

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

March 22, 2018

10:15 a.m.

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

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services – Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	172305 C	Faxton-St Lukes Healthcare St Lukes Division (Oneida County)
2.	181016 C	Maimonides Medical Center (Kings County)

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

Acute Care Services - Establish/Construct

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	181031 E	Westchester County Health Care Corporation (Ulster County)
2.	181106 E	Eastern Niagara Hospital – Lockport Division (Niagara County)
3.	171446 E	St. Josephs Hospital Health Center (Onondaga County)

Certified Home Health Agency - Establish/Construct

Exhibit # 3

	<u>Number</u>	<u>Applicant/Facility</u>
1.	172230 E	St. Joseph's Hospital Health Center CHHA (Onondaga County)
2.	172296 E	NYU Winthrop Hospital (Nassau County)

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 4

	<u>Number</u>	<u>Applicant/Facility</u>
1.	172363 E	Flushing Endoscopy Center, LLC (Queens County)

2. 181002 E New York Endoscopy Center
(Westchester County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 5

- | <u>Number</u> | <u>Applicant/Facility</u> |
|---------------|--|
| 1. 172347 B | Southern Tier Women's Health Services
(Broome County) |

Dialysis Services - Establish/Construct

Exhibit # 6

- | <u>Number</u> | <u>Applicant/Facility</u> |
|---------------|--|
| 1. 171380 B | New York Continuum Services, LLC
(Kings County) |
| 2. 172364 E | True North IV DC, LLC
(Queens County) |
| 3. 172411 E | True North V DC, LLC
(Kings County) |

Residential Health Care Facilities - Establish/Construct

Exhibit # 7

- | <u>Number</u> | <u>Applicant/Facility</u> |
|---------------|--|
| 1. 171416 E | Oak Hill Operating Co., LLC d/b/a Oak Hill
Rehabilitation and Nursing Care Center
(Tompkins County) |
| 2. 171417 E | River View Facility Operations, LLC d/b/a River View
Rehabilitation and Nursing Care Center
(Tioga County) |
| 4. 172428 E | Montclair Care Center, Inc. d/b/a Marquis
Rehabilitation & Nursing Center
(Nassau County) |

New LHCSAs – Affiliated with Assisted Living Programs (ALPs)

<u>Number</u>	<u>Applicant/Facility</u>
161033	2600 Niagara Falls Boulevard AL Operating Company, LLC d/b/a Elderwood Home Care at Wheatfield (Niagara County)
162292	571 Main Street Operating Company, LLC d/b/a Elderwood Home Care at Williamsville (Erie County)
162303	Western NY Care Services, LLC d/b/a Western NY Care Services (Cattaraugus, Wyoming, Erie and Niagara Counties)
171385	Home Care for Generations, LLC d/b/a Generations Home Care (Rockland, Westchester, Orange and Dutchess Counties)
172286	Magnolia Home Care Services, LLC d/b/a Magnolia Home Care Services (Rockland, Ulster, Dutchess, Sullivan, Orange, Westchester, Putnam and Bronx Counties)

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>
172062	J&A Health Services, LLC (Kings, Bronx, Queens, Richmond, New York and Nassau Counties)
172310	Caring Professionals Inc. (Queens County)

New LHCSAs

2471 L	Bonjour Home Care NY, LLC (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)
2488 L	Family Residences and Essential Enterprises, Inc. (Nassau, Suffolk and Queens Counties)
161021	Active Home Care, Inc. (Nassau and Queens Counties)
161066	Shelly A. Bacchus d/b/a Believe Again Home Care (Dutchess, Orange, Columbia, Ulster, and Green Counties)

- 161075 Apon Home Care, LLC
(Bronx, Queens, Kings, Westchester and New York
Counties)
- 161084 Age Friendly Homecare Corp.
(Kings, New York, Queens, Bronx, Richmond and
Westchester Counties)
- 161092 Sunny HHC, Inc.
(Kings, New York, Queens, Bronx, Richmond and Nassau
Counties)
- 161125 Joy Professional Home Care Services, LLC
(Nassau and Suffolk Counties)
- 161139 Goodness Home Care Agency, Inc.
(Queens, New York, Kings, Westchester, Richmond and
Bronx Counties)
- 161149 Jameshurst Company Inc. d/b/a Right at Home of Penfield
(Monroe, Wayne and Ontario Counties)
- 161187 Compassionate Home Care Services, Inc.
d/b/a Surplus Health Care Alliance
(Dutchess, Ulster, and Orange Counties)
- 161207 Aging in Place, LTD
(Nassau and Suffolk Counties)
- 161221 N & Y Elder Care, Inc.
(Kings, New York, Queens, Bronx, Richmond and
Westchester Counties)
- 161287 Elder Home Care, LLC d/b/a Compassionate Companion
Homecare
(Nassau, Westchester, Sullivan, Suffolk, Putnam, Ulster,
Queens, Orange and Dutchess Counties)
- 161296 Phoenix Home Care, Inc.
(Kings, Bronx, Queens, New York, Richmond and
Westchester Counties)

D. Certificates

Exhibit # 9

Certificate of Incorporation

Applicant

Cayuga Medical Center Auxiliary, Inc.

Certificate of Amendment of the Articles of Organization

Applicant

Endo Group, LLC

Certificate of Amendment of the Certificate of Incorporation

Applicant

The Martin Luther King, Jr., Health Center, Inc.

Long Island Jewish Medical Center

Plainview Hospital

Southside Hospital

Staten Island University Hospital



Project # 172305-C
Faxton-St Luke's Healthcare St Lukes Division

Program: Hospital
Purpose: Construction

County: Oneida
Acknowledged: November 10, 2017

Executive Summary

Description

Mohawk Valley Health System (MVHS), a not-for-profit corporation, is the active parent and co-operator of the following voluntary not-for-profit, Article 28 acute care operators located in Utica (Oneida County):

- Faxton-St. Luke's Healthcare (FSLH) St Luke's Division (St. Luke's), a 370-bed hospital located at 1656 Champlin Avenue, with 21 open extension clinics and three extension clinics currently under construction;
- St. Elizabeth Medical Center (SEMC), a 201-bed hospital located at 2209 Genesee Street, with eight extension clinics.
- Mohawk Valley Heart Institute (MHVHI), an Article 28 provider approved to provide Cardiac Surgery and Cardiac Catherization services, within the St. Elizabeth Medical Center.

MVHS requests approval to construct a 373-bed hospital to relocate and consolidate the majority of FSLH's and SEMC's inpatient services to a new hospital campus site in Utica. The new campus (to be known as the "Mohawk Valley Health System Campus") will be located in the central business district of Utica on a 25-acre parcel of land generally bordered by State Street, Broadway, Oriskany Street West, and Columbia Street.

This application is the first of two CON applications MVHS will be submitting. The second will be for the merger of FSLH and SEMC and will effectuate the complete consolidation, redesign and modernization of the inpatient and outpatient services currently

provided by FSLH and SEMC, with no anticipated reduction of services. The filing of the merger CON is expected within the next few months, with the completion of the merger sometime in 2021. The Department is advancing the construction CON at this time because CON approval is a requirement of both the local planning approval process as well as the Health Care Facility Transformation Program grant award to MVHS for this CON project to be eligible to receive grant reimbursement for eligible project costs.

Through the to-be-submitted merger application and this construction CON, the surviving single hospital entity is expected to effectuate the following:

- the overall number of inpatient beds will be reduced from 571 to 397 beds, with 373 beds at the newly constructed consolidated hospital campus and 24 Physical Medicine and Rehabilitation (PM&R) beds at the St. Luke's campus;
- the existing St. Luke's campus will downsize to 24 PM&R beds currently located there and provide outpatient services including laboratory services, primary care services, including obstetrics, and surgeon offices for outpatient visits;
- the existing SEMC campus will be converted into an extension clinic for primary care, laboratory services, sleep center services, and outpatient medical services related to cardiac and thoracic-surgeries (non-surgical); and
- the existing 29 extension clinics and three pending extension clinics will continue to operate under the surviving hospital operator.

The consolidated hospital campus will have the following inpatient bed complement:

<u>Category</u>	<u>Beds</u>
Medical/Surgical	240
Coronary Care	8
Intensive Care	42
Maternity	23
Neonatal Intermediate Care	8
Pediatric	8
Psychiatric	<u>44</u>
Total	373

The hospital will have all single-bedded rooms with the exception of 20 semi-private rooms. The intention is to utilize all rooms as singles except during surge times.

The project will be funded, in part, through the *Health Care Facility Transformation Program: Oneida County* (HCFTP: Oneida County) capital grant authorized under Section 2825-b of the Public Health Law. The grant was intended specifically to fund capital projects located in the largest population center of Oneida County that would consolidate multiple licensed health care facilities into an integrated system of acute inpatient, outpatient primary and other health care services. MVHS was awarded \$300 million via this grant to construct the new hospital campus.

The goal is to create an integrated delivery system that will end service fragmentation, obtain operational efficiencies by eliminating service duplication, reduce gaps in care coordination and rebalance healthcare service delivery as care shifts from an inpatient to an outpatient care model focused on population health.

BFA Attachment C is the organizational chart of MVHS, which identifies all affiliated entities of the organization.

OPCHSM Recommendation
Contingent Approval

Need Summary

Through the completion of this project there will be a reduction in the total bed compliment of the two hospitals. Current Occupancy rates are in the 70% range for SEMC and the 40-50% range for St. Luke's and therefore the reduction of 174 beds will help right-size inpatient care in the area. No services are proposed to be eliminated in this application.

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 \$481,371,583 will be met via \$31,371,583 of equity, a \$300,000,000 HCFTP Oneida County grant award, and permanent financing for the remaining \$150,000,000 to be funded via tax-exempt bonds (terms not currently provided) issued through the Dormitory Authority of the State of New York (DASNY). DASNY has provided a letter of interest to provide such financing, and Morgan Stanley has provided a letter of interest to underwrite the bonds. Prior to obtaining the bond financing, MVHS will secure an interim bridge financing loan in the amount of \$150,000,000 comprised of a three-year, interest only draw period followed by a ten-year term at 2.75% above the one-month LIBOR rate (1.7017% as of March 5, 2018) with payments based on a 30-year amortization schedule. Bank of America has provided a letter of interest to provide the bridge financing at the stated terms. This interim financing will be refunded upon issuance of the permanent bond financing solution.

Combined FSLH/SEMC Budget:

	<u>Current Year</u>
Revenues	\$503,199,924
Expenses	<u>\$501,337,743</u>
Net Income	\$1,862,181

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$580,132,699	\$602,592,827
Expenses	<u>\$575,213,089</u>	<u>\$599,016,852</u>
Net Income	\$4,919,610	\$3,575,975

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment from St. Elizabeth Medical Center and Mohawk Valley Health System in the form of Board Resolutions, acceptable to the Department, to decertify all inpatient beds at the current St. Elizabeth Medical Center by time the new facility becomes operational. [PMU]
3. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
4. Submission of documentation confirming final approval of the *Health Care Facility Transformation Program: Oneida County* grant contract, acceptable to Department of Health. [BFA]
5. Submission of an executed bridge loan commitment, acceptable to the Department of Health. (BFA)
6. Submission of the land appraisal value(s) for the site(s) on which the new replacement facility will be built, acceptable to the Department of Health. [BFA]
7. Submission of the executed land purchase agreement(s) for the site(s) on which the new replacement facility will be built, acceptable to the Department of Health. [BFA]
8. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]
9. Submission of Engineering (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]
10. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6). [SEQ]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. On or before the date the new hospital becomes operational, St. Elizabeth Medical Center must decertify all inpatient beds. [PMU]
3. Submission of a bond resolution acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Construction must start on or before January 1, 2019 and construction must be completed by May 1, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 12, 2018

Need Analysis

Background

Mohawk Valley Health System (MVHS), a not-for-profit corporation, is the active parent and co-operator of the following voluntary not-for-profit, Article 28 acute care hospitals located in Utica (Oneida County):

- Faxton-St. Luke's Healthcare (FSLH) St Luke's Division (St. Luke's), a 370-bed facility located at 1656 Champlin Avenue, with 21 open extension clinics and three extension clinics currently under construction; and
- St. Elizabeth Medical Center (SEMC), a 201-bed facility located at 2209 Genesee Street, with eight extension clinics.
- Mohawk Valley Heart Institute (MHVHI), an Article 28 provider approved to provide Cardiac Surgery and Cardiac Catheterization services, within the St. Elizabeth Medical Center.

MVHS requests approval to construct a 373-bed hospital to relocate and consolidate a majority of FSLH's and SEMC's inpatient services to a new hospital campus site in Utica. The new campus (to be known as the "Mohawk Valley Health System Campus") will be located on a 25-acre parcel of land generally bordered by State Street, Broadway, Oriskany Street West, and Columbia Street.

Beds: Existing and Proposed				
	St. Elizabeth	St Luke's	Change	New Facility
Coronary Care		8	0	8
Intensive Care	20	22	0	42
Maternity		26	-3	23
Medical / Surgical	149	238	-147	240
Neonatal Continuing Care		4	-4	
Neonatal Intermediate Care		8	0	8
Pediatric	8	14	-14	8
Physical Medicine and Rehab		**24	0	**24
Psychiatric	24	26	-6	44
Total	201	370	-174	373
<i>** Remaining at St Luke's Campus</i>				

Source: HFIS 2017

In addition to the above inpatient services, both FSLH and SEMC provide a range of outpatient services on their campuses, including primary and medical specialty care, ambulatory surgery, dental, radiology, lithotripsy and therapy services. Additionally, MHVHI is the approved provider for cardiac services, located within SEMC. Those cardiac services will be relocated to the new hospital site and it is anticipated that MHVHI will be dissolved as a result of the merger and consolidation of SEMC and FSLH. Also, the new hospital expects to maintain the following designations which are currently held by either SEMC or St. Luke's: Level III Adult Trauma Center, Level II Perinatal Center, and Stroke Center. While most of the inpatient services and many of the outpatient services currently located at St. Luke's and SEMC will relocate to the new campus, there is no anticipated or requested reduction of services as a part of this project.

Analysis

Historical utilization shows a general downward trend, as depicted below, to levels well under planning optimums. Additionally, Oneida County experienced a 1.6% population decline from 2010 to 2016 and is projected to decline another 2.8% by 2030. The proposed capacity of the new hospital and the projected occupancy take into account these factors.

St Elizabeth Medical Center Occupancy							
	Current Beds	2011	2012	2013	2014	2015	2016
Medical/Surgical	169	81.4%	82.7%	74.7%	71.8%	70.1%	71.2%
Pediatric	8	13.8%	13.0%	12.6%	9.4%	7.2%	4.6%
Obstetric	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
General Psychiatric	24	73.5%	80.6%	77.0%	81.1%	82.1%	77.2%
Chemical Dependence	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
High-Risk Neonates	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total	201	78.8%	81.1%	73.7%	71.5%	70.1%	70.5%

Source: SPARCS

St Luke's Occupancy							
	Current Beds	2011	2012	2013	2014	2015	2016
Med/Surg	292	53.4%	55.4%	53.5%	53.4%	52.5%	46.9%
Pediatric	14	18.9%	31.4%	18.1%	17.1%	12.3%	11.2%
Obstetric	26	64.2%	63.4%	60.9%	58.4%	58.0%	57.6%
General Psychiatric	26	61.5%	58.8%	62.0%	73.0%	75.8%	71.2%
Chemical Dependence	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
High-Risk Neonates	12	16.9%	16.1%	19.7%	17.2%	27.1%	29.5%
Total	370	52.8%	54.6%	52.6%	53.0%	52.8%	48.1%

Source: SPARCS

With a projected overall occupancy of 82%, the proposed facility appears appropriately sized to ensure inpatient health care access without the excess capacity that currently exists.

New Facility Projected Occupancy based on Average Daily Census (ADC)			
	Beds	1st and 3rd Year Expected ADC	Projected Occupancy of New Facility
Med/Surg*	290	249	85.86%
Pediatric	8	3	37.50%
Obstetric	23	13	56.52%
General Psychiatric	44	35	79.55%
High-Risk Neonates	8	5	62.50%
Total Projected Utilization	373	305	81.77%

*includes ICU and CCU

Conclusion

No services are proposed to be eliminated as a result of this application. This project will centralize and consolidate inpatient services and reduce the total bed compliment by 174 certified beds, thus right-sizing the inpatient infrastructure. The consolidation will provide a foundation for the provision of safer, more efficient and cost-effective care to area residents for years.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Upon completion, the applicant will reduce its overall inpatient bed complement by 174 beds (373 beds at the new campus and 24 PM&R beds at the St. Luke's campus). The new hospital campus will be the main site and the current St. Luke's site will become a division of the to-be-merged surviving entity, with 24 PM&R beds and some other outpatient services. The St. Elizabeth site will be converted into an outpatient extension clinic with sleep center services, non-surgical cardiac and thoracic surgery-related outpatient visits, primary care services and a laboratory patient service center will continue to be provided at that site.

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 \$481,371,583, detailed as follows:

Land	\$12,000,000
New Construction	320,000,888
Renovation & Demolition	1,700,000
Site Development	28,650,000
Temporary Utilities	3,010,000
Design Contingency	10,416,336
Construction Contingency	10,311,194
Planning Consultant Fees	740,400
Architect/Engineering Fees	18,730,205
Construction Manager Fees	3,525,500
Other Fees	16,234,512
Movable Equipment	29,275,000
Telecommunications	10,150,000
Financing Costs	3,500,000
Interim Interest Expense	10,500,000
Application Fee	2,000
Processing Fee (adjusted)*	<u>2,625,548</u>
Total Project Cost	\$481,371,583

*The processing fee has been adjusted based on the Article 28 allocated cost for this project as follows:

A. Total Project Cost submitted without Fees	\$478,744,035
B. Less: Non-Article 28 Component	<u>(1,371,583)</u>
C. Processing Fee basis for Article 28 Project Cost	\$477,372,452
D. Adjusted Processing Fee (C X 0.0055)	\$2,625,548

Project costs are based on a 40-month construction period beginning January 1, 2019.

The applicant's financing plan appears as follows:

Cash	\$31,371,583
HCFTP: Oneida County Grant	\$300,000,000
DASNY Tax-Exempt Bonds (terms to be determined)	<u>\$150,000,000</u>
Total Cost	<u>\$481,371,583</u>

DASNY has provided a letter of interest to provide a public offering or private placement as determined by the expected credit rating of the financing, and Morgan Stanley has provided a letter of interest to underwrite the bonds. Prior to obtaining the bond financing, MVHS will secure an interim bridge financing loan in the amount of \$150,000,000 comprised of a three-year, interest only draw period followed by a ten-year term at 2.75% above the one-month LIBOR rate (1.7017% as of March 5, 2018) with payments based on a 30-year amortization schedule. Bank of America has provided a letter of interest to provide the interim bridge financing at the stated terms.

Land

MVHS estimated that it will spend approximately \$12 million to acquire the various parcels of land required for this project. A total of 95 parcels comprise the site for the new hospital. The majority of these parcels have been appraised by a NYS Certified appraisal firm. MVHS has issued purchase offers to the owners of all properties with approved appraisals. The steps necessary to acquire the properties are underway. As a contingency of this CON, MVHS must submit all land appraisals and land purchase agreements for the Department to verify site control and the land cost to include in total project cost (lower of cost or appraised value).

Operating Budget

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

<u>2016 - Current Year</u>	<u>FSLH</u>	<u>SEMC</u>	<u>Combined</u>
Operating Revenue	\$284,755,470	\$216,936,349	\$501,691,819
Operating Expenses	<u>284,984,166</u>	<u>216,353,577</u>	<u>501,337,743</u>
Gain (Loss) from operations	(\$228,696)	\$582,772	\$354,076
Non-Operating Revenue	<u>1,079,311</u>	<u>428,794</u>	<u>1,508,105</u>
Total Net Income (Loss)	\$850,615	\$1,011,566	\$1,862,181

<u>Combined</u>	<u>Current Year</u>	<u>Year One</u>
Operating Revenue	\$501,691,819	\$578,938,274
Operating Expenses	<u>501,337,743</u>	<u>575,213,089</u>
Gain (Loss) from operations	\$354,076	\$3,725,185
Non-Operating Revenue	<u>1,508,105</u>	<u>1,194,425</u>
Total Net Income (Loss)	\$1,862,181	\$4,919,610

The following is noted with respect to the submitted budget:

- Revenue and expense assumptions are based on the experience of the existing services provided within FSLH and SEMC, adjusted for the projected volume and patient utilization. Projected Year One revenue and expense assumptions are based on an estimated annual increase from the current year of 2.2% to reflect market increases in rates and costs. This accounts for approximately \$70.2 million of the increase in revenue and \$69.9 million increase in expenses. The applicant indicated that, based on historical market trends, costs were expected to increase 1% - 4.5% across various expense categories due to inflation. For a more conservative approach, a 2.2% inflation factor was used to align with revenue assumptions. Furthermore, Year One capital costs have increased due to a significantly addition of both interest and depreciation due to the project.
- The number of positions associated with inpatient services is expected to decrease by 184 FTEs overall from the current year due to the operating efficiencies created by the consolidated hospital campus. However, this reduction is anticipated to occur over multiple years through natural attrition and by transferring positions to hospital-operated settings.
- The consolidated campus will allow for the help achieve efficiencies related to limited physician resources.
- Expense reductions are expected due to lower energy consumption, the elimination of redundant workflow and staffing, and lower maintenance costs for materials required by two separate facilities.
- Other cost efficiencies to be achieved under the newly constructed hospital include reduced infection rates (improved infection control), reduced length of stay, improved fall prevention/management and reduced medical errors and readmissions.
- Non-Operating Revenue primarily consists of realized investment gain (loss) and interest income.

Utilization by payor source for the current year and first year is as follows:

<u>Inpatient</u>	<u>Current Year</u>		<u>1st Year</u>	
	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>
Commercial - FFS	695	3%	643	3%
Commercial - MC	4,869	18%	4,703	19%
Medicare - FFS	9,201	34%	8,347	34%
Medicare - MC	4,070	15%	3,728	15%
Medicaid - FFS	1,542	6%	1,252	5%
Medicaid - MC	5,064	19%	4,865	20%
Private Pay	295	1%	276	1%
Charity	406	2%	329	1%
All Other	<u>584</u>	<u>2%</u>	<u>598</u>	<u>2%</u>
Total by Payor	26,726	100%	24,741	100%

<u>Outpatient</u>	<u>Current Year</u>		<u>1st Year</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial - FFS	22,134	3%	22,961	3%
Commercial - MC	154,935	24%	160,720	24%
Medicare - FFS	173,244	27%	179,726	27%
Medicare - MC	85,285	13%	88,532	13%
Medicaid - FFS	19,097	3%	19,818	3%
Medicaid - MC	153,064	24%	158,898	24%
Private Pay	16,585	3%	17,233	3%
Charity	1,163	0%	1,204	0%
All Other	<u>19,383</u>	<u>3%</u>	<u>20,113</u>	<u>3%</u>
Total by Payor	644,890	100%	669,205	100%

Capability and Feasibility

Total project costs of \$481,371,583 will be met via \$31,371,583 of equity, a \$300,000,000 HCFTP: Oneida County grant award, and \$150,000,000 to be financed via tax-exempt bonds (terms not currently provided) issued through the DASNY (letter of interest to provide). Morgan Stanley has provided a letter of interest to underwrite the bonds. Prior to obtaining the bond financing, MVHS will secure an interim bridge financing loan in the amount of \$150,000,000 comprised of a three-year, interest only draw period followed by a ten-year term at 2.75% above the one-month LIBOR rate (1.7017% as of March 5, 2018) with payments based on a 30-year amortization schedule. Bank of America has provided a letter of interest to provide such financing.

The submitted budget indicates an excess of revenues over expenses of \$4,919,610 during the first year of operations after the project is completed. Revenue and expense assumptions are based on the experience of the existing services provided within FSLH and SEMC, adjusted for the projected volume and patient utilization.

BFA Attachment A is the summaries of the 2015-2016 certified financial statements for FSLH and SEMC, which indicates a positive working capital, positive net equity, and an excess of revenues over expenses. BFA Attachment B is the internal financial statements of FSLH and SEMC as of December 31, 2017, which indicates a positive working capital and a positive net equity but shows a net operating loss of \$1,927,138. The operating losses are due to lower-than-projected volumes, mainly in outpatient surgery and the cardiac catheterization laboratory. Also, a higher need for medical specialists and agency staffing in areas for trauma, ICU, emergency, urgent care, orthopedic surgery and pediatric hospitalists resulted in an increase in expense. To reduce the deficit, MVHS has been working on a recruitment strategy for providers to strengthen the medical staff and is anticipating favorable financial results in 2018. MHVS has also contracted with a third party to provide healthcare consulting services to implement an inpatient clinical documentation improvement program and a labor productivity monitoring system. Also, MHVS believes they will be able to achieve significant savings due to economies of scale under a consolidated hospital campus structure, as detailed in the Operating Budget assumptions noted above.

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 for Faxon-St. Luke's Healthcare and St. Elizabeth Medical Center |
| BFA Attachment B | Financial Summary - Internal financial statements FSLH and SEMC as of December 31, 2017 |
| BFA Attachment C | Organizational Chart of Mohawk Valley Health System |



Project # 181016-C

Maimonides Medical Center

Program: Hospital
Purpose: Construction

County: Kings
Acknowledged: January 17, 2018

Executive Summary

Description

Maimonides Medical Center (MMC), a 711-bed, voluntary not-for-profit, Article 28 acute care hospital located at 4802 Tenth Avenue, Brooklyn (Kings County), requests approval to renovate space to expand and modernize the emergency department (ED) and convert 17 medical/surgical beds to neonatal intensive care unit beds. The project will expand and modernize adult and pediatric services of the ED and improve other departments impacted by the ED expansion, including upgrades and renovations to Interventional Cardiology, the Neonatal Intensive Care Unit (NICU) and Surgical Services. The project proposes to expand the NICU bed capacity from 31 beds to 48 beds by adding 7 neonatal intensive care beds, 7 neonatal intermediate care beds, and 3 neonatal continuing care beds. Concurrent with the NICU expansion is a 17-bed decertification of medical/surgical beds, resulting in no net new inpatient beds.

The project consists of new construction, renovation and the addition and replacement of equipment at the main hospital campus.

Components of the project are as follows:

- ED: MMC is undergoing significant growth in its ED service, particularly among the adult and geriatric population. The existing ED, which comprises approximately 29,390 square feet and 78 treatment stations, is undersized and experiencing overcrowding and a lack of resources that negatively impacts patient care. Upon completion, the ED will be approximately 63,660 square feet and feature 128 treatment stations.

- Cath Lab: The existing three-room Cath Lab is too small to support the needs of Interventional Cardiology, and the rooms do not meet current minimum design standards requiring patients to be prepped and recovered on a different floor via elevator transfer pre- and post-procedure. The Cath Lab Suite will be relocated to new and expanded space to consolidate and right-size the program to accommodate for patients with varying levels of complex procedures and recovery times. There is no request to increase the number of Cath Labs in this CON application.
- NICU: The current 31-bed NICU is often at full capacity, with overflow into other available intensive care space resulting in bifurcated inefficient service to these critical patients. The project will create 17 additional NICU beds in 7,200 square feet of space adjacent to the existing 31-bed NICU. To maintain current overall bed certification at MMC, 17 medical/surgical beds will be decertified.
- Post Anesthesia Care Unit (PACU): The existing 4th floor 13-OR Surgical Suite has an inadequately sized PACU and clinical support spaces. To support modernization of Surgical Services, the area housing the to-be-relocated 14-bed Cardio-Thoracic ICU (approved to relocate under CON 172105) will be fully renovated to provide a new 5,900-square-foot, 20-bed PACU.
- Clinical Labs: A reconfiguration of Clinical Labs is planned as part of a broader affiliation with a large regional healthcare system. As part of that reconfiguration, a Rapid Response Anatomic Pathology Lab

will be constructed contiguous to the Surgical Suite in 3,700 square feet of space on the 4th floor. That Lab will have the full range of Anatomic Pathology functions to support Maimonides' surgical program.

MMC serves as a tertiary care hub and safety net provider to Brooklyn's residents with 80% of its patient volume drawn from Medicaid and Medicare enrollees. This project is part of MMC's Master Facilities Plan for capital improvements to better serve Brooklyn's population.

OPCHSM Recommendation Contingent Approval

Need Summary

Expansion of the ED, PACU, NICU and Cath Lab Suite are needed due to high utilization. This project addresses current overcrowding and is designed for continued growth.

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 \$116,709,930 will be met through \$11,709,930 equity from operations and the issuance of tax-exempt/taxable revenue bonds for \$105,000,000 at 6% interest with a 30-year term. The financing may be secured on a stand-alone basis with MMC as sole obligor or with credit enhancement provided by the Federal Housing Authority (FHA). Merrill Lynch has provided a financing letter of interest for the underwriting of the revenue bond financing. The proposed enterprise budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,099,548,780	\$1,099,548,780
Expenses	<u>\$1,044,941,312</u>	<u>\$1,044,777,154</u>
Gain/(Loss)	\$54,607,468	\$54,771,626

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution, acceptable to the Department. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed bond underwriting agreement, acceptable to the Department. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before January 1, 2019 and construction must be completed by March 31, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 12, 2018

Need Analysis

Proposal

Maimonides Medical Center (MMC), an existing not-for-profit 711-bed acute care facility located at 4802 Tenth Avenue in Brooklyn (Kings County), requests approval for capital improvements consisting of the expansion and modernization of the adult and pediatric services of the Emergency Department (ED), as well as upgrades and renovations to Interventional Cardiology, Neonatal Intensive Care Unit (NICU) Surgical Services, and a new clinical lab. Additionally, MMC seeks to convert 17 medical/surgical beds to neonatal beds, thus increasing the NICU capacity from 31 beds to 48 beds, as shown in Table 1.

Background

Table 1: Beds			
Bed Type	Current	Change	Proposed
Coronary Care	10		10
Intensive Care	40		40
Maternity	69		69
Medical / Surgical	448	-17	431
Neonatal Continuing Care	9	3	12
Neonatal Intensive Care	10	7	17
Neonatal Intermediate Care	12	7	19
Pediatric	32		32
Pediatric ICU	11		11
Psychiatric	70		70
Total	711	0	711

Source: HFIS 2018

Table 2: Services	
Ambulance	Lithotripsy
Ambulatory Surgery - Multi Specialty	Medical Services - Primary Care
Audiology O/P	Medical Services - Other Medical Specialties
Cardiac Catheterization - Adult Diagnostic	Medical Social Services
Cardiac Catheterization - Electrophysiology (EP)	Nuclear Medicine - Diagnostic
Cardiac Catheterization - (PCI)	Nuclear Medicine - Therapeutic
Cardiac Surgery - Adult	Radiology - Diagnostic
Certified Mental Health Services O/P	Regional Perinatal Center (RPC)
Chemical Dependence - Rehabilitation O/P	Renal Dialysis - Acute
Clinic Part Time Services	Stroke Center
Clinical Laboratory Service	Therapy - Occupational O/P
Dental O/P	Therapy - Physical O/P
Emergency Department	Therapy - Speech Language Pathology

Source: HFIS 2018

The existing ED, with 78 treatment stations, is undersized relative to current healthcare standards and is experiencing overcrowding and a lack of appropriate resources that can negatively impact patient care. Upon completion of the Project, the ED will feature 128 treatment stations.

Table 3: ED Visits	
Year	Visits
2016	107,869
2015	91,775
2014	104,926
2013	108,803
2012	115,542

Source: SPARCS

The existing three-room Cath Lab Suite is undersized to support the growing needs of the interventional Cardiology program. Existing rooms do not meet current minimum design standards, and support functions are inadequate in size. The Cath Lab Suite will be relocated to significantly expanded space on Gellman-OS.

The existing 31-bed NICU is frequently operating at full capacity and often overflows into available space resulting in a bifurcated and inefficient service for these critical patients. A total of 17 NICU beds will be created and located in 7,200 square feet of space adjacent to the existing 31-bed NICU. To maintain the current overall bed certification at MMC, 17 medical/surgical beds will be converted to NICU certification.

A Rapid Response Anatomic Pathology Lab will be constructed contiguous to the Surgical Suite in 3,700 square feet of space on the 4th floor. That Lab will have the full range of Anatomic Pathology functions to support Maimonides' surgical program.

The PACU will be relocated and modernized to support the surgical services.

Conclusion

The improvements being made will help ease overcrowding, quality, and patient throughput while the facility is brought up to current operating standards.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

It is anticipated that the project will result in an additional 150.6 FTEs in the first year and remain at that level through the third year of operation.

Presently, Maimonides Medical Center's existing emergency department and Cath Lab Suite are undersized and do not meet current minimum design standards which may negatively impact patient care. Further, MMC reported that, for 2012 through 2017, it has consistently exceeded 100% occupancy for NICU beds.

MMC has developed a Facilities Master Plan and the proposed capital improvements (consisting of new construction, renovation and equipment) are an effort to provide significant enhancements to the main hospital campus that will modernize and "right-size" areas, improve overall workflow and prevent overcrowding— all of which should ultimately improve the patient/family experience.

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 \$116,709,930, are as follows:

New Construction	\$7,684,078
Renovation & Demolition	\$40,396,192
Site Development	\$759,480
Asbestos Abatement or Removal	\$2,019,810
Design Contingency	\$5,085,956
Construction Contingency	\$4,701,752
Planning Consultant Fees	\$1,172,549
Architect/Engineering Fees	\$4,690,197
Construction Manager Fees	\$1,516,182
Other Fees	\$413,465
Movable Equipment	\$21,044,110
Telecommunications	\$2,960,776
Financing Costs	\$2,100,000
Interim Interest Expense	\$21,525,000
CON Application Fee	\$2,000
CON Processing Fee	<u>\$638,383</u>
Total Project Cost	\$116,709,930

Project costs are based on a start date of January 1, 2019, with a 41-month construction period.

The applicant's financing plan appears as follows:

Cash	\$11,709,930
Revenue Bonds (6% interest, 30-year term)	<u>\$105,000,000</u>
Total	\$116,709,930

The cash contribution will be provided from MMC's current operations. BFA Attachment A is MMC's 2015-2016 certified and internal financial statements as of November 30, 2017, which show the availability of sufficient resources to cover both the project costs and the requisite working capital requirements.

Merrill Lynch provided a letter of interest for the underwriting of the tax-exempt/taxable revenue bond financing. MMC's preferred method of financing is a non-FHA public or private bond offering issued by Build NYC Resource Corporation (Build NYC). Build NYC, a local development corporation incorporated under New York Not-for-Profit Corporation Law, is administered by New York City Economic Development Corporation (NYCEDC) and assists qualified projects in obtaining tax-exempt and taxable bond financing. Due to the complexity of the FHA credit enhancement process, and since an FHA insured loan is not the preferred financing instrument for this project, the facility has only completed step one (initial self-assessment stage) of the eleven-step process. MMC has committed to keep the Department informed as the financing plan proceeds.

Operating Budget

The applicant submitted their first and third year operating budgets, in 2018 dollars, summarized below:

Inpatient	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>/Disch.</u>	<u>Total</u>	<u>/Disch.</u>	<u>Total</u>	<u>/Disch.</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$21,335	\$64,152,851	\$21,334	\$67,907,723	\$21,334	\$67,907,723
Medicaid MC	\$10,231	\$206,688,525	\$10,231	\$220,274,749	\$10,231	\$220,274,749
Medicare FFS	\$26,432	\$247,297,308	\$26,432	\$264,795,259	\$26,432	\$264,795,259
Medicare MC	\$21,692	\$85,424,740	\$21,932	\$92,815,815	\$21,932	\$92,815,815
Comm. FFS	\$20,327	\$58,115,038	\$20,327	\$61,855,215	\$20,327	\$61,855,215
Comm. MC	\$18,653	\$78,751,660	\$18,653	\$83,899,802	\$18,653	\$83,899,802
Private Pay/Other	\$10,665	\$7,220,259	\$11,177	\$8,460,759	\$11,177	\$8,460,759
Other		(\$800,640)		(\$800,640)		(\$800,640)
Other Op Rev		<u>\$95,512,584</u>		<u>\$95,512,584</u>		<u>\$95,512,584</u>
Total Revenue		\$842,362,325		\$894,721,266		\$894,721,266
<u>Expenses</u>						
Operating	\$13,078	\$578,866,606	\$12,462	\$588,971,606	\$12,462	\$588,971,606
Capital	<u>\$789</u>	<u>\$34,911,900</u>	<u>\$900</u>	<u>\$42,549,066</u>	<u>\$898</u>	<u>\$42,450,571</u>
Total Expenses	\$13,867	\$613,778,506	\$13,362	\$631,520,672	\$13,360	\$631,422,177
Net Income		<u>\$228,583,819</u>		<u>\$263,200,594</u>		<u>\$263,299,089</u>
Discharges		44,261		47,261		47,261

Other Op Revenue of \$95.512 Million is comprised of the following:

<u>Type</u>	<u>Amount</u>
Loan Forgiveness	\$24,000,000
Government grant income	\$5,926,000
Electronic health records incentive payments	\$155,000
Real estate rental	\$5,895,000
Investment income	\$3,179,000
Special funds income	\$9,270,000
Parking lot income	\$1,234,000
Grants and contribution	\$5,023,000
Insurance company surplus distribution	\$7,855,000
Other	\$8,918,000
Change in captive insurance program	\$20,720,000
Net change in unrealized gains and losses	(\$539,000)
Grants for capital asset acquisitions	<u>\$3,876,000</u>
Total	<u>\$95,512,000</u>

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

Medicaid FFS	6.73%
Medicaid MC	45.56%
Medicare FFS	21.20%
Medicare MC	8.95%
Commercial FFS	6.44%
Commercial MC	9.52%
Private Pay	<u>1.60%</u>
Total	100.00%

Outpatient	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues						
Medicaid FFS	\$393	\$9,485,965	\$393	\$10,008,802	\$393	\$10,008,802
Medicaid MC	\$249	\$56,842,815	\$249	\$59,976,806	\$249	\$59,976,806
Medicare FFS	\$497	\$36,648,803	\$497	\$38,669,564	\$497	\$38,669,564
Medicare MC	\$508	\$18,104,499	\$508	\$19,102,449	\$508	\$19,102,449
Comm. FFS	\$981	\$42,233,432	\$981	\$44,562,397	\$981	\$44,562,397
Comm. MC	\$1,257	\$31,754,606	\$1,257	\$33,504,782	\$1,257	\$33,504,782
Private Pay	\$27	\$366,440	\$28	\$404,131	\$28	\$404,131
Other		<u>(\$1,401,417)</u>		<u>(\$1,401,417)</u>		<u>(\$1,401,417)</u>
Total Revenue		\$194,035,143		\$204,827,514		\$204,827,514
Expenses						
Operating	\$838	\$374,717,246	\$824	\$388,951,246	\$824	\$388,951,246
Capital	\$43	\$19,377,950	\$52	\$24,469,394	\$52	\$24,403,731
Total Expenses	\$881	\$394,095,196	\$876	\$413,420,640	\$876	\$413,354,977
Net Income		<u>(\$200,060,053)</u>		<u>(\$208,593,126)</u>		<u>(\$208,527,463)</u>
Visits		447,320		471,983		471,983

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

Medicaid FFS	5.40%
Medicaid MC	51.10%
Medicare FFS	16.49%
Medicare MC	7.96%
Commercial FFS	9.62%
Commercial MC	5.65%
Private Pay/Other	3.09%
Charity Care	.70%
Total	100.00%

Enterprise Budget	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
	<u>Total</u>	<u>Total</u>	<u>Total</u>
Revenues			
Inpatient	\$842,362,325	\$894,721,266	\$894,721,266
Outpatient	\$194,035,143	\$204,827,514	\$204,827,514
Total Revenues	\$1,036,397,468	\$1,099,548,780	\$1,099,548,780
Expenses			
Inpatient	\$613,778,506	\$631,520,672	\$631,422,177
Outpatient	\$394,095,196	\$413,420,640	\$413,354,977
Total Expenses	\$1,007,873,702	\$1,044,941,312	\$1,044,777,154
Net Income	\$28,523,766	\$54,607,468	\$54,771,626
Discharges	44,261	47,261	47,261
Visits	447,320	471,983	471,983

The following is noted with respect to the submitted budget:

- Revenue assumptions for both inpatient and outpatient services are based on reimbursement methodologies for government payors (Medicaid and Medicare) and negotiations with commercial payors
- Utilization projections for outpatient are based on trending of ED utilization at MMC, the current ED overcrowding, the rapid growth of the King County population, and the overall issues that the other

county hospitals are facing with providing needed health care services. Incremental inpatient discharges are conservatively estimated at 12% of patients that presented to the ED that are admitted to the hospital. Over the last five years, the ED admission rate has been 25%.

- Expense assumptions are based upon the current operations and incremental expenses associated with the ED project equivalent to \$37 million annually. The incremental expenses are broken down as follows: 41.1% salaries, wages and benefits; 12.3% supplies; 11.7% other direct expenses; 0.6% utilities; and 34.3% capital costs of depreciation and interest.
- Breakeven based on the projected utilization is approximately 58.70% or 46,022 inpatient discharges and 461,797 outpatient visits in years one and three.

The budgets are reasonable.

Capability and Feasibility

Total project cost of \$116,709,930 will be satisfied with \$11,709,930 in equity from MMC's operations with the remainder from a \$105,000,000 tax exempt/taxable revenue bond issue at the above stated terms. BFA Attachment A is MMC's 2015-2016 certified and their internal financial statements as of November 30, 2017, which show significant liquid assets to cover the equity contribution for this application.

Working capital requirements are estimated at \$6,150,576 based on two months of incremental third year expenses. The applicant will satisfy this requirement entirely by equity from MMC's operations. As shown on BFA Attachment A, the facility has significant liquid assets to cover the working capital needs.

MMC projects a net gain of \$54,607,468 in the first year and \$54,771,626 in the third year of operation. Revenues for Medicare and Medicaid are based on reimbursement methodologies for government payors and Commercial and Private Pay are based negotiations with commercial payors. The budgets are reasonable.

As shown on BFA Attachment A, the entity achieved an average positive working capital position, an average positive net asset position and generated an average net income from operations of \$9,673,000 for the period 2015-2016, and a net loss of \$9,074,476 for the period ending November 30, 2017. The loss in 2017 was due, in part, to increased labor costs and higher costs for supplies, drugs and other expenses that were trending at a multiple of the rate of inflation (2.2% -3.5%). A slower than anticipated ramp-up in Trauma Center services and a delay in bringing seven additional physician practices on-line impacted patient volume resulting in lower than expected revenues. Also, the consolidated financial statements include the accounts of the Medical Center and M2 Medical Community Practice, P.C, a professional physician practice formed in 2013 to facilitate alignment between the Medical Center and the physicians. The physician practice had a \$11.3 million loss from operations in 2017 that contributed to the overall loss. The facility has been dealing with significant revenue generating issues due to lack of space in the facility. This project intends to rectify the lack of space issues and allow the facility to generate an incremental net income of \$26 million dollars for both Years One and Three. In recognition of the financial challenges, MMC's Board approved and implemented a \$31 million reduction in force (RIF) in November 2017, as part of a 2018 Break-even budget that will allow the facility to generate an overall positive net income position for both years one and three upon completion of the project.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A 2015-2016 Certified and 1/1/2017-11/30/2017 internal financial statements of Maimonides Medical Center



**Project # 181031-E
Westchester County Health Care Corporation**

**Program: Hospital
Purpose: Establishment**

**County: Ulster
Acknowledged: January 22, 2018**

Executive Summary

Description

Westchester County Health Care Corporation (WCHCC) d/b/a Westchester Medical Center (WMC) and d/b/a Westchester Medical Center Health Network (WMCHN), a New York State (NYS) public benefit corporation established in 1997, requests approval to be established as the active parent and co-operator of HealthAlliance, Inc. d/b/a HealthAlliance of the Hudson Valley (HealthAlliance), a NYS not-for-profit corporation, and the active grand-parent and co-operator of the following voluntary not-for-profit Article 28 hospitals:

- HealthAlliance Hospital Broadway Campus (HA Broadway), a 150-bed acute care hospital located at 396 Broadway, Kingston (Ulster County);
- HealthAlliance Hospital Mary’s Avenue Campus (HA Mary’s Avenue), a 150-bed acute care hospital located at 105 Mary’s Avenue, Kingston (Ulster County); and
- Margaretville Memorial Hospital (MMH), a 15-bed Critical Access Hospital located at 42084 State Highway 28, Margaretville (Delaware County).

HealthAlliance is currently established as the active parent and co-operator of the above three hospitals and will remain so after CON approval. Note, the above three hospitals may sometimes be referred to as “HealthAlliance Subsidiary Hospitals.”

WMC Health Network-Ulster, Inc. (WMC Ulster), a wholly-owned subsidiary of WCHCC, was formed in 2016 and became the sole member and passive parent of HealthAlliance. In 2017, WMC Ulster became the active parent of

HealthAlliance and its Subsidiary Hospitals (CON 162396). WCHCC is currently the sole member and passive parent of WMC Ulster. Per this application, HealthAlliance and its Subsidiary Hospitals will be disestablished from WMC Ulster, which will continue as a not-for-profit subsidiary of WCHCC with no power to operate a hospital in NYS.

It is noted that MMH is the sole corporate member of Margaretville Nursing Home, Inc. d/b/a Mountainside Residential Care Center (Mountainside), an 82-bed, not-for-profit, Article 28 residential health care facility adjoining the hospital. WCHCC will not exercise active powers over the skilled nursing facility as it is not part of this application request. There will be no change in the corporate relationship between MMH and Mountainside and MMM will remain the sole corporate member of the nursing home.

Approval of this application will give WCHCC the ability to exercise certain Article 28 rights, powers and authorities over HealthAlliance and the HealthAlliance Subsidiary Hospitals, and the active parent powers under 10 NYCRR 405.1(c), which include:

- Appointment and dismissal of management-level employees of HealthAlliance;
- Negotiation of payor and managed care contracts on behalf of HealthAlliance and the HealthAlliance Subsidiary Hospitals;
- Approval of the annual capital and operating budgets of HealthAlliance and the HealthAlliance Subsidiary Hospitals;

- Approval of the operating policies and procedures of HealthAlliance and the HealthAlliance Subsidiary Hospitals; and
- Approving and initiating the filing of certificate of need applications by the HealthAlliance Subsidiary Hospitals.

The purpose of the transaction is to establish 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 HealthAlliance and WMC. There are no costs associated with this project. There are no projected changes in the staffing, utilization, revenues or expenses for the HealthAlliance Subsidiary Hospitals as a direct result of this project. Upon completion, the HealthAlliance Subsidiary Hospitals will remain separate not-for-profit corporations certified under Article 28, maintaining separate operating certificates. There will be no change in either authorized services or the number or type of beds as a result of this project.

OPCHSM Recommendation Contingent Approval

Need Summary

There are no projected changes in beds, services or utilization as a direct result of this project. There will be no impact on need through approval of this application.

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.

As a public benefit corporation, WCHCC is not subject to character and competence review.

Financial Summary

There are no capital costs and no projected incremental changes in staffing, utilization, operating expense or operating revenue 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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]
3. Submission of a photocopy of the Board Resolution authorizing the Amended Bylaws of the Westchester County Health Care Corporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Health Alliance, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of a Board Resolution authorizing the Amended and Restated Bylaws of HealthAlliance, Inc., acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Certificate of Amendment to the Certificate of Incorporation of HealthAlliance Hospital Broadway Campus, acceptable to the Department. [CSL]
7. Submission of a photocopy of a Board Resolution authorizing the Amended and Restated Bylaws of HealthAlliance Broadway Campus, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of HealthAlliance Hospital Mary's Avenue Campus, acceptable to the Department. [CSL]
9. Submission of a photocopy of a Board Resolution authorizing the Amended and Restated Bylaws of HealthAlliance Hospital Mary's Avenue Campus, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Margaretville Memorial Hospital, acceptable to the Department. [CSL]
11. Submission of a photocopy of a Board Resolution authorizing the Amended and Restated Bylaws of Margaretville Memorial Hospital, acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of WMC Health Network - Ulster, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of a Board Resolution authorizing the Amended and Restated Bylaws of WMC Health Network - Ulster, 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

April 12, 2018

Need Analysis

Proposal

Upon approval of this CON Application, WCHCC will become the active parent of HealthAlliance and the active grand-parent of the HealthAlliance Subsidiary Hospitals, and HealthAlliance will remain the active parent of the HealthAlliance Subsidiary Hospitals.

The purpose of the transaction is to establish 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 HealthAlliance and WMC. There will be no change in beds or services.

Conclusion

There will be no impact on the availability of beds or services as a direct result of this project

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

This transaction aims to establish a coordinated and integrated system that will improve quality, increase access and lower health care costs. There are no projected changes to staffing, number of beds or authorized services at the HealthAlliance Subsidiary Hospitals. Following completion of the project, the hospitals will remain separate not-for-profit corporations certified under Article 28, maintaining separate operating certificates.

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.

On August 28, 2008, the Department issued a Stipulation and Order and fined Westchester Medical Center \$6,000 based on a complaint investigation that concluded on January 15, 2008 involving care given to a child. The child presented three times over a six-day period with headaches and vomiting and it was determined that no work-up for intracranial pathology had been done. The child subsequently died.

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

Capability and Feasibility

There are no issues of capability or feasibility, as there are no project costs, budgets or working capital requirements associated with this application.

BFA Attachment C is the 2016 consolidated financial statements of WCHCC and their internal financial statements as of September 30, 2017. As shown, WCHCC had a positive working capital position and a negative net asset position for the period. In addition, WCHCC had an operating loss of \$11,592,000 for 2016 and achieved operating income of \$21,086,000 as of September 30, 2017. WCHCC's 2016 negative net asset position of \$269,141,000 is primarily the result of a \$237,256,000 adjustment for adopting Governmental Accounting Standard Board (GASB) 75 and a \$59,673,000 adjustment for the addition of HealthAlliance. GASB 75 is the Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions.

BFA Attachment D is the 2016 consolidated financial statements of HealthAlliance, Inc. and their internal financial statements as of October 31, 2017. As shown, for 2016 the entity had a negative working capital position and incurred a \$10,804,681 operating loss before a one-time addition of \$80,180,264 for the separation of HealthAlliance Senior Living Corporation (HASLC). HASLC's separation and the adoption of GASB 75 caused the net assets to go from a negative \$59,673,000 to a positive \$6,202,760. State support from the Vital Access Provider program, the Interim Access Assurance Fund (SFY 2014-15), the Vital Access Provider Assistance Program and the Value Based Payment - Quality Improvement Program (ongoing since SFY 2015-16) has been provided to help HealthAlliance mitigate these operating losses.

In addition, corporate management has developed plans to improve profitability including: restructuring manage care contracts; assisting in recruitment and hiring of physicians; the use of shared staff; and WMC network contracting, which is expected to achieve savings in areas of insurance, legal, risk management, quality and purchasing. Management continues to work with WMC to standardize processes, which are anticipated to lead to efficiencies and continued cost reductions.

It should be noted that the corporation has developed a strategic plan to transition the Mary's Avenue campus into the single inpatient campus and to redevelop the Broadway campus into a "medical village" financed primarily through a \$88,756,441 CRFP grant.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Current Organizational Chart
BFA Attachment B	Proposed Organizational Chart
BFA Attachment C	Financial Summary 2016 consolidate financial statement and the September 30, 2017 internal financial statements of Westchester County Health Care Corporation.
BFA Attachment D	Financial Summary 2016 consolidated certified financial statement and the October 31, 2017 internal financial statements of HealthAlliance, Inc.



**Project # 181106-E
Eastern Niagara Hospital - Lockport Division**

**Program: Hospital
Purpose: Establishment**

**County: Niagara
Acknowledged: February 12, 2018**

Executive Summary

Description

Kaleida Health is a not-for-profit, Article 28 licensed integrated healthcare delivery system located in Buffalo that provides acute care hospital, skilled nursing and home healthcare services primarily to the residents of Western New York. Kaleida requests approval to be established as the active parent and co-operator of Eastern Niagara Hospital (ENH), a 136-bed, voluntary not-for-profit, Article 28 community hospital located at 521 East Avenue, Lockport (Niagara County). Inter-Community Health Systems, Inc. d/b/a Eastern Niagara Health System (ENHS) is the sole corporate member of ENH. As a condition of the proposed Kaleida Health-ENH alignment agreement, ENHS will be dissolved and Kaleida Health will become the sole corporate member of ENH upon approval of this application.

As active parent and co-operator, Kaleida Health will have the ability to exercise Article 28 rights, powers and authorities over ENH and the extension clinics under 10 NYCRR 405.1(c), including:

- Approval and appointment of the board members of ENH;
- Appointment and removal of the chief executive officer of ENH;
- Approval of amendments to the certificates or articles of incorporation and bylaws of ENH;
- Approval of annual operating and capital budgets of ENH;
- Approval of a sale, lease, mortgage or encumbrance of any ENH assets in excess of \$250,000 that has not been authorized by Kaleida-

- approved annual operating or capital budget;
- Approval of any merger, business consolidation, acquisition or joint venture by ENH;
- Approval of any filing at the state or federal level of a bankruptcy petition or the taking of any action regarding insolvency by ENH;
- Approval of any indebtedness in excess of \$250,000 by ENH, excluding vendor debt incurred in the normal course of business, that has not been authorized by Kaleida or included in a Kaleida-approved annual operating or capital budget;
- Allocation of fees to ENH based upon a jointly developed cost allocation formula for actual services rendered;
- Adoption of strategic plans for ENH;
- Approval of ENH management agreements that require government approval or that have not been authorized by member or included in approved budgets;
- Approval of changes in clinical services offered by ENH;
- Approving and initiating the filing of certificate of need applications by ENH;
- Approval of settlements of administrative proceedings or litigation to which ENH is a party; and
- Negotiation of payor and managed care contracts on behalf of ENH.

The applicant states this affiliation is a proactive and strategic plan to ensure the future of health care in Eastern Niagara County by establishing a coordinated integrated healthcare system with the objectives of improving quality, increasing access and lowering the costs of healthcare in the communities served by ENH and Kaleida Health.

Upon completion, the Eastern Niagara Hospital will remain a separate not-for-profit corporation maintaining its discrete Article 28 operating certification.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no change in either authorized services or the number or type of beds as a result of this project.

Program Summary

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

Financial Summary

There are no capital costs and no projected incremental changes in staffing, utilization, operating expense or operating revenue 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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of a photocopy of a Certificate of Amendment of the Certificate of Incorporation of Eastern Niagara Hospital, Inc., which is acceptable to the Department. [CSL]
3. Submission of a photocopy of the By-laws of Kaleida Health, which is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 12, 2018

Need Analysis

Background

Ambulatory Surgery - Multi Specialty	Medical Social Services
Chemical Dependence - Rehabilitation O/P	Nuclear Medicine - Diagnostic
Chemical Dependence - Withdrawal O/P	Nuclear Medicine - Therapeutic
Clinic Part Time Services	Radiology - Diagnostic
Clinical Laboratory Service	Renal Dialysis - Acute
Emergency Department	SAFE Center
Level I Perinatal Care	Therapy - Occupational O/P
Medical Services - Other Medical Specialties	Therapy - Speech Language Pathology
Medical Services - Primary Care	Therapy - Speech Language Pathology O/P

Source: HFIS 2018

Bed Type	Bed Count
Chemical Dependence - Rehabilitation	20
Intensive Care	8
Maternity	12
Medical / Surgical	76
Pediatric	8
Psychiatric	12
Total	136

Source: HFIS 2018

Conclusion

There will be no change in beds or services in Niagara County through completion of this project.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

The goal of this affiliation is to establish a coordinated, integrated healthcare system that results in improved quality, greater access and lower healthcare costs. Eastern Niagara Hospital will remain a separate Article 28 not-for-profit corporation and will maintain its separate operating certificate. The change in governance structure for ENH will not result in any immediate changes in existing services or staffing.

Character and Competence

The Board of Kaleida Health is comprised of the following individuals:

<u>Name</u>	<u>Title/Position</u>
Frank Curci	Chair
George Matthews, M.D.	Vice-Chair
David Milling, M.D.	Secretary
Christopher Ross	Treasurer
Nicholas Aquino, M.D.	
Lorrie Clemo, Ph.D.	
Gary Crosby	
Christopher Green	
Darren King	
Jody Lomeo	
William Maggio	
Brenda McGee	
Mary Lou Russin, R.N.	
Francisco Vasquez, Ph.D.	

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

Ms. McGee disclosed that, during her employ as Senior Vice President of Finance and Administration at St. Bonaventure University, the university was named in an Equal Employment Opportunity Commission (EEOC) claim and a NYS Office of Human Rights action. In 2010, both matters were concluded by settlement.

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 January 13, 2016, the Department issued a Stipulation and Order and \$16,000 fine against Highpointe on Michigan, a Kaleida-operated skilled nursing facility in Buffalo. The enforcement was based on a survey concluded on April 17, 2015 where deficient practice was cited in the following areas: Quality of Care: Accident Free Environment; Staff Treatment of Residents- Investigate/Report Allegations; Quality of Care for Special Needs – Respiratory Care; and Administration.

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, budgets or working capital requirements associated with this application.

BFA Attachment C is the 2016 consolidated financial statements of Kaleida Health and their internal financial statements as of October 31, 2017. As shown, Kaleida Health had a positive working capital position and a positive net asset position for the period. In addition, Kaleida Health had an operating income of \$30,267,000 for 2016 and achieved operating income of \$24,016,000 as of October 31, 2017.

BFA Attachment D is the 2016 consolidated financial statements of Eastern Niagara Hospital, Inc. and their internal financial statements as of November 30, 2017. As shown, for 2016 the entity had a positive working capital position, negative net assets position and incurred a \$1,079,124 operating loss. The facility has a net operating loss of \$471,425 as of November 30, 2017. State support from the Interim Access Assurance Fund (SFY 2014-15) and the Vital Access Provider Assurance Program (SFYs 2015-16 through to the present) has been provided to help Eastern Niagara mitigate these operating losses.

The corporation has developed a strategic plan to strengthen and enhance health care services in Eastern Niagara County. The affiliation will help strengthen ENH's access to specialty services and technology. In addition, the operational and administrative strength of Kaleida Health will lead to efficiencies and continued cost reductions.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Current Organizational Chart of Kaleida Health & Eastern Niagara Hospital, Inc.
BFA Attachment B	Proposed Organizational Chart
BFA Attachment C	2016 consolidate financial statement and the October 31, 2017 internal financial statements of Kaleida Health.
BFA Attachment D	2016 consolidated certified financial statement and the November 30, 2017 internal financial statements of Eastern Niagara Hospital, Inc.



**Project # 171446-E
St. Josephs Hospital Health Center**

**Program: Hospital
Purpose: Establishment**

**County: Onondaga
Acknowledged: August 4, 2017**

Executive Summary

Description

St. Joseph's Hospital Health Center (SJHHC, the Hospital), a 451-bed, voluntary not-for-profit, Article 28 acute care hospital located at 301 Prospect Avenue, Syracuse (Onondaga County) requests approval for St. Joseph's Health, Inc. (SJH), an New York not-for-profit corporation to be established as its active parent/co-operator. SJH is the sole corporate member of the Hospital and the two entities have mirror boards. 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 or SJH affiliates as a result of this project.

As active parent and co-operator, SJH will have the power and authority to make decisions for the Hospital and the active parent powers described in Title 10 NYCRR §405.1(c) including the following:

- Approval of amendments or restatements of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, and recommending the same to Trinity Health for adoption;
- Appointment or dismissal of members of the Corporation's Board of Directors;
- Appointment or dismissal of management level employees, including the President and Chief Executive Officer, and medical staff;
- Approval of operating and capital budgets;
- Adoption or approval of operating policies and procedures;

- Approval of certificate of need applications filed by on or behalf of SJHHC;
- Approval of debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- Approval of contracts for management or for clinical services; and
- Approval of settlements of administrative proceedings or litigation to which the SJHHC is a party, except approval of settlements or litigation that exceed insurance coverage or any applicable self-insurance funds.

The Hospital determined that it is in its best interest to delegate to SJH the authority to exercise active control over key operational areas. SJH's exercise of powers over the Hospital will enable the following:

- Formulation of consistent corporate policies and procedures across the SJH 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.

SJH is also the sole member of St. Joseph's Health Center Properties, Inc., St. Joseph's Hospital Health Center Foundation, Inc., and Embracing Age, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary

This project will not result in any changes to the Hospital's authorized services or the number or types of beds. In addition, there are no projected changes in the utilization, revenues or expenses of the Hospital as a direct result of this project.

Program Summary

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

Financial Summary

There are no project costs, working capital requirements or budgets associated with this application, and no projected incremental change in 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 a photocopy of a Restated Certificate of Incorporation of St. Josephs Health, Inc., or in the alternative, a Certificate of Amendment of the Certificate of Incorporation of St. Josephs Health, Inc., which is acceptable to the department. [CSL]
2. Submission of a photocopy of a Restated Certificate of Incorporation of St. Josephs Hospital Health Center, which is acceptable to the department. [CSL]

Approval conditional upon:

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

Council Action Date

April 12, 2018

Need Analysis

Background

Approval of this application will have no immediate impact on the beds or services or utilization of the hospital or its extension clinics.

Conclusion

This project will not have any impact regarding need.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

There will be no change in the Hospital's authorized services or the number or types of beds as a result of the addition of an active parent/co-operator.

Character and Competence

St. Joseph's Health, Inc. and St. Joseph's Hospital Health Center have "mirror" boards. The Board members are:

Craig Boise

Sr. Helen Marie Burns

James Cotelingam

Santo DiFino, M.D., Treasurer

Leslie Paul Luke, President/CEO

John Marshall

Michael Meath

Gina Myers, PhD, RN

Sr. Kathleen Osbelt

Merriette Pollard

Pawan Rao, M.D., Vice Chair

William Roberts, M.D.

Sr. Joan Marie Steadman

Vincent Sweeney, Chair

Paul Tremont

*Lowell Seifter, Esq., Secretary

**board officer but not a board member*

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

Upon review of the Board of Trustees, the following disclosures were made:

Mr. Boise disclosed that he was a defendant in a lawsuit filed by a terminated employee of the law school at which he previously served as Dean. The suit, which claimed violations of employment and constitutional rights, was dismissed by summary judgment at the U.S. District Court Northern District of Ohio. The case is currently on appeal with the U.S. Court of Appeals 6th Circuit.

Dr. Roberts disclosed one medical malpractice case initiated in May 2011 by a patient of Syracuse urology Associates, PC which alleged a six-month delay in the diagnosis of prostate cancer. The suit was subsequently settled in June 2015 for \$875,000 with Dr. Roberts and his former practice partner each paying half.

Trustees Burns, DiFino, Luke, Marshall, Myers, Pollard, Rao, Roberts, Sweeney and Tremont, as well as Secretary Seifter, each disclosed that the United States Attorney's Office for the Northern District of New York filed a Civil Investigation Demand on June 4, 2016 as a result of a complaint of a qui tam relator. On or about August 1, 2016, the Hospital entered into a Settlement Agreement and accepted responsibility for submitting claims to Medicaid as if one member of the CPEP Professional Staff was present for all Mobile Crisis Outreach visits when, in actuality, it was not the case, and, because the regulation. In addition, the regulations require one member of the CPEP Professional Staff to be present for all Mobile Crisis Outreach visits and the hospital's bills to Medicaid for those visits were not in compliance with the law. The Hospital paid \$3,200,000 in full settlement of this claim.

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 May 27, 2008, the Department issued a Stipulation and Order (S&O) and a \$6,000 fine against St. Joseph's Hospital Health Center based on the findings of an investigation into the occurrence of a wrong sided surgery. A patient suffering from a right hip fracture had multiple fixation screws inserted into his left hip. The error was discovered in the recovery room and the patient underwent a second operation.

On December 14, 2010, the Department issued a S&O and \$11,500 fine against St. Joseph's Hospital Health Center Certified Home Health Agency for violations discovered during a survey completed on July 27, 2009. Deficient Practices were cited in areas relating to Policies and Procedures of Service Delivery; Patient Assessment and Plan of Care; and Governing Authority.

On September 13, 2012, St. Joseph's Hospital Health Center received a Stipulation and Order and \$22,000 fine based on the findings of two complaint investigations. One involved a patient with a known risk for falls who was left unattended in the bathroom and fell. The second involved inadequate neurological assessment of a drug overdose patient.

Additionally, Sr. Steadman disclosed an affiliation with Saint Agnes Medical Center, a hospital located in Fresno, California. The State of California reported three enforcements and the imposition of civil penalties as follows: September 26, 2012- \$50,000; March 24, 2016 - \$4750; and February 2, 2017 - \$11,250. The state reported the enforcements were based on survey findings, none were repetitive violations, and all were resolved.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There is no issues of capability or feasibility as there are no project costs or any expected changes to the budget associated with this application.

BFA Attachment B is the certified financial statements of St. Joseph's Health, Inc. and Subsidiaries for the six-month period ending June 30, 2016, and the 12-month period ending June 30, 2017. As shown, the entity had an average positive working capital position and an average positive net asset position during the period. Also, the entity had an operating income of (\$8,172,000) for the six-month period ending June 30, 2016, and \$3,296,000 for the year ending June 30, 2017. The applicant indicated that the reason for the loss was attributable to a cost structure that was not sustainable for the current volume. Costs, including labor and supplies, were too high and not flexing to the volumes they were seeing during the six-month period. The applicant indicated that they implemented the following steps to improve operations: focused on cost cutting initiatives include reduction of FTE's coupled with an introduction of flex staffing throughout the organization to better align volume with variable costs; supply costs per unit of volume have decreased as more contracts are converted to overall Trinity Health pricing; and the receipt of a \$20M grant from New York State during the 12 months ended June 30, 2017.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

- BFA Attachment A Organizational Chart - Legal Structure of St Joseph's Health Center
- BFA Attachment B Financial Summary- June 30, 2016 certified financial statements and June 30, 2017 certified financial statements of St. Joseph's Health, Inc, and Subsidiaries.



Project # 172230-E
St. Joseph's Hospital Health Center CHHA

Program: Certified Home Health Agency
Purpose: Establishment

County: Onondaga
Acknowledged: October 16, 2017

Executive Summary

Description

St. Joseph's Hospital Health Center (the Hospital) is a voluntary not-for-profit, Article 28 hospital located in Syracuse that operates the St. Joseph's Hospital Health Center Certified Home Health Agency (CHHA), an Article 36 CHHA located in Liverpool (Onondaga County). The Hospital requests approval for St. Joseph's Health, Inc. (SJHI) to be established as the CHHA's parent and Trinity Health Corporation (Trinity Health) to be established as the CHHA's grandparent, in accordance with Article 36 of the New York Public Health Law.

SJHI and the Hospital have mirror boards. SJHI's sole member is Trinity Health, an Indiana non-profit corporation located in Livonia, Michigan. Trinity Health is one of the largest multi-institutional Catholic health care delivery systems in the nation, serving people and communities in 22 states with 93 hospitals and 120 continuing care locations. SJHI and the Hospital became affiliated with Trinity Health when SJHI was formed on October 4, 2014.

This application will not result in any changes to:

- The powers the Hospital/CHHA Program currently reserve to SJHI or Trinity;
- The Hospital's authorized services as an approved CHHA or the location for such services; and

- Utilization, revenues or expenses of the Hospital as a direct result of this project.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

Establishing St. Joseph's Health, Inc as the parent and Trinity Health as the grandparent of the CHHA will not result in any changes to the services or counties being served or to the CHHA's operating certificate.

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 St. Joseph's Health Inc. or Trinity Health Corporation, 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 budgets associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the certificate of incorporation of the applicant, acceptable to the Department. [CSL]
2. Submission of a photocopy of the by-laws of the applicant, acceptable to the Department. [CSL]
3. Submission of a photocopy of the transfer agreement of the applicant, acceptable to the Department. [CSL]
4. Submission of a photocopy of the by-laws and certificate of incorporation of St. Joseph's Hospital Health Center, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the by-laws and certificate of incorporation of Trinity Health, 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

April 12, 2018

Need Analysis

Analysis

Approval of this application will have no immediate impact on the services provided nor will there be any change to the counties served by the CHHA. The services currently offered by St. Joseph's Hospital Health Center CHHA are: Home Health Aide, Medical Social Services, Medical Supplies Equipment and Appliances, Nursing, Nutritional, Therapy – Occupational, Therapy – Physical, Therapy – Respiratory, and Therapy – Speech Language Pathology. The CHHA serves patients in Cortland and Onondaga counties.

Conclusion

St. Joseph's Hospital Health Center CHHA 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 change in the controlling persons of the CHHA program will not result in any changes to the services being provided by the CHHA.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

St. Joseph's Hospital Health Center, a voluntary not-for-profit corporation, currently operates an Article 28 Hospital in Syracuse, New York, and an Article 36 Certified Home Health Agency (CHHA) in Liverpool, New York. The current proposal is to establish St. Joseph's Health, Inc., a New York State voluntary not-for-profit corporation located in Syracuse, New York, and its sole member (parent) corporation Trinity Health Corporation, an Indiana voluntary not-for-profit corporation located in Livonia, Michigan, as the sole member (parent) corporation and grand-member (grandparent) corporation, respectively, of the CHHA.

St. Joseph's Hospital Health Center CHHA is currently approved to serve Cortland and Onondaga Counties, and is authorized for the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional Services, Therapy-Occupational, Therapy-Physical, Therapy-Respiratory, and Therapy-Speech Language Pathology. The CHHA will remain at its sole practice location office at 7246 Janus Park Drive, Liverpool, New York 13088. The legal entity / corporate operator, St. Joseph's Hospital Health Center, will remain at 301 Prospect Avenue, Syracuse, New York 13203.

The corporate organizational structure of St. Joseph's Hospital Health Center, the operator of the CHHA, includes Iroquois Nursing Home, Inc. (RHCF), over which St. Joseph's Hospital Health Center has control. (see Programmatic Attachment A – St. Joseph's Hospital Health Center Organizational Structure). The following providers are therefore affiliated with each board member of St. Joseph's Hospital Health Center named below, and each facility and provider was reviewed:

- St. Joseph's Hospital Health Center (Hospital)
- St. Joseph's North Ambulatory Surgery Center (ASC)
- St. Joseph's Northeast Ambulatory Surgery Center (ASC)
- St. Joseph's Hospital Health Center CHHA (CHHA)
- Iroquois Nursing Home, Inc. (RHCF)
- PACE CNY (PACE)

The corporate organizational structure of St. Joseph's Health, Inc., the proposed member (parent) corporation, includes Franciscan Health Support, Inc. (LHCSA) and Oswego Health Home Care, LLC (CHHA), over which St. Joseph's Health, Inc., has control. (see Programmatic Attachment B – St. Joseph's Health, Inc., Organizational Structure). The following providers are therefore affiliated with each board member of St. Joseph's Health, Inc. named below, and each additional facility and provider was reviewed:

- Oswego Health Home Care, LLC (CHHA)
- Franciscan Health Support, Inc. (LHCSA)

The corporate organizational structure of Trinity Health Corporation, the proposed grand-member (grandparent) corporation, includes additional health care providers located in New York State, over which Trinity Health Corporation has control. (see Programmatic Attachment C, Pages 1 through 4 – Trinity Health Providers / Facilities Within NYS). The following providers are therefore affiliated with each board member of Trinity Health Corporation named below, and each additional facility and provider was reviewed:

St. Peter's Health Partners (Capital Region)

- St. Peter's Hospital (Hospital)
- Albany Memorial Hospital (Hospital)
- Samaritan Hospital (Hospital)
- Seton Health System, Inc., d/b/a St. Mary's Hospital, Troy (Hospital)
- Sunnyview Hospital and Rehabilitation Center (Hospital)
- St. Peter's Ambulatory Surgery Center, LLC (ASC)
- Villa Mary Immaculate, d/b/a St. Peter's Nursing and Rehabilitation Center (RHCF)
- Our Lady of Mercy Life Center (RHCF)
- Seton Health at Schuyler Ridge Residential Health Care (RHCF)
- The James A. Eddy Memorial Geriatric Center, Inc. (RHCF and ACF/EH)
- The Capital Region Geriatric Center, Inc., d/b/a Eddy Village Green (RHCF)
- Beverwyck, Inc., d/b/a Eddy Village Green at Beverwyck (RHCF and ACF/EH)
- Heritage House Nursing Center, Inc., d/b/a Eddy Heritage House Nursing and Rehab Center (RHCF)
- The Community Hospice, Inc. (Hospice)
- Home Aide Service of Eastern New York, Inc., d/b/a Eddy Visiting Nurse and Rehab Association (CHHA)
- Eddy Licensed Home Care Agency, Inc. (LHCSA)
- Senior Care Connection, Inc., d/b/a Eddy SeniorCare (PACE)
- Glen at Highland Meadows, Inc., d/b/a The Terrace at the Glen (ACF/EH)
- The Marjorie Doyle Rockwell Center, Inc. (ACF)
- Glen Eddy, Inc. (ACF/EH)
- Hawthorne Ridge, Inc. (ACF)

Catholic Health System, Inc. (Western New York)

- Sisters of Charity Hospital (Hospital)
- Kenmore Mercy Hospital (Hospital)
- Mount St. Mary's Hospital (Hospital)
- Mercy Hospital of Buffalo (Hospital)
- Mercy Hospital Skilled Nursing Facility (RHCF)
- Father Baker Manor (RHCF)
- McAuley Residence (RHCF)
- McAuley – Seton Home Care Corporation (CHHA)
- Niagara Homemaker Services, Inc. d/b/a Mercy Home Care of Western New York (LHCSA)
- Catholic Health System Program of All-inclusive Care for the Elderly, Inc. (PACE)
- CHS LIFE (PACE)

In addition, the corporate organizational structure of Trinity Health Corporation also includes over 93 hospitals and 120 community care health care facilities and providers located in 21 additional states, over which Trinity Health Corporation has control. The complete list of the affiliated out-of-state health care facilities and providers by state, identifying name, location, and provider type, has been included in the application and a copy is attached (see Programmatic Attachment D, Pages 1 through 6 – Trinity Health Providers / Facilities Outside NYS). All facilities and providers listed in Programmatic Attachment D are therefore affiliated with each board member of Trinity Health Corporation named below, and compliance requests were requested from each state for each facility and provider.

The Board of Directors of both the applicant, St. Joseph's Hospital Health Center, and its proposed member (parent) corporation, St. Joseph's Health, Inc., are identical.

St. Joseph's Health, Inc.

Vincent P. Sweeney, Chairperson, lists current employment as President, Syracuse Office Environments (Workplace Furniture Sales, Service, Installation, and Design).

Pawan K. Rao, MD, Vice-Chairperson, is currently licensed / registered in New York State as a Physician, listing current employment as Vice President, Nephrology Hypertension Associates of CNY, PC (Physicians Practice), and Medical Director, St. Joseph's Dialysis Program (ESRD Dialysis D&TC). Dr. Rao discloses the following additional affiliation:

- St. Joseph's Dialysis Program (ESRD Dialysis D&TC) - 5% ownership interest

Lowell A. Seifter, Esq. Secretary, is currently licensed / registered in New York State as an Attorney, listing current employment as General Counsel, St. Joseph's Hospital Health Center. A current Certificate of Good Standing was submitted with the application.

Santo M. DiFino, MD, Treasurer, is currently licensed / registered in New York State as a Physician, listing current employment as Physician/Oncologist/Hematologist, Hematology / Oncology Associates of CNY (Physicians Practice). Dr. DiFino also discloses he receives a stipend as Chairman of the Department of Medicine at St. Joseph's Hospital Health Center.

Leslie Paul Luke, President and Chief Executive Officer, lists current employment as President and Chief Executive Officer, St. Joseph's Health, Inc.

Craig M. Boise, Esq., is currently licensed, but registration is inactive, in both New York State and Ohio as an Attorney, listing current employment as Dean and Professor of Law, Syracuse University College of Law. Mr. Boise does not currently practice law.

Sister Helen Marie Burns, RSM, is currently Retired, listing former employment as Vice President of Mission Integration, Mount Aloysius College in Pennsylvania.

Benjamin R. Carter, was formerly licensed and registered in Michigan as an Accountant, but no longer practices Accountancy. Mr. Carter lists current employment as Executive Vice President, Chief Financial Officer, and Treasurer, Trinity Health Corporation.

George S. Deptula, Esq., is currently licensed and registered in New York State as an Attorney, and is Retired as Partner and Of Counsel, Hiscock and Barclay, LLP (Law Firm). Mr. Deptula does not currently practice law. Mr. Deptula discloses the following additional affiliations:

- Loretto Health and Rehabilitation Center (RHCF)
- Loretto Oswego Health and Rehabilitation Center (RHCF)
- Auburn Senior Services, Inc. (RHCF)

John D. Marshall, CPA, is currently licensed / registered in New York State as a Certified Public Accountant, who lists current employment as Partner and Senior Counsel, Bonadio & Co., LLP (Accounting, Auditing, Finance Management, Business Advisory, and Tax Planning Firm).

Gina M. Myers, RN, is currently licensed / registered in New York State as a Nurse, who lists current employment as Adjunct Professor, LeMoyne College Department of Nursing and SUNY IT School of Nursing and Health Systems, and Research Consultant and Per Diem RN, St. Joseph's Hospital Health Center. Ms. Myers discloses the following additional affiliation:

- St. Joseph's College of Nursing

Sister Mary A. Obrist, is currently Retired, listing former employment as Vice President for Support Services, St. Joseph's Hospital Health Center.

Merriette C. Pollard, is currently Retired, listing former employment as Executive Director, Dunbar Association, Inc. (Not for Profit Community and Human Service Organization).

William H. Roberts, MD, is currently licensed, but is not registered, in New York State as a Physician. Dr. Roberts is currently Retired, listing former employment as Physician, Syracuse Urology Associates, PC (Physicians Practice). Dr. Roberts no longer practices Medicine.

Paul G. Tremont, lists current employment as President and Chief Executive Officer, SRC, Inc. (Not for Profit Research and Development corporation).

The Board of Directors of the proposed grand-member (grandparent) corporation, Trinity Health Corporation, is as follows:

Trinity Health Corporation

James D. Bentley, PhD, Chairperson, is currently Retired, listing former employment as Senior Vice President for Strategic Policy Planning, American Hospital Association (National Health Care Provider Association).

Mary Catherine Karl, Vice-Chairperson, CPA, is currently licensed / registered in Florida as a Certified Public Accountant. Ms. Karl is currently Retired, and discloses the following additional affiliations:

- BayCare Health System, Clearwater, FL
- St. Anthony's Hospital, St. Petersburg, FL
- Surgical Safety Institute, Tampa, FL

Paul G. Neumann, Esq., Secretary, is currently licensed / registered in Michigan, Colorado, and California as an Attorney, listing current employment as Executive Vice President and General Counsel, Trinity Health Corporation.

Cynthia A. Clemence, Treasurer, CPA, is currently licensed / registered in Michigan as a Certified Public Accountant, listing current employment as Interim Chief Financial Officer and Treasurer, Trinity Health Corporation.

Richard J. Gilfillan, MD, President and Chief Executive Officer, was formerly licensed and registered in New Jersey as a Physician within the previous ten years, and in Minnesota as a Physician prior to that, but is no longer licensed or registered, as he no longer practices Medicine. Dr. Gilfillan lists current employment as President and Chief Executive Officer, Trinity Health Corporation.

Kevin P. Barnett, lists current employment as Senior Investigator, Public Health Institute (Not for Profit Public Health Research, Policy, and Advocacy Organization).

Joseph R. Betancourt, MD, is currently licensed / registered in Massachusetts as a Physician, who lists current employment as Physician and Director of Disparities Solutions Center, Massachusetts General Hospital, and as President, Co-Founder, Owner, Quality Interactions, Inc. (Healthcare Workforce Training). Dr. Betancourt discloses the following additional affiliation:

- Neighborhood Health Plan, Boston, MA (Health Insurance)

Melanie C. Dreher, PhD, RN, is currently licensed, but no longer registered, in New York State, Massachusetts, and Iowa as a Nurse, and is currently licensed and registered in Illinois as a Nurse. Ms. Dreher is currently Retired, listing former employment as Dean, College of Nursing, Rush University Medical Center in Chicago. Ms. Dreher discloses the following additional affiliation:

- Wellmark, Des Moines, IA (Health Insurance)

Mary M. Fanning, RSM, is currently Retired, listing former employment as Assistant Professor of Business and Economics, Notre Dame of Maryland University. Sister Fanning discloses the following additional affiliation:

- Mercy Health Services, Baltimore, MD

George M. Philip, Esq., is currently licensed / registered in New York State as an Attorney. Mr. Philip is currently Retired, listing former employment as President, SUNY University at Albany. Mr. Philip discloses the following additional affiliation:

- St. Peter's Hospital, Albany, NY

Sister Kathleen M. Popko, SP, RN, is currently licensed, but no longer registered, in Massachusetts as a Nurse, listing current employment as President, Sisters of Providence (Religious Order). Sr. Popko discloses the following additional affiliations:

- Sisters of Providence Health System, Springfield, MA
- Saint Joseph of the Pines, Inc., Southern Pines, NC
- Mary's Meadow of Providence Place, Holyoke, MA

David N. Southwell, is currently Retired, listing former employment as Chief Financial Officer, Wellmark Blue Cross and Blue Shield, Iowa.

Stanley T. Urban, is currently Retired, listing former employment as Executive Vice President and Chief Administrative Officer, Catholic Health East (former health system merged into Trinity Health). Mr. Urban discloses the following additional affiliation:

- Adirondack Health, Saranac Lake, NY

Roberta L. Waite, EdD, is currently licensed / registered in Pennsylvania as both a Registered Nurse, and a Cosmetology Teacher, who lists current employment as Assistant Dean and Professor, Drexel University.

Larry Warren, is currently Retired, listing former employment as Interim Chief Executive Officer, Howard University Hospital, and Chief Executive Officer, University of Michigan Hospital.

Linda J. Werthman, RSM, LMSW, is currently licensed / registered in Michigan as a Licensed Masters Social Worker. Sister Werthman is currently Retired from the Institute of the Sisters of Mercy of the Americas, and is also currently employed as Adjunct Associate Professor of Social Work / Field Liaison, University of Detroit Mercy.

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, NYS Unified Court System, Massachusetts Board of Nursing, Massachusetts Board of Registration in Medicine, New Jersey Office of the Attorney General Division of Consumer Affairs, Minnesota Board of Medical Practice, Pennsylvania Board of Nursing, Pennsylvania Board of Cosmetology, Pennsylvania Department of State Licensing Verification, Iowa Board of Nursing, Illinois Board of Nursing, Michigan Department of Licensing and Regulatory Affairs, Michigan Attorney

Discipline Board, State Bar of Michigan, Michigan Board of Social Work, Colorado Supreme Court Office of Attorney Regulation Counsel, State Bar of California, Florida Department of Business and Professional Regulation, and Supreme Court of Ohio Attorney Search 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 all the currently licensed / registered and practicing attorneys listed above.

Facility Compliance / Enforcement

The Board of Directors of the applicant, St. Joseph's Hospital Health Center, have disclosed the following statement regarding St. Joseph's Hospital Health Center with their Schedule 2A disclosure forms:

"The following provides the relevant details pertaining to the affirmative answers to question 6.(11)(c) Have you ever been an officer, director, trustee, member, manager, partner, management employee, or stockholder of a company, including the applicant company, where you occupied any such position or served in any such capacity, wherein the company was the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud?:

With respect to investigations by Federal/State law enforcement agencies on issues related to Medicare or Medicaid fraud (not including self-disclosures): On June 4, 2016, the United States Attorney's office for the Northern District of New York filed a Civil Investigation Demand as a result of the complaint of a qui tam relator. The result of the investigation was that the Hospital entered into a Settlement Agreement with the Federal and State Governments on or about August 1, 2016. In that Settlement, the Hospital accepted responsibility for (1) submitting claims to Medicaid as if one member of the CPEP Professional Staff, as defined in the Regulations, was present for all Mobil Crisis Outreach visits when in actuality that was not the case; and (2) because the Regulations require one member of the CPEP Professional Staff to be present for all Mobil Crisis Outreach visits, the Hospital's bills to Medicaid for those visits were not in compliance with the law. The Hospital paid \$3,200,000 in full settlement of this claim."

In addition, Catholic Health System, Inc. (Western New York), a subsidiary of Trinity Health Corporation, discloses the following statement in a Request for Additional Information response:

"Trinity is one of three members of Catholic Health System, Inc. (Buffalo). Please note that a Corporate Integrity Agreement ("CIA") between Catholic Health System, Inc., Home & Community Based Care ("Catholic Health") and the Office of Inspector General of the Department of Health and Human Services ("OIG") was entered into on October 19, 2017. The CIA applies specifically to two sub-acute rehabilitation facilities, Father Baker Manor and McAuley Residence and is in effect for five years. During these five years, an Independent Review Organization will review billing claims for medical necessity and provide a therapy systems review, reporting results of these reviews to the OIG. In addition to Catholic Health's Compliance Officer and Compliance Committee oversight, key managers will certify annually that their departments are in compliance with federal health care program requirements and the CIA."

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Ambulatory Surgery Centers for the time-period 2011 through 2018, and reports as follows:

An enforcement action was taken against St. Joseph's Hospital Health Center (Hospital) in September 2012, based on a survey completed in August 2010, for an incident relating to a patient's fall. A civil penalty in the amount of \$22,000 was imposed and paid.

An Immediate Jeopardy situation in Infection Control was identified at St. Joseph's Hospital Health Center (Hospital) in September 2013, but was ultimately not enforced.

An enforcement action was taken against St. Peter's Hospital (Hospital) in August 2016, based on a survey completed in January 2016, for an Immediate Jeopardy situation in Food and Dietetic Services. A civil penalty in the amount of \$2000 was imposed and paid.

An Immediate Jeopardy situation in Infection Control was identified at Mercy Hospital of Buffalo (Hospital) in January 2013, but was ultimately not enforced.

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers reported that during the time-period 2011 to 2018, the remaining affiliated Hospitals and Ambulatory Surgery Centers have no histories of enforcement action taken.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID has reviewed the compliance histories of the affiliated Nursing Homes for the time-period 2011 to 2018, and reports as follows:

An enforcement action was taken against Adirondack Medical Center, d/b/a Mercy Living Center (RHCF) in March 2016, based on a survey completed on April 26, 2012, citing Immediate Jeopardy and violations in 10 NYCRR 415.12(i)(1) Quality of Care: Nutritional Status; 415.12 (m)(2) Quality of Care: Medication Errors; 415.13(a)(1)(i-iii) Quality of Care: Sufficient Staff; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance. A state civil penalty in the amount of \$10,000 was imposed and paid. In addition, a federal Civil Monetary Penalty of \$4050 was imposed and paid.

An enforcement action was taken against Loretto Health and Rehabilitation Center (RHCF) in June 2016, based on a survey completed on October 3, 2012, citing Immediate Jeopardy and violations in 10 NYCRR 415.11(c)(3)(i) Resident Assessment: Professional Standards; 415.12(h)(1) Quality of Care: Accidents; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance. A state civil penalty in the amount of \$16,000 was imposed and paid. In addition, a federal Civil Monetary Penalty of \$5000 was imposed and paid.

An enforcement action was taken against Capital Region Geriatric Center, Inc., d/b/a Eddy Village Green (RHCF) in March 2017, based on a survey completed on August 17, 2016, citing a violation in 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential. A state civil penalty in the amount of \$2000 was imposed and paid. In addition, a federal Civil Monetary Penalty of \$3963 was imposed and paid.

An enforcement action was taken against Iroquois Nursing Home, Inc. (RHCF) in January 2017, based on a survey completed on April 13, 2016, citing Immediate Jeopardy and violations in 10 NYCRR 415.4(b) Staff Treatment of Residents: Free from Mistreatment, Neglect, and Misappropriation of Property; 415.4(b) Staff Treatment of Residents: Policy and Procedure Manual Development Regarding Staff Treatment of Residents; 415.4(b)(1)(i) Abuse: Verbal, Sexual, Physical, Mental, Corporal Punishment, and Involuntary Seclusion; and 415.26 Administration. A state civil penalty in the amount of \$16,000 was imposed and paid. No federal Civil Monetary Penalty was imposed.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID reported that during the time-period 2011 to 2018, the remaining affiliated Nursing Homes have no histories of enforcement action taken.

The NYS Department of Health Division of Home and Community Based Services reviewed the compliance histories of the affiliated Certified Home Health Agencies, Licensed Home Care Services Agencies, and Hospice, for the time-period 2011 to 2018, and reports as follows:

An enforcement action was taken against McAuley – Seton Home Care Corporation (CHHA) in June 2013, based on a survey completed on September 15, 2011, citing violations in 10 NYCRR 763.11(b) Governing Authority; 763.5(a) Patient Referral, Admission, and Discharge; 763.6(b) Patient Assessment and Plan of Care; 763.6(c) Patient Assessment and Plan of Care; and 763.7(a) Clinical Records. A civil penalty in the amount of \$5500 was imposed and paid.

The NYS Department of Health Division of Home and Community Based Services reported that during the time-period 2011 to 2018, the remaining affiliated Certified Home Health Agencies, Licensed Home Care Services Agencies, and Hospice have no histories of enforcement action taken.

The NYS Department of Health Division of Adult Care Facilities and Assisted Living Programs reviewed the compliance histories of the affiliated Adult Care Facilities/Assisted Living Programs and Enriched Housing Programs, for the time-period 2011 to 2018, and reports as follows:

An enforcement action was taken against Hawthorne Ridge, Inc. (ACF) in March 2012, based on an inspection completed on September 14, 2010, citing a violation in 18 NYCRR 486.5(a)(4)(iii) Systemic Endangerment. A civil penalty in the amount of \$1000 was imposed and paid.

The NYS Department of Health Division of Adult Care Facilities and Assisted Living Programs reported that during the time-period 2011 to 2018, the remaining affiliated Adult Care Facilities/Assisted Living Programs and Enriched Housing Programs have no histories of enforcement action taken.

The NYS Department of Health Office of Health Insurance Programs, Bureau of Managed Long Term Care, reviewed the compliance histories of the affiliated PACE / LIFE Programs for the time-period 2011 to 2018, and reported that during that time-period, the affiliated PACE / LIFE Programs have all remained in compliance with no histories of enforcement action taken.

Out-of-state compliance requests were sent to all the states identified in Programmatic Attachment D, Pages 1 through 6 – Trinity Health Providers / Facilities Outside NYS, in which Trinity Health Corporation-affiliated providers are located.

To date, we have received responses from the states of California, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Massachusetts, Maryland, Michigan, Nebraska, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, and South Dakota.

Connecticut, Delaware, Georgia, Idaho, Illinois, Michigan, Nebraska, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, and South Dakota have all indicated that the affiliated providers / facilities in their states are in current compliance with no histories of enforcements, for the time-period 2011 – 2018.

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.

The State of Maryland reports that, during the time-period 2011 – 2018, an enforcement action was taken against Holy Cross Rehabilitation and Nursing (Sanctuary at Holy Cross), a nursing home located in Maryland, in September 2016, based on a February 2016 standard survey, citing violations in Quality of Care: Accidents/Hazards/Environment/Supervision. A federal Civil Monetary Penalty of \$74,700 was imposed and paid. The remaining Maryland providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and all providers / facilities are in current compliance.

The State of Indiana reports that, during the time-period 2011 – 2018, an enforcement action was taken against Sanctuary at Holy Cross, a nursing home located in Indiana, in January 2017, based on a September 2016 standard recertification survey, citing violations in Quality of Care: Necessary Care and Services/Highest Practicable Well-Being. A state civil penalty of \$3000 was imposed and paid. The remaining Indiana providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and all providers / facilities are in current compliance.

The State of Iowa reports no enforcements, but does report the following three issues for the time-period 2011 - 2018:

An Immediate Jeopardy situation was identified at Mercy Medical Center (Hospital) in January 2017, citing violations in the federal Conditions of Participation for 42 CFR 482.12 Governing Body; 42 CFR 482.21 Quality Assessment and Performance Improvement Program; 42 CFR 482.23 Nursing Services; and 42 CFR 482.27 Laboratory Services. However, the Immediate Jeopardy and citations were ultimately not enforced.

Condition level non-compliance was identified at Mercy Home Care (CHHA), a deemed Home Health Agency surveyed by an accreditation agency, in June 2016. Per federal requirements, the agency was ultimately prohibited from providing home health aide training and testing for the two-year period from 6/29/2016 through 06/29/2018. No state enforcement was imposed.

Ellen Kennedy Assisted Living Center (ALP) had violations cited in September 2016, in Sufficient Staffing and Nursing Reviews. The matter was resolved in November 2016, with no civil penalty enforcement action taken.

The remaining Iowa providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and are in current compliance.

The State of California reports that, during the time-period 2011 – 2018, three separate enforcement actions were taken against Saint Agnes Medical Center, a hospital located in Fresno, California, as follows:

Violations based on a survey conducted on January 13, 2012, resulted in a civil penalty of \$50,000 imposed on September 26, 2012. Violations based on a survey conducted on November 17, 2015, resulted in a civil penalty of \$4750 imposed on March 24, 2016. Violations based on a survey conducted on January 11, 2017, resulted in a civil penalty of \$11,250 imposed on February 2, 2017. The State of California reports that none of these enforcement actions involved repetitive violations, and all were resolved as noted above.

The remaining California providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and all providers / facilities are in current compliance.

The State of Florida reports that, during the time-period 2011 – 2018, the following enforcement actions were taken:

Winter Haven Hospital was assessed an administrative penalty of \$1000 in January 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in January 2011 for violations in the area of Emergency Department Services; an administrative penalty of \$1000 in March 2011 for violations in the area of Emergency Department Services; an administrative penalty of \$1000 in August 2012 for violations in the area of Emergency Department Services; and an administrative penalty of \$1000 in October 2013 for violations in the area of Inappropriate Restraints.

Mease Dunedin Hospital was assessed an administrative penalty of \$6000 in June 2012 for violations in the areas of Patient Assessment and Emergency Department Services; and an administrative penalty of \$320 in August 2013 for nonpayment of Life Safety Code survey fee.

Morton Plant Hospital was assessed an administrative penalty of \$800 in March 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in December 2011 for violations in the area of Nursing Department Policies and Procedures; an administrative penalty of \$1000 in July 2012 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; an administrative penalty of \$1000 in April 2013 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation; and an administrative penalty of \$1000 in July 2013 for violations in the area of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation.

Morton Plant North Bay Hospital was assessed an administrative penalty of \$2000 in October 2011 for violations in the areas of Nursing Assessment, Goals, Evaluation, Intervention, and Documentation.

St. Anthony's Hospital was assessed an administrative penalty of \$5000 in July 2011 for violations in the areas of MRI Alterations, Renovations, and Installation; an administrative penalty of \$600 in January 2014 for nonpayment of Life Safety Code survey fee; an administrative penalty of \$1000 in March 2015 for violations in the area of Nursing Management Functions; an administrative penalty of \$5500 in April 2016 for a violation in the area of Failure to Notify Florida State Agency for Health Care Administration of Ownership Change in 2014; and an administrative fee of \$471.36, and a reimbursement to the State of \$5553.31, for a total payment of \$6024.67, in September 2017 for recoupment of Medicaid overpayments.

St. Joseph's Hospital was assessed an administrative penalty of \$1000 in October 2012 for violations in the area of Discharge Planning; and an administrative penalty of \$21,500 in April 2016 for a violation in the area of Failure to Notify Florida State Agency for Health Care Administration of Ownership Changes in 2014 at St. Joseph's Hospital, St. Joseph's Hospital North, St. Joseph's Hospital South, and St. Joseph's Hospital Behavioral Health Center.

Bartow Regional Medical Center was assessed an administrative penalty of \$480 in May 2014 for nonpayment of Life Safety Code survey fee.

Holy Cross Hospital was assessed an administrative fee of \$572.59, and a reimbursement to the State of \$11,364.51, for a total payment of \$11,937.10, in April 2013 for recoupment of Medicaid overpayments; was assessed an administrative fee of \$73.84, and a reimbursement to the State of \$86,982.65, for a total payment of \$87,056.49, in October 2015 for recoupment of Medicaid overpayments; and was assessed a reimbursement payment to the State of a total payment of \$97,620.48, in September 2017 for recoupment of Medicaid overpayments.

The remaining Florida providers / facilities have no histories of enforcement for the time-period 2011 – 2018, and all providers / facilities are in current compliance.

To date, the remaining states of Alabama and Maine have failed to respond.

CHHA Quality of Patient Care Star Ratings (per https://www.medicare.gov/homehealthcompare/search.html , as of 01/02/2018)	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
St. Joseph's Hospital Health Center CHHA	3 out of 5 stars
Oswego Health Home Care, LLC	3.5 out of 5 stars
Eddy Visiting Nurse and Rehab Association	4 out of 5 stars
McAuley – Seton Home Care Corporation	4.5 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 of St. Joseph's Health, Inc. or Trinity Health Corporation, 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.

Financial Analysis

Background

There are no projected changes in the utilization, revenues or expenses of St. Joseph's Hospital Health Center CHHA as a direct result of this project.

Capability and Feasibility

There are no project costs or budgets associated with this application. BFA Attachment B is the consolidated certified financial statements of Trinity Health for the years ended June 30, 2017 and 2016. As shown, the entity maintained positive working capital and net asset positions in 2016 and 2017. Trinity Health had an operating income of \$46,379,000 in 2016, but experienced an operating loss of \$18,115,000 in 2017 due to the following two charges to operations:

- \$248,070,000 of non-cash fixed asset impairment charges that are helping the System right-size inpatient physical plant utilization and reposition in some markets; and
- \$36,184,000 of restructuring charges primarily related to severance and benefits under cost reduction and staffing initiatives currently positioning Trinity Health for lower labor costs in fiscal year 2018.

Trinity Health offset these net operating losses with several nonoperating items, including investment income and equity in earnings of unconsolidated affiliates. As of June 30, 2017, Trinity's excess of revenue over expenses, including nonoperating items, was \$1,336,823,000. BFA Attachment C is the consolidate certified financial statements of St. Joseph's Health, Inc. and Subsidiaries for the period ending June 30, 2017, which shows the entity maintained positive working capital and net asset positions and had an operating income of \$3,296,000.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

Programmatic Attachment A	St. Joseph's Hospital Health Center Organizational Structure
Programmatic Attachment B	St. Joseph's Health, Inc. Organizational Structure
Programmatic Attachment C	Trinity Health Providers / Facilities Within New York State
Programmatic Attachment D	Trinity Health Providers / Facilities Outside New York State
BFA Attachment A	St. Joseph's Health – Proposed corporate organizational chart
BFA Attachment B	Trinity Health – June 30, 2017 and 2016 certified financial statements
BFA Attachment C	St. Joseph's Health, Inc. and Subsidiaries – June 30, 2017 certified financial statements



**Project # 172296-E
NYU Winthrop Hospital**

Program: Certified Home Health Agency
Purpose: Establishment

County: Nassau
Acknowledged: December 18, 2017

Executive Summary

Description

NYU Winthrop Hospital (Winthrop), a voluntary not for profit, Article 36 Certified Home Health Agency (CHHA) located at 290 Old Country Road, Mineola (Nassau County), requests approval for the full asset merger of Lutheran CHHA, Inc. d/b/a Lutheran Care at Home (Lutheran), a voluntary not for profit, Article 36 CHHA located at 5407 Second Ave, Brooklyn (Kings County), into its operations. Winthrop CHHA, which is operated by NYU Winthrop Hospital (formerly known as Winthrop-University Hospital, and hereafter referred to as "Winthrop Hospital") and co-operated by NYU Langone Health System (System), will become the successor corporation. Winthrop CHHA currently provides home health care services to residents of Queens, Nassau and Suffolk Counties. Upon approval, Bronx, Kings, New York and Richmond Counties will be added as authorized geographic service areas, and audiology, physician services and therapy-respiratory services will be added to their operating certificate. Winthrop will continue to operate the 5407 Second Ave, Brooklyn location as a branch office to cover Richmond, Bronx, Kings, and New York counties.

Lutheran CHHA was formed by the former Lutheran Medical Center (LMC) and became operational in September 2014. In January 2016, LMC merged into NYU Langone Hospitals (NYULH) and control of the CHHA shifted from LMC to NYULH, whose sole member is the System. On April 1, 2017, the System became the sole member and active parent of Winthrop Hospital.

The proposed CHHA merger will enable high-quality, comprehensive services to be provided to patients of all four System inpatient facilities, where more than 90% of the patients live within the counties the combined CHHA will be licensed to serve. The merger will also allow for synergies in infrastructure and improve referrals across campuses to maintain a positive margin.

There are no financial commitments or changes in the governance structure as a result of the proposed merger. While Lutheran CHHA will cease to exist as a separate corporate entity, there is no change to the NYU Winthrop Board of Trustees or the role of the System as the sole member of NYU Winthrop.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

The proposed merger will have no impact on the availability of services and thus no impact on need.

Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the members of the Board of Trustees of New York University 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, budgets or acquisition price associated with this application. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$20,970,000	\$25,293,000
Total Expenses	<u>\$19,803,000</u>	<u>\$23,581,000</u>
Net Income	\$1,167,000	\$1,712,000

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 the applicant, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 12, 2018

Need and Program Analysis

Program Description

NYU Winthrop Hospital, a voluntary not-for-profit corporation, currently operates an Article 28 Hospital and an Article 36 Certified Home Health Agency and Long Term Home Health Care Program. The sole member, and active parent corporation of NYU Winthrop Hospital is NYU Langone Health System, a voluntary not-for-profit corporation, and the sole member corporation of NYU Langone Health System is New York University. The current proposal is for NYU Winthrop Hospital CHHA to acquire, merge, and ultimately close Lutheran CHHA, Inc., d/b/a Lutheran Care at Home an Article 36 CHHA.

NYU Winthrop Hospital CHHA is currently approved to serve Queens, Nassau, and Suffolk Counties (its LTHHCP is currently approved to serve Nassau County only), and is currently approved to provide the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional Services, Personal Care, Occupational Therapy, Physical Therapy, and Speech Language Pathology. Lutheran Care at Home is currently approved to serve Bronx, Kings, New York, Queens, and Richmond Counties and is currently approved to provide the services of Audiology, Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional Services, Personal Care, Physician Services, Occupational Therapy, Physical Therapy, Respiratory Therapy, and Speech Language Pathology. Accordingly, upon acquisition, merger, and ultimately closure of Lutheran Care at Home, NYU Winthrop Hospital CHHA will add Bronx, Kings, New York, and Richmond Counties as additional approved counties, and Audiology, Physician Services, and Respiratory Therapy as additional approved services. NYU Winthrop Hospital CHHA (and LTHHCP) will remain at its current practice location office at 290 Old Country Road, Mineola (Nassau County), which will become the CHHA's main parent office practice location. Upon completion of the project, the CHHA intends to operate the current practice location of Lutheran Care at Home, at 5407 Second Avenue, Brooklyn (Kings County), as a new branch office additional practice location for NYU Winthrop Hospital CHHA. The legal entity / corporate operator, NYU Winthrop Hospital, will remain at 259 First Street, Mineola, New York 11501.

Character and Competence Review

The corporate organizational structure of the applicant corporation, NYU Winthrop Hospital, the operator of the CHHA/LTHHCP, includes the following health care providers that are therefore affiliated with each board member of the corporation, and each facility and provider was reviewed at this time:

- NYU Winthrop Hospital (Hospital and several Extension Clinics)
- NYU Winthrop Hospital Certified Home Health Agency (CHHA)
- NYU Winthrop Hospital Long Term Home Health Care Program (LTHHCP)

The corporate organizational structure of the applicant's sole member and active parent corporation, NYU Langone Health System, and its sole member corporation, New York University, includes the following additional health care providers that are therefore affiliated with each board member of the two corporations, and each additional facility and provider was also reviewed at this time:

- NYU Langone Health – Cobble Hill (Hospital – Free Standing Emergency Department)
- NYU Langone Hospital - Brooklyn (Hospital and several School Based Clinics and Family Health Centers) – also known as Lutheran Medical Center
- NYU Langone Hospitals (Hospital and several Extension Clinics)
- NYU Langone Orthopedic Hospital (Hospital)
- Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (RHCF – per applicant, voluntary closure slated for Summer, 2018)
- Lutheran CHHA, Inc., d/b/a Lutheran Care at Home (CHHA)

The governing bodies of both the direct operator corporation, NYU Winthrop Hospital, and its sole member and active parent corporation, NYU Langone Health System, were already previously reviewed and approved by the Public Health and Health Planning Council (PHHPC) in previous Hospitals CON Project #162391, which received final All Contingencies Satisfied PHHPC approval by letter dated March 28, 2017. Therefore, those two governing bodies do not need review and approval at this time.

The members of the Board of Trustees of New York University, the sole member entity of NYU Langone Health System, and the ultimate member entity of the applicant NYU Winthrop Hospital, are as follows:

Mimi M. D. Marziani, Esq. (NY, TX), licensed to practice law in New York and Texas, is currently registered in Texas, but registration is delinquent in New York. Ms. Marziani lists current employment as Executive Director, Texas Civil Rights Project, and Adjunct Professor, University of Texas School of Law.

Daniel R. Tisch, Vice Chair, lists current employment as Managing Member, WTG and Company (Investment Firm).

Steven M. Cohen, Esq. (NY, DC), licensed and registered to practice law in New York and District of Columbia, lists current employment as Executive Vice Chairman, Chief Administrative Officer, and General Counsel, MacAndrews and Forbes Holding, Inc.

Jonathan C. Kim, lists current employment as Co-Chief Executive Officer, Redbadge Pacific (Investment Fund).

Mark T. Fung, Esq. (NY, NJ, DC), licensed to practice law in New York, New Jersey, and District of Columbia, is currently registered in New York and New Jersey, but registration is inactive in District of Columbia. Mr. Fung lists current employment as Managing Member, Law Offices of Mark T. Fung, PLLC.

Judy Steinhardt, is currently not employed.

Boris Alexis Jordan, lists current employment as President of Strategic Management, Renaissance Insurance Group Limited.

Mark Leslie, lists current employment as Lecturer in Management, Stanford University Graduate School of Business. Mr. Leslie discloses the following legal action against him:
Civil Litigation Action - US Securities and Exchange Commission vs. Mark Leslie, Kenneth E. Lonchar, Paul A. Sallaberry, Michael M. Cully, and Douglas S. Newton, Civil Action No. 07 CV 3444 (JF) (PSG) (N.D. Cal. filed July 2, 2007). US Securities and Exchange Commission Litigation Release No. 22143 October 28, 2011 / Accounting and Auditing Enforcement Release No. 3333 October 28, 2011. On October 21, 2011, the US District Court for the Northern District of California entered a settled final judgement against Mark Leslie, the former Chief Executive Officer of Veritas Software Corporation. The litigation alleged that Mr. Leslie and the remaining defendants inflated Veritas' reported revenues by approximately \$20 million in connection with a software sale to AOL. Mr. Leslie failed to disclose material information to Veritas' independent auditors in violation of federal securities laws. Without admitting or denying the allegations, Mr. Leslie consented to entry of a final judgment permanently enjoining him from future violations of Rule 13b2-2(a)(2) of the Securities Exchange Act of 1934 and ordering him to pay disgorgement and prejudgment interest of \$1,550,000 and a civil penalty of \$25,000.

Maria S. Bartiromo, lists current employment as Anchor and Global Markets Editor, Fox Business Network and Fox News Channel.

Natalie V. Holder, Esq. (NY, CT), licensed and registered to practice law in New York and Connecticut, lists current employment as Chief Diversity Officer, United States Capitol Police.

Joseph P. Landy, lists current employment as Co-Chief Executive Officer, Warburg Pincus, LLC (Investment Firm).

Mitchell L. Jacobson, lists current employment as Chairman of the Board and former CEO, MSC Industrial Direct Co, Inc. (Industrial Supplies). Mr. Jacobson discloses the following additional affiliations which were also reviewed at this time:

- New York Presbyterian Hospital – Allen Hospital
- New York Presbyterian Hospital – Columbia Presbyterian Center
- New York Presbyterian Hospital – New York Weill Cornell Center
- New York Presbyterian Hospital – Westchester Division
- New York - Presbyterian Brooklyn Methodist Hospital
- New York - Presbyterian Lawrence Hospital
- New York - Presbyterian / Hudson Valley Hospital
- New York - Presbyterian / Lower Manhattan Hospital
- New York - Presbyterian / Queens

Phyllis P. Barasch, Vice Chair, was formerly licensed and registered in New York State as both a Speech Language Pathologist and a Life/Accident/Health Insurance Agent, but is currently retired from both professions. Ms. Barasch lists current employment as Owner and President, PPB Associates (Management Consulting).

Adam C. Taki, lists current employment as President, Actlien Holding, Inc.

Evan R. Chesler, Esq. (NY), licensed and registered to practice law in New York State, lists current employment as Chairman and former CEO, Cravath, Swaine, and Moore, LLP (Law Firm).

Beverly R. Hyman, PhD, lists current employment as Founder and CEO, Beverly Hyman, PhD and Associates (Management Consulting).

Shelby B. White, Vice Chair, is currently retired as a free-lance writer.

Howard M. Meyers, lists current employment as Chairman, Quexco Incorporated (Metals Refining and Recycling). Mr. Meyers discloses the following additional affiliations which were also reviewed at this time:

- University of Texas MD Anderson Cancer Center (Hospital) – Houston, TX
- University of Texas Southwestern Medical Center (Hospital) – Dallas, TX

Jessica B. Swartz, lists current employment as Senior Director of Business Strategy, Planning, Development, and Operations, Regenovation (Biotechnology Start-Up in Regenerative Medicine).

William C. Rudin, lists current employment as Co-Vice Chairman and CEO, Rudin Management Company, Inc. (Real Estate Management).

Joel S. Ehrenkranz, Esq. (NY), licensed and registered to practice law in New York State, lists current employment as Founding Partner, Ehrenkranz and Ehrenkranz, LLP (Law Firm).

Joseph S. Steinberg, lists current employment as Chairman, Leucadia National Corporation (Holding Company).

Kelly Kennedy Mack, is currently licensed and registered in New York State as a Real Estate Broker, who lists current employment as President, Corcoran Sunshine Marketing Group (Residential Development, Sales, and Marketing).

Leonard A. Wilf, Esq. (NY, NJ), Vice Chair, licensed and registered to practice law in New York, and licensed but registration status retired to practice law in New Jersey, is retired from the practice of law, but lists current employment as President, Garden Homes (Real Estate Investment, Management, and Development). Mr. Wilf discloses the following additional affiliations which were also reviewed at this time:

- New York Presbyterian Hospital – Allen Hospital
- New York Presbyterian Hospital – Columbia Presbyterian Center
- New York Presbyterian Hospital – New York Weill Cornell Center
- New York Presbyterian Hospital – Westchester Division
- New York - Presbyterian Brooklyn Methodist Hospital
- New York - Presbyterian Lawrence Hospital
- New York - Presbyterian / Hudson Valley Hospital
- New York - Presbyterian / Lower Manhattan Hospital
- New York - Presbyterian / Queens

Andre J. L. Koo, lists current employment as Chairman, Chailease Group (International Leasing, Banking, Commerce, Construction, and Investment Advisors based in Taiwan).

Gale A. Drukier, lists current employment as Property Manager, Greystone Hotel Partners, LLC.

Lisa M. Yoo, Esq. (NY, NJ), licensed to practice law in New York State and New Jersey, is currently registered in New York, but registration is retired in New Jersey. Ms. Yoo is retired from the practice of law, but lists current employment as Partner, Alpine Venture Associates, LLC (Investment Firm).

John A. Paulson, lists current employment as President and Portfolio Manager, Paulson and Company, Inc. (Investment Firm).

Stuyvesant P. Comfort, Esq. (NY), licensed but no longer registered to practice law in New York State, is currently retired from the practice of law, but lists current employment as Investment Manager, Conversion Venture Capital.

Constance M. Silver, Vice Chair, has been retired since 1995.

David C. Oxman, Esq. (NY, NJ), licensed and registered to practice law in New York State and New Jersey, has been retired since 1995.

Charles D. Klein, lists current employment as Founder and Managing Director, American Securities, LLC.

S. Tamara Winn, has no disclosed employment since 2005.

Marc H. Bell, lists current employment as Managing Partner, Marc Bell Capital Partners (Investment Firm).

Jay Stein, lists current employment as Chairman and former CEO, Stein Mart, Inc. (Retail Department Store Chain).

Nina V. Weissberg, lists current employment as President, Weissberg Corporation, and Executive Director, Weissberg Investment Corporation.

Michael P. Denkensohn, lists current employment as Executive Director and Chief Operating Officer, Seward and Kissel, LLP (Law Firm).

Abdul Aziz Al Ghurair, lists current employment as Chief Executive Officer, Mashreq Group (Commercial Banking based in United Arab Emirates).

Charles M. Zegar, lists current employment as Founding Partner, Bloomberg, LP (Financial Software, Data, and Media Company).

Sascia (Xin) Yuan, lists current employment as Investment Analyst, Ford Foundation.

Brett B. Rochkind, lists current employment as Investor, General Atlantic Service Company (Investment Growth Equity Firm).

Ronald D. Abramson, Esq. (NY, DC), licensed and registered to practice law in New York and District of Columbia, lists current employment as Attorney and Business Manager, Buchanan, Ingersoll, and Rooney, PC (Law Firm).

Lisa H. Silverstein, lists current employment as Senior Vice President, Silverstein Properties, Inc. (Commercial Real Estate).

Ralph Alexander, lists current employment as Investing Partner, Riverstone Holdings, Inc.

Khaldoon Khalifa Al Mubarak, lists current employment as Chairman, Executive Affairs Authority (Abu Dhabi Government Agency), and Group CEO and Managing Director, Mubadala Development Company (Abu Dhabi Government-Owned Stock Company).

Florence A. Davis, Esq. (NY), licensed and registered to practice law in New York State, states she is retired from the practice of law, but lists current employment as President, The Starr Foundation (Private Charitable Foundation) and Director, Starr International Foundation (Charitable Foundation in Switzerland).

Taffi T. Ayodele, lists current employment as Co-Founder and Co-CEO, The Thando's Group, LLC (Nigerian Footwear Brand - Design, Manufacture, Retail).

William A. Brewer, Esq. (NY, TX), licensed and registered to practice law in New York State and Texas, lists current employment as Owner and Managing Partner, Brewer Attorneys and Counselors (Law Firm).

Lun Feng, lists current employment as Chairman, Vantone Holdings Company, LTD (Real Estate Investment Firm in Beijing, China).

Constance J. Milstein, Esq. (DC), licensed and registered to practice law in District of Columbia, lists current employment as Managing Member, Ogden CAP Properties, LLC; NY CAP Agency, LLC; Nedgo, LLC; SM Family / Master Holdings, LLC; OCA Opportunity Fund, LLC; and DC CAP Hotelier, LLC (Real Estate Ownership and Operations).

Sharon Chang, lists current employment as Founder, Yoxi (Social Innovation Think Tank), Partner, THINK School of Creative Leadership (Higher Education Innovation), Co-Founder, Smiletime (Interactive Platform), and Managing Trustee, TTSL Foundation (Charitable Foundation).

Catherine B. Reynolds, lists current employment as Chairman and CEO, EduCap, Inc. (NFP Foundation Providing Student Loans).

Brian A. Levine, MD (NY, MN), licensed and registered to practice medicine in New York State and Minnesota, lists current employment as President, Practice Director, and 25% Owner, New York Medical Sciences, PC (Physicians' Practice); Practice Director, Colorado Center for Reproductive Medicine (Physicians' Practice); and Attending Physician, Lenox Hill Hospital.

Amanda R. Lipitz, lists current employment as President, Producer, and Director, Amanda Lipitz Productions (Theatrical and Documentary Production).

Jeffrey S. Gould, Esq. (DC), licensed but registration is inactive to practice law in District of Columbia, lists current employment as Chief Operating Officer, Waxx Tech (Sound Sourcing Technology Start-Up).

William R. Berkley, Chair, lists current employment as Executive Chairman and Chief Executive Officer, W. R. Berkley Corporation (Property Casualty Insurance Holding Company).

Casey K. Box, lists current employment as Executive Director, Land Is Life (Indigenous Peoples and Communities Rights Coalition).

Fiona B. Druckenmiller, lists current employment as Founder and President, FD Gallery (Fine Jewelry and Art Dealer).

Laurence D. Fink, Vice Chair, lists current employment as Founder, Chairman, and Chief Executive Officer, BlackRock, Inc. (Investment Management).

Luiz H. Fraea, lists current employment as Founding Partner and Co-Chief Investment Officer, Gavea Investments (Private Equity Firm in Rio de Janeiro, Brazil).

Andrew D. Hamilton, President, lists current employment as President, New York University.

Martin Lipton, Esq. (NY), Chair Emeritus, licensed and registered to practice law in New York State, lists current employment as Attorney, Wachtell, Lipton, Rosen, and Katz (Law Firm).

Larry A. Silverstein, lists current employment as Chairman, Silverstein Properties, Inc. (Commercial Real Estate).

Chandrika K. Tandon, Vice Chair, lists current employment as Founder and Chairman, Tandon Capital Associates (Advisory and Investment Firm in US, Australia, and Brazil)

Anthony Welters, Esq. (NY, DC), Vice Chair, licensed and registered to practice law in New York State and District of Columbia, lists current employment as Executive Chairman, BlackIvy Group, LLC (Business Consulting Services).

Martin S. Dorph, Esq. (PA), Executive Vice President, is licensed to practice law in Pennsylvania, but not currently registered. His registration is currently listed as administratively suspended as he has no current malpractice liability insurance in effect, due to the fact that he is not practicing law at this time. Mr. Dorph lists current employment as Executive Vice President and Chief Financial Officer, New York University.

Kenneth G. Langone, Vice Chair, lists current employment as Chairman and Chief Executive Officer, Invemed Associates, LLC (Merchant and Investment Banking).

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 Department of State Occupational Licensing Management System, NYS Education Department Office of the Professions, NYSDOH Office of Professional Medical Conduct, NYSDOH Physician Profile, Minnesota Board of Medical Practice, NYS Unified Court System, New Jersey Courts Attorney Index, District of Columbia Bar, State of Connecticut Judicial Branch, State Bar of Texas, and Supreme Court of Pennsylvania Disciplinary Board, have all indicated that there are no additional adverse findings, or disciplinary actions or issues, regarding the licensure of the health professionals and other licensed professionals associated with this application.

Facility Compliance / Enforcement

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Hospitals and Extension Clinics for the time-period 2011 through 2018, and reports as follows:

An enforcement action was taken against New York - Presbyterian / Queens (Hospital) in November 2017, based on a survey completed in May 2016, for an Immediate Jeopardy situation relating to untrained security guards' application of restraints. A civil penalty in the amount of \$2000 was imposed and paid.

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers reported that during the time-period 2011 to 2018, the remaining affiliated Hospitals and Extension Clinics have no histories of enforcement action taken.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID has reviewed the compliance histories of the affiliated Nursing Home for the time-period 2011 to 2018, and reports as follows:

An enforcement action was taken against Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (RHCF) in March 2012, based on two surveys completed on February 16, 2011, and April 29, 2011, citing violations in 10 NYCRR 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.22 (a)(1-4) Resident Records Complete; and 415.12(j) Quality of Care: Hydration. A total state civil penalty in the amount of \$22,000 was imposed and paid. The facility is now in compliance.

The NYS Department of Health Division of Home and Community Based Services reviewed the compliance histories of the affiliated Certified Home Health Agencies and Long Term Home Health Care Program for the time-period 2011 to 2018, and reports that the affiliated Certified Home Health Agencies and Long Term Home Health Care Program have no histories of enforcement action taken.

The State of Texas reports that since the affiliated providers / facilities in Texas are owned and operated by the University of Texas, they are state owned and operated public health care providers that do not fall under the regulatory jurisdiction of the State of Texas Department of Health and Human Services. The Hospital Compare search on the federal CMS Medicare Compare website lists the affiliated hospital University of Texas Southwestern Medical Center with a four out of five star rating. The other affiliated hospital University of Texas MD Anderson Cancer Center does not appear on the Hospital Compare search.

CHHA Quality of Patient Care Star Ratings (per https://www.medicare.gov/homehealthcompare/search.html , as of 02/14/2018) New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
NYU Winthrop Hospital (CHHA)	3.5 out of 5 stars
Lutheran Care at Home (CHHA)	3 out of 5 stars

Conclusion

Upon approval there will be no change in counties serviced or services provided. A review of all personal qualifying information indicates there is nothing in the background of the members of the Board of Trustees of New York University 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.

Financial Analysis

Merger Agreement

The applicant has submitted a signed Merger Agreement between NYU Winthrop Hospital and Lutheran CHHA, Inc. to be effectuated upon Public Health and Health Planning Council approval. The terms of the agreement are summarized below:

Date:	October 27, 2017
Merging Entities:	NYU Winthrop Hospital and Lutheran CHHA, Inc.
Surviving Entity:	NYU Winthrop Hospital
Asset Acquired:	All remaining assets
Liabilities Acquired:	All remaining liabilities
Purchase Price:	\$-0-

Operating Budget

The applicant has submitted the projected first and third year operating budgets, in 2018 dollars, as summarized below:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Commercial - MC	\$1,612,000	\$2,377,000	\$3,172,000
Medicare - FFS	13,090,000	13,749,000	16,385,000
Medicare - MC	1,939,000	3,510,000	4,143,000
Medicaid - FFS	219,000	224,000	247,000
Medicaid - MC	842,000	890,000	1,097,000
All Other	<u>217,000</u>	<u>220,000</u>	<u>249,000</u>
Total Revenues	\$17,919,000	\$20,970,000	\$25,293,000
<u>Expenses</u>			
Operating	\$16,799,000	\$19,321,000	\$23,135,000
Capital	<u>437,000</u>	<u>482,000</u>	<u>446,000</u>
Total Expenses	\$17,236,000	\$19,803,000	\$23,581,000
Net Income (Loss)	<u>\$683,000</u>	<u>\$1,167,000</u>	<u>\$1,712,000</u>
Utilization (Visits)	92,608	108,132	129,252
Utilization (Hours)	18,378	22,971	27,041

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

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Commercial - MC	18.07%	18.99%	18.81%
Medicare - FFS	64.08%	57.81%	58.17%
Medicare - MC	9.20%	15.40%	15.21%
Medicaid - FFS	0.79%	0.70%	0.67%
Medicaid - MC	5.69%	5.12%	5.12%
Charity	0.45%	0.44%	0.53%
All Other	<u>1.72%</u>	<u>1.53%</u>	<u>1.48%</u>
Total	100.00%	100.00%	100.00%

Budget projections are based on the following: Medicaid revenues are based on an average episodic payment of \$1,282 per episode.

- Medicare revenues are based on an average episodic payment of \$3,648 per episode.
- Commercial payers are based upon historical experience.
- Utilization increase is based on an increase in referral volume providers and patients become familiar within the NYU Langone System.
- Revenue and Expenses are based on historical experience adjusted for changes in projected volume and efficiencies related to consolidating operations.
- NYU Winthrop CHHA follows NYU Winthrop Hospital's Charity Care policy and is available to all patients who request such consideration based on financial need. The policy discusses what services are covered and the criteria for eligibility.

Capability and Feasibility

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

BFA Attachment B is a summary of NYU Winthrop Hospital's 2015-2016 certified financial statements and their internal financial statements as of November 30, 2017. As shown, the entity had an average positive working capital position, average positive net asset position, and average positive operating income from 2015 through November 30, 2017.

BFA Attachment C is a summary of Lutheran Care at Home's August 31, 2017 certified financial statements and their internal financial statements as of December 31, 2017. As shown, the entity had an average negative working capital position, negative positive net asset position, and net operating loss from the periods shown. The losses shown were anticipated and NYU Langone Health System had made investments in the CHHA, ensuring staff availability to support a daily census of 90 to 100 patients. The CHHA was recently established in 2014, and is continuing to build a referral base. The applicant stated that merging the two CHHAs will allow for synergies and improve referrals across campuses to maintain a positive net margin.

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 Charts
BFA Attachment B	2015 - November 30, 2017 NYU Winthrop Hospital Financial Summary
BFA Attachment C	September 1, 2016 – December 31, 2017 Lutheran Care at Home Financial Summary



**Project # 172363-E
Flushing Endoscopy Center, LLC**

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment **Acknowledged:** December 7, 2017

Executive Summary

Description

Flushing Endoscopy Center, LLC (the Center), a proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 136-02 Roosevelt Avenue, Flushing (Queens County), requests approval for indefinite life. The Center was approved by the Public Health Council (PHC) under CON 111409 as a single specialty FASC specializing in gastroenterology services. PHC approval was for a conditional five-year limited life and the Center began operation effective May 1, 2013. There are no changes in services associated with this CON.

**OPCHSM Recommendation
Approval**

Need Summary

Data submission by the applicant, as a contingency of CON 111409, has been completed. Based on CON 111409, Medicaid procedures were projected at 15.90% and

Charity Care was projected at 2.51% for Year Three. Actual Charity Care in Year Three (2016) was 1.63% and Medicaid was 46.03%.

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	\$13,190,749
Expenses	<u>10,146,028</u>
Net Income	\$3,044,721

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval

Council Action Date

April 12, 2018

Need Analysis

Analysis

The primary service area is Queens County.

The table below provides information on projections and utilization for procedures in Year One (2014-1st full year) and Year Three (2016) based on CON 111409

CON 111409- Procedures	Year 1 (2014)		Year 3 (2016)	
Flushing Endoscopy Center	Projected	Actual	Projected	Actual
Total	18,360	19,139	20,400	19,264

The table below provides Year Three utilization, projections and actual, by payor, for CON 111409, and projections for Year One following approval.

Payor	CON 111409 Projected Year 3 (2016)	CON 111409 Actual Year 3 (2016)	CON 172363 Projections Year 1
Medicaid FFS	1.40%	1.90%	1.90%
Medicaid MS	14.50%	44.13%	44.13%
Medicare FFS	19.79%	10.01%	10.02%
Medicare MC	1.40%	12.89%	12.89%
Commercial MC	60.20%	19.63%	19.63%
Other (Exchange)	0.00%	9.22%	9.22%
Private Pay	0.20%	0.59%	0.58%
Charity Care	2.51%	1.63%	1.63%
Total	100.00%	100.00%	100.00%

The center currently has Medicaid Managed Care contracts with the following health plans: Affinity, Emblem, Fidelis, HealthFirst, Metroplus, UHC Community Plan, VNS and Wellcare. The center's Medicaid utilization has been consistently above the original projection of 16% each year of its operation and is projected to be at approximately 46% going forward. The center has an established referral relationship with the Charles B. Wang Community Health Center and is currently pursuing additional charity care partners through the NYC Community Care Program and NYC Health and Hospitals/Gouverneur to grow their charity care program. The center has also partnered with NYSDOH Cancer Services Program to provide services to the under-insured. Flushing Endoscopy Center, LLC is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion

The 2015 report by the Ad Hoc Advisory Committee on Freestanding ASCs and Charity Care indicates that "single specialty freestanding ASCs offering endoscopy are likely to serve an older clientele, a large portion of whom are 65 or over and eligible for Medicare; hence, it may be reasonable to expect a lower volume of Medicaid and charity care cases from these providers than from ASCs offering more general surgical services." The center's Medicaid volume has been consistently above 45% each year of its limited life, and it has been making reasonable and sustained efforts to provide services to the uninsured. Approval of the proposed project will allow for the continued access to gastroenterology ambulatory surgery services for the communities of Queens County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

The Center is not proposing to add any services at this time. Staffing is expected to remain at current levels and Dr. Alan C. Yao will continue to serve as the Center's Medical Director.

Compliance with Applicable Codes, Rules and Regulations

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

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

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted their current year (2016) and the first and third year operating budgets, in 2018 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicaid FFS	\$156,492	\$159,622	\$159,622
Medicaid MC	5,131,397	5,234,024	5,234,024
Medicare FFS	821,031	837,452	837,452
Medicare MC	1,685,844	1,719,561	1,719,561
Commercial FFS	4,156,836	4,239,973	4,239,973
Other (Exchange)	942,507	961,357	961,357
Private Pay	<u>38,000</u>	<u>38,760</u>	<u>38,760</u>
Total Revenues	\$12,932,107	\$13,190,749	\$13,190,749
<u>Expenses</u>			
Operating	\$8,779,005	\$9,042,375	\$9,200,607
Capital	<u>1,126,176</u>	<u>1,103,652</u>	<u>1,081,129</u>
Total Expenses	\$9,905,181	\$10,146,028	\$10,281,736
Net Income	<u>\$3,026,926</u>	<u>\$3,044,721</u>	<u>\$2,909,013</u>
Utilization (Procedures)	19,264	19,649	19,649
Cost Per Procedure	\$514.18	\$516.36	\$523.27

Utilization by payor during the current year and the first and third years after receiving indefinite life are as follows:

	<u>Current Year</u>		<u>Years One & Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid FFS	366	1.90%	373	1.90%
Medicaid MC	8,502	44.13%	8,672	44.13%
Medicare FFS	1,929	10.01%	1,968	10.02%
Medicare MC	2,483	12.89%	2,533	12.89%
Commercial FFS	3,781	19.63%	3,857	19.63%
Other (Exchange)	1,776	9.22%	1,812	9.22%
Private Pay	113	0.59%	115	0.58%
Charity Care	<u>314</u>	<u>1.63%</u>	<u>320</u>	<u>1.63%</u>
Total	19,264	100.00%	19,649	100.00%

Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate net income of \$3,044,721 and \$2,909,013 during the first and third years. Revenues are based on current reimbursement methodologies. The submitted budgets are reasonable.

BFA Attachment B is the 2015 and 2016 certified financial statements of Flushing Endoscopy Center, LLC. As shown, the facility had a positive average working capital position and a positive net asset position between 2015 and 2016. Also, the entity achieved an average net income of \$7,691,346 for the years 2015 and 2016.

BFA Attachment C is the internal financial statements of Flushing Endoscopy Center, LLC as of November 6, 2017. As shown, the entity had a positive working capital position, a positive net asset position, and achieved a net income of \$4,443,532 through November 6, 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	Current and original ownership of Flushing Endoscopy Center, LLC
BFA Attachment B	Financial Summary - 2015 and 2016 certified financial statements of Flushing Endoscopy Center
BFA Attachment C	Financial Summary - November 6, 2017 internal financial statements of Flushing Endoscopy Center



Project # 181002-E
New York Endoscopy Center

Program: Diagnostic and Treatment Center **County:** Westchester
Purpose: Establishment **Acknowledged:** January 8, 2018

Executive Summary

Description

New York Endoscopy Center, LLC (NYEC, the Center), a proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 2 Westchester Park Drive, White Plains (Westchester County), requests approval to transfer 51% ownership interest from the current three physician-owners to one new corporate not-for-profit member, WPH Holdings, Inc. The Center is certified as a single-specialty FASC specializing in gastroenterology services. There will be no change in services provided.

On October 4, 2017, the current members of NYEC entered into a Membership Interest Purchase Agreement with WPH Holdings, Inc. to sell 51% of their ownership interest (17% from each current member) for an aggregate purchase price of \$3,000,000. Ownership of the FASC before and after the proposed transaction is as follows:

<u>Members</u>	<u>Current</u>	<u>Proposed</u>
Charles Noyer, M.D.	33.33%	16.33%
Jack Rosemarin, M.D.	33.34%	16.34%
Alfred Roston, M.D.	33.33%	16.33%
WPH Holdings, Inc.	<u>0.00%</u>	<u>51.00%</u>
Total	100.00%	100.00%

WPH Holdings, Inc. is a newly incorporated New York State not-for-profit corporation whose passive sole member is White Plains Hospital Center (WPHC), a 292-bed acute care hospital located at 41 East Post Road, White Plains (Westchester County). WPHC will not take an active role in the operation of the FASC. Montefiore Health System, Inc. is the active parent of WPHC.

NYEC expects that having WPHC as a majority stakeholder will ensure that their goals align with the hospital's interests, safeguarding their viability into the future, and that WPHC will eventually leverage the FASC as a lower-cost setting for some of WPHC's gastroenterology endoscopic services.

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
The purchase price for the 51% membership interest in the Center is \$3,000,000 to be funded by WPH Holdings, Inc. via a cash distribution from WPHC on or before the closing date. WPHC has submitted a commitment letter for the transaction. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,060,723	\$2,271,137
Expenses	<u>\$1,329,081</u>	<u>\$1,356,799</u>
Net Income	\$731,642	\$914,338

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 Amended and Restated Operating Agreement of New York Endoscopy Center, LLC, which is acceptable to the Department. [CSL]
2. Submission of a photocopy of an amended By-laws of WPH Holdings, Inc., which is acceptable to the Department. [CSL]
3. Submission of photocopies of executed Administrative Services Agreements, which are acceptable to the Department. [CSL]
4. Submission of a photocopy of a Certificate of Amendment of the Certificate of Incorporation of WPH Holdings, 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

April 12, 2018

Program Analysis

Program Description

Other than the proposed change 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
Charles Noyer, M.D.	33.33%	16.33%
Jack Rosemarin, M.D.	33.34%	16.34%
Alfred Roston, M.D.	33.33%	16.33%
<i>*WPH Holdings, Inc.</i> <i>*Michael Palumbo, M.D.</i> <i>*Frances Bordoni</i> <i>*Joseph Guarracino</i>	0%	51.00%
TOTAL	100%	100.0%

****Subject to Character & Competence Review***

Dr. Rosemarin is the current Manager of the facility, however, upon approval, the Center's four managers will be Drs. Rosemarin and Roston and two board members from WPH Holdings, Inc.

WPH Holdings, Inc., is a not-for-profit corporation with three Board Members who have a variety of experience in the healthcare sector. The passive sole member of WPH Holdings, Inc. is White Plains Hospital Center (WPHC), a 292-bed acute care hospital located at 41 East Post Road, White Plains. WPHC has not taken, and will not take, an active role in the operation of New York Endoscopy Center.

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

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

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement, which will become effectuated upon Public Health and Health Planning Council approval. The terms are summarized below:

Date:	October 4, 2017
Sellers:	Charles Noyer, M.D., Jack Rosemarin, M.D., and Alfred Roston, M.D.
Purchaser:	WPH Holdings, Inc.
Acquired Assets:	Fifty-one (51) units of membership interest free and clear of liens and encumbrances, constituting 51% ownership interests in the FASC.
Purchase Price:	\$3,000,000 cash paid at closing (\$1,000,000 due each current member)
Provisions:	Owners to keep \$50,000 of purchase price in the Center's cash account for 45 days following closing to cover working capital needs not met with cash and receivables booked after the Agreement closing date.

WPH Holdings, Inc. will fund the purchase price through a \$3,000,000 cash contribution to be provided from its passive sole member, WPHC. WPHC has submitted a commitment letter to fund WPH Holdings, Inc. on or before the Agreement closing date.

Lease Rental Agreement

The applicant has submitted an executed First Lease Modification Agreement for the site the Center currently occupies, as summarized below:

Date:	August 18, 2015 with effective date November 1, 2017
Premises:	2 Westchester Drive, White Plains, NY. 5,037 sq. ft. on 1 st floor ("Suite 104")
Landlord:	Dryland Gannett, LLC
Lessor/Sub-lessor:	Digestive Disease & Nutrition Center of Westchester, LLP
Subtenant:	New York Endoscopy Center, LLC
Term:	Prime lease: Fourteen (14) years; end date September 14.,2031, with one five-year renewal option at the then fair market value rent. Sublease: Five (5) year term beginning November 1, 2017 plus two five-year renewal options.
Rental:	\$132,221.25 (\$26.25 per sq. ft.) year one with approximately 2% annual increases thereafter.
Provisions:	Subtenant is responsible for electricity, taxes, and a pro rata share of common area maintenance charges.

The Modification Agreement revises and extends the original lease and sublease agreements executed in 2009 between Dryland Gannett, Digestive Disease & Nutrition Center of Westchester, LLP and New York Endoscopy Center. The 100% owners of the sub-lessor, Digestive Disease & Nutrition Center of Westchester, LLP are the three physician members of the Center.

Administrative Service Agreements

The applicant has submitted a draft Administrative Services Agreement (ASA) with WPHC, summarized below:

Company:	New York Endoscopy Center, LLC
Contractor:	White Plains Hospital Center
Services Provided:	Assistance with Joint Commission and survey readiness; GPO participation; managed care negotiations; revenue cycle management; finance; coding; legal services; compliance; human resource policies/procedures; and occupational health services.
Term	Three years, then automatic yearly renewals.
Compensation:	\$30,000 per year. If WPHC utilizes external vendors for Joint Commission assistance or consulting services, NYEC shall also pay WPHC the costs incurred for such vendors.

The applicant has submitted a draft ASA with Digestive Disease Nutrition Consultants of Westchester LLP, summarized below:

Company:	New York Endoscopy Center, LLC
Contractor:	Digestive Disease Nutrition Consultants of Westchester, LLP
Services Provided:	Medical director services and overall supervision of clinical activities; billing/collection services.
Term	Three years, then automatic yearly renewals.
Compensation:	Medical director and clinical oversight services: \$2500 per month. Billing and collection services: \$35.00 per patient visit.

Both ASAs are non-arm's length agreements. The 100% owners of Digestive Disease Nutrition Consultants of Westchester, LLP are the three physician-owners of the Center, and WPHC is the 100% sole passive member of WPH Holdings, Inc., the proposed 51% owner of the Center. The draft ASA's provide that the Center will retain ultimate authority, responsibility and control in all final decisions associated with the services.

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

Operating Budget

The applicant has submitted the current year (2016) and the projected first and third year operating budgets, in 2018 dollars, as summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenue</u>						
Medicaid-FFS	\$523.10	\$5,231	\$525.45	\$5,780	\$524.69	\$6,821
Medicaid-MC	\$547.23	\$126,957	\$552.03	\$139,664	\$560.35	\$156,897
Medicare-FFS	\$427.43	\$244,915	\$433.34	\$269,969	\$439.52	\$298,435
Medicare-MC	\$406.65	\$69,943	\$408.23	\$76,339	\$411.86	\$83,607
Commercial-FFS	\$937.59	\$1,189,796	\$957.47	\$1,305,986	\$975.51	\$1,425,220
Private Pay	---	---	\$1,537.86	\$10,765	\$1,454.13	\$21,812
Charity Care*	\$565.20	\$62,737	\$641.72	\$74,288	\$664.08	\$87,308
Other NPSR**	\$721.11	\$147,827	\$798.25	\$160,599	\$761.09	\$173,704
Other Revenue	---	<u>\$17,333</u>	---	<u>\$17,333</u>	---	<u>\$17,333</u>
Total Revenues		\$1,864,739		\$2,060,723		\$2,271,137
<u>Expenses</u>						
Operating	\$355.05	\$913,188	\$383.83	\$1,072,792	\$362.14	\$1,100,170
Capital	<u>\$100.22</u>	<u>\$257,764</u>	<u>\$91.70</u>	<u>\$256,289</u>	<u>\$84.47</u>	<u>\$256,629</u>
Total Expenses	\$455.27	\$1,170,952	\$475.52	\$1,329,081	\$446.61	\$1,356,799
Net Income (Loss)		<u>\$693,787</u>		<u>\$731,642</u>		<u>\$914,338</u>
Procedures		2,572		2,795		3,038

* Charity care includes procedures realized from the Center's cancer screening program and procedures that were provided at a highly discounted rate to patients who were financially needy.

**Other NPSR (net patient service revenue) includes exchange payers, government payers and uncompensated care.

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

- Current Year reflects the facility's certified 2016 revenues, expenses and utilization experience, adjusted to reflect annualized rental costs per the modified rental agreement executed in 2017. Year One and Year Three revenues are based on the Center's historical rate experience for each payor.
- The increase in procedures in Year One and Year Three is based on expected volume from a new non-member physician who began practicing at the Center in August 2017.

- Expense projections for Year One and Year Three include the proposed Administrative Service Agreements and the revised rental sublease costs. FTEs are based on current staffing levels and are not projected to increase over the forecast period.
- Utilization by payor source for the current year, Year One and Year Three are summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid - FFS	0.4%	0.4%	0.4%
Medicaid - MC	9.0%	9.1%	9.2%
Medicare - FFS	22.3%	22.3%	22.4%
Medicare - MC	6.7%	6.7%	6.7%
Commercial - FFS	49.3%	48.8%	48.1%
Charity Care	4.3%	4.6%	4.9%
All Other	8.0%	8.2%	8.3%

- Breakeven utilization is approximately 64% of the projected utilization or 1,803 procedures in Year One and 60% or 1,815 in Year Three.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the membership interest is \$3,000,000 and will be met via cash provided by WPHC to WPH Holdings, Inc. BFA Attachments C and D are, respectively, the 2015-2016 certified financial statements and interim financial statements of White Plains Hospital Center and Subsidiaries as of September 30, 2017, which indicate the availability of sufficient funds for the cash contribution to WPH Holdings, Inc.

The working capital requirement, estimated at \$199,844, is based on two months of first year expenses. Funding will be provided by ongoing cash from operations and from retention of \$50,000 of the purchase price for 45 days after closing. BFA Attachment A is the 2015-2016 certified financial statements for New York Endoscopy Center, LLC. As shown, the Center had an average positive working capital position and an average positive net asset position from 2015 through 2016. Also, the Center reported net income of \$693,787 in 2016. BFA Attachment B is the internal financial statements of New York Endoscopy, LLC for the eight months ended August 31, 2017. Net operating income for the period was \$647,776, and working capital and net assets were positive. BFA Attachment E is the Pro Forma Balance Sheet for NYEC upon closing of the membership interest sale and reports positive working capital and adequate cash to support operations. The applicant demonstrates adequate financial resources to cover first year working capital requirements.

The submitted budget projects net operating income of \$731,642 in the first year and \$914,338 in the third year following the ownership change. The budget appears reasonable.

As shown on BFA Attachments C and D, WPHC maintained positive working capital and net assets during the reporting period. Income from operations was \$18,619,000 for 2016 and \$21,359,000 for 2015. Net income reported on WPHC's internal financial statements as of September 30, 2017 was \$22,650,000, and the entity continues to demonstrate positive working capital and net assets.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

- BFA Attachment A Financial Summary – 2016 Certified Financial Statements of New York Endoscopy, LLC
- BFA Attachment B Financial Summary – August 31, 2017 internal financial statements of New York Endoscopy, LLC
- BFA Attachment C Financial Summary – 2015-2016 Certified Financial Statements of White Plains Hospital Center and Subsidiaries
- BFA Attachment D Financial Summary- September 30, 2017 internal financial statements of White Plains Hospital Center and Subsidiaries
- BFA Attachment E Pro Forma Balance Sheet, New York Endoscopy Center



**Project # 172347-B
Southern Tier Women's Health Services**

Program: Diagnostic and Treatment Center **County:** Broome
Purpose: Establishment and Construction **Acknowledged:** December 12, 2017

Executive Summary

Description

Southern Tier Women’s Health Services, LLC, a to-be-formed New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 149 Vestal Parkway West, Vestal (Broome County). A private medical practice currently operates at the site and is the sole occupant of the building. This application will convert the private practice to Article 28, certified for Medical Services-Primary Care and Abortion services. The D&TC will have three treatment rooms and related support space. The Center will offer women’s healthcare and abortion services to residents of the Southern Tier and Central New York regions, as well as portions of Pennsylvania.

Membership interest of the proposed D&TC consists of Amy Cousins, M.D. (50%) and Margaret Johnston (50%), the physician and administrator, respectively, who have operated the private practice for the past 30 years. Dr. Cousins will serve as Medical Director.

The existing medical practice has been facing increasing costs, reimbursement constraints and an increasing percentage of Medicaid patients. Conversion to a D&TC will help to ensure the fiscal viability of the program and enable Southern Tier to take the more medically complex cases, including women that are obese, have diabetes or uterine anomalies.

**OPCHSM Recommendation
Contingent Approval**

Need Summary
Proposed services to be provided are: Medical Services-Primary Care and Abortion. The number of projected visits is 1,416 for Years One and Three.

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

Financial Summary
Total project costs of \$128,864 will be met via \$28,864 from the proposed members’ personal resources and a bank loan of \$100,000 at an interest rate of 2% for a three-year term. Resources for Abortion Delivery, a project of Hopewell Fund, has provided a letter of interest at the stated terms. The proposed budget is as follows:

Revenues	\$674,118
Expenses	<u>624,827</u>
Net Income	\$49,291

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a executed bank loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of a photocopy of the applicant's Amended Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's Amended Operating Agreement, acceptable to the Department. [CSL]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
7. 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 June 12, 2018 and construction must be completed by September 12, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

April 12, 2018

Need Analysis

Background and Analysis

The service area includes most of the Southern Tier covering the counties of Broome, Chenango, Tioga, Chemung, Schuyler, Otsego, and Delaware. The applicant believes that women from Pennsylvania will also travel to this center for services. The nearest Article 28 diagnostic and treatment center offering abortion services is Planned Parenthood of the Southern Finger Lakes in Ithaca, which is 45 miles and one hour away.

Demand for abortion services has been in a slow decline for several years at the private practice. However, combined with other women's health services, the practice has experienced about 1,600 visits annually. Approval of this project will enable continued access to abortion services for the women in the region. The number of projected visits is 1,416 for Years One and Three. The hours of operation for the center will be Monday through Friday from 9 am until 5 pm and Saturday from 10 am until 1 pm.

Areas of Broome County are designated as a Health Professional Shortage Area for Primary Care services as follows (Source- HRSA): Medicaid Eligible- Greater Binghamton Service Area.

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

Conclusion

Approval of this project will allow for the continued access to primary care and abortion services for the women in the southern tier area of New York State.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

The proposed center, which will be owned and operated by the physician and administrator who have run the private practice for the past 30 years, aims to ensure continued access to abortion services for the women of the region by offering safe and affordable services to meet community need. Additionally, it will continue to accept medically complex cases (women with obesity, diabetes and uterine anomalies) that other providers have refused or referred.

Proposed Operator	Southern Tier Women's Health Services, LLC
To Be Know As	Southern Tier Women's Health Services
Site Address	149 Vestal Parkway West Vestal, NY 13851 (Broome County)
Certified Services	Medical Services - Primary Care Abortion
Hours of Operation	Monday through Friday from 9 am to 5 pm and Saturday from 10 am to 1 pm.
Staffing (1 st Year / 3 rd Year)	6.7 FTEs / 6.7 FTEs
Medical Director(s)	Amy Cousins, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by UHS Wilson Medical Center 6.3 miles / 10-12 minutes away

Character and Competence

The members of Southern Tier Women's Health Services, LLC are as follows:

Name	Interest
Margaret R. Johnson	50%
Amy Cousins, M.D.	50%
Total	100%

Ms. Margaret Johnson is a managing member of BEZ Services, LLC, involved in management of the medical practice. She has over 37 years of experience in medical practice management.

Amy Cousins, M.D. earned her medical degree at Harvard Medical School and completed a general surgery internship and residency at Roosevelt Hospital. Following that, she served as Chief Resident in Obstetrics and Gynecology at Mt. Sinai Hospital. Subsequent to that, her experience includes positions as a clinical instructor, attending and staff physician, adjunct professor and physician in private practice. For over three decades, Dr. Cousins has been active in providing women's health services and she has established relationships with medical providers and the regional population.

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, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site, summarized below:

Date:	November 2, 2017
Premises:	3,390 square feet located at 148 Vestal Parkway West, Vestal, New York
Lessor:	Dana Ellis and Laurie Ellis, d/b/a DDL Associates
Lessee:	Southern Tier Women's Health Services, LLC
Term:	Five years with a five-year renewal period.
Rental:	\$55,464.88 (\$16.36 per sq. ft.)
Provisions:	The lessee shall be responsible for insurance, taxes and utilities.

The applicant has submitted an affidavit indicating that the lease arrangement will be an arm's length lease arrangement. The applicant has submitted letters from two New York licensed realtors attesting that the lease cost per square foot is at fair market value.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$128,864, further broken down as follows:

Renovation and Demolition	\$50,000
Design Contingency	5,000
Construction Contingency	5,000
Planning Consultant Fees	10,000
Other Fees (Consultant)	3,000
Moveable Equipment	53,170
CON Fee	2,000
Additional Processing Fee	694
Total Project Cost	\$128,864

Total Project costs are based on a June 15, 2018 start date and a three-month construction period.

The applicant's financing plan appears as follows:

Equity	\$28,864
Loan (2% interest rate, three-year term)	100,000
Total	\$128,864

Resources for Abortion Delivery, a project of the Washington, D.C. based Hopewell Fund, has provided a letter of interest at the stated terms.

Operating Budget

The applicant has submitted an operating budget, in 2018 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$522.60	\$444,215	\$522.43	\$259,125
Medicaid MC	0	0	\$522.85	\$185,090
Private Pay	\$522.05	\$162,879	\$522.05	\$162,879
Commercial MC	\$225.92	\$38,406	\$225.92	\$38,406
Self-Pay	\$336.68	<u>\$28,618</u>	\$336.68	<u>\$28,618</u>
Total Revenues		\$674,118		\$674,118
<u>Expenses</u>				
Operating	\$370.27	\$524,303	\$391.42	\$554,254
Capital	<u>50.78</u>	<u>71,906</u>	<u>49.84</u>	<u>70,573</u>
Total Expenses	\$421.05	\$596,209	\$441.26	\$624,827
Net Income		<u>\$77,910</u>		<u>\$49,291</u>
Utilization (Visits)		1,416		1,416
Cost Per Visit		\$421.05		\$441.26

Expense and utilization assumptions are based on the historical experience of the private practice.

Medicaid revenues are based on the Medicaid APG rates determined via a mix of CPT codes (best estimate prior to negotiating agreements). Commercial rates are based on estimates of local commercial insurers, and private pay rates are based on historical payments received for private pay patients in the office setting.

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	60.03%	35.00%
Medicaid Managed Care	0%	25.00%
Private Pay	22.03%	22.03%
Commercial Managed Care	12.00%	12.00%
Self-Pay*	5.94%	5.97%

* The medical practice currently provides charity care to its patient population and nearly 25 percent of current patients are self-pay, which includes those with insufficient means as well as cash pay patients. Approximately six percent of patients are provided charity care. The current practice maintains a fund that supports services for uninsured and some patients receive support from the NY Abortion Access Fund. The projections for the Article 28 show continuation of six percent charity care, with an average payment of \$100 (about 20% of the average payment for all payer sources combined).

Capability and Feasibility

Total project cost of \$128,864 will be met as follows: \$28,864 via the proposed members personal resources and a bank loan of \$100,000 at an interest rate of 2% for a three-year term. Resources for Abortion Delivery, a project of the Washington, D.C. based Hopewell Fund, has provided a letter of interest at the stated terms.

Working capital requirements are estimated at \$104,138 based on two months of third year expenses. The proposed members will provide equity from their personal resources to meet the working capital requirements. BFA Attachment A is the personal net worth statements of the proposed members of Southern Tier Women's Health Services, LLC, which indicates the availability of sufficient funds for the project cost and working capital equity contributions. BFA Attachment B is the pro forma balance sheet of Southern Tier Women's Health Services, LLC, which indicates a positive members equity position of \$133,002 as of the first day of operation.

The submitted budget indicates a net income of \$77,909 and \$49,291 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for abortion services and other women's health services. The submitted budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Personal Net Worth Statements of Proposed Members
BFA Attachment B Pro Forma Balance Sheet



Project # 171380-B
New York Continuum Services, LLC

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** May 25, 2017

Executive Summary

Description

New York Continuum Services, LLC (the Center), an existing New York limited liability company, requests approval to establish and construct a 24-station, Article 28 end-stage renal dialysis (ESRD) center to be located at 85 Bartlett Street, Brooklyn (Kings County). The applicant will lease approximately 10,000 square feet of space in an existing commercial mixed-use building owned by Neighborhood Realty & Management, LLC that will be renovated for the Center's use in accordance with the architect's specifications. The cost for the construction will be charged back to the lessee via the rent payments. The applicant will be responsible for furnishing the equipment and the water system. There is no relationship between the landlord and lessee.

The proposed members of the Center and their ownership percentages are as follows:

<u>Proposed Operator</u>	
New York Continuum Services, LLC	
<u>Members</u>	<u>%</u>
Miles Davis	45.0%
Naftali Brachfeld	27.5%
Abraham Sieger	27.5%

OPCHSM Recommendation
Contingent Approval

Need Summary

Access for all residents of the county, and particularly those within the surrounding neighborhoods, will be improved by the additional capacity.

Program Summary

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

Financial Summary

Total project costs of \$3,195,483 will be met via \$319,548 equity from the proposed members, a bank loan for \$521,185 for a seven-year term at 7% interest (to finance the lease of equipment) and \$2,354,750 as a landlord contribution toward the required renovations for which an affidavit from the landlord was submitted. M&T Bank has provided a letter of interest for the financing at the stated terms. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,124,978	\$6,374,934
Expenses	<u>\$2,208,197</u>	<u>\$4,261,165</u>
Net Income	(\$83,219)	\$2,113,769

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the lease of equipment, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an assumed name that will not cause confusion with any existing centers, acceptable to the Department. [HSP]
7. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before July 1, 2018 and construction must be completed by June 30, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AER]

Council Action Date

April 12, 2018

Need Analysis

Background

New York Continuum Services, LLC seeks approval to establish and construct a freestanding 24-station chronic renal dialysis center at 85 Bartlett Street in Brooklyn (Kings County) where there is significant projected need for additional stations. This application was reviewed with a batch of others targeting Kings County, the rest of which were eligible for administrative approval. Kings County had an estimated population 2,629,150 in 2016, 12.7% of which was aged 65 and over and 50.8% of which was nonwhite. These two population groups are statistically more likely to need end stage renal dialysis service. Comparisons between Kings County and New York State are shown below.

	Kings County	New York State
Ages 65 and Over	12.7%	15.4%
Nonwhite	50.8%	30.1%

Source: U.S. Census 2017

Needs Projections and Analysis

The below chart depicts projections prior to consideration of the pending batch of Kings County dialysis projects.

New York State Chronic End Stage Renal Disease (Dialysis) Resources / Need Projected Through 2021					
County	Existing Resources	Pending Resources	Total Current Resources	Projected Need 2021	Projected Unmet Need 2021
	a	b	c	d	e
			(a + b)		(d - c)
Kings	783	346	1,129	1,227	98
Effective November 7, 2017					
Column (a): Existing Resources: Stations in operation					
Column (b): Pending Resources: Approved-but-not-yet-operational stations					
Column (d): Total Need Projected Using 2016 Data and Upper Limit of 95% Confidence Linear Regression Methodology					

Analysis

The increasingly diverse population of Kings County, high obesity rates, the impact of diabetes (and that disease's relationship to End Stage Renal Disease), as well as the aging of the population in general, indicate a sustained future need for additional dialysis services in the County. This particular application addresses an area of relatively concentrated need within the northeastern corner of the county where existing services are comparatively sparse.

The Department also considered the following local factors presented by the applicant:

- The service area is a Primary Care Health Professional Shortage Area (HPSA) and Medically Underserved Area.
- The service area is 64% African American: (ESRD onset at age 57 vs. 63 for the White Population), and 20% Hispanic.
- Patients in the service area often go to the hospital first, then travel great distances to find a provider.
- The applicant stated that the centers closest to the Bartlett Street site have relatively low star ratings except for a hospital-operated center.
- Many patients don't have private transportation.
- The center will be open on Sundays to accommodate religious, cultural and employment needs of patients and their caregivers.

Existing Kings County Dialysis Centers in Relation to Proposed Facility							
Facility Name	Address Line	Zip	Shifts	Stations	Occupancy	Star Rating	Distance Miles
FMS-NEPHROCARE	1402 ATLANTIC AVE	11216	3	26	146.15%	3	2.5
BROOKLYN HOSPITAL CENTER	121 DEKALB AVE	11201	4	6	100.00%	3	2.8
CENTRAL BROOKLYN DIALYSIS CENTER LLC	818 STERLING PL	11216	4	30	145.33%	1	2.8
BROOKLYN DIALYSIS CENTER LLC	915 DEAN STREET	11238	3	25	132.80%	2	2.9
BROOKLYN HOSPITAL CENTER II	19 ROCKWELL PL	11217	4	25	152.00%	5	2.9
ROGOSIN INSTITUTE- NEPHROLOGY FOUNDATION OF BROOKLYN EAST	63 PENNSLYVANIA AVE	11207	4	30	119.33%	3	3.2
BUSHWICK CENTER FOR RENAL DIALYSIS, LLC	51 GEORGIA AVE	11207	4	20	150.00%	1	3.4
KINGSBROOK JEWISH MEDICAL CENTER - RNH DIALYSIS	585 SCHENECTADY AVE	11203	0	4	130.00%	1	3.5
KINGSBROOK JEWISH MEDICAL CENTER	585 SCHENECTADY AVE	11203	4	13	180.77%	1	3.5
KINGS COUNTY HOSPITAL CENTER	451 CLARKSON AVE	11203	3	26	121.15%	5	3.6
SUNY PARKSIDE DIALYSIS CENTER	710 PARKSIDE AVE	11226	4	24	125.83%	3	3.9
BROOKDALE PHYSICIANS DIALYSIS ASSOCIATES	9701 CHURCH AVE	11212	3.5	28	105.71%	4	4.1
BROOKDALE HOSPITAL & MEDICAL CENTER	1 BROOKDALE PLZ	11212	3	10	67.50%	1	4.2
PROSPECT PARK DIALYSIS	672 PARKSIDE AVE	11226	3	32	115.00%	1	4.2
ATLANTIC HEMODIALYSIS AT COBBLE HILL NURSING HOME	380 HENRY ST	11201	4	5	144.00%	2	4.4
FMS-NEPHRO CARE WEST	358-362 4TH AVE	11215	3	20	147.00%	3	4.5
UTICA AVENUE DIALYSIS CLINIC	1305 UTICA AVE	11203	3	30	130.00%	3	4.7
ROGOSIN KIDNEY CENTER - BKLYN	506 6TH ST	11215	4	22	150.91%	3	4.9
GATEWAY DIALYSIS CENTER	1170 EAST 98TH ST	11236	4	20	157.00%	3	5.2
NEOMY DIALYSIS CENTER	1122 CONEY ISLAND AVE	11230	3.5	31	121.29%	3	6.4
MILLENNIUM DIALYSIS	1408 OCEAN AVE	11230	4	20	134.00%	2	6.5
MIDWOOD DIALYSIS	1915 OCEAN AVE	11230	3.5	34	96.47%	3	7.1
LIBERTY R.C.	3915 AVENUE V	11234	3.5	29	121.38%	4	7.2
BAYRIDGE SUNSET PK DIALYSIS CTR	140 58TH STREET	11220	3.5	26	140.00%	3	8.1
KNICKERBOCKER DIALYSIS, INC.	4102 13TH AVE	11219	2.5	32	105.63%	2	8.8
DCI NARROWS KIDNEY CENTER	6520 FT HAMILTON PKWAY	11219	3.5	19	126.32%	5	9.1
DYKER HEIGHTS DIALYSIS CENTER	1435 86TH ST	11228	4	20	150.00%	5	10.6
ROGOSIN INSTITUTE- NEPHROLOGY FOUNDATION OF BROOKLYN SOUTH	1845 MCDONALD AVE	11223	3.5	30	126.67%	4	11.6
NEW YORK AKC, INC	2651 EAST 14TH ST	11235	3.5	24	159.17%	5	12.8
SHEEPSHEAD BAY RENAL CARE CENTER	26 BRIGHTON 11TH ST	11235	2.5	16	133.75%	5	16.2

Conclusion

Access for all residents of the County, and particularly those within the surrounding high need neighborhood, will be improved by the additional capacity.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

New York Continuum Services, LLC seeks approval to establish and construct a freestanding 24-station chronic renal dialysis center to be located at 85 Bartlett Street in Brooklyn (Kings County).

Proposed Operator	New York Continuum Services, LLC
Doing Business As	TBD
Site Address	85 Bartlett Street Brooklyn, NY 11206 (Kings County)
Approved Services	Chronic Renal Dialysis (24 Stations)
Shifts/Hours/Schedule	7 days per week, 6 am to 10 pm (The center will have Sunday hours to accommodate residents of the community who observe the Sabbath on Saturday)
Staffing (1 st Year / 3 rd Year)	12.0 FTEs / 24.6 FTEs
Medical Director(s)	Stuart Rosenberg, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by provided by Woodhull Medical Center 0.30 miles / 3 minutes

Character and Competence

The members of New York Continuum Services, LLC are:

Name	Interest
Miles Davis, <i>manager</i>	45.0%
Adam Sieger	27.5%
Naftali (Nathan) Brachfeld	27.5%

Each of the proposed members of New York Continuum Services, LLC possess health care experience. Mr. Davis is a New York State certified Emergency Medical Technician (EMT) and has been employed for over 20 years by the Kings Harbor Multicare Center in the Bronx. Currently, he serves as the Dialysis Administrator. Mr. Sieger and Mr. Brachfeld are both licensed nursing home administrators currently serving as Administrators of their respective facilities. Mr. Sieger has been employed for nearly 20 years by the Regeis Care Center, a 236-bed Residential Health Care Facility in the Bronx, and, since 2002, Mr. Brachfeld has been employed by the New York Center for Rehabilitation and Nursing, a 280-bed Residential Health Care Facility in Queens.

Disclosure information was submitted and reviewed for the proposed Medical Director. Stuart Rosenberg, M.D. is a New York State licensed practicing clinical physician board-certified in Internal Medicine with sub-certification in Nephrology. Dr. Rosenberg received his medical degree from the University of Connecticut Health Center and completed a nephrology fellowship at Albert Einstein College of Medicine. In 1994, he joined the Albert Einstein Division of Nephrology faculty as an Assistant Professor of Clinical Medicine. Since 2004, he has served as the Medical Director of the Kings Harbor Dialysis Center. In total, Dr. Rosenberg has over 25 years of experience treating patients with chronic and end-stage renal disease.

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.

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

Total Project Cost and Financing

Total project cost for renovation, equipment and fees is estimated at \$3,195,483 broken down as follows:

Renovation and Demolition	\$2,354,750
Fixed Equipment	170,000
Other Fees	75,000
Architect/Engineering Fees	141,285
Movable Equipment	434,980
CON Fee	2,000
Additional Processing Fee	<u>17,468</u>
Total Project Cost	\$3,195,483

Project costs are based on a construction start date of July 1, 2018 and a 12-month construction period.

The applicant's financing plan is as follows:

Equity (from proposed members)	\$319,548
Landlord Contribution *	2,354,750
Bank Loan (7-year term, fixed interest estimated at 7%)	<u>521,185</u>
Total	\$3,195,483

* The landlord will contribute toward the total project cost and will recover the renovation cost contribution via the lease payments. The property owner/landlord has submitted an affidavit (dated September 6, 2017) stating that Neighborhood Realty & Management, LLC will finance the renovations that are subject to this application.

M&T Bank has submitted a letter of interest for the equipment lease financing at the stated amount and terms listed above.

BFA Attachment A is a summary of the proposed members' net worth, which indicates sufficient resources proportional to ownership interest to cover the equity requirement. Also, a draft lease agreement has been submitted indicating lessor will pay the renovation costs and re-coup it through the lease payments.

Lease Agreement

The applicant has submitted a draft lease for the site to be occupied. The terms are summarized below:

Premises:	Approximately 10,000 square feet located at 85 Bartlett Street, Brooklyn, NY
Lessor:	Neighborhood Realty & Management, LLC
Lessee:	New York Continuum Services, LLC and Miles Davis as Personal Guarantor
Term:	10 years with two 5-year renewal options.
Rental:	Year 1-5: \$400,000 annual (approximately \$40 per sq. ft.) Year 6-10: \$440,000 annually (approximately \$44 per sq. ft.)
Provisions:	Lessee pays maintenance fees and other operating charges including gas, electric, water, sewer, insurance, building personnel costs, repairs and taxes based on use.
Guarantor:	Applicant member, Mile Davis, is listed in the lease agreement as a Personal Guarantor.

The applicant has provided an affidavit attesting that the lease is an arm's length agreement, as there is no relationship between landlord and tenant. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness.

Operating Budget

The applicant has submitted an operating budget for the first and third years, in 2018 dollars, which is summarized below:

	<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
Medicare	\$274.97	\$1,276,704	\$274.99	\$3,830,113
Medicaid	\$269.72	161,561	\$269.72	484,683
Commercial	\$325.06	730,080	\$325.01	219,0240
Less Bad Debt		<u>(43,367)</u>		<u>(130,101)</u>
Total Revenues		\$2,124,978		\$6,374,935
 <u>Expenses</u>				
Operating	\$217.19	\$1,626,292	\$164.51	\$3,695,533
Capital	<u>77.71</u>	<u>581,905</u>	<u>25.18</u>	<u>565,632</u>
Total Expenses	\$294.90	\$2,208,197	\$189.69	\$4,261,165
 Net Income(Loss)		<u>(\$83,219)</u>		<u>\$2,113,769</u>
 Treatments		7,488		22,464
Cost / Treatment		\$294.90		\$189.69

The first-year loss is due to start-up costs as the Center will only be open three days per week until patient census grows. By Year Three, the center will be operating six days per week and, once fully operational, will operate seven days per week. The applicant stated that any initial operating losses will be covered by the members.

Revenue assumptions are based upon current reimbursement methodologies by payor for chronic renal dialysis services. Expense and utilization assumptions are based on historical trends of other dialysis centers within Kings County.

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare	4,643	62%	13,928	62%
Medicaid	599	8%	1,797	8%
Commercial	<u>2,246</u>	<u>30%</u>	<u>6,739</u>	<u>30%</u>
Total	7,488	100%	22,464	100%

The applicant provided a conservative projection of utilization to reflect start-up issues and ramp-up of the dialysis center.

Capability and Feasibility

Total project costs of \$3,195,483 will be met via \$319,548 equity from the proposed members, a bank loan for \$521,185 for a seven-year term at 7% interest (to finance the leased equipment) and \$2,354,750 as a landlord contribution toward the required renovations costs. The landlord has submitted an affidavit indicating contribution of project costs. M&T Bank has provided a letter of interest for the financing at the stated terms. BFA Attachment A shows sufficient resources for the equity contribution.

Working capital is estimated at \$710,194, based on two months of Year Three expenses. The proposed members will provide \$360,194 in equity with the balance financed via a loan for \$350,000 for a three-year term at 7% interest. M&T Bank has provided a letter of interest for the working capital financing at the stated terms.

BFA Attachment B is the pro-forma balance sheet of the Center as of the first day, which indicates the operations will begin with positive members' equity of \$420,692.

The submitted budget projects a net profit/(loss) of (\$83,219) and \$2,113,769 during the first and third years, respectively. Medicare and Medicaid reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The Year One loss is due to the Center not being fully operational and is expected during the startup phase in of operations. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of proposed members
BFA Attachment B	Pro Forma Balance Sheet of New York Continuum Services, LLC
BFA Attachment C	Organization Chart



Project # 172364-E
True North IV DC, LLC

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment **Acknowledged:** December 7, 2017

Executive Summary

Description

True North IV DC, LLC, an existing New York limited liability company, requests approval to acquire the following two proprietary Article 28 chronic renal dialysis centers currently operated by Knickerbocker Dialysis, Inc., which operates Bronx Dialysis Center: Atlas Park Dialysis (Atlas Park), a 25-station dialysis clinic located at 80-00 Cooper Avenue, Glendale (Queens County), and Jamaica Hillside Dialysis (Jamaica Hillside), a 25-station dialysis clinic located at 171-19 Hillside Avenue, Jamaica (Queens). The facilities were initially approved as extension clinics of Bronx Dialysis Center under CON 141139 (Atlas Park) and 142199 (Jamaica Hillside) and became operational effective July 31, 2017. Atlas Park is licensed to provide chronic renal dialysis services, while Jamaica Hillside is licensed to provide chronic renal dialysis, home peritoneal dialysis training and support, and home hemodialysis training and support services. Knickerbocker Dialysis, Inc. is a wholly-owned subsidiary of DaVita of New York, Inc., which operates a significant number of chronic renal dialysis extension clinics in New York State.

After the proposed change of ownership, Atlas Park will become the main site and principal place of business of True North IV DC, LLC, and the Jamaica Hillside site will become an extension clinic of Atlas Park Dialysis. True North IV DC, LLC will continue to operate both facilities under their current names after the changes of ownership.

Attachment E shows the organizational chart of True North IV DC, LLC.

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

True North IV DC, LLC		%
Members		
True North DC Holding, LLC		88%
<i>Knickerbocker Dialysis, Inc. (51%)</i>		
DaVita of New York, Inc. (100%)		
DaVita Inc. (100%)		
North Shore LIJ Renal Ventures, LLC (49%)		
North Shore University Hosp (100%)		
Northwell Healthcare, Inc. (100%)		
Northwell Health, Inc. (100%)		
Quinum One, LLC		12%
Quinum LLC		(75%)
Alexander Bangiev, MD (38.88%)		
Dayanand Huded, MD (22.24%)		
Ljubisa Micic, MD (38.88%)		
Narayan Holding Company, LLC (25%)		
Narayan Das Agrawal, MD (100%)		
TOTAL		100%

True North IV DC, LLC will enter into a Consulting and Administrative Services Agreement with DaVita Inc. to provide accounting, billing, funds management and other consulting and administrative services.

OPCHSM Recommendation
Contingent Approval

Need Summary

The locations and primary service area in Queens County for both facilities will be unchanged and there will be no change in the operation of the facilities or expansion of services after the proposed changes of ownership.

Program Summary

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

Financial Summary

There are no project costs associated with this application. True North IV DC, LLC will assume the leases for the sites where Atlas Park Dialysis and Jamaica Hillside Dialysis are located.

The proposed budgets are as follows:

<u>Atlas Park Dialysis</u>	
	<u>Third Year</u>
Revenues	\$4,544,393
Expenses	<u>3,885,796</u>
Net Income	\$658,597

<u>Jamaica Hillside Dialysis</u>	
	<u>Third Year</u>
Revenues	\$5,396,716
Expenses	<u>4,739,221</u>
Net Income	\$657,495

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 amended Operating Agreement of True North IV DC, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Quinum One, LLC acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended Operating Agreement of Quinum One, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization for Narayan Holding Company, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended Facility Medical Director Agreement by Knickerbocker Dialysis, Inc., Nephrology Medical Care, PLLC and Ljudisa Micic, M.D. that complies with the Department of Health guidelines for service contracts, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

April 12, 2018

Need and Program Analysis

Background

After the change of ownership proposed in this present CON, Atlas Park Dialysis will become the main site and principal place of business of True North IV DC, LLC. Jamaica Hillside Dialysis will become an extension clinic of Atlas Park Dialysis. True North IV DC, LLC will continue to operate both facilities under their current names after the changes of ownership.

Program Description

Proposed Operator	True North IV DC, LLC	True North IV DC, LLC
Doing Business As	Atlas Park Dialysis	Jamaica Hillside Dialysis
Site Designation	Main Site	D&TC Extension Site
Site Address	80-00 Cooper Avenue Glendale (Queens)	171-19 Hillside Avenue Jamaica (Queens)
Approved Services	Chronic Renal Dialysis – (25 stations)	Chronic Renal Dialysis – (25 stations) Home Hemodialysis Training & Support Home Peritoneal Dialysis Training & Support
Shifts/Hours/ Schedule	6 days per week Available hours will increase, as required, based on demand	6 days per week Available hours will increase, as required, based on demand
Staffing (1 st Year / 3 rd Year)	6.25 FTEs / 14.83 FTEs	7.05 FTEs / 17.79 FTEs
Medical Director(s)	Ljubisa Micic, M.D.	Stafford D. John, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by: Long Island Jewish Forest Hills 2.7 miles / 16 minutes	Will be provided by: Long Island Jewish Forest Hills 5.0 miles / 16 minutes

Character and Competence

The proposed membership interest of True North IV DC, LLC is as follows:

Members	Interest
True North DC Holding, LLC Knickerbocker Dialysis, Inc. (51%) DaVita of New York, Inc. (100%) DaVita Inc. (100%) North Shore LIJ Renal Ventures, LLC (49%) North Shore University Hospital (100%) Northwell Healthcare, Inc. (100%) Northwell Health, Inc. (100%)	88%
Quinum One, LLC Quinum LLC (75%) Alexander Bangiev, MD (38.88%) Dayanand Huded, MD (22.24%) Ljubisa Micic, MD (38.88%) Narayan Holding Company, LLC (25%) Narayan Das Agrawal, MD (100%)	12%
TOTAL	100%

One of the members of True North DC Holding, LLC is Knickerbocker Dialysis, Inc. Knickerbocker is the licensed operator (or affiliated with) over 40 New York dialysis facilities. The sole member of Knickerbocker is DaVita of New York, Inc., which is owned by DaVita Inc. DaVita operates more than 2,300 dialysis facilities across the United States. The second member of True North DC Holding, LLC is North Shore LIJ Renal Ventures, LLC, whose sole member is North Shore University Hospital (NSUH). Northwell Healthcare, Inc., whose sole member is Northwell Health, Inc., is the parent of NSUH.

The Officers of True North IV DC, LLC are:

Name	Position
Luann D. Regensburg	President
Matt H. Henn	Vice President
Steven N. Fishbane, MD	Chief Medical Officer
Gregory Stewart	Treasurer
Laurence A. Kraemer	Secretary
Stefanie Telvi	Assistant Secretary

The True North IV DC, LLC managers and their affiliations are as follows:

Manager	Representing/Affiliation
Luann D. Regensburg	Knickerbocker/True North DC Holding, LLC/ DaVita, Inc.
Adam Boll	North Shore-LIJ Renal Ventures, LLC/True North DC Holding, LLC/Northwell Health, Inc.
Dayanand Huded, MD	Quinum One, LLC

Dr. Ljubisa S. Micic will serve as Medical Director for Atlas Park and Dr. Stafford D. John will serve as Medical Director for Jamaica Hillside. Both are experienced, practicing physicians who are board-certified in Internal Medicine and Nephrology.

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

Mr. Ranieri disclosed a settlement reached on March 8, 2013 with the Securities and Exchange Commission (SEC) for failure to adequately oversee a consultant's (third party "finder") activities.

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.

Ms. Karch and Mr. Nappi disclosed an affiliation with Northern Westchester Hospital.

- On November 21, 2016, the Department issued a Stipulation and Order (S&O) and \$10,000 fine to Northern Westchester Hospital when Immediate Jeopardy was identified on April 22, 2016 during a complaint investigation. The allegations involved untimely calling of a code team for a newborn in distress. Hospital staff were not trained in the code policy and as such did not initiate the code via the proper procedure. The baby expired.

Knickerbocker Dialysis Inc. is the operator of Garden City Dialysis Center in Garden City.

- On November 20, 2017, the Department issued an enforcement and assessed a \$2,000 fine based on a recertification survey concluded in October 2016. Immediate Jeopardy was called when a surveyor observed a patient in an isolation room who could not be seen or heard by the staff. The facility had a video observation hook-up (which is not permitted) and the patient had been given a bell to summon staff, however the bell could not be heard at the nurse's station.

The Department has taken the following actions against Northwell affiliates:

- On July 8, 2010, the Department issued a S&O and \$42,000 fine against Syosset Hospital for deficient practice related to the care of a child having an adenotonsillectomy. It was determined that the patient was improperly cleared for surgery and, despite multiple comorbidities, the child was not kept for observation post-operatively and subsequently expired after discharge.
- On November 21, 2016, the Department issued a S&O and \$4,000 fine to Long Island Jewish Medical Center for deficient practice related to Infection Control. The facility had 21 operating rooms (ORs) running and in 12 of the ORs, a total of 24 staff were observed not following acceptable standards of practice for Infection Control in Surgical Areas, specifically in regard to proper attire and exposure of hair during procedures.
- On March 6, 2017, the Department issued a S&O and \$4,000 fine to Plainview Hospital for deficient practice related to Infection Control. Observations revealed facility staff (i.e., physicians, podiatrists, radiologists, transporters, and physical therapists) failed to use standard infection control practices, specifically, wearing personal protective equipment, washing hands, cleaning equipment and following isolation precautions for patients with identified infectious diseases.

Northwell has made the following additional legal disclosures:

- In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the US Attorney's Office, the Office of the Inspector General (OIG) of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.
- In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the US Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.
- In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System stated that they have complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.
- In December 2010, the Civil Division of the United States Department of Justice (DOJ) alleged that, since 2003, certain Health System hospitals may have submitted claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. In 2016, the investigation was resolved by agreement with the DOJ.
- In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. In June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. Northwell reported that, to date, the government has not indicated whether there is any potential liability in either matter.
- In June 2012, the OIG and US Attorney's Office for the Eastern District of New York subpoenaed Staten Island University Hospital (SIUH) for documentation relating to services rendered at SIUH's inpatient specialized burn unit dating back to 2005. Requested documentation was provided in 2012 and, in 2013, SIUH responded to follow-up questions. Northwell reported that, to date, the government has not indicated whether SIUH has any potential liability in this matter.

- In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare.

DaVita has made the following legal disclosures:

- In April 2013, a qui tam lawsuit was initiated in California alleging overpayments from government healthcare programs. There have been four subsequent amendments to add additional defendants and issues. The fourth amendment alleged a DaVita subsidiary performed one-way retrospective reviews to identify additional diagnoses that would drive higher risk scores and increase capitated payments made by the government. DaVita disputes the allegations and states an intention to defend accordingly.
- In October 2014, DaVita refunded \$712.66 to the State of Indiana Attorney General's Medicaid Fraud Control Unit as reimbursement for dialysis services provided by a DaVita RN to a Medicaid recipient while she was temporarily unlicensed.
- Also in October 2014, DaVita entered into a Settlement Agreement with the US Department of Justice (DOJ) and a Corporate Integrity Agreement with the Office of Inspector General (OIG) to resolve allegations from a qui tam suit alleging violations of the False Claims Act through payments of kickbacks to induce referral of patients to its dialysis clinics.
- In December 2014, DaVita refunded \$267,287.93 covering services provided at 19 DaVita dialysis facilities after an OIG investigation determined overpayment for claims that should not have been billed to Medicaid Fee-For-Service, but rather the Nursing Home Division Waiver Program.
- In March 2015, the OIG initiated an investigation into JSA HealthCare Corp., a subsidiary of DaVita Medical Group, concerning Medicare Advantage service providers' risk adjustment practices and data, including identification and verification of factors used for making diagnoses. More specifically, the investigation focused on two Florida physicians with whom JSA previously contracted. Subsequently, in June 2015, the Company received a subpoena from the OIG requesting a wide range of documents relating to the company and its subsidiaries' provision of services to Medicare Advantage plans and patient diagnosis coding practices for a number of conditions. The company reports that it is cooperating with the investigation.
- In June 2015, DaVita settled a qui tam in the amount of \$450,000 plus fees and costs. The suit alleged the company's drug administration practices for vitamin D and iron agents fraudulently created unnecessary waste which was billed to (and paid for by) the government.
- In February 2016, DaVita's pharmacy services wholly-owned subsidiary, DaVita Rx, received a Civil Investigative Demand (CID) from the US Attorney's Office for the Northern District of Texas regarding DaVita Rx's relationship with pharmaceutical manufacturers and alleging the presentation of false claims to the government for payment of prescription medications.
- In March 2016, DaVita, Inc. executed settlement agreements with the State of New York and the DOJ regarding an investigation initiated in October 2011 related to payments for infusion drugs covered by Medicaid composite payments for dialysis.
- In January 2017, DaVita executed a settlement agreement relating to a CID from the DOJ that was initiated in November 2015 through a qui tam complaint involving RMS Lifeline, Inc., a wholly-owned subsidiary of DaVita (d/b/a Lifeline Vascular Access). Allegations were both employment-related and that medically unnecessary angiograms and angiography procedures were performed on 10 patients at two vascular access centers in Florida.
- Also in January 2017, DaVita was subpoenaed by the US Attorney's Office, District of Massachusetts for records relating to charitable patient assistance organizations, particularly the American Kidney Fund, and documents providing information to patients concerning the availability of such assistance. DaVita reported that it is cooperating with the investigation.

- In February 2017, a federal securities class action complaint was filed in the US District Court for the District of Colorado alleging that the company violated securities laws concerning financial results and revenue derived from patients who received charitable premium assistance from an industry-funded non-profit organization and that the process by which patients obtained the insurance and premium assistance was improper and created a false impression of DaVita's business and growth prospects.
- Derivative shareholder lawsuits were filed in the US District Court for the District of Colorado (February 2017) and the District of Delaware (May and June 2017) alleging (among other assertions) a breach of fiduciary duty, unjust enrichment, and failure to disclose certain information in violation of federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize profits. DaVita disputes these allegations, as well as those in the aforementioned class action suit, and states an intent to defend the actions accordingly.

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 nine 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.

Knickerbocker Dialysis, Inc. is a 51% member of True North DC Holding, LLC which is an 88% member of True North IV DC, LLC. Knickerbocker is the licensed operator (or affiliated with) over 40 New York dialysis facilities. A comprehensive list of the Star Ratings for all Knickerbocker-affiliated facilities located in New York State is provided in **HSP Attachment A**.

Conclusion

The locations, service areas, and services will remain the same after approval, with no impact on the need or capacity for dialysis services. 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 need and programmatic perspective, approval is recommended.

Financial Analysis

Contribution and Asset Purchase Agreements

The applicant has submitted executed contribution and asset purchase agreements (CAPAs) for the operating interests of Atlas Park and Jamaica Hillside. The agreements will become effectuated upon Public Health and Health Planning Council (PHHPC) approval of this CON application. The CAPAs include executed Forms of Assignment and Assumption and Bills of Sale. The terms of the agreement are summarized below:

Atlas Park Dialysis

Date:	July 28, 2017
Purchaser:	True North IV DC, LLC
Seller:	Knickerbocker Dialysis, Inc.
Acquired Assets:	All assets used in connection with the ownership and operation of Atlas Park Dialysis including inventory, supplies, prepaid expenses and fixed assets.
Assumed Liabilities:	All debts, obligations and liabilities incurred by Knickerbocker in connection with Atlas Park, regardless of when incurred.
Purchase Price:	\$4,406,819 (Start-up capital expenditures), \$1,192,594 (Start-up working capital – nine months of operating expenses), and \$181,587 (5% development fee) totaling \$5,781,000 as of 45 days prior to the execution of the CAPA. At least 5 days prior to the closing date these figures maybe adjusted.
Payment of Purchase Price:	Credit Facility from CoBiz Bank of \$4,013,800 and proposed members' contribution of \$1,767,200 of which \$971,081 has been deposited in escrow.

Member Contributions	Estimated Capital Requirements	Credit Facility	Capital Contribution
True North DC Holding, LLC	\$5,087,280	\$3,532,144	\$1,555,136
Quinum One, LLC	693,720	481,656	212,064
Totals	\$5,781,000	\$4,013,800	\$1,767,200

Jamaica Hillside Dialysis

Date:	July 28, 2017
Purchaser:	True North IV DC, LLC
Seller:	Knickerbocker Dialysis, Inc.
Acquired Assets:	All assets used in connection with the ownership and operation of Jamaica Hillside Dialysis including inventory, prepaid rent and numerous fixed assets but excluding the Excluded Assets.
Assumed Liabilities:	Salaries, wages, benefits and accrued paid time of all Jamaica Hillside employees; any and all existing debts, liens, claims, encumbrances, liabilities and obligations to which any of the Acquired Assets may be subject, including, without limitation, all capital lease obligations and all accounts payable incurred or accrued in connection with the operation of the Dialysis Business; and the obligations under those agreements and contracts.
Purchase Price:	\$3,058,214 (Start-up capital expenditures), \$1,779,986 (Start-up working capital – 11 months of operating expenses), and \$110,800 (5% development fee) totaling \$4,949,000 as of 45 days prior to the execution of the CAPA. At least 5 days prior to the closing date these figures maybe adjusted.
Payment of Purchase Price:	Credit Facility from CoBiz Bank of \$3,464,300 and proposed members' contribution of \$1,484,700 of which \$818,366.64 has been deposited in escrow.

Member Contributions	Estimated Capital Requirements	Credit Facility	Capital Contribution
True North DC Holding, LLC	\$4,355,120	\$3,048,584	\$1,306,536
Quinum One, LLC	\$593,880	\$415,716	\$178,164
Totals	\$4,949,000	\$3,464,300	\$1,484,700

The total estimated capital requirements of \$10,730,000 for both dialysis centers consist of the combined purchase price of \$7,622,596.81, expense adjustments of \$2,089,119.51 and working capital obligations of \$1,018,283.68. The purchase price reflects start-up capital expenditures and working capital requirements allocated to True North V DC, LLC and are not expected to vary significantly from the estimated amounts shown on the pro forma balance sheet under BFA Attachment D. Funding for this application will be provided through financing from CoBiz Bank, a Colorado Business Bank, and contributions from DaVita, Inc., Northwell Health, Inc., Dr. Alexander Bangiev, Dr. Dayanand V. Huded, Dr. Ljubisa S. Micic and Dr. Narayan Das Agrawal.

The credit facility totaling \$7,478,100 for both dialysis centers will consist of a series of advances from the effective date, July 28, 2017, to and including June 30, 2020. Provided no Event of Default has occurred and has not been cured by Borrower or waived by Bank, on June 30, 2020 the Revolving Loan will automatically be converted into a single term loan to be repaid in 60 equal monthly installments.

The capital contribution for both dialysis facilities as described in the purchase price of \$3,251,900 includes start-up capital costs, development fees and working capital.

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.

Lease Agreements

The applicant will lease space under the terms of the executed lease agreements and executed assignment and assumption of lease agreements, summarized below:

Atlas Park Dialysis

Lease Agreement	
Date:	September 18, 2015 (Second Amendment)
Premises:	Space 6001, consisting of approximately 9,500 square feet of floor area, in a commercial project commonly referred to as The Shops at Atlas Park, located at 8000 Cooper Avenue in the City of Glendale, County of Queens, State of New York.
Landlord:	WMAP, L.L.C.
Tenant:	Knickerbocker Dialysis, Inc.
Rent:	\$226,000, fixed annually (\$22,166.67 fixed monthly)
Terms:	120 months based on the initial date of executed lease on September 5, 2014
Provisions:	Tenant's share of real estate taxes, other taxes, assessments and public charges, insurance, gas, water and electricity.

Assignment and Assumption of Lease Agreement	
Date:	July 28, 2017
Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	True North IV DC, LLC
Premises:	9,500 sq. ft. located at 8000 Cooper Avenue in the City of Glendale, County of Queens, State of New York.

Jamaica Hillside Dialysis

Lease Agreement	
Date:	September 20, 2015 (First Amendment)
Premises:	8,607 square feet of space located at 171-19 Hillside Avenue, Jamaica, New York
Landlord:	Lawnside Realty Corp.
Tenant:	Knickerbocker Dialysis, Inc.
Rent:	\$307,632 annually (\$25,636 monthly) with annual increases of 2.5%
Terms:	120 months based on the initial date of executed lease on March 23, 2015
Provisions:	Tenant's proportionate share of all taxes, net cost of all utilities, including but not limited to gas, fuel oil, electrical, telephone and other utility charges, operating expenses and insurance.

Assignment and Assumption of Lease Agreement	
Date:	July 28, 2017
Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	True North IV DC, LLC
Premises:	8,607 sq. ft. located at 171-19 Hillside Avenue, Jamaica, New York

Luann D. Regensburg, President and a Manager of True North IV DC, LLC, Assistant Secretary of Knickerbocker Dialysis, Inc. and Acting Division Vice President of DaVita Inc., submitted an affidavit stating the proposed lease is an arm's length agreement as there is no relationship between landlord and tenant.

Consulting and Administrative Services Agreement

The applicant has submitted executed consulting and administrative services agreements (CASAs) and executed assignment, assumption and restatement of consulting and administrative services agreements.

Atlas Park Dialysis

Consulting and Administrative Services Agreement	
Date:	July 28, 2017
Established Operator:	Knickerbocker Dialysis, Inc.
Consultant:	DaVita, Inc.
Services Rendered:	Establish and develop the center; acquire all assets, equipment and maintenance required for operation of the center; provide computer hardware and software; provide supplies and prescription drugs; perform all patient billing and collecting functions; employ bookkeeping and accounting procedures; manage and account for the center's funds; prepare and deliver to established operator operating and capital budgets for the following fiscal year; assist in securing insurance; recommend policies and procedures; advise in quality assurance; assist in applying for licenses, permits and provider numbers; develop a compliance program; advocate for established operator in legal actions or proceedings; and comply with all provisions of federal, state and local Laws, rules, regulations and ordinances that are applicable to the Consulting Services provided.
Term:	Yearly
Compensation:	\$120,537 annually

Assignment, Assumption & Restatement of Consulting & Administrative Services Agreement	
Date:	July 28, 2017
Established Operator:	True North IV DC, LLC
Assignor:	Knickerbocker Dialysis, Inc.
Consultant:	DaVita, Inc.
Services Rendered:	In addition to the responsibilities outlined in the original CASA, True North IV DC, LLC will also Lease Knickerbocker employees through an executed employee lease agreement to include all salaries and benefits.
Term:	10-year initial term with option to renew at 5 years intervals
Compensation:	\$120,537 annually

Jamaica Hillside Dialysis

Consulting and Administrative Services Agreement	
Date:	July 28, 2017
Established Operator:	Knickerbocker Dialysis, Inc.
Consultant:	DaVita, Inc.
Services Rendered:	Establish and develop the center; acquire all assets, equipment and maintenance required for operation of the center; provide computer hardware and software; provide supplies and prescription drugs; perform all patient billing and collecting functions; employ bookkeeping and accounting procedures; manage and account for the center's funds; prepare and deliver to established operator operating and capital budgets for the following fiscal year; assist in securing insurance; recommend policies and procedures; advise in quality assurance; assist in applying for licenses, permits and provider numbers; develop a compliance program; advocate for established operator in legal actions or proceedings; and comply with all provisions of federal, state and local Laws, rules, regulations and ordinances that are applicable to the Consulting Services provided.
Term:	Yearly
Compensation:	\$159,984 annually

Assignment, Assumption and Restatement of Consulting and Administrative Services Agreement	
Date:	July 28, 2017
Established Operator:	True North IV DC, LLC
Assignor:	Knickerbocker Dialysis, Inc.
Consultant:	DaVita, Inc.
Services Rendered:	In addition to the responsibilities outlined in the original CASA, True North IV DC, LLC will also Lease Knickerbocker employees through an executed employee lease agreement to include all salaries and benefits.
Term:	10-year initial term with option to renew at 5 years intervals
Compensation:	\$159,984 annually

While DaVita, Inc. will be providing all the above services, True North IV DC, LLC retains ultimate control in all 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.

Operating Budget

Atlas Park Dialysis

The applicant has submitted first and third year operating budgets, in 2018 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	\$550.70	\$799,071	\$530.83	\$2,667,963
Medicare MC	\$288.87	477,214	\$296.67	1,838,490
Medicaid MC	\$256.17	<u>63,018</u>	\$263.06	<u>239,649</u>
Total Patient Revenues		\$1,339,303		\$4,746,102
Less: Bad Debt		<u>\$56,920</u>		<u>\$201,709</u>
Total Net Patient Revenue		\$1,282,383		\$4,544,393
<u>Expense</u>				
Operating	\$307.76	\$1,030,709	\$246.00	\$2,985,032
Interest	\$ 33.06	110,711	\$ 21.23	257,545
Depreciation and Rent	\$183.58	<u>614,818</u>	\$ 53.01	<u>643,219</u>
Total Expenses		\$1,756,238		\$3,885,796
Net Income (Loss)		<u>(\$473,855)</u>		<u>\$658,597</u>
Utilization (Treatments)		3,349		12,134
Cost per Treatment		\$524.40		\$320.24

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	43.33%	41.42%
Medicare MC	49.33%	51.07%
Medicaid MC	7.34%	7.51%

Jamaica Hillside Dialysis

The applicant has submitted first and third year operating budgets, in 2018 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	\$552.71	\$1,036,875	\$582.61	\$3,359,911
Medicare MC	\$288.48	659,460	\$294.51	2,026,842
Medicaid MC	\$256.35	<u>81,264</u>	\$262.28	<u>250,218</u>
Total Patient Revenues		\$1,777,599		\$5,636,971
Less: Bad Debt		<u>\$75,681</u>		<u>\$240,255</u>
Total Net Patient Revenue		\$1,701,918		\$5,396,716
<u>Expense</u>				
Operating	\$321.08	\$1,438,101	\$279.76	\$3,805,579
Interest	\$ 24.71	110,711	\$ 18.93	257,545
Depreciation and Rent	\$142.32	<u>637,448</u>	\$ 49.70	<u>676,097</u>
Total Expenses		\$2,186,260		\$4,739,221
Net Income (Loss)		<u>(\$484,342)</u>		<u>\$657,495</u>
Utilization (Treatments)		4,479		13,603
Cost per Treatment		\$488.11		\$348.39

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	41.9%	42.4%
Medicare FFS	51.0%	50.6%
Medicaid FFS	7.1%	7.0%

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 centers.
- The 2017 Medicaid APG rate for renal dialysis is reflected in the first and third year budgets. The APG rate is the base rate for Knickerbocker Dialysis, Inc. plus additional patient factors.

Capability and Feasibility

There are no project costs associated with this application.

The working capital requirements for Atlas Park Dialysis and Jamaica Hillside Dialysis is estimated at \$647,632 and \$789,870, respectively, based on two months of third year expenses. Working capital will be provided through proposed members' equity and financing from CoBiz Bank as explained in the APA above. BFA Attachments B and C, Financial Summary of DaVita, grandparent of Knickerbocker Dialysis, Inc., and Northwell Health, Inc., respectively, indicate sufficient funds available for estimated working capital. BFA Attachments A1 and A2, net worth statements for the members of Quinum, LLC (Dr. Alexander Bangiev, Dr. Dayanand V. Huded and Dr. Ljubisa S. Micic) and Narayan Holding Company, LLC. (Dr. Narayan Das Agrawal), respectively, indicate sufficient funds available for estimated working capital.

BFA Attachment D is the pro forma balance sheet of True North IV DC, LLC.

The submitted budgets for Atlas Park Dialysis and Jamaica Hillside Dialysis projects a net loss of \$473,855 and \$484,342 for Year One, respectively, and net income of \$658,597 and \$657,495 during Year Three, respectively. The Division Vice President of DaVita, Inc and the Vice President for Joint Ventures Operations for Quinum One has submitted a deficit funding letter, attesting that the projected first year loss will be absorbed by the ongoing operations of DaVita, Inc., Northwell Health, Inc., and the individual members of Quinum, LLC and Narayan Holding Company, LLC. Revenues are based on prevailing reimbursement methodologies and contracted rates for dialysis services. The budget appears reasonable.

As shown on BFA Attachment B, DaVita, Inc. has experienced positive working capital and stockholder's asset position as of September 30, 2017. The entity experienced net income from operations of \$1,074,029 for the nine months ended September 30, 2017. DaVita, Inc., a publicly traded company, is the ultimate parent of Knickerbocker Dialysis, Inc.

As shown on BFA Attachment C, Northwell Health, Inc. has maintained a positive working capital position, experienced a positive stockholder's position and generated \$34,390,000 in operating income as of September 30, 2017, showing sufficient resources for needed capital. Northwell Health, Inc., a not-for-profit corporation, is the ultimate parent of North Shore – LIJ Renal Ventures, LLC.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A1	Net Worth Statement for Quinum, LLC
BFA Attachment A2	Net Worth Statement for Narayan Holding Company, LLC
BFA Attachment B	Certified 2016 and Internal Financial Statements as of September 30, 2017 financial statements – DaVita, Inc.
BFA Attachment C	Consolidated Financial Statements and For the Nine Months Ended September 30, 2017 and 2016 - Northwell Health, Inc.
BFA Attachment D	Pro Forma Balance Sheets – True North IV DC, LLC
BFA Attachment E	Organizational Chart - True North IV DC, LLC
HSP Attachment A	Star Rating Profile for all Knickerbocker-affiliated facilities in New York State

–



Project # 172411-E
True North V DC, LLC

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** January 4, 2018

Executive Summary

Description

True North V DC, LLC, an existing New York limited liability company, requests approval to acquire Brooklyn Chinatown Dialysis (BCD), a 24-station, proprietary Article 28 chronic renal dialysis center located at 730 64th Street, Brooklyn (Kings County). Knickerbocker Dialysis, Inc., which operates Bronx Dialysis Center, is the current operator of the facility. BCD was certified as an extension clinic of Bronx Dialysis Center under CON 152292 and became operational effective October 12, 2017. BCD is licensed to provide chronic renal dialysis, home peritoneal dialysis training and support, and home hemodialysis training and support services. Knickerbocker Dialysis, Inc. is a wholly-owned subsidiary of DaVita of New York, Inc., which operates a significant number of chronic renal dialysis extension clinics in New York State. After the proposed change of ownership, True North V DC, LLC. True North V DC, LLC will continue to operate the facility under the name Brooklyn Chinatown Dialysis.

OPCHSM Recommendation
Contingent Approval

Need Summary

The location and primary service area for Brooklyn Chinatown Dialysis will be unchanged. True North V DC, LLC does not foresee any change in the operation of the facility or expansion of services after the change of ownership.

Program Summary

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

Financial Summary

There are no project costs associated with this application. True North V DC, LLC will assume the lease for the site where BCD is located. The proposed budget is as follows:

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

	<u>Third Year</u>
Revenues	\$4,037,794
Expenses	<u>3,894,173</u>
Gain	\$143,621

True North V DC, LLC		
<u>Members</u>		
True North DC Holding, LLC 80%		
Knickerbocker Dialysis, Inc.	51%	
North Shore-LIJ Renal Ventures, LLC	49%	
Sun, Liang, Yang & Yap, LLC 20%		
Wei Y. Sun, M.D.	25%	
Elizabeth Q. Liang, M.D.	25%	
Li E. Yang, M.D., Ph.D.	25%	
Laurel W. Yap, M.D.	25%	

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 Lease Agreement, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended Operating Agreement of True North V DC, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed copy of the Certificate of Amendment of the Articles of Organization of Sun, Liang, Yang & Yap, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the amended Operating Agreement of Sun, Liang, Yang & YIP, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

Council Action Date

April 12, 2018

Need and Program Analysis

Background

True North V DC, LLC will continue to operate the facility under the current name after the change in ownership. There will be no changes to the location, service area or services as a result of this application and therefore no change to the need or capacity of dialysis services in the county.

Program Description

Proposed Operator	True North V DC, LLC
Doing Business As	Brooklyn Chinatown Dialysis
Site Designation	Diagnostic & Treatment Center (Main Site)
Site Address	730 64th Street Brooklyn, NY 11220 (Kings County)
Approved Services	Chronic Renal Dialysis – (24 stations) Home Hemodialysis Training & Support Home Peritoneal Dialysis Training & Support
Shifts/Hours/ Schedule	6 days per week Available hours will increase, as required, based on demand
Staffing (1 st Year / 3 rd Year)	5.4 FTEs / 12.3 FTEs
Medical Director(s)	Li E. Yang, M.D., Ph.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by: Maimonides Medical Center 1.3 miles / 8 minutes

Character and Competence

The proposed membership interest of True North V DC, LLC is as follows:

Members	Interest
True North DC Holding, LLC <i>Knickerbocker Dialysis, Inc.</i> (51%) DaVita of New York, Inc. (100%) DaVita Inc. (100%) <i>North Shore LIJ Renal Ventures, LLC</i> (49%) North Shore University Hospital (100%) Northwell Healthcare, Inc. (100%) Northwell Health, Inc. (100%)	80%
Sun, Liang, Yang & Yap, LLC Wei Yue Sun, M.D. (25%) Elizabeth Q. Liang, M. D. (25%) Li E. Yang, M.D., Ph.D. (25%) Laurel Win Yap, M.D. (25%)	20%
TOTAL	100%

One of the members of True North DC Holding, LLC is Knickerbocker Dialysis, Inc. Knickerbocker is the licensed operator (or affiliated with) over 40 New York dialysis facilities. The sole member of Knickerbocker is DaVita of New York, Inc., which is owned by DaVita Inc. DaVita operates more than 2,300 dialysis facilities across the United States. The second member of True North DC Holding, LLC is North Shore LIJ Renal Ventures, LLC, whose sole member is North Shore University Hospital (NSUH). Northwell Healthcare, Inc., whose sole member is Northwell Health, Inc., is the parent of NSUH. Sun, Liang, Yang & Yap LLC is an existing New York State limited liability company. Each of the members is a practicing physician, board-certified in Internal Medicine/Nephrology.

The Officers of True North V DC, LLC are:

Name	Position
Luann D. Regensburg	President & Assistant Secretary
Matt H. Henn	Vice President
Steven N. Fishbane, MD	Chief Medical Officer
Gregory Stewart	Treasurer
Laurence A. Kraemer	Secretary

The True North V DC, LLC managers and their affiliations are as follows:

Manager	Representing/Affiliation
Luann D. Regensburg	Knickerbocker/True North DC Holding, LLC/ DaVita, Inc.
Matt H. Henn	Knickerbocker/True North DC, Holding, LLC/DaVita, Inc.
John McGovern	North Shore-LIJ Renal Ventures, LLC/True North DC Holding, LLC/Northwell Health, Inc.
Adam Boll	North Shore-LIJ Renal Ventures, LLC/True North DC Holding, LLC/Northwell Health, Inc.
Wei Yue Sun, M.D.	Sun, Liang, Yang & Yap, LLC

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

Mr. Ranieri disclosed a settlement reached on March 8, 2013 with the Securities and Exchange Commission (SEC) for failure to adequately oversee a consultant's (third party "finder") activities.

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.

Ms. Karch and Mr. Nappi disclosed an affiliation with Northern Westchester Hospital.

- On November 21, 2016, the Department issued a Stipulation and Order (S&O) and \$10,000 fine to Northern Westchester Hospital when Immediate Jeopardy was identified on April 22, 2016 during a complaint investigation. The allegations involved untimely calling of a code team for a newborn in distress. Hospital staff were not trained in the code policy and as such did not initiate the code via the proper procedure. The baby expired.

Knickerbocker Dialysis Inc. is the operator of Garden City Dialysis Center in Garden City.

- On November 20, 2017, the Department issued an enforcement and assessed a \$2,000 fine based on a recertification survey concluded in October 2016. Immediate Jeopardy was called when a surveyor observed a patient in an isolation room who could not be seen or heard by the staff. The facility had a video observation hook-up (which is not permitted) and the patient had been given a bell to summon staff, however the bell could not be heard at the nurse's station.

The Department has taken the following actions against Northwell affiliates:

- On July 8, 2010, the Department issued a S&O and \$42,000 fine against Syosset Hospital for deficient practice related to the care of a child having an adenotonsillectomy. It was determined that the patient was improperly cleared for surgery and, despite multiple comorbidities, the child was not kept for observation post-operatively and subsequently expired after discharge.
- On November 21, 2016, the Department issued a S&O and \$4,000 fine to Long Island Jewish Medical Center for deficient practice related to Infection Control. The facility had 21 operating

rooms (ORs) running and in 12 of the ORs, a total of 24 staff were observed not following acceptable standards of practice for Infection Control in Surgical Areas, specifically in regard to proper attire and exposure of hair during procedures.

- On March 6, 2017, the Department issued a S&O and \$4,000 fine to Plainview Hospital for deficient practice related to Infection Control. Observations revealed facility staff (i.e., physicians, podiatrists, radiologists, transporters, and physical therapists) failed to use standard infection control practices, specifically, wearing personal protective equipment, washing hands, cleaning equipment and following isolation precautions for patients with identified infectious diseases.

Northwell has made the following additional legal disclosures:

- In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the US Attorney's Office, the Office of the Inspector General (OIG) of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.
- In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the US Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.
- In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System stated that they have complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.
- In December 2010, the Civil Division of the United States Department of Justice (DOJ) alleged that, since 2003, certain Health System hospitals may have submitted claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. In 2016, the investigation was resolved by agreement with the DOJ.
- In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. In June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. Northwell reported that, to date, the government has not indicated whether there is any potential liability in either matter.
- In June 2012, the OIG and US Attorney's Office for the Eastern District of New York subpoenaed Staten Island University Hospital (SIUH) for documentation relating to services rendered at SIUH's inpatient specialized burn unit dating back to 2005. Requested documentation was provided in 2012 and, in 2013, SIUH responded to follow-up questions. Northwell reported that, to date, the government has not indicated whether SIUH has any potential liability in this matter.
- In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that the documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure for the majority of the claims. The contractor requested that LHH undertake a self-audit and voluntary disclosure of its billing and claims history for elective cardiac stent admissions during this time. In 2016, LHH completed the self-audit and made a repayment to Medicare.

DaVita has made the following legal disclosures:

- In April 2013, a qui tam lawsuit was initiated in California alleging overpayments from government healthcare programs. There have been four subsequent amendments to add additional defendants and issues. The fourth amendment alleged a DaVita subsidiary performed one-way retrospective reviews to identify additional diagnoses that would drive higher risk scores and

increase capitated payments made by the government. DaVita disputes the allegations and states an intention to defend accordingly.

- In October 2014, DaVita refunded \$712.66 to the State of Indiana Attorney General's Medicaid Fraud Control Unit as reimbursement for dialysis services provided by a DaVita RN to a Medicaid recipient while she was temporarily unlicensed.
- Also in October 2014, DaVita entered into a Settlement Agreement with the US Department of Justice (DOJ) and a Corporate Integrity Agreement with the Office of Inspector General (OIG) to resolve allegations from a qui tam suit alleging violations of the False Claims Act through payments of kickbacks to induce referral of patients to its dialysis clinics.
- In December 2014, DaVita refunded \$267,287.93 covering services provided at 19 DaVita dialysis facilities after an OIG investigation determined overpayment for claims that should not have been billed to Medicaid Fee-For-Service, but rather the Nursing Home Division Waiver Program.
- In March 2015, the OIG initiated an investigation into JSA HealthCare Corp., a subsidiary of DaVita Medical Group, concerning Medicare Advantage service providers' risk adjustment practices and data, including identification and verification of factors used for making diagnoses. More specifically, the investigation focused on two Florida physicians with whom JSA previously contracted. Subsequently, in June 2015, the Company received a subpoena from the OIG requesting a wide range of documents relating to the company and its subsidiaries' provision of services to Medicare Advantage plans and patient diagnosis coding practices for a number of conditions. The company reports that it is cooperating with the investigation.
- In June 2015, DaVita settled a qui tam in the amount of \$450,000 plus fees and costs. The suit alleged the company's drug administration practices for vitamin D and iron agents fraudulently created unnecessary waste which was billed to (and paid for by) the government.
- In February 2016, DaVita's pharmacy services wholly-owned subsidiary, DaVita Rx, received a Civil Investigative Demand (CID) from the US Attorney's Office for the Northern District of Texas regarding DaVita Rx's relationship with pharmaceutical manufacturers and alleging the presentation of false claims to the government for payment of prescription medications.
- In March 2016, DaVita, Inc. executed settlement agreements with the State of New York and the DOJ regarding an investigation initiated in October 2011 related to payments for infusion drugs covered by Medicaid composite payments for dialysis.
- In January 2017, DaVita executed a settlement agreement relating to a CID from the DOJ that was initiated in November 2015 through a qui tam complaint involving RMS Lifeline, Inc., a wholly-owned subsidiary of DaVita (d/b/a Lifeline Vascular Access). Allegations were both employment-related and that medically unnecessary angiograms and angiography procedures were performed on 10 patients at two vascular access centers in Florida.
- Also in January 2017, DaVita was subpoenaed by the US Attorney's Office, District of Massachusetts for records relating to charitable patient assistance organizations, particularly the American Kidney Fund, and documents providing information to patients concerning the availability of such assistance. DaVita reported that it is cooperating with the investigation.
- In February 2017, a federal securities class action complaint was filed in the US District Court for the District of Colorado alleging that the company violated securities laws concerning financial results and revenue derived from patients who received charitable premium assistance from an industry-funded non-profit organization and that the process by which patients obtained the insurance and premium assistance was improper and created a false impression of DaVita's business and growth prospects.
- Derivative shareholder lawsuits were filed in the US District Court for the District of Colorado (February 2017) and the District of Delaware (May and June 2017) alleging (among other assertions) a breach of fiduciary duty, unjust enrichment, and failure to disclose certain information in violation of federal securities laws in connection with an alleged practice to direct patients with government-subsidized health insurance into private health insurance plans to maximize profits. DaVita disputes these allegations, as well as those in the aforementioned class action suit, and states an intent to defend the actions accordingly.

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 nine 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.

Knickerbocker Dialysis, Inc. is a 51% member of True North DC Holding, LLC which is an 80% member of True North V DC, LLC. Knickerbocker is the licensed operator (or affiliated with) over 40 New York dialysis facilities. A comprehensive list of the Star Ratings for all Knickerbocker-affiliated facilities located in New York State is provided in HSP Attachment A.

Conclusion

There will be no change to services provided or the number of dialysis stations operated and therefore has no effect on need. 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 need and programmatic perspective, approval is recommended.

Financial Analysis

Contribution and Asset Purchase Agreement

The applicant has submitted an executed contribution and asset purchase agreement (CAPA) for the operating interests of BCD. The agreement will become effectuated upon PHHPC approval of this CON application. The CAPA includes executed Forms of Assignment and Assumption and Bill of Sale. The terms of the agreement are summarized below:

Date:	August 23, 2017
Purchaser:	True North V DC, LLC
Seller:	Knickerbocker Dialysis, Inc.
Acquired Assets:	All assets used in connection with the ownership and operation of BCD including inventory, supplies, prepaid expenses and fixed assets.
Assumed Liabilities:	All debts, obligations and liabilities incurred by Knickerbocker in connection with the Dialysis business, regardless of when incurred.
Purchase Price:	\$3,884,935 (Start-up capital expenditures), \$1,776,205 (Start-up working capital – 13 months of operating expenses), and \$151,860 (5% development fee) totaling \$5,813,000. These figures are estimates and are subject to change. Sun, Liang, Yang & Yap, LLC and True North Holding each acknowledges and agrees that it may be required to contribute additional capital to Company if the actual amounts differ from the estimated amounts.
Payment of Purchase Price:	Credit Facility from CoBiz Bank of \$4,070,000 and proposed members' contribution of \$1,743,000 of which \$1,031,856 has been deposited in escrow.

Member Contributions	Estimated Capital Requirements	Credit Facility	Capital Contribution
True North DC Holding, LLC	\$4,650,400	\$3,256,000	\$1,394,400
Sun, Liang, Yang, & Yap, LLC	1,162,600	814,000	348,600
Totals	\$5,813,000	\$4,070,000	\$1,743,000

The total estimated capital requirement of \$5,813,000 consist of the purchase price of \$2,573,135.48, expense adjustments of \$678,069.84 and members' contribution obligations of \$2,561,794.68. Start-up capital expenditures and working capital requirements allocated to True North V DC, LLC are not expected to vary significantly from the estimated amounts shown on the pro forma balance sheet under BFA Attachment D. Funding for this project will be provided through a mix of financing from CoBiz Bank, a Colorado Business Bank, and contributions from DaVita, Inc., Northwell Health, Inc., Wei Y. Sun, M.D., Elizabeth Q. Liang, M.D., Li E. Yang, M.D., Ph.D. and Laurel W. Yap, M.D.

The credit facility totaling \$4,070,000 will consist of a series of advances from the Effective Date to the Conversion Date. Provided no Event of Default has occurred and has not been cured by Borrower or waived by Bank, on August 1, 2019, the Revolving Loan will automatically be converted into a single term loan to be repaid by either the earlier of: October 1, 2024 or the date which is 62 months following the Conversion Date.

The capital contribution of \$1,743,000 includes start-up capital costs, development fees and working capital.

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.

Lease Agreement

The applicant will lease space on the first floor under the terms of the executed lease agreement summarized below:

Date:	December 4, 2015
Premises:	Space consisting of approximately 10,626 rentable square feet of floor area in a building located at 730 64th Street in the Borough of Brooklyn, County of Kings, City and State of New York
Landlord:	730 64th Street Company LLC
Tenant:	Knickerbocker Dialysis, Inc.
Rent:	\$393,162, annually (months 1-60) and \$432,478.20, monthly (months 61-120) with three renewal terms of 60 months each at \$39,643.84, \$43,608.22 and \$47,969.04 per year, respectively
Terms:	120 months
Provisions:	Tenant's share of real estate taxes, other taxes, assessments and public charges, insurance, gas, water and electricity.

Assignment and Assumption of Lease Agreement

The applicant has submitted an executed Assignment and Assumption of Lease agreement for the site, summarized below:

Date:	August 23, 2017
Assignor:	Knickerbocker Dialysis, Inc.
Assignee:	True North V DC, LLC
Premises:	10,626 sq. ft. located at 730 64 th Street, Brooklyn, New York

Luann D. Regensburg, President and a Manager of True North V DC, LLC, Assistant Secretary of Knickerbocker Dialysis, Inc. and Acting Division Vice President of DaVita Inc., submitted an affidavit stating the proposed lease is an arm's length agreement as there is no relationship between landlord and tenant.

Consulting and Administrative Services Agreement

The applicant has submitted an executed consulting and administrative services agreement (CASA). The terms of the agreement are summarized below:

Date:	August 23, 2017
Established Operator:	Knickerbocker Dialysis, Inc.
Consultant:	DaVita, Inc.
Services Rendered:	Establish and develop the center; acquire all assets, equipment and maintenance required for operation of the center; provide computer hardware and software; provide supplies and prescription drugs; perform all patient billing and collecting functions; employ bookkeeping and accounting procedures; manage and account for center's funds; prepare and deliver to established operator operating and capital budgets for the following fiscal year; assist in securing insurance; recommend policies and procedures; advise in quality assurance; assist in applying for licenses, permits and provider numbers; develop a compliance program; advocate for established operator in legal actions or proceedings; and comply with all provisions of federal, state and local Laws, rules, regulations and ordinances that are applicable to the Consulting Services provided.
Term:	Yearly
Consultant Fee:	\$113,239 annually

Assignment, Assumption and Restatement of CASA

The applicant has submitted an executed assignment, assumption and restatement of consulting and administrative services agreement. The terms of the agreement are summarized below:

Date:	August 23, 2017 (Second Amendment)
Company:	True North DC Holding, LLC
Administrator:	DaVita, Inc.
Responsibilities of Administrator:	Perform all bookkeeping and accounting procedures; maintain financial records; prepare and file all necessary local, state and federal income tax returns and all necessary business tax returns; institute, defend, appeal, mediate or arbitrate any and all legal actions or proceedings; comply with all provisions of federal, state and local laws, rules, regulations and ordinances; and assist Company in arranging for and secure on behalf of Company insurance coverage.
Term:	10-year initial term with option to renew at 5 years intervals
Compensation:	\$113,239 annually

While DaVita, Inc. will be providing all of the above services, the Company 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.

Operating Budget

The applicant has submitted first and third year operating budgets, in 2018 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	\$871.10	\$398,091	\$902.35	\$1,341,795
Medicare MC	\$286.51	881,694	\$292.05	2,714,875
Medicaid MC	\$247.08	48,428	\$252.69	161,977
Total Revenues		<u>\$1,258,213</u>		<u>\$4,218,647</u>
Less: Bad Debt		<u>\$54,002</u>		<u>\$180,853</u>
Total Patient Revenue		<u>\$1,204,211</u>		<u>\$4,037,794</u>
<u>Expenses</u>				
Operating	\$344.86	\$1,202,172	\$254.81	\$2,910,917
Interest (P&I)	\$22.55	78,617	\$17.34	198,085
Depreciation and Rent	\$218.76	762,610	\$68.73	785,171
Total Expenses		<u>\$2,043,399</u>		<u>\$3,894,173</u>
Net Income/(Loss)		<u>(\$839,188)</u>		<u>\$143,621</u>
Utilization (Treatments)		3,486		11,424
Cost per Treatment		\$586.17		\$340.88

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	13.1%	13.0%
Medicare FFS	81.3%	81.4%
Medicaid FFS	5.6%	5.6%

The following is noted regarding the first and third year budgets:

- Expense and utilization assumptions are based on the budgets that were included with CON 152292-C (Brooklyn Chinatown Dialysis), under which the existing facility was approved as an extension clinic of Knickerbocker Dialysis, Inc. The site commenced operations in 2017 and is still in the first year of operations at the time of this present CON submission. As shown in the projected operating budgets, the site is projected to have positive revenue over expenses by the third year of operation.
- The 2017 Medicaid APG rate for renal dialysis is reflected in the first and third year budgets. The APG rate is the base rate for Knickerbocker Dialysis, Inc. plus additional patient factors.

Capability and Feasibility

There are no project costs associated with this application. The working capital requirements for Brooklyn Chinatown Dialysis is estimated at \$649,029, based on two months of third year expenses. Working capital will be provided through a mix of proposed members' equity and financing from CoBiz Bank. BFA Attachments C and D, Financial Summary of DaVita, grandparent of Knickerbocker Dialysis, Inc. and Northwell Health, Inc., respectively, indicate sufficient funds available for estimated working capital. BFA Attachment A, net worth statements for the members of Sun, Liang, Yang & Yap, LLC (Wei Y. Sun, M.D., Elizabeth Q. Liang, M.D., Li E. Yang, M.D., Ph.D. and Laurel W. Yap, M.D.), indicates sufficient funds available for estimated working capital.

BFA Attachment D is the pro forma balance sheet of True North V DC, LLC.

The submitted budget projects a net loss of \$839,188 for Year One and a net income of \$143,621 during Year Three. The Acting Division Vice President of DaVita, Inc. and the Vice President for Joint Ventures Operations of North Shore-LIJ Renal Ventures, LLC and Managing Member of Sun, Liang, Yang & Yap, LLC has submitted a deficit funding letter, attesting that the projected first year loss will be absorbed by the ongoing operations of DaVita, Inc., Northwell Health, Inc. and the individual members of Sun, Liang, Yang & Yap, LLC. Revenues are based on prevailing reimbursement methodologies and contracted rates for dialysis services. The budget appears reasonable.

As shown on BFA Attachment B, DaVita, Inc. has experienced positive working capital and stockholder's asset position as of as of September 30, 2017. The entity experienced net income from operations of \$1,074,029 for the nine months ended September 30, 2017. DaVita, Inc., a publicly traded company, is the ultimate parent of Knickerbocker Dialysis, Inc.

As shown on BFA Attachment C, Northwell Health, Inc. has maintained a positive working capital position, experienced a positive stockholder's position and generated \$34,390,000 in operating income as of September 30, 2017, showing sufficient resources for needed capital. Northwell Health, Inc., a voluntary not for profit corporation, is the ultimate parent of North Shore – LIJ Renal Ventures, LLC.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement for Sun, Liang, Yang & Yap, LLC
BFA Attachment B	Certified 2016 and Internal Financial Statements as of September 30, 2017 financial statements – DaVita, Inc.
BFA Attachment C	Consolidated Financial Statements and For the Nine Months Ended September 30, 2017 and 2016 - Northwell Health, Inc.
BFA Attachment D	Pro Forma Balance Sheet – True North V DC, LLC
BFA Attachment E	Organizational Chart - True North V DC, LLC
HSP Attachment A	Star Rating Profile for all Knickerbocker-affiliated facilities in New York State



Project # 171416-E
Oak Hill Operating Co., LLC
d/b/a Oak Hill Rehabilitation and Nursing Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Tompkins
Acknowledged: June 15, 2017

Executive Summary

Description

Oak Hill Operating Co. LLC d/b/a Oak Hill Rehabilitation and Nursing Care Center, a New York limited liability company, requests approval to be established as the new operator of Oak Hill Manor Nursing Home, a 60-bed, proprietary, Article 28 residential health care facility (RHCF) located at 602 Hudson Street, Ithaca (Tompkins County). Oak Hill Acquisition Company, LLC is the current operator of the facility. A separate entity, Oak Hill 602 Holding, LLC, will acquire the real property. There will be no change in beds or services provided. Upon approval, the facility will be named Oak Hill Rehabilitation and Nursing Care Center.

On March 1, 2017, Oak Hill Acquisition Company, LLC entered into an Asset Purchase Agreement (APA) with Oak Hill Operating Co. LLC for the sale and acquisition of the RHCF's operating interests for \$1,000 plus assumed liabilities. Concurrently, the realty owner, Oak Hill Acquisition Group, LLC, entered into a Real Estate Purchase Agreement (REPA) with Oak Hill 602 Holding, LLC for the sale and acquisition of the real property for \$7,199,000. The APA and REPA will close simultaneously upon approval of this application by the Public Health and Health Planning Council (PHHPC). There is a relationship between Oak Hill Operating Co, LLC and Oak Hill 602 Holding, LLC in that the entities have several members in common. The applicant will lease the premises from Oak Hill 602 Holding, LLC.

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

Table with 2 columns: Member Name, Percentage. Title: Current Operator. Content: Oak Hill Acquisition Company, LLC; Hershe Greenzweig (75%); Jacqueline Braunstein (25%).

Table with 4 columns: Member Name, Percentage, Member Name, Percentage. Title: Proposed Operator. Content: Oak Hill Operating Co. LLC; Rivky Klein (17.5%), Anna Appel (17.5%), Hinda Landa (10.0%), Suri Reich (10.0%), Yossi Mayer (10.0%), Pearl Salamon (10.0%), Steven Landa (8.0%), Mordechai Berman (5.0%), Andrea Mayer (5.0%), Helen Majerovic (5.0%), David Landa (2.0%).

Concurrently under review, the applicant members of Oak Hill Operating Co. LLC and the realty members of Oak Hill 602 Holding, LLC are seeking approval to acquire the operating and realty interests in the Riverview Manor Health Care Center, a 77-bed RHCF located in Owego (CON 171417).

OPCHSM Recommendation
Contingent Approval

Need Summary

Current occupancy, as of June 14, 2017 is 98.3%, with one vacant bed. This proposal to establish Oak Hill Operating Co. LLC as the new operator of Oak Hill Manor Nursing Home will not change the number of RHCF beds in

Tompkins County. The percentage of new admissions that are Medicaid was 3.7% in 2013, 0.0% in 2014, and 5.6% in 2015. The new operator has committed to meet Medicaid access requirements, has committed to accepting Alternative Level of Care patients, and will implement a plan of action to recruit and retain qualified staff.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

Financial Summary

Oak Hill Operating Co. LLC will acquire the RHC operating assets for \$1,000 plus assumed liabilities (estimated at \$574,598 as of

September 30, 2017) to be funded from members' equity. Oak Hill 602 Holding, LLC will purchase the real property for \$7,199,000 to be funded via \$728,000 in members' equity and a \$6,471,000 loan for a ten-year term, interest fixed at FHLB of Pittsburgh ten-year amortizing loan rate index plus 275 Basis Points (estimated at 5.87% as of February 7, 2018), amortized over 25 years. S&T Bank has provided a letter of interest for the loan at stated terms. The realty entity intends to pursue U.S. Department of Housing and Urban Development (HUD) financing in the third year. There are no project costs associated with this application. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$6,481,400
Expenses	<u>5,762,938</u>
Net Income	\$718,462

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Within two years from the date of council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two-year period. [RNR]

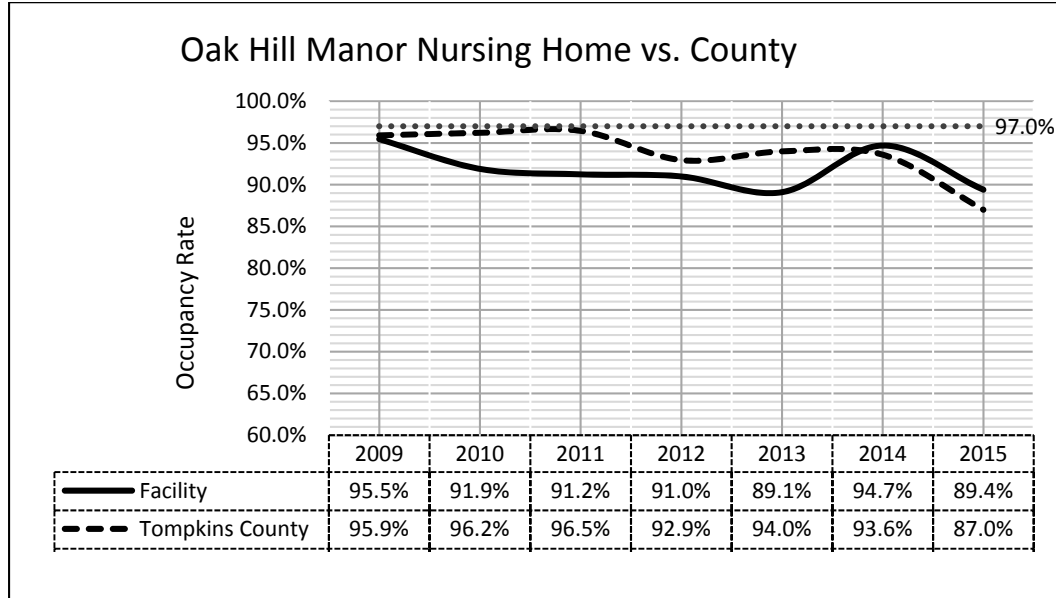
Council Action Date

April 12, 2018

Need Analysis

Background

This project is a change in ownership and will not result in a change in the number of RHCf beds in the county.



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.

Oak Hill Manor Nursing Home's Medicaid admissions rate has not exceeded the threshold of 75% of the Tompkins County rate, as demonstrated in the table below. Therefore, the applicant will be required to improve access to care for Medicaid residents, as well as commit to meeting the County threshold within two years of approval, as outlined in the contingencies and conditions below.

Percent of New RHCf Admissions that are Medicaid	2013	2014	2015
Tompkins County 75% Threshold	18.2%	18.5%	19.7%
Oak Hill Manor Nursing Home	3.7%	0.0%	5.6%

The 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.

Conclusion

This change in ownership will not affect the number of beds in the county. However, the applicant will be required to increase access for Medicaid enrollees.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Oak Hill Manor Nursing Home	Oak Hill Rehabilitation and Nursing Care Center
Address	602 Hudson Street Ithaca, NY 14850	Same
RHCF Capacity	60	Same
ADHC Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	LLC	Same
Operator	Oak Hill Acquisition Company, LLC	Oak Hill Operating Company, LLC *Rivky Klein 17.50% *Anna Appel 17.50% Hinda Landa 10.00% Yossi Mayer 10.00% Pearl Salaman 10.00% Suri Reich 10.00% Mordechai Berman 5.00% Helen Majerovic 5.00% Steven Landa 8.00% Andrea Mayer 5.00% David Landa 2.00% *Managing Members

Character and Competence - Background

Facilities Reviewed

Gold Crest Care Center	02/2008 to present
Wellsville Manor Care Center	02/2008 to present
Valley View Manor Nursing Home	02/2008 to present
Fieldston Lodge Care Center	02/2008 to present
Affinity Skilled Living and Rehabilitation Center	02/2008 to present
Bethany Gardens Skilled Living Center	02/2008 to present
Sunnyside Care Center	02/2008 to present
Van Allen Nursing Home	02/2008 to 07/2009
Sunrise Manor Center for Nursing	02/2008 to present
Windsor Park Nursing Home	02/2008 to present

Individual Background Review

Rivky Klein is currently employed at Gold Crest Care Center in the Social Services Department. She is also employed as a special education teacher for the City of New York Department of Education. She has a Master's Degree from Dameo College, discloses the following ownership interest:

Gold Crest Care Center (5%)	12/2012 to present
-----------------------------	--------------------

Anna Appel is employed at Sunnyside Care Center in the Social Services Department. Ms. Appel indicates that she has a high school diploma. Ms. Appel discloses the following ownership interest:

Gold Crest Care Center (5%)	12/2012 to present
-----------------------------	--------------------

Hinda Landa is currently a homemaker and discloses no employment history. She has a Bachelor of Arts from Yeshiva University. Ms. Landa discloses no ownership interests.

Yossi Mayer is employed by Fieldstone Lodge in the Plant Maintenance Department. He has two Talmudical degrees. Mr. Mayer discloses no ownership interests.

Pearl Salaman is currently a homemaker. She has a General Education Diploma (GED). Ms. Salaman discloses no ownership interests.

Suri Reich is employed at Wellsville Manor Care Center in the Social Services Department. She is also employed at the Beth Jacob of Boro Park school. Ms. Reich has a high school diploma and discloses no ownership interests.

Mordechai Berman is employed by Sunrise Manor Center for Nursing as the Administrator of Record, since March 2015. He holds a Nursing Home Administrator license in New York, in good standing, and a Bachelor's Degree from Mirrer Yeshiva. Mr. Berman discloses no ownership interests.

Helen Majerovic is employed at Flawless Dental as a receptionist. She has a high school diploma. Ms. Majerovic discloses no ownership interest.

Steven Landa is employed at Premier Clinical Solutions as a staffing consultant. He has an MBA in Health Care. Mr. Landa held a Nursing Home Administrator license in New York, which has expired voluntarily. He currently holds a Florida Nursing Home Administrator license in good standing. Mr. Landa discloses the following ownership interests:

Wellsville Manor Care Center (16.71%)	04/2001 to present
Valley View Manor Nursing Home (12.00%)	04/2002 to present

Andrea Mayer indicates his employment as the Operator of Gold Crest Care Center. He has a Talmudic degree from the Rabbinical College of Canada. Mr. Mayer discloses the following ownership interests:

Gold Crest Care Center (7.50%)	02/1996 to present
Fieldston Lodge Care Center (12.375%)	09/2003 to present
Affinity Skilled Living and Rehabilitation Center (7.50%)	02/2004 to present
Valley View Manor Nursin Home (18.00%)	04/2002 to present
Bethany Gardens Skilled Living Center (10.50%)	05/2002 to present
Sunnyside Care Center (15.50%)	09/2000 to present
Wellsville Manor Care Center (11.375%)	04/2001 to present
Van Allen Nursing Home (23.75%)	05/2005 to 07/2009

David Landa indicates his employment as the Operator of Windsor Park Nursing Home. He has a degree in Philosophy from Brooklyn College. Mr. Landa discloses the following ownership interests:

Gold Crest Care Center (40.00%)	02/1996 to present
Fieldston Lodge Care Center (26.00%)	09/2003 to present
Affinity Skilled Living and Rehabilitation Center (15.00%)	02/2004 to present
Windsor Park Nursing Home (22.50%)	06/1986 to present
Sunrise Manor Center for Nursing (28.50%)	06/1993 to present

Character and Competence – Analysis

A review of operations of Gold Crest Center for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-09-038 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility incurred a Civil Money Penalty of \$18,712.50 on September 17, 2008.

A review of operations at Valley View Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-132 for surveillance findings on September 18, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

A review of Operations at Wellsville Manor Care Center for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order # NH 10-061 for surveillance findings on August 6, 2009. Deficiencies were found under 10 NYCRR 415.5(a) Dignity and Respect of Individuality, 415.12 Provide Care/Services for Highest well-being, 415.12(h)(1)(2) Free of accidents Hazards/Supervision Devices and 415.26 Administration.
- The facility incurred a Civil Money Penalty of \$4,550 for findings on August 6, 2009.

A review of operations at Bethany Gardens Skilled Living Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-027 for surveillance findings on January 16, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care Accidents.
- The facility incurred a Civil Money Penalty of \$28,528 on January 16, 2014

A review of operations at Sunrise Manor Center for Nursing for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order # NH 10-032 for surveillance findings on May 8, 2009. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations for Sunnyside Care Center for the periods identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order NH 12-023 for surveillance findings on January 31, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care-Accidents, 415.14(d)(3) Food in Form to Meet Residents' Needs, 415.26 Administration and 15.27(a-c)- Quality Assurance.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH 16-166 for surveillance findings on September 18, 2014. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care-Accident Free Environment and 415.29(b) Physical Environment Space/Equipment.
- The facility incurred a Civil Money Penalty of \$3,055 on January 31, 2011.

A review of operations at Fieldston Lodge Care Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH 11-040 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.3(a)(1)(iii) Residents Rights, 415.4(b) Staff Treatment of Residents, 415.12(h)(2) Quality of Care Accidents and Supervision, 415.26 Administrator and 415.15(a) Medical Director.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH 12-019 for surveillance findings on January 11, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Free from Abuse and 415.12 Quality of Care Highest Practicable Potential.
- The facility incurred a Civil Money Penalty of \$22,652 on September 18, 2008.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations at Affinity Skilled Living and Rehabilitation Center and Windsor Park Nursing Home for the period identified above reveals that there were no enforcements.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	NYS Quintile
Gold Crest Care Center	****	****	*****	*	4
Wellsville Manor Care Center	**	**	*****	*	1
Valley View Manor Nursing Home	**	*	*****	Not Available	5
Fieldston Lodge Care Center	**	***	****	*	2
Affinity Skilled Living and Rehabilitation Ctr	**	**	****	**	3
Bethany Gardens Skilled Nursing Center	*	*	***	***	5
Sunnyside Care Center	*	*	***	*	5
Windsor Park Nursing Home	***	****	****	*	1
Sunrise Manor Ctr for Nursing	***	***	****	Not Available	5

The rating for Staffing is not available from the Medicare.gov site for Valley View Manor Nursing home and Sunrise Manor Center for Nursing

With regard to the nursing homes with quality star ratings of 1 or 2, the applicant noted that they have made changes in administration at these facilities. Additionally, consultants have been hired who are working with the entities to implement new programs to minimize deficiencies. They also claimed that there was a “misrepresentation” for many of the facilities on the submitted statistical reports for staffing which influenced the quality rating. The applicant adds that on several of their latest surveys they have had fewer 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 applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCF's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	March 1, 2017
Seller:	Oak Hill Acquisition Company, LLC
Buyer:	Oak Hill Operating Co. LLC
Asset Acquired:	Rights, title and interest in the business assets clear of liens including: tangible assets, inventory, supplies, books & records related to facility, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "Oak Hill Manor Nursing Home"), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, goodwill, security deposits, patients & employee records, manuals & computer software, phone & telefax numbers, agreed to accounts receivables.
Excluded Assets:	Seller's rights, title and interest on the closing date for retroactive rate increases, rate appeals, audits with respect to third party payments, which became effective on or after the Effective Date (6/1/14) relating to services prior to the effective date including: accounts receivables, Universal Settlement and real estate including FF&E which is the subject of the real estate contract.
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the closing date plus agreed to assumed liabilities.
Purchase Price:	\$1,000 plus assumed liabilities estimated at \$574,598 as of September 30, 2017.
Payment of Purchase Price:	\$1,000 due at closing.

The purchase price for the operations will be satisfied with an equity contribution of \$1,000 by the members of Oak Hill Operating Co. LLC. BFA Attachment H provides additional details for the assumed liabilities estimated at \$574,598 as of September 30, 2017. BFA Attachment A is the net worth summary of the members of Oak Hill Operating Co. LLC, which reveals sufficient resources to meet the equity requirement.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no outstanding Medicaid liabilities as of January 19, 2018.

Purchase and Sale Agreement for the Real Property

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

Date:	March 1, 2017
Seller:	Oak Hill Acquisition Group, LLC
Buyer:	Oak Hill 602 Holding, LLC
Purchase Price:	\$7,199,000
Assets Transferred:	Real Property located at 602 Hudson Street, Ithaca, NY
Payment of Purchase Price:	\$15,000 down payment at signing, plus \$15,000 per month until closing, provided that the monthly down payment shall be increased to \$22,500 per month starting on May 1, 2017. (All down payments shall be applied to purchase price.) Balance due at closing.

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

Equity - Oak Hill 602 Holding, LLC Members	\$ 728,000
Loan (10 years, 25 years amortizing, fixed rate interest at FHLB of Pittsburgh 10-year amortizing loan rate index, plus 275 basis points (5.87% as of 2/7/2018))	<u>6,471,000</u>
Total	<u>\$7,199,000</u>

S&T Bank has provided a letter of interest at the stated terms. The realty entity intends to pursue HUD financing in the third year.

BFA Attachment A is the net worth summaries for the proposed members of Oak Hill Operating Co. LLC and Oak Hill 602 Holding, LLC, which reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. David Landa and Andrea Mayer, members of both the operating and real property entities, have provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in the operating and realty entities to make up any member's equity shortfall. David Landa and Andrea Mayer have also provided affidavits to fund the real property loan balloon payment, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

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

Premises:	60-bed RHCF located at 602 Hudson Street, Ithaca, NY
Landlord:	Oak Hill 602 Holding, LLC
Lessee:	Oak Hill Operating Co, LLC
Term:	10 Years
Rental:	\$40,000 + debt service (Interest + Principal estimated at \$39,892 per month) per lease, the minimum monthly rent is \$80,000
Provisions:	Triple Net

The applicant has submitted an affidavit attesting that the lease will be a non-arm's length agreement, as the landlord and operating entity have several members in common.

Operating Budget

The applicant has provided an operating budget, in 2018 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

	<u>Current Year (2016)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenue</u>				
Medicaid-FFS	\$184.15	\$1,838,032		\$0
Medicaid-MC		\$0	\$191.81	\$1,629,800
Medicare-FFS	\$413.33	\$818,401		\$0
Medicare-MC		\$0	\$520.06	\$1,104,600
Commercial-FFS		\$0	\$349.91	\$743,200
Private Pay	\$310.20	\$2,889,238	\$350.01	\$2,974,000
Other *		<u>\$14,453</u>		<u>\$29,800</u>
Total Revenue		\$5,560,124		\$6,481,400
<u>Expenses</u>				
Operating	\$221.76	\$4,717,975	\$220.53	\$4,684,600
Capital	<u>\$26.51</u>	<u>\$563,980</u>	<u>\$50.75</u>	<u>\$1,078,338</u>
Total Expenses	\$248.27	\$5,281,955	\$271.29	\$5,762,938
Net Income		<u>\$278,169</u>		<u>\$718,462</u>
Utilization (Patient Days)		21,275		21,242
Occupancy		96.9%		97.0%

* Other revenue consists of income from beauty salon, guest meals and misc. income which includes interest income, rebates & refunds from the vendors.

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

- The current year reflects the facility's 2016 revenues and expenses.
- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2016 and projected based on the increase in the Medicare Prospective Payment System (PPS) rate effective October 2016, and increased by 2% for 2018. Also, the proposed operator plans to treat higher acuity patients and expects a higher rate of payment under the Medicare PPS reimbursement system. Commercial rates are based on the actual rates experienced in 2016, and the private rates are based on similar facilities in the geographical area adjusted by 2.5% for inflation.
- Expense assumptions are based on the current operator's model and then adjusted for inflation by 2% per annum based on the applicant's experience operating similar sized facilities. The applicant expects to reduce operating expenses by renegotiating group purchasing contracts to realize volume discounts, and renegotiating worker's compensation and group health insurance to ensure better employee benefits at lower cost.
- The projected utilization for the facility is 97% in Year One and Year Three. It is noted that utilization for the past three years has averaged 94% while occupancy was 100% as of October 4, 2017. The applicant projects an increase in commercial utilization and revenues through reassessment of how the current operator reflects certain dual eligible MCO days, and leveraging new contracts with commercial insurance and MCO plans.

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

Payors	Current Year		Year One	
	Days	%	Days	%
Medicaid-FFS	9,981	46.9%	0	0.0%
Medicaid-MC	0	0.0%	8,497	40.0%
Medicare-FFS	1,980	9.3%	0	0.0%
Medicare-MC	0	0.0%	2,124	10.0%
Commercial-FFS	0	0.0%	2,124	10.0%
Private Pay	<u>9,314</u>	<u>43.8%</u>	<u>8,497</u>	<u>40.0%</u>
Total	21,275	100%	21,242	100%

- The breakeven utilization is projected at 86.24% or 18,887 patient days in Year One.

Capability and Feasibility

Oak Hill Operating Co. LLC will acquire the RHC operating assets for \$1,000 plus assumed liabilities estimated at \$574,598 as of September 30, 2017, funded from members' equity. Oak Hill 602 Holding, LLC will purchase the real property for \$7,199,000 to be funded via \$728,000 in members' equity and a \$6,471,000 loan for 10-years at the above stated terms. S&T Bank has provided a letter of interest for the loan. The realty entity intends to pursue HUD financing in the third year. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,253,026 based on two months of first year expenses of \$960,489 plus \$574,598 in assumed liabilities offset by \$282,061 (half of the account receivables balance as of September 30, 2017). Funding will be as follows: \$626,513 from the members' equity with the remaining \$626,513 satisfied through a five-year loan with interest at the One Month Libor plus 275 basis points, for an estimated rate at 4.33% as of February 6, 2018. S&T Bank has provided a letter of interest. Review of BFA Attachments A, proposed operating and realty members' net worth summaries, reveals sufficient equity overall. David Landa and Andrea Mayer, members of both the operating and real property entities, submitted affidavits stating they are willing to contribute resources disproportionate to their membership interest in the operating and realty entities to make up any member's equity shortfall. Additionally, David Landa and Andrea Mayer have provided affidavits stating they are willing to contribute resources to cover the real property loan balloon payment, should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects a net profit of \$718,462 in Year One after the change in ownership. Revenues are estimated to increase by approximately \$921,276 or 17% based on a realignment of utilization between Medicaid and Commercial payors, plus increases in Private Pay and Medicare daily rates. Overall expenses are expected to increase by \$480,983 due to a \$33,375 decrease in operating expenses and a \$514,358 increase in interest and rent expense. The decrease in operating expenses comes from a \$452,967 drop in professional fees offset by a \$310,294 increase in wages and fringes and a \$109,298 increase in other direct expenses. The budget was created taking into consideration the proposed new owners' experience in operating similar sized facilities. BFA Attachment E is the pro forma balance sheets of Oak Hill Operating Co, LLC, and Oak Hill 602 Holding, LLC, which shows the operation entity will start with \$663,289 in member's equity and the realty entity will start with \$728,000 in members' equity. The budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is the Financial Summary of Oak Hill Acquisition Company, LLC d/b/a Oak Hill Manor Nursing Home for 2014 through 2016. As shown, the RHC had an average positive working capital position of \$249,161, average positive net assets of \$500,469, and average positive income of \$336,855 for the period. BFA Attachment D is the internal financial statement of Oak Hill Manor Nursing Home as

of September 30, 2017, which shows positive working capital position of \$943,977, positive net assets position of \$1,094,966, and net operating income of \$411,220.

BFA Attachments F and G are, respectively, the ownership interests and financial summaries of the proposed members' NYS affiliated RHCFS. The affiliated RHCFS show an average positive net asset, average positive working capital position and an average positive net income position for the period shown with the exception of the following:

- Gold Crest Care Center, Inc shows positive net assets, positive operating income and negative working capital. The negative working capital is the result of a higher-than-expected level of accounts payable and a balloon payment included in the current portion of long-term debt. The applicant expects these liabilities will be paid down and refinanced in 2017 bringing working capital into positive territory.
- Valley View Manor Nursing Home, LLC for 2016 shows positive working capital, positive operating income and positive net assets. In 2014 and 2015 negative net assets related to the realty entity's mortgage refinancing.
- Fieldston Lodge Care Center's shows positive net assets, positive operating income and negative working capital, which has been improving each year.
- Affinity Skilled Living & Rehab Center's shows positive net assets and operating income for all three years, but had negative working capital during those periods, which is expected to turn positive upon receipt of the Universal Settlement and others reimbursement items.
- Sunnyside Care Center shows positive working capital for period 2014-2016 and positive operating income in 2015 and 2016. For 2014 through 2016 net assets were negative, which was related to the realty entity's mortgage refinancing.
- Bethany Gardens Skilled Living Center shows positive working capital and positive operating income for period 2015 and 2016. For 2014 through 2016 net assets were negative, which was related to the realty entity's mortgage refinancing.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members, Oak Hill Operating Co, LLC and Oak Hill 602 Holding, LLC
BFA Attachment B	Current & Proposed Owners of the Real Property
BFA Attachment C	Financial Summary of Oak Hill Manor Nursing Home
BFA Attachment D	Internal Financial Statement of Oak Hill Manor Nursing Home.
BFA Attachment E	Pro Forma Balance Sheet, Oak Hill Operating Co, LLC and Oak Hill 602 Holding, LLC.
BFA Attachment F	Proposed Members' ownership Interest in affiliated RHCFS
BFA Attachment G	Proposed Members' Affiliated RHCFS' Financial Summary
BFA Attachment H	Details of Assumed Liabilities as of September 30, 2017



Project # 171417-E
River View Facility Operations, LLC d/b/a River View Rehabilitation and Nursing Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Tioga
Acknowledged: June 15, 2017

Executive Summary

Description

Riverview Facility Operations, LLC d/b/a River View Rehabilitation and Nursing Care Center, a New York limited liability company, requests approval to be established as the new operator of Riverview Manor Health Care Center, a 77-bed, proprietary, Article 28 residential health care facility (RHCF) located at 510 Fifth Avenue, Owego (Tioga County). Riverview Acquisition Company, LLC is the current operator of the facility, which is also certified to operate an 11-slot Adult Day Health Care Program (ADHCP) onsite. The ADHCP is non-operational and the current operator is coordinating with the area regional office to remove ADHCP service from the facility's operating certificate. There will be no change in beds or other services provided. A separate entity, River View 510 Holding, LLC, will acquire the real property. Upon approval, the entity will do business as River View Rehabilitation and Nursing Care Center.

On March 1, 2017, River Acquisition Company, LLC entered into an Asset Purchase Agreement (APA) with Riverview Facility Operations, LLC for the sale and acquisition of the RHCF operating interests for \$1,000 plus assumed liabilities. Concurrently, the realty owner, River Oak Acquisition Group, LLC and 530 5th Avenue, LLC, entered into a Real Estate Purchase Agreement (REPA) with River View 510 Holding, LLC for the sale and acquisition of the real property for \$4,799,000. The APA and REPA will close simultaneously upon approval of this application by the Public Health and Health Planning Council. There is a relationship between Riverview Facility Operations, LLC and

River View 510 Holding, LLC in that the entities have several members in common. The applicant will lease the premises from River View 510 Holding, LLC.

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

Table with 2 columns: Member Name, Percentage. Title: Current Operator Riverview Acquisition Company, LLC. Members: Hershe Greenzweig (75%), Jacqueline Braunstein (25%).

Table with 4 columns: Member Name, Percentage, Member Name, Percentage. Title: Proposed Operator Riverview Facility Operations, LLC. Members: Rivky Klein (20%), Anna Appel (20%), Hinda Landa (10%), Helen Majerovic (10%), Yossi Mayer (10%), Suri Reich (10%), Steven Landa (8%), Mordechai Berman (5%), Andrea Mayer (5%), David Landa (2%).

Concurrently under review, the applicant members of Riverview Facility Operations, LLC and the realty members of River View 510 Holding, LLC are seeking approval to acquire the operating and realty interests in the Oak Hill Manor Nursing Home, a 60-bed RHCF located in Ithaca (CON 171416).

OPCHSM Recommendation
Contingent Approval

Need Summary

Current occupancy, as of June 14, 2017 is 94.8%, with four vacant beds. The percentage of new admissions that are Medicaid was 23.6% in 2013, 38.3% in 2014, and 79.2% in 2015. There will be no change in the number of RHCF beds in the county.

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 the assumption of ownership.

Financial Summary

Riverview Facility Operations, LLC will acquire the RHCF operating assets for \$1,000 plus assumed liabilities (estimated at \$1,732,623 as

of September 30, 2017) to be funded from members' equity. River View 510 Holding, LLC will purchase the real property for \$4,799,000 to be funded via \$959,000 in members' equity, and a \$3,840,000 loan for a ten-year term, fixed rate interest through an interest rate Swap estimated at 5.62% as of December 12, 2017, amortized over 25 years. S&T Bank has provided a letter of interest for the loan at stated terms. The realty entity intends to pursue U.S. Department of Housing and Urban Development (HUD) financing in the third year. There are no project costs associated with this application. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$7,104,100
Expenses	<u>6,579,433</u>
Net Income	\$524,667

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an Operating Agreement of Riverview Facility Operations LLC, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of a Restated and Amended Articles of Organization of Riverview Facility Operations LLC, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a lease agreement between Riverview Facility Operations LLC and River View 510 Holding 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]

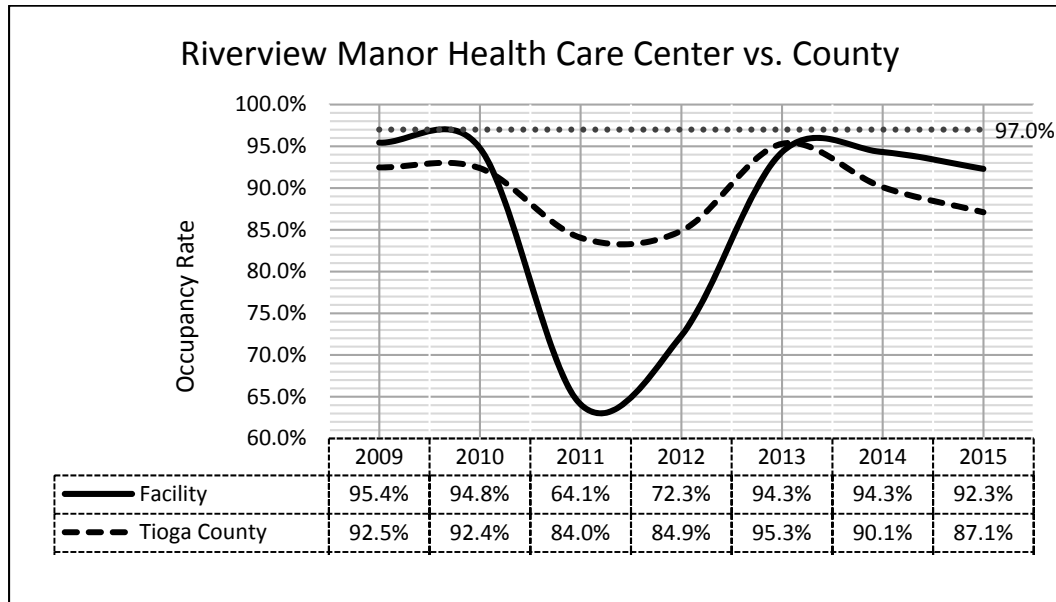
Council Action Date

April 12, 2018

Need Analysis

Background

The overall occupancy for Tioga County was 87.1% in 2015 as indicated in the chart below. The large dip in occupancy in 2011 and 2012 was due to this facility being flooded on September 7, 2011. The small size of this facility and the rural character of Tioga County both indicate that current bed levels are appropriate.



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.

Riverview Manor Health Center's Medicaid admissions rate has consistently exceeded the threshold of 75% of the Tioga County rate, as demonstrated in the table below.

Percent of New RHCF Admissions that are Medicaid	2013	2014	2015
Tioga County 75% Threshold	9.6%	9.9%	20.8%
Riverview Manor Health Care Center	23.6%	38.3%	79.2%

Conclusion

Although occupancy in Tioga County and at Riverview Manor Health Care Center has been slightly below Department planning thresholds, bed reductions would risk a lack of access in this rural area. Furthermore, Riverview has maintained a high rate of new Medicaid admission.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Riverview Manor Health Care Center	River View Rehabilitation and Nursing Care Center
Address	510 Fifth Avenue Owego, NY 13827	Same
RHCF Capacity	77	Same
ADHC Program Capacity	11	0
Type of Operator	Proprietary	Same
Class of Operator	LLC	Same
Operator	Riverview Acquisition Company, LLC	Oak Hill Operating Company, LLC *Rivky Klein 20.00% *Anna Appel 20.00% Hinda Landa 10.00% Yossi Mayer 10.00% Suri Reich 10.00% Mordechai Berman 5.00% Helen Majerovic 10.00% Steven Landa 8.00% Andrea Mayer 5.00% David Landa 2.00% <i>*Managing Member</i>

Character and Competence - Background

Facilities Reviewed

Gold Crest Care Center	02/2008 to present
Wellsville Manor Care Center	02/2008 to present
Valley View Manor Nursing Home	02/2008 to present
Fieldston Lodge Care Center	02/2008 to present
Affinity Skilled Living and Rehabilitation Center	02/2008 to present
Bethany Gardens Skilled Living Center	02/2008 to present
Sunnyside Care Center	02/2008 to present
Van Allen Nursing Home	02/2008 to 07/2009
Sunrise Manor Center for Nursing	02/2008 to present
Windsor Park Nursing Home	02/2008 to present

Individual Background Review

Rivky Klein is currently employed at Gold Crest Care Center in the Social Services Department. She is also employed as a special education teacher for the City of New York Department of Education. She has a Master's Degree from Dameo College, discloses the following ownership interest:

Gold Crest Care Center (5%) 12/2012 to present

Anna Appel is employed at Sunnyside Care Center in the Social Services Department. Ms. Appel indicates that she has a high school diploma. Ms. Appel discloses the following ownership interest:

Gold Crest Care Center (5%) 12/2012 to present

Hinda Landa is currently a homemaker and discloses no employment history. She has a Bachelor of Arts from Yeshiva University. Ms. Landa discloses no ownership interests.

Yossi Mayer is employed by Fieldstone Lodge in the Plant Maintenance Department. He has two Talmudical degrees. Mr. Mayer discloses no ownership interests.

Pearl Salaman is currently a homemaker. She has a General Education Diploma (GED). Ms. Salaman discloses no ownership interests.

Suri Reich is employed at Wellsville Manor Care Center in the Social Services Department. She is also employed at the Beth Jacob of Boro Park school. Ms. Reich has a high school diploma and discloses no ownership interests.

Mordechai Berman is employed by Sunrise Manor Center for Nursing as the Administrator of Record, since March 2015. He holds a Nursing Home Administrator license in New York, in good standing, and a Bachelor's Degree from Mirrer Yeshiva. Mr. Berman discloses no ownership interests.

Helen Majerovic is employed at Flawless Dental as a receptionist. She has a high school diploma. Ms. Majerovic discloses no ownership interest.

Steven Landa is employed at Premier Clinical Solutions as a staffing consultant. He has an MBA in Health Care. Mr. Landa held a Nursing Home Administrator license in New York, which has expired voluntarily. He currently holds a Florida Nursing Home Administrator license in good standing. Mr. Landa discloses the following ownership interests:

Wellsville Manor Care Center (16.71%)	04/2001 to present
Valley View Manor Nursing Home (12.00%)	04/2002 to present

Andrea Mayer indicates his employment as the Operator of Gold Crest Care Center. He has a Talmudic degree from the Rabbinical College of Canada. Mr. Mayer discloses the following ownership interests:

Gold Crest Care Center (7.50%)	02/1996 to present
Fieldston Lodge Care Center (12.375%)	09/2003 to present
Affinity Skilled Living and Rehabilitation Center (7.50%)	02/2004 to present
Valley View Manor Nursin Home (18.00%)	04/2002 to present
Bethany Gardens Skilled Living Center (10.50%)	05/2002 to present
Sunnyside Care Center (15.50%)	09/2000 to present
Wellsville Manor Care Center (11.375%)	04/2001 to present
Van Allen Nursing Home (23.75%)	05/2005 to 07/2009

David Landa indicates his employment as the Operator of Windsor Park Nursing Home. He has a degree in Philosophy from Brooklyn College. Mr. Landa discloses the following ownership interests:

Gold Crest Care Center (40.00%)	02/1996 to present
Fieldston Lodge Care Center (26.00%)	09/2003 to present
Affinity Skilled Living and Rehabilitation Center (15.00%)	02/2004 to present
Windsor Park Nursing Home (22.50%)	06/1986 to present
Sunrise Manor Center for Nursing (28.50%)	06/1993 to present

Character and Competence – Analysis

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

A review of operations of Gold Crest Center for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-09-038 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility incurred a Civil Money Penalty of \$18,712.50 on September 17, 2008.

A review of operations at Valley View Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-132 for surveillance findings on September 18, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

A review of Operations at Wellsville Manor Care Center for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order # NH 10-061 for surveillance findings on August 6, 2009. Deficiencies were found under 10 NYCRR 415.5(a) Dignity and Respect of Individuality, 415.12 Provide Care/Services for Highest well-being, 415.12(h)(1)(2) Free of accidents Hazards/Supervision.Devics and 415.26 Administration.
- The facility incurred a Civil Money Penalty of \$4,550 for findings on August 6, 2009.

A review of operations at Bethany Gardens Skilled Living Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH 16-027 for surveillance findings on January 16, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care Accidents.
- The facility incurred a Civil Money Penalty of \$28,528 on January 16, 2014

A review of operations at Sunrise Manor Center for Nursing for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order # NH 10-032 for surveillance findings on May 8, 2009. Deficiencies were found under 10NYCRR 415.12 Quality of Care.

Since there were no other enforcements, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations for Sunnyside Care Center for the periods identified above reveals the following:

- The facility was fined \$8,000 pursuant to Stipulation and Order NH 12-023 for surveillance findings on January 31, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care- Accidents, 415.14(d)(3) Food in Form to Meet Residents' Needs, 415.26 Administration and 15.27(a-c)- Quality Assurance.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH 16-166 for surveillance findings on September 18, 2014. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care- Accident Free Environment and 415.29(b) Physical Environment Space/Equipment.
- The facility incurred a Civil Money Penalty of \$3,055 on January 31, 2011.

A review of operations at Fieldston Lodge Care Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH 11-040 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.3(a)(1)(iii) Residents Rights, 415.4(b) Staff Treatment of Residents, 415.12(h)(2) Quality of Care Accidents and Supervision, 415.26 Administrator and 415.15(a) Medical Director.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH 12-019 for surveillance findings on January 11, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Free from Abuse and 415.12 Quality of Care Highest Practicable Potential.
- The facility incurred a Civil Money Penalty of \$22,652 on September 18, 2008.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations at Affinity Skilled Living and Rehabilitation Center and Windsor Park Nursing Home for the period identified above reveals that there were no enforcements.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	NYS Quintile
Gold Crest Care Center	****	****	*****	*	4
Wellsville Manor Care Center	**	**	*****	*	1
Valley View Manor Nursing Home	**	*	*****	Not Available	5
Fieldston Lodge Care Center	**	***	****	*	2
Affinity Skilled Living and Rehabilitation Ctr	**	**	****	**	3
Bethany Gardens Skilled Nursing Center	*	*	***	***	5
Sunnyside Care Center	*	*	***	*	5
Windsor Park Nursing Home	***	****	****	*	1
Sunrise Manor Ctr for Nursing	***	***	****	Not Available	5

The rating for Staffing is not available per the Medicare.gov site for Valley View Manor Nursing home and Sunrise Manor Center for Nursing

With regard to the nursing homes with quality star ratings of 1 or 2, the applicant noted that they have made changes in administration at these facilities. Additionally, consultants have been hired who are working with the entities to implement new programs to minimize deficiencies. They also claimed that there was a “misrepresentation” for many of the facilities on the submitted statistical reports for staffing which influenced the quality rating. The applicant adds that on several of their latest surveys they have had fewer 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 applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCF's operating interest. The agreement will become effectuated upon PHHPC approval of this CON. The terms are summarized below:

Date:	March 1, 2017
Seller:	Riverview Acquisition Company, LLC
Buyer:	Riverview Facility Operations, LLC
Asset Acquired:	Rights, title and interest in business assets clear of liens including: tangible assets, inventory, supplies, books & records related to facility, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "Riverview Manor Nursing Home"), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, goodwill, security deposits, patients & employee records, manuals & computer software, phone & telefax numbers, agreed to accounts receivables.
Excluded Assets:	Seller's rights, title and interest on the closing date for retroactive rate increases, rate appeals, audits with respect to third party payments, which became effective on or after the Effective Date (6/1/14) relating to services prior to the effective date including: accounts receivables, Universal Settlement, and real estate including FF&E which is the subject of the real estate contract.
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the closing date plus agreed to assumed liabilities.
Purchase Price:	\$1,000 plus assumed liabilities (estimated at \$1,732,623 as of September 30, 2017)
Payment:	\$1,000 due at closing

The purchase price of the operations will be satisfied with an equity contribution of \$1,000 by the members of Riverview Facility Operations, LLC. BFA Attachment H provides additional details for the assumed liabilities estimated at \$1,732,623 as of September 30, 2017. BFA Attachment A is the net worth summary of the members of Riverview Facility Operations, LLC, which reveals sufficient resources to meet the equity requirement.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no outstanding Medicaid liabilities as of January 19, 2018.

Purchase and Sale Agreement for the Real Property

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

Date:	March 1, 2017
Seller:	River Oak Acquisition Group, LLC and 530 5 th Avenue, LLC
Buyer:	River View 510 Holding, LLC
Purchase Price:	\$4,799,000
Assets Transferred:	Real Property located at 510 and 530 Fifth Ave, Owego, NY 13827
Payment of Purchase Price:	\$15,000 down payment at signing, plus \$15,000 per month until closing, provided that the monthly down payment shall be increased to \$22,500 per month starting on May 1, 2017. (All down payments shall be applied to purchase price.) Balance due at closing.

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

Equity- River View 510 Holding, LLC Members	\$ 959,000
Loan (10 years, 25-years amortizing, Fixed at interest rate Swap (10-year amortizing loan rate is approximately 5.62% as of 12/12/2017))	<u>3,840,000</u>
Total	<u>\$4,799,000</u>

S&T Bank has provided a letter of interest at the stated terms. The realty entity intends to pursue HUD financing in the third year.

BFA Attachment A is the net worth summaries for the proposed members of Riverview Facility Operations, LLC and River View 510 Holding, LLC, which reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. David Landa and Andrea Mayer, members of both the operating and real property entities, have provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in the operating and realty entities to make up any member's equity shortfall. David Landa and Andrea Mayer have also provided affidavits to fund the real property loan balloon payment, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

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

Premises:	77-bed RHC located at 510 Fifth Ave, Owego, NY 13827
Landlord:	River View 510 Holding LLC
Lessee:	Riverview Facility Operations, LLC
Term:	10 Years
Rental:	\$25,000 + Debt Service (interest + principal estimated at \$23,857 per month) per lease, minimum monthly rent is \$65,000
Provisions:	Triple Net

The applicant has submitted an affidavit attesting that the lease will be a non-arm's length agreement, as the landlord and operating entity have several members in common.

Operating Budget

The applicant has provided an operating budget, in 2018 dollars, for the first year of operation subsequent to the change in ownership. The budget is summarized below:

	Current Year (2016)		Year One	
	Per Diem	Total	Per Diem	Total
<u>Revenue</u>				
Medicaid-FFS	\$177.89	\$3,141,054	\$0.00	\$0
Medicaid-MC	\$0.00	\$0	\$191.46	\$3,705,600
Medicare-FFS	\$451.00	\$910,114	\$0.00	\$0
Medicare-MC	\$0.00	\$0	\$520.01	\$1,842,900
Commercial-FFS	\$245.55	\$1,108,405	\$350.11	\$763,598
Private Pay	\$342.36	\$841,852	\$349.79	\$762,900
Other *		<u>\$5,684</u>		<u>\$29,102</u>
Total Revenue		\$6,007,109		\$7,104,100
<u>Expenses</u>				
Operating	\$195.49	\$5,279,714	\$206.29	\$5,623,600
Capital	<u>\$21.48</u>	<u>\$579,977</u>	<u>\$35.06</u>	<u>\$955,833</u>
Total Expenses	\$216.97	\$5,859,691	\$241.35	\$6,579,433
Net Income		<u>\$147,418</u>		<u>\$524,667</u>
Utilization (Patient Days)		27,007		27,260
Occupancy		96.1%		97%

*Other revenue consists of rebates and refunds from vendors and interest revenue.

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

- The current year reflects the facility's 2016 revenues and expenses.
- Medicaid revenue is based on the facility's current 2016 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2016 and projected based on the increase in Medicare Prospective Payment System (PPS) rate effective October 2016 and increased by 2% for 2018. Also, the proposed operator plans to treat higher acuity patients, and expects a higher rate of reimbursement under the Medicare PPS reimbursement system. Private Pay and Commercial rates are based on similar facilities in the geographical area adjusted by 2.5% for inflation.
- Expense assumptions are based on the current operator's model and then adjusted for inflation by 2% per annum based on the applicant's experience operating similar sized facilities. The applicant expects to reduce operating expenses by renegotiating group purchasing contracts to realize volume discounts, and renegotiating worker's compensation and group health insurance to ensure better employee benefits at lower costs.
- The projected utilization for the facility is 97% in Year One and Year Three. It is noted that utilization for the past three years has averaged 94.0% while occupancy was 94.8% as of October 18, 2017.
- Utilization by payor source for the first year after the change in ownership is summarized below:

<u>Payor</u>	<u>Current year</u>		<u>Year One</u>	
	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid-FFS	17,657	65.4%		0.0%
Medicaid-MC	0	0.0%	19,354	71.0%
Medicare-FFS	2,377	8.8%		0.0%
Medicare-MC	0	0.0%	3,544	13.0%
Commercial-FFS	4,514	16.7%	2,181	8.0%
Private Pay	<u>2,459</u>	<u>9.1%</u>	<u>2,181</u>	<u>8.0%</u>
Total	27,007	100%	27,260	100%

- The breakeven utilization is projected at 89.83% or 25,246 patient days in year one.

Capability and Feasibility

The purchase price for the RHCF's operating interest is \$1,000 plus assumed liabilities estimated at \$1,732,623 as of September 30, 2017, funded from members' equity. River View 510 Holding, LLC will purchase the real property for \$4,799,000 to be funded via \$959,000 in members' equity, a \$3,840,000 loan for 10-years at the above stated terms. S&T Bank has provided letter of interest for the loan. It is the applicant's intent to pursue HUD financing in the third year. There are no project costs associated with this application.

The working capital requirement, estimated at \$1,738,686 is based on two months of first year expenses of \$1,096,567 plus \$1,732,623 in assumed liabilities offset by \$1,090,504, half of the accounts receivable balance as of September 30, 2017. Funding will be as follows: \$869,343 from the members' equity with the remaining \$869,343 satisfied through a five-year loan at One Month Libor Plus 300 basis points, for an estimated rate at 4.58% as of February 6, 2018. S&T Bank has provided a letter of interest. Review of BFA Attachments A, proposed members net worth summaries for the operator and real property owners, respectively, reveals sufficient equity overall. David Landa and Andrea Mayer, members of both the operating and real property entities, submitted affidavits stating they are willing to contribute resources disproportionate to their membership interest in the operating and realty entities to make up any member's equity shortfall. Additionally, David Landa and Andrea Mayer have provided affidavits stating they are willing to contribute resources in the realty entity to cover the balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects a net profit of \$524,667 in Year One after the change in ownership. Revenues are estimated to increase by approximately \$1,096,991 or 18% based on a utilization shift out of private and commercial payors to Medicare and Medicaid along with daily rate increases. Overall expenses are expected to increase by \$719,742, due to a \$343,886 increase in operating expenses and a \$375,856 increase in interest and rent expense. The increase in operating expenses comes from a \$239,128 increase in wages and fringes offset by a \$88,678 drop in professional fees, with the remaining \$193,436 increased expense spread primarily among non-medical supplies, purchased services and other direct costs. The budget was created taking into consideration the proposed new owners'

experience in operating similar sized facilities. BFA Attachment E is the pro forma balance sheets of Riverview Facility Operations, LLC and River View 510 Holding, LLC, which shows the operation entity will start with \$1,061,711 in member's equity and the realty entity will start with \$960,000 in members' equity. The budget appears reasonable.

Implementation of the transition of nursing home (NH) residents to Medicaid managed care is ongoing. Under the managed care construct, Managed Care Organizations (MCOs) negotiate payment rates directly with NH providers. A Department policy paper provided guidance requiring MCOs to pay the Medicaid FFS rate as a benchmark, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. The transition period has been extended out to 2020; hence, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is the Financial Summary of Riverview Acquisition Company, LLC d/b/a Riverview Manor Health Care Center for 2014 through 2016. As shown, the RHCF had an average negative working capital position of \$301,660, average negative net assets of \$205,900 and average negative income of \$346,814 for the period. BFA Attachment D presents the internal financial statement of Riverview Manor Health Care Center as of September 30, 2017, which shows that the RHCF had a positive working capital position of \$59,453, a positive net assets position of \$473,089, and generated a net operating income of \$611,969.

BFA Attachment F is proposed members' ownership interest in the affiliated RHCFs. BFA Attachment G is a Financial Summary of the proposed members' affiliated nursing homes. The affiliated RHCFs show an average positive net asset, average positive working capital position and an average positive net income position for the period shown with the exception of the following:

- Gold Crest Care Center, Inc. shows positive net assets, positive operating income and negative working capital. The negative working capital is the result of a higher-than-expected level of accounts payable and a balloon payment included in the current portion of long-term debt. The applicant expects these liabilities will be paid down by the end of 2017 bringing working capital into positive territory.
- Valley View Manor Nursing Home, LLC for 2016 shows positive working capital, positive operating income and positive net assets. In 2014 and 2015 negative assets related to the realty entity's mortgage refinancing.
- Affinity Skilled Living & Rehab Center's shows positive net assets and operating income for all three years, but had negative working capital during those periods, which is expected to turn positive upon receipt the Universal Settlement and others reimbursement items.
- Fieldston Lodge Care Center shows positive net assets, positive operating income and negative working capital, which has been improving each year.
- Sunnyside Care Center shows positive working capital for period 2014-2016 and positive operating income in 2015 and 2016. For 2014 through 2016 net assets were negative, which was related to the realty entity's mortgage refinancing.
- Bethany Gardens Skilled Living Center shows positive working capital and positive operating income for 2015 and 2016. For 2014 through 2016 net assets were negative, which was related to the realty entity's mortgage refinancing

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

- BFA Attachment A Net Worth of Proposed Members, Riverview Facility Operations, LLC and River View 510 Holding, LLC
- BFA Attachment B Current & Proposed Owners of the Real Property
- BFA Attachment C Financial Summary of Riverview Manor Health Care Center.
- BFA Attachment D 2017 Internal Financial Statement of Riverview Manor Health Care Center.
- BFA Attachment E Pro Forma Balance Sheet, Riverview Facility Operations, LLC and River View 510 Holding, LLC.
- BFA Attachment F Proposed Members' ownership Interest in affiliated RHCfs.
- BFA Attachment G Proposed Members' Affiliated RHCfs' Financial Summary.
- BFA Attachment H Details of Assumed Liabilities as of September 30, 2017



Project # 172428-E
Montclair Care Center, Inc.
d/b/a Marquis Rehabilitation & Nursing Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Nassau
Acknowledged: January 3, 2018

Executive Summary

Description

Montclair Care Center, Inc. d/b/a Marquis Rehabilitation & Nursing Center, a 102-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2 Medical Plaza, Glen Cove (Nassau County), requests approval to transfer 100% ownership interest in the corporation to one new stockholder, Advanced Nursing and Rehabilitation at Glen Cove, LLC, a to-be-formed New York State (NYS) limited liability company whose sole member will be Issac Laufer. The facility will operate under the name Advanced Nursing and Rehabilitation at Glen Cove. There will be no changes in bed or services provided.

The proposed ownership is as follows:

Table with 2 columns: Shareholders, %
Operator: Montclair Care Center, Inc.
Shareholders: Advanced Nursing and Rehabilitation at Glen Cove, LLC (100%), Issac Laufer (100%)

Under the terms of a Stock Purchase Agreement executed August 10, 2017, ten shareholders will withdraw from the corporation via the sale of their shares (97% ownership/97 shares) to Issac Laufer on behalf of the to-be formed Advanced Nursing and Rehabilitation at Glen Cove, LLC, and Issac Laufer will transfer his 3% ownership/3 shares to the proposed new member LLC. The purchase price for the shares is \$1,761,169 payable via the terms of a promissory note between Issac Laufer and the withdrawing members. The stock purchase

transaction will be effectuated upon approval by the Public Health and Health Planning Council.

The RHCF's realty is owned by 2 Medical Plaza LLC, a corporation that prior to a recent change in ownership had members in common with various operating entity shareholders, including Issac Laufer who had a 4.5% membership in the realty entity. On August 10, 2017, the realty members whose combined ownership totaled 95.5% executed a Membership Interest Purchase Agreement with Issac Laufer for the sale of their respective interests for \$7,046,676, rendering Issac Laufer 100% owner of the RHCF's real property. The purchase price is payable via the terms of a promissory note between Issac Laufer and the selling members. Closing of the transaction occurred on September 28, 2017, with payments on the promissory note commencing October 31, 2017. The existing lease between the operating and realty entities expires December 31, 2046, and will remain ongoing and unchanged after approval of this application.

OPCHSM Recommendation
Contingent Approval

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

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon the assumption of ownership.

Financial Summary

There are no project costs associated with this application. The total purchase price for the 97 shares to the operation is \$1,761,169 to be funded via a promissory note between Issac Laufer (the Maker) and the withdrawing

shareholders (collectively, the Payee) for a ten-year term at 2.58% interest, payable in monthly installments of principal and interest. The total purchase price for the 95.5% ownership interest (95.5 shares) in the real estate company is \$7,046,676 funded via a promissory note between Issac Laufer (the Maker) and the withdrawing members (collectively, the Payee) for a ten-year term at 2.58% interest, payable in monthly installments of principal and interest. Closing on the realty transaction occurred September 28, 2017. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$11,292,200
Expenses	<u>10,748,148</u>
Net Income	\$544,052

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 Promissory Note for the Facility Operations' Stock Membership Interest Purchase Agreement, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the Articles of Organization of Advanced Nursing and Rehabilitation at Glen Cove LLC, which is acceptable to the Department. [CSL]
3. Submission of a photocopy of the Operating Agreement of Advanced Nursing and Rehabilitation at Glen Cove LLC, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of a Certificate of Assumed Name, which is acceptable to the Department. [CSL]
5. Submission of a photocopy of the By-laws of Montclair Care Center 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

April 12, 2018

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Marquis Rehabilitation & Nursing Center	Same
Address	2 Medical Plaza Glen Cove, NY 11542	Same
RHCF Capacity	102	Same
ADHC Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	Corporation	LLC
Operator	Montclair Care Center, Inc.	Montclair Care Center, Inc. Advanced Nursing and Rehabilitation at Glen Cove, LLC 100% Isaac Laufer (100%)

Character and Competence - Background

Facilities Reviewed

Glen Cove Center for Nursing & Rehab	02/2008 to present
Marquis Rehab & Nursing Center	02/2008 to present
Sutton Park Center for Nursing and Rehab	02/2008 to present
North Westchester Restorative Therapy and Nursing Center	02/2008 to present
Excel at Woodbury for Rehab & Nursing LLC	08/2013 to present
Lynbrook Restorative Therapy and Nursing	01/2011 to present
Momentum at South Bay for Rehab and Nursing	11/2010 to present
Oasis Rehab and Nursing, LLC	10/2013 to present
Surge Rehab and Nursing LLC	01/2017 to present
Quantum Rehab & Nursing	01/2017 to present

Individual Background Review

Isaac Laufer discloses he is currently employed as the Executive Director of North Westchester Restorative Therapy and Nursing, East Rockaway Center, Suffolk Restorative Therapy and Nursing, Excel at Woodbury for Rehabilitation and Nursing and Oasis for Rehabilitation and Nursing Center. He has a Bachelor's of Science degree from Mirer Yeshiva Center Institute. He holds no professional licenses. Mr. Laufer discloses the following nursing home ownership interests:

Glen Cove Center for Nursing & Rehab (5%)	03/1998 to present
Marquis Rehab & Nursing Center (3%)	03/1998 to present
Sutton Park Center for Nursing and Rehab (23%)	01/1998 to present
North Westchester Restorative Therapy and Nursing Ctr (33%)	01/2006 to present
Excel at Woodbury for Rehab & Nursing LLC (50%)	08/2013 to present
Lynbrook Restorative Therapy and Nursing (50%)	01/2011 to present
Momentum at South Bay for Rehab and Nursing (50%)	11/2010 to present
Oasis Rehab and Nursing, LLC (50%)	10/2013 to present
Surge Rehab and Nursing LLC (50%)	01/2017 to present
Quantum Rehab & Nursing (50%)	01/2017 to present

Character and Competence – Analysis

A review of operations for Glen Cove Center for Nursing and Rehabilitation for the period identified above reveals:

- The facility was fined \$10,000 pursuant Stipulation and Order 16-130 issued for surveillance findings on September 25, 2014. Deficiencies were found under 10NYCRR 415.12 Quality of Care: Highest Practicable Potential.

- The facility was fined \$12,000 pursuant to Stipulation and Order 16-167 issued for surveillance findings on October 9, 2015. Deficiencies were found under 10 NYCRR 415(e)(2)(ii)(b) Notification of Changes and 10 NYCRR 415.12(c)(1) – Quality of Care: Pressure Sores.

A review of operations for Marquis Rehabilitation and Nursing Center for the period identified above reveals:

- The facility was fined \$8,000 pursuant Stipulation and Order 16-108 issued March 1, 2016 for surveillance findings on April 3, 2013. Deficiencies were found under 10NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment, 10NYCRR 415.15(a) Administration: Medical Director, 10NYCRR 415.26 Administration and 10NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance.
- The facility incurred a civil monetary penalty of \$5,525 for the period of April 3, 2013 to April 3, 2013.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations for Sutton Park Center for Nursing and Rehabilitation for the period identified above reveals:

- The facility was fined \$2,000 pursuant to Stipulation and Order 09-043 issued October 28, 2009 for surveillance findings on September 26, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) – Quality of Care: Accidents.
- The facility was fined \$4,000 pursuant to Stipulation and Order 10-015 issued April 30, 2010 for surveillance findings on June 18, 2009. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care and 10 NYCRR 415.27– Quality Assessment and Assurance.
- The facility was fined \$4,000 pursuant Stipulation and Order 10-042 issued October 19, 2010 for surveillance findings on October 7, 2009. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care: Highest Practical Potential and 10 NYCRR 415.12(c)(1) – Quality of Care: Unnecessary Drugs.
- The facility was fined \$10,000 pursuant to Stipulation and Order 11-026 issued May 24, 2011 for surveillance findings on January 19, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) – Quality of Care: Pressure Sores.
- The facility incurred a civil monetary penalty of \$32,630 for the period of June 17, 2009 to July 7, 2009.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations for Momentum at South Bay for Rehabilitation and Nursing for the period identified above reveals:

- The facility was fined \$2000 pursuant Stipulation and Order 16-077 issued January 13, 2016 for surveillance findings on April 9, 2014. Deficiencies were found under 10NYCRR 415.12 Quality of Care: Highest Practicable Potential.
- The facility was fined \$4,000 pursuant Stipulation and Order 16-168 issued May 31, 2016 for surveillance findings on September 15, 2015. Deficiencies were found under 10NYCRR 415.12 Quality of Care: Highest Practicable Potential and 10NYCRR 415.26 Administration.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations for Lynbrook Restorative Therapy and Nursing, North Westchester Restorative Therapy and Nursing Center and Excel at Woodbury for Rehabilitation and Nursing, LLC, Oasis for Rehabilitation and Nursing Center, Surge Rehabilitation and Nursing LLC and Quantum Rehabilitation and Nursing for the time periods indicated above reveals that there were no enforcements.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	NYS Quintile
Glen Cove Center for Nursing	*****	****	*****	****	4
Marquis Rehabilitation & Nursing Center	*****	***	*****	****	4
Sutton Park Ctr Nursing Rehab	*****	*****	*****	***	2
Long Island Care Center Inc	*****	****	*****	***	4
North Westchester Restorative Therapy & N C	*****	*****	*****	***	2
Excel At Woodbury For Rehab and Nursing, LLC	*****	***	*****	****	1
Lynbrook Restorative Therapy and Nursing	*****	***	*****	****	2
Momentum at South Bay for Rehabilitation and Nursing	****	**	*****	****	3
Oasis Rehabilitation and Nursing	*****	*****	*****	***	4
Surge Rehabilitation and Nursing	***	**	*****	***	2
Quantum Rehabilitation and Care Center	****	**	*****	****	4

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon the assumption of ownership.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Stock Purchase Agreement & Operations Promissory Note

The applicant has submitted an executed stock purchase agreement, to be effectuated upon PHHPC approval, summarized below:

Date:	August 10, 2017
Sellers:	Mayer Laufer 32.00%, Gerald Neuman 12%, Tali Skoczylas 12%, Josef Skoczylas 3%, Alexander Skoczylas 3%, Michael Nichols 4.125%, Nancy Nichols 4.125%, Issac Madeb 8.75%, Nathan Brach 8%, Marvin Ostreicher 10% (Total 97%).
Buyer:	Issac Laufer on behalf of Advanced Nursing and Rehabilitation at Glen Cove LLC (purchasing 97% interest and assigning his 3% interest to the LLC).
Interest Acquired:	97% of the equity of the Company as set forth in detail in Schedule A (the "Shares") (97% purchased interest plus 3% held interest assigned to Advanced Nursing and Rehabilitation at Glen Cove LLC giving 100% shareholder rights of Montclair Care Center, Inc to Issac Laufer.)
Purchase Price	\$1,761,169.
Payment of the Purchase Price:	Promissory Note at 2.58% interest payable over a ten-year term between Issac Laufer and the selling shareholders.

The applicant has submitted a draft promissory note for \$1,761,169 between Issac Laufer (the Maker) and the withdrawing shareholders (collectively, the Payee) with a ten-year term, ten-year amortization, at 2.58% interest, payable in monthly installments of principal and interest.

Real Estate Membership Interest Purchase Agreement & Promissory Note

The applicant has submitted an executed real estate Membership Interest Purchase Agreement and related executed Real Estate Promissory Note, summarized below:

Date:	August 10, 2017
Realty Premises:	The RHCF located at 2 Medical Plaza, Glen Cove, New York, 11542 (the real property on which Montclair Care Center (the "Facility") is located).
Sellers:	2 Medical Plaza LLC: Members: Mayer Laufer 41.50%, Tali Skoczylas 8.60%, Michael Nichols 3.30%, Nancy Nichols 3.30%, Nathan Brach 6.40%, Neuman Family Trust f/b/o Mark Neuman 4.80%, Neuman Family Trust f/b/o Neil Neuman 4.80%, Lily Madeb 7.00%, Sara Skoczylas Trust 2.40%, Moshe Skoczylas 1.00%, Joseph Skoczylas Trust 2.40%, Marc Ephraim Ostreicher 2.50%, David Ostreicher 2.50%, Shayna Steg 2.50%, Rebecca Lopiansky 2.50% (Total 95.50%)
Buyer:	Issac Laufer (will be 100% owner of 2 Medical Plaza, LLC)
Interest Acquired:	95.5% of the equity of the Company as set forth in detail in Schedule A (the "Shares") 95.5% purchase plus 4.5% held interest to become a 100% owner.
Purchase Price:	\$7,044,676.
Payment of Purchase Price:	Promissory Note at 2.58% interest payable over a ten-year term between Issac Laufer and the selling members.

The applicant has submitted an executed promissory note for \$7,044,676 between Issac Laufer (the Maker) and the selling members (collectively, the Payee) with a ten-year term, ten-year amortization, at 2.58% interest, payable in monthly installments of principal and interest. Closing of the transaction occurred on September 28, 2017, with payments on the promissory note commencing October 31, 2017.

Operating Budget

The applicant has provided the current year (2016) results and the first-year operating budget after the change in ownership, in 2018 dollars, summarized as follows:

Revenues	Current Year		Year One	
	Per Diem	Total	Per Diem	Total
Medicaid FFS	\$245.23	\$4,386,496	\$236.13	\$3,598,800
Medicare FFS	\$674.55	\$4,671,257	\$674.50	\$5,791,900
Commercial FFS	\$395.03	\$594,126	\$0.00	\$0
Commercial MC	\$232.29	\$635,080	\$236.05	\$1,255,300
Private Pay	\$356.72	\$676,348	\$356.85	\$625,200
All other		<u>\$15,460</u>		<u>\$21,000</u>
Total Revenues		\$10,978,767		\$11,292,200
Expenses				
Operating Expenses	\$327.55	\$10,136,408	\$318.35	\$9,836,500
Capital Expenses	<u>\$22.42</u>	<u>\$693,683</u>	<u>\$29.51</u>	<u>\$911,648</u>
Total Expenses	\$349.97	\$10,830,091	\$347.86	\$10,748,148
Net Income (Loss)		<u>\$148,676</u>		<u>\$544,052</u>
Utilization (Patient Days)		30,946		30,898
Occupancy		83.12%		82.99%
Breakeven Occupancy				78.99%

The following is noted with respect to the operating budget:

- The current year reflects the facility's 2016 revenues and expenses.
- Payor mix is determined using the mix from Marquis Care Center's 2017 patient days.
- The Medicaid rate of \$236.13 is projected based on the current Medicaid rate and reflect 2017 dollars. Medicare rate assumptions were calculated at \$674.50 based on the facility's 2016 average rate. Private pay rates of \$356.85 are based on the RHCFC 2016 average private pay rate.
- Expense projections are based on the 2016 financial year with the number and mix of staff remaining unchanged going forward. Non-labor related other direct expenses are expected to decrease slightly to reflect economies.
- Revenue projections assume 83% occupancy in Year One and are based on the occupancy experience of the 2016 financial year.
- Utilization broken down by payor source is as follows:

	Current Year		Year One	
	Days	%	Days	%
Medicaid FFS	17,887	57.80%	15,241	49.33%
Medicare FFS	6,925	22.38%	8,587	27.79%
Commercial FFS	1,504	4.86%	0	0.00%
Commercial MC	2,734	8.83%	5,318	17.21%
Private Pay	<u>1,896</u>	<u>6.13%</u>	<u>1,752</u>	<u>5.67%</u>
Total Patient Days	30,946	100%	30,898	100%

- The facility's Medicaid admission of 40.0% in 2015 and 33.6% in 2016 exceeded Nassau County's 75% threshold rates of 11.1% for 2015 and 9.2% for 2016.

Capability and Feasibility

The purchase price for the 97 shares in the operating entity is \$1,761,169 to be funded via a promissory note between Issac Laufer (the Maker) and the withdrawing shareholders (collectively, the Payee) for a ten-year term at 2.58% interest, payable in monthly installments of principal and interest. The purchase price for the 95.5% ownership interest (95.5 shares) in the real estate company is \$7,046,676 funded via a promissory note between Issac Laufer (the Maker) and the withdrawing members (collectively, the Payee) for a ten-year term at 2.58% interest, payable in monthly installments of principal and interest. Closing of the transaction occurred on September 28, 2017, rendering Issac Laufer the sole member of the operating entity. Monthly payments on the realty promissory note commenced on October 31, 2017.

The working capital requirement is estimated at \$1,791,358 based on two months of Year One expenses and will be funded from the applicant's personal assets and ongoing operations of the facility. BFA Attachment A is the personal net worth statement of the sole member of Advanced Nursing and Rehabilitation at Glen Cove LLC, which indicates the availability of sufficient funds for the promissory note payments and working capital requirement. BFA Attachment D is the pro forma balance sheet of Montclair Care Center, Inc, which indicates a positive net asset position of \$1,171,513 as of the first day of operation after the stock change.

The submitted budget indicates net income of \$544,052 in the first year after the change in ownership. Revenues are based on current reimbursement methodologies for nursing homes services. The submitted budget appears reasonable.

BFA Attachment B is the financial summary of Marquis Nursing & Rehabilitation Center from 2014 through 2016. The entity had an average negative working capital position and an average positive net position from 2014 through 2016. The applicant indicated that the reason for the negative working capital position is from accounts receivable of \$248,717, which were uncollectible, and notes payable incurred for renovations. Also, the entity incurred an average net loss of \$27,106 from 2014 through 2016. The reason for the loss was due to low occupancy. To remedy the loss and low occupancy levels, the operator invested approximately \$800,000 during 2017 for capital improvements made to the facility.

BFA Attachment C is the facility's internal financial statements as of September 30, 2017. As shown, the entity had a negative working capital position, a positive net asset position and experienced a loss from operations of \$124,872 through September 30, 2017. The loss was the result of difficulty meeting an occupancy level of at least 90% due to the age of the building, and non-union health insurance increases due to rising healthcare costs and inflation. To remedy the loss and low occupancy levels, \$800,000 was invested during 2017 for facility capital improvements to meet patient needs and improve the quality of life.

BFA Attachment F is the financial information for the other NYS nursing homes owned by Issac Laufer. As shown, a majority of the nursing homes had positive working capital positions, positive net asset positions and achieved operating income. For facilities with negative working capital positions and operating losses, the applicant indicated that the reasons were due, respectively, to accounts receivable write-offs and low occupancy levels at the facilities.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Member
BFA Attachment B	Financial Summary- Marquis Rehabilitation & Nursing Center
BFA Attachment C	September 30, 2017 internal financial statements of Montclair Care Center
BFA Attachment D	Proforma balance sheet
BFA Attachment E	Affiliated facilities list and ownership percentages
BFA Attachment F	Other owned facility financial information
BFA Attachment G	Realty Entity Members – 2 Medical Plaza LLC

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: 2600 Niagara Falls Boulevard AL Operating Company, LLC d/b/a Elderwood Home Care at Wheatfield
Address: Niagara Falls
County: Niagara
Structure: Limited Liability Company
Application Number: 161033

Description of Project:

2600 Niagara Falls Boulevard AL Operating Company, LLC d/b/a Elderwood Home Care at Wheatfield, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with Assisted Living Program, Elderwood Assisted Living at Wheatfield. The LHCSA and the ALP will have identical ownership.

The proposed membership of 2600 Niagara Falls Boulevard AL Operating Company, LLC d/b/a Elderwood Home Care at Wheatfield comprises the following individual:

Dr. Jeffrey Rubin—President & Co-CEO-50% Partner, Post Acute Partners, LLC	Warren Cole – Treasurer & Co-CEO - 50% Partner, Post Acute Partners, LLC
---	---

Affiliations:

Massachusetts

Woodmark Pharmacy of Massachusetts, LLC d/b/a Woodmark Pharmacy	(Inst. Pharmacy, 6/2014-present)
--	----------------------------------

New York

1 Bethesda Drive Operating Company, LLC d/b/a Elderwood at Hornell	(RHCF, 4/12/2016-present)
111 Ensminger Road Operating Company, LLC d/b/a Elderwood Assisted Living at Tonawanda	(ALP, 4/1/2016-present)
111 Ensminger Road Operating Company, LLC d/b/a Elderwood Home Care at Tonawanda	(LHCSA, 1/30/2018-present)
1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	(RHCF, 7/28/2013-present)
200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	(RHCF, 7/28/2013-present)
225 Bennett Road Operating Company, LLC d/b/a d/b/a Elderwood at Cheektowaga	(RHCF, 7/28/2013-present)
229 Bennett Road Operating Company, LLC d/b/a Elderwood Assisted Living at Cheektowaga	(ALP, 7/28/2013-present)
229 Bennett Road Operating Company, LLC Elderwood Home Care at Cheektowaga	(LHCSA, 7/28/2013-present)
2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	(RHCF, 7/28/2013-present)
2600 Niagara Falls Boulevard AL Operating Company, LLC d/b/a Elderwood Assisted Living at Wheatfield	(AH/ALP, 7/28/2013-present)
2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	(RHCF, 7/28/2013-present)
37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	(RHCF, 7/28/2013-present)

44 Ball Street Operating Company, LLC d/b/a Elderwood Assisted Living at Waverly	(ALP, 7/28/2013-present)
44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly	(LHCSA, 7/28/2013-present)
4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	(RHCF, 7/28/2013-present)
4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	(RHCF, 7/28/2013-present)
5271 Main Street Operating Company, LLC d/b/a Elderwood Village at Williamsville	(EHP, 7/28/2013-present)
580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Assisted Living at West Seneca	(ALP, 7/28/2013-present)
580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca	(LHCSA, 7/28/2013-present)
5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	(RHCF, 7/28/2013-present)
76 Buffalo Street Operating Company, LLC d/b/a Elderwood Assisted Living at Hamburg	(ALP, 7/28/2013-present)
76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg	(LHCSA, 7/28/2013-present)
Elderwood at Hornell (fka McCauley Manor Mercy Care)	(RHCF, 04/2016-present)
Elderwood of Lakeside at Brockport	(RHCF, 1/1/2018-present)
Elderwood of Uihlein at Lake Placid	(RHCF, 10/4/2016-present)

Pennsylvania

120 Rider Avenue PCH Operating Company, LP d/b/a Senior Living at Lancaster	(Personal Care Home, 2/2011-present)
120 Rider Avenue Operating Company, LP d/b/a Pediatric Specialty Care at Lancaster	(Pediatric Group Home, 2/2011-present)
2900 Johnson Street Operating Company, LP d/b/a Pediatric Specialty Care at Hopewell	(Pediatric Group Home, 2/2011-present)
3938 Glen Drive Operating Company, LP d/b/a Pediatric Specialty Care at Doylestown	(Pediatric Group Home, 2/2011-present)
425 Cedarcrest Road Operating Company, LP d/b/a Pediatric Specialty Care at Quakertown	(Pediatric Group Home, 2/2011-present)
90 Cafferty Road Operating Company, LP d/b/a Pediatric Specialty Care at Point Pleasant	(Pediatric Group Home, 2/2011-present)
3300 Henry Avenue Operating Company, LP d/b/a Pediatric Specialty Care at Philadelphia	(Pediatric Group Home, 2013-present)

Rhode Island

100 Wampanoag Trail Operating Company, LLC d/b/a Chestnut Terrace Nursing & Rehabilitation Center	(SNF, 2/2014-present)
981 Kings Town Road Operating Company, LLC d/b/a Scallop Shell Nursing & Rehabilitation Center	(SNF, 12/2010-present)

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel and it is concluded that proceeding with the proposal is appropriate.

A 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 Niagara County from an office located at 2600 Niagara Falls Boulevard, Niagara Falls, New York 14304.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Massachusetts

Woodmark Pharmacy of Massachusetts, LLC d/b/a (Inst. Pharmacy, 6/2014-present)
Woodmark Pharmacy

New York

1 Bethesda Drive Operating Company, LLC d/b/a (RHCF, 4/12/2016-present)
Elderwood at Hornell

111 Ensminger Road Operating Company, LLC d/b/a (ALP, 4/1/2016-present)
Elderwood Assisted Living at Tonawanda

111 Ensminger Road Operating Company, LLC d/b/a (LHCSA, 1/30/2018-present)
Elderwood Home Care at Tonawanda

1818 Como Park Boulevard Operating Company, LLC (RHCF, 7/28/2013-present)
d/b/a Elderwood at Lancaster

200 Bassett Road Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
Elderwood at Williamsville

225 Bennett Road Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
d/b/a Elderwood at Cheektowaga

229 Bennett Road Operating Company, LLC d/b/a (ALP, 7/28/2013-present)
Elderwood Assisted Living at Cheektowaga

229 Bennett Road Operating Company, LLC (LHCSA, 7/28/2013-present)
Elderwood Home Care at Cheektowaga

2600 Niagara Falls Boulevard Operating Company, LLC (RHCF, 7/28/2013-present)
d/b/a Elderwood at Wheatfield

2600 Niagara Falls Boulevard AL Operating Company, (AH/ALP, 7/28/2013-present)
LLC d/b/a Elderwood Assisted Living at Wheatfield

2850 Grand Island Boulevard Operating Company, LLC (RHCF, 7/28/2013-present)
d/b/a Elderwood at Grand Island

37 North Chemung Street Operating Company, LLC (RHCF, 7/28/2013-present)
d/b/a Elderwood at Waverly

44 Ball Street Operating Company, LLC d/b/a (ALP, 7/28/2013-present)
Elderwood Assisted Living at Waverly

44 Ball Street Operating Company, LLC d/b/a (LHCSA, 7/28/2013-present)
Elderwood Home Care at Waverly

4459 Bailey Avenue Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
Elderwood at Amherst

4800 Bear Road Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
Elderwood at Liverpool

5271 Main Street Operating Company, LLC d/b/a (EHP, 7/28/2013-present)
Elderwood Village at Williamsville

580 Orchard Park Road Operating Company, LLC d/b/a (ALP, 7/28/2013-present)
Elderwood Assisted Living at West Seneca

580 Orchard Park Road Operating Company, LLC d/b/a (LHCSA, 7/28/2013-present)
Elderwood Home Care at West Seneca

5775 Maelou Drive Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
Elderwood at Hamburg

76 Buffalo Street Operating Company, LLC d/b/a (ALP, 7/28/2013-present)
Elderwood Assisted Living at Hamburg

76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg	(LHCSA, 7/28/2013-present)
Elderwood at Hornell (fka McCauley Manor Mercy Care)	(RHCF, 04/2016-present)
Elderwood of Lakeside at Brockport	(RHCF, 1/1/2018-present)
Elderwood of Uihlein at Lake Placid	(RHCF, 10/4/2016-present)

Pennsylvania

120 Rider Avenue PCH Operating Company, LP d/b/a Senior Living at Lancaster	(Personal Care Home)
120 Rider Avenue Operating Company, LP d/b/a Pediatric Specialty Care at Lancaster	(Pediatric Group Home)
2900 Johnson Street Operating Company, LP d/b/a Pediatric Specialty Care at Hopewell	(Pediatric Group Home)
3938 Glen Drive Operating Company, LP d/b/a Pediatric Specialty Care at Doylestown	(Pediatric Group Home)
425 Cedarcrest Road Operating Company, LP d/b/a Pediatric Specialty Care at Quakertown	(Pediatric Group Home)
90 Cafferty Road Operating Company, LP d/b/a Pediatric Specialty Care at Point Pleasant	(Pediatric Group Home)
3300 Henry Avenue Operating Company, LP d/b/a Pediatric Specialty Care at Philadelphia	(Pediatric Group Home, 2013-present)

Rhode Island

100 Wampanoag Trail Operating Company, LLC d/b/a Chestnut Terrace Nursing & Rehabilitation Center	(SNF, 2/2014-present)
981 Kings Town Road Operating Company, LLC d/b/a Scallop Shell Nursing & Rehabilitation Center	(SNF, 12/2010-present)

The State of Massachusetts has indicated that Woodmark Pharmacy has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State of Pennsylvania has indicated that Senior Living at Lancaster, Pediatric Specialty Care at Lancaster, Pediatric Specialty Care at Hopewell, Pediatric Specialty Care at Doylestown, Pediatric Specialty Care at Quakertown, Pediatric Specialty Care at Point Pleasant and Pediatric Specialty Care at Philadelphia have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State Rhode Island has indicated that Chestnut Terrace Nursing & Rehabilitation Center and Scallop Shell Nursing & Rehabilitation Center have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Elderwood Assisted Living at Waverly (ALP) was fined two thousand eight hundred dollars (\$2,800) pursuant to a Stipulation and Order for surveillance findings on July 27, 2016 and November 21, 2016. Deficiencies were found under 18 NYCRR 487.7(f)(5) Resident Services.

Elderwood Assisted Living at Wheatfield (ALP) was fined two thousand eight hundred dollars (\$2,800) pursuant to a Stipulation and Order, dated July 5, 2017, for surveillance findings on July 27, 2016 and November 11, 2016. Deficiencies were found under 18 NYCRR 487.7(f)(5) Social Services.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that Elderwood Assisted Living at Tonawanda, Elderwood Assisted Living at Cheektowaga, Elderwood Village at Williamsville, Elderwood Assisted Living at West Seneca and

Elderwood Assisted Living at Hamburg have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality 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.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Contingent Approval

Contingencies

1. An executed copy of the operating agreement of the applicant, which is acceptable to the Department. [CSL]
2. An executed copy of the articles of organization of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: 5271 Main Street Operating Company, LLC d/b/a Elderwood Home Care at Williamsville
Address: Williamsville
County: Erie
Structure: Limited Liability Company
Application Number: 162292

Description of Project:

5271 Main Street Operating Company, LLC d/b/a Elderwood Home Care at Williamsville, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with an Assisted Living Program to be operated by 5271 Main Street Operating Company, LLC d/b/a Elderwood Home Care at Williamsville. The LHCSA and the ALP will have identical ownership.

The proposed membership of 5271 Main Street Operating Company, LLC d/b/a Elderwood Home Care at Williamsville comprises the following individuals:

Warren Cole, Treasurer – 50%
Partner, Post Acute Partners, LLC

Dr. Jeffrey Rubin, President – 50%
Partner, Post Acute Partners, LLC

Affiliations:

Massachusetts

Woodmark Pharmacy of Massachusetts, LLC d/b/a Woodmark Pharmacy (Inst. Pharmacy, 6/2014-present)

New York

1 Bethesda Drive Operating Company, LLC d/b/a Elderwood at Hornell (RHCF, 4/12/2016-present)
111 Ensminger Road Operating Company, LLC d/b/a Elderwood Assisted Living at Tonawanda (ALP, 4/1/2016-present)
111 Ensminger Road Operating Company, LLC d/b/a Elderwood Home Care at Tonawanda (LHCSA, 1/30/2018-present)
1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster (RHCF, 7/28/2013-present)
200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville (RHCF, 7/28/2013-present)
225 Bennett Road Operating Company, LLC d/b/a d/b/a Elderwood at Cheektowaga (RHCF, 7/28/2013-present)
229 Bennett Road Operating Company, LLC d/b/a Elderwood Assisted Living at Cheektowaga (ALP, 7/28/2013-present)
229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga (LHCSA, 7/28/2013-present)
2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield (RHCF, 7/28/2013-present)
2600 Niagara Falls Boulevard AL Operating Company, LLC d/b/a Elderwood Assisted Living at Wheatfield (AH/ALP, 7/28/2013-present)

2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	(RHCF, 7/28/2013-present)
37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	(RHCF, 7/28/2013-present)
44 Ball Street Operating Company, LLC d/b/a Elderwood Assisted Living at Waverly	(ALP, 7/28/2013-present)
44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly	(LHCSA, 7/28/2013-present)
4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	(RHCF, 7/28/2013-present)
4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	(RHCF, 7/28/2013-present)
5271 Main Street Operating Company, LLC d/b/a Elderwood Village at Williamsville	(EHP, 7/28/2013-present)
580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Assisted Living at West Seneca	(ALP, 7/28/2013-present)
580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca	(LHCSA, 7/28/2013-present)
5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	(RHCF, 7/28/2013-present)
76 Buffalo Street Operating Company, LLC d/b/a Elderwood Assisted Living at Hamburg	(ALP, 7/28/2013-present)
76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg	(LHCSA, 7/28/2013-present)
Elderwood at Hornell (fka McCauley Manor Mercy Care)	(RHCF, 04/2016-present)
Elderwood of Lakeside at Brockport	(RHCF, 1/1/2018-present)
Elderwood of Uihlein at Lake Placid	(RHCF, 10/4/2016-present)

Pennsylvania

120 Rider Avenue PCH Operating Company, LP d/b/a Senior Living at Lancaster	(Personal Care Home, 2/2011-present)
120 Rider Avenue Operating Company, LP d/b/a Pediatric Specialty Care at Lancaster	(Pediatric Group Home, 2/2011-present)
2900 Johnson Street Operating Company, LP d/b/a Pediatric Specialty Care at Hopewell	(Pediatric Group Home, 2/2011-present)
3938 Glen Drive Operating Company, LP d/b/a Pediatric Specialty Care at Doylestown	(Pediatric Group Home, 2/2011-present)
425 Cedarcrest Road Operating Company, LP d/b/a Pediatric Specialty Care at Quakertown	(Pediatric Group Home, 2/2011-present)
90 Cafferty Road Operating Company, LP d/b/a Pediatric Specialty Care at Point Pleasant	(Pediatric Group Home, 2/2011-present)
3300 Henry Avenue Operating Company, LP d/b/a Pediatric Specialty Care at Philadelphia	(Pediatric Group Home, 2013-present)

Rhode Island

100 Wampanoag Trail Operating Company, LLC d/b/a Chestnut Terrace Nursing & Rehabilitation Center	(SNF, 2/2014-present)
981 Kings Town Road Operating Company, LLC d/b/a Scallop Shell Nursing & Rehabilitation Center	(SNF, 12/2010-present)

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel and it is concluded that proceeding with the proposal is appropriate.

A search of the individuals and entity named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Erie County from an office located at 5271 Main Street, Williamsville, New York 14221.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	

A seven (7) year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

Massachusetts

Woodmark Pharmacy of Massachusetts, LLC d/b/a (Inst. Pharmacy, 6/2014-present)
Woodmark Pharmacy

New York

1 Bethesda Drive Operating Company, LLC d/b/a (RHCF, 4/12/2016-present)
Elderwood at Hornell

111 Ensminger Road Operating Company, LLC d/b/a (ALP, 4/1/2016-present)
Elderwood Assisted Living at Tonawanda

111 Ensminger Road Operating Company, LLC d/b/a (LHCSA, 1/30/2018-present)
Elderwood Home Care at Tonawanda

1818 Como Park Boulevard Operating Company, LLC (RHCF, 7/28/2013-present)
d/b/a Elderwood at Lancaster

200 Bassett Road Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
Elderwood at Williamsville

225 Bennett Road Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
d/b/a Elderwood at Cheektowaga

229 Bennett Road Operating Company, LLC d/b/a (ALP, 7/28/2013-present)
Elderwood Assisted Living at Cheektowaga

229 Bennett Road Operating Company, LLC (LHCSA, 7/28/2013-present)
Elderwood Home Care at Cheektowaga

2600 Niagara Falls Boulevard Operating Company, LLC (RHCF, 7/28/2013-present)
d/b/a Elderwood at Wheatfield

2600 Niagara Falls Boulevard AL Operating Company, (AH/ALP, 7/28/2013-present)
LLC d/b/a Elderwood Assisted Living at Wheatfield

2850 Grand Island Boulevard Operating Company, LLC (RHCF, 7/28/2013-present)
d/b/a Elderwood at Grand Island

37 North Chemung Street Operating Company, LLC (RHCF, 7/28/2013-present)
d/b/a Elderwood at Waverly

44 Ball Street Operating Company, LLC d/b/a (ALP, 7/28/2013-present)
Elderwood Assisted Living at Waverly

44 Ball Street Operating Company, LLC d/b/a (LHCSA, 7/28/2013-present)
Elderwood Home Care at Waverly

4459 Bailey Avenue Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
Elderwood at Amherst

4800 Bear Road Operating Company, LLC d/b/a (RHCF, 7/28/2013-present)
Elderwood at Liverpool

5271 Main Street Operating Company, LLC d/b/a (EHP, 7/28/2013-present)
Elderwood Village at Williamsville

580 Orchard Park Road Operating Company, LLC d/b/a (ALP, 7/28/2013-present)
Elderwood Assisted Living at West Seneca

580 Orchard Park Road Operating Company, LLC d/b/a (LHCSA, 7/28/2013-present)

Elderwood Home Care at West Seneca 5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	(RHCF, 7/28/2013-present)
76 Buffalo Street Operating Company, LLC d/b/a Elderwood Assisted Living at Hamburg	(ALP, 7/28/2013-present)
76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg	(LHCSA, 7/28/2013-present)
Elderwood at Hornell (fka McCauley Manor Mercy Care)	(RHCF, 04/2016-present)
Elderwood of Lakeside at Brockport	(RHCF, 1/1/2018-present)
Elderwood of Uihlein at Lake Placid	(RHCF, 10/4/2016-present)

Pennsylvania

120 Rider Avenue PCH Operating Company, LP d/b/a Senior Living at Lancaster	(Personal Care Home)
120 Rider Avenue Operating Company, LP d/b/a Pediatric Specialty Care at Lancaster	(Pediatric Group Home)
2900 Johnson Street Operating Company, LP d/b/a Pediatric Specialty Care at Hopewell	(Pediatric Group Home)
3938 Glen Drive Operating Company, LP d/b/a Pediatric Specialty Care at Doylestown	(Pediatric Group Home)
425 Cedarcrest Road Operating Company, LP d/b/a Pediatric Specialty Care at Quakertown	(Pediatric Group Home)
90 Cafferty Road Operating Company, LP d/b/a Pediatric Specialty Care at Point Pleasant	(Pediatric Group Home)
3300 Henry Avenue Operating Company, LP d/b/a Pediatric Specialty Care at Philadelphia	(Pediatric Group Home, 2013-present)

Rhode Island

100 Wampanoag Trail Operating Company, LLC d/b/a Chestnut Terrace Nursing & Rehabilitation Center	(SNF, 2/2014-present)
981 Kings Town Road Operating Company, LLC d/b/a Scallop Shell Nursing & Rehabilitation Center	(SNF)

The State of Massachusetts has indicated that Woodmark Pharmacy has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State of Pennsylvania has indicated that Senior Living at Lancaster, Pediatric Specialty Care at Lancaster, Pediatric Specialty Care at Hopewell, Pediatric Specialty Care at Doylestown, Pediatric Specialty Care at Quakertown, Pediatric Specialty Care at Point Pleasant and Pediatric Specialty Care at Philadelphia have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State Rhode Island has indicated that Chestnut Terrace Nursing & Rehabilitation Center and Scallop Shell Nursing & Rehabilitation Center have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Elderwood Assisted Living at Waverly (ALP) was fined two thousand eight hundred dollars (\$2,800) pursuant to a Stipulation and Order for surveillance findings on July 27, 2016 and November 21, 2016. Deficiencies were found under 18 NYCRR 487.7(f)(5) Resident Services.

Elderwood Assisted Living at Wheatfield (ALP) was fined two thousand eight hundred dollars (\$2,800) pursuant to a Stipulation and Order, dated July 5, 2017, for surveillance findings on July 27, 2016 and November 11, 2016. Deficiencies were found under 18 NYCRR 487.7(f)(5) Social Services.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that Elderwood Assisted Living at Tonawanda, Elderwood Assisted Living at Cheektowaga, Elderwood Village at Williamsville, Elderwood Assisted Living at West Seneca and Elderwood Assisted Living at Hamburg have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality 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.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Contingent Approval

Contingency

1. A copy of the amended and restated articles of organization of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Western NY Care Services, LLC d/b/a Western NY Care Services
Address: Orchard Park
County: Erie
Structure: Limited Liability Company
Application Number: 162303

Description of Project:

Western NY Care Services, LLC d/b/a Western NY Care Services, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. This LHCSA is associated with Absolut at Orchard Brooke ALP.

The members of Western NY Care Services, LLC d/b/a Western NY Care Services comprise the following entities:

Israel Sherman, LNHA (NY & NJ), Member – 45%
Owner/Operator, Absolut Care Homes

Samuel Sherman, Member – 1%
Owner/CFO, Sunharbor Manor Nursing Home

Affiliations:

- Sunharbor Manor Nursing Home (04/01/06)
- Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center (6/19/12-present)
- Absolut Center for Nursing and Rehabilitation at Allegany (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Aurora Park (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at West Dunkirk (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Eden (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Endicott (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Gasport (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Houghton (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Orchard Park (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Salamanca (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Three Rivers (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Westfield (05/01/07-present)
- Harbor Operator, LLC d/b/a Washington Square Health Care Center (01/01/14-present) (Ohio)

Affiliations:

- Sunharbor Manor Nursing Home (04/01/06-present)
- Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center (6/19/12-present)
- Absolut Center for Nursing and Rehabilitation at Allegany (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Aurora Park (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at West Dunkirk (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Eden (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Endicott (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Gasport (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Houghton (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Orchard Park (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Salamanca (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Three Rivers (05/01/07-present)
- Absolut Center for Nursing and Rehabilitation at Westfield (05/01/07-present)
- Harbor Operator, LLC d/b/a Washington Square Health Care Center (01/01/14-present) (Ohio)
- SB Operating Company, LLC d/b/a Sweet Brooke of Williamstown (06/09/14) (Massachusetts)

Absolut Facilities Management, LLC, Managing Member – 54%

Israel Sherman (Previously Disclosed) is sole member of Absolut Facilities Management, LLC

A search of the individuals and entities where appropriate named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Israel Sherman NHA license #03257 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 State of New Jersey has indicated that Israel Sherman holds an active Nursing Home Administrator License (NHA license #1224).

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Sunharbor Manor Nursing Home
- Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center
- Absolut Center for Nursing and Rehabilitation at Allegany
- Absolut Center for Nursing and Rehabilitation at Aurora Park
- Absolut Center for Nursing and Rehabilitation at West Dunkirk
- Absolut Center for Nursing and Rehabilitation at Eden
- Absolut Center for Nursing and Rehabilitation at Endicott
- Absolut Center for Nursing and Rehabilitation at Gasport
- Absolut Center for Nursing and Rehabilitation at Houghton
- Absolut Center for Nursing and Rehabilitation at Orchard Park
- Absolut Center for Nursing and Rehabilitation at Salamanca
- Absolut Center for Nursing and Rehabilitation at Three Rivers
- Absolut Center for Nursing and Rehabilitation at Westfield
- Harbor Operator, LLC d/b/a Washington Square Health Care Center (Ohio) 01/01/14-present
- SB Operating Company, LLC d/b/a Sweet Brooke of Williamstown (Massachusetts) 06/09/14-present

Sunharbor Manor was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated September 18, 2010 for surveillance findings on November 23, 2009. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

Niagara Rehabilitation and Nursing Center was fined fourteen thousand dollars (\$14,000) pursuant to a Stipulation and Order dated April 4, 2016 for surveillance findings on August 13, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b)(c) Resident Rights: Notification of Changes; 415.12(m)(2) Quality of Care: Significant Medication Errors; and 415.12 Quality of Care: Highest Practicable Potential.

Niagara Rehabilitation and Nursing Center was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order for surveillance findings on January 21, 2016. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

Niagara Rehabilitation and Nursing Center was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated August 23, 2017 for surveillance findings on June 13, 2017. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(c)-Notification of Changes.

- A federal CMP of \$8,908.25 was assessed for the June 13, 2017 survey findings.

Absolut Center for Nursing and Rehabilitation at Allegany, LLC was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated May 4, 2016 for surveillance findings on July 17, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents; and 415.26 Administration: Administration.

Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated January 4, 2016 for surveillance findings on January 30, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accident Free Environment; and 415.26(b)(2)(3) Administration: Governing Body.

Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated March 6, 2017 for surveillance findings on September 29, 2016. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Accident Free Environment.

Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated May 4, 2016 for surveillance findings on July 17, 2015. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sores.

Absolut Center for Nursing and Rehabilitation at Dunkirk, LLC was fined eighteen thousand dollars (\$18,000) pursuant to a Stipulation and Order dated May 4, 2016 for surveillance findings on February 4, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(1)(i, ii) Resident Rights: Notice and Services; 415.3(e)(2)(ii)(b) Resident Rights: Notification of Changes; 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents; 415.26 Administration; and 415.12 Quality of Care: Highest Practicable Potential.

Absolut Center for Nursing and Rehabilitation at Endicott, LLC was fined two thousand dollars (\$2,000) pursuant to a Stipulation and Order dated May 24, 2011 for surveillance findings on July 22, 2009. Deficiencies were found under 10 NYCRR 415.12(j) Quality of Care: Hydration.

Absolut Center for Nursing and Rehabilitation at Endicott, LLC was fined twenty-two thousand dollars (\$22,000) pursuant to a Stipulation and Order dated January 29, 2013 for surveillance findings on November 5, 2010. Deficiencies were found under 10 NYCRR 415.4(b) Investigation/Report; 415.12(c) Quality of Care: Pressure Sores; 415.12(f) Mental/Psychosocial Difficulties; 415.26(a) Administrator; 415.26(b)(3)(4) Governing Body; 415.15(a)(1) Medical Director; and 415.27(a)(a, b, c)(1, 2, 3, ii, iv) Quality Assurance.

Absolut Center for Nursing and Rehabilitation at Endicott, LLC was fined ten thousand dollars (\$10,000) pursuant to a Stipulation and Order dated December 18, 2017 for surveillance findings on August 28, 2017. Deficiencies were found under 10 NYCRR 418.12 – Quality of Care: Highest Practicable Potential.

Absolut Center for Nursing and Rehab was fined fourteen thousand dollars (\$14,000) pursuant to a Stipulation and Order dated September 11, 2013 for surveillance findings on November 21, 2011. Deficiencies were found under 10 NYCRR 415.12(j) Quality of Care: Highest Practicable Potential; 415.14(d)(3) Food Meets Individual Needs; and 415.27(a-c) Quality Assurance.

Absolut Center for Nursing and Rehabilitation at Endicott, LLC was fined four thousand dollars (\$4,000) pursuant to a Stipulation and Order dated July 4, 2016 for surveillance findings on August 15, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest practicable Potential; and 415.12(h)(1)(2) Quality of Care: Accident Free Environment.

Absolut Center for Nursing and Rehabilitation at Houghton was fined twelve thousand dollars (\$12,000) pursuant to a Stipulation and Order dated May 31, 2016 for surveillance findings on December 4, 2015. Deficiencies were found under 10 NYCRR 415.(e)(2)(ii)(a) Notification of Changes; and 415.12 Quality of Care: Highest Practicable Potential.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant requested compliance information from the States of Massachusetts, and Ohio but these states have not responded. The applicant submitted signed attestations stating that these agencies/facilities in the above listed states have not taken any enforcement or administrative actions against these agencies.

The applicant proposes to serve the residents of the following counties from an office located at 660 Armor Road, Orchard Park, New York 14127:

- Cattaraugus
- Erie
- Niagara
- Wyoming

The applicant proposes to continue to provide the following health care services:

- Nursing
- Medical Social Services
- Occupational Therapy
- Homemaker
- Home Health Aide
- Nutrition
- Physical Therapy
- Personal Care
- Speech-Language Pathology
- Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Approval

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Home Care for Generations, LLC d/b/a Generations Home Care
Address: New City
County: Rockland
Structure: Limited Liability Company
Application Number: 171385

Description of Project:

Home Care for Generations, LLC d/b/a Generations Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program (ALP) to be operated by L'Dor Assisted Living. The LHCSA and the ALP will have identical membership.

Home Care for Generations, LLC d/b/a Generations Home Care has proposed to enter into a management agreement with Paz Management, Inc. which is currently under review by the Department of Health.

The sole member of Home Care for Generations, LLC d/b/a Generations Home Care is the following individual:

Elliot Markowitz, LMSW – Owner
Owner/Operator, L'Dor (Adult Home)

Affiliation:

L'Dor (Adult Home, 2001-present)

A search of the individual name of 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 156 West Clarkstown Road, New City, New York 10956:

Rockland Westchester Orange Dutchess

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

A seven (7) year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

L'Dor - Adult Home

L'Dor was fined five hundred dollars (\$500.00) pursuant to a stipulation and order dated March 9, 2016 for inspection findings on July 6, 2015 for violations of 18 NYCRR Section 460-d (7) of the Social Services Law.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Approval

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Magnolia Home Care Services, LLC d/b/a Magnolia Home Care Services
Address: Haverstraw
County: Rockland
Structure: Limited Liability Company
Application Number: 172286

Description of Project:

Magnolia Home Care Services, LLC d/b/a Magnolia Home Care Services, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated the Assisted Living Program to be operated by Green Hills Estate. The LHCSA and the ALP will have identical membership.

The membership of Magnolia Home Care Services, LLC d/b/a Magnolia Home Care Services comprises the following individuals:

Anita Sanchez, RN – Member
Owner/Operator, Green Hills Estate HFA

Manuel Sanchez, Esq. - Member
Owner/Operator, Green Hills Estate HFA

Affiliation:
Green Hills Estate HFA (Adult Home)

Affiliation:
Green Hills Estate HFA (Adult 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 Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

A Certificate of Good Standing was not submitted for the attorney named above. Manuel Sanchez took and passed the New York State bar exam in 1974. He was admitted to practice law in New York State in the Second Judicial District. However, given that the applicant travels extensively, he has been unable to comply with New York State's requirement of continuing legal education credits and therefore is not a member of the bar in the State of New York.

The applicant proposes to serve the residents of the following counties from an office located at 1 South Route 9W, Haverstraw, New York 10927:

Rockland	Dutchess	Orange	Putnam
Ulster	Sullivan	Westchester	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
Medical Equipment, Supplies & Appliances		

A seven (7) year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

Green Hills Estate HFA (Adult Home)

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Approval

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: J & A Health Services, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 172062

Description of Project:

J & A Health Services, 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.

J & A Health Services, LLC was previously approved as a home care services agency by the Public Health Council at its September 7, 2007 meeting and subsequently assigned license number 1541L001 effective October 28, 2009. The sole member of J & A Health Services is Anatoly Spektor.

J & A Health Services, LLC has proposed to enter into a management agreement with Irina Slivko and Maks Kutsak which is currently under review by the Department of Health.

The purpose of this application is to transfer 100% of the membership to two new members, Irina Slivko and Maks Kutsak.

The membership of J & A Health Services, LLC comprises of the following individuals:

Irina Slivko– 50%	Maks Kutsak – 50%
Consultant, J & A Health Services, LLC	President, Instant Solution, Inc.

Irina Slivko was certified as a Personal Care Aide from 1989 -2009 before the New York State Home Care Registry was initiated. Certification was verified by obtaining copies of the PCA Certificates of Completion.

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 1214 Avenue M, Suite 201, Brooklyn, New York 11230:

Kings	Queens	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Homemaker	Occupational Therapy
Speech-Language Pathology	Housekeeper	Medical Social Services
Nutrition		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Contingent Approval

Contingency

1. A copy of the operating agreement of the applicant, which is acceptable to the Department.
[CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Caring Professionals, Inc.
Address: Forest Hills
County: Queens
Structure: For-Profit Corporation
Application Number: 172310

Description of Project:

Caring Professionals, 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.

Caring Professionals, Inc was previously approved as a home care services agency by the Public Health Council at its July 29th, 1994 meeting and subsequently assigned license number 9543L002, effective March 1, 1995. A secondary location in Kings County was approved by the Public Health Council at its July 29, 1994 meeting and subsequently assigned license number 9543L003, effective January 5, 2009. A third location in Nassau County was approved by the Public Health Council at its July 29, 1994 meeting and subsequently assigned license number 9543L004, effective June 15, 2012. All three locations are included in this transaction.

At that time, Caring Professionals, Inc. had authorized 200 shares of stock which were owned as follows: Miriam Sternberg owned 192 shares and Jonathan Sternberg owned 8 shares.

The applicant disclosed that in 2014 Miriam Sternberg transferred 192 shares of stock, and Jonathan Sternberg transferred 4 shares of stock to three separate family Trusts, changing the shareholder composition to the following:

Sternberg Family Trust 1 – 56 shares	Sternberg Family Trust 3 – 84 shares
Sternberg Family Trust 2 – 56 shares	Jonathan Sternberg – 4 shares

The trustee of all three family Trusts is Jonathan Sternberg.

In this proposal, Caring Professionals, Inc. is seeking approval of the undisclosed transfer of stock to the three Trusts that occurred in 2014.

The Board of Directors of Caring Professionals, Inc. is comprised of the following individuals:

Miriam Sternberg, RN – President President, Caring Professionals, Inc.	Jonathan Sternberg – Secretary/Treasurer Director, Caring Professionals, Inc.
---	--

Affiliation
Caring Professionals, Inc.

Affiliation
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.

Jonathan Sternberg is exempt from character and competence review due to the fact that he was previously approved by the Public Health Council for this operator.

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 offices located at:

Address	Counties Served
70-20 Austin St., Suite 135 Forest Hills, New York 11375	Queens, Kings, Bronx, New York, Richmond, Nassau
1400 Avenue Z, 3 rd Floor Brooklyn, New York 11235	Queens, Kings, Bronx, New York, Richmond, Nassau
445 Central Avenue, Suite 205 Cedarhurst, New York 11516	Nassau, Orange, Rockland, Suffolk, Sullivan, 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	Housekeeper	Medical Social Services
Medical Equipment, Supplies and Appliances	Nutrition	Homemaker

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Caring Professionals, Inc. (LHCSA)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Contingent Approval

Contingency

1. A copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Bonjour Home Care NY, LLC
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 2471-L

Description of Project:

Bonjour Home Care NY 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 Bonjour Home Care NY, LLC:

Irina Fain – 100% membership
Principal/CEO, Bonjour Home Care, LLC

Affiliation:

- Bonjour Home Care, LLC (NJ Health Care Services Firm, May 2010 - Present)

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 601 Brightwater Court, #3-K, Brooklyn, New York 11235:

- Bronx
- Queens
- Kings
- Richmond
- New York
- Westchester

The applicant proposes to provide the following health care services:

- Nursing
- Homemaker
- Home Health Aide
- Personal Care

A seven (7) year review of the operations of Bonjour Home Care, LLC (NJ Health Care Services Firm, 2010 - Present) was performed as part of this review.

The information provided by the State of New Jersey indicated that during the review period of 2010 to Present, Bonjour Home Care, LLC was fined ten thousand dollars (\$10,000.00) consisting of civil penalties pursuant to a stipulation and order dated February 8, 2016. Deficiencies were as follows: Provider failed to include certain information on its Employment Application NJAC 13:45B-14.2(a)(2), 13:45B-14.2(a)(3), 13:45B-14.2(a)(4), 13:45B-14.2(a)(5), 13:45B-14.2(a)(6), 13:45B-14.2(a)(7), 13:45B-14.2(a)(10) and 13:45B-14.2(a)(11); Provider failed to have an appropriately licensed person establish, in writing, a Plan of Care prior to referring or placing a Health Care Practitioner NJAC 13:45B-14.9(a); Provider failed to make referrals or placements consistent with the necessary level of care NJAC 13:45B-14.9(b); Provider failed to conduct an assessment of the Plan of Care every thirty (30) days NJAC 13:45B-14.9(c); Provider failed to conduct an on-site in home evaluation of the Plan of Care at least once during each sixty (60) day period NJAC 13:45B-14.9(g). Additional deficiencies were: Provider shall maintain the original of the Plan of Care and any revised Plans of Care and/or provide copies to the Patient and/or the Patient's representative, as required by NJAC 13:45B-14.9(h); Provider shall employ a licensed Health Care Practitioner, as required by NJAC 13:45B-14.3(c).

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Contingent Approval

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Family Residences and Essential Enterprises, Inc.
 Address: Old Bethpage
 County: Nassau
 Structure: Not-For-Profit Corporation
 Application Number: 2488L

Description of Project

Family Residences and Essential Enterprises, 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 Family Residences and Essential Enterprises, Inc. comprises the following individuals:

Mark Preiser, President Partner, Walter F. Cameron Advertising	Alan Polacek, JD, Secretary Partner, Donovan, LLP
Michael Leahy, CPA, Treasurer Real Estate Broker Owner, Metropolis Management, LLC	David Sanders, MBA, LLB, Board Member Private Practice, David Sanders & Associates
Ellen Page Nelson, LCSW, Board Member Psychology Department Adjunct, Nassau Community College Clinical Social Worker, Self Employed	Uma Ashok, MBA, Board Member Teaching Certification, Wisconsin Retired
Andrea Spencer, PhD, Board Member CT Certified School Administrator Dean, School of Education Pace University Founding Partner, Synchrony Solutions, LLC Educational Consultant, Connecticut State Office of the Child Advocate Educational Consultant, Center for Children's Advocacy	Mary Ellen Freely, EdD, Board Member NYS Certified School District Administrator NYS Certified School Building Administrator NYS Certified Elementary and Early Childhood Teacher Professor, St. John's University
John L. Baldante, Board Member CPA – Inactive Retired	

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

A Certificate of Good Standing has been received for all attorneys associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 191 Bethpage Hollow Road, Old Bethpage, New York 11804:

Nassau

Suffolk

Queens

The applicant proposes to provide the following health care services:

Nursing

Physical Therapy

Audiology

Homemaker

Home Health Aide

Occupational Therapy

Medical Social Services

Housekeeper

Personal Care

Speech-Language Pathology

Nutrition

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Contingent Approval

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Active Home Care, Inc.
Address: Great Neck
County: Nassau
Structure: For-Profit Corporation
Application Number: 161021

Description of Project:

Active 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 solely by Natalia Gonzalez.

The Board of Directors of Active Home Care, Inc. is comprised of the following individuals:

Natalia Gonzalez – President
Owner/Director of Waiver Services/Executive Member,
The Q. Quality Services for Independent Living, LLC

Affiliation:

The Q. Quality Services for Independent Living, LLC (TBI Waiver Program, 2011-present)

Trevor Milton, PhD – Board Member
Executive Member, The Q. Quality Services for Independent Living, LLC
Assistant Professor, Queensborough Community College

Julio Ayala, CRC, LMSW – Board Member
Care Manager, Maimonides Medical Center
Integration Counselor, The Q. Quality Services for Independent Living, LLC

Tysonya Gibson – Board Member
Assistant Director, The Q. Quality Services for Independent Living, LLC

Claudia Gonzalez – Board Member
Vice-President, Consulting and Development Business Corporation

Catalina Arango – Board Member
President, Consulting and Development Business Corporation

Jenny Hatzakorzian – Board Member
Service Coordinator - The Q. Quality Services for Independent Living, LLC

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 505 Northern Boulevard, Suite 202, Great Neck, New York 11021:

Nassau

Queens

The applicant proposes to provide the following health care services:

Nursing

Home Health Aide

Personal Care

A seven (7) year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

The Q. Quality Services for Independent Living, LLC (TBI Waiver Program, 2011-present)

The Bureau of Quality Assurance and Licensure and the Bureau of Long Term Care have determined that the Traumatic Brain Injury (TBI) provider has exercised sufficient supervisory responsibility to prevent harm to the health, safety and welfare of patients 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.

Recommendation: Contingent Approval

Contingencies

1. A copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]
2. A copy of the certificate of incorporation of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Shelly A. Bacchus d/b/a Believe Again Home Care
Address: Kingston
County: Ulster
Structure: Sole Proprietorship
Application Number: 161066

Description of Project:

Shelly A. Bacchus d/b/a Believe Again Home Care, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The following individual is the sole proprietor of Believe Again Home Care:

Shelly A. Bacchus – 100% Ownership
Personal Care Aide, Dr. Lisa Fields

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 283 Washington Avenue, Kingston, New York 12401:

- Dutchess
- Orange
- Columbia
- Ulster
- Greene

The applicant proposes to provide the following health care services:

- Nursing
- Medical Social Services
- Occupational Therapy
- Homemaker
- Home Health Aide
- Respiratory Therapy
- Physical Therapy
- Housekeeper
- Personal Care
- Speech-Language Pathology
- Nutrition

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Approval

Licensed Home Care Services Agency
Character and Competence Staff Review]

Name of Agency: Apon Home Care, LLC
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 161075

Description of Project:

Apon Home Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of Apon Home Care, LLC are comprised of the following individuals:

Khandaker Haque, CNA – 50% Membership Intake Director/Office Manager, Home Choice, LLC	Nazrul Haque – 50% Membership Intake Director, Home Choice, LLC
---	--

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Nurse Aide Registry revealed that the individual is certified as a CNA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 1829 Gleason Avenue, Bronx, New York 104725:

- Bronx
- Queens
- Kings
- Westchester
- New York

The applicant proposes to provide the following health care services:

- Nursing
- 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.

Recommendation: Contingent Approval

Contingency

1. A copy of the amended operating agreement of the applicant, acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Age Friendly Homecare Corp
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 161084

Description of Project:

Age Friendly Homecare Corp, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Age Friendly Homecare Corp has authorized 200 shares of stock which are owned solely by Joseph Toyoshima.

The Board of Directors of Age Friendly Homecare Corp is comprised of the following individual:

Joseph Toyoshima, HHA – Chairman, Owner
Analytics Integration Engineer, AMC Networks
Consultant, Self-employed

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA and has no convictions or findings.

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 2409 East 23rd Street, Brooklyn, New York 11235:

Kings	Queens	Richmond
New York	Bronx	Westchester

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	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.

Recommendation: Contingent Approval

Contingency

1. A copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: SUNNY HHC, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 161092

Description of Project:

SUNNY HHC, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

SUNNY HHC, Inc. has authorized 200 shares of stock, which are owned solely by Karl Bikhman.

The Board of Directors of SUNNY HHC, Inc. is comprised of the following individual:

Karl Bikhman, Esq. – President/Secretary
Attorney/Partner, Bikhman & Vinbaytel, P.C.

Affiliation

A-Plus Care HHC, Inc. (LHCSA) (4/18/2011 – 11/17/2017)

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 Certificate of Good Standing has been received for all attorneys.

The applicant proposes to serve the residents of the following counties from an office located at 1909 East 17th Street, Suite 1A, Brooklyn, New York 11229:

Kings	Queens	Richmond
New York	Bronx	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

A seven (7) year review of the operations of the following facility/agency was performed as a part of this review:

A-Plus Care HHC, Inc. (LHCSA) (4/18/2011 – 11/17/2017)

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.

Recommendation: Approval

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Goodness Home Care Agency Inc.
Address: Jamaica
County: Queens
Structure: For-Profit Corporation
Application Number: 161139

Description of Project:

Goodness Home Care Agency Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock. The shareholders comprise the following individuals: Salamatu Udoh owns 140 shares and Frank Udoh owns 60 shares.

The Board of Directors of Goodness Home Care Agency Inc. is comprised of the following individuals:

Salamatu Udoh, LPN – President/Treasurer LPN, I & Y Senior Care, Inc. LPN, Verdun Home Health Care, Inc. LPN, AMERICARE, Inc. LPN, Jos-El Home Care Agency	Frank Udoh – Vice-President/Secretary Driver, Uber
--	---

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 13035 176th St., Jamaica, New York 11434:

Queens New York	Kings Westchester	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.

Recommendation: Contingent Approval

Contingency

1. A copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Jameshurst Company, Inc.
d/b/a Right at Home of Penfield
Address: Penfield
County: Monroe
Structure: For-Profit Corporation
Application Number: 161149

Description of Project:

Jameshurst Company, Inc. d/b/a Right at Home of Penfield, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Jameshurst Company, Inc. has entered into a franchise agreement with Right at Home, Inc.

Jameshurst Company, Inc. d/b/a Right at Home of Penfield has authorized 200,000 shares of stock, which are owned as follows: Beverly James owns 15,000 shares and Robert James owns 15,000 shares. The remaining 170,000 shares are unissued.

The Board of Directors of Jameshurst Company, Inc. d/b/a Right at Home of Penfield is comprised of the following individuals:

Robert James – President
President, Jameshurst Company, Inc. d/b/a Right at Home of Penfield (companion care)

Beverly James – Secretary/Treasurer
Secretary/Treasurer, Jameshurst Company, Inc. d/b/a Right at Home of Penfield (companion care)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 421 Penbrooke Drive, Penfield, New York 14526:

Monroe	Wayne	Ontario
--------	-------	---------

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Housekeeper	Occupational Therapy
Speech-Language Pathology	Homemaker	Medical Social Services
Nutrition		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Contingent Approval

Contingencies

1. A copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]
2. A copy of the franchise agreement of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Compassionate Home Care Services, Inc.
d/b/a Surplus Healthcare Alliance
Address: Poughkeepsie
County: Dutchess
Structure: For-Profit Corporation
Application Number: 161187

Description of Project:

Compassionate Home Care Services, Inc. d/b/a Surplus Healthcare Alliance, 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. The shareholders comprise the following individuals: Ricardo King owns 100 shares and Rockell Samuels owns 100 shares.

The Board of Directors of Compassionate Home Care Services, Inc. d/b/a Surplus Healthcare Alliance is comprised of the following individuals:

Ricardo King, LPN – President Head Nurse/Manager, Renaissance Rehab Nursing Care Center	Rockell Samuels, LPN – Vice-President LPN, Unlimited Care President, Livin Saved Transportation
---	---

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 professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 72 Ferris Lane, Poughkeepsie, New York 12601:

Dutchess	Ulster	Orange
----------	--------	--------

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Homemaker	Occupational Therapy
Speech-Language Pathology	Housekeeper	

Ricardo King disclosed that in 2006 he was given an appearance ticket for credit card fraud. He reported to the Wappinger Falls, New York Village Court, took a plea deal and was charged with Petit Larceny. The applicant was required to pay back all charges in full. No further action was taken against him.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Recommendation: Contingent Approval

Contingency

1. A copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: N & Y Elder Care Inc
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 161221

Description of Project:

N & Y Elder Care Inc, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

N & Y Elder Care Inc has authorized 200 shares of stock which are owned as follows:

Yelena Cales – 100 shares Nataliya Dveyrina – 100 shares

The Board of Directors of N & Y Elder Care Inc is comprised of the following individuals:

Yelena Cales, RN – President/Treasurer
Intake Nurse, Elderserve Health – Riverspring at Home

Nataliya Dveyrina, HHA – Vice President/Secretary
Home Health Aide, Ultimate Services for You, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department, indicates no issues with the licensure of the health professionals associated with this application.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, currently employed as a HHA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 2243 East 72nd Street, Brooklyn, New York 11234:

Kings	Queens	Richmond
New York	Bronx	Westchester

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.

Recommendation: Contingent Approval

Contingencies

1. A copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]
2. A copy of the certificate of incorporation of the applicant, which is acceptable to the Department. [CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Elder Home Care LLC d/b/a Compassionate Companion Homecare
Address: Port Washington
County: Nassau
Structure: Limited Liability Company
Application Number: 161287

Description of Project:

Elder Home Care LLC d/b/a Compassionate Companion Homecare, 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 Elder Home Care LLC is as follows:

Pam J. Russo – CEO, 99%
Unemployed

Matthew Russo – 1%
Business Development/President, York Healthcare LLC

Affiliations

York Healthcare, LLC (LHCSA) (07/2013 – Present)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 51A Crescent Road, Port Washington, New York 11050:

Nassau	Suffolk	Queens
Westchester	Putnam	Orange
Sullivan	Ulster	Dutchess

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	Medical Social Services	Nutrition
Homemaker	Housekeeper	Audiology

A seven (7) year review of the operations of the following facility was performed as part of this review:

York Healthcare, LLC (LHCSA) (07/2013 – 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.

Recommendation: Contingent Approval

Contingency

1. A copy of the operating agreement of the applicant, which is acceptable to the Department.
[CSL]

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Phoenix Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 161296

Description of Project:

Phoenix 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. The shareholders comprise the following individuals: Diana Yakhnis owes 100 shares and Aleksandr Grinshpun owns 100 shares.

The Board of Directors of Phoenix Home Care, Inc. is comprised of the following individuals:

Diana Yakhnis, LMSW – President
Program Director, Golden Age of Brooklyn, LLC (Social Adult Day Care)

Aleksandr Grinshpun – Vice-President
Vice-President, Serenity Adult Day Care, Inc. (Social Adult Day Care)

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 issue 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 271 Amherst Street, Suite 1, Brooklyn, New York 11235:

Kings	Queens	Richmond
Bronx	New York	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.

Recommendation: Contingent Approval

Contingency

1. A copy of the by-laws of the applicant, which is acceptable to the Department. [CSL]



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)
From: Richard J. Zahnleuter
General Counsel
Date: February 13, 2018
Subject: Cayuga Medical Center Auxiliary, Inc.

Cayuga Medical Center Auxiliary, Inc. (the "Foundation") desires to solicit contributions to support Cayuga Medical Center at Ithaca, Inc., a licensed Article 28 facility located in Ithaca, New York.

To legally do this type of fundraising, the Foundation must receive approval from PHHPC, and the Foundation must receive PHHPC consent to file the formational Certificate of Incorporation. Such approval and consent is required pursuant to NY PHL §2801-a (1), (6), and (8), as well as NY N-PCL §404 (o) and (t).

Attached for PHHPC's review is a letter from the Foundation's attorney which includes a description of the fundraising activities that the Foundation plans to undertake; the Certificate of Incorporation of the Foundation along with the corporation's By-laws; a letter from the supported organization, Cayuga Medical Center at Ithaca, Inc.; information regarding the Foundation's initial board of directors; among other information.

There is no legal objection to the formation of the Foundation. The proposed Certificate of Incorporation of the Foundation is in legally acceptable form, and there is no legal objection to the filing of the same with the New York State Secretary of State.

Attachments.

January 16, 2018

HARRIS BEACH PLLC
ATTORNEYS AT LAW

99 GARNSEY ROAD
PITTSFORD, NY 14534
(585) 419-8800

ERIC J. BACH

DIRECT: (585) 419-8615
FAX: (585) 419-8811
EBACH@HARRISBEACH.COM

**CERTIFIED MAIL –
RETURN RECEIPT REQUESTED**

Colleen M. Leonard
Executive Secretary, Public Health and Health Planning Council
NYS Department of Health
Corning Tower - Room 1805
Empire State Plaza
Albany, New York 12237

Re: Cayuga Medical Center Auxiliary, Inc.

Dear Ms. Leonard:

On behalf of Cayuga Medical Center Auxiliary, Inc., please consider this submission a formal request for the issuance of a letter of consent to permit filing with the Secretary of State of the Certificate of Incorporation attached hereto as **Exhibit A**.

Your approval, in the form of the above-referenced letter of consent, is required pursuant to Sections 404(c) and 404(t) of the New York Not-for-Profit Corporation Law because, as set forth in Paragraph 3 of the proposed Certificate of Incorporation, Cayuga Medical Center Auxiliary, Inc. intends to solicit contributions to support Cayuga Medical Center at Ithaca, Inc., which is a general hospital located in Ithaca, New York, that is licensed pursuant to Article 28 of the New York Public Health Law.

In support of this approval request, please consider each of the following nine items:

1. Certificate of Incorporation – COPY

A photocopy of the signed and dated proposed Certificate of Incorporation of Cayuga Medical Center Auxiliary, Inc. is attached hereto as **Exhibit A**.

2. Certificate of Incorporation – SUPPORTED ORGANIZATION

Paragraph 3 of the proposed Certificate of Incorporation of Cayuga Medical Center Auxiliary, Inc. specifically identifies the name of the supported organization: Cayuga Medical Center at Ithaca, Inc.

3. Certificate of Incorporation – CONTENTS

Paragraph 7 of the proposed Certificate of Incorporation of Cayuga Medical Center Auxiliary, Inc. reads in its entirety as follows:

Nothing in this Certificate of Incorporation shall authorize the corporation, within the State of New York, to (a) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (b) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44, respectively, of the PHL and implementing regulations; (c) establish and operate an independent practice association; (d) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (e) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation, within the State of New York, to (i) hold itself out as providing or (ii) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

4. Bylaws – COPY

A photocopy of the proposed Bylaws of Cayuga Medical Center Auxiliary, Inc. is attached hereto as **Exhibit B**.

5. Letter from Supported Organization – ORIGINAL

An original, signed and dated letter from a duly-authorized representative of the intended supported organization, acknowledging that it will accept funds for it raised by the Cayuga Medical Center Auxiliary, Inc. is attached hereto as **Exhibit C**.

6. Generalized Description of Fundraising Activities

It is anticipated that the fundraising activities of Cayuga Medical Center Auxiliary, Inc. will include the development of an annual campaign aimed at a particular program or purpose of Cayuga Medical Center at Ithaca, Inc. that will be publicized in various ways, including through regular mail, e-mail, social media, and telephone and personal contacts. Cayuga Medical Center Auxiliary, Inc. may also engage in such fundraising events as golf tournaments, galas and wellness promotions, and it may apply for grants from private foundations.

7. Information regarding the Corporation's Initial Board of Directors

Attached as **Exhibit D**, please find a list of the following information regarding the Corporation's initial Board of Directors: (1) name and address; (2) occupation; (3) employer name and address; and (4) past and present affiliations with other charitable or non-profit organizations.

8. Organizational Relationship

With respect to the identification of the organizational relationship between the Corporation and the licensed supported organization, as set forth in Article II, Section 1 of the proposed Bylaws of Cayuga Medical Center Auxiliary, Inc., Cayuga Medical Center Auxiliary, Inc. will be a membership corporation with its membership comprised of individuals interested in supporting the purposes of the Corporation. Cayuga Medical Center at Ithaca, Inc. – i.e., the supported organization – will not be a member of Cayuga Medical Center Auxiliary, Inc. As such, the supported organization will not have a structural relationship to the Corporation, and, further, will not control the Corporation.

9. Affiliated Entities

With respect to any entities, which control, or are controlled by, the Corporation, please note that there are no such entities – i.e., the Corporation will have no structural affiliations whatsoever.

If there are any questions relating to the formation and/or operation of Cayuga Medical Center Auxiliary, Inc., or if additional information in support of this application for approval is required, please contact me at the Pittsford, New York address or telephone number set forth above.

Very truly yours,



Eric J. Bach

Enclosures

Exhibit A

CERTIFICATE OF INCORPORATION

OF

CAYUGA MEDICAL CENTER AUXILIARY, INC.

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

1. The name of the corporation is: Cayuga Medical Center Auxiliary, Inc.
2. The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of Section 102 of the Not-for-Profit Corporation Law.
3. The corporation is organized and shall be operated exclusively to benefit Cayuga Medical Center at Ithaca, Inc. and its not-for-profit, tax exempt affiliates. To this end, the corporation shall:
 - (a) Coordinate and provide, directly or indirectly, volunteer services and assistance to benefit Cayuga Medical Center at Ithaca, Inc. and its not-for-profit, tax exempt affiliates;
 - (b) Promote and raise community awareness, interest, and support to benefit Cayuga Medical Center at Ithaca, Inc. and its not-for-profit, tax exempt affiliates;
 - (c) Solicit, collect, accept, hold, invest, reinvest and administer gifts, bequests, devises, grants, contributions, donations and property of any sort, without limitation as to amount or value, for the foregoing purposes;
 - (d) Expend, contribute, disburse, donate or otherwise use its assets and/or income for the foregoing purposes; and
 - (e) 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, trustees, directors, officers or any private person.

4. In furtherance of its corporate purposes and operations being exclusively for the benefit of Cayuga Medical Center at Ithaca, Inc., the following governance and management powers shall be reserved to Cayuga Medical Center at Ithaca, Inc.:

(a) To approve any amendment of the Certificate of Incorporation or Bylaws of the Corporation and the adoption of any Restated Certificate of Incorporation or Restated Bylaws of the Corporation;

(b) To approve any plan of merger, consolidation, reorganization, or dissolution of the Corporation;

(c) To approve a voluntary change in the Corporation's tax exemption status under Section 501(c)(3) of the Internal Revenue Code; and

(d) To approve the sale or other disposition of all or substantially all of the assets of the Corporation.

5. In furtherance of its corporate purposes, the corporation shall have the power to solicit and receive gifts, grants and contributions from public and private sources, together with all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.

6. Nothing in this Certificate of Incorporation shall authorize this corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(a)-(n), (p)-(s), or (u)-(v) of the Not-for-Profit Corporation Law.

7. Nothing in this Certificate of Incorporation shall authorize the corporation, within the State of New York, to (a) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (b) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44, respectively, of the PHL and implementing regulations; (c) establish and operate an independent practice association; (d) establish, operate, construct, lease, or

maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (e) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the corporation, within the State of New York, to (i) hold itself out as providing or (ii) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

8. The corporation is a charitable corporation under Section 201 of the Not-for-Profit Corporation Law.

9. Notwithstanding any other provision herein, the corporation is organized and operated exclusively for charitable purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization contributions to which are deductible under Section 170(c)(2) of said Code.

10. No part of the assets, income, profits or 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 affecting one or more of its purposes), 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.

11. 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), and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

12. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more not-for-profit affiliates of the corporation, provided that such distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the not-for-profit affiliates of the corporation shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For purposes of this paragraph, an "affiliate" shall mean any not-for-profit organization which controls, is controlled by, or is under common control with the corporation.

13. In any taxable year in which the corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the corporation shall:

- (a) not engage in any act of self-dealing that is subject to tax under Section 4941 of said Code;
- (b) distribute its income for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income under Section 4942 of said Code;
- (c) not retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of said Code;
- (d) not make any investments in such a manner as to subject the corporation to tax under Section 4944 of said Code; and

(e) not make any expenditures that are subject to tax under Section 4945 of said Code.

14. The number of directors constituting the entire board of directors of the corporation shall not be less than three. Subject to such limitation, the number shall be fixed by or in accordance with the bylaws of the corporation pursuant to Section 702 of the Not-for-Profit Corporation Law. The names and addresses of the initial directors are:

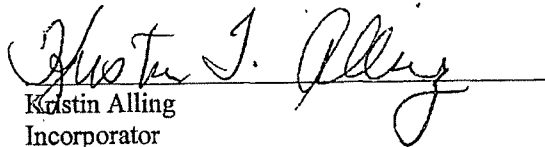
<u>Name</u>	<u>Address</u>
Kristin Alling	111 Woolf Lane Ithaca, NY 14850
Roberta Chiesa	159 Bundy Road Ithaca, NY 14850
Glenda Mattoon	P.O. Box 876 Trumansburg, NY 14886
Loretta Ramstad	370 Savage Farm Drive Ithaca, NY 14850
Claude Hewitt	2 Horizon Drive Ithaca, NY 14850
Joanna VanBusKirk	136 Seven Mile Drive #6 Ithaca, NY 14850
Randy Olson	73 Sage Road Ithaca, NY 14850
Teresa Palmer	1538 Taughannock Blvd Ithaca, NY 14850
Larry Hoffman	55 Genung Circle Ithaca, NY 14850

15. The office of the corporation is to be located in the County of Tompkins, State of New York.

16. The Secretary of State is hereby designated as the agent of the corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is: Cayuga Medical Center Auxiliary, Inc., 101 Dates Drive, Ithaca, New York 14850.

17. The subscriber is of the age of eighteen years or over.

IN WITNESS WHEREOF, the subscriber has signed this Certificate of Incorporation this 15 day of January, 2018. *KJA*


Kristin Alling
Incorporator
111 Woolf Lane
Ithaca, NY 14850

CERTIFICATE OF INCORPORATION
OF
CAYUGA MEDICAL CENTER AUXILIARY, INC.

Under Section 402 of the Not-for-Profit Corporation Law

HARRIS BEACH PLLC
99 Garnsey Road
Pittsford, NY 14534

Exhibit B

Bylaws
of
Cayuga Medical Center Auxiliary, Inc.

Adopted: _____

Bylaws
of
Cayuga Medical Center Auxiliary, Inc.

Article I

- The Corporation -

Section 1. Name.

The Corporation shall be known as "Cayuga Medical Center Auxiliary, Inc."

Section 2. Offices.

The principal office of the Corporation shall be located in Tompkins County, New York. The Corporation may also have offices at such other places within the State of New York as the Board of Directors (the "Board") may from time to time determine or the activities of the Corporation may require.

Section 3. Purposes.

The Corporation shall have such purposes as are now or hereafter set forth in its Certificate of Incorporation.

Article II

- Membership -

Section 1. Members.

The Corporation shall be a membership corporation. The membership shall be open to all individuals age 18 or older interested in supporting the purposes of the Corporation. The membership shall be comprised of three separate classes of members. Each class of membership, comprised of individual "Members," shall have specific commitment levels with respect to the volunteer services to be provided to Cayuga Medical Center at Ithaca, Inc. (the "Medical Center"). Such volunteer services may be of any type and may be provided to any department of the Medical Center, as approved by the Corporation. However, Members of the Corporation who are employees of the Medical Center may not provide volunteer services within the department of the Medical Center in which they are employed. The three classes of membership shall be:

(1) Active Members - Active Members shall contribute a minimum of 24 hours of volunteer services per year, as measured by the 12 months ended as of the last day of the calendar year immediately prior to the annual meeting. Active Members shall be voting Members.

(2) Life Members - Life Members shall be voting Members. Membership in this class shall be comprised of (i) those Active Members who fulfilled the requirements to be Active Members for 20 years, inclusive of active membership in any predecessor entity, and (ii) those Members who have previously served as President of the Board of Directors of the Corporation or of the Board of Directors of any predecessor entity. Membership in this class is granted for life without regard to volunteer service levels.

(3) Associate Members - Associate Members shall be non-voting Members. Associate Members shall participate in service programs sponsored by the Corporation. Any Member providing less than 24 hours of volunteer services per year, as measured by the 12 months ended as of the last day of the calendar year immediately prior to the annual meeting, shall be an Associate Member.

Section 2. Annual Meeting of the Members.

The Members of the Corporation shall hold an annual meeting of the Members each year in the month of April, at a convenient time and place as may be designated by the Board. At the annual meeting, the Members shall elect the Officers of the Corporation's Board of Directors, receive the annual report of the Corporation, and transact such other business as may properly come before the meeting.

Section 3. Annual Report to the Members.

(a) The President and the Treasurer shall prepare and present, at the annual meeting of the Members and at the annual meeting of the Board, an annual report, as required by Section 519 of the New York Not-for-Profit Corporation Law, which report shall be audited by a firm of independent public accountants selected by the Board and shall show, in appropriate detail, the following:

(1) The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year immediately preceding the date of the report.

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year immediately preceding the date of the report.

(3) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year immediately preceding the date of the report.

(4) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year immediately preceding the date of the report.

(5) The number of Members of the Corporation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period, and a statement of the place where the names and places of residence of the current members may be found.

(b) The annual report shall be filed with the records of the Corporation and either a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting of Members.

Section 4. Special Meetings of the Members.

Special meetings of the Members of the Corporation for any purpose may be called by the President of the Corporation or at the request of three or more Members. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

Section 5. Notice of Meetings.

Whenever Members are required or permitted to take any action at a meeting, written notice shall state the place, date, and hour of the meeting and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. A copy of the notice of any meeting shall be given personally, by mail, or by facsimile telecommunications or by electronic mail, to each Member entitled to vote at such meeting. If the notice is given personally, by first class mail or by facsimile telecommunications or by electronic mail, it shall be given not less than ten nor more than fifty days before the date of the meeting; if mailed by any other class of mail, it shall be given not less than thirty nor more than sixty days before such date. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the Member at the address filed with the Secretary of the Corporation. If sent by facsimile telecommunication or mailed electronically, such notice is given when directed to the Member's fax number or electronic mail address as filed with the Secretary of the Corporation.

Section 6. Waiver of Notice.

Notice of meetings need not be given to any Member who submits a waiver of notice before or after the meeting. Waiver of notice may be written or electronic. If written, the waiver must be executed by the Member by signing such waiver or causing his signature to be affixed to such waiver by any reasonable means, including, but not limited to facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. The attendance of any Member at a meeting without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice.

Section 7. Quorum.

The presence of at least ten (10) Members shall be necessary to constitute a quorum at any meeting.

Section 8. Action by the Members.

Any action required or permitted to be taken by the Members in their capacity as Members of the Corporation under applicable law or the Certificate of Incorporation or these Bylaws shall be taken by the Members at a duly convened meeting or by a unanimous written consent.

Section 9. Rights and Powers of the Members.

The Members shall have and exercise any and all rights and powers of corporate membership created by the laws of the State of New York or the Certificate of Incorporation or Bylaws of the Corporation.

Section 10. Rights and Powers Reserved to the Medical Center.

The following governance and management powers shall be reserved to the Medical Center:

(1) To approve any amendment of the Certificate of Incorporation or Bylaws of the Corporation and the adoption of any Restated Certificate of Incorporation or Restated Bylaws of the Corporation;

(2) To approve any plan of merger, consolidation, reorganization, or dissolution of the Corporation;

(3) To approve a voluntary change in the Corporation's tax exemption status under Section 501(c)(3) of the Internal Revenue Code; and

(4) To approve the sale or other disposition of all or substantially all of the assets of the Corporation.

Article III

- Board of Directors -

Section 1. Authority.

Subject to the powers reserved to the Members and to the Medical Center under Article II of these Bylaws, the affairs, property, business, and policies of the Corporation shall be under the charge, control, and direction of its Board of Directors.

Section 2. Qualifications.

Each director shall be at least eighteen (18) years of age.

Section 3. *Number and Composition.*

The Board of Directors, which at all times shall be comprised of at least three (3) individuals, shall consist of the following ex-officio members:

(1) The ex-officio voting members of the Board of Directors shall be: (i) the Officers of the Corporation, as appointed by the Members; and (ii) the Committee Chairpersons, as appointed by the President of the Board.

(2) The ex-officio non-voting members of the Board of Directors shall be: (i) the Chief Executive Officer of the Medical Center, or his or her designee; (ii) the Director of Volunteers; and (iii) the Coordinator of Volunteers.

As used in these Bylaws, "the entire Board" means the total number of voting directors which the Corporation would have if there were no vacancies on the Board.

Section 4. *Resignations of Directors.*

Any director of the Corporation shall be deemed to have resigned at such time as he or she resigns from or no longer fills the position or office from which his or her directorship derives. Such directorship resignation shall take effect immediately upon such director ceasing to fill the pertinent office.

Section 5. *Removal of Directors.*

Any director shall be removed from the Board concurrently with such director being removed from the position from which his or her directorship is derived.

Section 6. *Annual Meeting.*

The Annual Meeting of the Board shall be held immediately after the annual meeting of the Members each year at a convenient time and location designated by the Board.

Section 7. *Regular Meetings.*

Regular meetings of the Board may be held at such times as may be fixed from time to time by resolution of the Board. Notice of such meetings shall be given not less than one (1) week before the meeting.

Section 8. *Special Meetings.*

Special meetings of the Board may be called at any time by the President and shall be called by the Secretary if requested in writing by one-fifth of the entire Board.

Section 9. Notices.

Each director shall be given formal notice of each regular, annual, and special meeting of the Board not less than seven (7) days prior to the date scheduled for such meeting. The notice shall state the place, date, and time of the meeting. Notices shall be delivered personally or by mail, overnight delivery by a commercial carrier (e.g., Federal Express or UPS), telefax, or e-mail. If mailed or sent by overnight delivery by a commercial carrier, notice is given when deposited in the United States mail or delivered to the carrier, with postage or other charges thereon prepaid, directed to the director at his or her address as it appears in the record of directors or to such other address as the director shall have specified to the Secretary of the Corporation in writing. If telefaxed, notice is given when the sender receives confirmation that the transmission has been received by the recipient's telefax machine at a number provided by the recipient, at his or her option, for such purpose. If e-mailed, notice is given when the sender effects electronic transmission to an e-mail address provided by the recipient, at his or her option, for such purpose.

Section 10. Waivers of Notice.

Notice of any meeting of the Board need not be given to any director who submits a written waiver of notice either before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director submitting the waiver.

Section 11. Place of Meetings.

The Board may hold its meetings at such place or places within or outside the State of New York as the Board may from time to time by resolution determine.

Section 12. Quorum and Adjourned Meetings.

A majority of the entire Board shall constitute a quorum for the transaction of business at meetings of the Board. A majority of the directors present, whether or not a quorum is present, may adjourn any Board meeting to another time and place, provided that at least three (3) days written notice of the adjourned meeting is given to all directors either personally or by mail, e-mail or telefax. If a quorum is present at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting.

Section 13. Annual Report.

(a) The President and the Treasurer shall prepare and present, at the annual meeting of the Members and at the annual meeting of the Board, an annual report, as required by Section

519 of the New York Not-for-Profit Corporation Law, which report shall be audited by a firm of independent public accountants selected by the Board and shall show, in appropriate detail, the following:

(1) The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year immediately preceding the date of the report.

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year immediately preceding the date of the report.

(3) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year immediately preceding the date of the report.

(4) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year immediately preceding the date of the report.

(5) The number of Members of the Corporation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period, and a statement of the place where the names and places of residence of the current members may be found.

(b) The annual report shall be filed with the records of the Corporation and either a copy or an abstract thereof shall be entered in the minutes of the proceedings of the annual meeting of Members.

Section 14. Action by the Board.

(1) Any corporate action to be taken by the Board means action at a meeting of the Board. Each director shall have one (1) vote regarding any corporate action to be taken by the Board. Except as otherwise provided by law or these Bylaws, the vote of a majority of the directors present at the time of the vote at a duly convened meeting at which a quorum is present shall be the act of the Board.

(2) 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 thereof consent: (1) in writing to the adoption of a resolution setting forth and authorizing the action by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means, including, but not limited to, facsimile signature; or (2) electronically by transmitting his or her consent by electronic mail and setting forth in or including with such transmission information from which it can reasonably be determined that the transmission was authorized by the director granting such consent. The resolution and unanimous consent thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

(3) Any one or more members of the Board, or of any committee thereof, may participate in a meeting of such Board or committee by means of a conference telephone or

similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each director or committee member can participate in all matters before the Corporation or committee, including the ability to propose, object to, and vote upon a specific action to be taken by the director or such committee.

Section 15. Organization.

At each meeting of the Board, the President, or, in his or her absence, a chairman chosen by a majority of the directors, present shall preside. The Secretary, or, in his or her absence, a person chosen by a majority of the directors present, shall keep complete and accurate minutes of the meeting.

Section 16. Attendance at Meeting.

Attendance at each meeting of the Board shall be recorded by the Secretary in the minutes thereof. Unexcused absence from three (3) consecutive meetings of the Board shall constitute cause for removal of a director.

Section 17. Compensation and Expenses.

The members of the Board shall receive no compensation for their services, but directors may be reimbursed for reasonable expenses incurred in the performance of Corporation duties.

Section 18. Property Rights.

No director of the Corporation shall, by reason of that position, have any rights to or interest in the property or assets of the Corporation.

Article IV

- Committees -

Section 1. Appointment of Committees.

Committees shall include committees of the Board and committees of the Corporation. Committees of the Board shall be comprised exclusively of directors and shall each have at least three (3) members. Committees of the Corporation may include members who are non-directors of the Corporation; provided, however, that each such committee shall include at least one (1) director. Committees of the Corporation shall not have the authority to bind the Board. Until changed by amendment of these Bylaws, there shall be no committees of the Board.

Section 2. *Committee Chairpersons.*

Each Committee Chairperson shall be appointed from among the Members of the Corporation by the President of the Board as soon as practicable following the annual meeting of the Corporation. Thereafter, each Committee Chairperson shall select committee members from among the Members of the Corporation and from among the members of the Board. Vacancies on committees may be filled and additional committee members may be appointed between annual meetings by each respective Committee Chairperson. Committee members may also be removed from office by each respective Committee Chairperson.

Section 3. *Standing Committees.*

Until changed by amendment of these Bylaws, there shall be six standing committees of the Corporation. These committees shall be:

(1) Bylaws/Historian - The Bylaws/Historian Chairperson shall select two or more Members to form a committee which shall be familiar with the contents of these Bylaws, be prepared to locate specific reference to answer any question which may arise, review these Bylaws annually, and shall also maintain and be familiar with the current, past and archival information pertaining to the Corporation.

(2) Advocacy - The Advocacy Chairperson shall select two or more Members to form a committee to keep abreast of the wide scope of current legislative matters pertaining to hospitals and community health about which the Members should be informed.

(3) Membership - The Membership Chairperson shall select two or more Members to form a committee which, working with the Coordinator of Volunteers, shall maintain the records of Members, periodically review the membership file, coordinate the activities of the Teen Volunteers, and coordinate recruitment activities.

(4) Newsletter - The Newsletter Chairperson shall select two or more Members to form a committee which, working with the Director of Volunteers, will process and review a newsletter on behalf of the Corporation.

(5) Gift Shop - The Gift Shop Chairperson shall select two or more Members to form a committee which will act as the liaison between the gift shop volunteers and the Board of the Corporation.

(6) Nominating - The Nominating Chairperson shall be the immediate past President of the Board and shall select two Members to form a committee of three. This committee shall be formed early in the fiscal year and shall present a slate of officers to be announced at the April board meeting and present to the annual membership meeting.

(7) Program - The Program Chairperson shall select two or more Members to form a committee which shall be responsible for overseeing and reporting on all programmatic-related issues.

Section 4. Meetings.

Meetings of committees shall be held at such times and places as shall be fixed by the respective committee chairpersons, or by vote of a majority of all of the members of the committee. Written notice shall be given to all members of the committee not less than five (5) days before each meeting either personally or by mail, by e-mail or by telefax. Written minutes of the proceedings shall be kept at all committee meetings and shall be submitted at the next meeting of the Board. The President, or his or her designee, may attend all committee meetings.

Section 5. Quorum.

Unless otherwise provided by resolution of the Board, a majority of all of the members of a committee shall constitute a quorum for the transaction of business.

Section 6. Manner of Acting.

Any corporate action to be taken by a committee shall mean such action to be taken at a meeting of the committee. Each member of a committee shall have one (1) vote regarding any action to be taken by the committee. Any member(s) of a committee may participate in a meeting 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 by such means shall constitute presence in person at the meeting. Action by a committee shall be taken by majority vote at a meeting or without a meeting by unanimous consent.

Article V

- Officers -

Section 1. Number and Salary.

The officers of the Board shall be a President, Vice-President, Secretary, Treasurer, Assistant Treasurer, and such other officers as the Board may deem necessary or advisable. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary. No employee of the Corporation shall serve as President or hold any other title with similar responsibilities. The officers shall serve without compensation at the pleasure of the Members, but may be reimbursed for reasonable expenses incurred in performing duties for the Corporation. The Vice-President shall be an ex-officio member of all fundraising and special events.

Section 2. Terms of Officers.

The officers of the Board shall be elected by the Members of the Corporation from among its members at the Annual Meeting of the Members. Unless a different term is provided in the resolution of the Members electing such officer or these Bylaws, the term of office of each officer shall extend for one (1) year after his or her election and until a successor is elected or appointed and qualified. Officers shall not be eligible to serve more than two consecutive terms,

with the exception of the offices of Secretary and Treasurer, who can serve for additional terms provided such additional terms are approved by two-thirds affirmative vote of the Board of the Corporation.

Section 3. Additional Officers.

Additional officers may be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board may from time to time determine.

Section 4. Removal of Officers.

Any officer may be removed by vote of the Members, with or without cause, at any time, provided there is a quorum of not less than a majority of the entire Board present at the meeting at which such action is taken.

Section 5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if no time is specified, then on delivery. Acceptance of the resignation shall not be necessary to make it effective.

Section 6. Vacancies.

A vacancy in any office of the Corporation for any reason shall be filled for the unexpired term by the President with the approval of the Board. In the event that the President is unable to complete a term of office, the Vice President shall be appointed Acting President for the unexpired term by the Board.

Section 7. President of the Board.

The President shall have the authority to call meetings of the Board and shall generally supervise all affairs of the Corporation. The President shall preside at all meetings of the Board at which he or she is present. The President shall also perform such other duties as may be assigned to him or her from time to time by the Board.

Section 8. Vice-President of the Board

The Vice-President of the Board shall be an ex-officio member of all fund raising and special events, shall assist the President in fulfilling his or her duties under these Bylaws, and shall also perform such other duties as may be assigned to him or her by the Board or the President.

Section 9. Secretary of the Board.

It shall be the duty of the Secretary to supervise the preparation of minutes of all meetings of the Board and its committees, the giving of all notices required to be given by the Corporation, and the keeping of a current list of the Corporation's directors and officers and their residence addresses. The Secretary shall be responsible for supervising the preparation and maintenance of the books and records of the Corporation. The Secretary shall attend to corporate correspondence and perform all the duties customarily incidental to his or her office and such other duties as may be assigned to him or her by the Board or the President.

Section 10. Treasurer of the Board

It shall be the duty of the Treasurer to oversee the financial affairs of the Corporation, report at each regular meeting of the Board, and participate in preparing the annual report of the Corporation. The Treasurer shall also perform such other duties as may be assigned to him or her by the Board or the President.

Section 11. Assistant Treasurer of the Board.

The Assistant Treasurer shall assist the Treasurer in overseeing the financial affairs of the Corporation. The Assistant Treasurer shall perform such duties as may be assigned to him or her by the Treasurer. The Assistant Treasurer shall also perform such other duties as may be assigned to him or her by the Board or the President.

Article VI

- Contracts, Checks, Drafts and Bank Accounts -

Section 1. Execution of Contracts.

The Board, except as these Bylaws otherwise provide, may authorize any officer(s), agent(s), or employee(s), in the name of and on behalf of the Corporation, to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board, or expressly authorized by these Bylaws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

Section 2. Loans.

No loans shall be contracted on behalf of the Corporation unless specifically authorized by the Board.

Section 3. Checks, Drafts, etc.

All checks, drafts and other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed

on behalf of the Corporation in such manner as shall from time to time be determined by resolution of the Board.

Section 4. Deposits.

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select.

Article VII

- General -

Section 1. Seal.

The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the words "Corporate Seal, New York." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 2. Books and Records.

There shall be kept by the Corporation (1) correct and complete books and records of account, (2) minutes of the proceedings of the Board and its committees, (3) a current list of the directors and officers of the Corporation and their residence addresses, (4) a copy of the Certificate of Incorporation, and (5) a copy of the current Bylaws.

Section 3. Indemnification.

The Corporation shall, to the fullest extent permitted by law under the particular circumstances, indemnify its directors, officers, employees, and other personnel.

Section 4. Insurance.

The Corporation shall not be obligated to purchase directors' and officers' liability insurance, but should applicable law permit, the Corporation may purchase such insurance if authorized and approved by vote of a majority of the entire Board.

Section 5. Interested Directors and Officers.

The Board shall adopt a policy regarding conflicts of interest which shall apply to all directors, officers, and key employees of the Corporation.

Article VIII

- Fiscal Year -

The fiscal year of the Corporation shall begin on the 1st day of January and end on the 31st day of December in each year.

Article IX

- Rules of Order, Construction, and Bylaw Changes -

Section 1. Rules of Order.

To the extent not addressed in these Bylaws, meetings of the Board and its committees shall be governed by Robert's Rules of Order.

Section 2. Construction.

If there is any conflict or inconsistency between the provisions of the Corporation's Certificate of Incorporation and these Bylaws, the provisions of the Certificate of Incorporation shall govern.

Section 3. Bylaw Changes.

These Bylaws may be amended or revised at any regular or special meeting of the membership called for the purpose, by affirmative vote of two-thirds of the members present, provided the proposed amendments or revisions shall be presented in writing to the membership seven days prior to the meeting at which action is to be taken thereon. Such amendments or revisions shall become effective immediately on approval by the Board of Directors of the Medical Center.

Adopted: _____

Exhibit C



January 5, 2018

To Whom It May Concern,

This letter confirms that Cayuga Medical Center at Ithaca, Inc. will accept funds raised for it by Cayuga Medical Center Auxiliary, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "John Collett", written over a horizontal line.

John Collett
Chief Financial Officer
Cayuga Medical Center at Ithaca, Inc.

Exhibit D

**Initial Board of Directors
of
Cayuga Medical Center Auxiliary, Inc.**

Name and Address	Occupation	Employer Name and Address	Other Charitable and Nonprofit Affiliations
Kristin Alling 111 Woolf Lane Ithaca, NY 14850	Retired	None	West Hill Cemetery Assoc.; First Presbyterian Church of Ulysses
Roberta Chiesa 159 Bundy Road Ithaca, NY 14850	Retired	None	American Legion Auxiliary; VFW Auxiliary
Glenda Mattoon P.O. Box 876 Trumansburg, NY 14886	Retired	None	None
Loretta Ramstad 370 Savage Farm Drive Ithaca, NY 14850	Retired	None	Lansing Residential Center; MacCormick Secure Center
Claude Hewitt 2 Horizon Drive Ithaca, NY 14850	Retired	None	Lansing Residential Center; MacCormick Secure Center
Joanna VanBusKirk 136 Seven Mile Drive #6 Ithaca, NY 14850	Retired	None	Auxiliary Trustee Eagles; Newfield Booster Club
Randy Olson 73 Sage Road Ithaca, NY 14850	Retired	None	Vintage Gran Prix; Cayuga Lake Triathlon
Teresa Palmer 1538 Taughannock Blvd. Ithaca, NY 14850	Retired	None	Trumansburg Senior Citizens; Ulysses Christmas Bureau
Larry Hoffman 55 Genung Circle Ithaca, NY 14850	Retired	None	None



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: February 14, 2018

Subject: Endo Group, LLC: Certificate of Amendment of Articles of Organization

Pursuant to construction application 161315, Endo Group, LLC (the "Group") proposed to construct a multi-specialty ambulatory surgery center extension clinic, to be known as Syosset SurgiCenter, in Nassau County, New York.

The Department issued a letter to the Group on May 2, 2017 indicating that all contingencies related to the project had been satisfied. However, the application did not include an amended Articles of Organization that added purpose language to include the new extension clinic. Now, the Group wishes to amend its Articles of Organization so that the company's purposes indeed reflect the operation of Syosset SurgiCenter.

The Group requests PHHPC consent to file the Certificate of Amendment and PHHPC approval to file the amendment is required by New York State Public Health Law § 2801-a.

There is no legal objection to the proposed Certificate of Amendment of Articles of Organization of Endo Group, LLC and it is in legally acceptable form.

Attachments



OFFICE OF LEGAL AFFAIRS

Patricia M. Dineen
Vice President

February 6, 2018

Ms. Barbara DelCogliano
Deputy Director
Division of Planning and Licensure
New York State Department of Health
Corning Tower, Room 1842
Empire State Plaza
Albany, New York 12237

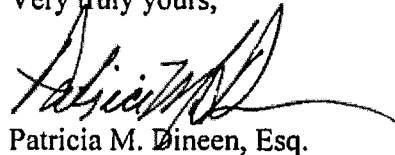
RE: 161315-C
Garden City SurgiCenter
(Nassau County)
Construct a multi-specialty ambulatory surgery center extension clinic to
be located at 240 Jericho Turnpike, Syosset

Dear Ms. DelCogliano:

In anticipation of the opening of the above referenced ambulatory surgery center to be known as Syosset SurgiCenter, enclosed please find a proposed Certificate of Amendment of the Articles of Organization of Endo Group, LLC ("the Company") for approval by the Public Health and Health Planning Council. The purpose of this amendment is to add as a purpose and power of the Company the ownership and operation of the Syosset SurgiCenter. Also enclosed is a copy of the current Articles of Organization of the Company, for reference.

Please do not hesitate to contact me should you require additional information and thank you for your attention to this matter.

Very truly yours,



Patricia M. Dineen, Esq.

Attachment I

Proposed Certificate of Amendment of the Articles of Organization of Endo Group, LLC

See attached.

**CERTIFICATE OF AMENDMENT
OF THE
ARTICLES OF ORGANIZATION
OF
ENDO GROUP, LLC**

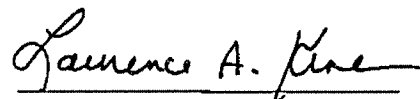
Under Section 211 of the
Limited Liability Company Law

The UNDERSIGNED, being an authorized representative of ENDO GROUP, LLC, does hereby certify:

1. The name of the limited liability company is ENDO GROUP, LLC ("Company").
2. The Articles of Organization of the Company was filed with the Secretary of State of the State of New York on September 17, 2003 and Amended and Restated Articles of Organization of the Company was filed with the Secretary of State of the State of New York on November 22, 2006. A Restated Articles of Organization of the Company was filed with the Secretary of State of the State of New York on January 14, 2015.
3. The amendment effectuated by this Certificate of Amendment to the Articles of Organization are as follows:
 - a. Paragraph SIXTH of the Articles of Organization relating to the purposes and powers of the Company is hereby deleted in its entirety and replaced as follows:

SIXTH: The purposes and powers of the Company shall be limited to the ownership and operation of Garden City SurgiCenter, an Article 28 ambulatory surgery center located at 450 Endo Boulevard, Garden City, New York 11530, and Syosset SurgiCenter, an Article 28 ambulatory surgery center located at 240 Jericho Turnpike, Syosset, New York 11791.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment of the Articles of Organization of the Company as of the 7th day of February, 2018 and affirms that the statements herein are true under the penalties of perjury.



Laurence A. Kraemer
Authorized Person

CERTIFICATE OF AMENDMENT
OF THE
ARTICLES OF ORGANIZATION
OF
ENDO GROUP, LLC
UNDER SECTION 211 OF THE LIMITED LIABILITY COMPANY LAW

FILED BY:

NORTHWELL HEALTH, INC.
2000 MARCUS AVENUE
NEW HYDE PARK, NEW YORK 11042

Attachment II

Current Articles of Organization of Endo Group, LLC

See attached.

FILING RECEIPT

=====

ENTITY NAME: ENDO GROUP, LLC

DOCUMENT TYPE: AMENDMENT (DOM LLC)
PROVISIONS RESTATED

COUNTY: NASS

=====

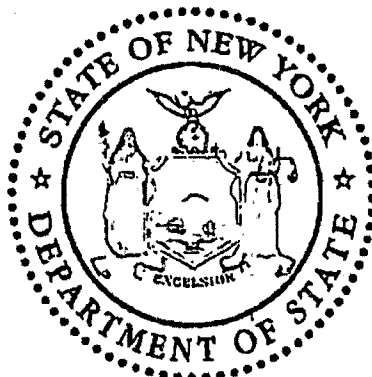
FILED:01/14/2015 DURATION:***** CASH#:150114000835 FILM #:150114000780

FILER:

PHACO GROUP, LLC & NORTH SHORE-LIJ
VENTURES GCSC, LLC; ATN: LEGAL AFF.
145 COMMUNITY DRIVE
GREAT NECK, NY 11021

ADDRESS FOR PROCESS:

REGISTERED AGENT:



=====

SERVICE COMPANY: C T CORPORATION SYSTEM - 07

SERVICE CODE: 07

FEEs 95.00

FILING 60.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 25.00

PAYMENTS 95.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 95.00
OPAL 0.00
REFUND 0.00

9401865JW

=====

DOS-1025 (04/2007)

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 January 15, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

150114000780

CT-07

**RESTATED
ARTICLES OF ORGANIZATION
OF
ENDO GROUP, LLC**

Under Section 214 of the Limited Liability Company Law
of the State of New York

The undersigned, being all of the members of ENDO GROUP, LLC, do hereby certify:

FIRST: The name of the LLC is ENDO GROUP, LLC (the "LLC").

SECOND: The date of the filing of the LLC's original Articles of Organization with the Secretary of State is September 17, 2003 and the date of filing of the LLC's Amended and Restated Articles of Organization with the Secretary of State is November 22, 2006.

THIRD: The Restated Articles of Organization restate the text of the LLC's Amended and Restated Articles.

FOURTH: Paragraph FIFTH has been amended to delete the text reading that "the LLC is to be managed by one or more members" and to provide that "the LLC will be managed by a Board of Managers appointed by the Members in accordance with the Company's Operating Agreement".

FIFTH: The LLC's Articles of Organization are hereby amended and restated in their entirety as follows:

**"ARTICLES OF ORGANIZATION
OF
ENDO GROUP, LLC**

Under and Pursuant to Section 203 of the Limited Liability
Company Law of the State of New York

FIRST: The name of the LLC is ENDO Group, LLC.

SECOND: The office of the LLC shall be located in the County of Nassau at 450 Endo Boulevard, Garden City, New York 11530.

THIRD: The latest date on which the LLC is to dissolve is December 31, 2053.

FOURTH: The Secretary of State of New York is designated as the agent of the LLC upon whom process against it may be served, and the address to which the Secretary of State shall mail a copy of any process against the LLC served upon him c/o Garden City SurgiCenter, 450 Endo Boulevard, Garden City, New York 11530, Attention: Administrator.

FIFTH: The LLC is to be managed by a Board of Managers appointed by the Members in accordance with the Company's Operating Agreement. Each Manager shall be either a Member or an officer, member or director of a Member. Neither the management structure nor any provision setting forth the management structure in these Articles of Organization or the Company's Operating Agreement may be deleted, modified or amended without the prior approval of the New York State Department of Health.

SIXTH: The purposes and powers of the Company shall be limited to the following: the ownership and operation of the Garden City SurgiCenter, and Article 28 Ambulatory surgery center located at 450 Endo Boulevard, Garden City, New York 11530.

SEVENTH: Notwithstanding anything in the Articles of Organization or Operating Agreement of the LLC to the contrary, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with New York Public Health Law Sections 2801-a(4)(b)."

[no further text on this page]

IN WITNESS WHEREOF, these Second Amended and Restated Articles of Organization have been subscribed this 12th day of August, 2014, by the undersigned, who affirm that the statements made herein are true under the penalties of perjury.

PHACO GROUP, LLC, Member

By: _____

For Lucas
Authorized Person

NORTH SHORE-LI VENTURES GCSC, LLC


By: _____

IN WITNESS WHEREOF, these Second Amended and Restated Articles of Organization have been subscribed this 15th day of August, 2014, by the undersigned, who affirm that the statements made herein are true under the penalties of perjury.

PHACO GROUP, LLC

By: _____

NORTH SHORE-LIJ VENTURES GCSC, LLC, Member

By: 
Dennis Dowling
Senior Vice President
Ambulatory Services

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

November 14, 2014

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue
White Plains, New York 10604

Re: Second Amended and Restated Articles of Organization of Endo Group, LLC

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 12th day of June, 2014, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Second Amended and Restated Articles of Organization of Endo Group, LLC, dated August 15, 2014.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl

780

CT-07

RESTATED

ARTICLES OF ORGANIZATION

OF

ENDO GROUP, LLC

Under and pursuant to Section 214 of the Limited Liability Company Law
of the State of New York

Handwritten mark

Filed by:

Phaco Group, LLC
and
North Shore-LIJ Ventures GCSC, LLC
145 Community Drive
Great Neck, New York 11021
Attn: Legal Affairs

1 LLC
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 14 2015

TAX \$ _____
BY: *[Signature]*

RECEIVED RECEIVED
2015 JAN -9 PM 1:04
2015 JAN 14 PM 12:05

REF 9401865 2W
DRAWDOWN

835

2015 JAN 14 PM 2:30

FILED



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: February 13, 2018

Subject: The Martin Luther King, Jr. Health Center, Inc.: Corporate Name Change

The Martin Luther King, Jr. Health Center, Inc. (the "Facility") is licensed to operate pursuant to Article 28 of the New York State Public Health Law. The Facility seeks to change its corporate name to BronxCare Dr. Martin Luther King, Jr. Health Center in an effort to promote branding identity with its affiliates. Please see the attached letter from Michael M. Stone, Esq. of Garfunkel Wild, P.C. for further details. The Facility seeks PHHPC approval of the proposed name change.

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).

There is no objection to the corporate name change and the Certificate of Amendment of the Certificate of Incorporation of The Martin Luther King, Jr. Health Center, Inc. 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.: 06238.3350

February 1, 2018

By E-mail

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
NYS Department of Health
Corning Tower, Room 1805, EPS
Albany, NY 12237

Re: Certificate of Amendment of The Martin Luther King, Jr. Health Center, Inc.

Dear Ms. Leonard:

My firm is counsel to The Martin Luther King, Jr. Health Center, Inc., a New York not-for-profit corporation affiliated with Bronx-Lebanon Hospital Center, Bronx-Lebanon Special Care Center, Inc. and Bronx-Lebanon Hospital New Directions Fund, Inc.

We are seeking approval to file a Certificate of Amendment to the Certificate of Incorporation of The Martin Luther King, Jr. Health Center, Inc. (the "Corporation"). In addition to updating the corporate type in compliance with the Nonprofit Revitalization Act of 2013, the amendments will change the name of the Corporation to "BronxCare Dr. Martin Luther King, Jr. Health Center."

As you are aware, Bronx-Lebanon Hospital Center ("Hospital") is changing its name to BronxCare Health System to better reflect the scope of health care services it provides to the community, which includes, in addition to hospital inpatient services, an extensive outpatient clinic program providing outpatient health, mental health and behavioral health services. The Hospital's other affiliates, Bronx-Lebanon Special Care Center, Inc. and Bronx-Lebanon Hospital New Directions Fund, Inc. are also changing their names to include "BronxCare."¹ The Certificates of Amendment for each of these entities are on the agenda of the February 8, 2018 meeting of the Public Health and Health Planning Council.

If possible, we would be grateful if the Corporation's Certificate of Amendment could be presented to the Council at the February 8, 2018 meeting along with the Certificates of Amendment of the Hospital and other affiliates. We understand that this request is not consistent with the longstanding practice of presenting Certificates to the Establishment and Project Review Committee prior to the full Council, but given the common interest in creating a cohesive brand between the

¹ As I explained in my letter to you dated December 11, 2017, "BronxCare" is a service mark of Bronx-Lebanon Hospital Center which is used by the Hospital and its affiliates in identifying their services to the community.

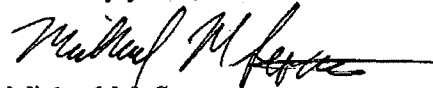
Ms. Colleen M. Leonard
NYS Department of Health
February 1, 2018
Page 2

Corporation and the Hospital and avoiding potential consumer confusion, we hope that a limited exception can be made in this case.

Enclosed please find the proposed Certificates of Amendment for the Corporation. Also enclosed is a copy of the Corporation's Certificate of Incorporation and all amendments.

Regardless of whether the Council considers this matter at its February 8, 2018 meeting or the next, we respectfully request the Council's approval to file this Certificate of Amendment with the New York State Department of State. Please contact me at your convenience if you have any questions or if you require additional information. We thank you in advance for your assistance.

Sincerely yours,



Michael M. Stone

Enclosures

cc: Errol Schneer
Fredrick I. Miller, Esq.

GARFUNKEL WILD, P.C.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

THE MARTIN LUTHER KING, JR., HEALTH CENTER, INC.

(Under Section 803 of the Not-for-Profit Corporation Law)

The undersigned, being the President and Chief Executive Officer of THE MARTIN LUTHER KING, JR., HEALTH CENTER, INC., hereby certifies:

FIRST: The name of the corporation is THE MARTIN LUTHER KING, JR., HEALTH CENTER, INC. (the "Corporation"). The name under which the Corporation was formed is The Community Board of the Martin Luther King, Jr. Health Center, Inc.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State on January 11, 1972.

THIRD: The Corporation was formed under Section 402 of the Not-for-Profit Corporation Law (the "N-PCL").

FOURTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL.

FIFTH: The Certificate of Incorporation is hereby amended to read as follows:

(a) Article FIRST of the Certificate of Incorporation of the Corporation, setting forth the name of the Corporation, is hereby amended in its entirety to read as follows:

"FIRST: The name of the Corporation is BronxCare Dr. Martin Luther King, Jr. Health Center."

(b) Article SECOND of the Certificate of Incorporation regarding the type of Corporation is amended to delete the reference to the Corporation being a type B corporation as defined in Section 201 of the N-PCL and to add that the Corporation is charitable. Accordingly Article SECOND shall be hereby amended in its entirety to read as follows:

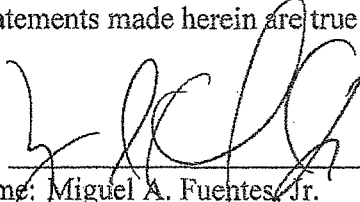
"SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL and is a charitable corporation under Section 201 of the N-PCL. The Corporation shall remain a charitable corporation after this Certificate of Amendment shall become effective.

SIXTH: The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

BronxCare Dr. Martin Luther King, Jr. Health Center
1276 Fulton Avenue
Bronx, New York 10456
Attn: President and Chief Executive Officer

SEVENTH: This amendment to the Certificate of Incorporation of the Corporation was authorized by written consent of the sole member of the Corporation on January 25, 2018.

IN WITNESS WHEREOF, this Certificate has been signed this 1st day of February, 2018 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

By: 
Name: Miguel A. Fuentes, Jr.
Title: President and Chief Executive Officer

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 January 29, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", is written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

CERTIFICATE OF INCORPORATION

OF

THE COMMUNITY BOARD OF THE
MARTIN LUTHER KING, JR. HEALTH CENTER, INC.

(Pursuant to Section 402 of the Not-For-Profit Corporation Law)

958697

WE, THE UNDERSIGNED, of full age, being desirous of associating ourselves together for the purposes as hereinafter more particularly described, pursuant to and in conformity with the Not-For-Profit Corporation Law of the State of New York do hereby certify:

FIRST: That the name of the proposed corporation is THE COMMUNITY BOARD OF THE MARTIN LUTHER KING, JR. HEALTH CENTER, INC. ~~(and that its name has been approved by the Secretary of State.)~~

SECOND: That the corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law.

THIRD: That the objects and purposes of this corporation shall be exclusively charitable, scientific and educational within the meaning of Section 501 (e) (3) of the United States Internal Revenue Code of 1954, as the same may be amended from time to time, and shall be limited exclusively to the following objects and purposes:

To set goals and priorities, and to advise the staff of THE MARTIN LUTHER KING, JR. HEALTH CENTER, INC., concerning programs and policies that will make the Center's operations most responsive to community needs, ~~(pursuant to Section F(1)(b) of the Office of Economic Opportunity Guideline for Health Services Programs.)~~

To increase community residents' effective use of health related facilities by disseminating information about such facilities.

To insure that health facilities meet community needs by promoting and encouraging the employment of adult community residents in all aspects of the delivery of health services; and to develop, publish and promote procedures whereby individual and community concerns can best be communicated to the Community Board.

To improve community health standards by informational campaigns about what health facilities and services are available to residents of the area; promoting and encouraging the construction of new health facilities; promoting ~~and participating~~ in area-wide comprehensive health planning; promoting more effective municipal and state health-related services within the area; and promoting equality of care in all health institutions which serve Martin Luther King, Jr. Health Center patients.

The Community Board is in no manner or form to ~~independently~~ establish or operate a health facility or health related service as defined in the Public Health Law of the State of New York, Article 28 thereof.

FOURTH: In furtherance of its objects and purposes as set out in Paragraph THIRD of this Certificate, but not for any other object or purpose, the Corporation may exercise the following powers to the extent permitted by law:

Solicit, accept, receive, hold and administer funds, and take and receive, by bequest, devise, gift or benefit of trust (but not as Trustee of any Trust), and purchase or lease, or otherwise acquire any property, real or personal, tangible, wheresoever located and without limitations as to amount or value, and borrow money;

Hold, sell, convey and dispose of any property so received, purchased or otherwise acquired, and invest and reinvest the principal therefrom, add such income to principal, and deal with, use, expend, convey, donate, assign or otherwise transfer the property of the Corporation, whether principal of income; and

Do everything and anything reasonable and lawfully necessary, proper, suitable or convenient to achieve any and all the objects and purposes set out in Paragraph THIRD of this Certificate; provided however, that the Corporation may not exercise any power, either expressed or implied, in such manner

as to disqualify the Corporation as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as the same may be amended from time to time.

The Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954, as amended, and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; or (d) make any taxable expenditures as defined in Section 4945(d) of the Code.

FIFTH: All the foregoing objects shall be furthered and accomplished without any profit to the Corporation or its officers, and no part of the net earnings of the Corporation shall inure to the benefit of any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation effecting one or more of its purposes) and no member, officer or employee of the Corporation, or any private individual, shall be entitled to share in the distribution of the Corporation. Upon dissolution of and after payment of all just debts, all remaining assets are to be distributed to organizations which have received Federal Charitable Corporation Status under IRC Section 501(c)(3); such distribution being subject to the written approval of a Supreme Court Justice of the State of New York.

SIXTH: The Corporation shall not be authorized or empowered to solicit and will not solicit contributions for any purpose for which approval of the State Board of Social Welfare of the State of New York is required by Section 35 of the Social Services Law of the State of New York and nothing in the Certificate of Incorporation shall authorize or empower the Corporation to undertake or carry on, and the Corporation will

not undertake or carry on, any of the health or child welfare activities specified in Section 35 of the Social Services Law of the State of New York or any other activities for which approval of the State Board of Social Welfare is required.

SEVENTH: The Corporation, in furtherance of its corporate purposes as set forth above, shall have all the powers enumerated in Section 202 of the Not-For-Profit Corporation Law, subject to any limitations provided in the Not-For-Profit Corporation Law, or any other statute of the State of New York. The Corporation shall be Type B Corporation pursuant to Section 201 of the Not-For-Profit Corporation Law.

EIGHTH: The territory in which the operations of the Corporation are to be principally conducted is City of New York, County of Bronx and State of New York.

NINTH: The principal office of said Corporation shall be located in the City of New York, County of Bronx and State of New York.

TENTH: The post office address to which the Secretary of State shall mail a copy of any notice required by law is 3674 Third Avenue, Bronx, New York 10456.

ELEVENTH: The names and residences of the directors until the first meeting are:

(Mrs.) Philomena Allen	1656 Washington Avenue Bronx, New York 10457
(Mrs.) Daphne Collins	1309 Clinton Avenue Bronx, New York 10456
(Mrs.) Lucy Cortez	1348 Webster Avenue Bronx, New York 10456

TWELFTH: No approvals by any agencies of Departments of the State of New York are required by law.

THIRTEENTH: All of the subscribers to this Certificate,
being at least nineteen years of age, affirm that the statements
made herein are true under the penalties of perjury.

DATED:

(Mrs.) Philomena Allen
1656 Washington Avenue
Bronx, New York 10457

Philomena Allen
Signature

(Mrs.) Daphne Collins
1309 Clinton Avenue
Bronx, New York 10456

Daphne Collins
Signature

(Mrs.) Lucy Cortez
1348 Webster Avenue
Bronx, New York 10456

Lucy Cortez
Signature

STATE OF NEW YORK)
) SS.:
COUNTY OF BRONX)

On this 19th day of Oct, 1971, before me personally came PHILOMENA ALLEN, DAPHNE COLLINS and LUCY CORTEZ, to me known and known to me to be the individuals described in and who executed the foregoing Certificate of Incorporation, and they duly acknowledged to me that they executed the same.

Bernard Kosoff
Notary Public.

I, WILFRED A. WILSON ⁷³ Justice of the Supreme Court of the State of New York, of the First Judicial District, do hereby approve the Certificate of Incorporation of THE COMMUNITY BOARD OF THE MARTIN LUTHER KING, JR. HEALTH CENTER, INC., and consent that the same be filed.

DATED: November 22, 1971 Wilfred A. Wilson
JUSTICE OF THE SUPREME
COURT OF THE STATE OF NEW YORK
FIRST JUDICIAL DISTRICT

Notice of Application Waived
(This certificate is deemed an
application for the purpose of the
Department of Social Services of the
State of New York, nor an
authentication of activities
otherwise limited by law.)

Dated: November 11, 1971
Joseph J. Lewinowitz
Attorney General

By: Charles C. Cole
Assistant Attorney General
Assume

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

In the Matter of the Application for the
Approval of the Certificate of Incorporation

-of-

THE COMMUNITY BOARD OF THE MARTIN LUTHER
KING, JR. HEALTH CENTER, INC.

Pursuant to the Not-For-Profit Corporation
Law)

STATE OF NEW YORK)

) SS.:

COUNTY OF BRONX)

WE, THE UNDERSIGNED, constitute a majority of the
members of a committee duly authorized to incorporate this
group.

Lucy Carter
William O. Adams
Joseph Adams

Sworn to before me this

19th day of OCT, 1971.

Bernard L. Katz
Notary Public

12/17E

Hq Type B

CERTIFICATE OF INCORPORATION

-of-

THE COMMUNITY BOARD

OF THE MARTIN LUTHER

KING, JR. HEALTH CENTER,

INC.

(Pursuant to Section 402 of the
Not-For-Profit Corporation Law)

HOLLENBERG, WIDDER, FISHMAN,
SCHAUM & LEVIN
Office & P.O. Address
170 Old Country Road
Mineola, New York 11501
516 747-4700

958897 - 8

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JAN 11 1972

TAX \$ None
FILING FEE \$ 50

John F. ...

Secretary of State

P. 03 Brady

4

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 January 29, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT

OF

THE CERTIFICATE OF INCORPORATION

OF

THE COMMUNITY BOARD OF THE
MARTIN LUTHER KING, JR., HEALTH CENTER, INC.

Under Section 803 of the Not-For-Profit Corporation Law

FIRST: The name of the corporation is THE COMMUNITY BOARD OF THE MARTIN LUTHER KING, JR., HEALTH CENTER, INC. (hereinafter referred to as the "Corporation").

The post office address to which the Secretary of State shall mail a copy of any notice required by law is Martin Luther King, Jr., Health Center, Inc., 3674 Third Avenue Bronx, New York 10456.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State on January 11, 1972.

THIRD: The Corporation was formed under the Not-For-Profit Corporation Law.

FOURTH: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law.

FIFTH: The Corporation is a Type B corporation under Section 201 of the Not-For-Profit Corporation Law and upon the effective date of this amendment the corporation shall continue to be a Type B corporation.

SIXTH: The amendments of the Certificate of Incorporation of the Corporation effected by this certificate of amendment are: - to change the corporate purposes and to change the corporate name.

SEVENTH: To accomplish the foregoing amendments Article FIRST relating to the corporate name and Article THIRD relating to the corporate purposes and Article TWELFTH relating to approvals, are hereby amended to read as set forth below.

"FIRST: That the name of the corporation is THE MARTIN LUTHER KING, JR., HEALTH CENTER, INC.

"THIRD: That the objects and purposes of this Corporation shall be exclusively charitable, scientific and educational within the meaning of §501(c) (3) of the United States Internal Revenue Code of 1954 as the same may be amended from time to time, and shall specifically include the following objects and purposes:

A478897

To establish, operate and maintain a diagnostic and treatment center as defined in the Public Health Law of the State of New York, Article 28 thereof.

The above described purposes and powers, except wherein they contain specific prohibition, shall not be deemed to limit the powers of the Corporation, and it is intended that the Corporation will be authorized to use all powers conferred in the Not-For-Profit Corporation Law in the furtherance of the Corporation's purposes, together with the power to solicit grants and contributions for corporate purposes.

"FIFTH: No part of the assets, income, profits or net earnings of the Corporation shall enure to the benefit of or be distributable to its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III hereof. 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. 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 1954 (or the 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 1954 (or corresponding provisions of any subsequent Federal tax laws).

Upon the dissolution, final liquidation, or winding up of the Corporation the Board of Directors shall, subject to any requisite approval and/or jurisdiction of the Supreme Court of the State of New York, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for the same or similar Not-For-Profit (charitable, educational, religious or scientific) purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine.

"TWELFTH: Prior to the delivery of this Certificate of Incorporation to the Department of State for filing, any approvals or consents which are required by the Not-For-Profit Corporation Law or by any other Statute of the State of New York before this Certificate of Incorporation may be filed in the Department of State will be endorsed upon this Certificate of Incorporation or annexed thereto, as the case may be.

EIGHTH: The approval of a Justice of the Supreme Court of the State of New York was required to be endorsed upon the certificate of incorporation of the Corporation prior to the delivery of said certificate of incorporation to the Department of State for filing.

Prior to the delivery of the certificate of amendment to the Department of State for filing, the approval of the aforesaid officer will be annexed thereto.

The approval of the ~~Commissioner of Health~~ ^{Public Health Council} of the State of New York was not required to be endorsed upon the certificate of incorporation of the Corporation prior to the date said certificate of incorporation was delivered to the Department of State for filing.

Due to the amendment of the purposes of the Corporation the approval of said ~~Commissioner of Health~~ ^{Public Health Council} will be endorsed upon the certificate of amendment of the certificate of incorporation of the Corporation prior to the delivery of said certificate of amendment to the Department of State for filing.

NINTH: The foregoing amendments of the certificate of incorporation of the Corporation were authorized by the vote of the entire Board of Directors, the Corporation having no members entitled to vote on said amendments.

IN WITNESS WHEREOF, we have subscribed this document on the 6th day of June, 1977, and do hereby affirm, under the penalties of perjury, that the statements contained therein have been examined by us and are true and correct.

Kenneth W. Brummond -

Kenneth W. Brummond
President

1118 Kelly St. Bronx, N.Y. 10459

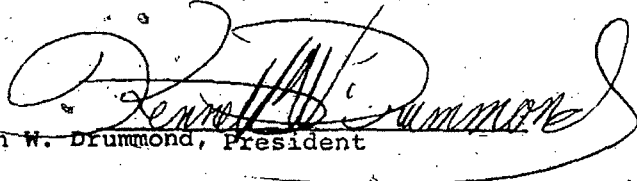
Marcella Brown -

Marcella Brown
Secretary

1162-76 Washington Ave.
Bronx, N.Y. 10456

STATE OF NEW YORK)
 : SS.:
COUNTY OF BRONX)

KENNETH W. DRUMMOND and MARCELLA BROWN, being severally, duly sworn, depose and say that they are the President and Secretary, respectively, of The Community Board of The Martin Luther King, Jr., Health Center, Inc.; and that they have read the foregoing Certificate of Amendment of the Certificate of Incorporation of The Community Board of The Martin Luther King, Jr., Health Center, Inc., and know the contents thereof; that the statements contained therein are true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.



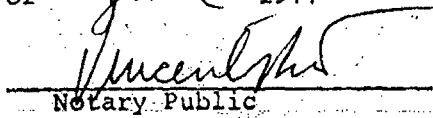
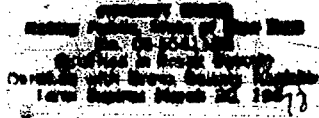
Kenneth W. Drummond, President



Marcella Brown, Secretary

Subscribed and sworn to
before me this 6 day

of June 1977


Notary Public


STATE OF NEW YORK)
 : SS.:
COUNTY OF BRONX)

DANIEL GOLDBERG, being duly sworn, deposes and says, that he is an attorney and counsellor at law and an associate of the firm of McLaughlin & Stern, Ballen and Miller, attorneys for the subscribers of the annexed Certificate of Amendment, and that no previous application for the approval of said Certificate of Amendment by any Justice of the Supreme Court has ever been made.



Daniel Goldberg

Subscribed and sworn to before
me this ^{7th} day of June, 1977


DENNIS G. MANDELL
Notary Public, State of New York
No. 24-7690130
Qualified in Kings County
Term Expires March 30, 1978

I, **JOSEPH DIFEDE**, a Justice
of the Supreme Court of the ~~Second~~ ^{FIRST} Judicial District, hereby
approve the foregoing Certificate of Amendment of the Certificate
of Incorporation of ~~the~~ The Community Board of the Martin Luther
King, Jr., Health Center, Inc., and consent to its being filed.

DATE: *Bronx, New York*
April 11, 1978

Joseph DiFeде
Justice of the Supreme Court
Second Judicial District

4/11/78

**THE UNDERSIGNED HAS NO
OBJECTION TO THE GRANTING
OF JUDICIAL APPROVAL
HEREON AND WAIVES
STATUTORY NOTICE**

LOUIS J. LEFKOWITZ
Attorney General
New York

Bernard Toomin

BERNARD TOOMIN
Assistant Attorney General

P-H



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

March 29, 1978

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after due inquiry and investigation at a meeting of the Public Health Council held on the 17th day of March, 1978, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of the Community Board of the Martin Luther King, Jr., Health Center, Inc. is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams

MARIANNE K. ADAMS
Secretary

Sent to: Daniel Goldberg, Esq.
McLaughlin, Stern, Ballen and Miller
100 East 42nd Street
New York, New York 10017

cc: Mrs. Deloris Smith
Project Director
Dr. Martin Luther King, Jr.
Health Center, Inc.
3674 Third Avenue
Bronx, New York 10456

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GORDON E. BROWN
JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST

MORTON P. HYMAN
MSGR. CHARLES J. FAHEY
W. KENNETH RILAND, D.O.
JEANNE E. JONAS
Robert J. Collins, M.D.
Mary C. McLaughlin, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
KENNETH W. WOODWARD, M.D.
COMMISSIONER OF HEALTH
ROBERT P. WHALEN, M.D.
EX OFFICIO

A478897

NFP

958697-8

11/1/72

Parent Co

Type B

not a corp 3674 3rd Ave

Branching 10450

new name OK

4/13 E

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
THE COMMUNITY BOARD OF THE
MARTIN LUTHER KING, JR.
HEALTH CENTER, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE
TAX \$ 100.00
FILING FEE \$ 1.00

FILED
APR 13 1978

Handwritten signature

239938

McLAUGHLIN & STERN, BALLEW AND MILLER
ATTORNEYS AND COUNSELORS AT LAW
100 EAST 42ND STREET
NEW YORK, N. Y. 10017

Type B

J



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: March 9, 2018

Subject: Northwell Quality and Medical Affairs, Inc.
162353E
Request to the Public Health and Health Planning Council for authorization to file the Certificate of Amendment of the Certificate of Incorporation for Long Island Jewish Medical Center with the New York State Department of State

Northwell Quality and Medical Affairs, Inc. (the applicant) was contingently approved by the Public Health and Health Planning Council (PHHPC) on March 9, 2017 to establish Northwell Quality and Medical Affairs, Inc. as the second active parent of seven hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc. All contingencies were completed and the final approval letter was issued on October 25, 2017. In February 2018 the applicant filed eight certificates of amendment with the New York State Department of State (DOS). Four of these amendments were rejected by DOS. The applicant is now seeking a letter from PHHPC authorizing the applicant to file the remaining certificate of amendments with DOS. Please see the attached letter from Laurence A. Kraemer, Esq. of Northwell Health for further details.

There is no objection to PHHPC authorizing the applicant to file the remaining certificates of amendment with DOS and the Certificate of Amendment of the Certificate of Incorporation of Long Island Jewish Medical Center is in legally acceptable form.

Attachments



February 28, 2018

Ms. Colleen M. Leonard
New York State Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

RE: 162353 E
Northwell Quality and Medical Affairs, Inc.
(Nassau County)
Establish Northwell Quality and Medical Affairs, Inc. as the second active parent of seven (7) hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc.

Dear Ms. Leonard:

I write this letter with regard to the above-referenced Certificate of Need application (the "Application") to establish Northwell Quality and Medical Affairs, Inc. ("NQMA") as the second active parent of seven hospitals and one residential healthcare facility co-operated by Northwell Healthcare, Inc., which are listed in Attachment I. Attached as Attachment II is a copy of the PHHPC approval letter (the "PHHPC Consent") received in connection with the Application.

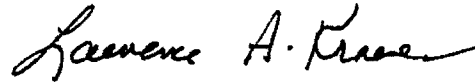
In February 2018, this office submitted to the New York State Department of State ("DOS") for filing a total of eight certificates of amendment to the certificates of incorporation of these seven hospitals and residential healthcare facility. The purpose of these amendments is to delegate certain decision-making authority to NQMA, consistent with the Application. A copy of the PHHPC Consent was provided to DOS with each amendment for filing. DOS accepted and filed four of the eight certificates of amendment based on the PHHPC Consent. Although the amendments are substantively the same, DOS rejected four of the amendments, contending that DOS needs an approval letter specifying each entity's name. Attachment I notes those amendments that have been accepted and filed by DOS and those that have been rejected for filing by DOS.

To complete these filings, this office respectfully requests a letter from PHHPC to authorize the filing of the certificate of amendment of the certificate of incorporation for each of Long Island Jewish Medical Center, Plainview Hospital, Southside Hospital, and Staten Island

University Hospital. Copies of these proposed certificates of amendment are attached as Attachment III.

Please do not hesitate to contact me should you need any additional information. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Laurence A. Kraemer". The signature is written in a cursive style with a long, sweeping underline.

Laurence A. Kraemer, Esq.

Attachment I

Eight Entities for which Certificates of Amendment were submitted to DOS

Seven (7) Hospitals:

Glen Cove Hospital – Amendment filed by DOS on February 2, 2018
Lenox Hill Hospital – Amendment filed by DOS on February 12, 2018
Long Island Jewish Medical Center – Rejected by DOS
North Shore University Hospital – Amendment filed by DOS on February 12, 2018
Plainview Hospital – Rejected by DOS
Southside Hospital – Rejected by DOS
Staten Island University Hospital – Rejected by DOS

Residential Health Care Facility:

Northwell Health Stern Family Center for Rehabilitation – Amendment filed by DOS on February 12, 2018

Attachment II

PHHPC Consent

See attached.

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

October 25, 2017

Michael Moskowitz
Assistant Vice President Program Development
Northwell Health
2000 Marcus Avenue
New Hyde Park, New York 11042

Re: 162353 E
Northwell Quality and Medical Affairs, Inc.
(Nassau County)
Establish Northwell Quality and Medical
Affairs, Inc. as the second active parent of
seven (7) hospitals and a residential health
care facility co-operated by Northwell
Healthcare, Inc.

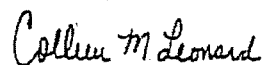
Dear Mr. Moskowitz:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Northwell Quality and Medical Affairs, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health and Health Planning Council considered this application at its meeting of March 9, 2017. You are expected to comply with the conditions listed on the March 10, 2017 letter from Tracy F. Raleigh.

Public Health and Health Planning Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please email the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

October 25, 2017

Michael Moskowitz
Assistant Vice President Program Development
Northwell Health
2000 Marcus Avenue
New Hyde Park, New York 11042

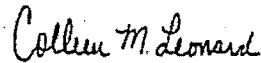
Re: Certificate of Amendment of the Certificate of Incorporation of Northwell Healthcare, Inc.

Dear Mr. Moskowitz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 9th day of March 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 Northwell Healthcare, Inc., dated June 15, 2017.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

Attachment III

**Certificates of Amendment of Certificates of Incorporation for each of Long Island Jewish
Medical Center, Plainview Hospital, Southside Hospital and Staten Island University
Hospital**

See attached.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LONG ISLAND JEWISH MEDICAL CENTER**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President and Chief Executive Officer of Long Island Jewish Medical Center, do hereby certify:

1. The name of the corporation is Long Island Jewish Medical Center (the "Corporation"). The Corporation was formed under the name "The Long Island Jewish Hospital".
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on October 20, 1949 under the Membership Corporations Law.
3. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to add a new Paragraph NINTH to the Certificate of Incorporation wherein the Corporation delegates, pursuant to Section 701 of the Not-for-Profit Corporation Law, decision-making authority on behalf of the Corporation concerning matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, a new Paragraph NINTH is hereby added to the Certificate of Incorporation to read as follows:

NINTH: The Corporation delegates to Northwell Quality and Medical Affairs, Inc., pursuant to Section 701 of the Not-for-Profit Corporation Law, decision-making authority on behalf of the Corporation concerning appointments, reappointments, changes in status, clinical privileges and departmental administrative matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation, and concerning such other matters with respect to the medical staff, graduate staff and allied health


professional staff of the Corporation as may be set forth in the by-laws of the Corporation or in a resolution of the board of trustees of the Corporation. Either the board of trustees of the Corporation or the board of trustees of Northwell Quality and Medical Affairs, Inc. may exercise decision-making authority on behalf of the Corporation concerning matters with respect to which decision-making authority has been or may be delegated by the Corporation to Northwell Quality and Medical Affairs, Inc. as set forth above in this Paragraph. Excepted from the delegation of decision-making authority pursuant to this Paragraph is the taking of final action concerning corrective actions or adverse appointment recommendations under the medical staff bylaws and the rules and regulations of the medical staff of the Corporation which have been the subject of an appellate review by an appellate review committee of the board of trustees of the Corporation and/or of Northwell Quality and Medical Affairs, Inc. The taking of final action concerning such corrective actions or adverse appointment recommendations is expressly reserved to the board of trustees of the Corporation.

6. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.

7. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is 270-05 76th Avenue, New Hyde Park, New York 11040, Attn: Office of Legal Affairs.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 22nd day of December, 2017, and hereby affirm, under penalties of perjury, that the statements herein are true.



Michael J. Dowling
President and Chief Executive Officer

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
LONG ISLAND JEWISH MEDICAL CENTER
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

FILED BY:


NORTHWELL HEALTH, INC.
2000 MARCUS AVENUE
NEW HYDE PARK, NEW YORK 11042



Department of Health

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel 

Date: March 9, 2018

Subject: Northwell Quality and Medical Affairs, Inc.
162353E
Request to the Public Health and Health Planning Council for authorization to file the Certificate of Amendment of the Certificate of Incorporation for Plainview Hospital with the New York State Department of State

Northwell Quality and Medical Affairs, Inc. (the applicant) was contingently approved by the Public Health and Health Planning Council (PHHPC) on March 9, 2017 to establish Northwell Quality and Medical Affairs, Inc. as the second active parent of seven hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc. All contingencies were completed and the final approval letter was issued on October 25, 2017. In February 2018 the applicant filed eight certificates of amendment with the New York State Department of State (DOS). Four of these amendments were rejected by DOS. The applicant is now seeking a letter from PHHPC authorizing the applicant to file the remaining certificate of amendments with DOS. Please see the attached letter from Laurence A. Kraemer, Esq. of Northwell Health for further details.

There is no objection to PHHPC authorizing the applicant to file the remaining certificates of amendment with DOS and the Certificate of Amendment of the Certificate of Incorporation of Plainview Hospital is in legally acceptable form.

Attachments



February 28, 2018

Ms. Colleen M. Leonard
New York State Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

RE: 162353 E
Northwell Quality and Medical Affairs, Inc.
(Nassau County)
Establish Northwell Quality and Medical Affairs, Inc. as the second active parent of seven (7) hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc.

Dear Ms. Leonard:

I write this letter with regard to the above-referenced Certificate of Need application (the "Application") to establish Northwell Quality and Medical Affairs, Inc. ("NQMA") as the second active parent of seven hospitals and one residential healthcare facility co-operated by Northwell Healthcare, Inc., which are listed in Attachment I. Attached as Attachment II is a copy of the PHHPC approval letter (the "PHHPC Consent") received in connection with the Application.

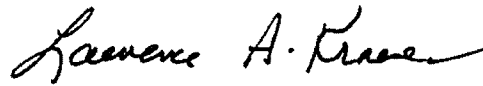
In February 2018, this office submitted to the New York State Department of State ("DOS") for filing a total of eight certificates of amendment to the certificates of incorporation of these seven hospitals and residential healthcare facility. The purpose of these amendments is to delegate certain decision-making authority to NQMA, consistent with the Application. A copy of the PHHPC Consent was provided to DOS with each amendment for filing. DOS accepted and filed four of the eight certificates of amendment based on the PHHPC Consent. Although the amendments are substantively the same, DOS rejected four of the amendments, contending that DOS needs an approval letter specifying each entity's name. Attachment I notes those amendments that have been accepted and filed by DOS and those that have been rejected for filing by DOS.

To complete these filings, this office respectfully requests a letter from PHHPC to authorize the filing of the certificate of amendment of the certificate of incorporation for each of Long Island Jewish Medical Center, Plainview Hospital, Southside Hospital, and Staten Island

University Hospital. Copies of these proposed certificates of amendment are attached as Attachment III.

Please do not hesitate to contact me should you need any additional information. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Laurence A. Kraemer". The signature is written in a cursive style with a prominent initial "L" and a long, sweeping underline.

Laurence A. Kraemer, Esq.

Attachment I

Eight Entities for which Certificates of Amendment were submitted to DOS

Seven (7) Hospitals:

Glen Cove Hospital – Amendment filed by DOS on February 2, 2018
Lenox Hill Hospital – Amendment filed by DOS on February 12, 2018
Long Island Jewish Medical Center – Rejected by DOS
North Shore University Hospital – Amendment filed by DOS on February 12, 2018
Plainview Hospital – Rejected by DOS
Southside Hospital – Rejected by DOS
Staten Island University Hospital – Rejected by DOS

Residential Health Care Facility:

Northwell Health Stern Family Center for Rehabilitation – Amendment filed by DOS on February 12, 2018

Attachment II

PHHPC Consent

See attached.

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

October 25, 2017

Michael Moskowitz
Assistant Vice President Program Development
Northwell Health
2000 Marcus Avenue
New Hyde Park, New York 11042

Re: 162353 E
Northwell Quality and Medical Affairs, Inc.
(Nassau County)
Establish Northwell Quality and Medical
Affairs, Inc. as the second active parent of
seven (7) hospitals and a residential health
care facility co-operated by Northwell
Healthcare, Inc.

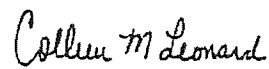
Dear Mr. Moskowitz:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Northwell Quality and Medical Affairs, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health and Health Planning Council considered this application at its meeting of March 9, 2017. You are expected to comply with the conditions listed on the March 10, 2017 letter from Tracy F. Raleigh.

Public Health and Health Planning Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please email the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

October 25, 2017

Michael Moskowitz
Assistant Vice President Program Development
Northwell Health
2000 Marcus Avenue
New Hyde Park, New York 11042

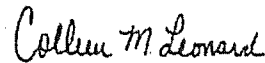
Re: Certificate of Amendment of the Certificate of Incorporation of Northwell Healthcare, Inc.

Dear Mr. Moskowitz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 9th day of March 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 Northwell Healthcare, Inc., dated June 15, 2017.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

Attachment III

**Certificates of Amendment of Certificates of Incorporation for each of Long Island Jewish
Medical Center, Plainview Hospital, Southside Hospital and Staten Island University
Hospital**

See attached.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
PLAINVIEW HOSPITAL**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President and Chief Executive Officer of Plainview Hospital, do hereby certify:

1. The name of the corporation is Plainview Hospital (the "Corporation"). The Corporation was formed under the name "CG Hospital".
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on December 16, 1994 pursuant to the New York State Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to add a new Paragraph THIRTEENTH to the Certificate of Incorporation wherein the Corporation delegates, pursuant to Section 701 of the Not-for-Profit Corporation Law, decision-making authority on behalf of the Corporation concerning matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, a new Paragraph THIRTEENTH is hereby added to the Certificate of Incorporation to read as follows:

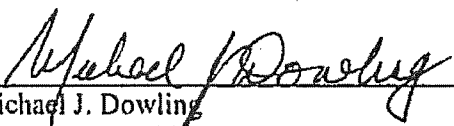
THIRTEENTH: The Corporation delegates to Northwell Quality and Medical Affairs, Inc., pursuant to Section 701 of the Not-for-Profit Corporation Law, decision-making authority on behalf of the Corporation concerning appointments, reappointments, changes in status, clinical privileges and departmental administrative matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation, and concerning such other matters with respect to the medical staff, graduate staff and allied health

professional staff of the Corporation as may be set forth in the by-laws of the Corporation or in a resolution of the board of trustees of the Corporation. Either the board of trustees of the Corporation or the board of trustees of Northwell Quality and Medical Affairs, Inc. may exercise decision-making authority on behalf of the Corporation concerning matters with respect to which decision-making authority has been or may be delegated by the Corporation to Northwell Quality and Medical Affairs, Inc. as set forth above in this Paragraph. Excepted from the delegation of decision-making authority pursuant to this Paragraph is the taking of final action concerning corrective actions or adverse appointment recommendations under the medical staff bylaws and the rules and regulations of the medical staff of the Corporation which have been the subject of an appellate review by an appellate review committee of the board of trustees of the Corporation and/or of Northwell Quality and Medical Affairs, Inc. The taking of final action concerning such corrective actions or adverse appointment recommendations is expressly reserved to the board of trustees of the Corporation.

6. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.
7. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is 888 Old Country Road, Plainview, New York 11803, Attn: Administration.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 22nd day of December, 2017, and hereby affirm, under penalties of perjury, that the statements herein are true.



Michael J. Dowling
President and Chief Executive Officer

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
PLAINVIEW HOSPITAL
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

FILED BY:


NORTHWELL HEALTH, INC.
2000 MARCUS AVENUE
NEW HYDE PARK, NEW YORK 11042



**Department
of Health**

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel 

Date: March 9, 2018

Subject: Northwell Quality and Medical Affairs, Inc.
162353E
Request to the Public Health and Health Planning Council for authorization to file the Certificate of Amendment of the Certificate of Incorporation for Southside Hospital with the New York State Department of State

Northwell Quality and Medical Affairs, Inc. (the applicant) was contingently approved by the Public Health and Health Planning Council (PHHPC) on March 9, 2017 to establish Northwell Quality and Medical Affairs, Inc. as the second active parent of seven hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc. All contingencies were completed and the final approval letter was issued on October 25, 2017. In February 2018 the applicant filed eight certificates of amendment with the New York State Department of State (DOS). Four of these amendments were rejected by DOS. The applicant is now seeking a letter from PHHPC authorizing the applicant to file the remaining certificate of amendments with DOS. Please see the attached letter from Laurence A. Kraemer, Esq. of Northwell Health for further details.

There is no objection to PHHPC authorizing the applicant to file the remaining certificates of amendment with DOS and the Certificate of Amendment of the Certificate of Incorporation of Southside Hospital is in legally acceptable form.

Attachments



February 28, 2018

Ms. Colleen M. Leonard
New York State Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

RE: 162353 E
Northwell Quality and Medical Affairs, Inc.
(Nassau County)
Establish Northwell Quality and Medical Affairs, Inc. as the second active parent of seven (7) hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc.

Dear Ms. Leonard:

I write this letter with regard to the above-referenced Certificate of Need application (the "Application") to establish Northwell Quality and Medical Affairs, Inc. ("NQMA") as the second active parent of seven hospitals and one residential healthcare facility co-operated by Northwell Healthcare, Inc., which are listed in Attachment I. Attached as Attachment II is a copy of the PHHPC approval letter (the "PHHPC Consent") received in connection with the Application.

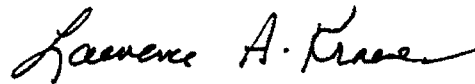
In February 2018, this office submitted to the New York State Department of State ("DOS") for filing a total of eight certificates of amendment to the certificates of incorporation of these seven hospitals and residential healthcare facility. The purpose of these amendments is to delegate certain decision-making authority to NQMA, consistent with the Application. A copy of the PHHPC Consent was provided to DOS with each amendment for filing. DOS accepted and filed four of the eight certificates of amendment based on the PHHPC Consent. Although the amendments are substantively the same, DOS rejected four of the amendments, contending that DOS needs an approval letter specifying each entity's name. Attachment I notes those amendments that have been accepted and filed by DOS and those that have been rejected for filing by DOS.

To complete these filings, this office respectfully requests a letter from PHHPC to authorize the filing of the certificate of amendment of the certificate of incorporation for each of Long Island Jewish Medical Center, Plainview Hospital, Southside Hospital, and Staten Island

University Hospital. Copies of these proposed certificates of amendment are attached as Attachment III.

Please do not hesitate to contact me should you need any additional information. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Laurence A. Kraemer". The signature is written in black ink and is positioned above the typed name.

Laurence A. Kraemer, Esq.

Attachment I

Eight Entities for which Certificates of Amendment were submitted to DOS

Seven (7) Hospitals:

Glen Cove Hospital – Amendment filed by DOS on February 2, 2018
Lenox Hill Hospital – Amendment filed by DOS on February 12, 2018
Long Island Jewish Medical Center – Rejected by DOS
North Shore University Hospital – Amendment filed by DOS on February 12, 2018
Plainview Hospital – Rejected by DOS
Southside Hospital – Rejected by DOS
Staten Island University Hospital – Rejected by DOS

Residential Health Care Facility:

Northwell Health Stern Family Center for Rehabilitation – Amendment filed by DOS on February 12, 2018

Attachment II

PHHPC Consent

See attached.

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

October 25, 2017

Michael Moskowitz
Assistant Vice President Program Development
Northwell Health
2000 Marcus Avenue
New Hyde Park, New York 11042

Re: 162353 E
Northwell Quality and Medical Affairs, Inc.
(Nassau County)
Establish Northwell Quality and Medical
Affairs, Inc. as the second active parent of
seven (7) hospitals and a residential health
care facility co-operated by Northwell
Healthcare, Inc.

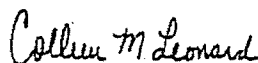
Dear Mr. Moskowitz:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Northwell Quality and Medical Affairs, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health and Health Planning Council considered this application at its meeting of March 9, 2017. You are expected to comply with the conditions listed on the March 10, 2017 letter from Tracy F. Raleigh.

Public Health and Health Planning Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please email the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

October 25, 2017

Michael Moskowitz
Assistant Vice President Program Development
Northwell Health
2000 Marcus Avenue
New Hyde Park, New York 11042

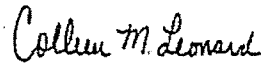
Re: Certificate of Amendment of the Certificate of Incorporation of Northwell Healthcare, Inc.

Dear Mr. Moskowitz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 9th day of March 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 Northwell Healthcare, Inc., dated June 15, 2017.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

Attachment III

Certificates of Amendment of Certificates of Incorporation for each of Long Island Jewish Medical Center, Plainview Hospital, Southside Hospital and Staten Island University Hospital

See attached.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
SOUTHSIDE HOSPITAL**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President and Chief Executive Officer of Southside Hospital, do hereby certify:

1. The name of the corporation is Southside Hospital (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on April 23, 1913 under the Membership Corporations Law.
3. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to add a new Paragraph SEVENTH to the Certificate of Incorporation wherein the Corporation delegates, pursuant to Section 701 of the Not-for-Profit Corporation Law, decision-making authority on behalf of the Corporation concerning matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, a new Paragraph SEVENTH is hereby added to the Certificate of Incorporation to read as follows:

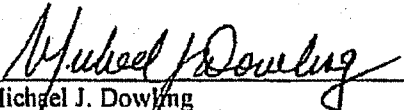
SEVENTH: The Corporation delegates to Northwell Quality and Medical Affairs, Inc., pursuant to Section 701 of the Not-for-Profit Corporation Law, decision-making authority on behalf of the Corporation concerning appointments, reappointments, changes in status, clinical privileges and departmental administrative matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation, and concerning such other matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation as may be set forth in the by-laws of the Corporation or in a resolution of the board of trustees of the Corporation. Either

the board of trustees of the Corporation or the board of trustees of Northwell Quality and Medical Affairs, Inc. may exercise decision-making authority on behalf of the Corporation concerning matters with respect to which decision-making authority has been or may be delegated by the Corporation to Northwell Quality and Medical Affairs, Inc. as set forth above in this Paragraph. Excepted from the delegation of decision-making authority pursuant to this Paragraph is the taking of final action concerning corrective actions or adverse appointment recommendations under the medical staff bylaws and the rules and regulations of the medical staff of the Corporation which have been the subject of an appellate review by an appellate review committee of the board of trustees of the Corporation and/or of Northwell Quality and Medical Affairs, Inc. The taking of final action concerning such corrective actions or adverse appointment recommendations is expressly reserved to the board of trustees of the Corporation.

6. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.
7. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is 301 E. Main Street, Bay Shore, New York 11706, Attn: Administration.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 22nd day of December, 2017, and hereby affirm, under penalties of perjury, that the statements herein are true.



Michael J. Dowling
President and Chief Executive Officer

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
SOUTHSIDE HOSPITAL
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

FILED BY:


**NORTHWELL HEALTH, INC.
2000 MARCUS AVENUE
NEW HYDE PARK, NEW YORK 11042**



Department of Health

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel 

Date: March 9, 2018

Subject: Northwell Quality and Medical Affairs, Inc.
162353E
Request to the Public Health and Health Planning Council for authorization to file the Certificate of Amendment of the Certificate of Incorporation for Staten Island University Hospital with the New York State Department of State

Northwell Quality and Medical Affairs, Inc. (the applicant) was contingently approved by the Public Health and Health Planning Council (PHHPC) on March 9, 2017 to establish Northwell Quality and Medical Affairs, Inc. as the second active parent of seven hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc. All contingencies were completed and the final approval letter was issued on October 25, 2017. In February 2018 the applicant filed eight certificates of amendment with the New York State Department of State (DOS). Four of these amendments were rejected by DOS. The applicant is now seeking a letter from PHHPC authorizing the applicant to file the remaining certificate of amendments with DOS. Please see the attached letter from Laurence A. Kraemer, Esq. of Northwell Health for further details.

There is no objection to PHHPC authorizing the applicant to file the remaining certificates of amendment with DOS and the Certificate of Amendment of the Certificate of Incorporation of Staten Island University Hospital is in legally acceptable form.

Attachments



February 28, 2018

Ms. Colleen M. Leonard
New York State Department of Health
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237

RE: 162353 E
Northwell Quality and Medical Affairs, Inc.
(Nassau County)
Establish Northwell Quality and Medical Affairs, Inc. as the second active parent of seven (7) hospitals and a residential health care facility co-operated by Northwell Healthcare, Inc.

Dear Ms. Leonard:

I write this letter with regard to the above-referenced Certificate of Need application (the "Application") to establish Northwell Quality and Medical Affairs, Inc. ("NQMA") as the second active parent of seven hospitals and one residential healthcare facility co-operated by Northwell Healthcare, Inc., which are listed in Attachment I. Attached as Attachment II is a copy of the PHHPC approval letter (the "PHHPC Consent") received in connection with the Application.

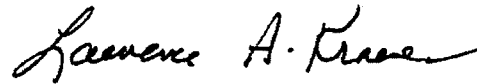
In February 2018, this office submitted to the New York State Department of State ("DOS") for filing a total of eight certificates of amendment to the certificates of incorporation of these seven hospitals and residential healthcare facility. The purpose of these amendments is to delegate certain decision-making authority to NQMA, consistent with the Application. A copy of the PHHPC Consent was provided to DOS with each amendment for filing. DOS accepted and filed four of the eight certificates of amendment based on the PHHPC Consent. Although the amendments are substantively the same, DOS rejected four of the amendments, contending that DOS needs an approval letter specifying each entity's name. Attachment I notes those amendments that have been accepted and filed by DOS and those that have been rejected for filing by DOS.

To complete these filings, this office respectfully requests a letter from PHHPC to authorize the filing of the certificate of amendment of the certificate of incorporation for each of Long Island Jewish Medical Center, Plainview Hospital, Southside Hospital, and Staten Island

University Hospital. Copies of these proposed certificates of amendment are attached as Attachment III.

Please do not hesitate to contact me should you need any additional information. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Laurence A. Kraemer". The signature is written in a cursive style with a prominent initial "L".

Laurence A. Kraemer, Esq.

Attachment I

Eight Entities for which Certificates of Amendment were submitted to DOS

Seven (7) Hospitals:

Glen Cove Hospital – Amendment filed by DOS on February 2, 2018

Lenox Hill Hospital – Amendment filed by DOS on February 12, 2018

Long Island Jewish Medical Center – Rejected by DOS

North Shore University Hospital – Amendment filed by DOS on February 12, 2018

Plainview Hospital – Rejected by DOS

Southside Hospital – Rejected by DOS

Staten Island University Hospital – Rejected by DOS

Residential Health Care Facility:

Northwell Health Stern Family Center for Rehabilitation – Amendment filed by DOS on February 12, 2018

Attachment II

PHHPC Consent

See attached.

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

October 25, 2017

Michael Moskowitz
Assistant Vice President Program Development
Northwell Health
2000 Marcus Avenue
New Hyde Park, New York 11042

Re: 162353 E
Northwell Quality and Medical Affairs, Inc.
(Nassau County)
Establish Northwell Quality and Medical
Affairs, Inc. as the second active parent of
seven (7) hospitals and a residential health
care facility co-operated by Northwell
Healthcare, Inc.

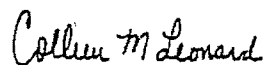
Dear Mr. Moskowitz:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Northwell Quality and Medical Affairs, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health and Health Planning Council considered this application at its meeting of March 9, 2017. You are expected to comply with the conditions listed on the March 10, 2017 letter from Tracy F. Raleigh.

Public Health and Health Planning Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please email the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

October 25, 2017

Michael Moskowitz
Assistant Vice President Program Development
Northwell Health
2000 Marcus Avenue
New Hyde Park, New York 11042

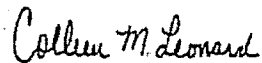
Re: Certificate of Amendment of the Certificate of Incorporation of Northwell Healthcare, Inc.

Dear Mr. Moskowitz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 9th day of March 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 Northwell Healthcare, Inc., dated June 15, 2017.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,



Colleen M. Leonard
Executive Secretary

/cl

Attachment III

**Certificates of Amendment of Certificates of Incorporation for each of Long Island Jewish
Medical Center, Plainview Hospital, Southside Hospital and Staten Island University
Hospital**

See attached.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
STATEN ISLAND UNIVERSITY HOSPITAL**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President and Chief Executive Officer of Staten Island University Hospital, do hereby certify:


1. The name of the corporation is Staten Island University Hospital (the "Corporation"). The Corporation was formed by the consolidation of "The Staten Island Hospital" and "Richmond Memorial Hospital and Health Center" into "Community Health Systems of Staten Island, Inc." The Staten Island Hospital was originally incorporated under the name "The S.R. Smith Infirmary" by a Certificate of Incorporation filed on May 5, 1869. Richmond Memorial Hospital and Health Center was originally incorporated under the name "Richmond Memorial Hospital" by a Certificate of Incorporation filed on October 15, 1919.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on June 16, 1987 under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to add a new Paragraph TWENTY-TWO to the Certificate of Incorporation wherein the Corporation delegates, pursuant to Section 701 of the Not-for-Profit Corporation Law, decision-making authority on behalf of the Corporation concerning matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, a new Paragraph TWENTY-TWO is hereby added to the Certificate of Incorporation to read as follows:

TWENTY-TWO: The Corporation delegates to Northwell Quality and Medical Affairs, Inc., pursuant to Section 701 of the Not-for-Profit Corporation

Law, decision-making authority on behalf of the Corporation concerning appointments, reappointments, changes in status, clinical privileges and departmental administrative matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation, and concerning such other matters with respect to the medical staff, graduate staff and allied health professional staff of the Corporation as may be set forth in the by-laws of the Corporation or in a resolution of the board of trustees of the Corporation. Either the board of trustees of the Corporation or the board of trustees of Northwell Quality and Medical Affairs, Inc. may exercise decision-making authority on behalf of the Corporation concerning matters with respect to which decision-making authority has been or may be delegated by the Corporation to Northwell Quality and Medical Affairs, Inc. as set forth above in this Paragraph. Excepted from the delegation of decision-making authority pursuant to this Paragraph is the taking of final action concerning corrective actions or adverse appointment recommendations under the medical staff bylaws and the rules and regulations of the medical staff of the Corporation which have been the subject of an appellate review by an appellate review committee of the board of trustees of the Corporation and/or of Northwell Quality and Medical Affairs, Inc. The taking of final action concerning such corrective actions or adverse appointment recommendations is expressly reserved to the board of trustees of the Corporation.

6. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.
7. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is 475 Seaview Avenue, Staten Island, New York 10305, Attention: Administration.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 22nd day of December, 2017, and hereby affirm, under penalties of perjury, that the statements herein are true.



Michael J. Dowling
President and Chief Executive Officer

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
STATEN ISLAND UNIVERSITY HOSPITAL
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

FILED BY:

**NORTHWELL HEALTH, INC.
2000 MARCUS AVENUE
NEW HYDE PARK, NEW YORK 11042**