <b><u>\$ 5,708,028</u></b>

LIABILITIES AND NET ASSETS

CURRENT LIABILITIES:		
ACCOUNTS PAYABLE	\$ 345,431	\$ 125,939
OTHER ACCRUED EXPENSES	498,233	508,302
CURRENT PORTION LONG TERM DEBT	23,344	-
THIRD PARTY PAYABLES	<u>-</u>	<u>-</u>
TOTAL CURRENT LIABILITIES	867,008	634,241
LONG TERM LIABILITIES:		
PHILIPS CAPITAL LEASE	<u>87,974</u>	<u>-</u>
TOTAL LONG TERM LIABILITIES	87,974	-
NET ASSETS:		
UNRESTRICTED	5,223,457	4,878,603
TEMPORARILY RESTRICTED	<u>22,567</u>	<u>195,184</u>
TOTAL NET ASSETS	5,246,024	5,073,787
 <b>TOTAL LIABILITIES AND NET ASSETS</b>	 <b><u>\$ 6,201,006</u></b>	 <b><u>\$ 5,708,028</u></b>

# **EXHIBIT E**



**TRI TOWN REGIONAL HEALTHCARE**

Financial Statements

December 31, 2016 and 2015

(With Independent Auditors' Report Thereon)

**TRI TOWN REGIONAL HEALTHCARE**

Financial Statements

December 31, 2016 and 2015

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Statements of Cash Flows	4
Notes to Financial Statements	5



KPMG LLP  
Two Financial Center  
60 South Street  
Boston, MA 02111

## Independent Auditors' Report

The Board of Directors  
Tri Town Regional Healthcare:

We have audited the accompanying financial statements of Tri Town Regional Healthcare, which comprise the balance sheets as of December 31, 2016 and 2015, and the related statements of operations and changes in net assets and cash flows for each of the years then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Tri Town Regional Healthcare as of December 31, 2016 and 2015, and the results of its operations and its cash flows for each of the years then ended, in conformity with U.S. generally accepted accounting principles.

**KPMG LLP**

Albany, New York  
May 31, 2017

**TRI TOWN REGIONAL HEALTHCARE**

Balance Sheets

December 31, 2016 and 2015

<b>Assets</b>	<u>2016</u>	<u>2015</u>
<b>Current assets:</b>		
Cash and cash equivalents	\$ 2,512,121	2,193,110
Patient accounts receivable, net (note 3)	1,179,415	1,019,125
Grants and other receivables	201,898	181,266
Estimated receivables from third-party payors	20,000	—
Inventories	113,100	95,812
Prepaid expenses	<u>32,001</u>	<u>30,566</u>
Total current assets	4,058,535	3,519,879
Interest in net assets of Friends of Bassett, Inc. (note 7)	17,120	17,599
Property and equipment, net (note 4)	<u>1,921,245</u>	<u>1,880,283</u>
Total assets	<u>\$ 5,996,900</u>	<u>5,417,761</u>
<b>Liabilities and Net Assets</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 388,223	398,434
Accrued salaries, wages, and related expenses	3,500	—
Accrued expenses (note 6)	479,921	471,123
Estimated payable to third-party payors (note 3)	13,636	16,163
Current installments of obligations under capital lease (note 5)	<u>19,355</u>	<u>—</u>
Total current liabilities	904,635	885,720
<b>Long-term liabilities:</b>		
Obligations under capital lease (note 5)	<u>100,626</u>	<u>—</u>
Total liabilities	<u>1,005,261</u>	<u>885,720</u>
<b>Net assets:</b>		
Unrestricted	4,959,492	4,499,863
Temporarily restricted	<u>32,147</u>	<u>32,178</u>
Total net assets	<u>4,991,639</u>	<u>4,532,041</u>
Total liabilities and net assets	<u>\$ 5,996,900</u>	<u>5,417,761</u>

See accompanying notes to financial statements.

**TRI TOWN REGIONAL HEALTHCARE**  
**Statements of Operations and Changes in Net Assets**  
**Years ended December 31, 2016 and 2015**

	<b>2016</b>	<b>2015</b>
Unrestricted revenue, gains, and other support:		
Net patient service revenue (note 3)	\$ 9,624,673	9,700,097
Provision for uncollectible accounts	(1,020,076)	(1,003,848)
Net patient service revenue, less provision for uncollectible accounts	8,604,597	8,696,249
Interest income	2,927	2,938
Other revenue (note 6)	1,789,974	1,437,873
Net assets released from restrictions used for operations	45,855	47,183
Total unrestricted revenue, gains, and other support	<b>10,443,353</b>	<b>10,184,243</b>
Expenses:		
Contracted personnel services (note 6)	3,678,125	3,651,906
Supplies and other	6,202,567	5,793,053
Depreciation and amortization	341,543	281,220
Interest expense	—	3,276
Total expenses	<b>10,222,235</b>	<b>9,729,455</b>
<b>Operating margin</b>	<b>221,118</b>	<b>454,788</b>
Excess of unrestricted revenue, gains, and other support over expenses	<b>221,118</b>	<b>454,788</b>
Unrestricted net assets:		
Net assets released from restrictions for property and equipment	238,511	613,256
Increase in unrestricted net assets	<b>459,629</b>	<b>1,068,044</b>
Temporarily restricted net assets:		
Contributions and grants and change in interest in Friends of Bassett, Inc.	284,335	634,324
Net assets released from restrictions for:		
Purchase of property and equipment	(238,511)	(613,256)
Operations	(45,855)	(47,183)
Decrease in temporarily restricted net assets	<b>(31)</b>	<b>(26,115)</b>
Change in net assets	459,598	1,041,929
Net assets, beginning of year	4,532,041	3,490,112
Net assets, end of year	<b>\$ 4,991,639</b>	<b>4,532,041</b>

See accompanying notes to financial statements.

**TRI TOWN REGIONAL HEALTHCARE**  
**Statements of Cash Flows**  
**Years ended December 31, 2016 and 2015**

	<b>2016</b>	<b>2015</b>
Cash flows from operating activities:		
Change in net assets	\$ 459,598	1,041,929
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	341,543	281,220
Contributions and grants restricted for the purchase of property and equipment	(238,511)	(242,342)
Amortization of discount on note payable		3,276
Deferred revenue recognized		(14,565)
Change in operating assets and liabilities:		
Patient accounts receivable, net	(160,290)	(148,357)
Grants and other receivables	(20,632)	(10,662)
Estimated receivables from third-party payors	(20,000)	—
Inventories	(17,288)	16,775
Prepaid expenses	(1,435)	(1,211)
Undistributed interest in net assets of Friends of Bassett, Inc.	479	13,207
Accounts payable	(10,211)	181,395
Accrued salaries, wages and related expense	3,500	—
Accrued expenses	8,798	(580,905)
Estimated payable to third party payors, net	(2,527)	(56,389)
Net cash provided by operating activities	343,024	483,371
Cash flows from investing activities:		
Purchases of property and equipment	(180,329)	(809,131)
Net cash used in investing activities	(180,329)	(809,131)
Cash flows from financing activities:		
Principal payment on debt	—	(400,000)
Payments on capital lease	(82,195)	—
Contributions and grants restricted for the purchase of property and equipment	238,511	242,342
Net cash provided by (used in) financing activities	156,316	(157,658)
Net increase (decrease) in cash and cash equivalents	319,011	(483,418)
Cash and cash equivalents, beginning of year	2,193,110	2,676,528
Cash and cash equivalents, end of year	\$ 2,512,121	2,193,110
See accompanying notes to financial statements.		
Supplemental disclosure of cash flow information:		
Current year capital lease obligations	\$ 202,176	—



## TRI TOWN REGIONAL HEALTHCARE

Notes to Financial Statements

December 31, 2016 and 2015

### (1) Organization and Summary of Significant Accounting Policies

Tri Town Regional Healthcare (d/b/a Tri-Town Regional Hospital) (Hospital) provides acute care services to local residents in the Town of Sidney. The Hospital's sole member is Bassett Regional Corporation (BRC). BRC is a tax-exempt membership organization, which has as its sole member, Thurston Corporation (Thurston). Thurston is also the sole member of The Mary Imogene Bassett Hospital (d/b/a Bassett Medical Center) (MIBH), a tax-exempt membership organization that provides certain services to the Hospital. See note 11.

The following is a summary of the Hospital's significant accounting policies:

#### (a) Basis of Presentation

The financial statements of the Hospital are presented on the accrual basis consistent with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 954, *Health Care Entities* (ASC Topic 954). Accordingly, net assets and revenue, expenses, gains, and losses are classified based on the existence or absence of donor-imposed restrictions. Unrestricted net assets of the Hospital are net assets not subject to donor-imposed stipulations, and available for operations. Temporarily restricted net assets are those whose use by the Hospital has been limited by donors to a specific time period or purpose.

#### (b) Contributions

Unconditional promises to give cash and other assets are reported at fair value at the date the promise is received. The gifts are reported as either temporarily or permanently restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified as unrestricted net assets and reported in the statements of operations and changes in net assets as net assets released from restrictions.

#### (c) Inventories

Inventories are stated at the lower of first in, first out (FIFO) cost or market.

#### (d) Cash Equivalents

Cash equivalents consist of money market instruments and all highly liquid debt instruments with original maturities of three months or less.

#### (e) Property and Equipment

Equipment and leasehold improvements are stated at cost. Depreciation is calculated using the straight-line method over the shorter period of the lease term or the estimated useful lives of the assets, ranging from 3 to 15 years.

Gifts of long-lived (capital) assets are reported as unrestricted support unless explicit donor stipulations specify how the donated assets must be used. Gifts of capital assets with explicit restrictions that specify how the assets are to be used and gifts of cash or other assets that must be used to acquire capital assets are reported as temporarily restricted support. Absent explicit donor

## TRI TOWN REGIONAL HEALTHCARE

Notes to Financial Statements

December 31, 2016 and 2015

restrictions about how long these capital assets must be maintained, expirations of donor restrictions are reported when the donated or acquired capital assets are placed in service.

**(f) Excess of Unrestricted Revenue, Gains, and Other Support over Expenses**

The statements of operations and changes in net assets includes a performance indicator excess of unrestricted revenue, gains, and other support over expenses. Changes in unrestricted net assets, which are excluded from excess of unrestricted revenue, gains, and other support over expenses, consistent with industry practice, include assets acquired using contributions or grant funds, which by donor or grant restrictions were to be used for the purpose of acquiring long lived assets.

For purposes of display, transactions deemed by management to be ongoing, major or central to the provision of health care services are reported as unrestricted revenue, gains, and other support and expenses in the determination of the Hospital's operating margin. Peripheral or incidental transactions are reported as nonoperating revenue or expense, when applicable.

**(g) Net Patient Service Revenue**

Net patient service revenue is reported at the estimated net realizable amounts from patients, third-party payors, and others for services rendered, including estimated retroactive adjustments under reimbursement agreements with third-party payors.

**(h) Provision for Uncollectible Patient Accounts Receivable**

The Hospital grants credit without collateral to patients, most of whom are local residents and are insured under third-party agreements. Services rendered to individuals when payment is expected and ultimately not received are written off to the allowance for estimated uncollectible accounts. Additions to the allowance for estimated uncollectible accounts are made by means of the provision for uncollectible accounts. Accounts written off as uncollectible are deducted from the allowance and subsequent recoveries are added. The amount of the provision for uncollectible accounts is based upon management's assessment of historical expected net collections, business and economic conditions, trends in federal and state governmental healthcare coverage, and other collection indicators.

**(i) Charity and Uncompensated Care**

The Hospital's general policy statement on charity care requires that medical care be rendered to all persons in need of such care regardless of their ability to pay. Because the Hospital does not pursue collection of amounts determined to qualify as charity care, they are not reported as revenue. The Hospital maintains records to identify and monitor the level of charity care it provides. These records include the amount of charges forgone for services furnished under its charity care policy. The Hospital's charity care policy has not changed during fiscal years 2016 or 2015.

**(j) Income Taxes**

The Hospital is a not for profit corporation as described in Section 501(c)(3) of the Internal Revenue Code (the Code) and is exempt from federal income taxes pursuant to Section 501(a) of the Code. The Hospital recognizes income tax positions when it is more-likely than-not that the position will be sustainable based on the merits of the position. Management has concluded that there are no

**TRI TOWN REGIONAL HEALTHCARE**

Notes to Financial Statements

December 31, 2016 and 2015

material tax liabilities or uncertain tax positions that need to be recorded as December 31, 2016 and 2015.

**(k) Use of Estimates**

The preparation of the accompanying financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions about future events. These estimates and the underlying assumptions affect the amounts of assets and liabilities reported, disclosures about contingencies, and reported amounts of revenues and expenses. Such estimates and assumptions include the allowance for uncollectible accounts and estimated third-party payor settlements. These estimates and assumptions are based on management's judgment. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the current economic environment. Management believes its estimates and assumptions are reasonable under the circumstances. Management adjusts such estimates and assumptions when facts and circumstances dictate. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Changes in those estimates resulting from continuing changes in the economic environment will be reflected in the financial statements in future periods.

**(2) Charity and Uncompensated Care**

The cost of charity care provided is determined based on the application of a cost to gross charge ratio to the total charity care charges foregone. The Hospital's annual cost of charity care was \$47,000 and \$62,000 in 2016 and 2015, respectively. In addition to the above, the cost of unreimbursed Medicaid services was approximately \$703,000 in 2016 and \$12,000 in 2015. The cost of unreimbursed Medicaid is determined based on the application of a cost to gross charge ratio to total Medicaid charges. The increase in unreimbursed cost resulted from increased Medicaid gross revenue combined with increased discounts and allowances, increased cost to charge ratio and decreased New York State Indigent Pool funds.

Included in net patient service revenue are amounts paid into and received from statewide uncompensated care pools. These uncompensated care pools are designed to help offset the cost of charity care and unreimbursed Medicaid services. During 2016 and 2015, the Hospital received approximately \$635,000 and \$654,000, respectively, in Medicaid statewide uncompensated care pool receipts.

**(3) Net Patient Service Revenue and Related Receivables and Third-Party Reimbursement**

Patient service revenue is recorded at the Hospital's established rates with contractual allowances, charity service, and courtesy allowances provided to employees deducted to arrive at net patient service revenue. A summary of patient service revenue, net of allowances, follows:

	2016	2015
Patient service revenue	\$ 26,952,296	24,839,345
Less provisions for contractual adjustments under third-party reimbursement programs and discounts	(17,327,623)	(15,139,248)
	\$ 9,624,673	9,700,097

**TRI TOWN REGIONAL HEALTHCARE**

Notes to Financial Statements

December 31, 2016 and 2015

A significant portion of the Hospital's net patient service revenue is derived through arrangements with third party payors, including government payors (42% in 2016 and 44% in 2015) and commercial payors (36% in 2016 and 37% in 2015), and private and other payors (22% in 2016 and 19% in 2015).

The Hospital has agreements with third-party payors that provide for payments to the Hospital at amounts different from its established charges. Outpatient services are paid at various rates under different arrangements with governmental payors, commercial insurance carriers, and health maintenance organizations. The basis for payment under these agreements includes prospectively determined discounts from established charges, fee schedules, and per diem rates for certain services.

In addition, under HCRA, all non-Medicare payors are required to make surcharge payments for the subsidization of indigent care and other healthcare initiatives. The percentage amount of the surcharge varies by payor and applies to a broad array of healthcare services.

The Hospital is required to prepare and file various reports of actual and allowable costs annually. Provisions have been made in the financial statements for prior and current years' estimated final settlements. The differences between the amount provided and the actual final settlement is recorded as an adjustment to net patient service revenue in the year the final settlement is determined. The net effect of settlements in 2016 and 2015 was not significant. The laws and regulations governing the reimbursement for healthcare services are complex and subject to interpretation. Third party payors retain the right to review and propose adjustments to amounts requested and recorded by the Hospital. In the opinion of management, retroactive adjustments, if any, would not be material to the financial position or results of operations of the Hospital. As of December 31, 2016, all cost reports through 2015 have been filed and no such Medicare cost reports have been final settled.

At December 31, 2016 and 2015, concentrations of patient accounts receivable based on gross charges are as follows:

	<u>2016</u>	<u>2015</u>
Government-related programs	42%	44%
Health maintenance organizations and commercial insurance programs	19	18
Private pay	22	19
Blue Cross and Blue Shield programs	17	19
	<u>100%</u>	<u>100%</u>

Accounts receivable are presented net of allowances for estimated uncollectible accounts of approximately \$496,000 and \$498,000 at December 31, 2016 and 2015, respectively.

**TRI TOWN REGIONAL HEALTHCARE**

Notes to Financial Statements

December 31, 2016 and 2015

**(4) Property and Equipment**

Property and equipment at December 31, 2016 and 2015 is summarized as follows:

	<b>2016</b>	<b>2015</b>
Leasehold improvements	\$ 2,300,497	1,842,064
Equipment	2,017,359	1,640,206
	4,317,856	3,482,270
Less accumulated depreciation and amortization	2,456,458	2,138,755
	1,861,398	1,343,515
Renovations in progress	59,847	536,768
Net property and equipment	\$ 1,921,245	1,880,283

The Hospital leases space from the Town of Sidney and also leases certain medical and office equipment under operating leases. Future minimum lease payments, by year, under these operating leases as of December 31, 2016 are as follows:

Year ending December 31:		
2017	\$	438,255
2018		38,844
2019		38,844
2020		38,844
2021		32,370
	\$	587,157

**(5) Capital Lease**

In August of 2016, the Hospital obtained a capital lease for a digital diagnostic system from Philips Medical Capital in the amount of \$202,176, which includes a \$1 buy-out for the purchase of the digital diagnostic system. An advanced payment of \$82,195 for the equipment was made in August 2016. The lease payments commence on February 1, 2017 with 60 equal monthly installments of \$2,277. The lease obligations are recorded net of imputed interest of approximately \$16,639 at December 31, 2016 at a rate of 6.10%.

**TRI TOWN REGIONAL HEALTHCARE**

Notes to Financial Statements

December 31, 2016 and 2015

Future minimum lease payments under this agreement for the next five years are as follows:

2017	\$	19,355
2018		22,385
2019		23,789
2020		25,281
2021		26,867
2022		2,304
	\$	<u>119,981</u>

**(6) Affiliation with The Mary Imogene Bassett Hospital (d/b/a Bassett Medical Center)**

The Mary Imogene Bassett Hospital (d/b/a Bassett Medical Center) (MIBH) provides various support services including the leasing of MIBH employees to the Hospital. Included in accrued expenses is \$423,040 and \$411,351 due to MIBH from the Hospital for such services as of December 31, 2016 and 2015, respectively.

The Hospital provided contracted lab services to MIBH in the amount of \$1,656,210 and \$1,327,450 in 2016 and 2015, respectively, which are included in other revenue in the statements of operations and changes in net assets.

**(7) Interest in Net Assets of Friends of Bassett, Inc.**

The Hospital is one of several beneficiaries of funds from the Friends of Bassett, Inc. (Friends), a not for profit institution organized for the benefit of all Thurston members. The Hospital's financial statements include an interest in the net assets of funds solicited by Friends on behalf of the Hospital.

**(8) Contingencies**

The Hospital is currently defending certain claims in the ordinary course of business. Management believes that these claims will have no material impact on the accompanying financial statements. Accordingly, no provision has been made in the accompanying financial statements.

**(9) Medical Malpractice and General Insurance**

Prior to December 31, 1998 the Hospital maintained insurance policies with varying limits to cover medical malpractice and general liability risks. Effective December 31, 1998, the Hospital obtained mature claims-made coverage for medical malpractice and occurrence based general liability via a policy written in the name of Thurston Corporation. Management intends to renew its coverage and has no reason to believe that it may be prevented from renewing such coverage.

In addition, the Hospital participates in an umbrella policy written in the name of Thurston Corporation. There are no deductibles under the professional and general liability policies. All known asserted and unasserted claims alleging malpractice have been communicated to the insurer who is responsible for resolving the claim and the related cost of litigation. The Hospital assesses the impact of claims incurred but not reported to the organization and providers reserves for potential exposure. Such incurred but not reported claims are not material to the Hospital as of December 31, 2016 and 2015.

**TRI TOWN REGIONAL HEALTHCARE**

Notes to Financial Statements

December 31, 2016 and 2015

**(10) Functional Expenses**

The Hospital provides general health care services to residents within its geographic location. Expenses related to providing these services are as follows:

	<u>2016</u>	<u>2015</u>
Health care services	\$ 7,733,137	7,360,348
General and administrative	<u>2,489,098</u>	<u>2,369,107</u>
Total	<u>\$ 10,222,235</u>	<u>9,729,455</u>

**(11) Subsequent Events**

The Hospital has evaluated subsequent events from the balance sheet date through May 31, 2017 the date at which the financial statements were issued, and determined there are no other items to disclose.

Effective January 12, 2017, Thurston Corporation became, with the consent of the appropriate regulatory entity, the active parent of its various subsidiary entities, including the Hospital. Effective February 8, 2017 Thurston Corporation changed its corporate name to Bassett Healthcare Network.

# **EXHIBIT F**



**CERTIFICATE OF DISSOLUTION  
OF  
TRI TOWN REGIONAL HEALTHCARE**

**Under Section 1003 of the Not-for-Profit Corporation Law**

- FIRST:** The name of the corporation is Tri Town Regional Healthcare.
- SECOND:** The certificate of incorporation was filed with the Department of State on April 25, 2007.
- THIRD:** A certificate of amendment to certificate of incorporation was filed with the Department of State on February 5, 2008.
- FOURTH:** A certificate of assumed name under which the corporation assumed the name Tri-Town Regional Hospital was filed with the Department of State on March 22, 2008.
- FIFTH:** The name and address of each officer and director of the corporation is:

Officers

	<u>Name</u>	<u>Office</u>	<u>Address</u>
1.	Jeffery Joyner	President	Aurelia Osborn Fox Memorial Hospital Society 1 Norton Avenue Oneonta, NY 13820
2.	Sue E. Andrews	Treasurer	Bassett Medical Center One Atwell Road Cooperstown, NY 13326-1394
3.	Gail Hoffman	Secretary	P.O. Box 75 Guilford, NY 13780

Directors

	<u>Name</u>	<u>Address</u>
1.	Scott McLean Board Chairperson	8 Haynes Boulevard Sidney, NY 13838
2.	Noel Goodspeed Board Vice Chairperson	9 Melrose Street Sidney, NY 13838

3. James Meno  
Board Secretary  
10 Haynes Boulevard  
Sidney, NY 13838
4. Michael Tengeres  
Bassett Medical Center  
One Atwell Road  
Cooperstown, NY 13326-1394
5. Sue E. Andrews  
Bassett Medical Center  
One Atwell Road  
Cooperstown, NY 13326-1394
6. Gail Hoffman  
P.O. Box 75  
Guilford, NY 13780
7. Laurie Neander  
At Home Care, Inc.  
25 Elm Street  
Oneonta, NY 13820

**SIXTH:** The corporation is a charitable corporation.

**SEVENTH:** At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in the Not-for-Profit Corporation Law Section 1002, the corporation holds no assets which are legally required to be used for a particular purpose.

**EIGHTH:** The corporation elects to dissolve.

**NINTH:** The dissolution was authorized by the unanimous vote of the board of directors, followed by the unanimous vote of the members.

**TENTH:** Prior to delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the State of New York Public Health and Health Planning Council and Attorney General. A copy of the approval letter of the Public Health and Health Planning Council and endorsement of the Attorney General are attached hereto.

Date: October 2, 2017

  
\_\_\_\_\_  
Jeffery Boyler, President

**CERTIFICATE OF DISSOLUTION  
OF  
TRI TOWN REGIONAL HEALTHCARE**

**Under Section 1003 of the Not-for-Profit Corporation Law**

**FILER:  
Persun & Hamlin, P.C.  
1700 Bent Creek Boulevard, Suite 160  
Mechanicsburg, PA 17050**

# **EXHIBIT E**

**RESOLUTION OF THE GOVERNING BOARD OF  
TRI TOWN REGIONAL HEALTHCARE**

**WHEREAS**, the President, Jeffery Joyner, of TRI TOWN REGIONAL HEALTHCARE doing business as TRI-TOWN REGIONAL HOSPITAL (the "**Institution**") recommends to the Governing Board of the **Institution** that it approve and recommend for approval the attached Plan of Dissolution and Distribution of Assets of the **Institution** to its members, Bassett Healthcare Network and Bassett Regional Corporation (hereinafter, collectively, the "**Members**"); and

**WHEREAS**, it is in the best interests of the **Institution** to dissolve in accordance with the Plan of Dissolution and Distribution of Assets attached hereto as Exhibit "A" (the "Plan") and that the **Institution** will undertake such action necessary to dissolve; and

**WHEREAS**, the **Institution** desires to distribute its net assets after payment of liabilities to Aurelia Osborn Fox Memorial Hospital Society, a not-for-profit corporation established under Article 28 of the Public Health Law and tax-exempt organization to continue to provide emergency department services and outpatient services in Delaware County, New York in accordance with the Plan; and

**WHEREAS**, the dissolution of the **Institution** and distribution of net assets will satisfy Contingency No. 4 as set forth in the State of New York Department of Health letter, dated April 7, 2017 approving the de-certification of the **Institution**'s inpatient hospital beds and continuation of an off-campus emergency department with outpatient services by Aurelia Osborn Fox Memorial Hospital Society. A copy of the Department of Health letter is attached hereto as Exhibit "B"; and

**WHEREAS**, the assumption of the **Institution**'s operations and use of the **Institution**'s net assets by Aurelia Osborn Fox Memorial Hospital Society will be governed by the written agreement of the parties attached hereto as Exhibit "C"; and

**WHEREAS**, the approvals of the State of New York Public Health and Health Planning Council, either the New York State Attorney General or New York State Supreme Court and consent of the New York State Department of Taxation and Finance are required in order to dissolve the **Institution**; and

**WHEREAS**, the Plan has to be recommended to and approved by the **Members**.

**NOW, THEREFORE**, the Governing Board of the **Institution** resolves as follows:

**Section 1. Approval and Recommendation of Plan of Dissolution and Distribution of Assets.** The Governing Board approves the Plan of Dissolution and Distribution of Assets attached hereto as Exhibit "A" and recommends to the **Members** that it approve the same.

**Section 2. Approval of Agreement.** The Governing Board approves the terms and conditions of the written agreement between the **Institution** and Aurelia Osborn Fox Memorial Hospital Society regarding the assumption of the **Institution**'s operations and use of the

**Institution's** net assets to be distributed to Aurelia Osborn Fox Memorial Hospital Society. A copy of the agreement is attached hereto as Exhibit "C". The **Institution's** representatives identified in Section 3 below are authorized to negotiate revisions to the said agreement that are required by the New York State Public Health and Health Planning Council and New York State Attorney General without further approval of the **Institution's** governing board.

**Section 3.** **Authorization to Undertake Action and Execute Documents.** The President, Jeffery Joyner, Treasurer, Sue E. Andrews and Secretary, Gail Hoffman (and such other persons authorized by resolution or by-laws of the **Institution**) are hereby authorized separately to undertake such actions and execute, deliver and approve, in the name and on behalf of the **Institution**, all documents necessary to achieve the dissolution of the **Institution** and transfer of the net assets of the **Institution** to Aurelia Osborn Fox Memorial Hospital Society as describe herein and in the Plan.

**Section 4.** **Inspection.** This Resolution shall be continuously available for inspection by the general public during normal business hours at the office of the Secretary of the **Institution**, 43 Pearl Street West, Sidney, New York 13838 .

**Section 5.** **Effective Date.** This Resolution shall take effect immediately.

STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF DELAWARE        )

I, the undersigned, Secretary of TRI TOWN REGIONAL HEALTHCARE (the "Institution"), do hereby certify:

1. That I have compared the annexed resolution of the Governing Board of the Institution, dated August 23, 2017, with the original thereof on file in my office and the same is a true and complete copy of the proceedings of the Governing Board of the Institution and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

2. I further certify that the attached resolution enacted by the Governing Board of the Institution has not been further amended or repealed and is in full force and effect on and as of the date of this Certificate.

IN WITNESS WHEREOF, I have hereunder set my hand on August 23, 2017.

Gail Hoffman  
Gail Hoffman, Secretary

23<sup>rd</sup>, August 2017 before me  
Came Gail Hoffman  
State of New York  
County of Delaware

Carol A Bowker  
**CAROL A. BOWKER**  
Notary Public - State of New York  
No. 01BO5044099  
Qualified in Delaware County  
My Commission Expires 5/22 2019

# **EXHIBIT F**



**RESOLUTION OF THE GOVERNING BOARD OF  
BASSETT HEALTHCARE NETWORK**

**WHEREAS**, the Chief Executive Officer, Vance M. Brown, M.D., of BASSETT HEALTHCARE NETWORK (the "**Institution**") recommends to the Governing Board of the **Institution** that it adopt and approve the attached Plan of Dissolution and Distribution of Assets of Tri Town Regional Healthcare d/b/a Tri-Town Regional Hospital (the "**Plan**"); and

**WHEREAS**, under resolution on August 23, 2017, the Governing Board of Tri Town Regional Healthcare d/b/a Tri-Town Regional Hospital previously approved the Plan and recommended it to the **Institution** for approval subject to the consent and approval of the New York State Attorney General and/or New York State Supreme Court under New York's Not-for-Profit Corporation Law.

**NOW, THEREFORE**, the Governing Board of the **Institution** resolves as follows:

**Section 1. Approval and Recommendation of Plan of Dissolution and Distribution of Assets.** The Governing Board approves the attached Plan of Dissolution and Distribution of Assets to be certified on September 14, 2017 and attached hereto.

**Section 2. Authorization to Undertake Action and Execute Documents.** The Chief Executive Officer, Vance M. Brown, M.D., Corporate Vice President Finance, Michael J. Tengeres and Secretary, William T. Burdick (and such other persons authorized by resolution or by-laws of the **Institution**) are hereby authorized to undertake such actions and execute, deliver and approve, in the name and on behalf of the **Institution**, all documents necessary to undertake the action authorized in this resolution.

**Section 3. Inspection.** This Resolution shall be continuously available for inspection by the general public during normal business hours at the office of the Secretary of the **Institution**, 1 Rockefeller Plaza, 31<sup>st</sup> Floor, New York, New York 10020 .

**Section 4. Effective Date.** This Resolution shall take effect immediately.

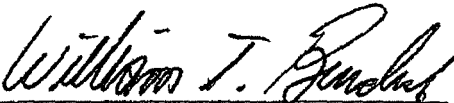
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF NEW YORK        )

I, the undersigned, Secretary of BASSETT HEALTHCARE NETWORK (the "**Institution**"), do hereby certify:

1. That I have compared the annexed resolution of the Governing Board of the **Institution**, dated September 14, 2017, with the original thereof on file in my office and the same is a true and complete copy of the proceedings of the Governing Board of the **Institution** and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

2. I further certify that the attached resolution enacted by the Governing Board of the **Institution** has not been further amended or repealed and is in full force and effect on and as of the date of this Certificate.

IN WITNESS WHEREOF, I have hereunder set my hand on September 14, 2017.

  
\_\_\_\_\_  
William T. Burdick, Secretary

**RESOLUTION OF THE GOVERNING BOARD OF  
BASSETT REGIONAL CORPORATION**

**WHEREAS**, the President, Vance M. Brown, M.D., of BASSETT REGIONAL CORPORATION (the "**Institution**") recommends to the Governing Board of the **Institution** that it approve the attached Plan of Dissolution and Distribution of Assets of Tri Town Regional Healthcare d/b/a Tri-Town Regional Hospital (the "Plan"); and

**WHEREAS**, under resolution on August 23, 2017, the Governing Board of Tri Town Regional Healthcare d/b/a Tri-Town Regional Hospital previously approved the Plan and recommended it to the **Institution** for approval subject to the consent and approval of the New York State Attorney General and/or New York State Supreme Court under New York's Not-for-Profit Corporation Law.

**NOW, THEREFORE**, the Governing Board of the **Institution** resolves as follows:

**Section 1. Approval and Recommendation of Plan of Dissolution and Distribution of Assets.** The Governing Board approves the attached Plan of Dissolution and Distribution of Assets to be certified on September 14, 2017 and attached hereto.

**Section 2. Authorization to Undertake Action and Execute Documents.** The President, Vance M. Brown, M.D., Treasurer, Michael J. Tengeres and Secretary, William T. Burdick (and such other persons authorized by resolution or by-laws of the **Institution**) are hereby authorized to undertake such actions and execute, deliver and approve, in the name and on behalf of the **Institution**, all documents necessary to undertake the action authorized in this resolution.

**Section 3. Inspection.** This Resolution shall be continuously available for inspection by the general public during normal business hours at the office of the Secretary of the **Institution**, 1 Rockefeller Plaza, 31<sup>st</sup> Floor, New York, New York 10020 .

**Section 4. Effective Date.** This Resolution shall take effect immediately.

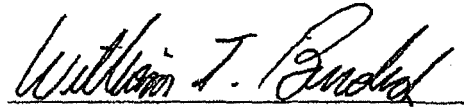
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF NEW YORK        )

I, the undersigned, Secretary of BASSETT REGIONAL CORPORATION (the "Institution"), do hereby certify:

1. That I have compared the annexed resolution of the Governing Board of the **Institution**, dated September 14, 2017, with the original thereof on file in my office and the same is a true and complete copy of the proceedings of the Governing Board of the **Institution** and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

2. I further certify that the attached resolution enacted by the Governing Board of the **Institution** has not been further amended or repealed and is in full force and effect on and as of the date of this Certificate.

IN WITNESS WHEREOF, I have hereunder set my hand on September 14, 2017.

  
\_\_\_\_\_  
William T. Burdick, Secretary

# **EXHIBIT G**

**RESOLUTION OF THE GOVERNING BOARD OF  
AURELIA OSBORN FOX MEMORIAL HOSPITAL SOCIETY**

**WHEREAS**, the President, Jeffery Joyner, of AURELIA OSBORN FOX MEMORIAL HOSPITAL SOCIETY (the "**Institution**") recommends to the Governing Board of the **Institution** the assumption of the healthcare operations of the not-for-profit corporation Tri Town Regional Healthcare doing business as Tri-Town Regional Hospital ( "Tri-Town") on January 1, 2018 at its facility located at 43 Pearl Street West, Sidney, New York, including accepting the transfer of the net assets of Tri Town and assignment of its facility lease agreement with the Town of Sidney, New York; and

**WHEREAS**, the **Institution** is desirous of assuming the operations of Tri-Town on January 1, 2018 and accepting the transfer of Tri-Town's net assets, including, but not limited to taking on assignment of its facility lease agreement; and

**WHEREAS**, the **Institution's** assumption of the operations of Tri-Town will satisfy Contingency No. 4 in the Certificate of Need approval letter issued to the **Institution** by the New York State Department of Health to the **Institution**, dated April 7, 2017 (DOH file #171054C) .

**NOW, THEREFORE**, the Governing Board of the **Institution** resolves as follows:

**Section 1. Assumption of Healthcare Operations.** The Governing Board approves the assumption by the **Institution** of the healthcare operations of Tri Town at 43 Pearl Street West, Sidney, New York effective January 1, 2018.

**Section 2. Acceptance of the Net Assets of Tri Town Regional Healthcare.** The Governing Board approves and accepts the net assets of Tri-Town including the acceptance of the assignment of the written lease agreement between Tri-Town and Town of Sidney, New York in the form attached hereto as Exhibit "A", contingent upon the approvals of the TRH Plan of Dissolution and Distribution of Assets attached hereto as Exhibit "B" (the "Plan") by the New York State Public Health and Health Planning Council and New York State Attorney General or New York State Supreme Court.

**Section 3. Approval of Agreement.** The Governing Board approves the terms and conditions of the written agreement attached hereto as Exhibit "C" between the **Institution** and Tri-Town regarding the assumption of Tri-Town operations and use of Tri-Town's net assets. The **Institution's** representatives identified in Section 4 below are authorized to negotiate revisions to the said agreement that are required by the New York State Public Health and Health Planning Council and New York State Attorney General without further approval of the **Institution's** governing board.

**Section 4. Authorization to Undertake Action and Execute Documents.** The President, Jeffery Joyner and the Chairperson of the Board of the **Institution**, Jeanne-Marie Havener (and such other persons authorized by resolution or by-laws of the **Institution**) are hereby authorized to undertake such actions and execute, deliver and approve, in the name and on behalf of the **Institution**, all documents and agreements necessary for the **Institution** to assume the operations of TRH and transfer of the net assets of Tri-Town as described in the Plan.

**Section 5.** **Inspection.** This Resolution shall be continuously available for inspection by the general public during normal business hours at the office of the Secretary of the **Institution**, One Norton Avenue, Oneonta, New York, New York 13820.

**Section 6.** **Effective Date.** This Resolution shall take effect immediately.

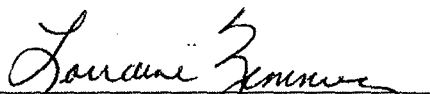
STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF OTSEGO                 )

I, the undersigned, Secretary of AURELIA OSBORN FOX MEMORIAL HOSPITAL SOCIETY (the "**Institution**"), do hereby certify:

1.       That I have compared the annexed resolution of the Governing Board of the **Institution**, dated August 23, 2017, with the original thereof on file in my office and the same is a true and complete copy of the proceedings of the Governing Board of the **Institution** and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

2.       I further certify that the attached resolution enacted by the Governing Board of the **Institution** has not been further amended or repealed and is in full force and effect on and as of the date of this Certificate.

IN WITNESS WHEREOF, I have hereunder set my hand on August 23, 2017.

  
\_\_\_\_\_  
Lorraine Zimmewicz, Secretary



# **EXHIBIT H**

## AGREEMENT

**THIS AGREEMENT**, dated as of October 2, 2017 (hereinafter together with the Schedules and Exhibits attached hereto (collectively referred to as "Agreement"), between **TRI TOWN REGIONAL HEALTHCARE doing business as TRI-TOWN REGIONAL HOSPITAL**, a New York not-for-profit corporation, with its principal office located at 43 Pearl Street West, Sidney, New York 13838 ("TRH") and **AURELIA OSBORN FOX MEMORIAL HOSPITAL SOCIETY**, a New York not-for-profit corporation, with its principal office located at One Norton Avenue, Oneonta, New York 13820 ("Fox"). TRH and Fox are sometimes referred to herein collectively as the "Parties" and individually as a "Party".

**WHEREAS**, TRH is a general hospital established under Article 28 of the Public Health Law of the State of New York and regulations issued thereunder operating under New York State Department of Health Operating Certificate #1227001H; and

**WHEREAS**, Fox is a hospital established under Article 28 of the Public Health Law of the State of New York and regulations issued thereunder operating under New York State Department of Health Operating Certificate #3801000H; and

**WHEREAS**, Fox's application for a certificate of need was conditionally granted by the New York State Department of Health by letter, dated April 7, 2017 ("CON") wherein TRH's inpatient beds are to be decertified and Fox is to create an off-campus emergency department and maintain outpatient services at TRH's facility site located at 43 Pearl Street West, Sidney, New York; and

**WHEREAS**, Contingency No. 4 of the CON requires TRH either become a division of Fox or voluntarily dissolve under Article 10 of the Not-for-Profit Corporation Law of the State of New York; and

**WHEREAS**, TRH wishes to voluntarily dissolve with the approval of the State of New York Public Health and Health Planning Council and either the New York State Attorney General or New York State Supreme Court (collectively, "Governmental Approvals"), and with the consent of the New York State Department of Taxation and Finance; and

**WHEREAS**, on August 23, 2017, the governing board of TRH adopted a resolution approving the attached Plan of Dissolution and Distribution of Assets ("Plan"); and

**WHEREAS**, on September 14, 2017 the governing boards of Bassett Healthcare Network and Bassett Regional Corporation, the members of TRH, adopted and approved the Plan; and

**WHEREAS**, under the Plan, after payment of all liabilities, TRH intends to transfer its net assets to Fox, including, but not limited to the assignment of its lease agreement with the Town of Sidney, New York for the facility located at 43 Pearl Street West, Sidney, New York; and

WHEREAS, the Parties are desirous of restricting Fox's use of TRH's net assets in keeping with the corporate purpose of TRH to provide healthcare services in the County of Delaware and State of New York; and

WHEREAS, the effective date of this Agreement shall be the date upon which all Governmental Approvals are obtained for TRH's Plan ("Effective Date").

NOW, THEREFORE, in reliance upon the representations and warranties made herein and in consideration of the mutual agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), and intending to be legally bound the Parties hereto agree as follows:

1. **REPRESENTATIONS AND WARRANTIES OF TRH.**

TRH represents and warrants to Fox that:

1.1. **Organization of TRH; Authority; Due Execution.**

(a) TRH is a corporation duly organized, validly existing and in good standing under the Not-for-Profit Corporation Law of the State of New York and has all requisite corporate power and authority to carry on its business as now being conducted and to own its properties. TRH has made available to Fox complete and correct copies of the Certificate of Incorporation and By-Laws of TRH as amended to date. Such Certificate of Incorporation and Bylaws so delivered are in full force and effect.

(b) TRH has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by TRH and constitutes the valid, binding and enforceable obligation of TRH, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(c) Except as set forth on **Schedule 1.1(c)** hereto, no consent, approval or authorization of, or notice to any individual, corporation, partnership, limited liability company, trust or unincorporated organization or any government or any agency or political subdivision thereof, or any other entity (a "Person") is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

1.2. **Plan of Dissolution and Distribution of Assets.** TRH and its members have adopted and approved the Plan of Dissolution and Distribution of Assets attached hereto as Exhibit "A". The assets of TRH to be distributed to Fox following payment of liabilities and associated expenses are set forth on **Schedule 1.2** hereto.

**1.3. Government Filings; No Violation.**

(a) Except as set forth on **Schedule 1.3.(a)** hereto, no notices, reports or other filings are required to be made with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by TRH from, any national, state, municipal, local or foreign government, any instrumentality, subdivision, court, administrative agency or commission or other governmental authority or instrumentality, or any quasi-governmental or private body exercising any tax, regulatory or governmental or quasi-governmental authority (a "Governmental Entity"), as a result of, in connection with, or as a condition to the execution and delivery of this Agreement by TRH and the consummation of the transactions contemplated hereby.

(b) The execution, delivery and performance of this Agreement does not, and the consummation of the transactions contemplated hereby will not, constitute or result in a breach or violation of, or a default (with or without notice, lapse of time or both) under, the Certificate of Incorporation or By-Laws of TRH.

**1.4. Litigation.** There is no civil, criminal or administrative suit, action, proceeding, arbitration, investigation, review or inquiry pending or, to the knowledge of TRH, threatened against or affecting TRH, the transactions contemplated by this Agreement or any of its properties or rights, nor is there any judgment, decree, injunction, rule or order of any Governmental Entity or arbitrator outstanding against or affecting TRH or any of its respective properties or rights (the foregoing collectively referred to as "Proceedings"). No event has occurred or circumstance exists which could reasonably be expected to give rise to or serve as a valid basis for the commencement of any Proceeding by or against TRH.

**1.5. Compliance with Law.** TRH is not in violation of any law that would impair its ability to consummate the transactions contemplated by this Agreement.

**1.6. Members.** The members of TRH are Bassett Healthcare Network and Bassett Regional Corporation. Those members have approved the Plan and the terms of this Agreement.

**2. REPRESENTATIONS AND WARRANTIES OF FOX.**

Fox represents and warrants to TRH that:

**2.1. Organization; Authority; Due Execution.**

(a) Fox is a corporation duly organized, validly existing and in good standing under the Not-for-Profit Corporation Law of the State of New York and has all requisite corporate power and authority to carry on its business as now being conducted and to own its properties.

(b) Fox has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Fox and constitutes

the valid, binding and enforceable obligation of Fox, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(c) No consent, approval or authorization of, or notice to any Person is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

**2.2. Government Filings; No Violation.**

(a) No notices, reports or other filings are required to be made with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by Fox from any Governmental Entity, as a result of, in connection with, or as a condition to the execution and delivery of this Agreement by Fox and the consummation of the transactions contemplated hereby.

(b) The execution, delivery and performance of this Agreement does not, and the consummation of the transactions contemplated hereby will not, constitute or result in a breach or violation of, or a default (with or without notice, lapse of time or both) under, the Certificate of Incorporation or By-Laws of Fox.

**2.3. Compliance with Law.** Fox is not in violation of any law that would impair its ability to consummate the transactions contemplated by this Agreement.

**3. CONDITIONS PRECEDENT.**

**3.1.** The respective obligations of the Parties hereto to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver, at or prior to the Effective Date, of each of the following conditions:

(a) All filings required to be made prior to the Effective Date by any Party hereto, and all consents, approvals and authorizations required to be obtained prior to the transfer of TRH's net assets to Fox, from any Governmental Entity in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by any Party hereto shall have been made or obtained (as the case may be).

(b) None of the consents, approvals and permissions referred to in Section 3.1(a) shall have imposed any condition that the board of directors of TRH or the board of directors of Fox determines to be unacceptable.

(c) No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent) which

(i) is in effect and (ii) has the effect of making the transactions contemplated hereby illegal or otherwise prohibiting consummation of the transactions contemplated hereby.

(d) Neither of the Parties hereto shall have terminated this Agreement, as provided for in this Agreement.

3.2. The obligations of the Parties to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver, at or prior to the Effective Date, of each of the following conditions:

(a) **Representations and Warranties of TRH.** The representations and warranties of TRH shall be true and correct in all material respects (except for those representations and warranties which have already been qualified with respect to materiality and which shall be true and correct in all respects) as of the date hereof and as of the Effective Date as if such representations and warranties were made as of the date hereof and as of the Effective Date (except as to any such representation or warranty which speaks as of a specific date, which must be true and correct as of such specific date) and Fox shall have received a certificate signed by an authorized officer of TRH to such effect.

(b) **Performance of Obligations of TRH.** TRH shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Effective Date, and Fox shall have received a certificate signed by an authorized officer of TRH to such effect.

(c) **Absence of Certain Changes.** No material adverse effect on the business, assets (including intangible assets), properties, prospects, operations (financial or otherwise) or results of operation of TRH shall have occurred since the date of this Agreement.

(d) **Representations and Warranties of Fox.** The representations and warranties of Fox shall be true and correct in all material respects (except for those representations and warranties which have already been qualified with respect to materiality and which shall be true and correct in all respects) as of the date hereof and as of the Effective Date as if such representations and warranties were made as of the date hereof and as of the Effective Date (except as to any such representation or warranty which speaks as of a specific date, which must be true and correct as of such specific date) and TRH shall have received a certificate signed by an authorized officer of Fox to such effect.

4. **TRANSFER OF NET ASSETS FROM TRH TO FOX.**

Following receipt of all Governmental approvals TRH shall assign and transfer to Fox its net assets during the dissolution period described in the Plan.

5. **RESTRICTION ON FOX USE OF TRH NET ASSETS.**

Fox shall use the net assets transferred by TRH to Fox under the Plan solely for the purpose of providing healthcare services for medical care and treatment of persons in need thereof within the County of Delaware, State of New York. The restriction set forth in this Section 5 shall survive dissolution of TRH.

6. **ADDITIONAL AGREEMENTS.**

6.1. **Conduct of Business Prior to the Effective Date.** From the date of this Agreement until the Effective Date, TRH shall conduct its business in the ordinary course of business consistent with past practice. Without limiting the generality of the foregoing, except as expressly contemplated by this Agreement or with the prior written consent of Fox, from the date hereof until the Effective Date and during the dissolution period described in the Plan, TRH shall not:

(a) take any action that would reasonably be expected to cause any of the representations and warranties in Section 1 of this Agreement not to be true and correct as of the date of such action or as of the Effective Date or otherwise prevent, delay or impede the consummation of the transaction contemplated hereby;

(b) sell, lease, encumber (including by the grant of any option thereon) or otherwise dispose of any assets or property of TRH, except for renewals of obligations or pursuant to existing contracts or commitments on the date hereof or in the ordinary course of business;

(c) take any action that is or could reasonably be expected to be material to the assets, business, condition (financial or otherwise), liabilities, prospects, results of operations or working capital of TRH;

(d) incur or assume any long-term or short-term debt or issue any debt securities; or

(e) agree or commit to do any of the foregoing.

6.2. **Further Assurances.** The Parties hereto shall use commercially reasonable efforts to cause the conditions set forth in Section 3 to be satisfied in a timely manner. From and after the date hereof, TRH shall, as and when requested by Fox, execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as Fox may reasonably deem necessary or desirable to carry out the intent and purposes of this Agreement and to consummate and give effect to the

other transactions, covenants and agreement contemplated hereby, including, without limitation, such actions as are reasonably necessary in connection with obtaining the approvals and consent identified on Schedule 1.3.(a), or any regulatory filings as any Party may undertake in connection herewith.

## **7. TERMINATION AND ABANDONMENT.**

**7.1. Termination.** Anything contained in this Agreement other than in this Section 7.1 to the contrary notwithstanding, this Agreement may be terminated in writing at any time prior to the Effective Date:

(a) by the mutual written consent of the Parties;

(b) by TRH, if Fox shall have breached or failed to perform in any material respect any of their respective representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 3 is incapable of being cured by Fox or is not cured by Fox within thirty (30) days following receipt of written notice from TRH of such breach or failure to perform; or

(c) by Fox, if TRH shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 3 is incapable of being cured by TRH or is not cured by TRH within thirty (30) days following receipt of written notice from Fox of such breach or failure to perform.

**7.2.** In the event of termination of this Agreement by any Party hereto as provided in Section 7.1 above, written notice thereof shall forthwith be given to the other Party hereto and this Agreement shall terminate without further action by any of the Parties hereto, and no Party shall have any further liability or obligation to any other Party hereto under the terms of this Agreement.

## **8. MISCELLANEOUS PROVISIONS.**

**8.1. Amendment and Waiver.** This Agreement may be amended by the Parties hereto, by action taken by their respective board of directors, as the case may be, or the duly authorized committees thereof, at any time prior to the Effective Date, any such amendment to be evidenced by an instrument in writing signed on behalf of each of the Parties hereto. Any term or provision of this Agreement may be waived in writing at any time by the Party that is entitled to the benefits thereof. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement on one or more occasions shall not in any way affect, limit or waive a Party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement.



8.2. **Expenses.** Each Party hereto shall bear and pay the expenses incurred by it in connection with the preparation and consummation of this Agreement, including without limitation expenses incurred in connection with investigations of the other Party and the obtaining of all applicable consents, approvals and permissions of regulatory authorities. In the event of the termination of this Agreement, as provided for in Section 7 hereof, neither Party shall have any liability to the other with respect to any such expenses incurred by the other.

8.3. **Headings.** The descriptive headings contained in this Agreement are for convenience of reference only and shall not control or affect the meaning or interpretation of this Agreement.

8.4. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given upon receipt of: hand delivery; certified or registered mail, return receipt requested; electronic mail; delivery by a national courier service; or telecopy transmission with confirmation of receipt:

(a) If to TRH at:

Tri Town Regional Healthcare  
43 Pearl Street West  
Sidney, New York 13838  
Attention: Jeffery Joyner, President  
Telephone No.: (607) 561-7984

(b) If to Fox at:

Aurelia Osborn Fox Memorial Hospital Society  
One Norton Avenue  
Oneonta, NY 13820  
Attention: Chairperson of the Board of Directors  
Telephone No. (607) 431-5900

Such names and addresses may be changed by written notice to each Person listed above.

8.5. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties hereto and delivered to the other Party. An executed .pdf or facsimile copy of this Agreement shall be deemed an original.

8.6. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to its conflict of laws principles.

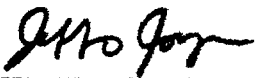
8.7. **Entire Agreement.** This Agreement, including the Schedules and Exhibit hereto and the documents referred to herein, embody the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all

prior agreements and understandings between the Parties hereto with respect to the subject matter hereof.

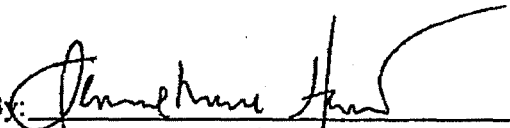
**8.8. Binding Effect: Benefits.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns; nothing in this Agreement, express or implied, is intended to confer on any third party other than the Parties hereto and their respective successors and assigns any rights, remedies, obligation or liabilities under or by reason of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the day and year first above written.

TRI TOWN REGIONAL HEALTHCARE

By:   
Name: Jeffery Joyner  
Title: President

AURELIA OSBORN FOX MEMORIAL  
HOSPITAL SOCIETY

By:   
Name: Jeanne-Marie Havener  
Title: Chairperson

**Schedule 1.1(c)**

The following approvals and consent are required for the TRH Plan and TRH voluntary dissolution:

1. Approval of the State of New York Public Health and Health Planning Council;
2. Approval of the New York State Attorney General or New York State Supreme Court; and
3. Consent of the New York State Department of Taxation and Finance to file a Certificate of Dissolution with the New York State Department of State.

**Schedule 1.2**

The assets of TRH to be distributed Fox are as follows:

**Schedule 1.3(a)**

See Governmental Approvals and consent listed on Schedule 1.1(c).

**CERTIFICATE OF DISSOLUTION  
OF  
TRI TOWN REGIONAL HEALTHCARE**

**Under Section 1003 of the Not-for-Profit Corporation Law**

- FIRST:** The name of the corporation is Tri Town Regional Healthcare.
- SECOND:** The certificate of incorporation was filed with the Department of State on April 25, 2007.
- THIRD:** A certificate of amendment to certificate of incorporation was filed with the Department of State on February 5, 2008.
- FOURTH:** A certificate of assumed name under which the corporation assumed the name Tri-Town Regional Hospital was filed with the Department of State on March 22, 2008.
- FIFTH:** The name and address of each officer and director of the corporation is:

Officers

	<u>Name</u>	<u>Office</u>	<u>Address</u>
1.	Jeffery Joyner	President	Aurelia Osborn Fox Memorial Hospital Society 1 Norton Avenue Oneonta, NY 13820
2.	Sue E. Andrews	Treasurer	Bassett Medical Center One Atwell Road Cooperstown, NY 13326-1394
3.	Gail Hoffman	Secretary	P.O. Box 75 Guilford, NY 13780

Directors

	<u>Name</u>	<u>Address</u>
1.	Scott McLean Board Chairperson	8 Haynes Boulevard Sidney, NY 13838
2.	Noel Goodspeed Board Vice Chairperson	9 Melrose Street Sidney, NY 13838

- |    |                               |   |
|----|-------------------------------|---|
| 3. | James Meno<br>Board Secretary | 10 Haynes Boulevard<br>Sidney, NY 13838                                 |
| 4. | Michael Tengeres              | Bassett Medical Center<br>One Atwell Road<br>Cooperstown, NY 13326-1394 |
| 5. | Sue E. Andrews                | Bassett Medical Center<br>One Atwell Road<br>Cooperstown, NY 13326-1394 |
| 6. | Gail Hoffman                  | P.O. Box 75<br>Guilford, NY 13780                                       |
| 7. | Laurie Neander                | At Home Care, Inc.<br>25 Elm Street<br>Oneonta, NY 13820                |

**SIXTH:** The corporation is a charitable corporation.

**SEVENTH:** At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in the Not-for-Profit Corporation Law Section 1002, the corporation holds no assets which are legally required to be used for a particular purpose.

**EIGHTH:** The corporation elects to dissolve.

**NINTH:** The dissolution was authorized by the unanimous vote of the board of directors, followed by the unanimous vote of the members.

**TENTH:** Prior to delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the State of New York Public Health and Health Planning Council and Attorney General. A copy of the approval letter of the Public Health and Health Planning Council and endorsement of the Attorney General are attached hereto.

Date: October 2, 2017

  
 \_\_\_\_\_  
 Jeffery Joyner, President

**CERTIFICATE OF DISSOLUTION  
OF  
TRI TOWN REGIONAL HEALTHCARE**

**Under Section 1003 of the Not-for-Profit Corporation Law**

**FILER:  
Persun & Hamlin, P.C.  
1700 Bent Creek Boulevard, Suite 160  
Mechanicsburg, PA 17050**



# **EXHIBIT J**

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
New York State Office Building  
44 Hawley Street, 17<sup>th</sup> Floor  
Binghamton, NY 13901

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In the Matter of the Application of  
TRI TOWN REGIONAL HEALTHCARE  
doing business as TRI-TOWN REGIONAL HOSPITAL  
for Approval of the Plan of Dissolution  
and Distribution of Assets  
Pursuant to Section 1002 of the  
Not-for-Profit Corporation Law

**VERIFIED PETITION**

AG No.

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TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

Petitioner, Tri Town Regional Healthcare doing business as Tri-Town Regional Hospital (hereinafter the "Corporation"), by Jeffery Joyner, President of the Corporation for its Verified Petition herein respectfully alleges:

1. That Tri Town Regional Healthcare doing business as Tri-Town Regional Hospital, whose principal office is located in the County of Delaware and State of New York, was incorporated pursuant to New York's Not-for-Profit Corporation Law on April 25, 2007. A copy of the Certificate of Incorporation and Certificate of Amendments, Certificate of Assumed Name and Corporate Bylaws are attached hereto, collectively, as Exhibit "A".

2. That the names, addresses and titles of the Corporation's officers and/or directors are as follows:

Officers

	<u>Name</u>	<u>Office</u>	<u>Address</u>
1.	Jeffery Joyner	President	Aurelia Osborn Fox Memorial Hospital Society 1 Norton Avenue Oneonta, NY 13820
2.	Sue E. Andrews	Treasurer	Bassett Medical Center One Atwell Road Cooperstown, NY 13326-1394
3.	Gail Hoffman	Secretary	P.O. Box 75 Guilford, NY 13780

Directors

	<u>Name</u>	<u>Address</u>
1.	Scott McLean Board Chairperson	8 Haynes Boulevard Sidney, NY 13838
2.	Noel Goodspeed Board Vice Chairperson	9 Melrose Street Sidney, NY 13838
3.	James Meno Board Secretary	10 Haynes Boulevard Sidney, NY 13838
4.	Michael Tengeres	Bassett Medical Center One Atwell Road Cooperstown, NY 13326-1394
5.	Sue E. Andrews	Bassett Medical Center One Atwell Road Cooperstown, NY 13326-1394
6.	Gail Hoffman	P.O. Box 75 Guilford, NY 13780
7.	Laurie Neander	At Home Care, Inc. 25 Elm Street Oneonta, NY 13820

3. That the purposes for which the Corporation was organized are as follows:

(a) The maintenance and operation within the County of Delaware, State of New York, of hospital facilities including dispensaries, one or more clinics and outpatient departments, for the medical, surgical, and psychiatric aid, care and treatment of persons in need thereof provided, however, that before any such facility is constructed or operated all approvals required by law, including the Public Health Law and any regulations promulgated pursuant thereto shall have first been obtained and, to the extent permitted by law, the doing of any and all things necessary, suitable, convenient or proper in connection therewith, including the maintenance and operation of hospital laboratories and departments for medical, surgical, pathological and chemical research and experimentation for the purpose of acquiring, extending and applying knowledge of medicine and surgery in all their branches; and

(b) To acquire real and personal property by bequest, devise, gift, purchase, lease or otherwise and to hold, invest and reinvest the same, and to sell, mortgage or otherwise convey or to lease any of such property, and to expend the proceeds and income thereof, all in furtherance of the charitable purposes described hereinabove;

(c) To administer such real and personal property in furtherance of such purposes; and

(d) Nothing herein contained shall authorize the Corporation to engage in any purposes or activities described in Sections 404(a) through 404(n), Sections 404(p) through 404(s) and Sections 404(u) through 404(v) of the Not-for-Profit Corporation Law of the State of New York to the extent that such activity is prohibited by said section. See – Exhibit “A”.

4. That the Corporation is a charitable not-for-profit corporation.

5. That the Corporation is established as a general hospital under Article 28 of New York’s Public Health Law. A copy of the Corporation’s Operating Certificate issued by the State of New York Department of Health is attached hereto as Exhibit “B”.

6. That the assets of the Corporation and their fair market values as of June 30, 2017 are as follows:

Assets:

Current:

Cash and Equivalents	\$1,540,432
Net Accounts Receivable	2,170,985
Inventories	113,100
Other Receivables	220,394
Prepaid Expenses and Advances	33,114
Third Party Payable	<u>120,275</u>
Total Current Assets	4,198,300
Property, Plant and Equipment:	
Net Property, Plant and Equipment	2,002,706
Total Assets:	<u>\$6,201,006</u>

7. That the Corporation has liabilities as of June 30, 2017 as follows:

Liabilities:

Current:

Accounts Payable	\$345,431
Other Accrued Expenses	498,233
Current Portion Long Term Debt	23,344
Third Party Payables	<u>-0-</u>
Total Current Liabilities	867,008
Long Term Liabilities:	
Philips Capital Lease	87,974
Total Liabilities	<u>\$954,982</u>

8. That, as of June 30, 2017 the fair value of the net assets of the Corporation is \$5,246,024.00.

9. That the Corporation will pay its liabilities prior to dissolution, including counsel fees and expenses of \$12,540.00 as itemized on the Affidavit of Matthew E. Hamlin, Esq. sworn to on September 28, 2017 attached hereto as Exhibit "C".

10. That the Corporation plans to dissolve. Its net assets will be distributed in accordance with the Plan of Dissolution and Distribution of Assets, dated August 23, 2017 (hereinafter the "Plan") with exhibits appended thereto attached hereto as Exhibit "G".

11. That, pursuant to the attached Plan, the Corporation plans to dissolve and intends to distribute its assets to Aurelia Osborn Fox Memorial Hospital Society (hereinafter "A.O. Fox Hospital"). A.O. Fox Hospital was granted under letter issued by the New York State Department of Health a certificate of need to provide off-campus emergency room department and maintenance of out-patient services of the Corporation at the Corporation's current facility located at 43 Pearl Street West, Sidney, New York. A copy of the New York State Department of Health certificate of need letter is attached hereto as Exhibit "D".

12. That under the certificate of need letter the Corporation's inpatient beds are to be de-certified.

13. That Contingency 4 of the certificate of need letter permits a certificate of dissolution for the Corporation to be provided to the Department of Health. See Exhibit "D".

14. That A.O. Fox Hospital is a New York charitable not-for-profit corporation engaged in hospital activity substantially similar to the Corporation's activities. A.O. Fox Hospital is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Attached hereto, collectively, as Exhibit "E", is a copy of A.O. Fox Hospital's Certificate of Incorporation, Certificate Amendment and Corporate Bylaws.

15. That a copy of the most recent audited financial statements for A.O. Fox Hospital are attached hereto as Exhibit "F", together with an Affidavit of Mark Wright, Vice President, Finance, establishing the corporate purposes of A.O. Fox Hospital are substantially similar to that of the Corporation and that A.O. Fox Hospital is exempt from taxation, pursuant to Section 501(c)(3) of the Internal Revenue Code.

16. That A.O. Fox Hospital will assume the operations of the Corporation effective on January 1, 2018 at the Corporation's facility located at 43 Pearl Street West, Sidney, New York.

17. That the governing board of the Corporation met pursuant to duly given notice on August 23, 2017 and passed a resolution by unanimous vote adopting the Plan and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Plan is attached hereto as Exhibit "G". A certified copy of the certified resolution by the Secretary of the Corporation is attached hereto as Exhibit "H".

18. That the governing boards of the Corporation's co-members, Bassett Healthcare Network and Bassett Regional Corporation met pursuant to duly given notice on September 14,

2017 and passed a resolution by unanimous vote approving the plan. A certified copy of the members' board resolutions are attached hereto as Exhibit "I".

19. That the governing board of A.O. Fox Hospital met pursuant to duly given notice on August 23, 2017 and by unanimous vote passed a resolution consenting to assume the operations of the Corporation effective January 1, 2018 and accepting the Corporation's net assets under the restrictions set forth in the written agreement to be entered into between the corporations. A certified copy of the A.O. Fox Hospital governing board resolution is attached hereto as Exhibit "J".

20. That under the terms of the written agreement to be entered into by the Corporation and A.O. Fox Hospital, the Corporation's net assets are to be used solely for the purpose of providing healthcare services for medical care and treatment of persons in need thereof within the County of Delaware, State of New York. A copy of the agreement is attached hereto as Exhibit "K".

21. That the approval of the Public Health and Health Planning Council of the State of New York to the Plan of Dissolution and Distribution of Assets was granted on \_\_\_\_\_  
\_\_\_\_\_. A copy of the Public Health and Health Planning Council approval letter is attached hereto as Exhibit "L".

22. That a copy of the proposed Certificate of Dissolution is attached hereto as Exhibit "M".



23. That no previous application for approval of a Plan of Dissolution and Distribution of Assets of the Corporation has been made with either the Attorney General of the State of New York or New York State Supreme Court.

WHEREFORE, Petitioner respectfully requests that the Attorney General approve the Plan of Dissolution and Distribution of Assets of Tri Town Regional Healthcare doing business as Tri-Town Regional Hospital, a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREOF, the Corporation has caused this Petition to be executed this 2<sup>nd</sup> day of October, 2017.


  
\_\_\_\_\_  
Jeffrey Joynet  
President

**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF OTSEGO    )

Jeffery Joyner, President, being duly sworn, deposes and says the following:

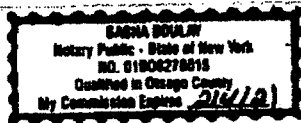
I am the President of Tri Town Regional Healthcare doing business as Tri-Town Regional Hospital, the corporation named in the above Petition. I make this verification at the direction of the Board of Directors. I have read the foregoing Petition and now the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

  
\_\_\_\_\_  
Jeffery Joyner  
President

Sworn to before me  
this 2<sup>nd</sup> day of October, 2017

  
Notary Public

My Commission Expires:



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of December, 2017, approves the filing of the Certificate of Dissolution of Tri Town Regional Healthcare, dated October 2, 2017.



**Project # 172166-E  
Community Providers, Inc.**

**Program: Hospital  
Purpose: Establishment**

**County: Clinton  
Acknowledged: September 14, 2017**

**Executive Summary**

**Description**

The University of Vermont Health Network, Inc. (UVMHN) and Community Providers, Inc. (CPI), request approval for the disestablishment of CPI as an active parent and co-operator of UVMHN-Champlain Valley Physicians Hospital Medical Center (CVPH), UVMHN-Elizabethtown Community Hospital (ECH) and UVMHN-Alice Hyde Medical Center (AHMC), resulting in UVMHN being the sole active parent, co-operator and sole corporate member of the UVMHN New York Hospitals. As the active parent of the Hospitals, UVMHN has the rights, powers and authorities authorized under Title 10 NYCRR Section 405.1(c) with respect to the Hospitals.

There are no costs associated with this project. CVPH, ECH and AHMC will remain separate not-for-profit corporations certified under Article 28 of the New York Public Health Law, maintaining separate operating certificates following completion of the project. There will be no change in either authorized services or the number or type of beds at the UVMHN New York Hospitals due to the proposed change in governance structure. This application for disestablishment simply removes CPI from its sole member, active parent and co-operator position with respect to the UVMHN New York Hospitals.

The applicant indicated that after several years of operation, it has become clear that there is no need for the continued existence of CPI. This is due to a variety of factors including, but not limited to: Redundancy - CPI exists in hierarchy under UVMHN within the holding company governing model; Duplicative nature of CPI vis a

vis UVMNH, including mirrored reserved powers over the UVMHN New York Hospitals; Inefficiencies with respect to duplicative required approvals for the UVMNH New York Hospitals to proceed with critically important initiatives, at times causing delays on matters; and several individuals serve on both the UVMHN and CPI board and must review the same materials and take actions on two separate occasion, with the CPI action subject to UVMNH approvals. CPI provides no services to the UVMNH New York Hospitals and has no financial resources.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

There will be no associated cost, no changes in utilization, and no changes in beds or services as a result of this application. The completion of this project will not have any direct impact on residents/patients in the service area of these facilities

**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 and no projected incremental change in staffing, operating expenses or operating revenues associated with this application.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the executed Amended and Restated Bylaws of University of Vermont Health Network, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Amended and Restated Articles of Incorporation of the University of Vermont Health Network, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Amended Restated Certificate of Incorporation of Community Providers, Inc., or, alternatively, a photocopy of the Certificate of Dissolution of Community Providers, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Champlain Valley Physicians Hospital Medical Center, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Amended Bylaws of the Champlain Valley Physicians Hospital Medical Center, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Elizabethtown Community Hospital, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Amended and Restated Bylaws of Elizabeth Community Hospital, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Alice Hyde Medical Center, acceptable to the Department. [CSL]
9. Submission of a photocopy of the amended Bylaws of Alice Hyde Medical Center, acceptable to the Department. [CSL]
10. Submission of a photocopy by the Board of Director of Community Providers, Inc. approving of the disestablishment of Community Providers, Inc. as co-active parent, co-operator and sole member of Champlain Valley Physicians Hospital Medical Center, Elizabethtown Community Hospital and Alice Hyde Medical Center, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 7, 2017**

## Need Analysis

### Analysis

The purpose of the transaction is to stream line efficiencies and create a more centralized and aligned governance structure within this health system.

### Conclusion

This project will not have any impact regarding need. No changes will occur with beds or services. There are also no planned staffing or revenue and expenditure changes anticipated.

### Recommendation

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

## Program Analysis

### Project Proposal

This project represents a corporate reorganization for the involved hospitals as the Network has engaged in discussions regarding best governance practices that will provide a more centralized and aligned governance structure so that the system can continue to work to achieve a highly coordinated regional healthcare network that improves the quality and access to care for the Adirondack Region and requires eliminating redundancy, inefficiency, and having multiple governing boards for the parent entities and UVMHN New York Hospitals.

Following completion of this project, UVMHN will become the sole active parent, co-operator and sole corporate member of CVPH, ECH and AHMC. Each of the aforementioned New York hospitals will remain separate not-for-profit corporations and maintain separate operating certificates. There will be no changes in authorized services or the number or type of beds.

### Compliance with Applicable Codes, Rules and Regulations

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

### Recommendation

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

## Financial Analysis

### Capability and Feasibility

There are no issues of capability or feasibility as there are no project costs or any expected changes to the budgets associated with this application.

BFA Attachment B is the September 30, 2015 and September 30, 2016 certified financial statements of The University of Vermont Health Network, Inc. and Subsidiaries. As shown, the entity had an average positive working capital position, an average positive net asset position and achieved an average income from operations of \$76,927,500 for the periods ending September 30, 2015 and September 30, 2016.

BFA Attachment C is the September 30, 2015 and September 30, 2016 certified financial statements of Champlain Valley Physician Hospital Medical Center. As shown, the entity had an average positive working capital position and an average positive net position for the period October 1, 2014 through September 30, 2016. Also, the entity achieved a loss from operations of \$6,945,240 through September 30, 2016. The applicant indicated that the reason for the loss was the result of an unexpected and abrupt decrease in inpatient volume for both medical/surgical and behavioral health services. The decrease was caused by provider vacancies in behavioral health and medical specialists, as well as an unexplained and temporary decline in admissions within their catchment area. The hospital implemented the following steps to improve operations: five psychiatrists have been recruited with assistance from the University of Vermont Health Network Medical Group, increased participation in Medicare 340B drug purchasing program, increased behavioral health census by filling provider vacancies, revenue cycle improvements, supply chain reductions and payer contract updates. UVM Health Network has also assisted CVPH in restructuring its long-term debt to achieve interest rate savings.

BFA Attachment D is the September 30, 2015 and September 30, 2016 certified financial statements of Elizabethtown Community Hospital. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an operating income of \$2,264,992 for the year ended September 30, 2016.

BFA Attachment E is the September 30, 2016 certified financial statements of Alice Hyde Medical Center. As shown, the entity had an average negative working capital position and an average positive net asset position. Also, the entity achieved an operating loss from operations of \$325,303 for the year ended September 30, 2016. The applicant has indicated that the reason for the loss was the result of key provider vacancies and the resulting decrease in both inpatient and surgical volumes. The applicant indicated that they implemented the following steps to improve operations: with support from UVM Health Network Medical Group, Alice Hyde is actively recruiting to fill these key provider vacancies (primary care, orthopedics and ENT), and in collaboration with financial staff and UVM Health Network and with support from external financial consultants engaged by UVM Health Network, Alice Hyde has developed a financial improvement plan directed at reducing expenses.

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

Recommendation

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

## Attachments

BFA Attachment A	Organizational Chart of University of Vermont Health Network, Inc.
BFA Attachment B	September 30, 2015 and September 30, 2016 certified financial statements of University of Vermont Health Network, Inc.
BFA Attachment C	Financial Summary- September 30, 2015 and September 30, 2016 certified financial statements of Champlain Valley Physician Hospital Medical Center
BFA Attachment D	Financial Summary- September 30, 2015 and September 30, 2016 certified financial statements of Elizabethtown Community Hospital
BFA Attachment E	Financial Summary- September 30, 2016 certified financial statements of Alice Hyde Medical Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of December 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 disestablishment of Community Providers, Inc. as co-active parent, co-operator and sole member of Champlain Valley Physicians Hospital Medical Center, Elizabethtown Community Hospital and Alice Hyde Medical Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172166 E

Community Providers, Inc.



APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the executed Amended and Restated Bylaws of University of Vermont Health Network, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Amended and Restated Articles of Incorporation of the University of Vermont Health Network, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Amended Restated Certificate of Incorporation of Community Providers, Inc., or, alternatively, a photocopy of the Certificate of Dissolution of Community Providers, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Champlain Valley Physicians Hospital Medical Center, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Amended Bylaws of the Champlain Valley Physicians Hospital Medical Center, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Elizabethtown Community Hospital, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Amended and Restated Bylaws of Elizabeth Community Hospital, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Alice Hyde Medical Center, acceptable to the Department. [CSL]
9. Submission of a photocopy of the amended Bylaws of Alice Hyde Medical Center, acceptable to the Department. [CSL]
10. Submission of a photocopy by the Board of Director of Community Providers, Inc. approving of the disestablishment of Community Providers, Inc. as co-active parent, co-operator and sole member of Champlain Valley Physicians Hospital Medical Center, Elizabethtown Community Hospital and Alice Hyde Medical Center, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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 # 172164-B
Ellis Ambulatory Surgery Center, LLC

Program: Diagnostic and Treatment Center County: Saratoga
Purpose: Establishment and Construction Acknowledged: September 14, 2017

Executive Summary

Description

Ellis Ambulatory Surgery Center, LLC, a New York limited liability company, requests approval to establish and construct a multi-specialty, Article 28 freestanding ambulatory surgery center (FASC) to be located at 105 Sitterly Road, Clifton Park (Saratoga County). The FASC will be located in a to-be-built two-story building of approximately 40,000 square feet, separate from, but connected at the ground level to an existing Ellis Hospital multi-use medical office building that provides outpatient urgent care, imaging, laboratory and primary care services, as well as private medical offices. The proposed FASC will occupy approximately 18,800 square feet of the new building's first floor, while the second floor will house non-Article 28 medical offices. There are no costs included in this application for the non-Article 28 medical office space. Ellis Hospital will lease the FASC space and equipment to Ellis Ambulatory Surgery Center, LLC. The proposed Center will consist of two operating rooms (OR) at the onset, and space for two additional ORs to accommodate future expansion. Upon approval, the applicant will operate the facility under the name Ellis Ambulatory Surgery Center, LLC.

Ownership of the operations will be as follows:

Table with 2 columns: Member Name, Percentage. Rows: Proposes Operator (Ellis Ambulatory Surgery Center, LLC), Members (Ellis Hospital 95%, Lucie Capek, M.D. 5%)

The FASC will consolidate community-based physicians, bringing them together into the regulatory environment of an Article 28

Center. The majority of the projected cases at the proposed FASC are currently being performed at Ellis Hospital. The Hospital and the one physician member have committed in writing to performing cases that may appropriately be performed in a freestanding venue at the proposed Center.

OPCHSM Recommendation
Contingent Approval

Need Summary

The multi-specialty ambulatory surgery center will offer General Surgery, Otolaryngology, Ophthalmology, and Plastic Surgery procedures. The center will have two operating rooms, and shell space for two additional operating rooms for future expansion.

The applicant projects 1,744 procedures in Year One with Medicaid at 17.82% and Charity Care at 2.05%.

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 cost for the Article 28 space is estimated at \$13,642,993 to be funded by Ellis Hospital via a \$10,941,194 loan at 3.75% interest for a seven-year term and 25-year amortization period; a seven-year equipment lease for \$1,337,500 at 0% interest; and equity of \$1,364,299. NBT Bank has provided a letter

of interest for the bank loan and Ellis Hospital has provided a letter of intent to enter into a capital Equipment Lease Agreement at the stated terms. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,194,346	\$3,457,316
Expenses	<u>\$3,022,902</u>	<u>\$3,297,947</u>
Gain/(Loss)	\$171,444	\$159,369

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed equipment lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed operating agreement, 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 of a photocopy of the executed Articles of Organization for Ellis Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the amended and executed Operating Agreement of Ellis Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Articles of Organization of Ellis Surgical Associates, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the amended and executed Operating Agreement of Ellis Surgical Associates, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's lease agreement, acceptable to the Department. [CSL]
12. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2018 and construction must be completed by August 1, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

**December 7, 2017**

# Need Analysis

## Analysis

The service area consists of Saratoga and Schenectady Counties. There are no ambulatory surgery centers located in Schenectady County. Saratoga County currently has three single specialty freestanding ambulatory surgery centers, and PHHPC has recently approved a new multi-specialty ASC to be established there. The table below shows the number of patient visits at ambulatory surgery centers in Saratoga County for 2015 and 2016.

ASC Type	Facility Name	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)

From 2015 to 2016, Saratoga County experienced a 65.5% increase in ambulatory surgery center visits with the opening of a third ACS. The population of both Schenectady and Saratoga Counties combined in 2010 was 374,334, with 162,276 individuals (43.4%) aged 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 181,343 by 2025, 45.0% of the projected population of 402,979 for both counties combined.

The applicant projects 1,744 procedures in Year One and 1,849 in Year Three based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years One and Three.

Projections	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	311	17.82%	330	17.85%
Medicare FFS	267	15.32%	283	15.30%
Medicare Mc	290	16.63%	307	16.60%
Comm Ins- FFS	722	41.45%	766	41.42%
Private Pay	10	0.53%	10	0.56%
Charity Care	36	2.05%	38	2.05%
Other	108	6.20%	115	6.22%
<b>Total</b>	<b>1,744</b>	<b>100.00%</b>	<b>1,849</b>	<b>100.00%</b>

The vast majority of the cases to be performed at the proposed center are currently being performed at Ellis Hospital, Schenectady County.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment. To serve the underinsured population, the center intends to obtain contracts with the following Medicaid Managed Care plans: CDPHP and MVP Healthcare. The center will reach out to local family shelters, homeless shelters, and any Federally Qualified Health Centers (FQHC) in the area to bring Charity Care and Medicaid patients to the center.

## Conclusion

Approval of this project will allow for access to multi-specialty ambulatory surgery services in Saratoga County.

## Recommendation

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

## Program Analysis

### Program Description

The proposed Center represents Ellis Hospital's efforts to collaborate with local physicians, each of whom already works cooperatively with Ellis, to create a multi-specialty ambulatory surgery center in the community. Based on discussions with its medical staff, the hospital plans to move some of its ambulatory surgical cases from the hospital to the center. Those cases will be performed by current Ellis physicians, of varying specialties at the new FASC.

<b>Proposed Operator</b>	Ellis Ambulatory Surgery Center, LLC
<b>Doing Business As</b>	Ellis Ambulatory Surgery Center
<b>Site Address</b>	105 Sitterly Road Clifton Park, NY 12065 (Saratoga County)
<b>Surgical Specialties</b>	Multi-Specialty
<b>Operating Rooms</b>	2 (Class C)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 8:00 am - 4:00 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	13.0 FTEs / 13.3 FTEs
<b>Medical Director</b>	David M. Liebers M.D.
<b>Emergency, In-Patient &amp; Back-up Support Services Agreement and Distance</b>	Expected to be provided by Ellis Hospital 11 miles/21 minutes
<b>After-hours access</b>	An on-call service will be available 24 hours per day, 7 days per week to immediately refer the patient to the Center's on-call physician

### Character and Competence

The proposed ownership of Ellis Ambulatory Surgery Center, LLC is:

<b>Member Name</b>	<b>Membership Interest</b>
Ellis Hospital	95%
Lucie Capek, M.D.	5%
<b>Total</b>	<b>100%</b>

The proposed managers of Ellis Ambulatory Surgery Center, LLC are: Patricia Buhr, Paul Milton, Stephen Pagano and Lucie Capek, M.D. Mr. Milton is the President and CEO of Ellis Hospital, and Mr. Pagano and Ms. Buhr are Board members of Ellis.

A Character and Competence Review was conducted on each of the 25 individuals who comprise the Ellis Hospital Board of Trustees, as well as Dr. Lucie Capek. Dr. Capek is a board-certified practicing plastic surgeon who has been operating a solo private practice for over 17 years. She has managed all business aspects of the practice, to include the design and build out of the office and renovations, purchase of equipment, and management of clinical and administrative staff.

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. Joy disclosed that, in 2017, he was named in a malpractice suit (among multiple other physicians). Currently, the case is in the discovery phase.

Mr. Little disclosed that he was the Chairman of the Board for a start-up company (Skyonic) in the clean energy space that filed for Assignment for the Benefit of Creditors in 2016.

Dr. McDonald disclosed he was involved in a medical malpractice case that went to trial in 2016 and a verdict was returned in his favor (for the defendant).

Members Breault, Cioffi, Donovan, Mullaney, Kenneally, Kennedy and Wood each disclosed that they were named in a complaint brought against them as Trustees of Ellis Hospital. The action was filed on August 5, 2008 in the US District Court, Northern District of New York and allegations were that the defendants breached a fiduciary duty as Trustee regarding the failure to carry out the terms of two bequests. The defendants motion to dismiss was granted. The Plaintiff appealed and a Summary Order was issued on January 27, 2010 which affirmed the lower Court's dismissal of the action. Thereafter, Ellis Hospital entered a negotiation with the Office of the Attorney General (OAG) – Charities Bureau to address the underlying concerns which had prompted the filing of the action. On April 29, 2010, an Assurance of Discontinuance was executed between Ellis Hospital and the OAG to ensure that the intent of the original donors was being adequately address in the use of funds.

The Department also conducted a Character and Competence Review on the proposed Medical Director. Dr. David Liebers is board-certified in Internal Medicine with sub-certification in Infectious Diseases. After earning his medical degree at the University of Rochester, he completed his residency and internship in Pittsburgh and a fellowship in Infectious Diseases in Albany. Since 2005, Dr. Liebers has been employed by Ellis Medicine. He currently serves as the Chief Medical Officer and Vice President of Quality and Medical Affairs.

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

Ellis Hospital opened the Medical Center of Clifton Park, a nearly 40,000 square-foot building that includes urgent care, imaging, laboratory services, medical offices and a primary care extension clinic. The proposed project will create a second building (connected to the original building). The second floor of that building will also house medical practices, thus providing additional access to physician services, primary care being one of them. The Center will establish an outreach plan to the underserved communities which will include the development of referral arrangements with area federally qualified health centers (FQHCs) and other community-based providers and local family and homeless shelters. The Applicant commits to treat all patients on the basis of need without discrimination due to any personal characteristics or ability to pay.

As an affiliate of Ellis Hospital, the Center will become a member of the Innovative Health Alliance of New York (IHSNY), an Accountable Care Organization (ACO) in New York's Capital region and a Centers for Medicare and Medicaid Services approved ACO. In addition, the Center is committed to implementing an electronic medical record (EMR) system within 18 months of opening and expects to join the HIXNY regional health information organization (RHIO) for data exchange.

#### 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 Building Agreement

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

Premises:	Approximately 19,000 sq. ft. in a building to be constructed at 105 Sitterly Road, Clifton Park, N.Y. 12065
Owner/Landlord:	Ellis Hospital
Lessee/Tenant:	Ellis Ambulatory Surgery Center, LLC
Term:	10 years from Commencement Date (CON Approval Date)
Rental:	\$665,000 (\$35.00 per sq. ft.) per year.
Provisions:	Triple net lease with the rent payment to include taxes, utilities and common area maintenance charges.

The applicant has provided an affidavit stating the landlord and tenant are affiliated entities therefore the lease is a non-arm's length agreement. The applicant has provided a letter from a New York State licensed realtor attesting to the reasonableness of the per square foot rental amount.

### Total Project Cost and Financing

Total project costs for new construction and the acquisition of moveable equipment is estimated at \$13,642,993 broken down as follows:

New Construction	\$7,340,700
Site Development	1,321,300
Design Contingency	866,200
Construction Contingency	476,400
Planning Consultant Fees	32,100
Architect /Engineering Fees	666,900
Construction Manager fees	300,100
Other Fees (Consultant, etc.)	107,000
Moveable Equipment	1,337,500
Telecommunications	561,800
Financing Costs	306,967
Interim Interest Expense	249,411
CON Application Fee	2,000
Additional Fees	<u>74,615</u>
Total Project Cost	\$13,642,993

Project costs are based on a start date of September 1, 2018 and an eleven-month construction period.

Ellis Hospital's financing plan appears as follows:

Cash Equity (Ellis Hospital)	\$1,364,299
Bank Loan (3.75% interest, 7 years, 25-year amortization)	10,941,194
Equipment Lease (7 years, 0% interest)	<u>1,337,500</u>
Total	\$13,642,993

The applicant has submitted an affidavit indicating that they will fund the balloon payment with equity if refinancing is not available.

### Lease Equipment Agreement

Ellis Hospital will lease the equipment for the FASC to Ellis Ambulatory Surgery Center, LLC. Ellis Hospital has submitted a term sheet to confirm the intent of Ellis Ambulatory Surgery Center, LLC and Ellis Hospital to enter into a formal capital Equipment Lease Agreement to lease the equipment for approximately \$191,000 per year for seven years. This term sheet is not a binding commitment and is



subject to the negotiation of mutually acceptable terms and conditions between Ellis Ambulatory Surgery Center, LLC and Ellis Hospital. This agreement, if entered into, would be between Ellis Ambulatory Surgery Center, LLC and Ellis Hospital.

#### Operating Budget

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

	<u>Year One</u>			<u>Year Three</u>		
	<u>Per Case</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Case</u>	<u>Per Proc.</u>	<u>Total</u>
Revenues:						
Medicaid MC	\$1,241	\$1,078	\$335,114	\$1,266	\$1,101	\$363,415
Medicare FFS	\$1,241	\$1,171	\$312,773	\$1,266	\$1,195	\$338,090
Medicare MC	\$1,863	\$1,491	\$432,275	\$1,900	\$1,522	\$467,360
Commercial FFS	\$3,069	\$2,669	\$1,927,302	\$3,131	\$2,722	\$2,085,389
Private Pay	\$696	\$557	\$5,570	\$710	\$639	\$6,390
All other	\$1,929	\$1,679	<u>\$181,312</u>	\$1,967	\$1,710	<u>\$196,672</u>
Total Revenues			\$3,194,346			\$3,457,316
Expenses:						
Operating		\$1,246.46	\$2,173,831		\$1,302.76	\$2,408,803
Capital		<u>\$486.85</u>	<u>\$849,071</u>		<u>\$480.88</u>	<u>\$889,144</u>
Total Expenses		\$1,733.31	\$3,022,902		\$1,783.64	\$3,297,947
Net Income (Loss)			<u>\$171,444</u>			<u>\$159,369</u>
Cases			1,515			1,608
Procedures			1,744			1,849
Cost Per Procedure			\$1,733.31			\$1,783.64

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

	<u>Year One</u>			<u>Year Three</u>		
	<u>Cases</u>	<u>Proc.</u>	<u>% (Cases)</u>	<u>Cases</u>	<u>Proc.</u>	<u>% (Cases)</u>
Medicaid MC	270	311	17.82%	287	330	17.85%
Medicare FFS	252	267	16.63%	267	283	16.60%
Medicare MC	232	290	15.31%	246	307	15.30%
Commercial FFS	628	722	41.45%	666	766	41.42%
Private Pay	8	10	0.53%	9	10	0.56%
Charity Care	31	36	2.05%	33	38	2.05%
All Other	<u>94</u>	<u>108</u>	<u>6.21%</u>	<u>100</u>	<u>115</u>	<u>6.22%</u>
Total Utilization	1,515	1,744	100%	1,608	1,849	100%

Projected utilization at the FASC is based on cases currently performed at Ellis Hospital moving to the FASC to be performed by Ellis physicians at the FASC, and by Dr. Capek. The applicant submitted physician referrals letters in support of utilization projections. The Center expects to experience a 3.0% annual increase to the number of surgical procedures to account for growth in physician practices and increased surgeries moving from Ellis Hospital as the Center matures.

Expense assumptions are based on historical ambulatory surgery center costs of Ellis Hospital and other freestanding ambulatory surgery centers in New York State. Utilization by payer and reimbursement rates are based on Ellis Hospital's outpatient ambulatory surgery experience. The FASC budget projects 2.05% for charity care and 17.85% for Medicaid during the third year.

#### Capability and Feasibility

Total project costs of \$13,642,993 will be met by Ellis Hospital via equity of \$1,364,299, bank financing of \$10,941,194 at 3.75% interest with a seven-year term and 25-year payout, and a seven-year equipment lease with no interest for \$1,337,500. Letters of interest have been provided.

The working capital requirement is estimated at \$549,658 based on two months of third year expenses and will be met by a cash contribution from Ellis Hospital of \$522,175 and Dr. Capek of \$25,483. BFA Attachment B is the 2015 and 2016 certified financial statements of Ellis Hospital (d/b/a Ellis Medicine and Subsidiaries) that indicates the availability of sufficient funds to meet the total project cost and the working capital requirement. BFA Attachment A is the net worth statement of Dr. Capek which indicates adequate funds for the working capital contribution. BFA Attachment D is the pro forma balance sheet of Ellis Ambulatory Surgery Center, LLC, which indicates a positive net asset position of \$1,913,957 as of the first day of operation.

The submitted budget projects net income of \$236,498 and \$229,455 in the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

As shown on BFA Attachment B, Ellis Hospital had an average positive working capital position and an average positive net asset position, and achieved an average income from operations of \$1,670,237 from 2015 through 2016.

BFA Attachment C is the internal financial statements of Ellis Medicine as of August 31, 2017. As shown, the entity had a positive working capital position and a positive net asset position through August 31, 2017. Ellis Medicine achieved a loss from operations of \$173,000 through August 31, 2017, due to outpatient revenues being 4% underbudget, and contract employment and supplies being overbudget.

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

Recommendation

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

## Attachments

BFA Attachment A	Net Worth Statement of Dr. Capek
BFA Attachment B	2015 and 2016 Certified Financial Statements of Ellis Hospital (d/b/a Ellis Medicine and Subsidiaries)
BFA Attachment C	August 31, 2017 Internal Financial Statement of Ellis Medicine.
BFA Attachment D	Pro Forma Balance Sheet
BHFP Attachment	Map

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of December 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 105 Sitterly Road, 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:

FACILITY/APPLICANT:

172164 B

Ellis Ambulatory Surgery Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed equipment lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed operating agreement, 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 of a photocopy of the executed Articles of Organization for Ellis Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the amended and executed Operating Agreement of Ellis Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Articles of Organization of Ellis Surgical Associates, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the amended and executed Operating Agreement of Ellis Surgical Associates, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's lease agreement, acceptable to the Department. [CSL]
12. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2018 and construction must be completed by August 1, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]

3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

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



**Project # 172262-E  
Nyack Hospital**

**Program:** HOSPITAL  
**Purpose:** Establishment

**County:** Rockland  
**Acknowledged:** November 2, 2017

**Executive Summary**

**Description**

Montefiore Health System, Inc. (MHS), a New York not-for-profit corporation, requests approval to be established as the active parent and co-operator of Nyack Hospital (Nyack), a 375-bed, voluntary not-for-profit, Article 28 acute care community hospital located at 160 North Midland Avenue, Nyack (Rockland County). In 2014, MHS became the sole member and passive parent of Nyack to advance a regional transformation strategy and enhance the provision of care to the population of Rockland County and the Hudson Valley region. Upon approval of this application, Nyack will continue to serve as a vital community hospital, bolstered by the MHS network of hospitals, providers and care management enterprise. There are no costs associated with this project. There will be no change in authorized services, the number or type of beds, or staffing upon approval of this project. In addition, there are no projected changes in the utilization, revenue or expenses of the Hospital as a result of this project.

As active parent and co-operator, MHS will have the power and authority to make decisions for the Hospital through the active parent powers described in Title 10 NYCRR 405.1 (c). The applicant has indicated MHS will have the authority to:

- Appoint and remove members of the Board of Trustees of Nyack;
- Determine the size of the Board of Trustees of Nyack;
- Nominate members to the Committees of the Board of Trustees of Nyack and the Board of Trustees of MHS;

- Approve amendments to Nyack's certificate of corporation;
- Approve amendments to Nyack's bylaws;
- Approve operating and capital budgets and any strategic plans, including any material amendments or modifications;
- Approve individual or categories of operating policies or procedures;
- Approve certificate of need applications to be filed by or on behalf of Nyack, or any entity controlled by Nyack;
- Approve debt issuance that may be necessary to finance the cost of compliance with operational or physical plant standards that are required by law and applicable to Nyack, in the amount greater than \$500,000, unless previously approved as part of annual operating and capital budgets;
- Approve contracts with third parties for management of Nyack's facilities or for clinical services;
- Approve settlements of administrative proceedings or litigation to which Nyack is party, if the settlement is in excess of available insurance coverage and/or funded by the Member or otherwise may have a material adverse effect on Nyack, MHS or affiliates; and
- Approve appointment or removal of the President and Chief Executive Officer of Nyack (or position having substantially similar responsibility).

The Hospital determined that it is in its best interest to delegate to MHS the authority to exercise active control over key operational

areas. MHS's exercise of powers over the Hospital will enable the following:

- Formulation of consistent corporate policies and procedures across the System;
- Ensure a consistent approach to regulatory compliance standards of care, and medical staff credentialing;
- Organize the network providers into an efficient and accessible continuum of care responsive to community needs;
- Collaborate in areas designed to conserve resources, such as joint purchasing;
- Facilitate clinical integration and the use of best practices;
- Enhance the sharing of resources; and
- Reflect common mission, philosophy, values and purpose across the System.

MHS, established in 2004, is an integrated, academically based, healthcare delivery system that includes 11 hospitals, 3086 acute care beds, 200 ambulatory locations including primary care and multi-specialty practices, and a range of urgent, mobile, and community-based clinics including a large school based health program.

BFA Attachment A is the Corporate Organizational Chart and legal structure of MHS.

OPCHSM Recommendation

Contingent approval

Need Summary

The proposed project does not result in any immediate changes in existing services at Nyack Hospital, changes in the projected utilization and staffing, or restructuring.

Program Summary

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

Financial Summary

There are no project costs, working capital requirements or budgets associated with this application, and no projected incremental changes in utilization, staffing, operating expenses or operating revenues related to this application.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [BPM]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [BPM]
3. Submission of the enacted Amended and Restated Bylaws of Montefiore Health System, Inc., acceptable to the Department. [CSL]
4. Submission of the executed Restated Certificate of Incorporation of Montefiore Health System, Inc., acceptable to the Department. [CSL]
5. Submission of the enacted Amended and Restated Bylaws of Nyack Hospital, acceptable to the Department. [CSL]
6. Submission of the executed Certificate of Amendment of the Certificate of Incorporation of Nyack Hospital, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

December 7, 2017



## Need Analysis

### Project Description

Montefiore Health System, Inc. (MHS) seeks approval for the establishment of Montefiore Health System, Inc. as the active parent and co-operator of The Nyack Hospital a 375 bed Hospital located at 160 North Midland Ave. Nyack, NY 10591 (Rockland County).

To advance MHS's regional transformation strategy and enhance the provision of care to the population of Rockland County and the Hudson Valley region, MHS became the sole member and passive parent of Nyack in 2014. Per board resolutions and amendments to the certificates of incorporation of MHS and Nyack, MHS will become the active parent and co-operator of Nyack, subject to the New York State Department of Health and other regulatory approvals. The vision is to build a regional network of hospitals and community physicians closely aligned in an integrated system of care. Nyack will continue to serve as vital community hospital, bolstered by the MHS network of hospitals and providers and MHS's sophisticated care management enterprise. This affiliation will enhance the missions of both MHS and Nyack to continue to provide advanced, quality healthcare to the communities and an expanding service area of over 3 million people.

### Analysis

MHS will support and develop Nyack Hospital as a Medical Village under the backing of the state's Delivery System Reform Incentive Payment (DSRIP) program and Nyack will continue to provide needed tertiary services in Rockland County, linked to primary and specialty outpatient providers. Nyack will retain agreed upon operational autonomy consistent with the MHS relationship and applicable law relating to joint planning, joint managed care contracting and economic integration. Montefiore is working closely with the state to realize our vision for building an integrated academic health system, including transformation of Nyack wherein the hospital serves as a cornerstone provider within the Rockland county community of care, while integrated into Montefiore Health System.

### Conclusion

There will be no changes to beds or services as a result of this project.

### Recommendation

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

## Program Analysis

### Program Proposal

Montefiore Health System, Inc. (MHS), an existing not-for-profit corporation, seeks approval for the establishment of Montefiore Health System, Inc. as the active parent and co-operator of Nyack Hospital located at 160 North Midland Avenue in Nyack (Rockland County).

Nyack Hospital is a 375-bed community hospital that serves patients from Nyack and Rockland County. Other Nyack licensed Article 28 locations include the Nyack Hospital Prenatal Center also in Nyack and the Nyack Hospital Alcohol & Drug Rehab Clinic located in Spring Valley.

Montefiore Health System currently includes over 3,000 acute care beds in 11 hospitals, 200 ambulatory locations (primary care and multi-specialty practices), and a range of community-based clinics.

In 2014, MHS became the sole member and passive parent of Nyack to advance MHS's regional transformation strategy and enhance the provision of care to the population of Rockland County and the Hudson Valley region. In becoming the active parent and co-operator of Nyack, MHS aims to build a regional network of hospitals and community physicians in an integrated system of care.

Nyack will remain a separate Article 28, not-for-profit corporation and will maintain its separate operating certificate. The change in governance structure for Nyack does not result in any immediate changes in existing services or staffing.

#### Character and Competence

The Montefiore Health System Board, comprised of 48 members, was subject to a Character and Competence review.

The Officers of the Board of Montefiore Health System, Inc. are:

<b>Name</b>	<b>Title/Position</b>
Steven M. Safyer, MD	President/CEO
James M. Butler	Chair
Oded Aboodi	Vice Chair, Treasurer
Christopher S. Panczner	Asst. Secretary (Non-Trustee)
Jay B. Langer	Chair Emeritus

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

Upon review of the 48-member Board of Trustees of Montefiore Health System, the following disclosures were made:

- *Mr. Gantcher disclosed that he was named in a suit initiated in August 2014 by the estate of a tradesman who died on the job in his (Gantcher's) home. The case was subsequently settled in August 2016 by the insurance company.*
- *Ms. Lane disclosed that her law license had been suspended due to failure to comply with Judiciary Law 468-a (Failing to Register). A motion to reinstate her as an attorney was granted on September 25, 2008.*
- *Ms. Klema's law license, issued in 1985, was suspended on October 19, 1998. Her license lapsed/expired (voluntarily) when she moved to Investment Banking.*
- *Mr. Smith disclosed that he is a board member of Stellaris Health Network. Northern Westchester Hospital is a member of Stellaris. On November 21, 2016, the Department issued a Stipulation and Order (S&O) and \$10,000 fine against the hospital related to Immediate Jeopardy identified on April 22, 2016 during an allegation survey. The issues involved timely calling a code team for a new born baby. Staff were not trained in the code policy and did not initiate the code via the proper procedure. The baby expired.*

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, approved is recommended.**

## Financial Analysis

### Capability and Feasibility

There are no issues of capability or feasibility as there are no project costs of any expected changes to the budgets associated with this application.

BFA Attachment B is the 2015 and 2016 certified financial statements of Montefiore Health System, Inc. As shown, the entity had an average positive working capital position and an average positive net asset position from 2015 through 2016. Also, the entity achieved an average operating revenues over expenses before other items of \$6,074,000 from 2015 through 2016. The applicant indicated that the reason for the losses in 2015 were the result of Montefiore starting the EPIC implementation. Montefiore Medical Center incurred expenses related to implementation, which affected the bottom line. There were also some new programs that started up that incurred losses in 2015 and some programs MHS took over the when they combined with the Albert Einstein College of Medicine in 2015. The applicant implemented the following steps to improve operations: put in place certain cost control initiatives, implemented improvements and continued growth at White Plains Hospital Center.

BFA Attachment C is the 2015 and 2016 certified financial statements of Nyack Hospital. As shown, the entity had an average negative working capital position and an average positive net asset position from 2015 through 2016. The applicant indicated that the reason for the average negative working capital position is historical losses. Also, the entity incurred an average excess of expenses over revenues of \$6,502,361. The applicant indicated that the reason for the losses were a decrease in inpatient volumes, declining payor mix and reduction in reimbursement rates. As a result, Nyack Hospital has been granted funding through the Vital Access Provider Assurance Program (VAPAP) and the Value Based Payment Quality Improvement Program (VBP QIP) administered by the New York State Department of Health (NYSDOH). Nyack received \$4,579,744 VAPAP/VBP QIP funding during State Fiscal Year (SFY) 2015-2016, \$4,579,744 VBP QIP funding during SFY 2016-2017, and is scheduled to receive \$17,747,861 VBP QIP funding for SFY 2017-2018. The Hospital is in the process of implementing a VAPAP Transformation Plan that is designed to improve operating results so that the Hospital will be financially sustainable. The VAPAP Transformation Plan is being implemented in collaboration with the Montefiore Health System and is being closely monitored by the NYSDOH.

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

### Recommendation

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

## Attachments

BFA Attachment A	Organizational Chart- Montefiore Health System, Inc.
BFA Attachment B	Financial Summary- 2015 and 2016 certified financial statements of Montefiore Health System, Inc.
BFA Attachment C	Financial Summary- 2015 and 2016 certified financial statements of Nyack Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of December 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 Montefiore Health System as the active parent/co-operator, 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:

172262 E

Nyack Hospital

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [BPM]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse Services, acceptable to the Department. [BPM]
3. Submission of the enacted Amended and Restated Bylaws of Montefiore Health System, Inc., acceptable to the Department. [CSL]
4. Submission of the executed Restated Certificate of Incorporation of Montefiore Health System, Inc., acceptable to the Department. [CSL]
5. Submission of the enacted Amended and Restated Bylaws of Nyack Hospital, acceptable to the Department. [CSL]
6. Submission of the executed Certificate of Amendment of the Certificate of Incorporation of Nyack Hospital, 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 # 172263-E  
St. Luke's Cornwall Hospital/Newburgh**

**Program: HOSPITAL  
Purpose: Establishment**

**County: Orange  
Acknowledged: November 2, 2017**

**Executive Summary**

**Description**

Montefiore Health System, Inc. (MHS), a New York not-for-profit corporation, requests approval to be established as the active parent and co-operator of St. Luke's Cornwall Hospital (SLCH), a 242-bed, voluntary not-for-profit, Article 28 acute care hospital located at 19 Laurel Avenue, Cornwall (Orange County). In 2016, MHS became the sole member and passive parent of SLCH to advance a regional transformation strategy and enhance the provision of care to the population of Orange County and the Hudson Valley region. Upon approval of this application, SLCH will continue to serve as a vital community hospital, bolstered by the MHS network of hospitals, providers, and care management enterprise. There are no costs associated with this project. There will be no change in authorized services, the number or type of beds, or staffing upon approval of this project. In addition, there are no projected changes in the utilization, revenue, or expenses of the Hospital as a result of this project.

As active parent and co-operator, MHS will have the power and authority to make decisions for the Hospital through the active parent powers described in Title 10 NYCRR 405.1 (c). The applicant has indicated MHS will have the authority to:

- Appoint and remove members of the Board of Trustees of SLCH;
- Determine the size of the Board of Trustees of SLCH;
- Nominate members to the Committees of the Board of Trustees of SLCH and the Board of Trustees of MHS;

- Approve amendments to SLCH's certificate of corporation;
- Approve amendments to SLCH's bylaws;
- Approve operating and capital budgets and any strategic plans, including any material amendments or modifications;
- Approve individual or categories of operating policies or procedures;
- Approve certificate of need applications to be filed by or on behalf of SLCH or any entity controlled by SLCH;
- Approve debt issuance that may be necessary to finance the cost of compliance with operational or physical plant standards that are required by law and applicable to SLCH, in the amount greater than \$500,000, unless previously approved as part of annual operating and capital budgets;
- Approve contracts with third parties for management of SLCH facilities or for clinical services;
- Approve settlements of administrative proceedings or litigation to which SLCH is party, if the settlement is in excess of available insurance coverage and/or funded by the Member or otherwise may have a material adverse effect on SLCH, MHS or affiliates; and
- Approve appointment or removal of the President and Chief Executive Officer of SLCH (or position having substantially similar responsibility).

The Hospital determined that it is in its best interest to delegate to MHS the authority to exercise active control over key operational

areas. MHS's exercise of powers over the Hospital will enable the following:

- Formulation of consistent corporate policies and procedures across the MHS system;
- Ensure a consistent approach to regulatory compliance standards of care and medical staff credentialing;
- Organize the network providers into an efficient and accessible continuum of care responsive to community needs;
- Collaborate in areas designed to conserve resources, such as joint purchasing;
- Facilitate clinical integration and the use of best practices;
- Enhance the sharing of resources;
- Reflect common mission, philosophy, values, and purpose across the System.

MHS, established in 2004, is an integrated, academically based, healthcare delivery system that includes 11 hospitals, 3086 acute care beds, 200 ambulatory locations including primary care and multi-specialty practices, and a range of urgent, mobile, and community-based clinics including a large school based health program.

## OPCHSM Recommendation Contingent Approval

### Need Summary

The proposed project, as described, does not result in any immediate changes in existing services at St. Luke's Cornwall Hospital, changes in the projected utilization and staffing, or restructuring.

### Program Summary

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

### Financial Summary

There are no project costs, working capital requirements, or budgets associated with this application, and no projected incremental changes in utilization, staffing, operating expenses, or operating revenues related to this application.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of the enacted Amended and Restated Bylaws of Montefiore Health System, Inc., acceptable to the Department. [CSL]
2. Submission of the executed Restated Certificate of Incorporation of Montefiore Health System, Inc., acceptable to the Department. [CSL]
3. Submission of the enacted Amended and Restated Bylaws of St. Luke's Cornwall Hospital, acceptable to the Department. [CSL]
4. Submission of the executed Certificate of Amendment of the Certificate of Incorporation of St. Luke's Cornwall Hospital, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**December 7, 2017**



## Need Analysis

### Background

Montefiore Health System, Inc. (MHS) seeks approval for the establishment of Montefiore Health System, Inc. as the active parent and co-operator of St. Luke's Cornwall Hospital (SLCH).

To advance MHS's regional transformation strategy and enhance the provision of care to the population of Orange County and the Hudson Valley region, MHS became the sole member and passive parent of SLCH in 2016. Per board resolutions and amendments to the certificates of incorporation of MHS and SLCH, MHS will become the active parent and co-operator of SLCH, subject to the New York State Department of Health and other regulatory approvals. The vision is to build a regional network of hospitals and community physicians closely aligned in an integrated system of care. SLCH will continue to serve as a vital community hospital, bolstered by the MHS network of hospitals and providers and MHS's sophisticated care management enterprise. This affiliation will enhance the missions of both MHS and SLCH to continue to provide advanced, quality healthcare to the communities and an expanding service area of over 3 million people.

### Analysis

MHS will support and develop SLCH as a Medical Village under the backing of the state's Delivery System Reform Incentive Payment (DSRIP) program and SLCH will continue to provide needed tertiary services in Orange County, linked to primary and specialty outpatient providers. SLCH will retain agreed upon operational autonomy consistent with the MHS relationship and applicable law relating to joint planning, joint managed care contracting and economic integration. Montefiore is working closely with the state to realize our vision for building an integrated academic health system, including transformation of SLCH wherein SLCH serves as a cornerstone provider within the Orange county community of care.

### Conclusion

There will be no change to beds or services as a result of this project.

### Recommendation

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

## Program Analysis

### Program Description

Montefiore Health System, Inc. (MHS), an existing not-for-profit corporation, seeks approval for the establishment of Montefiore Health System, Inc. as the active parent and co-operator of St. Luke's Cornwall Hospital (SLCH), located at 19 Laurel Avenue in Cornwall (Orange County).

St. Luke's Cornwall Hospital has two campuses, one in Cornwall and one in Newburgh, as well as off-site facilities throughout the community. SLCH/Newburgh is licensed for 242 acute care beds while SLCH/Cornwall is licensed for 103 acute care beds, but largely operates as an outpatient center. There is one SLCH Licensed Article 28 extension clinic, St. Luke's Hospital - Physical Therapy Extension Clinic, located in Fishkill.

Montefiore Health System currently includes over 3,000 acute care beds in 11 hospitals, 200 ambulatory locations (primary care and multi-specialty practices), and a range of community-based clinics.

In 2016, MHS became the sole member and passive parent of St. Luke's Cornwall Hospital to advance MHS's regional transformation strategy and enhance the provision of care to the population of Orange County and the Hudson Valley region. In becoming the active parent and co-operator of SLCH, MHS aims to build a regional network of hospitals and community physicians in an integrated system of care.

St. Luke's Cornwall Hospital will remain a separate Article 28, not-for-profit corporation and will maintain its separate operating certificate. The change in governance structure for SLCH does not result in any immediate changes in existing services or staffing.

#### Character and Competence

The Montefiore Health System Board, comprised of 48 members, was subject to a Character and Competence review.

The Officers of the Board of Montefiore Health System, Inc. are:

<u>Name</u>	<u>Title/Position</u>
Steven M. Safyer, MD	President/CEO
James M. Butler	Chair
Oded Aboodi	Vice Chair, Treasurer
Christopher S. Panczner	Asst. Secretary (Non-Trustee)
Jay B. Langer	Chair Emeritus

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

Upon review of the 48-member Board of Trustees of Montefiore Health System, the following disclosures were made:

- *Mr. Gantcher disclosed that he was named in a suit initiated in August 2014 by the estate of a tradesman who died on the job in his (Gantcher's) home. The case was subsequently settled in August 2016 by the insurance company.*
- *Ms. Lane disclosed that her law license had been suspended due to failure to comply with Judiciary Law 468-a (Failing to Register). A motion to reinstate her as an attorney was granted on September 25, 2008.*
- *Ms. Klema's law license, issued in 1985, was suspended on October 19, 1998. Her license lapsed / expired (voluntarily) when she moved to Investment Banking.*
- *Mr. Smith disclosed that he is a board member of Stellaris Health Network. Northern Westchester Hospital is a member of Stellaris. On November 21, 2016, the Department issued a Stipulation and Order (S&O) and \$10,000 fine against the hospital related to Immediate Jeopardy identified on April 22, 2016 during an allegation survey. The issues involved timely calling a code team for a new born baby. Staff were not trained in the code policy and did not initiate the code via the proper procedure. The baby expired.*

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.

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

#### Recommendation

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

## Financial Analysis

### Capability and Feasibility

There are no issues of capability or feasibility as there are no project costs of any expected changes to the budgets associated with this application.

BFA Attachment B is the 2015 and 2016 certified financial statements of Montefiore Health System, Inc. As shown, the entity had an average positive working capital position and an average positive net asset position from 2015 through 2016. Also, the entity achieved an average operating revenues over expenses before other items of \$6,074,000 from 2015 through 2016. The applicant indicated that the reason for the losses in 2015 were the result of Montefiore starting the EPIC implementation. Montefiore Medical Center incurred expenses related to implementation, which affected the bottom line. There were also some new programs started up that incurred losses in 2015 and some programs MHS took over when they combined with the Albert Einstein College of Medicine in 2015. The applicant implemented the following steps to improve operations: put in place certain cost control initiatives and implemented improvements and continued growth at White Plains Hospital Center.

BFA Attachment C is the January 15, 2016 through December 31, 2016 certified financial statements of St. Luke's Cornwall Hospital and Subsidiaries. As shown, the entity had a negative working capital position and a positive net asset position in 2016. The reason for the negative working capital position is historical losses. Also, the entity incurred a loss from operations of \$18,673,139 in 2016. Included in the loss is a one-time charge for depreciation of \$5.8M in 2016. The applicant, in close coordination with Montefiore, implemented the following initiatives: stemming out migration in key specialty lines, maximizing benefits around supply chain and economies of scale, improving clinical integration with Montefiore and Crystal Run, and bringing third party contracts up to market rates. SLCH has been granted funding through the Value Based Payment Quality Improvement Program (VBP QIP) administered by the New York State Department of Health (NYSDOH). SLCH has received \$14,000,000 during State Fiscal Year (SFY) 2016-2017 VBP-QIP funding budget (VBP QIP) and scheduled to receive \$19,301,520 VBP QIP funding for SFY 2017-2018. SLCH is in the process of implementing a 5-year plan to improve operating results and achieve financial sustainability. The plan is being implemented in collaboration with the Montefiore Health System and is being closely monitored by the New York State department of Health.

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

### Recommendation

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

## Attachments

- BFA Attachment A Organizational Chart - Montefiore Health System, Inc.
- BFA Attachment B Financial Summary - 2015 and 2016 certified financial statements of Montefiore Health System, Inc.
- BFA Attachment C Financial Summary - January 15, 2016 through December 31, 2016 certified financial statements of St. Luke's Cornwall Hospital and Subsidiaries

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 7th day of December 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 Montefiore Health System as the active parent/co-operator, 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:

172263 E

St. Luke's Cornwall Hospital/Newburgh

APPROVAL CONTINGENT UPON:

1. Submission of the enacted Amended and Restated Bylaws of Montefiore Health System, Inc., acceptable to the Department. [CSL]
2. Submission of the executed Restated Certificate of Incorporation of Montefiore Health System, Inc., acceptable to the Department. [CSL]
3. Submission of the enacted Amended and Restated Bylaws of St. Luke's Cornwall Hospital, acceptable to the Department. [CSL]
4. Submission of the executed Certificate of Amendment of the Certificate of Incorporation of St. Luke's Cornwall Hospital, 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 # 171297-E  
Syracuse Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Onondaga  
**Purpose:** Establishment    **Acknowledged:** April 25, 2017

**Executive Summary**

**Description**

Syracuse Surgery Center, LLC, a proprietary Article 28 diagnostic and treatment center (D&TC) located at 3400 Vickery Road, Syracuse (Onondaga County), requests approval for indefinite life status. The D&TC was approved by the Public Health Council (PHC) under CON 111196 as a single-specialty freestanding ambulatory surgery center (FASC) specializing in ophthalmology services. PHC approval was for a five-year limited life and the Center began operations effective June 1, 2012. The applicant is not proposing to add or change any services, or expand or renovate the facility.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Syracuse Surgery Center specializes in oculoplastic surgery, a subspecialty of ophthalmology. Data submission by the applicant as a contingency of CON 111196 is complete. Within CON 111196, the applicant projected utilization for Medicaid at 2.00% and Charity Care at 4.00% at the Center. These projections have not been met by the Center. However, the applicant has been providing services to the under-insured residents of the

service area though The Center for Vision Care which is operated by SUNY Upstate Medical University's Department of Ophthalmology during their limited life approval process. SUNY Upstate has indicated it is their preference to retain the charity care and Medicaid cases at their clinic as part of their residency program.

**Program Summary**

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

**Financial Summary**

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

	<u>Year One</u>
Revenues	\$2,249,030
Expenses	<u>1,073,771</u>
Net Income	\$1,165,546

## 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 applicant's amended Operating Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of an Amended Articles of Organization, acceptable to the Department. [CSL]

Council Action Date

**December 7, 2017**

## Need Analysis

### Analysis

The primary service area is Onondaga County. The table below provides information on projections and utilization by visits for Year One (2013-1<sup>st</sup> full year) and Year Three (2015) based on CON 111196.

CON 111196- Visits	Year One (2013)		Year Three (2015)	
	Projected	Actual	Projected	Actual
Syracuse Surgery Center				
Total	1,900	1,423	2,014	1,482

The table below provides Year Three utilization, projections and actual, by payor, for CON 111196, and projections for Year One following approval.

Payor	CON 111196		CON 171297
	Projected Year Three (2015)	Actual Year Three (2015)	Projected Year One
Medicaid FFS/ MC	2.0%	0.2%	1.61%
Medicare FFS/ MC	38.0%	54.9%	59.14%
Commercial FFS/ MC	56.0%	44.3%	35.22%
Other	0.0%	0.6%	4.03%
Charity	4.0%	0.0%	0.00%
Total	100.0%	100.0%	100.00%

The Center participates with Fidelis and recently became a provider with Humana's Medicaid Managed Care. The Center has contacted Syracuse Community Health Center (an FQHC) as outreach for underserved patients. The Center is committed to serving all patients in need without regard to ability to pay or source of payment.

Oculoplastic is a subspecialty within Ophthalmology services. The three physician members are three of the four oculoplastic surgeons in the Central New York Region. All three physicians from Syracuse Surgery Center provide office visits and outpatient surgical oculoplastic services to under-insured patients at The Center for Vision Care, which is operated by SUNY Upstate Medical University's Department of Ophthalmology, four half-days per month. Drs. Bersani, Hill and Carruth are adjunct faculty members of the SUNY's Department of Ophthalmology and, as the only oculoplastic surgeons on the faculty, provide training to residents by performing surgeries at the Clinic. SUNY Upstate has provided the Department a letter indicating that, in order to maximize the surgical opportunities for the ophthalmology residents and provide continuity of care for the Center for Vision Care patients, it is their preference that the physicians from Syracuse Surgery Center perform as many outpatient cases as possible at the Department's outpatient surgery center, rather than at Syracuse Surgery Center.

The table below shows the service to the under-insured provided by the three doctors at both the Center for Vision Care (Clinic) and Syracuse Surgery Center (ASC) combined.

Combined Caseload (both Clinic & ASC)			
Calendar Year	2014	2015	2016
Total Visits	1,513	1,568	1,573
Medicaid & Charity Care	31	39	62
Medicaid & Charity Care % of total visits	2.0%	2.5%	3.9%



The following table shows the Medicaid and charity care utilization of the other ASC in Onondaga County. Heritage One Day Surgery, University Gastroenterology, The Endoscopy Center of Central NY and Upstate Orthopedics ASC are the other ASC's that operated under the limited life process.

Name	Type	2015 <sup>1</sup>		2016 <sup>2</sup>
		Charity	Medicaid	Medicaid
Syracuse Surgery Center <sup>3</sup>	Ophthalmology	0.0%	0.2%	2.0%
Camillus Surgery Center	Multi	0.0%	4.5%	12.8%
Digestive Disease Center of Central New York, LLC	Gastroenterology	N/A	11.9%	12.9%
Endoscopic Procedure Center	Gastroenterology	0.0%	8.0%	6.1%
Endoscopy Center of Central New York	Gastroenterology	0.4%	4.3%	0.4%
Heritage One Day Surgery	Pain Management	0.3%	14.3%	14.2%
Specialists' One-Day Surgery Center, LLC	Orthopedics	0.1%	9.1%	12.0%
Specialty Surgery Center of Central New York	Multi	0.0%	0.3%	5.1%
Syracuse Endoscopy Associates, LLC	Gastroenterology	0.0%	9.4%	3.0%
Upstate Orthopedics Ambulatory Surgery Center	Orthopedics	1.4%	15.5%	15.7%
University Gastroenterology at the Philip G. Holtzapple Endoscopy Center	Gastroenterology	0.0%	16.0%	26.8%
<b>Average for the County</b>		<b>0.2%</b>	<b>8.5%</b>	<b>10.1%</b>

<sup>1</sup> 2015 data from Ambulatory Health Care Facility Cost Report, except for Digestive Disease, for which data is from SPARCS.

<sup>2</sup> 2016 data is for a complete year from SPARCS. DOH staff has confirmed that facilities are unable to report charity care through SPARCS.

<sup>3</sup> Does not include cases performed at The Center for Vision Care at SUNY Upstate/

#### Conclusion

The Center's physicians provide the majority of their service to the under-insured in the service area at the Center for Vision Care, at the request of SUNY's Upstate Medical University's Department of Ophthalmology. In their roles as adjunct faculty members their service for the Center for Vision Care patients provides training to the Ophthalmology residents. Although the Center's charity care utilization is less than 2 percent, the Center has been making reasonable and sustained efforts to provide service to the under-insured in Onondaga County through their efforts at the Center for Vision Care.

#### Recommendation

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

## Program Analysis

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

Dr. Robert Hill will continue to serve as the Center's Medical Director.

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.**

<b>Financial Analysis</b>
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**Operating Budget**

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

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Commercial FFS	\$1,145,994	\$1,145,994	\$1,145,994
Commercial MC	50,762	50,762	50,762
Medicare FFS	559,192	559,192	559,192
Medicare MC	330,456	330,456	330,456
Medicaid FFS	5,734	5,734	5,734
Medicaid MC	0	37,110	37,110
Charity Care	0	0	0
All Other	<u>32,391</u>	<u>119,782</u>	<u>119,782</u>
Total Revenues	<u>\$2,124,529</u>	<u>\$2,249,030</u>	<u>\$2,249,030</u>
<u>Expenses</u>			
Operating	\$868,207	\$885,571	\$903,284
Capital	<u>189,585</u>	<u>188,200</u>	<u>180,200</u>
Total Expenses	<u>\$1,057,792</u>	<u>\$1,073,771</u>	<u>\$1,083,484</u>
Net Income	<u>\$1,066,737</u>	<u>\$1,175,259</u>	<u>\$1,165,546</u>
Utilization (Procedures)	4,899	5,140	5,140
Cost Per Procedure	\$215.91	\$208.90	\$210.79

Revenue assumptions are based on current reimbursement rates, and expense and utilization assumptions are based on historical experience.

**Capability and Feasibility**

There are no project costs associated with this application. The submitted budgets indicate net income of \$1,175,259 and \$1,165,546 in the first and third years. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment B is the 2016 certified financial statements (cash basis) of Syracuse Surgery Center, LLC. The facility had positive working capital position of \$197,422 and net asset position of \$985,764 and achieved net income from operations of \$1,038,923 in 2016.

BFA Attachment C is the internal financial statements (cash basis) of Syracuse Surgery Center, LLC as of February 28, 2017. The facility had positive working capital position of \$155,181 and net assets position of \$948,751 and achieved net income from operations of \$181,508 through February 28, 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 Current and original ownership of Syracuse Surgery Center
- BFA Attachment B Financial Summary – 2016 certified financial statements of Syracuse Surgery Center
- BFA Attachment C Financial Summary – February 28, 2017 internal financial statements of Syracuse 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 7th day of December 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 request for indefinite life for CON #111196, 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:

171297 E

Syracuse Surgery Center

APPROVAL CONTINGENT UPON:

1. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of an Amended Articles of Organization, acceptable to the Department. [CSL]

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*.

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: 1 Of A Kind Home Health Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2062L

Description of Project:

1 Of A Kind Home Health Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of 1 Of A Kind Home Health Care, LLC is:

Andrea David, EMT  
Owner, Afternoon Evening and Weekend Daycare

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Emergency Medical Services has indicated that Andrea S. David (EMT License #429763) holds an EMT license in good standing and the Bureau of Emergency Services has not taken any disciplinary action against this individual or her license.

The applicant proposes to serve the residents of the following counties from an office located at 148 George Street, Brooklyn, New York 11237:

Kings	Queens	New York
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	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: July 17, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Ultracare Family Wellness of NY, Inc.  
Address: Kew Gardens  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2173-L

Description of Project:

Ultracare Family Wellness of NY, 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: Desmond Johnson owns 110 shares and Gillian Bailey owns 90 shares.

The Board of Directors of Ultracare Family Wellness of NY, Inc. comprises the following individual:

Desmond Johnson, President  
Retired

Gillian Bailey, RN, BSN, Vice President  
Risk Manager/Supervisor, Westchester Center for Rehabilitation and Nursing  
Supervisor – RVO, Rebekah Nursing Home

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care profession associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 119-40 Metropolitan Avenue, Suite 110, Kew Gardens, NY 11415:

Queens	Bronx	Kings
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 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 9, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Just Care, LLC  
Address: Flushing  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2283L

Description of Project:

Just 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 Just Care, LLC comprises the following individual:

Dmitry Tsepenyuk, President – 100%  
Executive Manager, Atlantic Adult Day Care  
Owner/Board Member, Golden Age Care, LLC (NJ)  
Owner/Board Member, Queensboro Adult Day Care Center

Affiliations

Golden Age Care, LLC	(NJ Medical Adult Day Care Center, 2003 – Present)
Golden Years Care, LLC	(NJ Medical Adult Day Care Center, 2010 – 2012)
Queensboro Adult Day Care Center	(Adult Social Day Care, 2010-present)

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 137-08 31<sup>st</sup> Road, Flushing, New York 11354:

Queens	Kings	Richmond
New York	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	Medical Social Services
Nutrition	Homemaker	Housekeeper

The information received from the State of New Jersey indicates that Golden Age Care, LLC is currently in compliance and that no enforcement actions have been taken against the agency. The state was only able to supply information for the period of June 4, 2009 through September 2016.

The information received from the State of New Jersey indicates that Golden Years Care, LLC is currently in compliance and that no enforcement actions have been taken against the agency. The state was only able to supply information for the period of July 01, 2014 through June 30, 2015.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 3, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Perfect Gentle Hands Homecare, Inc.  
Address: Jamaica  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2347L

Description of Project:

Perfect Gentle Hands Homecare, Inc., a to be formed 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 and Doreen Johnson will solely own all 200 shares.

The proposed Board of Directors of Perfect Gentle Hands Homecare, Inc. comprises the following individual:

Doreen Johnson, HHA, President

A search of the individual and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, is not currently employed as a HHA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 9211 172<sup>nd</sup> Street, 2<sup>nd</sup> Floor, Jamaica, New York 11433:

Kings	Queens	Richmond
Bronx	Nassau	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: Bangla Homecare, Inc.  
Address: Jackson Heights  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2348L

Description of Project:

Bangla Homecare, Inc., a to-be-formed 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 solely owned by Abu Z. Mahmood.

The proposed Board of Directors of Bangla Homecare, Inc. comprises the following individual:

Abu Zafar Mahmood, President/Owner  
Director of South Asian Community Patients and Aides, Marks Home Care Agency  
President, Bangla Home Health Aides and Services  
Director of Bangladesh Community Affairs, Doral Investor Group D/B/A House Calls  
Freelance contributor, Web-based newspapers/media on international affairs/regional conflicts

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 37-38 73<sup>rd</sup> Street, 1<sup>st</sup> Floor, Jackson Heights, New York 11372:

Kings	Queens	Richmond
Bronx	Nassau	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: July 25, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Raices Homecare, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2350L

Description of Project:

Raices 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:  
Rafaela Villafana - 66 2/3 shares, Maria Almonte - 66 2/3 shares and Vera Singh - 66 2/3 shares.

The Board of Directors of Raices Homecare, Inc. comprises the following individuals:

Rafaela Villafana, President  
Program Director, La Familia Adult Day Center, Inc.

Affiliations

La Familia Adult Day Center, Inc. (Adult Day Care, 2013-present)

Maria Almonte, Vice President  
Job Opportunity Specialist 2/Manager, Human Resources Administration – Department of Social Services

Affiliations

La Familia Adult Day Center, Inc. (Adult Day Care, 2013-present)

Vera I. Singh, RN (CA & PA), Secretary  
Senior Manager of PV Operations, Amgen

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The state of California has indicated that Vera I. Singh, RN license #715907 holds an active RN license which expires on February 28, 2019.

The state of Pennsylvania has indicated that Vera I. Singh, RN license #RN528369L holds an active RN license which expires on April 30, 2018.

The applicant proposes to serve the residents of the following counties from an office located at 2268 56<sup>th</sup> Drive, 2<sup>nd</sup> Floor, Brooklyn, New York 11234:

Kings	Queens	Richmond
Bronx	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 30, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Micah Eastman LPN, Michael Eastman RN, Oshea Eastman RN, PLLC  
d/b/a MMO Nursing  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2359-L

Description of Project:

Micah Eastman LPN, Michael Eastman RN, Oshea Eastman RN, PLLC d/b/a MMO Nursing, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Micah Eastman LPN, Michael Eastman RN, Oshea Eastman RN, PLLC d/b/a MMO Nursing comprises the following individuals:

Micah Eastman, LPN – 50%

President/CEO/Administrator, Micah Eastman LPN, Michael Eastman RN, Oshea Eastman RN, PLLC d/b/a MMO Nursing

Michael Eastman, RN – 25%

IV Clinician/Home Infusions, Pridecare, Inc.

Oshea Eastman, RN – 25%

Nurse Assessor, VillageCareMAX

The proposed Board of Directors of Micah Eastman LPN, Michael Eastman RN, Oshea Eastman RN, PLLC d/b/a MMO Nursing will be comprised of the following individuals:

Micah Eastman, LPN, President

Disclosed Above

Michael Eastman, RN, Vice President

Disclosed Above

Oshea Eastman, RN, Officer

Disclosed Above

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 729-A Macon Street, Suite A-1, Brooklyn, New York 11233:

Kings  
New York

Queens  
Bronx

Richmond  
Westchester

The applicant proposes to provide the following health care services:

Nursing

Home Health Aide

Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 15, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Multicommunity Services at 95 Street Corp.  
d/b/a Agelass Beauty Homecare Agency  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2370L

Description of Project:

Multicommunity Services at 95 Street Corp. d/b/a Agelass Beauty Homecare Agency, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Multicommunity Services at 95 Street Corp. d/b/a Agelass Beauty Homecare Agency has authorized 200 shares of stock which are owned solely by Beverly Creary.

The Board of Directors of Multicommunity Services at 95 Street Corp. d/b/a Agelass Beauty Homecare Agency is comprised of the following individual:

Beverly Creary, Manager  
Manager/Owner, Multicommunity Services at 95 Street Corp.

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 1034 Rutland Road, Brooklyn, New York 11212:

Kings	Queens	New York
Richmond	Bronx	

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: September 14, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Alpha Home Care Services Inc.  
Address: Bronx  
County: Bronx  
Structure: For-Profit Corporation  
Application Number: 2409-L

Description of Project:

Alpha Home Care Services Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are solely owned by Josephine Oviawe.

The Board of Directors of Alpha Home Care Services Inc. comprises the following individual:

Josephine Oviawe, RN, BSN, CEO  
RN, Gotham Agency

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care profession associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 4125 Dereimer Avenue, Bronx, New York 10466:

Bronx	Kings	Queens
New York	Richmond	

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 15, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Rising Sun Medical Staffing, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2432-L

Description of Project:

Rising Sun Medical Staffing, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The following individual is the proposed sole member of Rising Sun Medical Staffing, LLC:

Anamaria Tapia, RN – 100%  
Home Infusion Nurse, Pridicare, Inc.  
Home Infusion Nurse, Greater NY Nursing Services

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 the following issue with the licensure of the health professional associated with this application:

On December 16, 2014 a Regents Action was taken against Anamaria Tapia, RN. On January 11, 2011, Ms. Tapia self-reported that she was dependent upon narcotic pain medication while employed as a registered professional nurse. The licensee did not contest the charges and an application for consent order granted with an agreed upon penalty of a 3 month actual suspension, 21 month stayed suspension, and 2 years' probation.

The applicant proposes to serve the residents of the following counties from an office located at 87 Pilling Street, Apt. 1, Brooklyn, New York 11207:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Housekeeper
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 31, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: K Kari and Associates Corp  
d/b/a Kari Agency and Staffing Services  
Address: Elmont  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 2433-L

Description of Project:

K Kari and Associates Corp d/b/a Kari Agency and Staffing Services, 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 Kettely Pierre.

The Board of Directors of K Kari and Associates Corp d/b/a Kari Agency and Staffing Services comprises the following individuals:

<p>Kettely Pierre, CNA, MPA, Chair/President Phlebotomy Technician Outreach Coordinator, North Shore Hospital – LIJ Health System</p>	<p>Carline Prepetit, BSN, HR/Compliance Officer Analyst, Emblem Health</p>
<p>Myriam Jean, RN, BSN, Director of Patient Services Licensed RN: NY, NJ Staff Emergency Room Nurse, Mount Sinai Hospital of Queens Staff Emergency Room Nurse, Beth Israel Medical Center</p>	<p>Yollette Jules, Treasurer/Secretary Project Engineer, Long Island Rail Road</p>
<p>Wesley Jean-Louis, Community Liaison Stationary Engineer, Queens College Stationary Engineer, The Brooklyn Hospital Center</p>	

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The State of New Jersey Department of Law & Public Safety, Division of Consumer Affairs indicates no issues with the licenses of the healthcare professionals associated with this application.

The State of Pennsylvania Department of State indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1386 Star Avenue, Elmont, New York 11003-3231:

Nassau

Suffolk

Queens

The applicant proposes to provide the following health care services:

Nursing

Physical Therapy

Speech-Language Pathology

Nutrition

Home Health Aide

Occupational Therapy

Audiology

Homemaker

Personal Care

Respiratory Therapy

Medical Social Services

Housekeeper

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 16, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Imperial Home Health Care Inc.  
Address: Freeport  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 2457-L

Description of Project:

Imperial Home Health 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 solely by Dr. Chukwuma Madu.

The Board of Directors of Imperial Home Health Care Inc. is comprised of the following individuals:

Dr. Chukwuma Madu, RPh, President/Treasurer/Secretary  
Certified Diabetes Educator  
Certified Asthma Educator  
Owner/President, Freeport Medical Supply Inc./Xtra Care Pharmacy

Lorrel Lyn-Cook, MAEd, Vice President  
Unemployed

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 75 South Main Street, Freeport, New York:

Nassau	Suffolk	Westchester
Queens		

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

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 15, 2017



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: Pentec Infusions of New York, LLC  
 Address: Nassau County  
 County: Nassau  
 Structure: Limited Liability Company  
 Application Number: 2495-L

Description of Project:

Pentec Infusions of 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 sole member of Pentec Infusions of New York, LLC is Pentech Holdings, Inc., a Delaware Corporation.

The sole shareholder of Pentech Holdings Inc. is Pentec Healthcare Infusions, Inc., a Delaware Corporation.

Pentec Healthcare Infusions, Inc. has authorized 2,750,000 shares of common stock with no shares having been issued and 1,100,000 shares of preferred stock, with 987,855 shares issued to and owned by various private equity investment funds. There are 112,145 shares of preferred stock unissued. The principal shareholders of the preferred stock are:

Norwest Equity Partners IX, LP Shares Owned: 682,255 Percent Interest: 69.064	DW Healthcare Partners, LP Shares Owned: 100,000 Percent Interest: 10.123
Frazier Healthcare V, LP Shares Owned: 100,000 Percent Interest: 10.123	

The Board of Directors of Pentech Holdings Inc. and Pentec Healthcare Infusions, Inc. are identical and are comprised of the following individuals:

Joseph Cosgrove, President/CEO/Secretary/Treasurer/Director, Pentec Health, Inc.	Timothy Kuehl, MBA, Board Member Senior Vice President, Norwest Venture Capital Management, Inc.
Carter Balfour, MBA, Board Member Senior Vice President, Norwest Venture Capital Management, Inc.	John Lindahl, Board Member Co-CEO, Norwest Venture Capital Management, Inc.
Andrew Carragher, MBA, Board Member President, DWHP Management Services (Canada) ULC	Rodney Boone, MBA, Board Member Partner, DW Healthcare Partners (Healthcare Private Equity Investors)

There are 24 investors in Norwest Equity Partners IX, LP, however, 99.25% of the equity interest in the fund is owned directly or indirectly by Wells Fargo & Company, a publicly held, New York Stock Exchange listed bank holding company. This limited partnership is represented on the Board of Directors of Pentec Equity Infusions, Inc. by John Lindahl and Tim Kuehl.

There are 40 investors in DW Healthcare Partners, LP, however, no individual investor owns an interest that would require submission of personal disclosure information. This limited partnership is represented on the Board of Directors of Pentec Equity Infusions, Inc. by Andrew Carragher and Rod Boone.

There are 59 investors in Frazier Healthcare V, LP, however, no individual investor owns an interest that would require submission personal disclosure information. The individual that represented Frazier Healthcare V, LP on the Board of Directors of Pentec Equity Infusions, Inc. resigned from the board and has not been replaced at this time.

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 in Nassau County:

Nassau	Suffolk	Queens
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The applicant proposes to provide the following health care services:

Nursing

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Pentec Health, Inc.

The State of California Department of Public Health has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Colorado Department of Public Health & Environment 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 District of Columbia Department of Health has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Illinois Department of Public Health has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Indiana Department of Health reported seven (7) deficiencies for their survey date of August 10, 2011 for a Breach of Licensure Provisions of Indiana Code Section 16-27-1-15 and Indiana Administrative Code Section 17-10-1(a). This action was resolved with a ten thousand dollar (\$10,000) civil penalty.

The State of Kansas Department of Health and Environment has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.



The State of Kentucky Office of the Inspector General, Division of Health Care has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Maine Department of Health and Human 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 State of Maryland Department of Health and Mental Hygiene has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Minnesota Department of Health reported that on September 5, 2014 the applicant was cited for Individual Abuse Prevention Plan, Informing Clients of Complain Process, TB Prevention and Content of Client Record. The violations were resolved December 8, 2014 with no penalty.

The State of Nebraska Department of Health and Human 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 State of Nevada Bureau of Healthcare Quality and Compliance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of New Hampshire Department of Health and Human 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 State of New Jersey, Office of the Attorney General, Division 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.

The State of New Mexico Department of Health has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of North Carolina Division of Health Service Regulation has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Tennessee Department of Health – Health Care Facilities has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Texas Department of Aging and Disability 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 State of Utah Department of Health has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Virginia Department of Health Office of Licensure & Certification has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: September 1, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: RCDN Inc.  
d/b/a Griswold Home Care North Orange County, NY  
Address: Chester  
County: Orange  
Structure: For-Profit Corporation  
Application Number: 2499-L

Description of Project:

RCDN Inc. d/b/a Griswold Home Care North Orange County, NY, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

RCDN Inc. has proposed to operate as a Franchisee of Griswold International, LLC.

The applicant has authorized 1,300 shares of stock which are owned as follows: Richard Smith owns 74 shares and RCDN, Inc. 401(k) Plan F/B/O Richard Smith owns 1,169 shares. The remaining 57 shares are unissued.

The Board of Directors of RCDN Inc. d/b/a Griswold Home Care North Orange County, NY comprises the following individuals:

Richard W. Smith, President  
Certified Information Systems Auditor  
Owner/Operator, Griswold Home Care North Orange, NY (Companion Care, 2014 – Present)

Christine Erickson, Treasurer/Secretary  
Project Management Professional  
Lead Manager, AXA Equitable Life Insurance

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 15 Railroad Avenue, Suite 338, Chester, New York 10918:

Orange

The applicant proposes to provide the following health care services:

Nursing	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 22, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Care Universal Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2517-L

Description of Project:

Care Universal Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Peter A. Imana owns 100 shares and Omobola Opawoye owns 100 shares.

The Board of Directors of Care Universal Inc. comprises the following individuals:

Peter A. Imana, RN, BSN, President  
RN, Columbia Presbyterian Allen Pavilion

Omobola F. Opawoye, RN, MSN, Vice President  
RN, Department of Veterans Affairs

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 held by the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office to be located in Kings County:

Kings	Queens	New York
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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 9, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Connected Home Care LLC d/b/a Connected Home Care  
Address: Rye  
County: Westchester  
Structure: Limited Liability Company  
Application Number: 2528L

Description of Project:

Connected Home Care LLC d/b/a Connected 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.

The members of Connected Home Care LLC d/b/a Connected Home Care are the following individuals:

Sarah Ball – 75%  
Executive Sales Professional, GlaxoSmithKline

Michael Grill, DO – 25%  
Physician, NYU Langone Medical Center  
Physician, Trinity Pawling School

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant 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 80 Central Avenue, Rye, New York 10580:

Westchester	Dutchess	Orange	Putnam
Sullivan	Ulster	Rockland	Bronx

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: July 5, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Bikur Cholim, Inc.  
Address: Monsey  
County: Rockland  
Structure: Not-For-Profit Corporation  
Application Number: 2533-L

Description of Project:

Bikur Cholim, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of Bikur Cholim, Inc. comprises the following individuals:

Simon Lauber -President  
Consultant, Yedei Chesed Inc.

Yehudah Singer, LCSW - Secretary  
School Therapist, Kiryas Joel Village of School District

Affiliations:

- Bikur Cholim, Inc. (OMH)

Affiliations:

- Bikur Cholim, Inc. (OMH)

Yisroel Kahan, EMT – Treasurer  
Community Liaison/Administration, Bon Secours  
Charity Health System

Abraham Apter – Member  
Account Executive, Fidelity

Affiliations:

- Bikur Cholim, Inc. (OMH)

Affiliations:

- Bikur Cholim, Inc. (OMH)

Joseph Krausz - Member  
DSP, Share of New Square

Affiliations:

- Bikur Cholim, Inc. (OMH)

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The information provided by the Bureau of Emergency Medical Services indicated that Yisroel Kahan held an EMT license # 422217 (expired 7/31/2017, scheduled for renewal exam 10/2017) and there had never been any disciplinary action taken against this individual or his license.

The information provided by the Office of Mental Health 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 25 Robert Pitt Drive, Suite 101, Monsey, New York 10952:

Rockland  
Sullivan

Putnam  
Ulster

Dutchess  
Westchester

Orange  
Nassau

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 & 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: Gracious Hands Home Care Agency, LLC  
Address: Schenectady  
County: Schenectady  
Structure: Limited Liability Company  
Application Number: 2541L

Description of Project:

Gracious Hands 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 Gracious Hands Home Care Agency, LLC comprises the following individual:

Kodjo Aklassou Gana – 100%  
Previously certified CNA (2008-2017)  
Self-employed, Used Car Sales

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 2418 Broadway, Schenectady, New York 12306:

Schenectady                      Albany                      Rensselaer                      Saratoga

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: July 26, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Bright Horizon Prime Care Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2571-L

Description of Project:

Bright Horizon Prime 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:

Anatoliy Kamenetskiv – 66 Shares  
Mariana Baram-Shaposhnik, RN (NY, NJ) – 68 Shares  
Viktoriya Shchegol, RN (NY, NJ) – 66 Shares

The Board of Directors of Bright Horizon Prime Care Inc. comprises the following individuals:

Anatoliy Kamenetskiv – Chairperson/President  
and Secretary  
Project Manager, New York Life Insurance  
Company  
Mariana Baram-Shaposhnik, RN (NY, NJ) – Vice President  
Director of Nursing, Stay Well Services  
Affiliation:  
• Stay Well Services

Viktoriya Shchegol, RN (NY, NJ) – Treasurer  
Registered Nurse, Accelerated Surgical Center  
Registered Nurse, Northfield Surgical Center

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professionals associated with this application.

The State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs indicates no issues with the licensure of the health professionals associated with this application.

A search of the individuals (and entities as appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Information provided by the State of New Jersey has indicated that the home care agency reviewed is currently operational and has not had any enforcement or administrative actions taken against the facility.

The applicant proposes to serve the residents of the following counties from an office located at 593 Midland Avenue, Staten Island, New York 10306:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Physical Therapy
Occupational Therapy	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 20, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Stellar Home Care Solutions, Inc.  
Address: Bronx  
County: Bronx  
Structure: For-Profit Corporation  
Application Number: 2620-L

Description of Project:

Stellar Home Care Solutions, 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 Flor M. Camarena.

The Board of Directors of Stellar Home Care Solutions, Inc. comprises the following individuals:

Flor M. Camarena-Norberto, President/CEO  
Foreign Medical License  
Phlebotomy Technician, EKG Technician  
Unemployed

Susana Dionicio-Montas, MBA, Director of Human Resources  
Foreign Law License  
Unemployed

Niurka Rodriguez, MS, Treasurer  
Assistant Director/Family & Community Engagement Coordinator, Northern Manhattan Perinatal Partnership, Inc.

Maribel Morillo, MTH, Secretary  
Unemployed

Dr. Candido C. Norberto-Rodriguez, Board Member  
Private Medical Practice

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1182 Union Avenue, Bronx, New York 10459:

Bronx	New York	Queens
Kings	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Safiya Haamid and Amal Qaasem  
d/b/a Happy Home Care  
Address: Buffalo  
County: Erie  
Structure: Partnership  
Application Number: 2630-L

Description of Project:

Safiya Haamid and Amal Qaasem d/b/a Happy Home Care, a partnership, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The partners of Safiya Haamid and Amal Qaasem d/b/a Happy Home Care comprises the following individuals:

Safiya Haamid FKA Fowzia Jama – 50%  
Owner, Happy Kids Child Care

Amal Qaasem FKA Yurub Salad Jama, RN – 50%  
New York and Minnesota RN  
Nurse, Cerenity Nursing Home  
Nurse, Heaven Home Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The State of Minnesota Board of Nursing 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 205 Loepere Street, Buffalo, New York 14211:

Erie

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: September 1, 2017

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 9, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Jancare Private Health Services, Inc.  
Address: Fishkill  
County: Dutchess  
Structure: For-Profit Corporation  
Application Number: 2639L

Description of Project:

Jancare Private Health Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Jancare Private Health Services, Inc. has authorized 200 shares of stock which are owned as follows: Janice Green owns 100 shares and 100 shares remain unissued.

The Board of Directors of Jancare Private Health Services, Inc. is comprised of the following individual:

Janice Green, RN – President  
Charge Nurse, Montefiore Medical Center

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1534 Route 52, Suite F/H, Fishkill, New York 12524:

Dutchess	Putnam	Westchester
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 22, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: VESRETTA Homecare LLC  
Address: St. Albans  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2645-L

Description of Project:

VESRETTA Homecare LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The membership of VESRETTA Homecare LLC is comprised of the following individual:

Janet Roberts, RN – 100%  
RN/Charge Nurse, Parker Jewish Institute for Healthcare and Rehabilitation  
RN/Staff Nurse, Silvercrest Center for Nursing & Rehabilitation

The Board of Directors of VESRETTA Homecare LLC is comprised of the following individual:

Janet Roberts, RN, President  
Disclosed Above

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 113-14 198 Street, St. Albans, New York 11412:

Queens	Kings	Bronx
New York	Nassau	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 16, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: All Patient Care Home Health Agency Inc.  
Address: Forest Hills  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2649-L

Description of Project:

All Patient Care Home Health Agency Inc., a for-profit 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: Boris Kariyev owns 180 shares and Rachel Davrayev owns 20 shares.

The Board of Directors of All Patient Care Home Health Agency Inc. comprises the following individuals:

Boris Kariyev, HHA, President  
Faculty, Touro College

Rachel Davrayev (FKA Rosa Davrayev and Rosa Israeli), HHA, PCA, Vice President/Secretary  
HHA, Caring Professionals, Inc.

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 individuals named above on the New York State Home Care Registry revealed that the individual is certified as a HHA or PCA, is currently employed as an HHA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 108-25 63<sup>rd</sup> Road #1, Forest Hills, New York 11375:

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	Occupational Therapy	Respiratory 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 18, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: JJR Lifecare, Inc. d/b/a Right at Home Eastern L.I.  
Address: Miller Place  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 152016

Description of Project:

JJR Lifecare, Inc. d/b/a Right at Home Eastern L.I., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

JJR Lifecare, Inc. has entered into a franchise agreement with Right at Home, Inc.

JJR Lifecare, Inc. d/b/a Right at Home Eastern L.I., has authorized 2500 shares of stock which are owned as follows: Richard Fleischman owns 138.11 shares, James Robinson owns 8.63 shares and JJR Lifecare, Inc. retirement plan owns 576.88 shares. The trustees of the retirement plan are James Robinson and Jennifer Robinson. The remaining 1776.38 shares are unissued.

The Board of Directors of JJR Lifecare, Inc. d/b/a Right at Home Eastern L.I., is comprised of the following individuals:

James Robinson – President/Treasurer/Secretary  
President, Right at Home Eastern L.I. (companion care)

Jennifer Robinson, PA – Vice-President  
Physician's Assistant, Island Healthcare

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of Suffolk County from an office located at 85 Echo Avenue, Suite 5, Miller Place, New York 11764.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: July, 24 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Caregiver Pro Homecare, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 152055

Description of Project:

Caregiver Pro 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 authorized 200 shares of stock which are owned solely by Marina Rabinovich, Esq.

The Board of Directors of Caregiver Pro Homecare, Inc. is comprised of the following individual:

Marina Rabinovich, Esq. – 200 Shares  
Attorney/Owner, Law Office of Marina Rabinovich

Affiliations:

Med Pro Homecare Agency, Inc. (LHCSA)  
MR Homecare Agency of NY, Inc. (LHCSA)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for the attorney.

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	Queens
New York	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
Durable Medical Supplies and Equipment		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Med Pro Homecare Agency, Inc. (2016-present)  
MR Homecare Agency of NY, Inc. (2012-2015)

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 18, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Family Respite Homecare Agency, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 152084

Description of Project:

Family Respite Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant authorized 200 shares of stock which are owned as follows:

Karina Rabinovich – 180 shares                      Marina Rabinovich, Esq. – 20 shares

The Board of Directors of Family Respite Homecare Agency, Inc. comprises the following individuals:

Marina Rabinovich, Esq.- Vice-President                      Karina Rabinovich – President  
Attorney/Owner, Law Office of Marina Rabinovich                      Student

Affiliations:

Med Pro Homecare Agency, Inc.  
MR Homecare Agency of NY, Inc. (LHCSA)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for the attorney.

The applicant proposes to serve the residents of the following counties from an office located at 251 East 5<sup>th</sup> Street, Unit 1, Brooklyn, New York 11218:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
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):

Med Pro Homecare Agency, Inc. (2016-present)  
MR Homecare Agency of NY, Inc. (2012-2015)

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 18, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review]

Name of Agency: Hope & Cherish Home Care, L.L.C.  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 152242

Description of Project:

Hope & Cherish Home Care, L.L.C., a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed members of Hope & Cherish Home Care, L.L.C. are comprised of the following individuals:

Stella Zavelyuk, MD – 51% Membership  
Pediatrician, Community Health Initiative  
Pediatrician, Ocean Medical PC

Gary Kanovich – 49% Membership  
Chief Operating Officer, Effective Home Care, LLC

Affiliation:  
Effective Home Care, LLC (LHCSA) (5/7/14 – Present)

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations of Effective Home Care, LLC (5/7/14 – 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 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 4157 Ocean Avenue, Brooklyn, New York 11235:

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: August 28, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Excel Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 152300

Description of Project:

Excel 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 Excel Care, LLC comprises the following individual:

Yekaterina Galper – 100%  
Administrator, Real Care, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 35 Girard Street, Brooklyn, New York 11235:

Kings	Queens	Bronx
New York	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: September 27, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review]

Name of Agency: Consortium Home Care, Inc.  
Address: Oakland Gardens  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 152333

Description of Project:

Consortium 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:

Andrew Kim – 200 Shares  
Administrator, KAPE Holdings, LLC d/b/a Flower Day Care  
Administrator, Functional Life Achievements, Inc. d/b/a Bloome Care  
Managing Partner, Consortium Health Group, Inc. d/b/a Consortium Health

The following individual is the sole member of the Board of Directors of Consortium Home Care, Inc.:

Andrew Kim – President/Chairman  
(Previously Disclosed)

A search of the individual (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 5722 224<sup>th</sup> Street, Suite 2, Oakland Gardens, New York 11364:

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	Homemaker	Housekeeper	Speech-Language Pathology

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 23, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Castle Rock Home Care, Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 152345

Description of Project:

Castle Rock 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: Gildo Consolini owns 100 shares and David Modnyy owns 100 shares.

The Board of Directors of Castle Rock Home Care, Inc. is comprised of the following individuals:

Gildo Consolini, PhD, LCSW – President Administrator, Prestige LHCSA Management, Inc. d/b/a Hand in Hand Together Home Care	David Modnyy – Vice President/Treasurer Owner/Administrator, Prestige LHCSA Management, Inc. d/b/a Hand in Hand Together Home Care
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Affiliation:

Prestige LHCSA Management, Inc d/b/a Hand in Hand Together Home Care (LHCSA, 2014-present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The State of Connecticut indicates no issues with the LCSW 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 672 Britton Avenue, Staten Island, New York 10304:

Richmond Bronx	New York Westchester	Kings	Queens
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Prestige LHCSA Management, Inc d/b/a Hand in Hand Together Home Care (LHCSA, 2014-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: October 13, 2017

ALicensed Home Care Services Agency  
Character and Competence Staff Review]

Name of Agency: Help At Home Homecare, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 152349

Description of Project:

Help At Home Homecare, Inc., 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:

Benjamin C. Allison – 200 shares  
President/CEO, Care One Home Medical Equipment, Inc.

The following individual is the sole member of the Board of Directors of Help At Home Homecare, Inc:

Benjamin C. Allison – President/CEO/Treasurer  
(Previously Disclosed)

A search of the individual (and entity) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2230 1st Ave, New York, New York 10029:

New York                      Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Physical Therapy
Respiratory 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 5, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review]

Name of Agency: East End Home Care, Inc  
Address: East Marion  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 152351

Description of Project:

East End Home Care, Inc., 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:

Holly A. Vescovi – 100 Shares  
President, At Home Services for Independent Living, Inc.

100 shares remain unissued.

The following individual is the proposed sole member of the Board of Directors of East End Home Care, Inc.:

Holly A. Vescovi – President, Vice President, Secretary, Treasurer  
(Previously Disclosed)

A search of the individual and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Suffolk County from an office located at 370 Rocky Point Road, East Marion, New York 11939.

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide              Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: September 26, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Ingersoll Adult Home, Inc. d/b/a Ingersoll Place Licensed Home Care Services Agency  
Address: Niskayuna  
County: Schenectady  
Structure: Not-For-Profit Corporation  
Application Number: 162314

Description of Project:

Ingersoll Adult Home, Inc. d/b/a Ingersoll Place Licensed Home Care Services Agency, not-for-profit business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA is associated with Ingersoll Adult Home, Inc. d/b/a Ingersoll Place Assisted Living.

The members of Ingersoll Adult Home, Inc. d/b/a Ingersoll Place Licensed Home Care Services Agency comprises the following individuals:

David W. Gallup – President  
Public Safety Dispatcher, Schenectady County

Gedia DeMari - Vice President  
Retired

Christopher J. Healy, CPA Denise – Treasurer  
Assurance Manager, Marvin and Company, P.C.

James Erceg – Secretary  
Retired

Carroll M. Helen – Member  
Retirement Plan Advisor/Financial Advisor, Mussett Wealth  
Management

Lynn A. Larrabee, RN – Member  
Retired

Leonard G. Angerame – Member  
President, Angerame Architects P.C.

Heather R. Lewis, CPA – Member  
Director/Owner, Marvin and Company P.C.

Thomas M. Prawdzik - Member  
Vice President/Commercial Bank Manager, M&T Bank

Denise J. Slattery, EMT – Member  
Aide/EMT-B, Dorthy Davis

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 licensure of the health professional associated with this application.

The information provided by the Bureau of Emergency Medical Services indicated that Denise J. Slattery holds an EMT license # 351451. There has never been any disciplinary action taken against this individual or her license.

The applicant proposes to serve the residents of the Schenectady County from an office located at 3359 Consaul Road, Niskayuna, New York 12304.

The applicant proposes to provide the following health care services:

Nursing  
Physical Therapy

Home Health Aide  
Occupational Therapy

Personal Care

Speech-Language Pathology

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: September 19, 2017



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Big Heart Home Care LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 162235

Description of Project:

Big Heart 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.

Merlmax Challenge Home Care, Inc. was previously approved by the Public Health Council at its July 7, 2006 meeting and subsequently licensed 1412L001 effective July 8, 2008.

The purpose of this application is to seek approval for applicant to acquire 100% ownership of the LHCSA through an Asset Purchase Agreement.

The following individual is the sole member Big Heart Home Care LLC:

Vladimir Reznic, RN – Chief Executive Officer/Managing Member  
Home Health Care Nurse, Metropolitan Jewish Health System

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of Vladimir Reznic and Big Heart Home Care LLC revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Merlmax Challenge Home Care, Inc. has entered into a management agreement with Big Heart Home Care LLC which was approved by the Department of Health on August 15, 2016.

The applicant proposes to serve the residents of the following counties from an office located at 706 Avenue U, 2<sup>nd</sup> Floor, Brooklyn, New York 11223:

Bronx	New York	Kings
Queens	Richmond	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: November 8, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Westchester Family Care, Inc.  
Address: Mamaroneck  
County: Westchester  
Structure: For-Profit Corporation  
Application Number: 171325

Description of Project:

Westchester Family Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Westchester Family Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 7, 2014 meeting and subsequently assigned license number 2458L001, effective July 29, 2015. At that time, the applicant had authorized 200 shares of stock. Ralph Del Gais owned 100 shares as the sole shareholder. The remaining 100 shares were unissued.

On July 31, 2015, 10 shares of stock were issued to Glenn Lane, leaving 90 shares of stock unissued. Ralph Del Gais continued to own 100 shares.

The purpose of this application is to seek approval for a stock transfer from Ralph Del Gais to Glenn Lane. Upon approval of this stock transfer, Glenn Lane will own 110 shares and 90 shares will remain unissued.

The Board of Directors of Westchester Family Care, Inc. will be comprised of the following individuals:

Glenn Lane - President  
Administrator, Westchester Family Care, Inc.

Lisa Ingrassia - Director  
Compliance Executive/Director,  
Bank of America/Merrill Lynch

Affiliation:  
Westchester Family Care, Inc.

Affiliation:  
Westchester Family Care, 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 1 Depot Plaza, Mamaroneck, New York 10543:

Westchester	Rockland	Putnam	Dutchess
Nassau	Suffolk	Bronx	

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Home Health Aide
Homemaker	Housekeeper	Nutrition
Medical Social Services		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Westchester Family Care, Inc. (2015-present)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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: CenterCare Home Care Agency, LLC  
Address: Little Neck  
County: Queens  
Structure: Limited Liability Company  
Application Number: 172039

Description of Project:

CenterCare Home Care Agency, 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.

CenterCare Home Care Agency, LLC was previously approved by the Public Health and Health Planning Council at its August 6, 2015 meeting and subsequently licensed as 2470L001 effective July 28, 2016. At that time the membership was as follows: Zhuowen Huang – 33%, Chao Li – 33% and Tsz Chun Cheung – 34%.

This application seeks Public Health and Health Planning Council approval for a 100% change in ownership through a Membership Interest Transfer Agreement.

The following individual is the proposed sole member of CenterCare Home Care Agency, LLC:

Dan He, RN – 100% membership  
Administrator, CenterCare Home Care Agency  
Supervisor, VillageCare

A search of the individual and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A review of the operations of CenterCare Home Care Agency, LLC (July 2016 – 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 5743 263rd Street, Little Neck, New York 11362:

Bronx	Kings	Nassau
New York	Queens	Richmond

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	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 26, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Gurwin Home Care Agency, Inc.  
 Address: Farmingdale  
 County: Nassau  
 Structure: Not-For-Profit Corporation  
 Application Number: 172050

Description of Project:

Gurwin Home Care Agency, 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.

Gurwin Home Care Agency, Inc. was previously approved by the Public Health Council at its September 27, 1996 meeting and subsequently assigned license numbers 9849L001 and 9849L002 effective August 28, 1997 and April 15, 1999 respectively. The location associated with license number 9849L001 was subsequently closed on October 15, 2014. The applicant is requesting approval to establish Gurwin Healthcare System, Inc. as the sole corporate member of Gurwin Home Care Agency, Inc.

The Board of Directors of **Gurwin Home Care Agency, Inc.** is comprised of the following individuals:

Alfred W. Levy, President Previously approved by PHC	Rosalyn C. Gordon, RN Previously approved by PHC
Jolene Boden, LCSW Long Island District Director, Jewish Association Serving the Aging	Roberta G. Monat, LCSW, Treasurer Retired - November 1, 2005

The Board of Directors of **Gurwin Healthcare System, Inc.** is comprised of the following individuals:

Bert E. Brodsky, Co-Chairman Chairman, Sandata Technologies  <u>Affiliations:</u> The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing & Rehabilitation Center (SNF & ADHCP, 12/2003-present) The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing and Rehabilitation Center (LTHHCP, 12/2003-8/14/17) The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Certified Home Health Agency (CHHA, 09/2014-present) Gurwin Jewish – Fay J. Lindner Residences, Inc. (ALP & EHP, 05/1997-present)	Lawrence J. Simon, Co-Chairman Retired - 2009  <u>Affiliations:</u> The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing & Rehabilitation Center (SNF & ADHCP, 05/1993-present) The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing and Rehabilitation Center (LTHHCP, 05/1993-8/14/17) The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Certified Home Health Agency (CHHA, 09/2014-present) Gurwin Jewish – Fay J. Lindner Residences, Inc. (ALP & EHP, 05/1997-present)

<p>Herbert H. Friedman, NHA, Secretary/Treasurer CEO/Executive Vice President, Gurwin Jewish Nursing &amp; Rehabilitation Center</p> <p><u>Affiliations:</u> The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing &amp; Rehabilitation Center (SNF &amp; ADHCP, 01/1986-present) The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Certified Home Health Agency (CHHA, 09/2014-present) The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing and Rehabilitation Center (LTHHCP, 01/1986-8/14/17) Gurwin Jewish – Fay J. Lindner Residences, Inc. (ALP &amp; EHP, 01/1998-present) Gurwin Home Care Agency, Inc. (LHCSA, 11/1996-present)</p>	
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Alfred W. Levy and Rosalyn C. Gordon, RN are exempt from character and competence reviews due to the fact that they were previously approved by the Public Health Council for this operator.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

A search of the individuals and entities 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 Herbert H. Friedman (NHA license #02405) 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 applicant proposes to continue to serve the residents of the following counties from offices located at 330 Conklin Street, Farmingdale, New York 11735:

Nassau	Suffolk	Queens
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The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech/Language Pathology
Medical Social Services	Nutrition	

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

- Gurwin Home Care Agency, Inc. (LHCSA)
- Gurwin Jewish – Fay J. Lindner Residences, Inc. (ALP & EHP)
- The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Certified Home Health Agency (CHHA)

- The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing and Rehabilitation Center (LTHHCP)
- The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Jewish Nursing & Rehabilitation Center (SNF & ADHCP)

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The 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.

<b>CHHA Quality of Patient Care Star Ratings</b>	
<b>New York Average:</b> 3 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
The Rosalind and Joseph Gurwin Jewish Geriatric Center of Long Island, Inc. d/b/a Gurwin Certified Home Health Agency	3 out of 5 stars

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
 Date: September 26, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: FEGS Home Attendant Services, Inc.  
Address: Bronx  
County: Bronx  
Structure: Not-For-Profit Corporation  
Application Number: 172072

Description of Project:

FEGS Home Attendant Services, 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.

FEGS Home Attendant Services, Inc. was previously approved as a home care services agency by the Public Health Council at its January 20, 1995 meeting and subsequently assigned license number 9659L001 effective November 14, 1995.

On April 19, 2016, Federation Employment and Guidance Service, Inc. d/b/a FEGS, the parent company of FEGS Home Attendant Services, Inc., filed bankruptcy. In this proposal, Home Attendant Service of Hyde Park, Inc., a not-for-profit corporation, proposes to purchase 100% interest and become the sole member of FEGS Home Attendant Services, Inc.

FEGS Home Attendant Services, Inc. and Home Attendant Service of Hyde Park, Inc. entered into a management agreement which was approved by the NYS Department of Health on April 18, 2016.

The Board of Directors of FEGS Home Attendant Services, Inc. will be comprised of the following individuals:

Moshe Silberstein, EMT – Board Member  
Chief Executive Officer, High Point Builders

Affiliation:  
Home Attendant Services of Hyde Park (LHCSA)

Israel Landau – Board Member  
Caregiver, Hamaspik Care

Affiliation:  
Home Attendant Services of Hyde Park (LHCSA)

Jon Karger – Board Member  
Business Consultant, United Staffing  
Owner, Hatzlucha Construction Corp.

Affiliation:  
Home Attendant Services of Hyde Park (LHCSA)

Martin Walter – Board Member  
Owner, Mart Essentials

Affiliation:  
Home Attendant Services of Hyde Park (LHCSA)



Erving Pismichenko – Board Member  
Chief Executive Officer, YesPac Inc.

The Board of Directors of Home Attendant Service of Hyde Park, Inc. is comprised of the following individuals:

Moshe Silberstein, EMT – Board Member  
(disclosed above)

Israel Landau – Board Member  
(disclosed above)

Jon Karger – Board Member  
(disclosed above)

Martin Walter – Board Member  
(disclosed above)

Erving Pismichenko – Board Member  
(disclosed above)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The information provided by the Bureau of Emergency Medical Services indicated that Moshe Silberstein holds an EMT license (# 244943) and there had never been any disciplinary action taken against this individual or his license.

The applicant proposes to serve the residents of the following counties from an office located at 424 East 147<sup>th</sup> Street, Bronx, New York 10455:

Bronx  
Richmond

Kings  
New York

Queens  
Westchester

The applicant proposes to provide the following health care services:

Nursing

Home Health Aide

Personal Care

Physical Therapy

Respiratory Therapy

Occupational Therapy

Speech-Language Pathology

Audiology

Medical Social Services

Nutrition

Homemaker

Housekeeper

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):

Home Attendant Services of Hyde Park (2014-present)  
FEGS Home Attendant Services, Inc.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

#### Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 24, 2017

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Family Home Health Care, Inc.  
Address: Tarrytown  
County: Westchester  
Structure: Not-For-Profit Corporation  
Application Number: 162039

Description of Project:

Family Home Health 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.

Family Home Health Care, Inc. was previously approved by the Public Health Council at its May 20, 1994 meeting and subsequently assigned license numbers 9549L001, 9549L002, 9549L003 effective September 28, 1995, August 15, 2011 and May 13, 2016 respectively. The applicant is requesting approval to establish The Dominican Sisters Family Health Service, Inc. as the sole corporate member of Family Home Health Care, Inc.

The Board of Directors of **Family Home Health Care, Inc.** is comprised of the following individuals:

Mary J. Zagajeski, President/CEO President/CEO, Dominican Sisters Family Health Service, Inc.	William T. Smith, PhD, NHA, LMSW, President/CEO President/CEO, Aging in America, Inc.
Raymond E. Sacher, Vice President First Vice President & Commercial Lending Officer, PCSB Bank	Dr. Mary Alice Higgins Donius, EdD, RN, Secretary Dean, Sacred Hearth University School of Nursing  <u>Affiliations:</u> Danbury/New Milford Hospital (CT, 2015-present)
Joseph T. DeAngelis, Member Retired – April 1, 2008	Thomas K. Bourke, Member Vice President of Wealth Management/Financial Planning Specialist, Morgan Stanley Smith Barney
Joseph L. Bukzin, CPA, Member Senior Manager, KPMG, LLP	Russell J. Carpentieri, Member Managing Director and Partner, OPUS Advisory Group LLC
Darius P. Chafizadeh, Esq., Member Partner, Harris Beach, PLLC	Louis C. Cosentino, CPA, Treasurer Managing Director, KPMG, LLP
Annmarie C. Covone, NHA Chief Financial Officer & Senior Vice President, Catholic Health Care System d/b/a ArchCare  <u>Affiliations:</u> Carmel Richmond Healthcare & Rehabilitation Center (3/2007-present) Ferncliff Nursing Home (3/2007-present) Kateri Residence (03/2007-8/28/2013) Mary Manning Walsh Home (03/2007-present) St. Teresa's Nursing Home (03/2007-2/1/2013) St. Vincent de Paul Residence (03/2007-present)	Jeffrey J. Hodgman, Member Retired - August 19, 2005  <u>Affiliations:</u> Carmel Richmond Healthcare & Rehabilitation Center (7/1/2016-present) Ferncliff Nursing Home (7/1/2016-present) Mary Manning Walsh Home (7/1/2016-present) St. Vincent de Paul Residence (7/1/2016-present) Terence Cardinal Cooke Health Care Center (7/1/2016-present) Empire State Home Care Services, Inc. (7/1/2016-

<p>Terence Cardinal Cooke Health Care Center (03/2007-present)  CMLTC Inc. d/b/a ArchCare Senior Life (03/2007-present)  CSNP, LLC d/b/a ArchCare Advantage (03/2007-present)  Empire State Home Care Services, Inc. (05/2014-10/4/2016)  Vising Nurse Association of Brooklyn (2012-05/2014)  Dominican Sisters Family Health Service, Inc. d/b/a ArchCare at Home (04/2016-present)</p>	<p>10/4/2016)  Dominican Sisters Family Health Service, Inc. d/b/a ArchCare at Home (11/2014-present)</p>
<p>Michael F. Hayes, CPA, Vice Chairman  Partner, KPMG, LLP</p>	<p>Ronald M. Krawczyk, Member  Financial Consultant, Self Employed</p>
<p>Max F. Van Gilder, MD, Chairman  Retired - July 15, 2015</p> <p><u>Affiliation:</u>  Dominican Sisters Family Health Service, Inc. (1978-present)</p>	<p>Scott LaRue, NDTR  President/CEO, ArchCare</p> <p><u>Affiliations:</u>  Catholic Health Care System d/b/a ArchCare (03/2011-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (3/2011-present)  Ferncliff Nursing Home (3/2011-present)  Kateri Residence (3/2011-8/28/2013)  Mary Manning Walsh Home (03/2011-present)  St. Teresa's Nursing Home (03/2011-2/1/2013)  St. Vincent de Paul Residence (03/2011-present)  Terence Cardinal Cooke Health Care Center (03/2011-present)  CMLTC Inc. d/b/a ArchCare Senior Life (03/2011-present)  CSNP, LLC d/b/a ArchCare Advantage (03/2011-present)  Empire State Home Care Services, Inc. (05/2014-10/4/2016)  Vising Nurse Association of Brooklyn (2012-5/1/2014)  Calvary Hospital (3/2011-present)  Providence Rest (2013-present)</p>
<p>Mary E. Randolph, RN, Member  Retired - 2000</p>	<p>Gregory T. Rinn. Esq.  President, Medical Logistics, Inc.  Partner, Poon &amp; Rinn, LLC</p>
<p>Daniel A. Lansen, Member  Partner, Compufit LLC</p>	

The Board of Directors of **The Dominican Sisters Family Health Service, Inc.** is comprised of the following individuals:

<p>Mary J. Zagajeski, President/CEO  Disclosed Above</p>	<p>Raymond E. Sacher, Vice President  Disclosed Above</p>
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Russell J. Carpentieri, Managing Director and Partner Disclosed Above	Max F. Van Gilder, MD, Chairman Disclosed Above
Dr. Mary Alice Higgins Donius, EdD, RN, Secretary Disclosed Above	Joseph T. DeAngelis, Secretary Disclosed Above
Annmarie C. Covone, NHA Disclosed Above	Jeffrey J. Hodgman, Member Disclosed Above
Ronald M. Krawczyk, Member Disclosed Above	Daniel A. Lansen, Member Disclosed Above
Michael F. Hayes, CPA, Vice Chairman Disclosed Above	Louis C. Cosentino, CPA, Treasurer Disclosed Above
Scott LaRue Disclosed Above	Darius P. Chafizadeh, Esq., Member Disclosed Above
Joseph L. Bukzin, CPA Disclosed Above	Gregory T. Rinn, Esq. Disclosed Above

The Board of Directors of **Catholic Health Care System d/b/a Archcare** is comprised of the following individuals:

<p>Francis J. Serbaroli, Esq., Chairman Partner, Greenberg Traurig, LLP</p> <p><u>Affiliations:</u> Carmel Richmond Healthcare &amp; Rehabilitation Center (2008-present) Ferncliff Nursing Home &amp; Rehabilitation Center (2008-present) St. Vincent de Paul Residence (2008-present) Terence Cardinal Cooke Health Care Center (2008-present) Mary Manning Walsh Home (2008-present) CMLTC Inc. d/b/a ArchCare Senior Life (2008-present) CSNP, LLC d/b/a ArchCare Advantage (2008-present) Empire State Home Care Services, Inc. (2014-10/4/2016) St. Teresa's Nursing Home (2008-2013) Kateri Residence (2008-2013)</p>	<p>Karl P. Adler, MD, Vice Chairman Archbishop's Delegate for Healthcare, Archdiocese of New York</p> <p><u>Affiliations:</u> Carmel Richmond Healthcare &amp; Rehabilitation Center (2001-present) Ferncliff Nursing Home &amp; Rehabilitation Center (2001-present) Mary Manning Walsh Home (2001-present) St. Vincent de Paul Residence (2001-present) Terence Cardinal Cooke Health Care Center (2001-present) CSNP, LLC d/b/a ArchCare Advantage (2007-present) CMLTC, Inc. d/b/a ArchCare Senior Life (2007-present) Center for Comprehensive Health Practice (1988-2015) Empire State Home Care Services, Inc. (2012-2014) Kateri Residence (2001-2013) St. Francis Hospital (2001-2013) St. Teresa's Nursing Home (2001-2013) St. Vincent's Hospital (1994-2012)</p>
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<p>Thomas E. Alberto, Trustee Retired – October 31, 2013</p> <p><u>Affiliations:</u> Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present) Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present) Mary Manning Walsh Home (2013-present) St. Vincent de Paul Residence (2008-present) Terence Cardinal Cooke Health Care Center (2008-present) Empire State Home Care Services, Inc. (1990-10/4/2016) Vising Nurse Association of Brooklyn (2008-2014) Kateri Residence (2013) St. Teresa’s Nursing Home (2008-2013)</p>	<p>Charles J. Fahey, Trustee Retired - 2001</p> <p><u>Affiliations:</u> Carmel Richmond Healthcare &amp; Rehabilitation Center (2006-present) Ferncliff Nursing Home &amp; Rehabilitation Center (2006-present) Mary Manning Walsh Home (2006-present) St. Vincent de Paul Residence (2006-present) Terence Cardinal Cooke Health Care Center (2006-present) CSNP, LLC d/b/a ArchCare Advantage (2014-present) Empire State Home Care Services, Inc. (2014-10/4/2016) St. Teresa’s Nursing Home (2006-2013) Kateri Residence (2006-2013) Isabella Geriatric (1998-2010)</p>
<p>John T. Dunlap, Esq., Trustee Partner, Dunnington, Bartholow &amp; Miller</p> <p><u>Affiliations:</u> Carmel Richmond Healthcare &amp; Rehabilitation Center (2006-present) Ferncliff Nursing Home &amp; Rehabilitation Center (2006-present) Mary Manning Walsh Home (2006-present) St. Vincent de Paul Residence (2006-present) Terence Cardinal Cooke Health Care Center (2006-present) Empire State Home Care Services, Inc. (2014-10/4/2016) St. Teresa’s Nursing Home (2006-2013) Kateri Residence (2006-2013)</p>	<p>Eric P. Feldmann, Trustee</p> <p><u>Affiliations:</u> Ferncliff Nursing Home &amp; Rehabilitation Center (2009-present) Mary Manning Walsh Home (2009-present) St. Vincent de Paul Residence (2009-present) Terence Cardinal Cooke Health Care Center (2009-present) St. Teresa’s Nursing Home (2009-2013) Kateri Residence (2009-2013)</p>
<p>Rory A. Kelleher, JD, Trustee Senior Counsel, Sidley Austin LLP</p> <p><u>Affiliations:</u> Carmel Richmond Healthcare &amp; Rehabilitation Center (2008-present) Ferncliff Nursing Home &amp; Rehabilitation Center (2008-present) Mary Manning Walsh Home (2008-present) St. Vincent de Paul Residence (2008-present) Terence Cardinal Cooke Health Care Center (2008-present) Empire State Home Care Services, Inc. (2014-10/4/2016) St. Teresa’s Nursing Home (2008-2013) Kateri Residence (2005-2013)</p>	<p>Paul Travers, Trustee Senior Vice President of Client Services and Administration, Mutual of America</p> <p><u>Affiliations:</u> Carmel Richmond Healthcare &amp; Rehabilitation Center (2014-present) Ferncliff Nursing Home &amp; Rehabilitation Center (2014-present) Mary Manning Walsh Home (2014-present) St. Vincent de Paul Residence (2014-present) Terence Cardinal Cooke Health Care System (2014-present) Empire State Home Care Services, Inc. (2014-10/4/2016)</p>
<p>Gregory A. Mustaciuolo, Trustee Vicar General, Archdiocese of New York</p>	<p>Thomas M. O’Brien, Trustee President &amp; CEO, Sun National Bank</p>

<p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (2009-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (2009-present)  Mary Manning Walsh Home (2009-present)  St. Vincent de Paul Residence (2009-present)  Terence Cardinal Cooke Health Care Center (2009-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  St. Teresa's Nursing Home (2009-2013)  Kateri Residence (2009-2013)  Providence Health Service (2009-2012)</p>	<p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (2005-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (2005-present)  Mary Manning Walsh Home (2005-present)  St. Vincent de Paul Residence (2005-present)  Terence Cardinal Cooke Health Care Center (2005-present)  Empire State Home Care Services, Inc. (2015-10/4/2016)  St. Teresa's Nursing Home (2013)  Kateri Residence (2005-2013)</p>
<p>Kathryn K. Rooney, Esq., Trustee  Attorney, Law Offices of Kathryn K. Rooney</p> <p><u>Affiliations:</u>  Homemakers of Staten Island (1950-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (2001-present)  Mary Manning Walsh Home (2005-present)  St. Vincent de Paul Residence (2005-present)  Terence Cardinal Cooke Health Care Center (2005-present)  Richmond University Medical Center (2007-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  Kateri Residence (2005-2013)</p>	<p>Gerald T. Walsh, MSW, Trustee  Vicar for Clergy, Archdiocese of New York</p> <p><u>Affiliations:</u>  Isabella Geriatric (1999-present)  ArchCare (2013-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present)  Mary Manning Walsh Home (2013-present)  St. Vincent de Paul Residence (2013-present)  Terence Cardinal Cooke Health Care Center (2013-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  Kateri Residence (2013)  St. Teresa's Nursing Home (2013)</p>
<p>Gerald T. Sweeney, Trustee  Chief Information Officer, Healthfirst</p> <p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (2012-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (2012-present)  Mary Manning Walsh Home (2012-present)  St. Vincent de Paul Residence (2012-present)  Terence Cardinal Cooke Health Care Center (2012-present)  CMLTC, Inc. d/b/a ArchCare Senior Life (2012-present)  CSNP, LLC d/b/a ArchCare Advantage (2012-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  St. Teresa's Nursing Home (2012-2013)  Kateri Residence (2012-2013)</p>	<p>Gennaro J. Vasile, PhD, Member  Senior Advisor, Freed-Maxick Healthcare Consulting  Owner and Principal, Integrated Management Solutions</p> <p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present)  Mary Manning Walsh Home (2013-present)  St. Vincent de Paul Residence (2013-present)  Terence Cardinal Cooke Health Care Center (2013-present)  CMLTC, Inc. d/b/a ArchCare Senior Life (2014-present)  CSNP, LLC d/b/a ArchCare Advantage (2014-present)  Kateri Residence (2013)  St. Teresa's Nursing Home (2013)</p>
<p>Thomas J. Fahey, Jr., MD, Member  Senior Vice President of Clinical Program Development, Memorial Sloan Kettering,</p>	<p>Tara A. Cortes, PhD, RN, Member  Executive Director/Professor, The Hartford Institute for Geriatric Nursing at NYU College</p>

<p>Evelyn H. Lauder Breast Cancer Center</p> <p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (2009-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (2009-present)  Mary Manning Walsh Home (2009-present)  St. Vincent de Paul Residence (2009-present)  Terence Cardinal Cooke Health Care Center (2009-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  St. Teresa's Nursing Home (2009-2013)  Kateri Residence (2009-2013)  Calvary Hospital (2000-2012)  Memorial Sloan Kettering Cancer Center (1996-2011)  Cornell University Medical College (2000-2011)</p>	<p>of Nursing</p> <p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present)  Mary Manning Walsh Home (2013-present)  St. Vincent de Paul Residence (2013-present)  Terence Cardinal Cooke Health Care Center (2013-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  Vising Nurse Association of Brooklyn (2009-2014)  Kateri Residence (2013)  St. Teresa's Nursing Home (2013)</p>
<p>Clarion E. Johnson, Member  Retired - March 31, 2013</p> <p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (7/1/2016-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (7/1/2016-present)  Mary Manning Walsh Home (7/1/2016-present)  St. Vincent de Paul Resident (7/1/2016-present)  Terence Cardinal Cooke Health Care Center (7/1/2016-present)  Empire State Home Care Services, Inc. (7/1/2016-10/4/2016)</p>	<p>George B. Irish, Member  Eastern Director, Hearst Foundation</p> <p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (1/1/2017-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (1/1/2017-present)  Mary Manning Walsh Home (1/1/2017-present)  St. Vincent de Paul Resident (1/1/2017-present)  Terence Cardinal Cooke Health Care Center (1/1/2017-present)</p>
<p>Jeffrey J. Hodgman, Member  Disclosed Above</p>	

The Board of Directors of **Providence Health Services** is comprised of the following individuals:

<p>Timothy M. Dolan, PhD, Trustee  Archbishop, Archdiocese of New York</p>	<p>Gerald T. Walsh, MSW, Trustee  Disclosed Above</p>
<p>Gregory A. Mustaciuolo, Trustee  Disclosed Above</p>	<p>William Whiston, Trustee  Chief Financial Officer, Archdiocese of New York</p>

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

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 Certificate of Good Standing has been received for all attorneys.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

The Bureau of Professional Credentialing has indicated that Dr. William T. Smith (NHA license #03132) 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 Annmarie C. Covone (NHA license #04719) 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 applicant proposes to continue to serve the residents of the following counties from offices located at:

65 South Broadway, Tarrytown, New York 10591		
Bronx	Orange	Putnum
Rockland	Suffolk	Westchester
3237 Route 112, Building 6, Medford, New York 11763		
Nassau	Queens	Suffolk
225 West 34 <sup>th</sup> Street, New York, New York 10122		
Kings	New York	Queens
Richmond		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

- Calvary Hospital (Hospital)
- Carmel Richmond Healthcare & Rehabilitation Center (NH)
- Center for Comprehensive Health Practice (D&TC, 2010-2015)
- CMLTC Inc. d/b/a ArchCare Senior Life (MLTC)
- Cornell University Medical College (Hopsital, 2010-2011)
- CSNP, LLC d/b/a ArchCare Advantage (MLTC)
- Danbury/New Milford Hospital (CT, Hopsital, 2015-present)
- Dominican Sisters Family Health Services, Inc. d/b/a ArchCare at Home (CHHA)
- Empire State Home Care Services, Inc. (CHHA, 2009-10/4/16)
- Ferncliff Nursing Home & Rehabilitation Center (NH)
- Homemakers of Staten Island (LHCSA)
- Isabella Geriatric (NH)
- Kateri Residence (NH, 2010-2013)
- Mary Manning Walsh Home (NH)
- Memorial Sloan Kettering Cancer Center (Hospital. 2010-2011)
- Providence Rest (NH & ADHC, 2013-present)
- Richmond University Medical Center (Hospital)
- St. Francis Hospital (Hospital, 2010-2013)
- St. Teresa Nursing Home (NH, 2010-2013)
- St. Vincent de Paul Residence (NH & ADHC)
- Terence Cardinal Cooke Health Care Center (NH)
- Visiting Nurse Association of Brooklyn (CHHA, 2010-2014)



The information provided by the Division of Home and Community Based Services has indicated that **The Dominican Sisters Family Health Services, Inc. d/b/a ArchCare at Home** and **Homemakers of Staten Island and Visiting Nurse Association of Brooklyn** have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Division of Home and Community Based Services has indicated that **Family Home Health Care, Inc.** was fined one thousand dollars (\$1,000) pursuant to a stipulation and order dated July 5, 2017 for failure to submit information and materials relating to the 2015 Licensed Home Care Agency Statistical Report. Deficiencies were found under 10 NYCRR 766.12(c).

The Division of Home and Community Based Services has indicated that **Empire State Home Care Services, Inc.** was fined one thousand dollars (\$1,000) pursuant to a stipulation and order in 2014 for failure to submit information and materials relating to the 2014 Home Care Emergency Response Survey Drill. Deficiencies were found under 10 NYCRR 763.14(a)(3)(vi).

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 Bureau of Quality and Surveillance has indicated that **Ferncliff Nursing Home Company, Inc.** was fined thirty-seven thousand seven hundred dollars (\$37,700) pursuant to a stipulation and order dated February 27, 2013 for complaint surveillance findings of April 27, 2011. Deficiencies were found under 10 NYCRR 415.11(c)(3)(i) Service Meets Professional Standards, 415.12 Quality of Care Highest Practicable Potential, 415.15(b)(2)(ii) Physician Visits Review Notes/Care/Orders, 415.18(c)(2) Drug Regimen Review, Report Irregular, Act On, 415.15(a) Medical Director and 415.26 Administration.

The Bureau of Quality and Surveillance has indicated that **Terrence Cardinal Cooke Health Care Center** was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated September 22, 2015 for complaint surveillance findings of September 9, 2013. Deficiencies were found under 10 NYCRR 415.29(b) Physical Environment Emergency Power.

The Bureau of Quality and Surveillance has indicated that **Mary Manning Walsh Home** was fined six thousand five hundred dollars (\$6,500) pursuant to a stipulation and order dated June 24, 2015 for recertification surveillance findings of January 25, 2013. Deficiencies were found under 10 NYCRR 415.

The Bureau of Quality and Surveillance has indicated that **Terrence Cardinal Cooke Health Care Center** was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated September 26, 2011 for recertification surveillance findings of April 9, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

The Bureau of Quality and Surveillance has indicated that **Carmel Richmond Healthcare & Rehabilitation Center, Isabella Geriatric Center, Kateri Residence, St. Vincent de Paul Residence, Providence Rest, Inc. and St. Teresa Nursing Home** 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 Managed Care Certification and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Office of Managed Care has indicated that **CMLTC Inc. d/b/a ArchCare Senior Life** and **CSNP, LLC d/b/a ArchCare Advantage** have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The state of Connecticut has confirmed that Danbury/New Milford Hospital is currently holding a valid license.

<b>CHHA Quality of Patient Care Star Ratings</b>	
<b>New York Average:</b> 3 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Dominican Sisters Family Health Services, Inc. d/b/a ArchCare at Home	2.5 out of 5 stars

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: September 8, 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 7th day of December, 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>
2062 L	1 Of a Kind Home Health, LLC (Kings, Bronx, Queens, Richmond, New York, and Westchester Counties)
2173 L	Ultracare Family Wellness of NY, Inc. (Queens, New York, Bronx, Richmond, Kings, and Nassau)
2283 L	Just Care, LLC (Queens, New York, Kings, Bronx, Richmond and Nassau Counties)
2347 L	Perfect Gentle Hands Homecare, Inc. (Kings, Bronx, Queens, Nassau, Richmond and New York Counties)

- 2348 L            Bangla Homecare, Inc.  
(Kings, Bronx, Queens, Nassau, Richmond, and New  
York Counties)
- 2350 L            Raices Homecare, Inc.  
(Kings, Bronx, Queens, New York and Richmond  
Counties)
- 2359 L            Micah Eastman LPN, Michael Eastman RN, Oshea  
Eastman RN, PLLC d/b/a MNO Nursing  
(Kings, New York, Queens, Bronx, Richmond and  
Westchester Counties)
- 2370 L            Multicomunity Services at 95 Street Corp.  
d/b/a Agelass Beauty Homecare Agency  
(Kings, Richmond, Queens, Bronx, and New York  
Counties)
- 2409 L            Alpha Home Care Services Inc.  
(Bronx, New York, Kings, Richmond, and Queens  
Counties)
- 2432 L            Rising Sun Medical Staffing, LLC  
(Bronx, Queens, Kings, Richmond, Nassau and New  
York Counties)
- 2433 L            K Kari and Associates Corp  
d/b/a Kari Agency and Staffing Services  
(Nassau, Suffolk and Queens Counties)
- 2457 L            Imperial Home Health Care Inc.  
(Nassau, Queens, Suffolk and Westchester Counties)
- 2463 L            Eula Care Senior Companion Agency, Inc.  
d/b/a Eula Care Manorville  
(Suffolk and Nassau Counties)
- 2495 L            Pentec Infusions of New York, LLC  
(Nassau, Suffolk and Queens Counties)

- 2499 L RCDN Inc.  
d/b/a Griswold Home Care North Orange County, NY
- 2517 L Care Universal Inc.  
(Kings, Bronx, Queens, Richmond, New York and Westchester Counties)
- 2528 L Connected Home Care LLC d/b/a Connected Home Care  
(Westchester, Sullivan, Dutchess, Ulster, Orange, Rockland, Putnam and Bronx Counties)
- 2533 L Bikur Cholim, Inc.  
(Rockland, Sullivan, Putnam, Ulster, Dutchess, Westchester, Orange and Nassau Counties)
- 2541 L Gracious Hands Home Care Agency, LLC  
(Schenectady, Albany, Rensselaer, and Saratoga Counties)
- 2571 L Bright Horizon Prime Care Inc.  
(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
- 2620 L Stellar Home Care Solutions, Inc.  
(Bronx, Kings, New York, Richmond, Queens, and Westchester Counties)
- 2626 L Embrace Independence Elder Care, Inc.  
(Westchester and Rockland Counties)
- 2630 L Safiya Haamid and Amal Qaasem  
d/b/a Happy Home Care  
(Erie County)
- 2639 L Jancare Private Health Services, Inc.  
(Dutchess, Putnam and Westchester Counties)

2645 L VESRETTA Homecare LLC  
(Queens, New York, Kings, Nassau and Bronx  
Counties)

2649 L All Patient Care Home Health Agency Inc.  
(Queens, Richmond, Kings, Bronx, New York and  
Nassau Counties)

152016 JJR Lifecare, Inc. d/b/a Right at Home Eastern L.I.  
(Suffolk County)

152055 Caregiver Pro Homecare, Inc.  
(Bronx, New York, Kings, Richmond, Queens and  
Nassau Counties)

152084 Family Respite Homecare Agency, Inc.  
(Bronx, Richmond, Kings, Westchester, New York and  
Queens Counties)

152242 Hope & Cherish Home Care L.L.C.  
(Bronx, Queens, Kings, Richmond, Nassau and New  
York Counties)

152300 Excel Care, LLC  
(Kings, New York, Queens, Richmond, Bronx and  
Westchester Counties)

152333 Consortium Home Care, Inc.  
(Bronx, Queens, Kings, Richmond, Nassau and New  
York Counties)

152345 Castle Rock Home Care, Inc  
(Richmond, Bronx, New York, Westchester, Kings and  
Queens Counties)

152349 Help At Home Homecare, Inc.  
(New York and Westchester Counties)

152351 East End Home Care, Inc.  
(Suffolk County)

162314 Ingersoll Adult Home, Inc. d/b/a Ingersoll Place  
Licensed Home Care Services Agency  
(Schenectady County)

162039 Family Home Health Care, Inc.  
(Bronx, Rockland, Orange, Suffolk, Putnam,  
Westchester, Kings, Nassau, Queens, New York and  
Richmond Counties)

162235 Big Heart Home Care LLC  
(Bronx, Queens, New York, Richmond, Kings and  
Westchester Counties)

171325 Westchester Family Care, Inc.  
(Westchester, Nassau, Rockland, Suffolk, Putnam,  
Bronx, and Dutchess Counties)

172039 CenterCare Home Care Agency, LLC  
(Bronx, New York, Kings, Queens, Nassau, and  
Richmond Counties)

172050 Gurwin Home Care Agency, Inc.  
(Nassau, Suffolk and Queens Counties)

172072 FECS Home Attendant Services, Inc.  
(Bronx, Richmond, Kings, New York, Queens and  
Westchester Counties)