

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

**COMMITTEE DAY**

**AGENDA**

*May 17, 2018*  
*10:00 a.m.*

*New York State Department of Health Offices 90 Church Street, 4<sup>th</sup> Floor, Rooms 4A/4B, NYC*

**I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW**

Gary Kalkut, M.D., Vice Chair

**A. Applications for Construction of Health Care Facilities/Agencies**

**Acute Care Services – Construction**

**Exhibit # 1**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	172064 C	NYU Langone Hospitals (Kings County)
2.	181051 C	South Nassau Communities Hospital (Nassau County)
3.	181054 C	United Memorial Medical Center Bank Street Campus (Genesee County)
4.	181108 C	White Plains Hospital Center (Westchester County)

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

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 2**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	181066 B	Greece ASC, LLC d/b/a Cornerstone Eye Surgery Center (Monroe County)
2.	181103 B	WNY Medical Management (Erie County)
3.	181278 E	Liberty Endoscopy Center (New York County)

**Diagnostic and Treatment Centers - Establish/Construct**

**Exhibit # 3**

<u>Number</u>	<u>Applicant/Facility</u>
1. 172413 B	Oneida Health Roswell Park Oncology, LLC (Madison County)
2. 172423 B	MediDental Group LLC d/b/a MediDental Care (Queens County)
3. 181119 E	Premium Health (Kings County)
4. 181137 E	CFDSHC, Inc. (Albany County)

**Dialysis Services - Establish/Construct**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 172364 E	True North IV DC, LLC (Queens County)
2. 172411 E	True North V DC, LLC (Kings County)

**Hospice Services - Establish/Construct**

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 181065 E	The Caring Coalition of Central New York (Onondaga County)

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

**Exhibit # 6**

<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)
3. 172292 E	Grand Mohawk Valley, LLC d/b/a The Grand Rehabilitation and Nursing at Mohawk (Herkimer County)

4. 172293 E Grand Batavia, LLC d/b/a The Grand Rehabilitation and Nursing at Batavia (Genesee County)
5. 181120 E Chapin Acquisition I, LLC d/b/a Jamaica Estates Nursing and Rehabilitation Center (Queens County)
6. 181218 E Heritage Operating Associates, LLC d/b/a The Grand Rehabilitation and Nursing at Utica (Oneida County)

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

**Exhibit # 7**

<u>Number</u>	<u>Applicant/Facility</u>
1. 171041 E	Shining Star Home Health Care (Kings County)
2. 172408 E	Prospect Acquisition III, LLC d/b/a Responsive Home Health Care (Kings County)
3. 181047 E	Gamzel NY, Inc. d/b/a Centers Home Health Care of Downstate (Kings County)
4. 181085 E	QC – Medi New York, Inc. d/b/a Kindred at Home (Saratoga County)
5. 181191 E	Always There Home Care (Ulster County)

**C. Home Health Agency Licensures**

**Exhibit # 8**

**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  
(Erie County)

171385 Home Care for Generations, LLC  
d/b/a Generations Home Care  
(Rockland County)

172286 Magnolia Home Care Services,  
(Rockland County)

**D. Certificates**

**Exhibit # 9**

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

Applicant

Century Medical and Dental Center, Inc.

St. James Mercy Foundation, Inc.

St. James Mercy Hospital

**Certificate of Amendment of Articles of Organization**

Applicant

Yonkers Gardens LLC

**Certificate of Dissolution**

Applicant

Keser Services, Inc.

Menorah Foundation, Inc.



**Project # 172064-C  
NYU Langone Hospitals**

**Program: Hospital  
Purpose: Construction**

**County: Kings  
Acknowledged: August 7, 2017**

**Executive Summary**

**Description**

NYU Langone Hospitals, a 844-bed voluntary Article 28 acute care hospital in New York County request approval to construct the NYU Langone-Brooklyn Ambulatory Surgery Center, a multi-specialty ambulatory surgery center (ASC) to be located at 5610 Second Avenue in Brooklyn. The ASC will be constructed as a two-story addition to the Hospital's Sunset Park Family Health Center, a stand-alone facility that will remain open during construction. The proposed ASC is expected to offer the following specialties: Orthopedics, General Surgery, Ophthalmology, Otolaryngology, Vascular Surgery, and Breast Surgery.

NYU Langone Hospital-Brooklyn Division, located in the same county, currently has 11 operating rooms (ORs) that serve both inpatient and ambulatory patients. The ORs are original to the building which opened in the 1970's, are small and near capacity, limiting the kinds of cases that can be performed. As a result, there are only a few rooms that can accommodate cases requiring imaging and other technologies, severely constraining the growth of this case volume. Since both inpatient and outpatient surgery cases are performed in an area designed only for inpatient cases, there is much inefficiency.

The plan for the off-site ASC calls for six new ORs that will allow NYU Langone Hospital-Brooklyn to shift outpatient volume from the main campus, freeing up capacity to accommodate more acute cases on-site in a cost-effective manner, while creating a patient friendly and efficient setting for its ambulatory

surgery patients. In addition to the new ORs, there will be two endoscopy procedure rooms, thirty-five PACU bays, three nurse stations, a staff lounge, an intake and waiting area, two new freight sized elevators and the required support spaces. The new ASC will comprise a total of 31,969 gross square feet of new interior construction, including 16,113 square feet of shell space designated for a Family Health Clinic that will be fit-out and processed under a separate CON application.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

The applicant projects 6,201 procedures in Year One and 6,646 in Year Three. Medicaid utilization is projected to be about 44%.

**Program Summary**

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

**Financial Summary**

Total project cost is \$87,277,218. However, the project includes shell space costs of \$8,015,165. As a result, total reimbursable cost is limited to \$79,262,053. Project costs of \$87,277,218 will be met via equity from operations. The incremental budget is as follows:

Revenues	\$30,806,870
Expenses	<u>21,001,076</u>
Gain/(Loss)	9,805,794

## 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. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.20 LSC Chapter 20 New Ambulatory Healthcare Public Use, 3.38 LSC Chapter 38 Business Occupancies Public Use, and 3.7.0 Programmatic Design Guidelines for Outpatient Surgical Facilities for review and approval. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before August 7, 2018 and construction must be completed by March 25, 2020, 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 start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. The staff of the facility must be separate and distinct from staff of other entities. The signage must clearly denote the facility is separate and distinct from other adjacent entities. The entrance to the facility must not disrupt any other entity's clinical program space. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

**June 7, 2018**

# Need and Program Analysis

## Background and Analysis

The proposed center, to be named NYU Langone Brooklyn Ambulatory Surgery Center, will have six Class C operating rooms and two procedure rooms specifically designed for outpatient surgical procedures and post-acute care in the following specialties: Orthopedics, General Surgery, Ophthalmology, Otolaryngology, Vascular Surgery, and Breast Surgery.

The service area is Kings County. The population of Kings County in 2010 was 2,504,700 with 877,822 individuals (35.0%) who are age 45 and older, which is the primary population utilizing ambulatory surgery services. Per projection data from the Cornell Program on Applied Demographics (PAD), this population group (45 and older) is estimated to grow to 941,703 and represent 36.5% of the projected population of 2,583,413 for the county.

Currently, the 11 operating rooms at NYU Langone Hospital-Brooklyn serve both inpatient and ambulatory surgery cases and are near capacity. Approval of this project will allow the hospital to shift outpatient volume from the campus, freeing up capacity to accommodate more acute cases. The off-site ambulatory surgery center is being proposed to increase capacity and improve efficiency. The number of projected procedures is 6,201 in Year One and 6,646 in Year Three. The hours of operation will be Monday through Friday from 8:00 am to 6:00 pm.

There are currently two hospital extension clinics providing multi-specialty surgery services in the county. The table below shows the extension clinics and their patient volume for 2015 and 2016.

<u>Extension Clinic Name</u>	<u>Patient Visits</u>	
	<u>2015</u>	<u>2016</u>
NYU Langone Brooklyn Ambulatory Surgery and Endoscopy Center	5,842	7,006
University Hospital of Brooklyn - SUNY Downstate at Bay Ridge	<u>3,292</u>	<u>3,131</u>
<b>Totals</b>	<b>9,134</b>	<b>10,137</b>

Kings County is designated as a Medically Underserved Area/population (Source-HRSA). The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

## 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

The proposed extension clinic will allow for the continuity of access for outpatient ambulatory surgery services for the communities within Kings County. 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 need and program perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$87,277,218, further broken down as follows:

	Article 28	Shell Space	Total
New Construction	\$50,900,133	6,952,317	\$57,852,450
Renovation and Demolition	2,337,572	0	2,337,572
Temporary Utilities	1,920,000	0	1,920,000
Design Contingency	5,090,013	695,232	5,785,245
Construction Contingency	2,545,007	347,616	2,892,623
Fixed Equipment	1,615,056	0	1,615,066
Architect/Engineering Fees	3,665,725	20,000	3,685,725
Moveable Equipment	9,845,345	0	9,845,345
Telecommunications	907,656	0	907,656
Con Fees	2,000	0	2,000
Additional Processing Fee	<u>433,546</u>	<u>0</u>	<u>433,546</u>
Total Project Cost	\$79,262,052	\$8,015,165	\$87,277,218

Project costs are based on a construction start date of August 2018, and a 19-month construction period.

The Construction Cost Control Unit has determined that this project includes shell space costs of \$8,015,165 for Non-Article 28 space. As a result, the total approved project cost for reimbursement purposes shall be limited to \$79,262,053.

The hospital will provide equity via operations to meet the total project cost.

### Operating Budget

The applicant has submitted an incremental operating budget, in 2018 dollars, during the first and third years, summarized below:

Outpatient ASC	Year One		Year Three	
	Per Proc.	Total	Per Proc.	Total
Revenues				
Medicaid FFS	\$3,368	\$855,462	\$3,369	\$943,330
Medicaid MC	\$3,204	\$8,462,748	\$3,205	\$9,331,706
Medicare FFS	\$3,633	\$2,205,093	\$3,632	\$2,430,085
Medicare MC	\$3,222	\$1,852,400	\$3,220	\$2,041,614
Commercial FFS	\$8,556	\$8,282,101	\$8,556	\$9,129,094
Commercial MC	\$7,072	\$6,166,802	\$7,074	\$6,797,791
Private Pay	\$1,820	\$120,141	\$1,825	\$133,250
Total Revenues		\$27,944,747		\$30,806,870
Expenses				
Operating		\$15,799,245		\$17,670,431
Capital		<u>3,330,645</u>		<u>3,330,645</u>
Total Expenses		\$19,129,890		\$21,001,076
Gain/(Loss)		<u>\$8,814,857</u>		<u>\$9,805,794</u>
Procedures		6,000		6,615



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

<u>Outpatient ASC</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS	4.23%	4.23%
Medicaid MC	44.02%	44.02%
Medicare FFS	10.12%	10.11%
Medicare MC	9.58%	9.58%
Commercial FFS	16.13%	16.13%
Commercial MC	14.53%	14.53%
Private Pay	1.10%	1.10%
Charity Care	0.29%	0.29%

Utilization and expense assumptions are based on the historical experience of the hospital. While the hospital is projecting almost no charity care, Medicaid is expected to exceed 48%. The hospital says this is due to the location, Sunset Park, which has the highest Medicaid and Medicaid HMO utilization of any zip code in the country. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

#### Capability and Feasibility

Project costs of \$87,277,218 will be met via equity from hospital operations. BFA Attachment A presents NYU Langone Hospitals' certified financial statements for the period ending August 31, 2016, and their internal financial statements as of November 30, 2017, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$8,814,757 and \$9,805,794 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position and an average positive net asset position from September 1, 2016 through November 30, 2017. Also, the entity achieved a gain from operations of \$44,139,000 from September 1, 2016 through November 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 Financial Summary – August 31, 2016 certified financial statements and the November 30, 2017 internal financial statements of NYU Langone Hospitals.



Project # 181051-C
South Nassau Communities Hospital

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: January 23, 2018

Executive Summary

Description

South Nassau Communities Hospital (SNCH), a 455-bed, voluntary not-for-profit, Article 28 acute care hospital located at One Healthy Way, Oceanside (Nassau County), requests approval to construct a four-story addition on the main hospital campus, convert 14 Medical/Surgical (M/S) beds to six Intensive Care Unit (ICU) beds and eight Coronary Care Unit (CCU) beds, and modernize its operating rooms (ORs) and a portion of the emergency department (ED). The 84,000-square-foot addition, to be known as the J-Wing, will be connected to the existing hospital. There will be no net new beds as a result of this project.

This project is expected to be completed in phases over a 24-month period. Components of the project are as follows:

- ED: The ground floor will provide a new walk-in ED entrance that will be an extension of the existing ED, which will also be undergoing a major renovation and expansion project...
OR Suite: The first floor will house a modernized OR suite with nine ORs and associated support spaces.

existing ORs with the new OR suite of the J-wing. This component will increase surgical and procedural capacity and provide a modern OR with technology upgrades.

- ICU: The second floor will house a new and expanded 20-bed ICU consisting of the existing 14 beds plus the six converted M/S beds.
CCU: The third floor will house a new and expanded 20-bed CCU consisting of the existing 12 beds plus the eight converted M/S beds.

The current ICU and CCU space will be repurposed to accommodate additional Post-Anesthesia Care Unit space and peri-operative support space.

OPCHSM Recommendation
Contingent Approval

Need Summary

The addition of these eight coronary care beds and six intensive care beds will allow South Nassau Communities Hospital to align themselves with area demand. The aging demographic along with higher acuity patients supports the need for this bed conversion. The service area has seen significant demographic changes over the last decade and was disrupted by Super Storm Sandy. This modernization and expansion project will provide improved and necessary care to the residents of the area.

Program Summary

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

Financial Summary

Total project cost of \$145,525,784 will be met via equity of \$60,000,000 with the \$85,525,784 balance to be funded from the proceeds of a \$176,910,576 Federal Emergency Management Agency (FEMA) Public Assistance Grant

provided to SNCH for Superstorm Sandy recovery. The proposed budget is as follows:

	<u>Years One &amp; Three</u>
Revenues	\$28,017,326
Expenses	<u>\$20,824,245</u>
Net Income	\$7,193,081

## 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. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]
4. 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 four years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 4, 2019 and construction must be completed by July 6, 2021, 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 start date this shall constitute abandonment of the approval. [PMU]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]

Council Action Date

**June 7, 2018**

## Need and Program Analysis

### Background

The new, 84,000-square-foot, four-story addition will include a 20-bed ICU and a 20-bed CCU. Currently, SNCH has a 14-bed ICU and a 12-bed CCU. SNCH will convert six existing Medical/Surgical beds to ICU beds and eight existing Medical/Surgical beds to CCU beds.

### Analysis

Bed Type	Bed Count	Proposed Change	Beds Upon Completion
Coronary Care	12	8	20
Intensive Care	14	6	20
Maternity	26		26
Medical / Surgical	329	-14	315
Neonatal Continuing Care	3		3
Neonatal Intermediate Care	3		3
Pediatric	12		12
Psychiatric	36		36
Transitional Care	20		20
<b>Total</b>	<b>455</b>	<b>0</b>	<b>455</b>

Source: HFIS 2018

### Utilization, Actual and Projected

	2013	2014	2015	Projected	
				1st Year	3rd Year
Coronary Care	81.23%	84.27%	91.62%	94.58%	94.58%
Intensive Care	59.61%	62.86%	65.36%	85.18%	85.18%
Med/Surg	73.83%	67.22%	68.28%	73.38%	73.38%

Source: ICR Cost Reports

South Nassau Communities Hospital has seen a decrease in medical/surgical inpatients and an increase in ICU/CCU patients. The table above shows an 11.1% increase in Coronary Care Utilization from 2013 to 2016. For the same period, Intensive Care saw a 7.3% increase and Medical/Surgical saw a 5.3% decrease in utilization. This trend to higher acuity patients is consistent with an aging demographic and supports the need for the proposed bed conversions.

### 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

The transition in patient types precipitates a need for additional ICU and CCU beds and fewer surgical beds. Through this project it is expected that South Nassau Communities Hospital will realign its bed compliment to better address need. 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 need and program perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost for the new addition is \$145,525,784, detailed as follows:

New Construction	\$81,769,314
Site Development	325,0000
Temporary Utilities	4,200,000
Asbestos Abatement/ Removal	750,000
Design Contingency	8,176,931
Construction Contingency	4,088,466
Planning Consultant Fees	1,347,643
Architect/Engineering Fees	6,316,608
Other Fees	10,693,099
Movable Equipment	23,560,720
Telecommunications	3,500,000
Application Fee	2,000
Processing Fee	<u>796,003</u>
Total Project Cost	\$145,525,784

Project costs are based on a construction start date of September 1, 2019, with a 24-month construction period. The applicant's financing plan appears as follows:

Cash	\$60,000,000
FEMA Grant	<u>\$85,525,784</u>
Total	\$145,525,784

The cash contribution will be provided from current operations. The remaining \$85,525,784 balance due will be funded via proceeds from the overall \$176,910,576 FEMA Public Assistance Grant provided to SNCH to mitigate the damage caused by Superstorm Sandy. BFA Attachment A is SNCH's 2015-2017 Consolidated Certified Financial Statements, which indicate the availability of sufficient resources to cover both the project costs and working capital requirements. The applicant provided documentation of the FEMA grant award, a portion of which will be allocated to this construction project.

### Incremental Operating Budget

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

	<u>Years One &amp; Three</u>
<u>Revenues</u>	
Medicaid FFS	\$485,490
Medicaid MC	\$1,423,451
Medicare FFS	\$7,341,964
Medicare MC	\$2,405,029
Commercial FFS	\$289,662
Commercial MC	\$15,373,695
Private Pay/Other	<u>\$698,035</u>
Total Revenues	\$28,017,326
<u>Expenses</u>	
Operating	\$15,226,776
Capital	<u>\$5,597,469</u>
Total Expenses	\$20,824,245
Gain/(Loss)	<u>\$7,193,081</u>
Total Discharges	1,000

Incremental inpatient utilization by payor for Year One and Year Three is as follows:

<u>Payor</u>	<u>Years One &amp; Three</u>
Medicaid FFS	2.80%
Medicaid MC	11.50%
Medicare FFS	31.30%
Medicare MC	10.00%
Commercial FFS	0.80%
Commercial MC	40.10%
Private Pay/Other	3.50%

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

- Psychiatric emergency care is currently being provided in the hospital's existing ED and the hospital does not anticipate any new volume or incremental expenses related to the six designated Behavioral Health ED treatment areas that will be located on the ground floor of the new J-Wing. SNCH has 45 dedicated ED patient bays, and 14 of those are used interchangeably for high acuity and/or trauma cases and behavioral health patients. The co-mingling of these types of patients that require different courses of treatment is driving the need for the six separate and distinct Behavioral Health bays. The Behavioral Health ED treatment areas are included in this project for the purpose of providing a secure and discrete physical space for the assessment and treatment of the existing behavioral health patient caseload, which is already included in the hospital's ongoing operating budget.
- Revenue assumptions are based on current (2018) reimbursement methodologies for government payors (Medicaid and Medicare) and negotiations with commercial payors. The projections include \$2.5 million in revenue related to enhanced managed care rates and/or service intensity lift from performing more complex inpatient surgeries.
- Utilization projections for incremental inpatients are based on trending of current data and the addition of the 14 ICU/CCU beds. The applicant indicated that the creation of new state-of-the-art ICU/CCU beds will enable the hospital to attract more complex cases. An additional 1,000 surgical cases are expected by 2022 that will generate patient days sufficient to justify the 14 additional critical care beds.
- Expense assumptions are based upon current operations. The incremental expenses associated with the project are estimated at \$20.8 million annually. It is anticipated that this project will generate a labor force increase of approximately 100 FTEs including clinical, environmental, security and plant staff to accommodate the additional space. The incremental expenses are broken down as follows: 45.23% for salaries and benefits; 27.90% for supplies, utilities and other direct expenses; and 26.87% for capital costs related to depreciation.

The budgets are reasonable.

#### Capability and Feasibility

Total project cost of \$145,525,784 will be met via equity of \$60,000,000 and \$85,525,784 apportioned from the overall \$176,910,576 FEMA Public Assistance Grant provided to SNCH to mitigate the damage caused by Superstorm Sandy. BFA Attachment A is the 2015-2017 certified financial statements of South Nassau Communities Hospital and Subsidiaries, which indicate the availability of sufficient funds for the equity contribution to meet the total project cost.

Working capital requirements are estimated at \$86,583,621 based on two months of third year expenses. Working capital will be funded from operations. BFA Attachment A indicates the availability of sufficient funds to meet working capital needs.

BFA Attachment A shows South Nassau maintained average positive working capital and net asset positions, and achieved an average net operating income of \$3,619,987 for the 2015-2016 period. The entity had a net operating loss of \$2,584,974 for the period ending December 31, 2017. However, after non-operating income is considered, the entity shows a net income of \$5,633,937 during the 2017 period.

In February 2018, Mount Sinai Hospitals Group, Inc. (Mount Sinai) and SNCH executed an agreement, pursuant to which Mount Sinai will become the sole corporate member and active parent of the hospital. The parties expect the transaction to become effective later in 2018, subject Public Health and Health Planning Council approval. Pursuant to the agreement, Mount Sinai will contribute \$20 million upon closing of the transaction and approximately \$20 million per year over the next five years, for a total of \$120 million, to be used to support certain Hospital capital projects.

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

#### Recommendation

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

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## Attachments

BFA Attachment A    2015, 2016, 2017 Consolidated Certified Financial Statements of South Nassau Communities Hospital and Subsidiaries





**Project # 181054-C  
United Memorial Medical Center Bank Street Campus**

**Program: Hospital  
Purpose: Construction**

**County: Genesee  
Acknowledged: February 16, 2018**

**Executive Summary**

**Description**

United Memorial Medical Center (UMMC) is a 131-bed, voluntary not-for-profit, Article 28 acute care hospital located at 16 Bank Street, Batavia (Genesee County). The hospital is currently certified for two Chemical Dependence Detoxification (CD Detox) beds and 18 Chemical Dependence Rehabilitation (CD Rehab) beds. Per this application, UMMC requests approval to certify two additional CD Rehab beds and convert the two CD Detox beds to two additional CD Rehab beds, resulting in a total of 22 CD Rehab beds. There are no associated construction costs, as the patient rooms for this increased capacity currently exist. Upon approval of this application, the facility will be certified for 133 beds (a net gain of two beds).

Effective January 1, 2016, the OASAS granted UMMC temporary approval to increase their CD Rehab capacity by two beds for a one-year period. On December 14, 2017, the OASAS further granted UMMC emergency approval to increase their CD Rehab beds from 20 to 22 beds, with a requirement that a CON be submitted to the Department of Health to make the change permanent. This expanded capacity was consistent with the recommendations for State actions provided by the Heroin and Opioid Task Force in their report to the Governor issued on June 9, 2016. In response to the recommendations, on June 22, 2016, a comprehensive legislative package was enacted by the Governor to tackle this public health crisis. The legislation included authority for hospitals to temporarily increase the number of treatment beds by 10% to address the heroin epidemic and treatment bed shortage that exists in certain areas of the State. This noted bed

shortage is consistent with UMMC's experience. The applicant indicated that both of their CD units have consistently been at 95% occupancy and they continue to have at least ten patients on a wait list for admissions.

RU System, Inc. a/k/a Rochester Regional Health System (the System) is the active parent and co-operator of UMMC. The goal of the System is to provide quality healthcare in a cost-effective manner to the communities served by its member facilities. The System is in support of this application to address the increased demand for inpatient chemical dependency services in Western New York due to the heroin and opioid epidemic. Access to inpatient rehabilitation will be improved, and linkages to other drug abuse treatment services in the community will be provided.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

Utilization supports the certification of the additional beds. The utilization has continued to rise and the applicant currently has a waiting list.

**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 is no total project cost associated with this application. The Incremental budget is as follows:

Revenues	\$295,291
Expenses	<u>\$0</u>
Excess Rev. over Exp.	\$295,291

## 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 documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]

**Approval conditional upon:**

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

Council Action Date

**June 7, 2018**

## Need and Program Analysis

### Background

This application requests the permanent increase of United Memorial Medical Center (UMMC) Chemical Dependency beds from 18 to 22. Two temporary CD Rehab beds will be made permanent and two CD Detox beds will convert to CD Rehab beds.

### Analysis

Bed Category	Current Beds	Proposed Change	Beds Upon Completion
Chemical Depend. – Rehab.	18	4	22
Chemical Depend. – Detox.	2	-2	0
<b>Total</b>	<b>20</b>	<b>2</b>	<b>22</b>

Source: HFIS

In 2016 Hospitals received permission to temporarily increase chemical dependence bed capacity by 10% to address the heroin epidemic in the State. UMMC added two temporary rehab beds and is now seeking to permanently certify those two beds and convert two existing detox beds into rehab beds, for a total of four additional chemical dependence rehab beds.

The applicant states that utilization has continued to rise such that utilization of the existing beds is approximately 95%, with typically 10 patients on an admission wait list.

### Utilization

#### Detox

Year	Patients	Patient Days	ALOS	Avg. Daily Census	Occ.
2011	43	277	7	1	37.95%
2012	61	423	7	2	57.95%
2013	39	352	10	1	48.22%
2014	61	515	9	2	70.55%
2015	65	588	10	2	80.55%
2016	68	396	6	2	54.25%
	<b>337</b>	<b>2,551</b>			

The total of 337 detox patients includes 322 patients that chose to withdraw before completion of the detox or transition to rehab and 15 that finished detox.

#### Rehab

Year	Patients	Patient Days	ALOS	Avg. Daily Census	Occ.
2011	233	5,353	23	15	81.48%
2012	225	5,366	24	15	81.67%
2013	208	5,154	25	15	78.45%
2014	214	4,792	23	14	72.94%
2015	251	5,704	23	16	86.82%
2016	315	5,937	19	17	90.37%
	<b>1,446</b>	<b>32,306</b>			

Even with the conversion of the detox beds, UMMC maintains the ability to treat detox patients because low acuity cases can be treated in the unit, moderate acuity cases can be treated in the ER, and severe acuity cases can be treated in the ICU. Backup arrangements also exist with SBH, New Focus, Loyola and ECMC.

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

Utilization analysis and the applicant's assessment support addition of four Chemical Dependency Rehabilitation beds. 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 need and program perspective, approval is recommended.**

<h2>Financial Analysis</h2>
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Operating Budget

The applicant has submitted their current year (2017) operations, and an incremental operating budget, in 2018 dollars, during the first and third year for the additional two chemical dependence rehabilitation beds, summarized below:

	<u>Current Year</u> <u>(2017)</u>		<u>Year One &amp; Three</u> <u>(Incremental Only)</u>	
	<u>Per Day</u>	<u>Total</u>	<u>Per Day</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid FFS	\$377	\$372,476	\$376.24	\$37,248
Medicaid MC	\$377	1,601,496	\$377.71	160,150
Medicare FFS	\$546	212,394	\$544.59	21,239
Medicare MC	\$546	212,394	\$544.59	21,239
Commercial FFS	\$542	102,980	\$542	10,298
Commercial MC	\$574	404,850	\$565.99	40,185
Private Pay	\$542	<u>49,322</u>	\$548	<u>4,932</u>
Total Revenues		<u>\$2,955,912</u>		<u>\$295,291</u>
<u>Expenses</u>				
Operating	\$181.36	\$1,269,500	\$0	\$0
Capital	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Expenses	\$181.36	\$1,269,500	\$0	\$0
Excess Revenues		<u>\$1,686,412</u>		<u>\$295,291</u>
Utilization (patient days)		7,000		700

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

	<u>Current Year</u>	<u>Year One &amp; Three</u>
Medicaid FFS	14.11%	14.14%
Medicaid MC	60.68%	60.57%
Medicare FFS	5.56%	5.57%
Medicare MC	5.56%	5.57%
Commercial FFS	2.71%	2.71%
Commercial MC	10.07%	10.14%
Private Pay	1.31%	1.30%

Utilization assumptions are based on the historical experience of the hospital operating chemical dependence rehabilitation beds. The applicant has indicated that there are no incremental expenses associated with this application.

#### Capability and Feasibility

There are no issues of capability for this application as there are no project costs. The submitted budget projects incremental revenues over expenses of \$295,291 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for chemical dependence rehabilitation beds. The submitted budget appears reasonable.

BFA Attachment A is the 2015 and 2016 certified financial statements of UMMC. As shown, the entity had an average positive working capital position and an average positive net asset position from 2015 through 2016. Also, the entity achieved an average excess of revenues over expenses of \$3,944,474 for the period.

BFA Attachment B is the internal financial statements of UMMC as of November 30, 2017. As shown, the entity had a positive working capital position and a positive net asset position through November 30, 2017. Also, the entity achieved an excess of revenues over expenses of \$3,706,000 through November 30, 2017.

BFA Attachment C is the 2015 and 2016 certified financial statements of Rochester Regional Health and Affiliates. As shown, the entity had an average positive working capital position and an average positive net asset position from 2015 through 2016. Also, the entity achieved an average excess of revenues over expenses of \$57,119,000 for the period.

BFA Attachment D is the internal financial statements of Rochester Regional Health as of December 31, 2017. As shown, the entity had a positive working capital position and a positive net asset position through December 31, 2017. Also, the entity achieved an excess of revenues over expenses of \$51,932,000 through December 31, 2017.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Financial Summary - 2015 and 2016 certified financial statements of United Memorial Medical Center
BFA Attachment B	Financial Summary - November 30, 2017 internal financial statements of United Memorial Medical Center
BFA Attachment C	Financial Summary - 2015 and 2016 certified financial statements of Rochester Regional Health and Affiliates.
BFA Attachment D	Financial Summary - December 31, 2017 internal financial statements of Rochester Regional Health.



**Project # 181108-C  
White Plains Hospital Center**

**Program: Hospital  
Purpose: Construction**

**County: Westchester  
Acknowledged: March 6, 2018**

**Executive Summary**

**Description**

White Plains Hospital Center (WPH), a 292-bed, voluntary not-for-profit, Article 28 acute care hospital located at 41 East Post Road, White Plains (Westchester County), requests approval to construct a new ten-story hospital office building (HOB) on the campus, with a two-story bridge connecting to the main hospital building. The HOB will be constructed on a parcel of land to be cleared by the demolition of the following three hospital-owned buildings:

- a vacated former residential building located at 8 Longview Avenue;
- a vacated hospital administrative building located at 10 Longview Avenue; and
- a building located at 122 Maple Avenue containing an MRI unit that will be relocated into the new HOB.

The new construction will consist of approximately 250,000 square feet of space comprising nine floors plus a lower level for clinical space, rooftop MEP space, and a 4,919-square foot bridge connecting to the existing hospital. The HOB will include space for both Article 28 and non-Article 28 services and will enable WPH to relocate, expand, and modernize outpatient ambulatory surgery and imaging programs, currently located within the main hospital, into larger, more efficient spaces. The project will also create a dedicated outpatient pediatric program and relocate and consolidate existing WPH physician specialty practices. The plan includes 165,657 square feet of Article 28 space for ambulatory surgery, endoscopy, diagnostic imaging, women’s and pediatric imaging, maternal fetal medicine, cardiology and an interventional radiology suite. An additional 72,336 square feet of non-Article 28 space will

house physician practices in cardiology, vascular, thoracic, obstetrics and gynecology, pediatrics, orthopedics, surgery and other specialty programs.

Development of the HOB is the next significant step in WPH’s master plan to modernize and expand healthcare service delivery. WPH currently has 12 operating rooms (ORs) that serve both inpatients and ambulatory patients. The rooms are small and cannot accommodate the unique spatial requirements of advanced clinical technology. Six new ambulatory ORs and three new minor procedure rooms will be built in the HOB to increase surgical capacity, enabling WPH to strategically plan how to best modernize its existing inpatient OR suites. The non-Article 28 office space will be used for medical staff and affiliated physicians, and supports the hospital’s efforts to attract and retain top medical professionals. The new HOB will facilitate the shift from inpatient to outpatient care, and increase accessibility to highly integrated outpatient services. WPH is a member of Montefiore Health System, Inc.

OPCHSM Recommendation  
Contingent Approval

### Need Summary

Through this project White Plains Hospital Center plans to improve its infrastructure, modernize its operating rooms, and consolidate its outpatient services. Operating rooms which are beyond 20 years old are undersized and outdated. The new Hospital Office Building will allow WPH to address the continued increase in surgical volume and acuity of cases providing more efficient and higher quality care.

### Program Summary

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

### Financial Summary

The total project cost is \$272,139,188. However, due to the inclusion of non-Article 28 space, the total reimbursable cost is limited to \$205,062,331. The total project cost of \$272,139,188 includes the cost for the Article 28

space (\$205,062,331) and non-Article 28 space (\$67,076,857) and will be met via cash of \$27,004,188, an in-kind contribution of land for \$635,000, and a \$244,500,000 FHA-insured mortgage loan for a 25-year term at 5% interest. Gavin and LaVigne Incorporated has provided a letter of interest to arrange an FHA-insured mortgage using taxable Government National Mortgage Association (GNMA) securities.

### Enterprise Budget:

	<u>Current Year</u> <u>(2016)</u>	<u>Year One</u> <u>(2021)</u>	<u>Year Three</u> <u>(2023)</u>
Revenues	\$534,138,258	\$887,588,000	\$1,013,218,000
Expenses	<u>\$512,970,313</u>	<u>\$813,513,000</u>	<u>\$922,004,000</u>
Gain	\$21,167,945	\$49,437,000	\$61,963,000

### Incremental HOB Budget:

	<u>Year One</u> <u>(2021)</u>	<u>Year Three</u> <u>(2023)</u>
Revenues	\$58,676,020	\$81,400,069
Expenses	<u>\$57,453,438</u>	<u>\$72,576,915</u>
Gain	\$1,222,582	\$8,832,154



## 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. Demonstration, to the satisfaction of the Department, that the proposed floor plans for Article 28 and non-Article 28 operations are compliant with NFPA and CMS policy and guidelines. [PMU]
3. Submission of an executed permanent mortgage for the project from a recognized lending institution at an interest rate acceptable to the Department of Health. Submission of the executed permanent mortgage must be provided within 120 days of approval of the New York State hospital code drawings and before the start of construction. Included with the submission must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
4. The submission of required Design Development Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-01, for review and approval. In addition, the following guideline requirements are to be submitted, for review and approval, for Outpatient Facilities:
  - a. 3.2.0. Programmatic Design Guidelines for Primacy care facilities;
  - b. 3.3.0 Programmatic Design Guidelines for Outpatient and Diagnostic Treatment facilities;
  - c. 3.7.0 Programmatic Design Guidelines for Outpatient Surgical Facilities;
  - d. 3.20 LSC NFPA 101, Chapter 20 New Ambulatory Healthcare Public Use; and
  - e. 3.38 LSC NFPA 101 Chapter 38 Business Occupancies Public Use. [DAS]
5. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10 NYCRR 97.12. [SEQ]

**Approval conditional upon:**

1. The project must be completed within four years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before April 5, 2019 and construction must be completed by May 6, 2021, 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 start date this shall constitute abandonment of the approval. [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

**June 7, 2018**

## Need and Program Analysis

### Analysis

#### Current and Future Programs of White Plains Hospital Center's Hospital building

Number of Rooms/Machines	Current Main Hospital	After Project Completion Main Hospital	After Project Completion HOB	Total	Net Change
MRI	2	1	3	4	2
CT	3	3	2	5	2
Fluoroscopy	2	1	2	3	1
X-Ray	3	3	1	4	1
PET/CT	1	0	1	1	0
Ultrasound Diagnostic	5	5	3	8	3
Ultrasound Women's Imaging	2	0	8	8	6
Ultrasound Maternal Fetal	3	0	4	4	1
Mammography	3	0	4	4	1
Stereotactic	1	0	1	1	0
Dexa (Bone Densitometry)	0	0	1	1	1
Interventional Radiology	1	1	1	2	1
Rad. Onc./Linear Accl.	2	2	0	2	0
Nuclear Camera	4	2	2	4	0
OR's	12	12	6	18	6
Minor OR's (procedure rooms)	1	1	3	4	3
Endoscopy	6	2	4	6	0
Hyperbaric Chamber	0	0	2	2	2

Source: Applicant

#### White Plains Hospital Center Ambulatory Surgery

Year	Amb/Surg
2016	10,034
2015	9,353
2014	10,036
2013	9,841
2012	8,335

Source: HFIS 2018

This project is to help the facility modernize, address historical growth, and prepare for the shift from inpatient care to outpatient care. The project will also improve outdated operating rooms (OR's) which are undersized for current treatment protocols.

The applicant provided the following factors to address utilization concerns at the HOB operating suite.

- White Plains Hospital (WPH) plans to transfer 75% of their existing and future ambulatory surgery from the main campus to the HOB (Hospital Office Building)
- Most of the procedures will fall under General Surgery, Urology, Orthopedic, and Vascular.
- Its anticipated that both the volume and complexity of procedures will continue to increase. WPH has experienced a 15% increase in acuity of cases from 2012 to 2017.
- The applicant has experienced a 18% growth in inpatient surgery volume and a 9% increase in ambulatory surgery volume from 2012 to 2017.
- The applicant conservatively estimates continued 1% growth in surgical volume through 2023, reaching a total OR volume of 16,561 cases by 2023.

### 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

The new construction will allow White Plains Hospital to address the continued increase in surgical volume and consolidate outpatient services. 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 need and programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost, which is for construction of the HOB and associated connecting bridge along with the acquisition of moveable equipment, is estimated at \$272,139,188, detailed as follows:

	<u>Article 28</u>	<u>Non-Article 28</u>	<u>Total</u>
Land Acquisition	\$442,023	\$192,977	\$635,000
New Construction	\$110,773,605	\$44,246,872	\$155,020,477
Asbestos Abatement/Removal	\$48,883	0	\$48,883
Design Contingency	\$10,790,975	\$4,711,072	\$15,502,048
Construction Contingency	\$5,395,488	\$2,355,536	\$7,751,024
Planning Consultant Fees	\$340,271	\$148,554	\$488,825
Architect/Engineering Fees	\$8,102,292	\$3,537,260	\$11,639,552
Construction Manager Fees	\$3,047,410	\$1,330,424	\$4,377,833
Other Fees	\$4,666,369	\$2,037,221	\$6,703,590
Moveable Equipment	\$35,832,374	\$2,989,308	\$38,821,682
Telecommunications	\$4,848,599	\$1,291,561	\$6,140,160
Financing Costs	\$8,755,302	\$1,887,398	\$10,642,700
Interim Interest Expense	\$10,895,077	\$2,348,674	\$13,243,751
Con Fees	\$2,000	0	\$2,000
Additional Processing Fee	<u>\$1,121,663</u>	<u>0</u>	<u>\$1,121,663</u>
Total Project Cost	\$205,062,331	\$67,076,857	\$272,139,188

Project costs are based on a construction start date of April 5, 2019, and a 26-month construction period.

The Construction Cost Control Unit has determined that this project includes direct costs and space allocations totaling \$67,076,857 for non-Article 28 space. As a result, the total approved project cost for reimbursement purposes shall be limited to \$205,062,331.

The applicant's financing plan is as follows:

Equity in-kind contribution	\$635,000
Equity cash contribution	\$27,004,188
FHA-insured mortgage loan (25 years, 5% interest)	<u>\$244,500,000</u>
Total	\$272,139,188

Gavin and LaVigne, Inc. has provided a letter of interest to arrange an FHA-insured mortgage using taxable GNMA securities. Gavin and Lavigne Inc. specialize in HUD/FHA-insured loans for health care facilities.

### Operating Budget

The applicant has submitted an incremental operating budget for the outpatient services to be provided in the HOB, in 2018 dollars, during the first and third years, summarized below:

	<b>Year One (2021)</b>		<b>Total</b>
	<b>Article 28</b>	<b>Non-Art. 28</b>	
Revenue	\$46,233,292	\$12,442,728	\$58,676,020
Operating Expenses	\$23,441,547	\$10,279,418	\$33,720,965
Capital Expenses			
Interest	\$9,125,512	\$2,984,998	\$12,110,510
Depreciation	<u>\$9,186,781</u>	<u>\$2,435,182</u>	<u>\$11,621,963</u>
Total Expenses	\$41,753,840	\$15,699,598	\$57,453,438
Net Income Before Capital	<u>\$22,791,745</u>	<u>\$2,163,310</u>	<u>\$24,955,055</u>
Net Income After Capital	<u>\$4,479,452</u>	<u>(\$3,256,870)</u>	<u>\$1,222,582</u>
Utilization (Visits)	21,698	25,508	47,206

	<b>Year Three (2023)</b>		<b>Total</b>
	<b>Article 28</b>	<b>Non-Art. 28</b>	
Revenue	66,926,486	\$14,473,583	\$81,400,069
Operating Expenses	\$35,491,266	\$13,882,224	\$49,373,490
Capital Expenses			
Interest	\$8,726,864	\$2,854,598	\$11,581,462
Depreciation	<u>\$9,186,781</u>	<u>\$2,435,182</u>	<u>\$11,621,963</u>
Total Expenses	\$53,404,911	\$19,172,004	\$72,576,915
Net Income Before Capital	<u>\$31,435,220</u>	<u>\$591,359</u>	<u>\$32,026,579</u>
Net Income After Capital	<u>\$13,521,575</u>	<u>(\$4,689,421)</u>	<u>\$8,832,154</u>
Utilization (Visits)	26,937	28,413	60,985

WPH's total enterprise budget over the forecast period, inclusive of the HOB projections, is as follows:

	<u>Current Year</u> <u>(2016)</u>	<u>Year One</u> <u>(2021)</u>	<u>Year Three</u> <u>(2023)</u>
Revenues	\$534,138,258	\$887,588,000	\$1,013,218,000
Expenses	<u>\$512,970,313</u>	<u>\$813,513,000</u>	<u>\$922,004,000</u>
Net Operating Income	\$21,167,945	\$49,437,000	\$61,963,000

The following is noted with respect to the submitted incremental and enterprise budgets:

- In 2016, all outpatient visits were provided under Article 28 licensure with WPH salaried physicians responsible for patient care. In the new HOB, a subset of services being relocated will be provided under non-Article 28 status via private medical practices affiliated with WPH.
- WPH will relocate the following outpatient Article 28 services to the HOB: PST/Lab Collection, Radiology including Enhanced Cancer Center services (radiation oncology), Ambulatory Surgery, Endoscopy, Interventional Radiology, Women's Imaging, Perinatology, Non-Invasive Diagnostic Testing, and Wound Care.

- Total 2016 outpatient visits relating to services that will be relocated to the HOB as Article 28 services accounted for 61,282 visits. Volume growth for this targeted subset is projected at 35.4%, or an average annual increase of 6.2%, from 2016 to 2021, followed by a slightly reduced annual rate of growth of 5.4% per year from 2021 to 2023.
- The applicant has provided a market share analysis to support the growth in the demand for outpatient care, noting the ongoing industry trend of services transitioning from inpatient to outpatient care, especially for ambulatory surgery services. Ambulatory surgery is forecasted to expand in such specialties as Spine, Pain Management, Hepatobiliary and Colorectal surgeries. WPH expects 100% of their ambulatory surgery, ambulatory radiology and endoscopy cases to be relocated to the HOB. A budget sensitivity analysis is provided as BFA Attachment B to reflect a more moderate rate of volume growth, which shows the enterprise organization can absorb any revenue shortfalls related to slower than expected volume expansion.
- WPH has been actively hiring physicians across outpatient specialties, including the addition of 16 surgeons between 2015-2017. Between 2014-2016, WPH generated a 6.8% annual growth in endoscopy, ambulatory surgery and radiology procedure visits.
- Physicians associated with several existing non-Article 28 practices owned by WPH will relocate to the new HOB upon its completion. The physician practices include orthopedics, cardiology, vascular, thoracic, maternal and fetal medicine, OB/GYN and other specialty services.
- Total 2016 visits related to services that will now be non-Article 28 services accounted for 31,999 visits. Volume growth in this subset is projected at an average rate of 12.44% per year until 2021, followed by a leveling off at 3.85% per year from 2021 to 2023.
- Affiliations such as WPH's recent acquisition of Scarsdale Medical Group LLP, a physician practice with more than 50 physicians, and the movement of a large Endoscopy group from Montefiore Health System, are expected will continue to drive growth over the forecast period.
- Operating expense projections assume an FTE staffing increase of 11.4% between 2016-2021, and an additional 5.0% increase between 2021-2023. Incremental capital costs reflect interest and depreciation on the HOB allocated in proportion to the shares of HOB space dedicated to Article 28 and non-Article 28 services.
- Article 28 HOB outpatient revenue projections are also based on an approximate 2.6% per year growth in total outpatient rates from 2016 to 2021. The projected increase in rates levels off at 2.5 % per year for 2021 to 2023. It is noted that many/most of the Article 28 service lines relocating to the HOB are higher intensity, technology reliant services that have historically provided higher reimbursement rates of payment across all payors. However, given WPH's 76.3% governmental payor mix, a budget sensitivity analysis is provided as BFA Attachment B, which demonstrates that even with a 30% reduction in projected rate growth, the HOB would generate net income of \$5.4 million by 2023.
- Utilization assumptions are based on WPH's prior experience, with no change in payor mix anticipated due to this transaction. Utilization by payor for the HOB's Article 28 services is as follows:

Payor	Year One (2021)	Year Three (2023)
Commercial FFS	4.6%	4.6%
Commercial MC	14.8%	14.8%
Medicare FFS	27.9%	27.9%
Medicare MC	6.4%	6.4%
Medicaid FFS	2.4%	2.4%
Medicaid MC	39.6%	39.6%
Private Pay	4.3%	4.3%

- The overall growth in WPH's enterprise income is driven by growth in inpatient services, professional fees and the remaining outpatient service lines not moving to the HOB. Projected inpatient annual revenue growth of 3% reflects both recent annual growth in rates, continued growth in demand for services in WPH's market area, and anticipated future market penetration. The applicant has provided a service area and market share analysis to support this growth in the demand for healthcare services. The analysis, conducted by an independent third party, details WPH's primary and secondary service areas, which encompasses an estimated 751,000 people in 2017. WPH is identified as a leading healthcare provider in their primary service area showing steady annual increases in their market share penetration.

### Capability and Feasibility

The total project cost is \$272,139,188 consisting of Article 28 space for \$205,062,331 and non-Article 28 space for \$67,076,857. Project costs will be met with \$27,004,188 in accumulated cash, an in-kind contribution of land valued at \$635,000, and a mortgage loan for \$244,500,000. BFA Attachment A is the 2016-2017 certified financial statements of White Plains Hospital Center, which indicates the availability of sufficient funds for the equity contribution.

Working capital requirements are estimated at \$7,193,373 based on two months of first year expenses. Working capital will be funded from operations. BFA Attachment A indicates the availability of sufficient funds for the equity to meet working capital needs.

The submitted incremental HOB budget indicates an excess of revenues over expenses of \$1,222,582 and \$8,832,154 during the first and third years, respectively. A sensitivity analysis holding incremental Article 28 volume growth to 4% per year and non-Article 28 volume growth to 7% per year over the forecast period shows losses of \$22,880,026 in 2021 and \$21,369,189 in 2023. BFA Attachment B also provides a sensitivity analysis on rate assumptions holding governmental payors to 1% annual growth rather than the 2.51% projected by WPH. Net revenue would decrease by \$1,756,963 in 2021 and \$3,442,948 in 2023. The enterprise budget, as sensitized by staff, shows Year Three net operating income of \$31,761,657 (volume sensitized analysis) demonstrating the overall ability of WPH to absorb any revenue shortfall should volume expansion be less robust than projected.

As shown on BFA Attachment A, the entity had a positive working capital position and a positive net asset position through December 31, 2017. Also, the entity achieved an excess of revenues over expenses of \$33,046,000 through December 31, 2017.

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 – Certified financial statements of White Plains Hospital Center for 2016 and 2017
- BFA Attachment B Sensitivity Analysis



**Project # 181066-B**  
**Greece ASC, LLC d/b/a Cornerstone Eye Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Monroe  
**Purpose:** Establishment and Construction    **Acknowledged:** February 7, 2018

**Executive Summary**

**Description**

Greece ASC, LLC d/b/a Cornerstone Eye Surgery Center, an existing New York limited liability company, requests approval to establish and construct a single-specialty, Article 28 freestanding ambulatory surgery center (FASC) specializing in ophthalmology services. The Center will be housed in a to-be-constructed, one-story medical office building located at 135 Canal Landing Boulevard, Greece (Monroe County). Contingent on approval of this application, 135 Canal Landing, LLC, an affiliate of the applicant, will construct the building shell with site improvements and lease the shell to Greece ASC, LLC. The applicant will perform all leasehold improvements for the FASC buildout in compliance with regulations. The new surgery center building will consist of 6,950 gross square feet and will include two operating rooms, one procedure room, seven pre-op/post-op bays, and the requisite support space.

The proposed members of Greece ASC, LLC are Steve B. Park, M.D. (50%) and Omar E. Hanuch, M.D. (50%), who will both be practicing physicians at the Center. The physicians are also equal owners of 135 Canal Landing, LLC, the applicant's landlord.

Dr. Park, a Board-certified ophthalmologist, will serve as Medical Director. Drs. Park and Hanuch are partners in a private medical practice, Cornerstone Eye Associates, which will provide billing and certain administrative services to the FASC. The medical practice has offices in Brighton, Irondequoit and Gates.

Projections concerning the number of cases/procedures and payer mix are based on

the applicant surgeons' current caseloads. Drs. Park and Hanuch currently perform surgeries at Westfall Surgery Center, a large multi-specialty ASC located in the eastern suburbs of Rochester.

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

**Need Summary**  
The applicant projects 3,701 procedures in Year One and 3,926 in Year Three with Medicaid at 3% and Charity Care at 2%.

**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**  
Total project cost of \$2,739,037 will be met by a \$300,001 equity contribution from the proposed members, equipment financing via a bank loan of \$649,190 at 4.6% interest for a seven-year term and a bank loan of \$1,789,846 at 4.7% interest for a ten-year term for the tenant improvements. M&T Bank has provided a letter of interest for the respective loans. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,652,795	\$2,783,200
Expenses	<u>1,952,090</u>	<u>\$2,011,566</u>
Net Income	\$700,705	\$771,634

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need, regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
  - a. Actual utilization including procedures.
  - b. Breakdown of visits by payor source.
  - c. Percentage of charity care provided by visits.
  - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery.
  - e. Number of emergency transfers to a hospital.
  - f. Number of nosocomial infections recorded.
  - g. A brief list of all efforts made to secure charity cases.
  - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed equipment loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed loan commitment for the improvements, acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
9. Submission of a photocopy of the Operating Agreement of Greece ASC, LLC, which is acceptable to the Department. [CSL]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
11. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]



**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before October 1, 2018 and construction must be completed by May 15, 2019, 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 start date this shall constitute abandonment of the approval. [PMU]
3. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
4. The staff of the facility must be separate and distinct from 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]
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

**June 7, 2018**

## Need Analysis

### Analysis

The primary service area is Monroe County. However, the Center also expects to draw patients from Wayne, Ontario, Orleans, Genesee and Livingston counties, which represents the catchment area for the medical practice. Monroe County has a total of five freestanding ambulatory surgery centers, all multi-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in Monroe County for 2015 and 2016.

ASC Type	Facility Name	Total Patient Visits	
		2015	2016
Multi	Brighton Surgery Center, LLC	6,150	6,170
Multi	Lindsey House Surgery Center, LLC	545	607
Multi	Rochester Ambulatory Surgery Center	4,943	5,182
Multi	Unity Linden Oaks Surgery Center	6,031	5,410
Multi	Westfall Surgery Center, LLP	15,292	13,753
<b>Total Visits</b>		<b>32,961</b>	<b>31,122</b>

Source: SPARCS-2017

The applicant projects 3,701 procedures in Year One and 3,926 in Year Three. These projections are based on the current practices of participating surgeons. Most of the projected procedures to be performed at the new center are currently performed in freestanding ambulatory surgery centers in Monroe County.

Projections-181066	Year One		Year Three	
	Volume	%	Volume	%
Medicaid	112	3.03%	117	2.98%
Medicare	2,035	54.99%	2,160	55.01%
Comm	1,480	39.98%	1,571	40.01%
Charity Care	74	2.00%	78	2.00%
<b>Total</b>	<b>3,701</b>	<b>100.00%</b>	<b>3,926</b>	<b>100.00%</b>

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Blue Choice Option, MVP Option, and Child Health Plus. The applicant also intends to reach out to Jordan Health and Regional Primary Care Network, both FQHC's, to develop referral relationships to serve the under-insured in the community. The center has developed a financial assistance policy with a sliding fee scale to be utilized once the center is operational.

### Conclusion

Approval of this project will provide additional choice for ophthalmology surgery services for the residents of the service area.

### Recommendation

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

## Program Analysis

### Program Description

Greece ASC, LLC d/b/a Cornerstone Eye Surgery Center, seeks approval to establish and construct a single-specialty freestanding ambulatory surgery center specializing in ophthalmology, to be located at 135 Canal Landing Boulevard in Greece (Monroe County).

Proposed Operator	Greece ASC, LLC
Doing Business As	Cornerstone Eye Surgery Center
Site Address	135 Canal Landing Boulevard Greece, New York 14626
Surgical Specialties	Single Specialty: Ophthalmology
Operating Rooms	2 (1 Class B, 1 Class C)
Procedure Rooms	1
Hours of Operation	Initially, 3 days per week 7 am to 3 pm Extended as necessary to accommodate patient scheduling issues.
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	6.4 FTEs / 6.4 FTEs
Medical Director(s)	Steve B. Park, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by: Rochester General Hospital 6.6 Miles / 17 minutes
On-call service	Patients who require assistance during off-hours will call his/her surgeon's service and be directed to the surgeon or another ophthalmologist on call.

### Character and Competence

The ownership of Greece ASC, LLC is:

Member	Interest
<b>Omar Hanuch, M.D.</b>	<b>50%</b>
<b>Steve B. Park, M.D.</b> , <i>Medical Director</i>	<b>50%</b>
<b>TOTAL</b>	<b>100%</b>

**Dr. Omar Hanuch** has over 20 years of experience working in a high volume surgical practice and has been actively involved in outpatient surgery in various settings. Dr. Hanuch graduated from the National University of Cordoba Medical School (Argentina) with honors then completed a General Medical residency in Chicago's Hinsdale Hospital/Rush Medical School. He also earned a post-doctoral research fellowship in Cornea and Refractive Surgery followed by a surgical ophthalmology residency at the University of Rochester. He is board-certified in Ophthalmology and Family Medicine and is also a Clinical Assistant Professor of Ophthalmology at the University of Rochester.

**Dr. Steve Park** earned his medical degree from the University of Illinois at Chicago. He completed an Ophthalmology residency at University Hospitals of Cleveland, and a Cornea and External Disease fellowship at the University of Rochester. Dr. Park is board-certified in Ophthalmology. earned his medical degree from the University of Illinois at Chicago in 1986. He then completed an internship at Beth Israel Medical Center, an Ophthalmology residency at University Hospitals of Cleveland, and a Cornea and External Disease fellowship at the University of Rochester. Dr. Park is board-certified in Ophthalmology and is an assistant clinical professor in the Department of Ophthalmology at the University of Rochester School of Medicine.

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

Dr. Park disclosed that he was named in a malpractice case involving a retrobulbar hemorrhage that a patient sustained in July 2012 after administration of anesthesia by an anesthesiologist. A board-certified expert opined that the care and treatment Dr. Park provided exceeded the standard of care, however, in April 2014, his insurance company settled the case for \$50,000.

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

#### Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant will stress the importance of establishing a relationship and provide a list of PCPs (affiliated with the Rochester Regional Health System and the University of Rochester Medical Center) to the patient and note the interaction and the recommendation in the patient's medical record. The Applicant is committed to serving all persons in need of services and there will be no discrimination based on personal characteristics or ability to pay. There is a financial assistance policy with a sliding fee schedule. The Applicant will advise clinics and other referral sources for underserved patients of the Financial Assistance Program. Other activities to provide outreach to the underserved include provision of free services through participation in Project Eye Care, a program sponsored by the Association for the Blind and Visually Impaired, and EyeCare America, a program sponsored by the American Academy of Ophthalmology. Project Eye Care provides free eye exams at local community health centers based on lack of insurance and income eligibility and EyeCare America offers free eye care for seniors and pro bono eye care. Any outpatient surgeries arising from such services would be performed at the surgery center.

The Center intends on using an Electronic Medical Record (EMR) program and will consider participating in a Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE).

#### Conclusion

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

#### Recommendation

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

## Financial Analysis

### Administrative Services and Billing Agreement

The applicant has submitted an executed administrative services and billing agreement, summarized below:

Date:	January 25, 2018
Facility Operator:	Greece ASC, LLC d/b/a Cornerstone Eye Surgery Center
Contractor:	Steve B. Park, M.D., P.C. d/b/a Cornerstone Eye Associates (CEA)
Services Provided:	CEA will provide the following services: timely bill claims for Facility services, claims collection, resolution and follow up, tracking of accounts receivable, monthly and annual reporting of claims, collection and receivables, coordinate prior authorizations, pre-determination of benefits and deposits for surgeries, CEA shall follow Operator's charity care policy and procedures, file the report of patient service revenue received and surcharge obligations with the DOH Public Goods Pool, based on billing data, providing financial management services, including budget preparation, accounts payable and accounts receivable management, provide monthly reports of revenue/expenses, assist Operator in negotiations payer contracts, generate required reports including DOH/SPARCS data file and provide computer support and human resource management services.
Term:	Three-year term with automatic renewal for and additional one-year term, unless either party shall deliver written notice or determination not less than 90 days prior to the expiration of the current term.
Compensation:	\$96,000 annually.

The Agreement provides that the Facility Operator retains ultimate authority, responsibility and control in all final decisions associated with the services and acknowledges the reserve powers that must not be delegated. The applicant has submitted an executed attestation acknowledging understanding of the reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

### Lease Rental Agreement

The applicant has submitted an executed lease agreement for the site that they will occupy, summarized below:

Date:	January 25, 2018
Premises:	6,950 square feet located at 135 Canal Landing Boulevard, Greece, New York.
Lessor:	135 Canal Landing, LLC
Lessee:	Greece ASC, LLC
Term:	Fifteen years, with three additional five-year term extensions
Rental:	Year 1-5: \$209,500 annually (\$30.00 per sq. ft.) with a 2% annual increase beginning in the sixth year.
Provisions:	Lessee responsible for utilities, real estate taxes, maintenance and insurance.

The lease is a non-arm's length lease arrangement. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant in that the members have identical ownership. Letters have been provided from two New York licensed realtors attesting to the rental rate being of fair market value.

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$2,739,037, further broken down as follows:

New Construction	\$1,641,938
Design Contingency	156,375
Construction Contingency	78,188
Architect/Engineering Fees	156,375
Other Fees (Consultant)	40,000
Moveable Equipment	649,190
CON Fee	2,000
Additional Processing Fee	<u>14,971</u>
Total Project Cost	\$2,739,037

Project costs are based on a construction start date of October 1, 2018, and an eight-month construction period.

The applicant's financing plan appears as follows:

Equity (Members)	\$300,001
Equipment Loan (4.6% interest rate for a seven-year term)	649,190
Bank Loan (4.7% interest rate for a ten-year term)	<u>1,789,846</u>

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid MC	\$635.00	\$71,120	\$635.00	\$74,295
Medicare FFS	\$705.00	1,434,675	\$705.00	1,522,800
Commercial FFS	\$775.00	<u>1,147,000</u>	\$755.00	<u>1,186,105</u>
Total Revenues		\$2,652,795		\$2,783,200
<u>Expenses</u>				
Operating	\$364.68	\$1,349,664	\$366.70	\$1,439,652
Capital	<u>162.77</u>	<u>602,426</u>	<u>145.67</u>	<u>571,914</u>
Total Expenses	\$527.65	\$1,952,090	\$512.37	\$2,011,566
Net Income		<u>\$700,705</u>		<u>\$771,634</u>
Procedures		3,701		3,926

Medicare reimbursement is based on the 2018 Medicare fee schedule. Based on the applicant's experience, Commercial reimbursement is at 110% of Medicare and Medicaid managed care is at 90% of Medicare.

Expense assumptions are based on other ASCs in the geographical area and the assumption that the ASC will be open three days per week. The utilization assumptions are based on the number of outpatient surgical procedures each member physician currently performs in a FASC setting. Drs. Park and Hanuch intend to perform 2,250 and 1,451 ophthalmology surgeries, respectively, at the new Center.

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid MC	3.03%	2.98%
Medicare FFS	54.99%	55.01%
Commercial FFS	39.98%	40.01%
Charity Care	2.00%	2.00%

### Capability and Feasibility

Total project costs of \$2,739,037 will be met as follows: Equity of \$300,001 from the proposed members of Greece ASC, LLC, an equipment loan of \$649,190 at 4.6% interest for a seven-year term, and a bank loan of \$1,789,846 at 4.7% interest for a ten-year term. M&T Bank has provided a letter of interest for the loans.

Working capital requirements are estimated at \$335,261, which is equivalent to two months of third year expenses. The applicant will finance \$160,000 at an interest rate of 4.55% for a five-year term. The remaining \$165,261 will be met via equity from the proposed members of Greece ASC, LLC. BFA Attachment A presents the personal net worth statements of the applicant members, which indicate the availability of sufficient funds for the equity contributions. BFA Attachment B is the pro forma balance sheet of Greece ASC, LLC, which indicates a positive net asset balance position of \$474,762 as of the first day of operation.

The submitted budget indicates a net income of \$700,705 and \$771,634 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers specializing in ophthalmology services. The submitted budget appears reasonable.

### Recommendation

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

## Supplemental Information

### Surrounding Hospital Responses

Letters were sent to the following surrounding hospitals asking for information on the impact of the proposed ambulatory surgery center in their service areas. None of the hospitals responded.

The Unity Hospital of Rochester  
1555 Long Pond Road  
Rochester, New York 14626

Rochester General Hospital  
1425 Portland Avenue  
Rochester, New York 14621

Highland Hospital  
1000 South Avenue  
Rochester, New York 14620

Strong Memorial Hospital  
601 Elmwood Avenue  
Rochester, New York 14642

Monroe Community Hospital  
435 East Henrietta Road  
Rochester, New York 14620

### DOH Comment

In the absence of comments from surrounding hospitals, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

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## Attachments

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





**Project # 181103-B  
WNY Medical Management**

**Program:** Diagnostic and Treatment Center    **County:** Erie  
**Purpose:** Establishment and Construction    **Acknowledged:** February 27, 2018

**Executive Summary**

**Description**

WNY Medical Management LLC d/b/a WNY Medical Management, a proprietary, Article 28 freestanding ambulatory surgery center (FASC) located at 700 Michigan Avenue, Buffalo (Erie County), requests indefinite life and approval to certify and construct a multi-specialty ambulatory surgery extension clinic to be located at 3112 Sheridan Drive, Amherst (Erie County). The FASC was approved by the Public Health Council (PHC) under CON 092069 as a single-specialty FASC specializing in pain management services and the Center began operation effective April 10, 2013. The new location will initially provide pain management, orthopedics, plastic surgery, spine, podiatry, otolaryngology and general surgery procedures.

The existing Center on Michigan Avenue is limited in its ability to expand with only Class A operating rooms (ORs) and the lack of expansion capability on the existing campus. The new Center will have four ORs and two procedure rooms.

There will be no change to the current membership of WNY Medical Management LLC. The utilization projected for the new extension clinic is based on a conservative estimate derived through conversations with physicians who have expressed interest in using the new site. These cases are currently being performed in a variety of locations throughout Erie and Niagara County in existing Hospitals, Surgery Centers and Office Based surgery practices.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

Data submission by the applicant, as a contingency of CON 092069, has been completed. Based on CON 092069, WNY Medical Management projected 2,020 procedures in Year One and 2,424 procedures in Year Three. Medicaid procedures were projected at 2.0 % and Charity Care was projected at 2.0% for Year Three. The total number of procedures 1,170 in Year Three (2016). Actual Charity Care in Year Three (2016) was 2.22 % and Medicaid was 7.44%.

**Program Summary**

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

**Financial Summary**

Project costs of \$3,557,340 will be met with \$557,340 in cash from the members and a \$3,000,000 self-amortizing mortgage loan for a term not to exceed 25 years, with an initial five-year interest rate of 5.5%. M&T Bank has provided a letter of interest for a mortgage loan. The proposed budget is as follows:

Revenues	\$5,436,476
Expenses	<u>4,880,943</u>
Gain	\$ 555,533

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed bank loan commitment for project costs, acceptable to the Department of Health. [BFA]
4. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
5. Submission of a lease, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of an Operating Agreement of WNY Medical Management, LLC, which is acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of Engineering(MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2018 and construction must be completed by January 1, 2019, 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 start date this shall constitute abandonment of the approval. [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

**June 7, 2018**

## Need Analysis

### Background

WNY Medical Management, LLC, d/b/a WNY Medical Management, an existing Article 28 Diagnostic and Treatment Center certified as a single-specialty ambulatory surgery center providing pain management services, is requesting permission to convert to permanent life and to certify and construct a multi-specialty ambulatory surgery center extension clinic to be located at 3112 Sheridan Drive, Amherst, 14226, in Erie County.

### Analysis

The primary service area is Erie County. The table below provides information on projections and utilization by procedures for Year One (2014-1<sup>st</sup> full year) and Year Three (2016) based on CON 092069.

<b>CON 092069- Procedures</b>	<b>Year 1 (2014)</b>		<b>Year 3 (2016)</b>	
<b>WNY Medical Management</b>	Projected	Actual	Projected	Actual
Total	2,020	614	2,424	1,170

The table below provides Year Three utilization, projections and actual, by payor, for CON 092069 and projections for Year One following indefinite life approval for the main site. The applicant believes that most of the increases in utilization will occur at the extension clinic, which accounts for visits and payor utilization remaining the same at the main site for Year One after approval.

<b>Payor</b>	<b>CON 092069 Projected Year 3 (2016)</b>	<b>CON 092069 Actual Year 3 (2016)</b>	<b>CON 181103 Projections Year 1</b>
Medicaid FFS	2%	7.44%	7.44%
Medicare FFS	5%	10.77%	10.77%
Medicare MC	20%	0.00%	0.00%
Commercial FFS	40%	23.16%	23.16%
Commercial MC	30%	0.00%	0.00%
Other (WC & No Fault)	0%	56.41%	56.41%
Private Pay	1%	0.00%	0.00%
Charity Care	2%	2.22%	2.22%
Total	100.00%	100.00%	100.00%

For the proposed extension clinic, the number of projected procedures is 3,583 in Year One and 4,056 in Year Three. The table below shows the projected payor source utilization for Years One and Three.

Projections- 181103	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	264	7.37%	299	7.37%
Medicare FFS	840	23.44%	937	23.10%
Comm FFS	1,867	52.11%	2,078	51.23%
Other	538	15.02%	658	16.22%
Charity Care	74	2.07%	84	2.07%
Total	3,583	100.00%	4,056	100.00%

The table below shows the projected payor source utilization for Years One and Three for both sites combined.

Projections- 181103	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	351	7.38%	386	7.39%
Medicare FFS	966	20.32%	1,063	20.34%
Comm FFS	2,138	44.98%	2,349	44.95%
Other	1,198	25.21%	1,318	25.21%
Charity Care	100	2.11%	110	2.11%
Total	4,753	100.00%	5,226	100.00%

Erie County has a total of ten freestanding ambulatory surgery centers: eight multi-specialty ASCs and two single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in Erie County for 2015 and 2016.

ASC Type	Facility Name	Total Patient Visits	
		2015	2016
Multi	Ambulatory Surgery Center of Western New York, LLC	13,084	11,868
Multi	Buffalo Ambulatory Surgery Center	10,826	12,300
Multi	Buffalo Surgery Center, LLC	5,381	7,557
Multi	Center for Ambulatory Surgery	11,740	11,579
Multi	Endoscopy Center of Western New York, LLC	10,083	10,427
Single	Eye Health Associates Inc	4,878	4,181
Multi	Millard Fillmore Surgery Center	5,220	4,922
Multi	Southtowns Surgery Center (opened 7/26/16)	N/A	351
Multi	Sterling Surgical Center, LLC	4,982	5,511
Single	WNY Medical Management	794	1,170
Total		66,988	69,866

Source: SPARCS-2017

The applicant provided the following information regarding their commitment to serve the uninsured and underinsured. The main site currently has Medicaid Managed Care contracts Medisource and YourCare Health Plan. The same managed care plans will be accepted at the extension clinic. The main site has contacted the following organizations to provide service to the underinsured: Northwest Community Center and Lifetime Health, both FQHCs, and The Greater Buffalo United Accountable Healthcare Network (GBUAHN- care coordination service for Medicaid recipients). At this point, the applicant has made little progress in developing referral arrangements with the FQHCs, mostly due to the lack of patients in need of pain management services. The applicant expects much greater need for the multi-specialty services by the patients of the FQHCs. WNY Medical Management is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

#### Conclusion

WNY Medical management has fulfilled its commitment to provide service to the uninsured and under-insured in Erie County. With the additional surgery services being provided in the extension clinic WNY Medical Management will be able to expand their ambulatory surgery services provided to the residents of Erie County.

#### Recommendation

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

## Program Analysis

### Program Description

WNY Medical Management, LLC, seeks approval to convert to indefinite life and construct and certify a multi-specialty extension clinic at 3112 Sheridan Drive in Amherst (Erie County).

The proposed new location will serve a significant population of pediatric patients and intends to meet the requirements of the Children's Surgery Verification Quality Improvement Program of the American College of Surgeons. The accreditation program was developed by the College recognizing that a large proportion of children's surgical procedures are performed in outpatient surgical setting.

Dr. Waghmarae, the current Medical Director of the FASC, will continue as Medical Director of both the main and new extension clinic sites.

WNY Medical Management has executed transfer agreements with Kaleida Health and Sisters of Charity Hospital.

Proposed Operator	WNY Medical Management, LLC
Extension Site Name	WNY Medical Management – Sheridan Drive Site
Extension Site Address	3112 Sheridan Drive Amherst, NY 14226 (Erie County)
Surgical Specialties	Multi-Specialty, including: Physical Medicine and Rehabilitation; General Surgery; Anesthesia/Pain Management; Otolaryngology; Podiatry
Operating Rooms	4
Procedure Rooms	2
Hours of Operation	Monday through Saturday, 7:00 am to 6:00 pm (Days and hours to be modified to accommodate patient demand and convenience.)
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	23.7 FTEs / 26.3 FTEs
Medical Director(s)	Romanth Waghmarae, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Buffalo General/Kaleida Health & Sister's Hospital 5.2 miles / 14 minutes
On-call service	Patients will be provided with their surgeon's after-hours number. Additionally, the surgery center will use an after-hours answering service.

### Compliance with Applicable Codes, Rules and Regulations

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

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Lease Rental Agreement

The applicant has provided an executed lease for the space the new Center will occupy. The terms are summarized below:

Date:	January 31, 2018
Premises	Approximately 16,379 sq. ft. Located at 3112 Sheridan Drive, Amherst, NY
Landlord:	First Berkshire Business Trust
Tenant:	WNY Medical Management, LLC
Term:	12 Years
Rental:	Annual rent: \$147,411 (\$9.00/sq. ft.) in year 1, \$221,116.50(\$13.50/sq. ft.) in year 2, \$306,778.67(\$18.73/sq. ft.) in year 3, with a 2% increase each year thereafter.
Provisions:	Maintenance, insurance, taxes and utilities

The applicant has indicated that the lease will be an arm's length lease arrangement, and has submitted letters from two New York State real estate brokers attesting to the reasonableness of the base per square foot rental.

### Total Project Cost and Financing

Total project cost for renovations and the acquisition of movable equipment is estimated at \$3,557,340, broken down as follows:

Renovation & Demolition	\$778,000
Design Contingency	77,800
Construction Contingency	77,800
Architect/Engineering Fees	75,000
Construction Manager Fees	27,293
Movable Equipment	2,500,000
Application Fee	2,000
Additional Processing Fee	<u>19,447</u>
Total Project Cost	\$3,557,340

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

The applicant's financing plan appears as follows:

Equity from members	\$557,340
Bank Loan (maximum 25 years, self-amortizing, initial 5-year interest of 5.5%)	\$3,000,000

A letter of interest has been submitted by M&T Bank for the equipment and construction loan.

## Operating Budget

The applicant has submitted an operating budget, in 2018 dollars, for the current year (2016) and the first and third years after receiving indefinite life operating certification, and including the extension clinic operation, summarized below:

<u>Revenues</u>	<u>Current Year (2016)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Commercial FFS	\$557.79	\$151,162	\$1,152.15	\$2,463,297	\$1,153.52	\$2,709,627
Medicare FFS	\$279.04	35,159	\$1,098.82	1,061,461	\$1098.41	1,167,607
Medicaid MC	\$347.13	30,200	\$1,026.36	360,254	\$1,026.63	396,280
Other*	\$1143.63	<u>754,794</u>	\$882.50	<u>1,057,239</u>	\$882.37	<u>1,162,962</u>
Total Revenues		\$971,315		\$4,942,251		\$5,436,476
 <u>Expenses</u>						
Operating		\$709,385		\$3,575,881		\$3,861,474
Interest		18,426		187,182		133,725
Depreciation/Rent		<u>167,384</u>		<u>722,884</u>		<u>885,744</u>
Total Expenses		\$895,195		\$4,485,947		\$4,880,943
Net Income (Loss)		<u>\$76,120</u>		<u>\$456,304</u>		<u>\$555,533</u>
(Procedures)		1,170		4,753		5,226
Cost Per Procedure		\$765.12		\$943.81		\$933.97

\*Other represents No Fault and Workmen's Compensation.

The following is noted with respect to the submitted budget:

- Revenue, expense and utilization assumptions are based on the combined historical experience of the physician members of WNY Medical Management Ambulatory Surgery Center.
- The current rates reflect relatively low-acuity pain management procedures. Projected revenues were determined using the Medicare rates associated with the projected procedures. Adjustments were made for other insurance companies based on historical rates being above the Medicare rate.
- The rates included in the first and third year budgets reflect the complexity of the projected multi-specialty procedures.
- Incremental salaries and wages were calculated using industry standard staffing patterns based on the acuity of the projected cases, with employee benefits projected at 22% of salaries and wages.
- Projected case volume by surgeon was generally reduced by 1/3 to provide a more conservative revenue projection.
- Utilization by payor source for the current (2016), first and third years is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid MC	7.44%	7.38%	7.39%
Medicare FFS	10.77%	20.32%	20.34%
Commercial FFS	23.16%	44.98%	44.95%
Other	56.41%	25.21%	25.21%
Charity Care	2.22%	2.11%	2.11%

## Capability and Feasibility

Project costs of \$3,557,340 will be met with \$557,340 in cash from members and a \$3,000,000 self-amortizing mortgage loan for a term not to exceed 25 years, with an initial five-year interest rate of 5.5%. M&T Bank has provided a letter of interest for a mortgage loan.

Working capital requirements are estimated at \$813,491 based on two months of third year expenses. The working capital will be funded with members' equity of \$483,491 and a \$330,000 bank loan at 5.5% interest over five years. M&T Bank has provided a letter of interest at the stated terms for working capital.

BFA Attachment A, the members' net worth statement, indicates sufficient equity exists overall for project cost and working capital; however, liquid resources are not available in proportion to ownership interest

for several members. While there is a disproportionate share of contributed initial capital, the partners share equal ownership in the organization. Therefore, equity contributions for the new project will be shared equally by all the partners in accordance with the operating agreement of the LLC.

The submitted budget indicates a net profit of \$456,304 and \$555,533 for the first and third year, respectively. The budget appears reasonable.

BFA Attachment B, financial summary of WNY Medical Management, indicates that the facility maintained positive working capital in 2016 and 2017, positive equity position for years stated and generated net income of \$94,546 and \$109,728 for 2016 and as of December 31, 2017, respectively. The negative working capital for 2015 was due to previous startup costs and a line of credit that was established by the Center.

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

Recommendation

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

## Supplemental Information

### Surrounding Hospital Responses

Letters were sent to the following surrounding hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. None of the hospitals responded.

Millard Fillmore Suburban Hospital  
1540 Maple Road  
Williamsville, New York 14221

Sisters of Charity Hospital  
2605 Harlem Road  
Cheektowaga, New York 14225

Erie County Medical Center  
462 Grider Street  
Buffalo, New York 14215

Buffalo General Medical Center  
100 High Street  
Buffalo, New York 14203

Niagara Falls Memorial Medical Center  
621 Tenth Street  
Niagara Falls, New York 14302

Kenmore Mercy Hospital  
2950 Elmwood Avenue  
Kenmore, New York 14217

### DOH Comment

In the absence of comments from surrounding hospitals, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.



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## Attachments

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BFA Attachment A	WNY Medical Management Net Worth Statement
BFA Attachment B	WNY Medical Management 2015-2016 certified financials & internal financials as of December 31, 2017
BHFP Attachment	Map



**Project # 181278-E  
Liberty Endoscopy Center**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment    **Acknowledged:** April 19, 2018

**Executive Summary**

**Description**

This application amends and supersedes CON 172325, which was approved by the Public Health and Health Planning Council on February 8, 2018, as subsequent to approval a proposed new member withdrew. Liberty Endoscopy Center, LLC, a proprietary, single-specialty (gastroenterology), Article 28 freestanding ambulatory surgery center (FASC) located at 156 William Street, New York (New York County), requests approval to add six new members, each of whom will purchase a 4% membership interest in the Center, for a total transfer of 24% ownership interest. The proposed new members are Deborah Chua, M.D., Veronika Dubrovskaya, M.D., Michael Glick, M.D., Valerie Antoine-Gustave, M.D., Neal Joseph, M.D. and Martin Wolff, M.D., all of whom are currently performing procedures at the Center. The proposed new members have each executed a Membership Subscription Agreement, which includes his/her agreement to be bound by the Center’s existing, approved Operating Agreement. The purchase price for each 4% membership interest is \$28,450 for a total purchase price of \$170,700 for the 24% ownership transfer.

The existing lease, which extends through 2030 with two five-year renewal options, will continue unchanged.

BFA Attachment B shows the current and proposed membership interest in Liberty Endoscopy Center, LLC.

**OPCHSM Recommendation  
Approval**

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

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

**Financial Summary**  
There are no project costs associated with this application and no budgeted operating expenses or revenues. The proposed new members have each purchased a 4% membership interest for \$28,450 resulting in a total purchase price of \$170,700 for the 24% ownership transfer.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**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

**June 7, 2018**

## Program Analysis

### Program Description

Liberty Endoscopy Center, LLC, an existing single specialty (gastroenterology) freestanding ambulatory surgery center, requests approval to transfer 24% ownership interest to six new members. There are no anticipated changes in operation resulting from this change in ownership.

This application amends and supersedes CON 172325, which was approved by the Public Health and Health Planning Council on February 8, 2018, as subsequent to approval a proposed new member withdrew.

Since becoming operational January 13, 2017, the Center has provided gastroenterology services to residents of New York County. The Center collaborates with The Bowery Mission, one of the oldest not-for-profit organizations in New York, to provide free colonoscopy services to the population served by The Bowery Mission, and has an agreement with Cumberland Diagnostic and Treatment Center, a NYC Health & Hospitals clinic, in collaboration with NYC Community Cares Project, to provide uninsured patients with access to colonoscopy screenings.

### Character and Competence

The table below details the proposed change in ownership:

<b>Member Name</b>	<b>Current Membership Interest</b>	<b>Proposed Membership Interest</b>
Albert Harary, M.D.	2.25%	1.61%
Alexander Chun, M.D.	4.49%	3.21%
Anthony Borcich, M.D.	2.25%	1.61%
Carl McDougall, M.D.	4.49%	3.21%
David Robbins, M.D.	6.85%	4.89%
Eric Morgenstern, M.D.	4.49%	3.21%
Ilan Weisberg, M.D.	4.49%	3.21%
Jennifer Bonheur, M.D.	6.85%	4.89%
Jonathan Warman, M.D.	2.25%	1.61%
Julie Foont, M.D.	6.85%	4.89%
Jusuf Zlatanic, M.D.	6.85%	4.89%
Makoto Iwahara, M.D.	4.49%	3.21%
Michael Krumholz, M.D.	4.49%	3.21%
Mylan Satchi, M.D.	1.12%	0.80%
Paulo Pacheco, M.D.	6.85%	4.89%
Peter Balocco, M.D.	4.49%	3.21%
Peter Kim, M.D.	10.0%	7.14%
Yasmin Metz, M.D.	0.45%	0.32%
Mount Sinai Ambulatory Ventures, Inc.	10.0%	10.00%
PE Healthcare Associates, LLC	6.00%	6.00%
<b>*Martin Wolff, M.D.</b>	-----	<b>4.00%</b>
<b>*Michael Glick, M.D.</b>	-----	<b>4.00%</b>
<b>*Neal Joseph, M.D.</b>	-----	<b>4.00%</b>
<b>*Valerie Antoine-Gustave, M.D.</b>	-----	<b>4.00%</b>
<b>*Veronika Dubrovskaya, M.D.</b>	-----	<b>4.00%</b>
<b>*Deborah Chua, M.D.</b>	-----	<b>4.00%</b>
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>

**\*Members subject to a Character and Competence Review for this project**

Each of the new members are practicing board-certified gastroenterologists. Drs. Wolff, Glick, Joseph, Antoine-Gustave, Dubrovskaya, and Chua are employed by Gotham Medical Associates.

Regarding the education and training of the new members: Dr. Wolff earned his medical degree from the New York University (NYU) School of Medicine and completed a gastroenterology fellowship at the NYU Medical Center. Additionally, he is a Clinical Assistant Professor of Medicine at NYU School of Medicine and an attending gastroenterologist at NYU Langone Medical Center and Mount Sinai Beth Israel. Dr. Glick graduated from NYU School of Medicine and completed a fellowship in gastroenterology at Memorial Sloan Kettering Cancer Center. Dr. Joseph earned his medical degree at George Washington University and subsequently pursued specialty training in gastroenterology at Lenox Hill Hospital. Additionally, he has recently served as a Co-Medical Director for Liberty Endoscopy Center (located in Manhattan). Dr. Antoine-Gustave earned her medical degree from Johns Hopkins School of Medicine and completed a fellowship in gastroenterology at Brigham and Women's Hospital. Dr. Dubrovskaya earned her medical degree from Virginia Commonwealth University and completed a gastroenterology fellowship at St. Luke's-Roosevelt Hospital. Dr. Chua earned her medical degree from Temple University School of Medicine and completed fellowship training in gastroenterology at New York University.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the seven (7) incoming individual physician members regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the 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 Subscription Agreement

The applicant has submitted the executed Membership Subscription Agreements for the proposed members, the terms of which are summarized below:

Date:	September 12, 2017 (five members), September 18, 2017 (Martin Wolff, M.D.)
Description:	Purchase of 4% membership interest
Company:	Liberty Endoscopy Center, LLC
Purchasers:	Deborah Chua, M.D., Veronika Dubrovskaya, M.D., Michael Glick, M.D., Valerie Antoine-Gustave, M.D., Neal Joseph, M.D. and Martin Wolff, M.D.
Purchase Price:	\$28,450 per proposed new member
Payment of Purchase Price:	\$2,845 deposit held in escrow; Equity via personal assets for the \$25,605 balance due at closing.

Payment of the balance due from each proposed new member will be paid via equity from their personal assets. BFA Attachment A is a summary of the proposed members' net worth statements, which shows sufficient resources for the transactions.

#### Capability and Feasibility

There are no project costs associated with this application and no changes to operations. BFA Attachment C is an internal financial summary of Liberty Endoscopy Center as of December 31, 2017, which shows the entity has maintained a positive working capital position, a negative net equity position and has experienced a net operating gain of \$875,651.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Personal Net Worth Statements of Proposed Members of Liberty Endoscopy Center
BFA Attachment B	Current and Proposed Membership interest in Liberty Endoscopy Center, LLC
BFA Attachment C	Internal Financial Statements as of December 30, 2017



Project # 172413-B
Oneida Health Roswell Park Oncology, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Madison
Acknowledged: February 2, 2018

Executive Summary

Description

Oneida Health Roswell Park Oncology, LLC, a to-be-formed New York limited liability company, requests approval to establish and construct a new cancer care diagnostic and treatment center (D&TC) to be located at 601 Seneca Street, Oneida (Madison County). On December 19, 2017, Oneida Health Systems, Inc. (the "System") and Roswell Park Cancer Institute (RPCI) executed Articles of Organization to form Oneida Health Roswell Park Oncology, LLC to own and operate the D&TC. The System and RPCI will each have 50% ownership in the Company.

The System operates Oneida Healthcare, a 101-bed, voluntary not-for-profit, Article 28 acute care hospital located at 321 Genesee Street in Oneida (Madison County). The System was awarded a \$6.75 million capital grant under the Essential Health Care Provider Support Program - Health Care Delivery System Innovators Fund (EHCPSP-I) to develop a quality outpatient Comprehensive Cancer Care Center (the Center) on the Oneida Healthcare Campus in partnership with RPCI. The System and RPCI are working towards the development of the new Company that will be responsible for the purchase of the equipment and the operation of the facility.

The Center is being created in a two-phase process. Phase I was accomplished under CON 162158, which approved the purchase and renovation of 604 Seneca Street on the Oneida Campus to certify a new Medical Infusion Center extension clinic. This 10,000-square foot building incorporates a six-room medical clinic, a retail clinic, telemedicine room, 12-chair infusion

center, and a USP 797-compliant medication mixing room. RPCI specialists began seeing patients at this Center in June 2017, and a medical oncologist began treating patients in December 2017. CON 162158 was 100% financed with EHCPSP-I grant funding.

This CON is to implement Phase II, which provides for the design, development, construction, and operation of a complimentary Radiation Oncology Center that will allow patients from the infusion program, as well as patients throughout Oneida's primary and secondary markets, to receive radiation therapy on the Oneida Campus. Currently, patients must travel outside the county to receive radiation oncology treatments. The Radiation Oncology Center will be located in a new one-story, 6,079-square foot building to be constructed on a vacant parcel of land that Oneida owns. The Center will occupy the entire building, which will consist of four exam rooms, one consultation room, a CT scanner room, a Linear Accelerator Treatment vault, control rooms, patient treatment planning/dosimetry space and staff offices. EHCPSP-I grant funds will be used to design and construct the building.

The purpose of the partnership is to enable patients to receive cancer care locally and have access to state-of-the-art cancer services offered at RPCI, including clinical trials, through onsite care by Roswell physician specialists.

OPCHSM Recommendation
Contingent Approval

### Need Summary

The proposed diagnostic and treatment center is in the Central NY region, which currently has 15 approved or existing LINAC machines and has a calculated need for 20 LINAC machines. The number of projected visits is 3,067 in Year One and 6,539 visits in Year 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 \$7,302,816 will be met via \$1,001,546 equity from Oneida Health Systems, Inc., \$1,001,546 equity from Roswell Park

Cancer Institute Oncology, PC., \$2,299,724 in EHCPSP-I grant funding, and a capital lease for \$3,000,000 for fixed equipment (TrueBeam and CT Scanner). Varian Medical Systems, Inc. has provided a capital lease proposal for the equipment with title passing to the Lessee for \$1.00 at the end of a seven-year term. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,951,080	\$4,414,071
Expenses	<u>\$2,172,773</u>	<u>\$3,784,095</u>
Gain/(Loss)	(\$221,693)	\$629,976



## 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed ground lease for the land use, acceptable to the Department of Health. [BFA]
4. Submission of an executed capital lease agreement for the equipment, acceptable to the Department of Health. [BFA]
5. Submission of a photocopy of the Operating Agreement of Oneida Health Roswell Park Oncology, LLC, which is acceptable to the Department. [CSL]
6. Submission of a lease, which is acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of Engineering (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2018 and construction must be completed by March 1, 2019, 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 start date this shall constitute abandonment of the approval. [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

**June 7, 2018**

## Need Analysis

### Analysis

This project includes one linear accelerator (LINAC). The primary service area for the proposed diagnostic and treatment center is Madison and Oneida Counties. The intent of the partnership between Oneida Health and Roswell Park is to enable patients to receive care locally and have access to many of the cancer services offer at Roswell Park, through onsite care by Roswell physicians. There are two linear accelerators located at Article 28 facilities within 30 miles from this proposed site. These two Article 28 facilities are Rome Memorial Hospital located in Rome (Oneida county), which is 17.2 miles and 26 minutes away, and Faxton Medical Campus in Utica (Oneida County), which is 21.1 miles and 32 minutes away from this proposed site.

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

The table below shows the calculated need for linear accelerators in the Central NY planning region:

	<b>LINAC Need in Central NY Region</b>	<b>Total</b>
1	# of Cancer Cases/Year	8,534
2	60% will be Candidates for Radiation Therapy	5,120
3	50% of (2) will be Curative Patients	2,560
4	50% of (2) will be Palliative Patients	2,560
5	Course of Treatment for Curative Patients is 35 Treatments	89,605
6	Course of Treatment for Palliative patients is 15 Treatments	38,402
7	The Total Number of Treatments [(5) +(6)]	128,007
8	Need for LINAC Machines <sup>1</sup> [(7)/6,500]	20
9	Existing/Approved Resources (Upon Approval of CON 172413)	16
10	Remaining Need for LINAC Machines [(8) -(9)]	4

<sup>1</sup>Each LINAC Machine has capacity for 6,500 Treatments

The Central NY health planning region has a total of nine Article 28 facilities - six hospitals and three hospital extension clinics - providing linear accelerator services.

Current/Approved Resources	# Facilities with LINAC Services			# LINAC Machines		
	Hospitals	Clinics	Total	In Hospitals	In Clinics	Total
Central NY Region						
St. Lawrence	2	0	2	3	0	3
Jefferson	1	0	1	2	0	2
Lewis	0	0	0	0	0	0
Herkimer	0	0	0	0	0	0
Oneida	1	1	2	2	1	3
Oswego	0	1	1	0	1	1
Cayuga	0	0	0	0	0	0
Onondaga	1	1	2	4	1	5
Madison	0	0	0	0	0	0
Cortland	0	0	0	0	0	0
Tompkins	1	0	1	1	0	1
<b>Total Central NY Region</b>	<b>6</b>	<b>3</b>	<b>9</b>	<b>12</b>	<b>1</b>	<b>15</b>

Conclusion

The methodology shows a need for additional linear accelerators in the Central NY planning region. Approval of this project will help address that need.

Recommendation

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

**Program Analysis**

Project Proposal

Oneida Health Roswell Park Oncology, LLC (OHRPO) seeks approval to establish and construct a new cancer care diagnostic and treatment center to be located at 601 Seneca Street in Oneida (Madison County).

Proposed Operator	Oneida Health Roswell Park Oncology, LLC
Site Address	601 Seneca Street Oneida, NY
Services	Medical Services – Other Medical Specialties Radiology – Therapeutic Linear Accelerator (1)
Hours of Operation	Monday through Friday from 8:00 am to 5:00 pm
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	7.8 FTEs / 11.0 FTEs
Medical Director(s)	To be determined
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Oneida Health Systems <1 mile / <2 minutes

Character and Competence

The members of Oneida Health Roswell Park Oncology, LLC are:

Roswell Park Cancer Institute	50%
Oneida Health Systems, Inc.	50%

The proposed managers of Oneida Health Roswell Park Oncology are:

Thomas Schwaab, M.D.	Mary Parry
Armen Gallucci	Jeremiah Sweet
Ryan Grady	Debra Walz

**Dr. Schwaab**, a urologist, serves as Roswell Park’s Chief of Strategy, Business Development and Outreach. In that role, he assures that business and clinical initiatives are delivered appropriately, efficiently and effectively. He is also responsible for widening the Institute’s scope of operations and growth potential at national and international levels. He is also a Professor of Oncology and Immunology and CEO of Global Biotechnology and Cancer Therapeutics.

**Mr. Gallucci** is the Vice President for Strategy, Business Development and Outreach. He is responsible for strategic aspects of the Institute’s initiative which provide access to clinical trials and advanced technologies and developing and maintaining productive, long-term relationships with major hospital and health systems.

**Mr. Grady** is a Certified Professional Accountant who currently works for the Roswell Park Cancer Institute as the Vice President of Finance.

**Ms. Parry** is the Chief Operating Officer of Oneida Healthcare. In that role, she coordinates and supervises the overall operations of Oneida Healthcare. Her position incorporates facets of regulatory compliance, financial analysis, negotiation skills and construction and grant management.

**Mr. Sweet** has been serving as the Vice President of Finance and Chief Financial Officer for Oneida Healthcare since July 2017. Prior to that, he held positions as Senior Financial Analyst, Manager of Hospital and Physician Services and the Director of Finance Operations for Bassett Medical Center.

**Ms. Walz** is a Nurse Practitioner board-certified in oncology and women's health and a Registered Nurse First (Surgical) Assist. Since April 2017, she has served as the Director of Nursing for Oneida Health Cancer Center. In that role, Ms. Walz collaborates with surgical oncologists and hematologists to provide care and monitoring for patients undergoing treatment, assists in the development and implementation of new services and aids in the implementation of evidence-based policies and protocols in an effort to improve outcomes for patients with cancer.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for all 31 members and managers 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.

Oneida Health Systems, Inc. operates Oneida Healthcare Residential Health Care Facility (RHCF) which was subject to the following two Department enforcements:

- On September 26, 2011, a Stipulation and Order and \$8,000 fine was issued based on a survey completed on April 2, 2010. Deficient practices cited related to: Quality of Care: Accidents and Supervision; Feeding/Assistant-Training and Supervision of Resident; Quality Assurance Committee; and Administration.
- On January 31, 2017, a Stipulation and Order and \$10,000 fine was issued based on a survey completed on October 7, 2016. Deficient practice was cited for Quality of Care: Pressure Sores.

Recommendation

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

## Financial Analysis

Ground Lease Agreement

The applicant submitted a draft ground lease agreement for the land on which the D&TC will be constructed, summarized below:

Land:	Real property (land) located at Seneca Street Extension and NYS Route 5 in the City of Oneida, NY
Landlord:	Oneida Health Systems, Inc.
Lessee:	Oneida Health Roswell Park Oncology, LLC
Term:	40 Years; successive 5-year extensions provided Lessee not in default, 6 months written notice
Rental:	\$21,000 per year; \$1,750 per month
Provisions:	Lessee pays all real estate taxes, utilities, insurance and maintenance costs

Total Project Cost and Financing

Total project cost of \$7,302,816 is detailed as follows:

New Construction	\$2,534,940
Site Development	490,000
Temporary Utilities	15,000
Design Contingency	303,900
Construction Contingency	151,950
Fixed Equipment	3,000,000
Architect/Engineering Fees	285,000
Movable Equipment	480,091
Application Fee	2,000
Processing Fee	<u>39,935</u>
Total Project Cost	\$7,302,816

Project costs are based on a construction start date of September 1, 2018, with a 7-month construction period.

The applicant's financing plan appears as follows:

Cash - Oneida Health Systems, Inc.	\$1,001,546
Cash - Roswell Park Cancer Institute Oncology, P.C.	1,001,546
Capital Lease (Equipment)	3,000,000
EHCPS-P-I Grant funding	<u>2,299,724</u>
Total	\$7,302,816

Varian Medical Systems, Inc. has provided a preliminary Finance Lease proposal for the TrueBeam and CT equipment, for full-pay-out with equipment title passing to Lessee at the end of the seven-year term for \$1.00. The lease would commence at time of equipment acceptance or first clinical use and provides two payment alternatives: 84 payments of \$43,565 each or three payments of \$0 followed by 81 payments of \$45,539.

Incremental Operating Budget

The applicant has submitted an incremental operating budget, in 2018 dollars, for the first and third years, 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	\$639.70	\$39,022	\$673.90	\$88,281
Medicaid MC	636.22	292,662	674.93	662,111
Medicare FFS	636.22	409,727	675.13	926,955
Medicare MC	636.22	292,662	674.93	662,111
Commercial FFS	635.69	760,921	675.09	1,721,488
Commercial MC	637.61	97,554	674.94	220,704
Private Pay/Other	636.22	<u>58,532</u>	675.62	<u>132,421</u>
Total Revenues		\$1,951,080		\$4,414,071
<u>Expenses</u>				
Operating	\$535.61	\$1,642,722	\$458.02	\$2,994,986
Capital	<u>172.82</u>	<u>530,051</u>	<u>120.68</u>	<u>789,109</u>
Total Expenses	\$708.44	\$2,172,773	\$578.70	\$3,784,095
Gain/(Loss)		<u>(\$221,693)</u>		<u>\$629,976</u>
Total Visits		3,067		6,539

The following is noted with respect to the submitted budget:

- Volume for the Joint Venture (JV) is estimated based on market volume (new patients) and the treatment volume (number of treatments per patient) expected to be seen at the facility. The primary service area is defined as Oneida and any Utica area zip codes that are within a 45-minute drive to the Oneida facility. The service area also includes zip codes in Madison and Oneida counties, which encompass 1,869 square miles—59% of which is rural.
- The applicant anticipates a three-year ramp-up to full utilization. Year One estimates 256 radiation new starts (a 60% ramp-up adjustment was applied to this) with each patient is estimated to receive 20 visits. This is estimated to be about 22% of the primary service area volume.
- In Year Three it is estimated that the JV will see 327 Radiation new starts and these patients will have 20 visits each. This is about 28.9% of the primary service area volume.
- The physicians will be hired into Roswell Park and leased to the JV at fair market value.
- Revenue assumptions are based on current average per visit payment rates by payor for radiation therapy services. The assumptions were developed taking into consideration the CPT revenue codes usually billed for radiation therapy services and Oneida Healthcare's regional payor mix to determine what the likely average reimbursement would be for a patient as a percentage of Medicare 2017 rates. These payor weighted averages were applied to the volume assumptions developed.
- Expense and utilization assumptions are based on statistical calculations to determine the patient radiation needs for patients in the Oneida primary service areas, as well as secondary service areas. The utilization calculation was based on population, stratified for age and applied cancer incidence rates based on age groups.
- Outpatient utilization by payor source for Year One and Year Three is as follows:

<u>Payor</u>	<u>Years One &amp; Three</u>
Medicaid FFS	2%
Medicaid MC	15%
Medicare FFS	21%
Medicare MC	15%
Commercial FFS	39%
Commercial MC	5%
Private Pay/Other	3%

#### Capability and Feasibility

Total project cost of \$7,302,816 will be satisfied with \$1,001,546 in equity from Oneida Health's operations, \$1,001,546 in equity from Roswell Park Cancer Institute Oncology, PC, a \$3,000,000 capital lease and \$2,299,721 from an EHCPSP-I grant. Varian Medical Systems, Inc. has provided a capital lease proposal for the equipment at the above stated terms with title passing to the Lessee for \$1.00 at the end of seven years.

Working capital requirements are estimated at \$630,683 based on two months of incremental third year expenses. The applicants will satisfy this requirement entirely by equity from operations. Roswell Park Cancer Institute Oncology, P.C. is a subsidiary of Roswell Park Cancer Institute Corporation. As shown on BFA Attachment A and B, the entities have significant liquid assets to cover the working capital requirement.

The entity projects a net loss of \$221,693 in the first year and net gain of \$629,976 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 on negotiations with commercial payors. The budgets are reasonable. The System's CEO and RPCI's President/CEO provided a letter committing to support the operations through cash infusions as needed during the start-up phase. They noted that the business plan approved by the respective Boards of Directors provides a commitment to support this JV to ensure long term success of providing radiation care to the community.

BFA Attachment A is Oneida Health Systems, Inc.'s 2015, 2016, and 2017 certified financial statements and their internal financial statements as of February 28, 2018, which indicate significant liquid assets to cover their portion of the total project cost for this application. Oneida achieved both positive average working capital and net asset positions and generated an average net loss of \$2,555,022 for the 2015-2016 period. In 2017, the facility achieved both positive working capital and net asset positions and

generated a net loss of \$793,752. For the period ending February 28, 2018, the facility achieved both positive working capital and net asset positions and generated a net loss of \$364,578. The losses, on an accrual basis, are of a non-cash nature and do not affect Oneida Health's ability to fund its current operations.

BFA Attachment B is Roswell Park Cancer Institute Corporation's certified financial statements for the fiscal years ending March 31, 2016 and March 31, 2017, and their internal financial statements as of December 31, 2017, which indicate significant liquid assets to cover their portion of the total project cost for this application. The entity achieved both positive average working capital and net asset positions and generated an average net loss of \$22,127,000 for the 2016-2017 period, and a net loss of \$41,362,000 for the period ending December 31, 2017. The losses, on an accrual basis, are of a non-cash nature and do not affect Roswell Park's ability to fund its current operations.

BFA Attachment C is the pro forma balance sheet, which shows the entity will start with \$4,302,816 in owner equity.

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	2015, 2016, 2017 Consolidated Certified Financial and 02/28/2018 Internal Financial Summary of Oneida Health Systems, Inc.
BFA Attachment B	2016 & 2017 Consolidated Certified and 12/31/2017 Internal Financial Summary of Roswell Park Cancer Institute Corporation
BFA Attachment C	Opening Day Pro Forma Balance Sheet



**Project # 172423-B**  
**MediDental Group LLC d/b/a MediDental Care**

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

**Executive Summary**

**Description**

MediDental Group, LLC d/b/a MediDental Care, an existing New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) for the provision of dental services. The proposed D&TC will be housed in 2,535 square feet of leased space in an existing four-story, mixed-use building located at 22-46 31<sup>st</sup> Street, Astoria (Queens County). The Center will have five Dental Hygiene rooms, a Pan-X Ray area, lab space and requisite support areas located on the ground floor level. Second floor space will be used for staff and administrative offices and utilities will be located in the basement.

The proposed ownership of the operations is as follows:

MediDental Group, LLC	
<u>Members</u>	
Emunah Family Ventures, LLC	60%
Emanuel Inoyatov (100%)	
Dalhart Ventures, LLC	40%
Richard (Dyke) Rogers (100%)	

Andrew Sarowitz, D.D.S., a dentist currently in private practice, will be the Center's Medical Director.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
The applicant projects 12,150 visits in Year One and 26,325 in Year Three. Upon approval, the center will be known as MediDental Care.

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 \$1,522,056 will be met through members' equity. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,250,235	\$2,708,843
Expenses	<u>\$1,167,080</u>	<u>\$1,958,915</u>
Gain/(Loss)	\$83,155	\$749,928



## 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of MediDental Group, LLC, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the First Amended and Restated Operating Agreement of MediDental Group, LLC, which is acceptable to the Department. [CSL]
5. Submission of a facility lease, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a Certificate of Amendment of the Articles of Organization of Emunah Family Ventures, LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an Operating Agreement of Emunah Family Ventures, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an Operating Agreement of Dalhart Ventures LLC, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of a Certificate of Amendment to the Application of Authority of Dalhart Ventures LLC, which is acceptable to the Department. [CSL]
10. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before September 1, 2018 and construction must be completed by February 1, 2019, 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 start date this shall constitute abandonment of the approval. [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

**June 7, 2018**

## Need Analysis

### Analysis

The primary service area is Queens County, with an emphasis on Astoria. The population of Queens County was 2,230,722 in 2010. Per the PAD projection data from the Cornell Program on Applied Demographics, the population of Queens County is estimated to grow to 2,378,066 by 2025, an increase of 6.6%.

The proposed center will provide Dental services. There are nine Article 28 diagnostic and treatment centers which offer a variety of services, including dental outpatient services. This will be the first Article 28 diagnostic and treatment center in Queens County to offer just dental outpatient services.

The number of projected visits is 12,150 in Year One and 26,325 in Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

### Conclusion

Approval of this project will provide improved access for dental services to the residents of Astoria as well as the surrounding communities within Queens County.

### Recommendation

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

## Program Analysis

### Project Proposal

Proposed Operator	MediDental Group, LLC
To Be Know As	MediDental Care
Site Address	22-46 31st Street Astoria, NY 11105 (Queens County)
Specialties	Dental O/P
Hours of Operation	Monday through Friday, 8 am to 6 pm. If needs indicate, may expand to weekends.
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	10.14 FTEs / 18.83 FTEs
Medical Director(s)	Andrew Sarowitz, DDS
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Mount Sinai Queens Hospital 1 miles / 6 minutes away

### Character and Competence

The members of MediDental Group, LLC are two limited liability companies, each with a single member, as follows:

<b>Name</b>	<b>Interest</b>
<b>Enunah Family Ventures, LLC</b>	<b>60%</b>
Emanuel Inoyatov (100%)	
<b>Dalhart Ventures, LLC</b>	<b>40%</b>
Richard Rogers (100%)	
<b>Total</b>	<b>100%</b>

**Mr. Emanuel Inoyatov** has over seven years of experience in the management of dental clinics. Since February 2013, he has been employed by Health Professional NYC, a management company that provides services to urgent care facilities and dental practices. Since June 2016, he is a member of and has also served as CEO of Dental Made Easy Management Group, LLC. In addition to oversight of the company, he works with multiple dental practices. Mr. Inoyatov reports he has responsibility for overall management of all aspects of practice operations with the exception of the actual provision of services.

**Mr. Richard Rogers** has over 15 years of experience at Rogco Management Inc. As a consultant and manager, he manages various technology, security, energy and agricultural businesses. Mr. Rogers is also a member of Dental Made Easy Management Group, LLC.

Disclosure information was similarly submitted and reviewed for the Medical Director, Andrew Sarowitz, DDS. Dr. Sarowitz earned his doctoral degree in dental surgery from New York University College of Dentistry and completed two externships in oral and maxillofacial surgery. He performed his residency at Long Island College Hospital, where he also instructed dental residents in a program designed to address the special needs of patients with developmental disabilities. Currently, he is the owner/founder of four dental practices located in Manhattan, Brooklyn and the Bronx.

Mr. Inoyatov has provided an affidavit stating that the proposed dental clinic will not have any management service agreement, consulting agreement or administrative service agreement upon or post approval of this project.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's 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 for the proposed site, the terms of which are summarized below:

Date	December 18, 2017
Premises:	2,535 Sq. Ft (1,541 sq. ft. ground floor, 821 sq. ft. second floor, and 173 sq. ft. basement) at 22-46 31st Street, Astoria, NY 11105
Landlord:	QN Realty, LLC
Lessee:	MediDental Group, LLC
Term:	10 Years plus two (2) 4-year renewal options
Rental:	\$198,000 (\$78.10 per sq. ft.) 3% annual increase starting in the 3 <sup>rd</sup> year. No fixed rent for first 120 days and 50% fixed rent next 120 days.
Provisions:	Taxes, insurance, utilities and maintenance

The applicant has provided an affidavit stating that the lease is an arm's length arrangement. Letters from two New York State (NYS) licensed realtors have been provided attesting to the rental rate being of fair market value.

#### Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment is estimated at \$1,522,056, broken down as follows:

Renovation & Demolition	\$760,500
Design Contingency	\$76,050
Construction Contingency	\$76,050
Planning Consultant Fees	\$20,000
Architect/Engineering Fees	\$60,840
Other Fees	\$150,000
Movable Equipment	\$368,301
Application Fees	\$2,000
Additional Processing Fees	<u>\$8,315</u>
Total Project Cost	\$1,522,056

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

The applicant will fund the total project cost from members' equity.

BFA Attachment A is the net worth summary of the members of MediDental Group, LLC, which shows sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. Proposed member Richard Rogers has submitted an affidavit stating he is willing to contribute resources disproportionate to his membership interest in the operation to cover any equity shortfall.

#### Operating Budget

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

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid FFS	\$104.91	\$63,787	\$104.90	\$55,282
Medicaid MC	\$105.02	\$369,968	\$105.01	\$939,803
Medicare FFS	\$105.00	\$127,575	\$105.02	\$138,206
Medicare MC	\$105.02	\$318,937	\$105.01	\$829,238
Commercial FFS	\$104.98	\$267,908	\$104.99	\$525,184
Private Pay	\$105.00	<u>\$102,060</u>	\$105.00	<u>\$221,130</u>
Total Revenues		\$1,250,235		\$2,708,843
 <u>Expenses</u>				
Operating		\$839,549		\$1,625,444
Capital		<u>327,531</u>		<u>333,471</u>
Total Expenses		\$1,167,080		\$1,958,915
Net Income		<u>\$83,155</u>		<u>\$749,928</u>
Utilization (Visits)		12,150		26,325
Cost per Visit		\$96.06		\$74.41

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

Payor	Year One		Year Three	
	Visits	%	Visits	%
Medicaid-FFS	608	5%	527	2%
Medicaid-MC	3,523	29%	8,950	34%
Medicare-FFS	1,215	10%	1,316	5%
Medicare-MC	3,037	25%	7,897	30%
Commercial	2,552	21%	5,002	19%
Private Pay	972	8%	2,106	8%
Charity Care	243	2%	527	2%
Total	12,150	100%	26,325	100%

Revenue and reimbursement assumptions are based on the proposed operators' experience in managing and operating dental practices, along with reviewing AHCF-1 Medicaid cost reports. Expense assumptions are based on the staffing needed to meet utilization expectations.

Utilization projections are based the proposed operators' management and operational experience with dental practices. The applicant plans on implementing marketing, advertising, and community outreach programs targeted to reach pre-schools, community groups, houses of worship and others. A Charity Care policy will be in place to provide financial assistance to the patients. Additionally, the Center will work with local hospitals and primary care providers to make sure that needed free dental care it will be available at the site.

#### Capability and Feasibility

Total project costs of \$1,522,056 will be satisfied from the proposed members' equity. The working capital requirement is estimated at \$326,486, based on two months of third year expenses. Funding will be provided from the members' financial resources. Review of BFA Attachment A, the personal net worth statement of the applicant members, shows sufficient liquid resources to meet the total project cost and the working capital equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. Proposed member Richard Rogers has submitted an affidavit stating he is willing to contribute resources disproportionate to his membership interest in the operation to cover any equity shortfall.

The submitted budget projects a first year and third year net income of \$83,155 and \$749,928 respectively. Revenues, expenses and utilization assumptions are based on the proposed operator's experience in the operating similar facilities. BFA Attachment B is MediDental Group, LLC's pro-forma balance sheet that shows operations will start off with \$1,848,542 in equity. The applicant's budget appears to be reasonable.

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	MediDental Group, LLC members Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet of MediDental Group, LLC



**Project # 181119-E  
Premium Health**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment    **Acknowledged:** February 20, 2018

**Executive Summary**

**Description**

Premium Health, Inc. (Premium), a voluntary not-for-profit, Article 28 Diagnostic and Treatment Center (D&TC) located at 620 Foster Avenue, Brooklyn (Kings County), requests approval for indefinite life. Premium also operates an extension clinic at 5506 15th Avenue, Brooklyn, and is finalizing contingencies to certify a second extension clinic at 4514 16th Avenue, Brooklyn, which was approved to be funded with a Statewide Health Care Facility Transformation Program grant (CON 171465). The facility is a Federally Qualified Health Center (FQHC) and is licensed to provide Medical Services – Primary Care and Medical Services – Other Medical Specialties. There are no changes in services associated with this application request.

The D&TC was approved by the Public Health Council under CON 102147 with a five-year limited life and began operations effective December 18, 2012. The directives for Premium’s limited life approval included providing at least 5% of total annual visits to uninsured or underinsured patients by Year Two, providing at least 60% of total annual visits to Medicaid beneficiaries, at least 50% of total annual visits must be for primary care services, and at least Level 1 Patient-Centered Medical Home (PCMH) certification must be received by Year Three.

The Center is open to all patients in need of services. The D&TC serves the communities of Borough Park and Flatbush/Midwood/Kensington in Brooklyn, a service area with a large Hasidic Jewish population and a substantial percentage of residents living at or below the Federal Poverty

Level. The facility has a transfer and affiliation agreement with NYU Langone Hospital - Brooklyn.

**OPCHSM Recommendation  
Approval**

**Need Summary**

Based on CON 102147, Premium Health, Inc. projected 9,150 visits in Year One and 10,500 visits in Year Three. Medicaid visits were projected at 85.0 % and Charity Care was projected at 6.0% for Year Three. The total number of visits was 213 in Year One (2013) and 11,887 in Year Three (2015). The facility did not receive its Medicaid Provider Number until early 2014, so the number of visits for 2013 was extremely low. The total number of visits for 2014 was 5,944, which is more representative of an actual first “full” year. Actual Charity Care in Year Three (2015) was 8.0 % and Medicaid was 58.1%. Upon approval of this project, Premium Health projects 35,937 visits in Year One with Medicaid at 78.0% and Charity Care at 6.0 %.

**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. The projected budget is as follows:

	<u>Year Three</u>
Revenues	\$9,578,610
Expenses	8,852,324
Net Income	\$726,286

## 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

**June 7, 2018**



## Need and Program Analysis

### Analysis

The Center is not proposing to add any services. Eli Inzlicht-Sprei, M.D. will continue to serve as the Center's Medical Director and staffing will remain at current levels.

The primary service area is the communities of Borough Park and Flatbush/Midwood/Kensington which includes the following zip codes: 11204, 11218, 11219, and 11230. These communities consist of a large Hasidic Jewish population. Borough Park is a Health Professional shortage area for Primary Care Services (Source: HRSA).

The table below provides information on projections and utilization by visits for Year One and Year Three based on CON 102147.

CON 102147-Visits	Year One (2013)		Year Two (2014)		Year Three (2015)	
	Projected	Actual	Projected	Actual	Projected	Actual
<b>Premium Health</b>						
Total	9,150	213	-	5,944	10,500	11,887

The center did not receive their Medicaid Provider Number until early 2014, thus the volume for 2013 was extremely low. As such, 2014 is a better representation of the facility's first full year of operation.

The table below provides Year Three utilization, projections and actual, by payor, for CON 102147, and projections for Year One following approval.

Payor	CON 102147		CON 181119
	Projected Year 3 (2015)	Actual Year 3 (2015)	Projections Year One
Medicaid FFS	11.0%	6.9%	8.0%
Medicaid MC	75.0%	51.2%	70.0%
Medicare FFS	1.8%	19.5%	10.0%
Medicare MC	0.4%	0.0%	0.0%
Commercial FFS/ MC	1.8%	14.5%	7.0%
Private Pay	6.0%	0.0%	0.0%
Charity Care	4.0%	8.0%	6.0%
Total	100.00%	100.00%	100.00%

As part its original CON approval, the Center committed to meeting the various conditions noted below. Information from the 2014-2016 AHCF cost report (2016 is latest available) indicates the following:

- At least 5% of total visits annually will be to uninsured or under-insured patients by Year Two.
  - In 2014, 15.5% of annual visits were from uninsured or under-insured individuals. In 2015, 8.0% of the annual visits were from uninsured or under-insured individuals. In 2016, 6.9% of the annual visits were from uninsured or under-insured individuals. The facility has met this commitment.
- At least 60% of total visits annually will be to Medicaid beneficiaries.
  - In 2014, 24.2% of annual visits were from individuals covered by Medicaid. In 2015, Medicaid patients accounted for 58.1% of visits and by 2016 that percentage climbed to 68.9%. The applicant indicated that they were unable to meet 60% Medicaid utilization during the first full year of operation as one of the facility's doctors initially brought in a high percentage of commercially insured individuals. Subsequently, the DTC has been successful in attracting Medicaid patients and now exceeds the 60% commitment.
- At least 50% of total annual visits must be for primary care services.
  - In 2014, primary care services accounted for 74.9% of total annual visits. In 2015, 60.8% of total annual visits were for primary care and in 2016, primary care accounted for 78.0% of total annual visits. The facility has met this commitment.

- At least Level 1 PCMH certification must be received by year three.
  - Both operational sites of the Center received Level 3 PCMH recognition from the National Committee for Quality Assurance on January 4, 2018. The facility has met this commitment.

#### 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 complaint.

#### Conclusion

Approval of this project will allow for the continued access to a variety of medical services for the communities of Borough Park and Flatbush/Midwood/Kensington as well as the surrounding communities within Kings County. The applicant is fulfilling its commitment to serve the uninsured and under-insured patients in the service area. Based on the results of the 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 the need and program perspectives, approval is recommended

## Financial Analysis

#### Operating Budget

The applicant submitted their current year (2017) and 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	\$451,729	\$580,450	\$676,990
Medicaid MC	4,407,371	5,680,586	6,635,498
Medicare FFS	471,825	585,708	671,121
Commercial FFS	140,556	184,406	217,294
Other (Exchange)	242,179	312,782	365,734
Grant Revenue	<u>1,011,973</u>	<u>1,011,973</u>	<u>1,011,973</u>
Total Revenues	\$6,725,633	\$8,355,905	\$9,578,610
<u>Expenses</u>			
Operating	\$5,714,213	\$6,946,023	\$7,936,973
Capital	<u>915,351</u>	<u>915,351</u>	<u>915,351</u>
Total Expenses	\$6,629,564	\$7,861,374	\$8,852,324
Net Income	<u>\$96,069</u>	<u>\$494,531</u>	<u>\$726,286</u>

Utilization (Visits)	27,937	35,937	41,937
Cost Per Visit	\$237.30	\$218.75	\$211.09

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

Payor	Current Year		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Medicaid FFS	2,246	8.0%	2,886	8.0%	3,366	8.0%
Medicaid MC	19,385	69.4%	24,985	70.0%	29,185	70.0%
Medicare FFS	2,983	10.7%	3,703	10.0%	4,243	10.0%
Commercial FFS	1,795	6.4%	2,355	7.0%	2,775	7.0%
Charity Care	<u>1,528</u>	<u>5.5%</u>	<u>2,008</u>	<u>6.0%</u>	<u>2,368</u>	<u>6.0%</u>
Total	27,937	100.0%	35,937	100.0%	41,937	100.0%

Revenue, expense, and utilization assumptions are based on the current operating experience of Premium. The increased utilization in Years One and Three reflect the expansion of services due to the new extension clinic to be located at 4514 16th Avenue in Brooklyn.

#### Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate net income of \$494,531 and \$726,286 during the first and third years after indefinite life certification. Revenues are based on current reimbursement methodologies. The submitted budgets are reasonable.

BFA Attachment A is the 2015 and 2016 certified financial statements of Premium Health, Inc. As shown, the facility had a net loss of \$250,202 in 2015, and net income of \$231,794 in 2016. Based upon year-end financials for 2017, Premium Health is expected to end with positive net income. The negative fund balance and negative working capital position accumulated in the early years of Premium Health are due to start-up costs. These costs have decreased slightly over time given the positive net income in 2016 and 2017. Premium Health expects the negative fund balance to be continually reduced as the Center continues with positive net income.

BFA Attachment B is the internal financial statements of Premium Health, Inc as of December 31, 2017. As shown, the entity achieved a net income of \$96,070 through December 31, 2017, and the negative fund balance has decreased.

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 - 2015 and 2016 certified financial statements of Premium Health, Inc
BFA Attachment B	Financial Summary – December 31, 2017 internal financial statements of Premium Health, Inc



Need Summary

There will be no change in services provided as a result of this application. The number of projected visits is 26,498 for Year One and 28,535 for Year 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

CFDSHC will acquire the Center's operation for \$597,528 and CFDS will fund this transaction on behalf of CFDSHC. CFDSHC will execute and deliver to CFDS an unsecured, non-interest bearing promissory note for \$597,528 (current

value of equipment, inventory and supplies), which shall become payable in the event and to the extent that CFDSHC has an operating surplus in any calendar year. The applicant has submitted a draft agreement of the promissory note. CFDS states that they will provide financial support to CFDSHC to ensure its financial viability and success. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,910,766	\$5,732,447
Expenses	<u>\$5,639,581</u>	<u>\$5,732,447</u>
Net Income	(\$728,815)	\$0

## 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 operating assets and working capital, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the Certificate of Amendment of the Certificate of Incorporation of CFDSHC, Inc., which is acceptable to the Department. [CSL]
3. Submission of a Certificate of Assumed Name, which is acceptable to the Department. [CSL]
4. Submission of a photocopy of the By-laws of CFDSHC, Inc., which is acceptable to the Department. [CSL]
5. Submission of a photocopy of a Certificate of Discontinuance, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of a lease, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a Certificate of Amendment of the Certificate of Incorporation of Center for Disability Services, 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]
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

**June 7, 2018**

## Need and Program Analysis

### Project Proposal

This project is solely a change of operator and there are no proposed changes to the services offered.

Upon approval, CFDSHC will operate the center's main D&TC site and three extension clinics, as follows:

<b>Site</b>	<b>Facility Type</b>
Center for Disability Services 314 South Manning Boulevard Albany, NY 12208 (Albany County)	Diagnostic and Treatment Center <i>Main Site</i>
Center for Disability Services 700 South Pearl Street Albany, NY 12208 (Albany County)	Diagnostic and Treatment Center Extension Clinic
Center for Disability Services Helping Hand Lane Glenville, NY 12325 (Schenectady County)	Diagnostic and Treatment Center Extension Clinic
Center for Disability Services 121 Opportunity Lane Schoharie, NY 12157 (Schoharie County)	Diagnostic and Treatment Center Extension Clinic
Center for Disability Services*** 939 Route 146 Clifton Park, NY 12065 (Saratoga County)	Diagnostic and Treatment Center Extension Clinic  <b>*** This site is no longer operational and is to be removed from the Operating Certificate</b>
Center for Disability Service – St. Margaret's Center*** 27 Hackett Boulevard Albany, NY 12208 (Albany County)	Diagnostic and Treatment Center Extension Clinic  <b>*** This site is no longer operational and is to be removed from the Operating Certificate</b>

### Analysis

The primary service area covers the following counties; Albany, Rensselaer, Saratoga, and Schenectady. CFDSHC intends to convert the center to a Federally Qualified Health Center (FQHC), and become a sub-grantee of Whitney M Young, Jr. Health Center, an existing FQHC in the capital region. The center will continue to provide the following services: primary care, pediatric care, psychology, audiology, mental health, dental, epilepsy care, medical social services, multiple sclerosis care, optometry, podiatry, physical medicine and rehabilitation, occupational therapy, speech language pathology and therapy, vocational rehabilitation, and women's care.

CFDSHC projects 26,498 visits for the proposed center in Year One and 28,535 in Year Three. The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

## Character and Competence

The Board of CFDSHC, Inc. is comprised of the following individuals:

<u>Name</u>	<u>Position/Title</u>
Maria Kansas Devine, M.D.	CMO/CEO, CFDSHC, Inc.
James P. Coleman	Chairman/Board Member, CFDSHC, Inc.
David J. Jurczynski	Treasurer/Board Member, CFDSHC, Inc.
Richard W. Becker	Secretary/Board Member, CFDSHC, Inc.
Marc A. Antonucci	Board Member, CFDSHC, Inc.
Donna M. Clyne	Board Member, CFDSHC, Inc.
Milton C. Hall III	Board Member, CFDSHC, Inc.
Richard W. Harris	Board Member, CFDSHC, Inc.
M. Tina Goodwin-Segal	Board Member, CFDSHC, Inc.
Anne E. Schneider	Board Member, CFDSHC, Inc.

CFDSHC, Inc. is governed by a community-based board. All nine board members live and/or work in the Capital Region and are knowledgeable regarding the healthcare needs of the patients the Center serves.

**Dr. Devine** is a board-certified family physician with nearly 30 years of experience. Since 2014, Dr. Devine has served as the center's Chief Medical Officer. Prior to that, she was a founding partner of Troy Family Physicians where she worked for 25 years. Additional experience includes service as the Troy Police and Fire Surgeon; Physician for the Watervliet Central School District; Nursing Home Physician at St. Louise House; Medical Advisor for the Visiting Nurses Association; and Associate Clinical Professor at Albany Medical College.

**Mr. Coleman** is an Architect and is a Principal of hcp Architects, LLP in Albany, a firm that has worked on projects in the health care field.

**Mr. Jurczynski** is the Executive Vice President and Chief Financial Officer of Capital Communications Federal Credit Union where he oversees investment portfolios of mostly fixed income securities and has asset/liability management responsibility over residential and commercial real estate loans.

**Mr. Becker** is the Director of Corporate and Foundation Relations at the State University at Albany where he works with University leadership and corporate and private foundations to identify and secure funding to increase programmatic and research opportunities for the faculty and student body. Prior to this position, he was the Manager of Development Communications for Albany Medical Center where he was responsible for media events, advisories, releases, responding to media inquiries and web content.

**Mr. Antonucci**, an attorney with experience in health law and litigation, is employed by the Center for Disability Services, Inc. as its General Counsel. Prior to that, he was a partner of Rivkin Radler, LLP, an Albany law practice.

**Ms. Clyne**, is an attorney with experience representing various health care entities, including hospitals, nursing homes, clinics and adult care facilities employed by Shenker, Russo & Clark, LLP, an Albany law practice.

**Mr. Hall** is an experienced financial advisor who has been employed by Northwestern Mutual for over 45 years where he serves as a Managing Partner.

**Mr. Harris** reported that he has been retired since April of 1995. Prior to his retirement he was a firefighter with the Fire Department of the City of New York (FDNY).

**Ms. Goodwin-Segal** has been employed for nearly 15 years by Measurement Incorporated, a corporation that provides customized educational assessment services for state governments. Currently, she serves as the Director of the NYS Center for School Safety where her responsibilities include collaboration with state agencies and in-depth knowledge of health-related topics.



**Ms. Schneider** is the Deputy Executive Director of the Center for Disability Services where she has worked for over 30 years. She serves as the center's spokesperson and is also responsible for overseeing the fundraising and marketing activities.

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

Approval of this project will provide for continued access to a variety of medical services to the residents of Albany, Rensselaer, Saratoga, and Schenectady Counties. 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

#### Lease Agreement:

The applicant has submitted an executed Lease Agreement for the Center's main and extension clinic sites, the terms of which are summarized below:

Date:	November 15, 2017
Premises:	314 South Manning Blvd, Albany, NY; 700 South Pearl Street, Albany, NY; 55 Helping Hand Lane, Glenville, NY; 121 Opportunity Drive, Schoharie, NY (via assignment, owned by Schoharie ARC)
Landlord:	Center for Disability Services, Inc.
Lessee:	CFDSHC, Inc.
Term:	10 Years, option to renew with 5 one (1) year renewals.
Rental:	\$247,452.93 per annum. (\$20,621.08 per month).
Provisions:	Rent includes the tenant's portion of the taxes, maintenance, utilities and insurance.

The applicant has submitted an affidavit stating the lease agreement is a non-arm's length arrangement.

Acquisition and Administrative Service Agreement

The applicant has submitted an executed Acquisition and Administrative Service Agreement (AASA) between CFDS, Inc. and CFDSHC, Inc. The terms are summarized below:

<b>Acquisition:</b>	
Date:	February 12, 2018
Seller:	Center for Disability Services, Inc.
Buyer:	CFDSHC, Inc.
Asset Acquired:	All rights, title and interest in the Center, its utilized equipment, inventory and supplies on hand.
Purchase Price:	\$597,528 (current value of equipment utilized, inventory & supplies).
Payment of Purchase Price:	\$597,528 Promissory note from CFDSHC, Inc. to the Center for Disability Services, Inc.
<b>Administrative Services:</b>	
Provider:	Center for Disability Services, Inc.
Purchaser:	CFDSHC, Inc.
Services Provided:	Physicians, healthcare professionals & support staff necessary for/involved in the clinic operations; back office support/general administrative services; maintain all existing insurance coverage; legal services; quality/compliance services; financial & purchasing; human resources; information technology; government/community relations and grants; enrollments; general receptions; property management services. Financial support \$1,000,000/year for working capital or any deficit including capital expenditures (subject to reimbursement to extent CFDSHC has an operating surplus in any calendar year).
Compensation:	CFDSHC will reimburse CFDS total cost of employees including benefits bi-weekly. The value of all other services to be reimbursed as determined monthly.

CFDS, Inc. will provide the above services and the Licensed Operator will retain ultimate authority, responsibility and control for the operations. There is a relationship between CFDSHC (applicant) and the administrative service agreement provider (CSDS) in that the entities share administrative staff, knowledge and resources. The applicant has submitted an executed attestation stating that they understand and acknowledge that there are powers that must not be delegated and the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

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

## Operating Budget

The applicant submitted the facility's current year (2016) and projected operating budget for the first and third years, in 2018 dollars, shown below:

	<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>
<u>Revenues</u>						
Medicaid-FFS	\$196.79	\$1,170,129	\$217.38	\$1,350,799	\$221.13	\$1,512,057
Medicaid-MC	\$196.84	\$658,427	\$217.45	\$760,222	\$221.17	\$850,857
Medicare-FFS	\$55.17	\$478,169	\$55.17	\$492,513	\$55.17	\$526,001
Commercial-FFS	\$96.77	\$711,633	\$96.77	\$740,082	\$96.77	\$782,756
Private Pay	\$333.60	\$69,055	\$333.55	\$71,047	\$333.46	\$75,695
Pharmacy-340B		\$0		\$0		\$500,000
Other Revenue*		\$477,022		\$496,103		\$515,174
CFDS, Inc. Support		\$0		<u>\$1,000,000</u>		<u>\$969,907</u>
Total Revenues		\$3,564,435		\$4,910,766		\$5,732,447
<u>Expenses</u>						
Operating	\$228.66	\$5,835,294	\$201.72	\$5,345,294	\$190.58	\$5,438,160
Capital	<u>\$9.02</u>	<u>230,059</u>	\$11.11	<u>294,287</u>	<u>\$10.31</u>	<u>294,287</u>
Total Expenses	\$236.68	\$6,065,353		\$5,639,581	\$200.89	\$5,732,447
Net Income		<u>(\$2,500,918)</u>		<u>(\$728,815)</u>		<u>\$0</u>
Utilization (Visits)		\$25,519		26,498		28,535

\*Revenue related to Botox Service reimbursement and adjustments for payments from prior period.

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

- Revenue and utilization assumptions are based on the actual performance of the Center and its extension clinics in 2016. The first and third year revenues reflect changes related to the conversion of the Center to a FQHC, the discontinuation of neurology services in 2017, and the addition of a Pharmacy 340B Program. Medicaid rates reflect the changes related to the conversion of the Center to a FQHC and wrap-around payments for Medicaid MCO related to primary care visits.
- Expenses were adjusted for the inflation, discontinuation of the neurology service in 2017 and recategorization of certain expenses due to the AASA, specifically, all staff will be provided through an AASA, except for the Administrator, who will be employed by CFDSHC.
- CFDS, Inc. will provide financial support up to \$1,000,000 per year for working capital or any deficit, including capital expenditures, which CFDSHC may incur.
- Utilization is expected to increase in the first and third year due to anticipated relationship with Whitney M. Young Jr. Health Center, with projected growth in the children, adolescent and older population of the Center's service area.
- Utilization by payor source is summarized below:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	5,946	23.3%	6,214	23.5%	6,838	24.0%
Medicaid-MC	3,345	13.1%	3,496	13.2%	3,847	13.5%
Medicare-FFS	8,667	34.0%	8,927	33.7%	9,534	33.4%
Commercial FFS	7,354	28.8%	7,648	28.9%	8,089	28.3%
Private Pay	<u>207</u>	<u>0.8%</u>	<u>213</u>	<u>0.8%</u>	<u>227</u>	<u>0.8%</u>
Total	25,519	100%	26,498	100%	28,535	100%

The applicant stated that the Center's existing policies and procedures will remain in place upon approval of this application. In accordance with current policy, the ability to pay will not be a factor in treating a patient. According to the CFDS 2016 certified financial statements, the Center provides a significant amount of partially or totally uncompensated patient care through their D&TC clinic. Medicaid utilization is anticipated to be approximately 37% annually.

### Capability and Feasibility

CFDSHC, Inc will acquire the Center's operation for \$597,528 and CFDS, Inc will fund this transaction on behalf of CFDSHC, Inc. BFA Attachment C is the 2015-2016 certified financial statements of Center for Disability Services Holding Corporation, which shows the entity has sufficient liquid resources to meet the project's equity requirements. CFDSHC will execute and deliver to CFDS, Inc. an unsecured, non-interest bearing promissory note for \$597,528, which shall become payable in the event and to the extent that CFDSHC has an operating surplus in any calendar year. The applicant has submitted a draft agreement of the Promissory Note. There are no project costs associated with this application.

Working capital requirements are estimated at \$939,930 based on two months of Year One expenses. CFDS, Inc. will provide financial support up to \$1,000,000 per year for working capital or any deficit including capital expenditures, which CFDSHC may incur. CFDSHC will execute and deliver to CFDS an unsecured, non-interest bearing promissory note for working capital, which shall become payable in the event and to the extent that CFDSHC has an operating surplus in any calendar year. Review of BFA Attachment C, Center for Disability Services Holding Corporation certified financial statements, indicate sufficient liquid resources to meet all the equity requirements.

The submitted budget is projecting an overall first year loss of \$728,815 and breakeven-even in the third year, which includes \$1,000,000 or less in financial support from CFDS, Inc. As mentioned above, CFDS will provide operating financial support to CFDSHC to ensure financial viability and success. Revenues are based on the Center's actual reimbursement rates by payor. Revenues for the first and third year reflect changes related to the conversion of the Center to FQHC status, the discontinuation of neurology services in 2017, and addition of a Pharmacy 340B program. Medicaid rates reflect payment as a FQHC sub-grantee. BFA Attachment F is a budget sensitivity analysis holding rates to the 2016 payment level (non-FQHC) by payor for the Year One utilization, which shows that the budgeted loss would increase by \$1,700,260 resulting in a net loss in year one of \$2,429,075. Given the commitment of CFDS to provide financial support to ensure the financial viability of the Center as it seeks FQHC status, the budget appears reasonable. BFA Attachment D is CFDSHC's pro forma balance sheet, which shows operations will start off with \$939,930 in equity.

BFA Attachment C is Center for Disability Service Holding Corporation's certified financial statements for 2015-2016, which shows positive working capital position, positive net assets position and positive operating income for the period. Also included as part of Attachment C is the Internal Financial Statements of the facility as of October 30, 2017, which shows positive working capital, positive net assets position and an operating income of \$4,213,581.

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	Pre- Closing Organizational Chart
BFA Attachment B	Post-Closing Organizational Chart
BFA Attachment C	2015-2016 Certified Financial Statements and Internal Financial as of October 31, 2017 of Center for Disability Service Holding Corporation
BFA Attachment D	CFDSHC, Inc's-Pro Forma Balance Sheet
BFA Attachment F	Budget Sensitivity



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:

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

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

**June 7, 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 <sup>st</sup> Year / 3 <sup>rd</sup> 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
<b>True North DC Holding, LLC</b> <i>Knickerbocker Dialysis, Inc.</i> (51%) DaVita of New York, Inc. (100%) DaVita Inc. (100%) <b>North Shore LIJ Renal Ventures, LLC</b> (49%) North Shore University Hospital (100%) Northwell Healthcare, Inc. (100%) Northwell Health, Inc. (100%)	<b>88%</b>
<b>Quinum One, LLC</b> <b>Quinum LLC</b> (75%) Alexander Bangiev, MD (38.88%) Dayanand Huded, MD (22.24%) Ljubisa Micic, MD (38.88%) <b>Narayan Holding Company, LLC</b> (25%) Narayan Das Agrawal, MD (100%)	<b>12%</b>
<b>TOTAL</b>	<b>100%</b>



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:

<b>Name</b>	<b>Position</b>
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:

<b>Manager</b>	<b>Representing/Affiliation</b>
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 \$450,000,000 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
<b>Totals</b>	<b>\$5,781,000</b>	<b>\$4,013,800</b>	<b>\$1,767,200</b>

#### **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.

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

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

<b>Lease Agreement</b>	
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.

<b>Assignment and Assumption of Lease Agreement</b>	
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**

<b>Lease Agreement</b>	
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.

<b>Assignment and Assumption of Lease Agreement</b>	
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**

<b>Consulting and Administrative Services Agreement</b>	
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

<b>Assignment, Assumption &amp; Restatement of Consulting &amp; Administrative Services Agreement</b>	
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**

<b>Consulting and Administrative Services Agreement</b>	
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

<b>Assignment, Assumption and Restatement of Consulting and Administrative Services Agreement</b>	
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	\$1,112.92	\$444,055	\$1,114.08	\$1,548,573
Medicare FFS	\$314.23	463,184	\$296.38	1,564,000
Medicaid FFS	\$256.17	63,018	\$263.06	239,649
All Other	\$300.04	<u>369,046</u>	\$306.01	<u>1,393,880</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		12,133
Cost per Treatment		\$524.41		\$320.27

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare FFS	1,474	44.0%	5,277	43.5%
Medicaid FFS	246	7.4%	911	7.5%
Commercial FFS	399	11.9%	1,390	11.5%
All Other	1,230	36.7%	4,555	37.5%

**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	\$1,106.26	\$604,019	\$1,106.61	\$2,158,987
Medicare FFS	\$303.08	614,941	\$297.47	1,763,716
Medicaid FFS	\$256.35	81,264	\$262.28	250,218
All Other*	\$300.99	<u>477,375</u>	\$306.93	<u>1,464,050</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

\$348.40

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare FFS	2,029	45.3%	5,929	43.6%
Medicaid FFS	317	7.1%	954	7.0%
Commercial FFS	546	12.2%	1,950	14.3%
All Other*	1,587	35.4%	4,770	35.1%

\* All Other revenues and utilization is comprised of VA, Medicare Advantage, which is managed care, and Medicare Assigned.

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

- Revenue projections are based on current rates received by similar facilities operated by the members of the applicant.
- 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

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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 64<sup>th</sup> 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.

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

True North V DC, LLC		
<b>Members</b>		
<b>True North DC Holding, LLC</b>		<b>80%</b>
Knickerbocker Dialysis, Inc.	51%	
North Shore-LIJ Renal Ventures, LLC	49%	
<b>Sun, Liang, Yang &amp; Yap, LLC</b>		<b>20%</b>
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%	

**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:

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

## 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

**June 7, 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 <sup>st</sup> Year / 3 <sup>rd</sup> 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
<b>True North DC Holding, LLC</b> <i>Knickerbocker Dialysis, Inc.</i> (51%) DaVita of New York, Inc. (100%) DaVita Inc. (100%) <b>North Shore LIJ Renal Ventures, LLC</b> (49%) North Shore University Hospital (100%) Northwell Healthcare, Inc. (100%) Northwell Health, Inc. (100%)	<b>80%</b>
<b>Sun, Liang, Yang &amp; Yap, LLC</b> 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%)	<b>20%</b>
<b>TOTAL</b>	<b>100%</b>

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:

<b>Name</b>	<b>Position</b>
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:

<b>Manager</b>	<b>Representing/Affiliation</b>
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 \$450,000,000 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
<b>Totals</b>	<b>\$5,813,000</b>	<b>\$4,070,000</b>	<b>\$1,743,000</b>

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 <sup>th</sup> 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		\$1,258,213		\$4,218,647
Less: Bad Debt		\$54,002		\$180,853
Total Patient Revenue		\$1,204,211		\$4,037,794
<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		\$2,043,399		\$3,894,173
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 # 181065-E**  
**The Caring Coalition of Central New York**

**Program: Hospice**  
**Purpose: Establishment**

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

**Executive Summary**

**Description**

Comfortcare of Cayuga County, Inc. d/b/a Hospice of the Finger Lakes (HFL) is a voluntary not-for-profit, Article 40 Hospice located at 1130 Corporate Drive, Auburn (Cayuga County). The Caring Coalition of Central New York d/b/a Hospice of Central New York Hospice & Palliative Care Associates (HCNY), a voluntary not-for-profit, Article 40 Hospice located at 990 Seventh North Street, Liverpool (Onondaga County), requests approval to acquire a majority of HFL’s assets and merge the Hospice into its operations. HCNY currently provides hospice services to the residents of Onondaga, Oswego and Madison Counties, and has over 36 years of experience. HFL serves the residents of Cayuga and western Onondaga Counties, and has over 29 years of experience. Upon approval of this application, HCNY’s operating certificate will be revised to add Cayuga County to its authorized geographic service area. Neither hospice maintains inpatient beds and as both programs currently provide identical services, there will be no change in HCNY’s authorized services upon merger. HCNY will use the assumed name “Hospice of the Finger Lakes” in the areas currently served by HFL.

Caring Coalition of Central New York and Comfortcare of Cayuga County, Inc. will enter into an asset purchase agreement to effectuate the merger. Upon Public Health and Health Planning Council (PHHPC) approval, HCNY will lease the administrative office space in Cayuga County from Comfortcare of Cayuga County, Inc. for no less than five years. HCNY will retain HFL’s administrative and clinical staff and volunteers, with a goal of seamlessly

integrating the HFL operation such that there will be no notable difference in the care provided.

HCNY has been providing HFL with support and consultation services since October 2014, as HFL has been experiencing financial losses due to a small patient census generating insufficient revenue to cover administrative overhead costs. Merging the two agencies will allow HCNY to employ the staff of both agencies in a more cost efficient and effective manner. Upon PHHPC approval, HFL will terminate its CMS Medicare Provider Number. The Department has approved HFL’s proposed closure plan. Comfortcare of Cayuga County, Inc. will continue operating as a 501(c)(3) charitable foundation to provide educational and financial support services to the region.

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

**Need Summary**  
The merger will preserve the services currently provided by HFL.

**Program Summary**  
Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate this hospice agency.

### Financial Summary

There are no project costs associated with this application and no staffing changes or change in services will result from the consolidation of the two hospice programs. HCNV will acquire HFL's business assets for a purchase price of \$1.00. An assignment and assumption of the value of the assets and liabilities will be determined at closing.

The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$9,812,898	\$10,545,514
Expenses	<u>\$9,737,134</u>	<u>\$10,274,390</u>
Gain/(Loss)	\$75,764	\$271,124

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
3. A copy of the amended by-laws of the applicant, acceptable to the Department. [CSL]
4. A copy of the asset purchase agreement of the applicant, acceptable to the Department. [CSL]
5. A copy of the lease agreement of the applicant, acceptable to the Department. [CSL]
6. A copy of the proposed certificate of incorporation of the applicant, acceptable to the Department. [CSL]
7. A copy of the stock certificates 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

**June 7, 2018**

## Need and Program Analysis

### Proposal

The Caring Coalition of Central New York d/b/a Hospice of Central New York/Hospice & Palliative Care Associates ("HCNY"), a not-for-profit corporation, requests approval for a merger and acquisition whereby HCNY will acquire the majority of the assets of Comfortcare of Cayuga County, Inc. d/b/a Hospice of the Finger Lakes ("HFL"). The merger will include all of HFL's approvals (including counties served and services authorized) into the existing HCNY and its approvals, under Article 40 of the Public Health Law.

HCNY is a 501(c)(3) organization that holds an Article 40 Operating Certificate to provide hospice services in adjoining Onondaga, Oswego and Madison Counties. HCNY has been providing services for approximately 36 years.

HFL is a 501(c)(3) organization that holds an Article 40 Operating Certificate to provide hospice services in Cayuga and Onondaga Counties. HFL has been providing services for approximately 29 years.

As part of this application process, HFL will file a Closing Plan with the Department and terminate its CMS Medicare Provider Number, but will continue operating as a 501(c)(3) charitable foundation under the name Comfortcare of Cayuga County, Inc. ("Comfortcare"). Comfortcare will educationally and financially support hospice services in Cayuga County and the nearby Finger Lakes region, but will not provide any clinical hospice services.

Upon completion of the merger, HCNY will:

1. Provide hospice services in Cayuga and Onondaga counties under the assumed name, "Hospice of the Finger Lakes". Both of the current assumed names of HCNY will be retained and "Hospice of the Finger Lakes" will become the third assumed name for this agency;
2. Maintain an administrative office in Cayuga County for no less than five years; and
3. Retain most, if not all of, the administrative and clinical staff and volunteers.

The applicant proposes to continue to serve the residents of the following counties from an office located at 990 Seventh North Street, Liverpool, New York 13088: Madison, Onondaga, and Oswego.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1130 Corporate Drive, Auburn, New York 13021: Cayuga and Onondaga.

The applicant proposes to continue to provide the following health care services from both locations:

Nursing	Bereavement	Pastoral Care
Medical Social Services	Nutrition	Home Health Aide
Homemaker	Housekeeper	Personal Care
Physical Therapy	Physician	Occupational Therapy
Speech Pathology	Respiratory Therapy	Audiology
Psychological	Clinical Laboratory	Inpatient Services
Pharmaceutical	Medical Supplies & Equipment	

Character and Competence Review

The Board of Directors of The Caring Coalition of Central New York d/b/a Hospice of Central New York/Hospice & Palliative Care Associates is as follows:

<b>Anne Marie Mullin</b> , Clinical Laboratory Technologist, President Director of Marketing, Vice President of Business Development & Marketing, Senior Vice President, Chief Executive Officer – Laboratory Alliance of Central New York, LLC	<b>Christopher Didio</b> , CPA, First Vice President Partner – Dannible & McKee, LLP
<b>Timothy G. Reed</b> , Second Vice President Continuous Improvement Specialist, Eaton	<b>Maria J. Grice</b> , Radiation Therapist, Secretary Chief of Radiation Services – Hematology Oncology Associates of Central NY
<b>Rosaline T. Letiecq</b> , Treasurer Retired, 12/2003	<b>Michael J. Luton</b> , CPA, Board Member Vice President, Financial Advisor – Madison Planning Group, Inc.
<b>Vicki A. Hopsicker</b> , Board Member School Counselor – Chittenango Central Schools	<b>Heather R. McClanahan</b> , CPA (Oregon), Board Member Vice President of Finance – Welch Allyn, Inc
<b>Carol A. Gavan</b> , Board Member Retired, 2012	<b>Mary Burgoon</b> , Board Member Retired, 2015
<b>Rachel A. Windover</b> , Board Member Retired, 2007	<b>Catherine J. Winger</b> , Board Member Retired, 12/31/2004

The following are not members of the governing body but are officers of the corporation:

<b>Cynthia L. Chandler</b> , RN, Chief Executive Officer Chief Executive Officer, Chief Clinical Officer, Director of Patient & Family Services – Hospice of Central New York	<b>Judith A. Setla</b> , MD, Medical Director Medical Director – Hospice of Central New York
<b>Thomas J. Maroney</b> , Chief Financial Officer Chief Financial Officer – Hospice of Central New York	<b>Jacqueline M. Fields</b> , RN, Corporate Compliance Officer Corporate Compliance Officer – Hospice of Central New York

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct indicate no issues with the licensure of the health professionals associated with this application. The state of Oregon indicated no issues with the licensure of the health professional associated with this application.

A seven-year review of the operations of Hospice of Central New York/Hospice & Palliative Care Associates was performed as part of this review. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Conclusion

Approval of this project will allow for continued hospice services in the counties served by HFL. Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate this hospice agency.

Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant submitted a draft Asset Purchase Agreement to acquire HFL's operating interests, to be effective upon PHHPC approval. The terms are summarized below:

Seller:	Comfortcare of Cayuga County, Inc., d/b/a/ Hospice of the Finger Lakes
Buyer:	The Caring Coalition of Central New York, d/b/a Hospice of Central New York
Asset Acquired:	Call contracts, books, records, permits, intellectual property, and good will arising from the seller or the business.
Excluded Assets:	Cash and equivalents, accounts receivable, named insurance plans, bylaws, minutes and stated records to the organization of the seller, any federal or state refunds due to the seller, contracts not transferable.
Assumed Liabilities:	Any assumed contracts, accounts payable, ordinary employment liabilities.
Excluded Liabilities:	All liabilities and obligations under assumed contracts that arise or are attributable prior to closing, the existing line of credit with KeyBank, National Association, any liability for taxes of the seller relating to the business or assumed liabilities for any pre-closing tax period. Also, claims from suits, actions and investigations and other legal proceedings as expressed in the agreement.
Purchase Price:	\$1.00 for the Business Assets and assumed liabilities as listed on the pro-forma.
Payment of Purchase Price:	\$1.00 at closing. The APA provides for assignment and assumption of the assets and liabilities with a valuation to be determined at closing.

BFA Attachment D provides the combined pro-forma balance sheet of the merged entities as of day one, which indicates positive working capital and net assets.

### Lease Agreement

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

Premises:	1130 Corporate Drive, Auburn, New York
Lessor:	Comfortcare of Cayuga County, Inc. (Property Owner)
Lessee:	The Caring Coalition of Central New York
Term:	Five years with One (1) year renewal successive extensions
Rental:	Monthly rental charge will be waived by the lessor as long as HCNV remains on the premises during the original lease term.
Provisions:	Lessee will maintain insurance premiums, liability insurance, and utility costs.

The applicant has provided an affidavit attesting that the lease is an arms-length agreement, as there is no relationship between landlord and tenant. The landlord will allow the tenant to occupy the current premises free of charge for the term of the lease.

## Operating Budget

The applicant has submitted a combined operating budget, in 2018 dollars, for the first and third years post-merger, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>		
Medicare (General Inpt.)	\$137,552	\$145,178
Medicaid (General Inpt.)	7,633	7,913
Medicare (Home Care)	\$7,728,631	\$8,316,469
Medicaid (Home Care)	743,471	780,744
Commercial/Other (Home Care)	<u>1,195,611</u>	<u>1,295,210</u>
Total Revenues	\$9,812,898	\$ 10,545,514
<u>Expenses</u>		
Inpatient	\$153,057	\$161,410
Home Care	<u>9,584,077</u>	<u>10,112,980</u>
Total Expenses	\$9,737,134	\$10,274,390
Net Income/(Loss)	<u>\$75,764</u>	<u>\$271,124</u>

Projected utilization by site of service for Years One and Three is as follows:

<u>Service Site</u>	<u>Year One</u>	<u>Year Three</u>
Inpatient Days	210	214
Home Care Visits	<u>53,080</u>	<u>55,266</u>
Total	53,290	55,480

Projected utilization by payor source for years one and three is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Medicare	85%	85%
Medicaid	2%	2%
Comm/Private Pay	13%	13%

The following is noted with respect to the submitted Combined HCNV and HFL budget:

- Year One rate calculations are based upon 2018 published Medicare and Medicaid rates, along with contracted rates with third party and private payors.
- For Year Three, revenue was estimated based on an annual 1.67% rate increase per year for Medicare and Medicaid, and an annual 2% rate increase for third party and private payors.
- Any potential losses will be covered through HCNV assets and philanthropic funding from the Hospice Foundation of Central New York.

## Capability and Feasibility

There are no project costs associated with this application and no staffing changes will be implemented. The submitted budget shows positive net income for the first and third years of operation. The opening combined balance sheet indicates that adequate working capital is available to support operations.

The working capital requirement is two months of first year expense or \$1,622,856, which will be funded from existing operations. BFA Attachment B indicates sufficient funds for the working capital requirement.

BFA Attachments A is the 2016-2017 certified financials of HFL, which shows the entity maintained an average negative working capital position and an average positive net asset position for the period. Also, the hospice achieved an operating gain of \$74,169 in 2016, but incurred an operating loss of \$46,994 in 2017.

BFA Attachment B is the certified financial summary for HCNV for fiscal years ending May 31, 2016 and 2017. As shown, HCNV maintained an average positive working capital position and a positive net asset position for the period. Also, the hospice achieved operating income of \$127,015 in 2016, and operating income of \$412,071 in 2017.

BFA Attachment C is the internal financial statement of HCNV for the period June 1, 2017 thru December 31, 2017. The entity shows positive working capital and net asset positions, and achieved and operating income of \$329,970.

BFA Attachment D is HCNV's combined pro-forma balance sheet and income statement as of the first day of operations, which shows positive working capital and net asset positions and indicates the entity has sufficient equity to facilitate this merger.

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	2016 & 2017 Certified Financial Statement, HFL
BFA Attachment B	2016 & 2017 Certified Financial Statement of HCNV
BFA Attachment C	HCNV Internal - 7 Month: June 1, 2017 to December 31, 2017
BFA Attachment D	Pro-Forma Statement of HCNV





**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:

<u>Current Operator</u>	
Oak Hill Acquisition Company, LLC	
<u>Members</u>	
Hershe Greenzweig	75%
Jacqueline Braunstein	25%

<u>Proposed Operator</u>			
Oak Hill Operating Co. LLC			
<u>Members</u>			
Rivky Klein	17.5%	Steven Landa	8.0%
Anna Appel	17.5%	Mordechai Berman	5.0%
Hinda Landa	10.0%	Andrea Mayer	5.0%
Suri Reich	10.0%	Helen Majerovic	5.0%
Yossi Mayer	10.0%	David Landa	2.0%
Pearl Salamon	10.0%		

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

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 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 RHCF operating assets for \$1,000 plus assumed liabilities (estimated at \$480,920 as of December 31, 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>\$5,759,643</u>
Net Income	\$721,757

## 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]

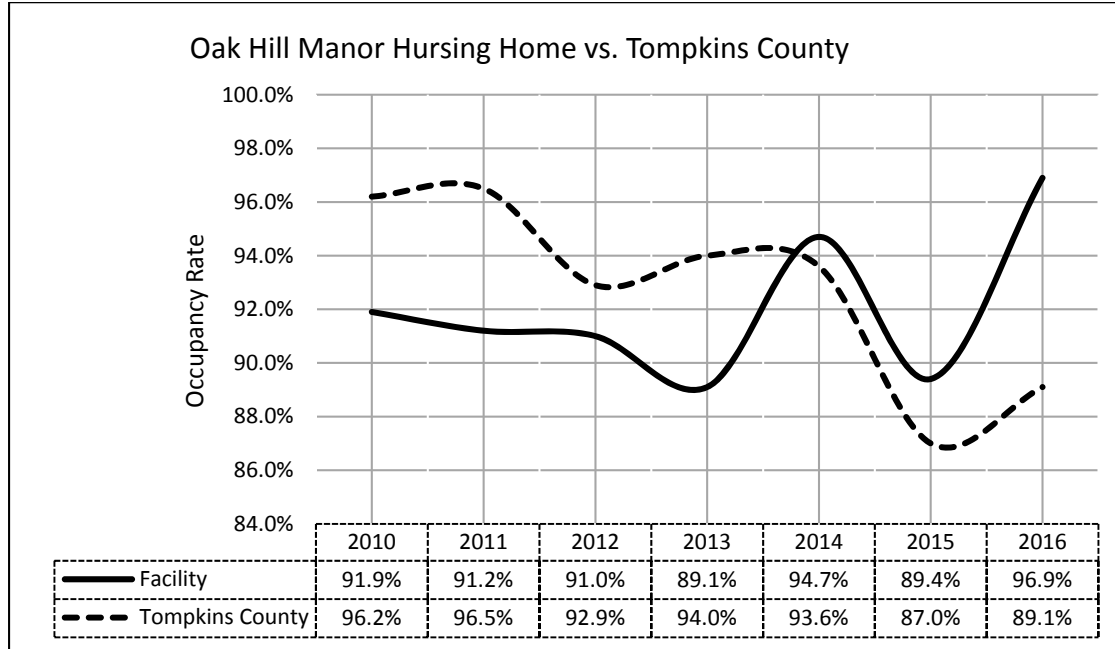
Council Action Date

**June 7, 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.

Other than 2016, 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 commit to meeting the County, as outlined in the contingencies and conditions.

Percent of New RHCF Admissions that are Medicaid	2014	2015	2016
Tompkins County 75% Threshold	18.5%	19.7%	26.4%
Oak Hill Manor Nursing Home	0.0%	5.6%	78.3%

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.**

<h2 style="margin: 0;">Program Analysis</h2>
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Facility Information

	<b>Existing</b>	<b>Proposed</b>
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 RHC's operating interest. The agreement will become effectuated upon PHPC 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 \$480,920 as of December 31, 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 \$480,920 as of December 31, 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 April 26, 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>\$1,075,043</u>
Total Expenses	\$248.27	\$5,281,955	\$271.29	\$5,759,643
Net Income		<u>\$278,169</u>		<u>\$721,757</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 96.7% as of April 4, 2018. 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.
- The breakeven utilization is projected at 86.00% or 18,887 patient days in Year One.

- 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%

### Capability and Feasibility

Oak Hill Operating Co. LLC will acquire the RHC operating assets for \$1,000 plus assumed liabilities estimated at \$480,920 as of December 31, 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 \$1,241,911 based on two months of first year expenses of \$959,940 plus \$480,920 in assumed liabilities offset by \$198,949 (half of the account receivables balance as of December 31, 2017). Funding will be as follows: \$620,956 from the members' equity with the remaining \$620,955 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 \$721,757 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 \$477,688 due to a \$33,375 decrease in operating expenses and a \$511,063 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 \$621,956 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 December 31, 2017, which shows positive working capital position of \$657,569, positive net assets position of \$855,650, and net operating income of \$304,314.

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 December 31, 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%).

OPCHSM Recommendation
Contingent Approval

Need Summary
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.

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:

Financial Summary

Riverview Facility Operations, LLC will acquire the RHCF operating assets for \$1,000 plus assumed liabilities (estimated at \$1,623,847 as of December 31, 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

	<u>Year One</u>
Revenues	\$7,104,100
Expenses	<u>6,568,449</u>
Net Income	\$535,651



## 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 an Operating Agreement of Riverview Facility Operations LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of a Restated and Amended Articles of Organization of Riverview Facility Operations LLC, which is acceptable to the Department. [CSL]
9. 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]
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)

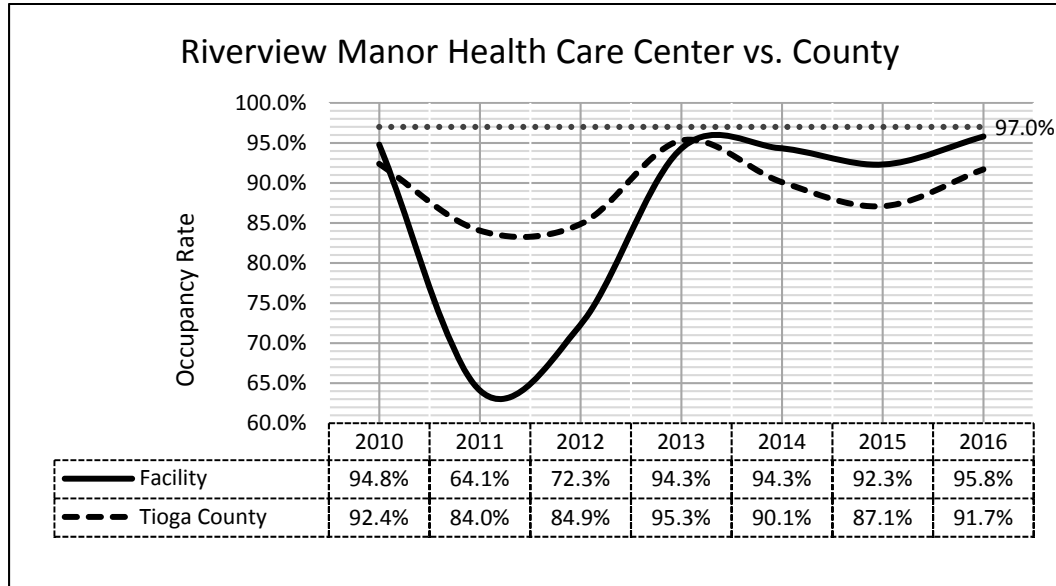
Council Action Date

**June 7, 2018**

# Need Analysis

## Background

The overall occupancy for Tioga County was 91.7% in 2016. The large dip in occupancy in 2011 and 2012 was due to the 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.

<b>Percent of New RHCFA Admissions that are Medicaid</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Tioga County 75% Threshold	9.90%	20.80%	5.60%
Riverview Manor Health Care Center	38.30%	79.20%	5.60%

## 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

	<b>Existing</b>	<b>Proposed</b>
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
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**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
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**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 \$1,623,847 as of December 31, 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 \$1,623,847 as of December 31, 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 April 27, 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 <sup>th</sup> 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:

	<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	\$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>\$944,849</u>
Total Expenses	\$216.97	\$5,859,691	\$241.35	\$6,565,449
Net Income		<u>\$147,418</u>		<u>\$535,651</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 90.9% as of April 11, 2018.
- The breakeven utilization is projected at 89.69% or 25,206 patient days in year one.
- Utilization by payor source for the first year after the change in ownership is summarized below:

Payor	Current year		Year One	
	Days	%	Days	%
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%

### Capability and Feasibility

The purchase price for the RHCF's operating interest is \$1,000 plus assumed liabilities estimated at \$1,623,847 as of December 31, 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 \$1,779,076 is based on two months of first year expenses of \$1,094,742 plus \$1,623,847 in assumed liabilities offset by \$939,513, half of the accounts receivable balance as of December 31, 2017. Funding will be as follows: \$889,538 from the members' equity with the remaining \$889,538 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 \$535,651 in Year One after the change in ownership. Revenues are estimated to increase by approximately \$1,097,125 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 \$708,758 due to a \$343,886 increase in operating expenses and a \$364,872 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 RHCFC 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 is the internal financial statement of Riverview Manor Health Care Center as of December 31, 2017, which shows that the RHCFC had a positive working capital position of \$365,549, a positive net assets position of \$33,991, and generated a net operating income of \$189,936.

BFA Attachment F is proposed members' ownership interest in the affiliated RHCFCs. BFA Attachment G is a Financial Summary of the proposed members' affiliated nursing homes. The affiliated RHCFCs 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 December 31, 2017



**Project # 172292-E**

**Grand Mohawk Valley, LLC**

**d/b/a The Grand Rehabilitation & Nursing at Mohawk**

**Program: Residential Health Care Facility**

**County: Herkimer**

**Purpose: Establishment**

**Acknowledged: November 13, 2017**

**Executive Summary**

**Description**

Grand Mohawk Valley, LLC d/b/a The Grand Rehabilitation & Nursing at Mohawk, a New York limited liability company, requests approval to be established as the new operator of Mohawk Valley Health Care Center, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 99 Sixth Avenue, Ilion (Herkimer County). The facility also operates a 38-slot Adult Day Health Care Program (ADHCP) onsite, which is included in this application request. MVNH Associates, LLC, a proprietary entity, is the current operator of the facility. Upon approval of this application, the facility will be named The Grand Rehabilitation & Nursing at Mohawk. There will be no change in beds or services provided.

On September 28, 2017, MVNH Associates, LLC entered into an Asset Purchase Agreement (APA) with Grand Mohawk Valley, LLC for the sale and acquisition of the RHCF operating interests for \$3,000,000 plus assumed liabilities valued at \$1,520,387 as of December 31, 2017. There will be no change in ownership of the RHCF's real property as a result of this application. The RHCF's real property is owned by MVNH Realty, LLC, whose members are William K. Madden (40%), Jacqueline T. Madden Trust (10%), Gerald J. Wood (44%), Gerald J. Wood III (3%) and Justin M. Wood (3%). MVNH Realty II, LLC, whose members are William K. Madden (50%), Gerald J Wood (44%), Gerald J Wood III (3%) and Justin M Wood (3%), also leases space at 295 West Main Street in Ilion (site of the now closed Mohawk Valley General Hospital) used by the RHCF for kitchen and support services. The applicant will enter into

arms-length lease agreements with MVNH Realty, LLC and MVNH Realty II, LLC for site control of the facility and the kitchen/support service space. The applicant has submitted an affidavit attesting that there is no relationship between the respective landlord entities and the proposed new tenant.

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

<u>Current Operator</u>	
MVNH Associates, LLC	
<u>Member</u>	
William K Madden	100%

<u>Proposed Operator</u>	
Grand Mohawk Valley, LLC	
<u>Members</u>	
Jeremy Strauss	95%
Meryl Strauss	5%

The applicant members have ownership interest in various New York State (NYS) RHCFs. BFA Attachments F and G present, respectively, the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes.

OPCHSM Recommendation  
Contingent Approval

### Need Summary

There will not be any changes to beds at the facility. The applicant has provided a plan to improve the care and utilization at this facility with the intention of reaching the department's 97 percent planning standard.

### Program Summary

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Health Care System (Grand Health). Grand Health is a related entity with Jeremy Strauss as CEO. The applicant does intend to utilize staffing agencies following their assumption of ownership.

### Financial Summary

Grand Mohawk Valley, LLC will acquire the RHCF operations for \$3,000,000 plus assumed liabilities, estimated at \$1,520,387 as of

December 31, 2017. Funding for the \$3,000,000 purchase price will be met via \$750,000 in equity and a ten-year \$2,250,000 loan at 5% interest, amortized over 25 years. The assumed liabilities currently valued at \$1,520,387 will be funded via equity. Harborview Capital Partners has provided a letter of interest at the stated terms. Grand Mohawk Valley, LLC will lease the RHCF premises from MVNH Realty, LLC, and the hospital dietary/support space use by the nursing home from MVNH Realty II, LLC. There are no project costs associated with this application. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$10,568,629
Expenses	<u>10,534,303</u>
Net Income	\$34,326

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed lease agreement for the RHCF, acceptable to the Department of Health. [BFA]
4. Submission of an executed lease agreement for rental of kitchen and support space at the now closed hospital site, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed Consulting Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**June 7, 2018**

# Need Analysis

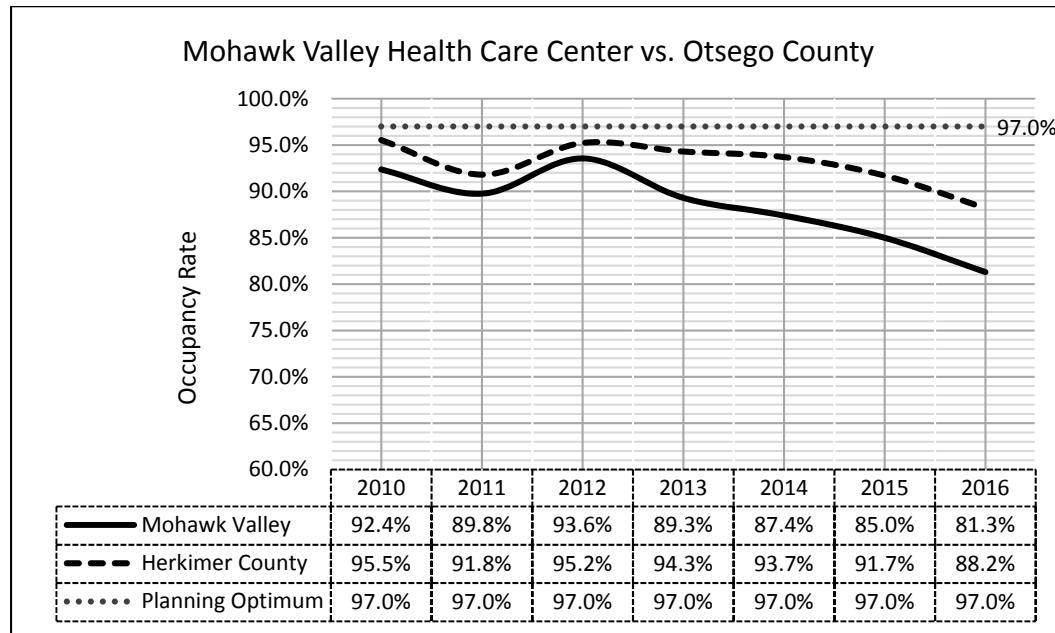
## Analysis

The current Need methodology indicates a need for 76 additional beds in Herkimer County.

### RHCF Need – Herkimer

2016 Projected Need	599
Current Beds	523
Beds Under Construction	0
Total Resources	523
Unmet Need	76

	2010	2011	2012	2013	2014	2015	2016
Mohawk Valley	92.4%	89.8%	93.6%	89.3%	87.4%	85.0%	81.3%
Herkimer County	95.5%	91.8%	95.2%	94.3%	93.7%	91.7%	88.2%
Planning Optimum	97.0%	97.0%	97.0%	97.0%	97.0%	97.0%	97.0%



Mohawk Valley’s utilization has declined over the last six years. The facility and county have been operating under the 97 percent planning optimum since 2010.

The applicant has stated that the negative publicity associated with an attorney general investigation into the facility caused a decrease in utilization from 2014 to current. The new experienced owners plan to work hard to gain the public’s trust again and improve their reputation.

The new owners plan to use the following to improve facility utilization:

- A dedicated short-term rehabilitation program
- Strengthen relationships with hospital discharge planners
- Accept higher acuity patients
- Establish new referral relationships
- Engage in community outreach programs
- Provide specialty services



Medicaid Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Mohawk Valley Health Care Center Medicaid admissions for 2015 (33.6%) exceeded Herkimer counties threshold of 23.0%. In 2016 Mohawk Valley Health Care Center saw 40.8% Medicaid admissions which was also above the counties threshold of 34.9%.

Conclusion

There will be no change in beds in Herkimer County as a result of this application. There is no impact on need or utilization in this area of Herkimer County.

Recommendation

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

Program Analysis

Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Mohawk Valley Health Care Center	The Grand Rehabilitation and Nursing at Mohawk
Address	99 Sixth Avenue Ilion	Same
RHCF Capacity	120	Same
ADHC Program Capacity	38	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	MVNH Associates, LLC	Grand Mohawk Valley, LLC *Jeremy Strauss 95% Meryl Strauss 5%  *Managing Member

Character and Competence – Background

**Facility Review**

Nursing Homes

Boro Park Center for Rehabilitation	05/2011 to 03/2016
Brooklyn Center for Rehabilitation & Residential Healthcare	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Holliswood Center for Rehabilitation	05/2013 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare	07/2014 to present

The Grand Rehabilitation and Nursing at Guilderland	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley	09/2016 to present
The Grand Rehabilitation and Nursing at Pawling	01/2004-present
The Grand Rehabilitation and Nursing at Queens	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango	05/2011 to present
The Grand Rehabilitation and Nursing at Rome	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
The Grand Rehabilitation and Nursing at Barnwell	12/2017 to present

Adult Homes

Washington Center Adult Home (AH)	02/2014 to 05/2016
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	08/2007 to present
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**Individual Background Review**

**Jeremy B. Strauss** discloses employment as Executive Director of The Grand Rehabilitation of Pawling since 2003. He is also the CEO of The Grand HealthCare System, which is a consulting and service company for skilled nursing and rehabilitation facilities. He has a BA Degree from Yeshiva University.

Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation (2%)	05/2011 to 03/2016
Brooklyn Center for Rehabilitation & Residential HealthCare (5%)	03/2007 to 12/2015
Bushwick Center for Rehabilitation (10%)	05/2011 to 12/2015
Corning Center for Rehabilitation (25%)	07/2013 to 02/2016
Essex Center for Rehabilitation (30%)	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care (25%)	04/2012 to 12/2015
Holliswood Center for Rehabilitation (7.5%)	05/2013 to 3/21/16
Richmond Center for Rehabilitation and Specialty Healthcare (5%)	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare (29%)	07/2014 to 05/04/16
The Grand Rehabilitation and Nursing at Guilderland (95%)	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley (95%)	09/2016 to present
The Grand Rehabilitation and Nursing at Pawling (98%)	01/2004 to present
The Grand Rehabilitation and Nursing at Queens (95%)	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango (67%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (98%)	05/2011 to present
Washington Center for Rehabilitation (30%)	02/2014 to 12/2015
Waterfront Center for Rehabilitation (30%)	01/2013 to 12/2015
Washington Center Adult Home (AH) (30%)	02/2014 to 05/2016
Senior Care Emergency Ambulance Services, Inc. (23%)	05/2005 to present
The Grand Rehabilitation and Nursing at Barnwell (95%)	12/2017 to present

**Meryl Strauss** discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. She has a BA Degree from Queens College. Ms. Strauss discloses the following health facility interests:

The Grand Rehabilitation and Nursing at Guilderland (5%)	11/2016 to present
The Grand Rehabilitation and Nursing at River Valley (5%)	09/2016 to present
The Grand Rehabilitation and Nursing at Rome (2%)	08/2016 to present
The Grand Rehabilitation and Nursing at Chittenango (2%)	07/2016 to present
The Grand Rehabilitation and Nursing at Barnwell (5%)	12/2017 to present

## Character and Competence - Analysis

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-.034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

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

A review of operations of the Grand Rehabilitation and Nursing at Guilderland for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order # 17-042 issued on July 25, 2017 for surveillance findings on April 14, 2017. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Changes Significant Changes in Condition-Complications and /or Life Threatening.

An assessment of the underlying causes of the 2015 enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-118 issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 19, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.
- A federal CMP of \$7,283.25 was assessed for December 16, 2016 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-009 issued for surveillance findings on October 20, 2017. Deficiencies were found under 10 NYCRR 483.24 and 483.25(k)(l) Provide Care/Services for Highest Well Being

A review of the operations of The Grand Rehabilitation and Nursing at Rome for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.
- A federal CMP of \$8,541 was assessed for the September 11, 2015 survey findings.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The review of operations for the above nursing homes indicates there were only single enforcements, and the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Holliswood Center for Rehabilitation and Healthcare, Steuben Center for Rehabilitation and Healthcare, The Grand Rehabilitation and Nursing at Queens, The Grand Rehabilitation and Nursing at River Valley, The Grand Rehabilitation and Nursing at Pawling and The Grand Rehabilitation and Nursing at Barnwell for the time periods indicated above reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements. Information provided by the Bureau of Emergency Services indicates there have been issues involving crashing ambulances and vehicle maintenance.

A review of operations for Washington Center Adult Home, (Argyle Center for Independent Living) for the periods identified above, reveals the following:

- The facility was fined \$455.00 pursuant to Stipulation and Order # ACF-16-149 issued on 11/21/2016 for surveillance findings on 1/7/2016 and 4/5/2016. Deficiencies were found under 18 NYCRR 487.8, Food Service.

#### Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	Quintile
The Grand Rehabilitation & Nursing at Pawling	*****	****	*****	***	4
The Grand Rehabilitation & Nursing at Queens	*****	****	*****	***	5
The Grand Rehabilitation & Nursing at Rome	**	*	*****	**	5
The Grand Rehabilitation & Nursing at Chittenango	*	*	****	*	3
The Grand Rehabilitation & Nursing at Guilderland	*	*	***	***	N/A*
The Grand Rehabilitation & Nursing at River Valley	**	**	***	**	5
The Grand Rehabilitation & Nursing at Barnwell	*	*	**	**	5

*\*Not applicable because the facility was a special focus facility*

With regard to the nursing homes with a quality score of 1 or 2, the applicant indicates in general the low star ratings are attributed to inconsistent practices among staff due to varying comprehension of policies/procedures and technical skill proficiencies. The applicants have stated they have responded by implementing staffing incentives to recruit and retain employees. The incentives include enhanced training and education, and housing to augment staff recruitment and retention. Other measures implemented across the board include changes to policies and procedures, audits of staff practices and increased oversight. The applicant also mentions that two of the facilities provide care to clinically complex residents that other facilities are unwilling or unable to accept, and this can affect the performance rating for quality measures.

It is noted that there have been improvements in some of the star ratings since the applicant has taken ownership, and that two of their 2-star facilities have been owned for less than two years.

The Grand Rehabilitation and Nursing at Guilderland was a Special Focus facility from July 2015 until November 2016. Mr. Strauss acquired a 9% membership interest of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, the previous operator, in November 2014. Mr. Strauss was hired as a consultant to the operator, and the facility showed sufficient improvement to graduate from Special Focus. In November 2016 the ownership of Guilderland Center changed, with Mr. Strauss serving as managing member.

In response to the 2017 enforcement at this facility the applicant explained that a review of staff practices indicated a lack of clarity among staff regarding notification protocol. The applicant indicates that the issues with leadership and staff at the facility have been remedied. The facility has taken steps including hiring a new Administrator. The Grand, the operating consultant, has added Support and Regional Assessment nurses and a Corporate Director of Education. Specific staffing initiatives at Guilderland Center include hiring a staff recruiter for the Capital Region, the execution of a staffing contract to provide additional night and weekend staffing, introduction of a new benefit package for staff recruitment and retention and the implementation of an on-call transportation support program to provide assistance to staff getting to work.

In response to the most recent October 2017 enforcement at The Grand Rehabilitation and Nursing at Chittenango the root cause was inconsistency and inadequate monitoring by the nursing and medical staff. The facility has taken steps which include immediate re-education of nurses on the proper procedure for documenting all labs, quality assurance monitoring and the review of lab audits by the quality assurance committee.

**Project Review**

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Healthcare System. The Grand is a related party with Jeremy Strauss serving as CEO. The applicant intends to utilize staffing agencies following their assumption of ownership.

**Conclusion**

No negative information has been received concerning the character and competence of the proposed applicant members

**Recommendation**

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

<b>Financial Analysis</b>
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**Asset Purchase Agreement**

The applicant has submitted an executed APA to acquire the RHCF’s operating interests, to be effective upon Public Health and Health Planning Council approval. The terms are summarized below:

<b>Date:</b>	September 28, 2017
<b>Seller:</b>	MVNH Associates, LLC
<b>Buyer:</b>	Grand Mohawk Valley, LLC
<b>Asset Acquired:</b>	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 “Mohawk Valley Health Care Center”), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, goodwill, security deposits for future services, patients & employee records, manuals & computer software, phone & telefax numbers, and non-excluded accounts receivables.
<b>Excluded Assets:</b>	Seller’s rights, title and interest on the closing date in all insurance policies; all amounts due from affiliates; any claims and refunds owned by seller; all rate increases from any source; all claims, rights, cause of action, rights of recovery, rights of set-off and recoupment against any third parties; accounts receivables; all accounts payable; Universal Settlement, rate appeals, audits, and real estate including FF&E which is the subject of the real estate contract.
<b>Assumption of Liabilities:</b>	Liabilities and obligations arising with respect to the operation of the Facility on and after the closing date except retained liabilities by seller.
<b>Purchase Price:</b>	\$3,000,000 plus assumed liabilities of \$1,520,387 as of December 31, 2017.
<b>Payment of Purchase Price:</b>	\$300,000 deposit paid upon signing; balance due at closing

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

Equity – Grand Mohawk Valley, LLC Members	\$750,000
Loan (10 years, 5% interest, 25-year amortization)	<u>\$2,250,000</u>
<b>Total</b>	<b>\$3,000,000</b>

Harborview Capital Partners has provided a letter of interest at the stated terms.

BFA Attachment A is the net worth summary of the members of Grand Mohawk Valley, LLC, which reveals sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. Proposed member Jeremy Strauss has submitted an affidavit stating he is willing to contribute resources disproportionate to his membership interest in the operating entity to cover any equity shortfall. Mr. Strauss has also provided an affidavit stating he is willing to contribute personal resources to fund the balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

BFA Attachment B provides additional details on the assumed liabilities of \$1,520,387 as of December 31, 2017, which consists of \$1,439,145 of short term and \$81,242 of long term obligations.

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

#### Lease Agreement

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

Premises:	120-bed RHCF located at 99 Sixth Avenue, Ilion, NY 13357
Landlord:	MVNH Realty, LLC
Lessee:	Grand Mohawk Valley, LLC
Term:	20 Years plus one (1) renewal for a 5-year term
Rental:	Years 1-5 \$755,000, Years 6-10 \$830,500, Years 11-15 \$913,550, Years 16-20 \$1,004,905 and Year 21-25 (if applicable) \$1,105,692
Provisions:	Triple Net

The applicant submitted a draft lease agreement for the hospital kitchen and support space used by the RHCF, the terms of which are summarized below:

Premises:	Space at Mohawk Valley General Hospital (closed) located at 295 West Main Street, Ilion, NY
Landlord:	MVNH Realty II, LLC
Lessee:	Grand Mohawk Valley, LLC
Term:	20 Years and one (1) renewal for a 5-year term
Rental:	Years 1-5-\$120,000, Years 6-10- \$132,000, Years 11-15- \$145,200, Years 16-20 \$159,720 and Year 21-25 (if applicable) \$175,692.
Provisions:	Triple Net

The lease arrangements are arm's length agreements. The applicant has submitted letters from two independent licensed realtors attesting that the lease cost per square foot is at fair market value.

## Consulting Services Agreement

The applicant has provided a draft Consulting Services Agreement, with terms summarized below:

Contractor:	Strauss Ventures, LLC d/b/a The Grand Health Care System
Facility:	Grand Mohawk Valley, LLC
Consulting & Advisory Services:	Consulting & advisory services related to administration and operational functions, including assistance with the following: regulatory monitoring, compliance/quality assurance, development/implementation of marketing plan, assistance/supervision of all functions related to accounts receivable, billing and analytics, preparing reports, bookkeeping, reimbursement, back office financial activities and group purchasing.
Term:	One Year with automatic one-year renewals, unless terminated through mutual consent, default or by one party with 30-day written notice.
Fee:	\$37,500 per month. Periodically fees will be adjusted based on quarterly review of fairness and appropriateness of the fees.

Jeremy Strauss, a member of the applicant, is CFO of the Strauss Ventures, LLC. The draft Consulting Service Agreement provides that Grand Mohawk Valley, LLC retains ultimate authority, responsibility and control in all the final decisions associated with the services. In accordance with the Department's ASA and Contract standardization policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes and regulations. The applicant has submitted an executed attestation, as required under the new policy, acknowledging understanding of the reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

## Operating Budget

The applicant has provided the current year results and the first and third year operating budgets subsequent to the change in ownership, in 2017 dollars, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
<u>Revenues</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicaid-FFS/MC	\$181.56	\$5,096,554	\$198.57	\$6,495,727	\$198.57	\$6,495,727
Medicare-FFS/MC	\$387.17	\$1,730,274	\$421.09	\$2,191,780	\$421.09	\$2,191,780
Private Pay/Comm.	\$420.08	\$1,329,139	\$258.62	\$953,521	\$258.62	\$953,521
ADHCP-Medicaid <sup>1</sup>	\$163.08	\$869,705	\$114.15	\$927,601	\$114.15	\$927,601
Ancillary PT		\$14,972		\$0		\$0
Other Income <sup>2</sup>		\$10,983		\$0		\$0
<b>Total Revenue</b>		<b>\$9,051,627</b>		<b>\$10,568,629</b>		<b>\$10,568,629</b>
<u>Expenses</u>						
Operating	\$249.94	\$8,924,000	\$221.35	\$9,209,106	\$221.35	\$9,209,106
Capital	13.61	\$486,091	31.85	\$1,325,197	\$31.34	\$1,303,708
<b>Total Expenses</b>	<b>\$263.55</b>	<b>\$9,410,091</b>	<b>\$253.20</b>	<b>\$10,534,303</b>	<b>\$252.69</b>	<b>\$10,512,814</b>
<b>Net Income</b>		<b><u>(\$358,464)</u></b>		<b><u>\$34,326</u></b>		<b><u>\$55,815</u></b>
RHCF Inpt. Days		35,704		41,605		41,605
Inpatient Utilization		82%		95%		95%
ADHCP Visits		5,333		7,995		7,995
ADHCP Utilization		50%		75%		75%

<sup>1</sup> The Current Year ADHCP Rate includes revenue associated with transportation, which is reimbursed separate from the Medicaid per visit rate. The Year One and Year Three projections are conservatively based only upon the 2017 ADHCP Medicaid rate sheet for the facility, which is held to operating and property cost ceiling limitations.

<sup>2</sup> Other Income consists of cash discount and rebates, vending machine, investment income and miscellaneous income.



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

- Breakeven utilization is projected at 94.7% for the first year.
- The current year reflects the facility's 2016 revenues and expenses.
- Medicaid revenue is based on the facility's current 2017 Medicaid Regional Pricing rate. The current year Medicare and Private pay rates are the actual daily rate experienced by the facility during 2016 and projected based on weighted averages calculated using patient days by payor and net PPS revenue by payor as of September 2017.
- Expense and staffing assumptions were based on the current operator's model and adjusted based on the proposed operator's experience in operating other nursing homes.
- The facility's projected utilization for Years One and Three is 95%. It is noted that utilization for the past three years has averaged around 85%, but current occupancy was 93.3% as of March 14, 2018. The applicant plans to improve occupancy by various measures including:
  - Improving staffing patterns to enhance and ensure consistency of quality of care. The improved quality of care will increase their CMS star ratings which will make the facility a more attractive option to prospective residents;
  - Utilization of "The Grand APP" Program, which provides each resident with an iPad to enhance quality of life;
  - Implementing training initiatives to provide staff with skills necessary to care for high acuity patients in order to accept more clinically complex residents;
  - Provide specialty services including tracheostomy care, enhanced wound care, IV therapy and complex clinical care; and
  - Strengthen provider relationships and improve collaboration with hospital discharge planners.
 The cumulative effect of these measures is expected to result in utilization levels of 95% or higher, which will favorably increase revenues.
- Utilization by payor source is summarized below:

Payor	Current Year		Year One		Year Three	
	Days	%	Days	%	Days	%
Medicaid-FFS	28,071	79%	32,713	79%	32,713	79%
Medicare-FFS	4,469	13%	5,205	13%	5,205	13%
Private Pay & Commercial	3,164	9%	3,687	9%	3,687	9%
RHCf Total	35,704	100%	41,605	100%	41,605	100%
ADHC-Visits (all Medicaid)	5,333	100%	7,995	100%	7,995	100%

### Capability and Feasibility

Grand Mohawk Valley, LLC will acquire the RHCf operations for \$3,000,000 plus assumed liabilities estimated at \$1,520,387 as of December 31, 2017. Funding for the \$3,000,000 purchase price will be met via \$750,000 in members' equity and a 10-year loan for \$2,250,000 at 5% interest, amortized over 25 years. Harborview Capital Partners has provided a letter of interest at the stated terms. Grand Mohawk Valley, LLC will lease the RHCf premises from MVNH Realty, LLC and the hospital space from MVNH Realty II, LLC. There are no project costs associated with this application.

The working capital requirement is estimated at \$3,194,862 based on two months of first year expenses of \$1,755,717 plus \$1,439,145 in short term assumed liabilities as of December 31, 2017. The applicant will provide \$2,317,739 from members' equity with the remaining satisfied via a \$877,123 loan for five-year term at 5% interest. Harborview Capital Partners has provided a letter of interest. Review of BFA Attachment A, proposed members net worth summaries, reveals sufficient equity overall. Proposed member Jeremy Strauss has submitted an affidavit stating he is willing to contribute resources disproportionate to his membership interest in the operating entity to make up any member's equity shortfall. Mr. Strauss has also provided an affidavit stating he is willing to contribute resources to fund the balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects \$34,326 of net income in Year One after the change in ownership. Revenues are estimated to increase by approximately \$1,485,061 coming from Medicaid and Medicare Manage Care. Overall expenses are expected to increase by \$1,125,426 coming from a \$286,320 increase in operating expense (added staff related) and a \$839,106 increase in interest and rent expense. The budget was created taking into consideration the proposed new owners' experience in operating

similar facilities. As of March 14, 2018, utilization was at 93.3%. BFA Attachment H is a budget sensitivity analysis based on current utilization of the facility as of March 14, 2018, which shows the budgeted revenues would decrease by \$206,230 in Year One and in Year Three resulting in a net loss of \$171,904 and \$150,415, respectively. The managing member of the proposed operator, Jeremy Strauss, has advised that if necessary, he will contribute his own personal funds to subsidize and offset any financial losses. Review of BFA Attachment A indicates sufficient liquid resources exist to cover losses should utilization remain flat. This assessment takes into consideration all equity requirements for the purchase of the operations, assumption of liabilities and working capital needs for this application and CON 172293, which is concurrently under review. BFA Attachment C is Grand Mohawk Valley, LLC's pro forma balance sheet for operation, which shows the operating entity will start with \$4,914,335 in member's equity. Assets include goodwill of \$3,124,248, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill were eliminated from the equation, the total net assets would be a positive \$379,474. The budget appears reasonable.

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

BFA Attachment D is the Financial Summary of MVNH Associates, LLC d/b/a Mohawk Valley Health Care Center for 2014 through 2016. As shown, the RHC had an average positive working capital position of \$999,079, average positive net assets of \$1,240,524, and average positive net income of \$178,691 for the period. BFA Attachment E is the internal financial statements for MVNH Associates, LLC as of December 31, 2017, which shows positive working capital, positive net assets and the negative operating income of \$186,852.

BFA Attachments F and G are, respectively, the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes. Review of BFA Attachment G indicates the affiliated homes had average positive net asset, average positive working capital and average positive net income positions for the period shown, except for the following:

- Clearview Operating Co, LLC d/b/a The Grand Nursing & Rehab at Queens shows positive net assets and positive operating income during the period. The facility had a negative working capital position in 2015, but turned the working capital position to positive in 2016.
- Guilderland Operator Co, LLC d/b/a The Grand Rehab and Nursing at Guilderland shows negative working capital, negative net assets and an operating loss during the period. The facility was acquired in November 2016. The negative result is due to an accounts receivable write-off of \$680,000 and \$340,000 recorded depreciation during 2016-2017. The cumulative effect of both transactions will result in a positive position in 2017.
- River Valley Operating Associates, LLC d/b/a The Grand Rehab and Nursing at River Valley shows negative working capital, negative net assets and an operating loss during 2016 and 2017. The facility was acquired in July 2016. The operator plans to mitigate losses through several measures such as modification of the lease for rent reduction, focusing on CMI to increase admissions of short term residents, appealing real estate taxes, providing consistently better service to maintain high occupancy, investment in the facility's infrastructure, and seeking an abatement in the FHA/Mortgage insurance premium.

Recommendation

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

## Attachments

BFA Attachment A	Net Worth of Proposed Members of Grand Mohawk Valley, LLC
BFA Attachment B	Details of Assumed Liabilities as of 12/31/2017
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary and 2016 Certified Financial Statement of MVNH Associates, LLC
BFA Attachment E	2017 Internal Financial Statement of MVNH Associates, LLC
BFA Attachment F	Proposed Members' ownership interest in affiliated RHCfs
BFA Attachment G	Financial Summary of Proposed Members' Affiliated RHCfs
BFA Attachment H	Budget Sensitivity



**Project # 172293-E**  
**Grand Batavia, LLC d/b/a The Grand Rehabilitation and  
Nursing at Batavia**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Genesee  
**Acknowledged:** November 13, 2017

**Executive Summary**

**Description**

Grand Batavia, LLC d/b/a The Grand Rehabilitation and Nursing at Batavia, a New York limited liability company, requests approval to be established as the new operator of Batavia Health Care Center, LLC, a 62-bed, proprietary, Article 28 residential health care facility (RHCF) located at 257 State Street, Batavia, (Genesee County). Batavia Health Care Center, LLC is the current operator of the facility. Upon approval of this application, the facility will be named The Grand Rehabilitation and Nursing at Batavia. There will be no change in beds or services provided.

On September 28, 2017, Batavia Health Care Center, LLC entered into an Asset Purchase Agreement (APA) with Grand Batavia, LLC for the sale and acquisition of the RHCF's operating interests for \$1,800,000 plus assumed liabilities valued at \$474,076 as of December 31, 2017. There will be no change in ownership of the RHCF's real property as a result of this application. The RHCF's real property is owned by Batavia Realty, LLC, whose members are William K. Madden (22.5%), Jacqueline T. Madden Trust (22.5%), Gerald J. Wood (30%), Gerald J. Wood III (15%) and Justin M. Wood (10%). The applicant will enter into a lease agreement with Batavia Realty, LLC for site control of the facility. The applicant has submitted an affidavit attesting that there is no relationship between landlord and proposed tenant.

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

<u>Current Operator</u>	
Batavia Health Care Center, LLC	
<u>Members</u>	
Jill Madden	100%

<u>Proposed Operator</u>	
Grand Batavia, LLC	
<u>Members</u>	
Jeremy Strauss	95%
Meryl Strauss	5%

The applicant members have ownership interest in various New York State (NYS) RHCFs. BFA Attachments F and G present, respectively, the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

This project is a change in ownership. There will not be any changes to beds at the facility. The last year of certified data shows the facility operating at 88.2%.

### Program Summary

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Health Care System (The Grand). The Grand is a related entity with Jeremy Strauss as CEO. The applicant does intend to utilize staffing agencies upon their assumption of ownership.

### Financial Summary

Grand Batavia, LLC will acquire the RHC operations for \$1,800,000 plus assumed liabilities, estimated at \$474,076 as of December 31, 2017. Funding for the \$1,800,000 purchase price will be met via \$447,750 in equity and a ten-year \$1,352,250 loan at 5% interest,

amortized over 25 years. The \$474,076 in assumed liabilities will be funded via equity. Harborview Capital Partners has provided a letter of interest at the stated terms. Grand Batavia, LLC will lease the premises from Batavia Realty, LLC. There are no project costs associated with this application. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,815,318	\$4,916,605
Expenses	<u>4,898,197</u>	<u>4,887,026</u>
Net Income	(\$82,879)	\$29,579

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [(BFA]
5. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department.

**Approval conditional upon:**

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

Council Action Date

**June 7, 2018**

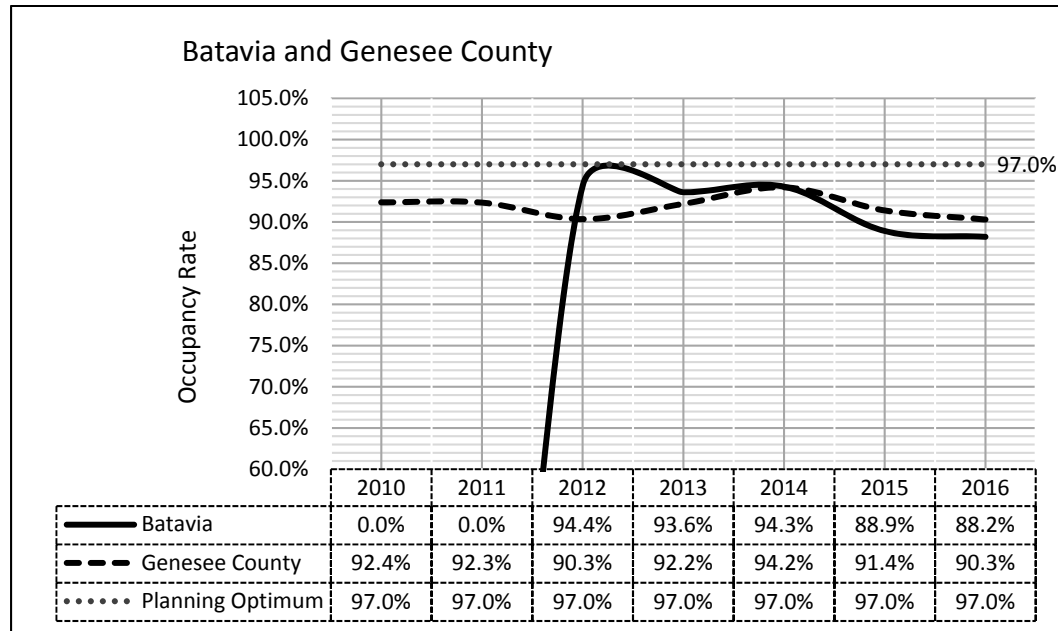
# Need Analysis

## Analysis

The current Need Methodology calculates a need for 183 additional beds in Genesee County.

### RHCF Need – Genesee

2016 Projected Need	545
Current Beds	362
Beds Under Construction	0
Total Resources	362
Unmet Need	183



The applicant has stated that negative publicity associated with an attorney general investigation into a sister facility caused a decrease in utilization from 2014 to present. The new experienced owners plan to work hard to gain the public's trust again and improve their reputation.

The new owners plan to use the following to improve facility utilization:

- A dedicated short-term rehabilitation program
- Strengthen relationships with hospital discharge planners
- Accept higher acuity patients
- Establish new referral relationships
- Engage in community outreach programs
- Provide specialty services

Medicaid Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Batavia's Medicaid admissions for 2015 (19.5%) did exceed Genesee County's threshold of 9.2%. In 2016 Batavia saw 23.6% Medicaid admissions which was also above the counties threshold of 8.1%.

Conclusion

This change in ownership will have no impact on existing need or utilization in this area of Genesee County.

Recommendation

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

<h2 style="margin: 0;">Program Analysis</h2>
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Facility Information

	Existing	Proposed
Facility Name	Batavia Health Care Center	The Grand Rehabilitation and Nursing at Batavia
Address	257 State Street Batavia	Same
RHCF Capacity	62	Same
ADHC Program Capacity	0	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Batavia Health Care Center, LLC	Grand Batavia, LLC *Jeremy Strauss 95% Meryl Strauss 5%  *Managing Member

Character and Competence – Background

**Facility Review**

Nursing Homes

Boro Park Center for Rehabilitation	05/2011 to 03/2016
Brooklyn Center for Rehabilitation & Residential Healthcare	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Holliswood Center for Rehabilitation	05/2013 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Guilderland	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley	09/2016 to present



The Grand Rehabilitation and Nursing at Pawling	01/2004-present
The Grand Rehabilitation and Nursing at Queens	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango	05/2011 to present
The Grand Rehabilitation and Nursing at Rome	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
The Grand Rehabilitation and Nursing at Barnwell	12/2017 to present

Adult Homes

Washington Center Adult Home (AH)	02/2014 to 05/2016
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	08/2007 to present
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**Individual Background Review**

**Jeremy B. Strauss** discloses employment as Executive Director of The Grand Rehabilitation of Pawling since 2003. He is also the CEO of The Grand HealthCare System, which is a consulting and service company for skilled nursing and rehabilitation facilities. He has a BA Degree from Yeshiva University.

Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation (2%)	05/2011 to 03/2016
Brooklyn Center for Rehabilitation & Residential HealthCare (5%)	03/2007 to 12/2015
Bushwick Center for Rehabilitation (10%)	05/2011 to 12/2015
Corning Center for Rehabilitation (25%)	07/2013 to 02/2016
Essex Center for Rehabilitation (30%)	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care (25%)	04/2012 to 12/2015
Holliswood Center for Rehabilitation (7.5%)	05/2013 to 3/21/16
Richmond Center for Rehabilitation and Specialty Healthcare (5%)	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare (29%)	07/2014 to 05/04/16
The Grand Rehabilitation and Nursing at Guilderland (95%)	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley (95%)	09/2016 to present
The Grand Rehabilitation and Nursing at Pawling (98%)	01/2004 to present
The Grand Rehabilitation and Nursing at Queens (95%)	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango (67%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (98%)	05/2011 to present
Washington Center for Rehabilitation (30%)	02/2014 to 12/2015
Waterfront Center for Rehabilitation (30%)	01/2013 to 12/2015
Washington Center Adult Home (AH) (30%)	02/2014 to 05/2016
Senior Care Emergency Ambulance Services, Inc. (23%)	05/2005 to present
The Grand Rehabilitation and Nursing at Barnwell (95%)	12/2017 to present

**Meryl Strauss** discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. She has a BA Degree from Queens College. Ms. Strauss discloses the following health facility interests:

The Grand Rehabilitation and Nursing at Guilderland (5%)	11/2016 to present
The Grand Rehabilitation and Nursing at River Valley (5%)	09/2016 to present
The Grand Rehabilitation and Nursing at Rome (2%)	08/2016 to present
The Grand Rehabilitation and Nursing at Chittenango (2%)	07/2016 to present
The Grand Rehabilitation and Nursing at Barnwell (5%)	12/2017 to present

## Character and Competence - Analysis

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-.034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

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

A review of operations of the Grand Rehabilitation and Nursing at Guilderland for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order # 17-042 issued on July 25, 2017 for surveillance findings on April 14, 2017. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Changes Significant Changes in Condition-Complications and /or Life Threatening.

An assessment of the underlying causes of the 2015 enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-118 issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 19, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.
- A federal CMP of \$7,283.25 was assessed for December 16, 2016 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-009 issued for surveillance findings on October 20, 2017. Deficiencies were found under 10 NYCRR 483.24 and 483.25(k)(l) Provide Care/Services for Highest Well Being

A review of the operations of The Grand Rehabilitation and Nursing at Rome for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.
- A federal CMP of \$8,541 was assessed for the September 11, 2015 survey findings.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The review of operations for the above nursing homes indicates there were only single enforcements, and the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Holliswood Center for Rehabilitation and Healthcare, Steuben Center for Rehabilitation and Healthcare, The Grand Rehabilitation and Nursing at Queens, The Grand Rehabilitation and Nursing at River Valley, The Grand Rehabilitation and Nursing at Pawling and The Grand Rehabilitation and Nursing at Barnwell for the time periods indicated above reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements. Information provided by the Bureau of Emergency Services indicates there have been issues involving crashing ambulances and vehicle maintenance.

A review of operations for Washington Center Adult Home, (Argyle Center for Independent Living) for the periods identified above, reveals the following:

- The facility was fined \$455.00 pursuant to Stipulation and Order # ACF-16-149 issued on 11/21/2016 for surveillance findings on 1/7/2016 and 4/5/2016. Deficiencies were found under 18 NYCRR 487.8, Food Service.

#### Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	Quintile
The Grand Rehabilitation & Nursing at Pawling	*****	****	*****	***	4
The Grand Rehabilitation & Nursing at Queens	*****	****	*****	***	5
The Grand Rehabilitation & Nursing at Rome	**	*	*****	**	5
The Grand Rehabilitation & Nursing at Chittenango	*	*	****	*	3
The Grand Rehabilitation & Nursing at Guilderland	*	*	***	***	N/A*
The Grand Rehabilitation & Nursing at River Valley	**	**	***	**	5
The Grand Rehabilitation & Nursing at Barnwell	*	*	**	**	5

*\*Not applicable because the facility was a special focus facility*

With regard to the nursing homes with a quality score of 1 or 2, the applicant indicates in general the low star ratings are attributed to inconsistent practices among staff due to varying comprehension of policies/procedures and technical skill proficiencies. The applicants have stated they have responded by implementing staffing incentives to recruit and retain employees. The incentives include enhanced training and education, and housing to augment staff recruitment and retention. Other measures implemented across the board include changes to policies and procedures, audits of staff practices and increased oversight. The applicant also mentions that two of the facilities provide care to clinically complex residents that other facilities are unwilling or unable to accept, and this can affect the performance rating for quality measures.

It is noted that there have been improvements in some of the star ratings since the applicant has taken ownership, and that two of their 2-star facilities have been owned for less than two years.

The Grand Rehabilitation and Nursing at Guilderland was a Special Focus facility from July 2015 until November 2016. Mr. Strauss acquired a 9% membership interest of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, the previous operator, in November 2014. Mr. Strauss was hired as a consultant to the operator, and the facility showed sufficient improvement to graduate from Special Focus. In November 2016 the ownership of Guilderland Center changed, with Mr. Strauss serving as managing member.

In response to the 2017 enforcement at this facility the applicant explained that a review of staff practices indicated a lack of clarity among staff regarding notification protocol. The applicant indicates that the issues with leadership and staff at the facility have been remedied. The facility has taken steps including hiring a new Administrator. The Grand, the operating consultant, has added Support and Regional Assessment nurses and a Corporate Director of Education. Specific staffing initiatives at Guilderland Center include hiring a staff recruiter for the Capital Region, the execution of a staffing contract to provide additional night and weekend staffing, introduction of a new benefit package for staff recruitment and retention and the implementation of an on-call transportation support program to provide assistance to staff getting to work.

In response to the most recent October 2017 enforcement at The Grand Rehabilitation and Nursing at Chittenango the root cause was inconsistency and inadequate monitoring by the nursing and medical staff. The facility has taken steps which include immediate re-education of nurses on the proper procedure for documenting all labs, quality assurance monitoring and the review of lab audits by the quality assurance committee.

**Project Review**

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Healthcare System. The Grand is a related party with Jeremy Strauss serving as CEO. The applicant intends to utilize staffing agencies following their assumption of ownership.

**Conclusion**

No negative information has been received concerning the character and competence of the proposed new members

**Recommendation**

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

<h2>Financial Analysis</h2>
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**Asset Purchase Agreement**

The applicant has submitted an executed APA to acquire the RHCF’s operating interests, to be effective upon Public Health and Health Planning Council approval. The terms are summarized below:

Date:	September 28, 2017
Seller:	Batavia Health Care Center, LLC
Buyer:	Grand Batavia, 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 “Batavia Health Care Center”), domain names and addresses, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, goodwill, security deposits for future services, patients & employee records, manuals & computer software, phone & telefax numbers, and non-excluded accounts receivables.
Excluded Assets:	Seller's rights, title and interest on the closing date in all insurance policies; all amounts due from affiliates; any claims and refunds owned by seller; all rate increases from any source; all claims, rights, cause of action, rights of recovery, rights of set-off and recoupment against any third parties; accounts receivables; all accounts payable; Universal Settlement, rate appeals, audits, 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 except retained liabilities by seller; all of seller’s accounts payable, payroll and cash receipts assessment liabilities.
Purchase Price:	\$1,800,000 plus assumed liabilities of \$474,076 as of December 31, 2017.
Payment of Purchase Price:	\$180,000 deposit paid upon signing; Balance due at closing

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

Equity - Grand Batavia, LLC Members	\$447,750
Loan (10 years, 5% interest rate, 25-year amortization)	<u>\$1,352,250</u>
Total	\$1,800,000

Harborview Capital Partners has provided a letter of interest at the stated terms.

BFA Attachment A is the net worth summary of the members of Grand Batavia, LLC, which reveals sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. Proposed member Jeremy Strauss has submitted an affidavit stating he is willing to contribute resources disproportionate to his membership interest in the operating entity to cover any equity shortfall. Mr. Strauss has also provided an affidavit stating he is willing to contribute personal resources to fund the balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

BFA Attachment B provides details of the assumed liabilities for \$474,076 as of December 31, 2017.

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

#### Lease Agreement

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

Premises:	62-bed RHC located at 257 State Street, Batavia, NY 14020
Landlord:	Batavia Realty, LLC
Lessee:	Grand Batavia, LLC
Term:	20 years plus one (1) 5-year renewal term
Rental:	Years 1-5: \$550,000, Years 6-10: \$605,000, Years 11-15: \$665,500, Years 16-20: \$732,050 and Year 21-25 (if applicable) \$805,255
Provisions:	Triple Net

The lease arrangement is an arm's length agreement. The applicant has submitted letters from two independent licensed realtors attesting that the lease cost per square foot is at fair market value.

#### Consulting Services Agreement

The applicant has provided a draft Consulting Services Agreement, with terms summarized below:

Contractor:	Strauss Ventures, LLC d/b/a The Grand Health Care System
Facility:	Grand Batavia, LLC
Consulting & Advisory Services:	Consulting & advisory services related to administration and operational functions, including assistance with the following: regulatory monitoring, compliance/quality assurance, development/implementation of marketing plan, assistance/supervision of all functions related to accounts receivable, billing and analytics, preparing reports, bookkeeping, reimbursement, back office financial activities and group purchasing.
Term:	One Year with automatic one-year renewals, unless terminated through mutual consent, default or by one party with 30-day written notice.
Fee:	\$20,000 per month. Periodically adjusted based on quarterly review of fairness and appropriateness of the fees.

Jeremy Strauss, a member of the applicant, is CFO of the Strauss Ventures, LLC. Also, Strauss Ventures, LLC will be providing consulting services to the aforementioned RHCFS concurrently under review per CON 172292 and CON 172387. The draft Consulting Service Agreement provides that Grand Batavia, LLC retains ultimate authority, responsibility and control in all of the final decisions associated with the services. In accordance with the Department's Administrative Service Agreement (ASA) and Contract standardization policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes and regulations. The applicant has submitted an executed attestation, as required under the new policy, acknowledging understanding of the reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

### Operating Budget

The applicant has provided the current year (2016) results and first and third year operating budget subsequent to the change in ownership, in 2017 dollars, summarized as follows:

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
<u>Revenues</u>						
Medicaid-FFS/MC	\$193.97	\$3,134,944	\$196.30	\$3,407,003	\$196.30	\$3,478,643
Medicare-FFS/MC	\$220.21	\$550,751	\$348.62	\$937,096	\$348.65	\$956,695
Private Pay/Comm.	\$683.83	\$927,277	\$323.86	\$471,219	\$323.87	\$481,267
Other Income*		<u>\$3,657</u>		<u>\$0</u>		<u>\$0</u>
Total Revenue		\$4,616,629		\$4,815,318		\$4,916,605
<u>Expenses</u>						
Operating	\$212.65	\$4,257,098	\$195.25	\$4,197,773	\$191.23	\$4,197,773
Capital	<u>\$11.86</u>	<u>\$237,447</u>	<u>\$32.58</u>	<u>\$700,424</u>	<u>\$31.40</u>	<u>\$689,253</u>
Total Expenses	\$224.51	\$4,494,545	\$227.83	\$4,898,197	\$222.63	\$4,887,026
Net Income		<u>\$122,084</u>		<u>(\$82,879)</u>		<u>\$29,579</u>
RHCF Inpt. Days		20,019		21,499		21,951
Inpatient Utilization		88.5%		95.0%		97.0%

\* Other Income consists of cash discount and rebates, vending machine, investment income and miscellaneous income.

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2016 revenues and expenses.
- Medicaid revenue is based on the facility's current 2017 Medicaid Regional Pricing rate (benchmark for managed care as well). The current year Medicare and Private Pay rates are the actual daily rate experienced by the facility during 2016. The year one and year three rates are projected based on weighted averages calculated using patient days by payor and net PPS revenue by payor as of September 2017.
- Expenses and staffing assumptions were based on the current operator's model and adjusted based on the proposed operator's experience in operating other nursing homes. The proposed operator will implement reductions in expense where appropriate and achievable.
- Projected utilization for year one is 95% and 97% for year three. Utilization for the past three years has averaged around 91% and current occupancy was 90.3% as of March 14, 2018. The applicant plans to increase utilization by various measures including:
  - Implementing staff training initiatives to provide skills necessary to care for high acuity patients;
  - Implementing a specific initiative to accept more clinically complex residents;
  - Enhance provider relationships and improve collaboration with hospital discharge planners; and
  - Implement marketing initiatives and focus on community outreach efforts.
- Breakeven utilization is projected at 96.64% for the first year.

- Utilization by payor source is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid-FFS	80.7%	80.7%	80.7%
Medicare-FFS	12.5%	12.5%	12.5%
Private Pay & Commercial	<u>6.8%</u>	<u>6.8%</u>	<u>6.8%</u>
RHCF Total	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

#### Capability and Feasibility

Grand Batavia, LLC will acquire the RHCF operations for \$1,800,000 plus assumed liabilities estimated at \$474,076 as of December 31, 2017. Funding for the \$1,800,000 purchase price will be met via \$447,750 in members' equity and a 10-year loan for \$1,352,250 at 5% interest, amortized over 25 years.

Harborview Capital Partners has provided a letter of interest at the stated terms. Grand Batavia, LLC will lease the premises from Batavia Realty, LLC. There are no project costs associated with this application.

The working capital requirement is estimated at \$1,288,580 based on two months of third year expenses of \$814,504 plus \$474,076 in assumed liabilities as of December 31, 2017. The applicant will provide \$881,328 from members' equity with the remaining satisfied via a \$407,252 loan for a five-year term at 5% interest. Harborview Capital Partners has provided a letter of interest. Review of BFA Attachment A, proposed members net worth summaries, reveals sufficient equity overall. Proposed member Jeremy Strauss has submitted an affidavit stating he will contribute resources disproportionate to his membership interest in the operating entity to make up any member's equity shortfall. Mr. Strauss has also provided an affidavit stating he is willing to contribute resources to fund the operating entity loan balloon payment should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects a net loss of \$82,879 in Year One and net income of \$29,579 in Year Three after the change in ownership. Revenues are estimated to increase by approximately \$198,689 and \$299,976 in Year One and Year Three respectively, mainly from Medicaid Manage Care. Overall expenses are expected to increase by \$403,652 in Year One and \$392,481 in Year Three, due to a \$59,325 decrease in operating expenses offset by an increase in interest and rent expense of \$462,977 in Year One and \$451,806 in Year Three. As noted above, most of the operating expenses were adjusted based on the proposed operator's experience in operating other nursing homes. As of March 14, 2018, utilization was at 90.3%. BFA Attachment H is a budget sensitivity analysis based on current utilization of the facility as of March 14, 2018, which shows the budgeted revenues would decrease by \$237,595 in Year One and \$338,791 in Year Three resulting in a net loss of \$320,474 and \$309,212, respectively. The managing member of the proposed operator, Jeremy Strauss, has advised that if necessary, he will contribute his own personal funds to subsidize and offset any financial losses. Review of BFA Attachment A indicates sufficient liquid resources exist to cover losses should utilization remain flat. This assessment takes into consideration all equity requirements for the purchase of the operations, assumption of liabilities and working capital needs for this application and CON 172292, which is concurrently under review. BFA Attachment C presents Grand Batavia, LLC's pro forma balance sheet for operation, which shows the operating entity will start with \$2,082,892 in member's equity. Assets include goodwill of \$1,425,300, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill were eliminated, the total net assets would be positive \$657,592. The budget appears reasonable.

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



BFA Attachment D is the Financial Summary of Batavia Health Care Center, LLC d/b/a Batavia Health Care Center for 2014 through 2016. As shown, the RHCFF had an average positive working capital position of \$827,602, average positive net assets of \$1,027,276, and average positive net income of \$339,968 for the period. BFA Attachment E is the internal financial statements for Batavia Health Care Center, LLC as of December 31, 2017, which shows positive working capital, positive net assets and negative operating income of \$116,956.

BFA Attachments F and G present, respectively, the percentage ownership and financial summaries of the proposed members' NYS affiliated nursing homes. Review of BFA Attachment G indicates the affiliated homes had average positive net asset, average positive working capital and average positive net income positions for the period shown, except for the following:

- Clearview Operating Co, LLC d/b/a The Grand Nursing & Rehab at Queens shows positive net assets and positive operating income during the period. The facility had a negative working capital position in 2015, but turned the working capital position to positive in 2016.
- Guilderland Operator Co, LLC d/b/a The Grand Rehab and Nursing at Guilderland shows negative working capital, negative net assets and an operating loss during the period. The facility was acquired in November 2016. The negative result is due to an accounts receivable write-off of \$680,000 and \$340,000 recorded depreciation during 2016-2017. The cumulative effect of both transactions will result in a positive position in 2017.
- River Valley Operating Associates, LLC d/b/a The Grand Rehab and Nursing at River Valley shows negative working capital, negative net assets and an operating loss during 2016 and 2017. The facility was acquired in July 2016. The operator plans to mitigate losses through several measures such as modification of the lease for rent reduction, focusing on CMI to increase admissions of short term residents, appealing real estate taxes, providing consistently better service to maintain high occupancy, investment in the facility's infrastructure, and seeking an abatement in the FHA/Mortgage insurance premium.

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
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BFA Attachment A	Net Worth of Proposed Members of Grand Batavia, LLC
BFA Attachment B	Details of Assumed Liabilities as of December 31, 2017
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary and 2016 Certified Financial Statement of Batavia Health Care Center, LLC
BFA Attachment E	2017 Internal Financial Statement of Batavia Health Care Center, LLC
BFA Attachment F	Proposed Members' ownership interest in affiliated RHCFFs
BFA Attachment G	Financial Summary of Proposed Members' Affiliated RHCFFs
BFA Attachment H	Budget Sensitivity



Project # 181120-E
Chapin Acquisition I, LLC d/b/a Jamaica Estates Nursing and Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: February 21, 2018

Executive Summary

Description

Chapin Acquisition I, LLC d/b/a Jamaica Estates Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the new operator of Margaret Tietz Center for Nursing Care, Inc., a 200-bed, voluntary not-for-profit, Article 28 residential health care facility (RHCF) located at 164-11 Chapin Parkway, Jamaica, (Queens County). Margaret Tietz Center for Nursing Care, Inc., a subsidiary of CenterLight Health System, Inc., is the current operator and real property owner of the facility. A separate entity, Chapin Acquisition II, LLC, will acquire the real property. There will be no change in beds or services provided.

On January 12, 2018, Margaret Tietz Center for Nursing Care, Inc entered into an Asset Purchase Agreement (APA) with Chapin Acquisition I, LLC for the sale and acquisition of the RHCF operating interests for \$2,500,000. Concurrently, Margaret Tietz Nursing and Rehabilitation Center, Inc. entered into a Real Estate Purchase Agreement (REPA) with Chapin Acquisition II, LLC for the sale and acquisition of the real property for \$38,500,000. The APA and REPA will close at the same time upon Public Health and Health Planning Council (PHHPC) approval. There is a relationship between Chapin Acquisition I, LLC and Chapin Acquisition II, LLC in that there is identical membership in both entities. The applicant will lease the premises from Chapin Acquisition II, LLC.

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

Table with 1 column: Current Operator
Margaret Tietz Center for Nursing Care, Inc.
Not-For-Profit Corporation (100%)

Table with 2 columns: Proposed Operator, Members
Chapin Acquisition I, LLC
Members: Alex Solovey (30.34%), Leopold Friedman (30.33%), Pasquale DeBenedictis (30.33%), Soloman Rutenberg (9.00%)

CenterLight's Board of Directors made the decision to sell Margaret Tietz Center for Nursing Care, Inc. as part of a strategic initiative to focus the company's efforts and resources on its Program of All-Inclusive Care for the Elderly (PACE). It was felt that the PACE model of care is aligned with the future direction of the New York healthcare delivery system as it functions under a full capitation model and coordinates all components of participant care. CenterLight developed a due diligence package that was shared on a confidential basis with several reputable organizations with long term care operations. CenterLight selected Chapin Acquisition I, LLC due to its attractive offer and extensive experience in long term care operations. CenterLight plans to invest the sale proceeds into its Pace program with the current outstanding liabilities of Margaret Tietz being fully satisfied on an ordinary course basis.

There are no restrictions on the property regarding its use or ownership.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this application.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants 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 may utilize staffing agencies upon their assumption of ownership, if they identify an immediate need in a particular staffing area.

Financial Summary

There are no project costs associated with this proposal. The purchase price for the RHCF operations is \$2,500,000 and will be met with equity from the proposed members of Chapin Acquisition I, LLC. The purchase price for the realty is \$38,500,000 to be funded by Chapin Acquisition II, LLC via \$3,850,000 members' equity and a \$34,650,000 mortgage for a ten-year term amortized over 25 years with variable interest based on the One-Month Libor plus 3.25% (estimated at 5.13% based on the One-Month Libor of 1.88% as of April 10, 2018). Bank of America has provided a letter of interest at the stated terms. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$26,516,900
Expenses	<u>24,996,600</u>
Net Income	\$1,520,300

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the real property, acceptable to the Department of Health. [BFA]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
5. Submission of the applicants amended and executed Lease Agreement, acceptable to the Department. [CSL]
6. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
7. Submission of the applicants executed Certificate of Amendment of the Articles of Organization, 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

**June 7, 2018**

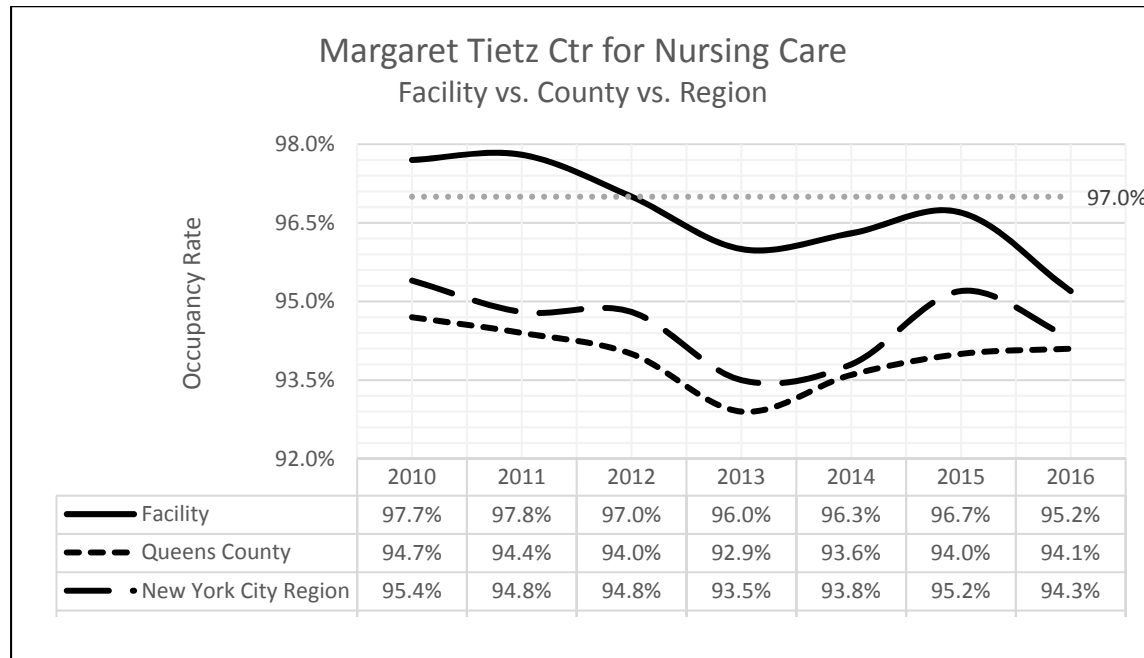
# Need Analysis

## Analysis

The current Need Methodology indicates a need for 9,778 additional beds in the New York City region.

### RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	41,336
Beds Under Construction	-43
Total Resources	41,293
Unmet Need	9,778



The overall occupancy for the New York City region was 94.3% for 2016 and 95.2% for the Margaret Tietz Center for Nursing Care.

Margaret Tietz Center for Nursing Care's utilization was 97.7% in 2010 and 95.2% in 2016. The facility has maintained strong occupancy rates over the last several years. Self-reported occupancy for 2017 was 92.5%. The county has been at 93% utilization or above since 2010.

### Medicaid Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Margaret Tietz Center for Nursing Care's Medicaid admissions of 7.3% in 2015 did not exceed Queen's County threshold of 22.4%. In 2016 Margaret Tietz Center for Nursing Care's Medicaid admissions of 7.7%% also did not exceed the county threshold of 21.6%.

**Conclusion**

There will be no change to beds or services as a result of this application.

**Recommendation**

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

**Program Analysis**

**Facility Information**

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Margaret Tietz Center for Nursing Care Inc	Jamaica Estates Nursing and Rehabilitation Center
Address	164-11 Chapin Parkway Jamaica, NY 11432	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	LLC
Class of Operator	Voluntary	Proprietary
Operator	Margaret Tietz Center for Nursing Care, Inc.	Chapin Acquisition I, LLC  <u>Members</u> *Pasquale DeBenedictis 30.33% *Alex Solovey 30.34% *Leopold Friedman 30.33% Soloman Rutenberg 9.00% *managing members

**Character and Competence - Background**

**Facilities Reviewed**

Nursing Homes

Barnwell Nursing and Rehabilitation Center	05/2008 to 03/2018
Brooklyn Gardens Nursing & Rehabilitation Center	09/2014 to present
East Neck Nursing and Rehabilitation Center	05/2008 to present
Beach Gardens Rehab and Nursing Center	11/2014 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing & Rehab Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Terrace Health Care Center (Fordham Nursing & Rehab Ctr)	06/2015 to 08/2016
Fordham Nursing and Rehab Center	08/2016 to present
The Citadel Rehabilitation & Nursing Center at Kingsbridge	02/2015 to present
Workmen's Circle Multicare Center	07/2013 to present
Upper East Side Rehabilitation and Nursing Center	06/2015 to present
Long Beach Nursing & Rehab Center	08/2016 to present
Sea Crest Nursing and Rehab Center	07/2015 to present
Hudson Pointe @Riverdale Center for Nursing & Rehab	06/2016 to present
Bronx Gardens Rehab and Nursing Center	11/2016 to present
The Plaza Rehab & Nursing Center	09/2016 to present
Ross Center for Nursing & Rehabilitation	06/2016 to present

Cassena Care at Norwalk(CT)	07/2013 to present
Cassena Care at Stamford (CT)	02/2016 to present
Cassena Care at New Britain (CT)	02/2016 to present

Other Health Facilities

Workmen’s Circle Dialysis Center (D&TC)	08/2015 to present
East Neck Dialysis Center (D&TC)	08/2015 to present
Cassena Care Dialysis at Peninsula (D&TC)	11/2016 to present
Sea-Crest Dialysis Center (D&TC)	09/2017 to present
Ultimate Care LLC (LHCSA)	02/2010 to present

**Individual Background Review**

**Pasquale DeBenedictis** is currently employed as the Chief Financial Officer at the Center for Nursing and Rehabilitation. Mr. DeBenedictis has a Bachelor’s degree in Accounting from SUNY Plattsburg. He holds a CPA license, which is currently inactive. Mr. DeBenedictis discloses ownership interests in the following health care facilities:

Barnwell Nursing and Rehabilitation Center (33.30%)	11/2003 to 03/2018
East Neck Nursing and Rehabilitation Center (15%)	02/2005 to present
Mills Pond Nursing and Rehabilitation Center (29%)	10/2010 to present
Sayville Nursing and Rehabilitation Center (33.33%)	12/2012 to present
Workmen’s Circle Multicare Center (25%)	07/2013 to present
Shore View Nursing and Rehabilitation Center (32.50%)	06/2014 to present
Morningside Nursing and Rehabilitation Center (35%)	07/2014 to present
Peninsula Nursing and Rehabilitation Center (25.05%)	08/2014 to present
Upper East Side Rehabilitation and Nursing Center (34.50%)	06/2015 to present
Sea Crest Nursing and Rehab Center (32.50%)	07/2015 to present
Fordham Nursing and Rehab Center (28.25%)	08/2016 to present
Long Beach Nursing & Rehab Center (25%)	08/2016 to present
Workmens Circle Dialysis Center (D&TC) (25%)	08/2015 to present
East Neck Dialysis Center (D&TC) (33.33%)	09/2015 to present
Cassena Care Dialysis at Peninsula (D&TC) (23.75%)	11/2016 to present
Sea-Crest Dialysis Center (D&TC) (32.50%)	09/2017 to present

Connecticut Nursing Homes

Cassena Care at Norwalk (35%)	07/2013 to present
Cassena Care at Stamford (35%)	02/2016 to present
Cassena Care at New Britain (35%)	02/2016 to present

Downtown Brooklyn Nursing & Rehabilitation Ctr (27.34%)	Pending
Morningside Dialysis Center, LLC (D&TC) (35%)	Pending
Morningside Acquisition, III LLC (Adult Home) (20%)	Pending
Morningside Acquisition, III LLC (LHCSA) (20%)	Pending
Hillside Manor Certified H.C.A. (CHHA) (30%)	Pending

**Alex Solovey** is a New York State licensed physical therapist and is in good standing. He is the Director of Rehabilitation at Theradynamics since January 1999. Mr. Solovey is currently employed as the Chief Operating Officer at the Center for Nursing and Rehabilitation. Mr. Solovey discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center (33.33%)	11/2003 to 03/2018
East Neck Nursing and Rehabilitation Center (15%)	02/2005 to present
Mills Pond Nursing and Rehabilitation Center (29%)	10/2010 to present
Sayville Nursing and Rehabilitation Center (33.33%)	12/2012 to present
Workmen’s Circle Multicare Center (25%)	07/2013 to present
Shore View Nursing and Rehabilitation Center (32.50%)	06/2014 to present
Morningside Nursing and Rehabilitation Center (35%)	07/2014 to present
Peninsula Nursing and Rehabilitation Center (25.05%)	08/2014 to present
Upper East Side Rehabilitation and Nursing Center (34.50%)	06/2015 to present

Sea Crest Nursing and Rehab Center (32.50%)	07/2015 to present
Long Beach Nursing & Rehab Center (25%)	08/2016 to present
Fordham Nursing and Rehab Center (28.25%)	08/2016 to present
Workmens Circle Dialysis Mgmt, LLC (D&TC) (25%)	08/2015 to present
Mills Pond Dialysis Center, LLC (D&TC) (33.33%)	08/2015 to present
Peninsula Continuum Services, LLC (D&TC) (23.75%)	11/2016 to present
Sea-Crest Dialysis Center (D&TC) (32.50%)	09/2017 to present

Connecticut Nursing Home

Cassena Care at Norwalk (35%)	06/2013 to present
Cassena Care at Stamford (35%)	02/2016 to present
Cassena Care at New Britain (35%)	02/2016 to present

Downtown Brooklyn Nursing & Rehabilitation Ctr. (27.33%)	Pending
Morningside Dialysis Center, LLC (D&TC) (35%)	Pending
Morningside Acquisition, III LLC (Adult Home) (20%)	Pending
Morningside Acquisition, III LLC (LHCSA) (20%)	Pending
Hillside Manor Certified H.C.A. (CHHA) (30%)	Pending

**Leopold Friedman** is the Chief Executive Officer of Advanced Care Staffing, Inc. since 2006 which is a nurse staffing agency. Mr. Friedman discloses the following ownership interests:

Peninsula Nursing and Rehabilitation Center (25%)	01/2013 to present Beach
Gardens Rehab and Nursing Center (20%)	11/2014 to present
The Citadel Rehabilitation & Nursing Center at Kingsbridge (50%)	02/2015 to present
Upper East Side Rehabilitation and Nursing Center (3%)	06/2015 to present
Long Beach Nursing & Rehab Center (25%)	08/2016 to present
Hudson Pointe @Riverdale Center for Nursing & Rehab (50%)	06/2016 to present
Bronx Gardens Rehab and Nursing Center (50%)	11/2016 to present
The Plaza Rehab & Nursing Center (25%)	09/2016 to present
Ross Center for Nursing & Rehabilitation (5%)	06/2016 to present
Yonkers Gardens Center for Rehab & Nursing (20%)	04/2018 to present
Ultimate Care, Inc. (LHCSA) (33.33%)	02/2010 to present
Cassena Care Dialysis at Peninsula (D&TC) (23.75%)	11/2016 to present

Hillside Manor Certified H.C.A. (CHHA) (30%)	Pending
Brooklyn Gardens Dialysis Center, LLC (25%)	Pending
Downtown Brooklyn Nursing & Rehabilitation Center (27.33%)	Pending

Mr. Friedman is a board member of the following nursing home:

Brooklyn Gardens Nursing & Rehabilitation Center	09/2014 to present
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**Soloman Rutenberg** is employed as the CEO at Workmen's Circle Multicare Center since 2006 which is a skilled nursing facility. He has a Master's degree in Engineering from Latvia Technical University. Mr. Rutenberg discloses ownership interest in the following health care facilities:

Workmen's Circle Multicare Center (25%)	08/2012 to present
Shore View Nursing and Rehabilitation Center (5%)	06/2014 to present
Sea Crest Nursing and Rehab Center (5%)	07/2015 to present
Mills Pond Nursing and Rehabilitation Center (9%)	05/2014 to present
Terrace Health Care Center (9%)	06/2014 to 08/2016
Morningside Nursing and Rehabilitation Center (20%)	07/2014 to present
Upper East Side Rehabilitation and Nursing Center (4.25%)	03/2016 to present
Fordham Nursing and Rehab Center (38.50%)	08/2016 to present
Long Beach Nursing & Rehab Center (9%)	08/2016 to present
Workmens Circle Dialysis Mgmt, LLC (D&TC) (25%)	08/2015 to present
Sea-Crest Dialysis Center (D&TC) (5%)	09/2017 to present

Connecticut Nursing Home

Cassena Care at Norwalk (15%)	02/2016 to present
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Cassena Care at Stamford (15%)	02/2016 to present
Cassena Care at New Britain (15%)	02/2016 to present
Morningside Dialysis Center, LLC (D&TC)	Pending
Morningside Acquisition, III LLC (Adult Home)	Pending
Morningside Acquisition, III LLC (LHCSA)	Pending
Downtown Brooklyn Nursing & Rehabilitation Center (10%)	Pending
Hillside Manor Certified H.C.A. (CHHA) (5%)	Pending

#### Character and Competence – Analysis

A review of **Barnwell Nursing and Rehabilitation Center** for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-15-001 issued January 12, 2014 for surveillance findings on March 13, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care: Accidents/Supervision.
- A federal CMP of \$3,250 was paid for the Immediate Jeopardy on 3/13/12.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on February 1, 2013. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors; 10NYCRR 415.26 Administration; and 10NYCRR 415.27 Quality Assurance.
- A federal CMP of \$5,000 was paid for the Immediate Jeopardy on 2/1/13.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on September 26, 2013. Deficiencies were found under 10NYCRR 415.4(b)(1)(2)(3) Free from Mistreatment Neglect and Misappropriation of Property; and 10NYCRR 415.12 Quality of Care Highest Practicable Potential.
- A federal CMP of \$8,000 was paid for Immediate Jeopardy on 9/26/13.

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

A review of **East Neck Nursing and Rehabilitation Center** for the period identified above reveals the following:

- The facility was fined \$6000 pursuant to Stipulation and Order NH-15-039 issued November 3, 2015 for surveillance findings on March 21, 2014. Deficiencies were found under 10NYCRR 415.3 (e)(1)(ii) Resident Rights: Right to Accept/Refuse Treatment; Right to Formulate Advance Directives; 10NYCRR 415.26 Administration and 10NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of **Mills Pond Nursing and Rehabilitation Center** for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-17-050 issued September 14, 2017 for surveillance findings on July 12, 2017. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors.

A review of operations of **The Citadel Rehabilitation and Nursing Center at Kingsbridge** for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-205 issued November 29, 2016 for surveillance findings on August 1, 2016. Deficiencies were found under 10NYCRR 415.12(h)(1) Quality of Care Accident Free Environment and 10NYCRR 415.26 Administration.
- The nursing home paid a CMP of \$20,737.60 for the survey dated August 1, 2016.

A review of operations of **Upper East Side Rehabilitation and Nursing Center** for the period identified above reveals the following:

- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on February 20, 2018. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of No Significant Med Errors and 10NYCRR 415.15(b)(2)(iii) Physician Services/Physicians Visits.

A review of operations for **Cassena Care at New Britain** for the period identified above reveals the following:

- The facility was fined \$1,730 by the State of Connecticut for a survey on September 15, 2016 for F tag 309-Quality of Care.
- The facility incurred a Civil Money Penalty of \$17,821.05 for survey findings on September 15, 2016 for F tag 309- Provide Care/Services for highest wellbeing, F tag 323- Free of Accident Hazards/Supervision/Devices and F tag 327- Sufficient fluid to maintain hydration.

A review of operations for **Cassena Care at Norwalk** for the period identified above reveals that the facility was fined by the state of Connecticut for the following:

- The facility was fined \$1,020 for the survey on September 5, 2013 for F Tag 309- Provide necessary care and services to maintain highest wellbeing of each resident and F Tag 323 -Free of Accidents: Hazards/supervision/devices.
- The facility was fined \$360 for the survey on October 17, 2013 for Tag F 323- Free from accident hazards and risks, supervision to prevent avoidable accidents.
- The facility was fined \$1,160 for the survey on December 23, 2013 for Tag F 323- Free from accident -Fall in shower.
- The facility was fined \$1,370 for the survey on February 28, 2014 for Tag F 309 G- Provide care/services for highest wellbeing, and Tag F 314 G- Treatment/services to prevent/heal pressure sores.
- The facility was fined \$3,000 for the survey on January 26, 2016 for Tag F 223- Protect resident from all abuse, physical punishment, and being separated from others.
- The facility was fined \$2,370 and \$3,000 for the survey on March 31, 2016 for Tag F 224 Prohibit mistreatment/neglect/misappropriation.
- The facility was fined \$2,530 for the survey on July 13, 2017 Free of Accident Hazards/Supervision/Devices.

The facility incurred the following Civil Money Penalties for the period identified above:

- \$7,850 for survey findings on September 5, 2013.
- \$13,650 for survey findings on February 28, 2014.
- \$6,500 for survey findings on January 26, 2016.
- \$8,750 for survey findings on March 31, 2016.
- \$2,315.95 for survey findings on September 15, 2016.

*The applicant has signed an affidavit signed attesting that none of the above fines are repetitive.*

A review of operations for **Peninsula Continuum Services, LLC d/b/a Cassena Care Dialysis at Peninsula in Far Rockaway, NY**, for the period identified above reveals the following:

- The facility incurred a Federal Civil Money Penalty of \$12,468 for survey findings from December 28, 2016 to May 15, 2017 for Respiratory protection program (fit testing, documentation), hazards communication program, sharps injury log.

The applicant has submitted an affidavit which attests that there have been no enforcement actions for Cassena Care at Stamford in the State of Connecticut for the periods identified above which results in a conclusion of substantially consistent high level of care.

A review of operations for Brooklyn Gardens Nursing & Rehabilitation Center, Beach Gardens Rehabilitation and Nursing Center, Morningside Nursing and Rehabilitation Center, Peninsula Nursing and Rehabilitation Center, Sayville Nursing and Rehabilitation Center, Shore View Nursing and Rehabilitation Center, Ross Center for Nursing and Rehabilitation, The Plaza Rehabilitation and Nursing Center, Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, Bronx Gardens Rehabilitation and Nursing Center, Sea-Crest Nursing and Rehabilitation Center, Long Beach Nursing and

Rehabilitation, Terrace Health Care Center, and Workmen's Circle Multicare Center for the periods identified above, reveals there are no enforcements.

A review of operations for Workmen's Circle Dialysis Center, East Neck Dialysis Center, Cassena Care Dialysis at Peninsula and Sea-Crest Dialysis Center (D&TC) for the periods identified above, resulted in no enforcements.

A review of Ultimate Care LLC (LHCSA) for the periods identified above, revealed no enforcements.

#### Quality Review

<b>Provider Name</b>	<b>Overall Rating</b>	<b>Health Inspection Rating</b>	<b>Quality Measure Rating</b>	<b>Staffing Rating</b>	<b>NYS Quintile</b>
Brooklyn Gardens Nursing & Rehabilitation Center	**	**	*****	*	4
East Neck Nursing & Rehab Center	*****	****	*****	Data Not Available	1
Beach Gardens Rehab and Nursing Center	****	***	*****	**	4
Mills Pond Nursing and Rehabilitation Center	**	**	****	Data Not Available	4
Morningside Nursing and Rehabilitation Center	*****	*****	*****	**	2
Peninsula Nursing and Rehabilitation Center	**	*	*****	Data Not Available	5
Sayville Nursing and Rehabilitation Center	***	**	*****	Data Not Available	5
Shore View Nursing & Rehabilitation Center	*****	****	*****	Data Not Available	4
Fordham Nursing and Rehabilitation Center	*****	*****	*****	*	3
The Citadel Rehab & Nursing Ctr At Kingsbridge	**	*	*****	**	3
Workmens Circle Multicare Center	*****	*****	*****	**	1
Upper East Side Rehabilitation and Nursing Center	*****	*****	*****	Data Not Available	3
Long Beach Nursing and Rehabilitation Center	****	***	*****	Data Not Available	4
Sea Crest Nursing and Rehabilitation Center	****	****	****	Data Not Available	2
Hudson Pointe at Riverdale Ctr For Nrsng And Rehab	****	****	*****	*	3
Bronx Gardens Rehabilitation & Nursing Center	***	**	*****	***	4
The Plaza Rehab and Nursing Center	*****	*****	*****	*	2
Ross Center for Nursing and Rehabilitation	**	**	*****	*	3

#### CT

Cassena Care at New Britain	***	**	*****	Data Not Available	N/A
Cassena Care at Norwalk	**	*	*****	Data Not Available	N/A
Cassena Care at Stamford	*****	***	*****	****	N/A

With regards to the nursing homes with quality ratings of 1 or 2, the applicant noted the low ratings were from bankruptcies, environmental deficiencies and a natural disaster. The applicant is working to make significant improvements to their facilities by changing the administrators, replacing LPN's with RN's, staff trainings and adding nursing staff.

It is noted that The Citadel Rehabilitation and Nursing Center at Kingsbridge in August of 2016, received an Immediate Jeopardy as a result of side rails on the current beds not being in compliance with regulations. As of March 21, 2017, the facility received approval for phase one resident room upgrades. The facility will remove existing beds and replace them with new beds. This IJ will be reflected on the Health Inspections score for a period of 36 months.

The applicant claims that Ross Center for Nursing and Rehabilitation had consistent low CMS ratings prior to change of ownership. Since the change of ownership, the facility improved to 2-star ratings. Two inspections were conducted in 2017, one in January and the other in July. There was a total of 10 deficiencies from these inspections. None of the deficiencies noted resulted in any fines and or enforcement actions. The facility will implement a new quality improvement program to analyze existing staffing patterns and training. The improvement program will identify new benchmarks for reducing re-hospitalizations, high risk patients for pressure ulcers and a pain program. The facility will work with staff to retrain staff to the extent possible or if necessary attract and replace LPN's with RN's.

#### Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicant members. All health care facilities are in substantial compliance with all rules and regulations. The applicants may utilize staffing agencies upon their assumption of ownership, if they identify an immediate need in a particular staffing area.

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

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

Date:	January 12, 2018
Seller:	Margaret Tietz Center for Nursing Care, Inc.
Buyer:	Chapin Acquisition I, LLC
Asset Acquired:	Rights, title and interest in the business assets including: cash equivalents in new accounts, accounts receivable, retroactive rate increase and grants after effective date, Universal Settlement after execution date, tangible assets, inventory, supplies, books and records related to the facility, assigned and assumed contracts, agreements, warranties, Medicaid and Medicare provider numbers, assignable licenses and permits, resident funds, security deposits, patients & employee records, manuals & computer software, phone and telefax numbers.
Excluded Assets:	Corporate records, reimbursements and credits prior to effective date, the names "Margaret Tietz Nursing and Rehabilitation Center," "Margaret Tietz," and "CenterLight," Company's Intellectual Property, Employee Plans' Assets, charitable gifts, bequests and grants, proceeds from litigation for services prior to effective date, cash equivalents not in new accounts. \$1,765,076 insurance recoveries receivables noted in 12/31/16 financial statement.
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the effective Date; plus, assumption of Healthcare Program Liabilities (up to \$2,145,664), and liabilities under the Promissory Note. Total liabilities estimated at \$5,385,089 as of October 31, 2017.
Purchase Price:	\$2,500,000 plus assumed liabilities less accounts receivables. (As of October 31, 2017, assumed liabilities = \$5,385,089. Offset by \$5,385,089 in net accounts receivable for net of \$0).
Payment of Purchase Price:	\$125,000 paid upon execution and subject to added deposits of \$500,000 and \$1,000,000 if not closed by the start of the 19 <sup>th</sup> month and 25 <sup>th</sup> month, respectively.

The \$2,500,000 purchase price for the operations will be satisfied by members equity.

BFA Attachment B provides additional details on the assumed liabilities of \$5,385,089 offset by \$5,385,089 in net accounts receivable per the internal financial statement as of October 31, 2017.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of March 30, 2018, the facility had no outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed REPA for the sale of the RHCF's realty, to be effective upon PHHPC approval concurrent with the APA. The terms are summarized below:

Date:	January 12, 2018
Seller:	Margaret Tietz Nursing and Rehabilitation Center, Inc. (f/k/a Kew Gardens Nursing Home Co., Inc.)
Purchaser:	Chapin Acquisition II, LLC
Asset Transferred:	Real Property located at 164-11 Chapin Parkway, Jamaica, NY 11432
Purchase Price:	\$38,500,000
Payment of Purchase Price:	\$1,925,000 paid upon execution and subject to added deposit of \$500,000 if not closed by the start of the 19 <sup>th</sup> month. Balance due at Closing.

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

Equity - Chapin Acquisition II, LLC Members	\$3,850,000
Loan (interest at One-Month Libor + 3.25% or 5.13%, 10 years, 25-year amortization)	<u>34,650,000</u>
Total	\$38,500,000

\* One-Month Libor of 1.88% as of April 10, 2018.

Bank of America has provided a letter of interest.

BFA Attachment A is the net worth summary for the proposed members of Chapin Acquisition I, LLC (operator) and Chapin Acquisition II, LLC (real property owner), which reveals sufficient resources to meet the equity requirement for the project. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Alex Solovey and Pasquale DeBenedictis have provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest and personally contribute capital to fund the balloon payment should acceptable financing not be available at the time of refinancing.

Lease Agreement

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

Premises:	200-bed RHCF located at 164-11 Chapin Parkway, Jamaica, New York 11432
Landlord:	Chapin Acquisition II, LLC
Lessee:	Chapin Acquisition I, LLC
Term:	20 years (no renewable terms)
Rent:	\$3,850,000 (\$320,834 per month), 2% increase after 1 <sup>st</sup> year
Provisions:	Taxes, insurance, maintenance, and utilities

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

Operating Budget

The applicant has provided the current year (2016) results and the first-year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid-FFS/MC	\$314.93	\$15,556,740	\$300.50	\$15,107,500
Medicare-FFS/MC	\$545.99	6,611,392	\$649.95	7,824,100
Commercial -FFS	\$354.36	1,654,839	\$360.08	1,784,900
Private Pay	\$499.98	1,772,444	\$500.03	1,770,600
Other Revenue *		<u>972,142</u>		<u>29,800</u>
Total		\$26,567,557		\$26,516,900

<u>Expenses</u>				
Operating	\$381.50	\$26,598,615	\$293.56	\$20,787,200
Capital	<u>\$34.61</u>	<u>2,413,018</u>	<u>\$59.45</u>	<u>4,209,400</u>
Total Expenses	\$416.11	\$29,011,633	\$353.01	\$24,996,600

Net Income (Loss) (\$2,444,076) \$1,520,300

Patient Days 69,722 70,810  
Utilization % 95.51% 97.00%

\* Current Year: Vital Access Provider (VAP) Award for \$709,140, Grant Income of \$217,438 and Miscellaneous of \$45,564.

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

- The breakeven utilization is projected at 91.44% for first and third years
- The current year reflects the facility's 2016 revenues and expenses.
- Medicaid revenue is based on the facility's current 2017 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2016. The Year One forecasted Medicare rate is based on the federal Medicare rate for the facility for 2017, and for other facilities operated by the proposed ownership group in the NYC region increased by 1% for inflation. The Private Pay rates were based on the current operator's average rates for 2017 and the average rates for similar facilities in the same geographic area increased by 2.5% for inflation.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience.
- The facility's projected utilization for Year One and Three is 97%. It is noted that utilization for the past three years has averaged around 96.2%, with current occupancy being 90% as of January 31, 2018.
- Utilization by payor is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>
Medicaid-FFS/MC	70.8%	71.0%
Medicare-FFS/MC	17.4%	17.0%
Commercial-FFS	6.7%	7.0%
Private Pay	<u>5.1%</u>	<u>5.0%</u>
Total	100%	100%

- The facility's Medicaid admissions of 7.3% in 2015 and 7.7% in 2016 were below Queens County's 75% threshold rates of 22.4% for 2015 and 21.6% for 2016. The applicant indicated that there were 21 admissions in 2015 and 23 admissions in 2016 where the payor source was Medicare/Medicaid. When a resident enters as a Medicare payor, it can be for a short term rehabilitative reason, yet they can be enrolled in the Medicaid program. By reviewing the financial arrangements on the last day of the reporting period, Medicaid is the primary payer (58.97% in 2015, 43.88% in 2016). Also, for some MLTC plans, when the admission is made it is booked as "Other." Margaret Tietz had 324 and 349 admissions respectively for 2015 and 2016 that have been designated as Private/Other. Incorporating these admissions in both 2015 and 2016, the adjusted Medicaid admission rate would increase to above 60% for both years in question.

### Capability and Feasibility

Chapin Acquisition I, LLC will acquire the RHC operations for \$2,500,000 to be funded via members' equity. Chapin Acquisition II, LLC will purchase the real property for \$38,500,000 to be funded by members' equity of \$3,850,000 and a \$34,650,000 mortgage for a ten-year term amortized over 25 years at variable interest based on the One-Month Libor plus 3.25% (estimated at 5.13% based on the One-Month Libor of 1.88% as of April 10, 2018). Bank of America has provided a letter of interest for the loan at the stated terms. There are no project costs associated with this application.

The working capital requirement is estimated at \$4,166,100 based on two months of first year expenses and will be funded via member's equity. BFA Attachment A, proposed members net worth summaries, reveals sufficient resources to meet equity requirements. As previously stated, liquid resources may not be available in proportion to ownership interest. As the result of potential equity shortfall, Alex Solovey and Pasquale DeBenedictis have provided affidavits stating their willingness to contribute resources disproportionate to their membership interest and to cover the balloon payment if terms are not acceptable at the time of refinancing.

The submitted budget projects a first-year profit of \$1,520,300 after the change in ownership. Revenues are expected to increase by \$891,685 (after excluding \$942,342 in non-transferring other revenues as noted above). Overall expenses are expected to decline by \$4,015,033 based on a \$5,811,415 reduction in operating expense and a \$1,796,382 increase in capital expense (primarily rent). The decline in operating expense is attributable to the following: a reduction in salary and wages of \$1,760,827 (a 14.6 FTE reduction from management that includes a \$300,000 CEO and COO allocation of Centerlight's corporate structure, and a savings of an estimated \$1,460,827 for functions that were provided by a centralized, related party, support structure); a \$1,408,006 reduction in employee benefits (percentage to salaries dropped from 41.82% to 35%); a \$461,902 reduction in fees (legal expense specific to sale & allocation of corporate expense); a \$1,576,061 reduction in other direct expenses (primarily current operator's bad debt expense); and the \$604,616 balance spread between non-medical supplies and purchased services (expects to secure better pricing). BFA Attachment C is Chapin Acquisition I, LLC's pro forma balance sheet, which shows the entity will start with \$5,266,000 in member's equity, which includes the \$5,385,089 in assumed liabilities offset by \$5,385,089 in net accounts receivable. The budget appears reasonable.

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

BFA Attachment D is the Financial Summary of Margaret Tietz Center for Nursing Care, Inc. for 2014 through 2016. The RHC had an average negative net income of \$1,323,182 and positive average net assets of \$10,379,052. Working capital was positive during the reporting periods. BFA Attachment E is the draft financial statements as of November 30, 2017, which continue to show positive working capital, net assets, and the net loss of \$1,319,983.

BFA Attachment F is proposed members' ownership interest in the affiliated RHCs and their financial summaries. All the RHCs have maintained positive net income, working capital and net assets or have become positive by 2017 except for Hudson Pointe and Hendon Gardens. Hudson Pointe's negative working capital is the result of inheriting certain liabilities from the June 2016 acquisition, which remained on the books through much of 2017. Their January 2018 internal financial statements show the entity is now generating an operating surplus. Hendon Gardens' loss centers around the ineffectiveness of the Administrator who has since been replaced. The new Administrator has increased marketing efforts and is bringing operations towards net positive cash flow.

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

Recommendation

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



## Attachments

- BFA Attachment A Net Worth of Proposed Members of Chapin Acquisition I, LLC
- BFA Attachment B Details of Assumed Liabilities as of October 31, 2017
- BFA Attachment C Pro Forma Balance Sheet
- BFA Attachment D Financial Summary and 2016 Certified Financial Statement of Margaret Tietz Center for Nursing Care
- BFA Attachment E November 30, 2017 draft Financial Statement of Margaret Tietz Center for Nursing Care
- BFA Attachment F Proposed Members' Ownership Interest in Affiliated RHCs and Financial Summary
- BFA Attachment G Members of Landlord, Chapin Acquisition II, LLC



**Project # 181218-E**  
**Heritage Operating Associates, LLC d/b/a The Grand Rehabilitation and Nursing at Utica**

**Program:** Residential Health Care Facility  
**Purpose:** Establishment

**County:** Oneida  
**Acknowledged:** March 30, 2018

**Executive Summary**

**Description**

Heritage Operating Associates, LLC d/b/a The Grand Rehabilitation and Nursing at Utica, a New York limited liability company, requests approval to be established as the new operator of Heritage Health Care Center, a 220-bed, Article 28 residential health care facility (RHCF) located at 1657 Sunset Avenue, Utica, (Oneida County). Faxton-Sunset-St. Luke's Health Care Center, Inc., a voluntary not-for-profit entity, is the current operator and real property owner of the facility. Upon approval of this application, the facility will be called The Grand Rehabilitation and Nursing at Utica. There will be no change in beds or services provided.

On January 31, 2017, Faxton-Sunset-St. Luke's Health Care Center, Inc. entered into an Asset Purchase Agreement (APA) with Heritage Operating Associates, LLC for the sale and acquisition of the RHCF operating interests for \$1,000 plus the assumption of accounts payable outstanding at the time of closing (\$2,347,839 as of April 25, 2018). They concurrently entered into a Real Estate Purchase Agreement (REPA) with Heritage Real Estate Operations Associates, LLC for the sale and acquisition of the real property for \$1,000 plus the assumption of a notes payable for \$11,312,767. The APA and REPA will close at the same time upon approval by the Public Health and Health Planning Council (PHHPC). There is a relationship between Heritage Operating Associates, LLC and Heritage Real Estate Operations Associates, LLC in that there are common members in both entities. The

applicant will lease the premises from Heritage Real Estate Operations Associates, LLC.

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

<u>Current Operator</u>	
Faxton-Sunset-St. Luke's Health Care Center, Inc.	
Voluntary Not-For-Profit	

<u>Proposed Operator</u>	
Heritage Operating Associates, LLC	
<u>Members</u>	
Heritage Acquisition Holdings LLC	95%
Jeremy Strauss (95%)	
Rebecca Strauss (5%)	
Meryl Strauss	5%

Faxton-Sunset-St. Luke's Health Care Center, Inc. decided to sell the RHCF for programmatic and fiscal reasons. The facility's recruitment efforts to source qualified candidates were continuously unsuccessful, and they lacked the ability to adequately staff the home. A 2014 publicized incident severely tarnished their reputation in the local market and the Board ultimately decided that the only way to reverse the community's perception was through a sale. The facility has experienced consistent annual losses ranging up to \$1 million, which resulted in negative net assets of over \$8 million and eliminated the possibility of borrowing required funds for capital improvements. The Board interviewed more than seven potential buyers during 2015-2016 and selected The Grand Healthcare System (The Grand) as they have

significant resources, operate several other facilities in the geographic region, and are knowledgeable of the local community, its residents and their needs. Additionally, The Grand agreed to accept all of the facility's debts towards the purchase price. While there won't be any substantial proceeds for the sale, all earnings will be donated to Faxton-Sunset-St. Luke's Foundation. There are no known restrictions on the property.

#### OPCHSM Recommendation Contingent Approval

#### Need Summary

There will be no change in beds at the facility through completion of this project. This change in ownership will have no impact on need or utilization.

#### Program Summary

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Healthcare System (The Grand). The Grand is a related entity with Jeremy Strauss as CEO. The applicant does intend to utilize staffing agencies upon their assumption of ownership.

#### Financial Summary

Heritage Operating Associates, LLC will acquire the RHCF operations for \$1,000 funded via

equity, plus the assumption of accounts payable (\$2,347,839 as of April 25, 2018, to be offset by accounts receivables). Heritage Real Estate Operations Associates, LLC will purchase the real property for \$1,000 plus the assumption of a notes payable for \$11,312,767. This liability pertains to two notes payable that are due to Sunset Utica, LLC (Sunset). On December 13, 2016, the notes payable were combined and acquired by Utica Acquisitions LLC, whose sole member is Jeremy Strauss. The Terms of Agreement require interest only payments for the first 24 months, with intent to secure permanent long-term financing by the end of the 24-month period. The purchase of the real property will be funded, to the extent needed, via a personal line of credit available to Mr. Strauss until permanent financing is obtained. Harborview Capital Partners provided a letter confirming the line of credit of up to \$25 million at 6% interest payable over no more than five years. There are no project costs associated with this application. The projected budget is as follows:

	<u>Year One</u>
Revenues	\$15,619,171
Expenses	<u>13,923,229</u>
Net Income	\$1,695,942

## 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.
  - 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 an executed Consulting Services Agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
6. Submission of a photocopy of the applicant's executed Consulting Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed Assignment of Lease, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
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 a commitment to refinance a note payable or its satisfaction for acquiring the real property, acceptable to the Department of Health. [BFA]

Council Action Date

**June 7, 2018**

# Need Analysis

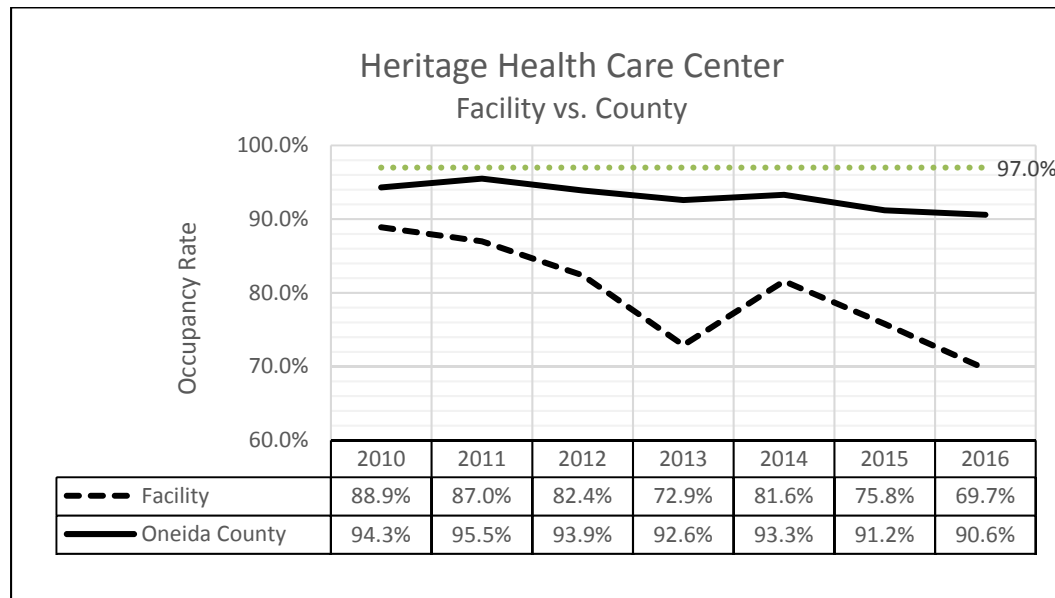
## Analysis

The current Need methodology indicates an excess of 362 beds in Oneida County.

### RHCF Need – Oneida County

2016 Projected Need	2,276
Current Beds	2,638
Beds Under Construction	0
Total Resources	2,638
Unmet Need	-362

Facility	2010	2011	2012	2013	2014	2015	2016
<b>Oneida County</b>	94.3%	95.5%	93.9%	92.6%	93.3%	91.2%	90.6%
<b>Heritage Center</b>	88.9%	87.0%	82.4%	72.9%	81.6%	75.8%	69.7%



Self-reported occupancy for 2017 is shown below. According to the applicant, the low occupancy is due to operational deficiencies. The significant improvement in occupancy is in part attributable to the assistance offered by The Grand Healthcare System. Occupancy, as of March 14, 2018 was 95.0%.

2017 Occupancy	Jan	Feb	Mar	Apr	May	June
Heritage Health	69.5%	70.5%	75.9%	79.5%	80.0%	78.6%

2017 Occupancy	July	Aug	Sep	Oct	Nov	Dec
Heritage Health	81.4%	87.3%	88.2%	88.2%	89.5%	90.9%

The current operator entered into a consulting services with The Grand Healthcare System to improve operations, stabilize staffing and enhance the care provided to residents. With the Grand Healthcare system's assistance, the facility has been able to improve the quality of care, which has resulted in an increase in utilization.

The applicant will continue the following initiatives to sustain the recent improvements in quality of care and utilization:

- Strengthen relationships with hospital discharge planners
- Collaborations with local area hospitals to ensure prompt discharge of hospital patients appropriate for care in a skilled nursing care facility.
- Meeting with local community leaders to determine specific needs of the community and develop programs to address identified needs.
- Implementation of new programs to provide the following additional services: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy and complex clinic care.

By offering these additional services, the facility will be able to care for higher acuity residents, including difficult to place residents. The cumulative effects if these factors should allow the facility to achieve and sustain occupancy rates near the Department's planning optimum.

#### Medicaid Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long-term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Heritage Health Care Center's Medicaid admissions for 2015 were 42.1%, which exceeded Oneida County's threshold of 18.6%. Likewise, in 2016 the facility's Medicaid admissions were 54.4%, which also exceeded the county threshold of 18.2%.

#### Conclusion

There will be no change in beds in Oneida County through completion of this project. This change in ownership will have no impact on need or utilization.

#### Recommendation

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

## Program Analysis

### Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Heritage Health Care Center	The Grand Rehabilitation and Nursing at Utica
Address	1657 Sunset Avenue Utica NY	Same
RHCF Capacity	220	Same
ADHC Program Capacity	0	Same
Type of Operator	Voluntary	Same
Class of Operator	Not for Profit	Same
Operator	Faxton- Sunset St. Luke's Health Care Center	Heritage Operating Associates, LLC Heritage Acquisition Holdings LLC 95% Jeremy Strauss (95%) Rebecca Strauss (5%) Meryl Strauss 5%

### Character and Competence - Background

#### Facility Review

##### Nursing Homes

Boro Park Center for Rehabilitation	05/2011 to 03/2016
Brooklyn Center for Rehabilitation & Residential Healthcare	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Holliswood Center for Rehabilitation	05/2013 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Guilderland	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley	09/2016 to present
The Grand Rehabilitation and Nursing at Pawling	01/2004-present
The Grand Rehabilitation and Nursing at Queens	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango	05/2011 to present
The Grand Rehabilitation and Nursing at Rome	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
The Grand Rehabilitation and Nursing at Barnwell	12/2017 to present

##### Adult Homes

Washington Center Adult Home (AH)	02/2014 to 05/2016
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##### Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	08/2007 to present
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### **Individual Background Review**

**Jeremy B. Strauss** discloses employment as Executive Director of The Grand Rehabilitation of Pawling since 2003. He is also the CEO of The Grand HealthCare System, which is a consulting and service company for skilled nursing and rehabilitation facilities. He has a BA Degree from Yeshiva University.

Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation (2%)	05/2011 to 03/2016
Brooklyn Center for Rehabilitation & Residential HealthCare (5%)	03/2007 to 12/2015
Bushwick Center for Rehabilitation (10%)	05/2011 to 12/2015
Corning Center for Rehabilitation (25%)	07/2013 to 02/2016
Essex Center for Rehabilitation (30%)	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care (25%)	04/2012 to 12/2015
Holliswood Center for Rehabilitation (7.5%)	05/2013 to 3/21/16
Richmond Center for Rehabilitation and Specialty Healthcare (5%)	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare (29%)	07/2014 to 05/04/16
The Grand Rehabilitation and Nursing at Guilderland (95%)	11/2014 to present
The Grand Rehabilitation and Nursing at River Valley (95%)	09/2016 to present
The Grand Rehabilitation and Nursing at Pawling (98%)	01/2004 to present
The Grand Rehabilitation and Nursing at Queens (95%)	06/2004 to present
The Grand Rehabilitation and Nursing at Chittenango (67%)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (98%)	05/2011 to present
Washington Center for Rehabilitation (30%)	02/2014 to 12/2015
Waterfront Center for Rehabilitation (30%)	01/2013 to 12/2015
Washington Center Adult Home (AH) (30%)	02/2014 to 05/2016
Senior Care Emergency Ambulance Services, Inc. (23%)	05/2005 to present
The Grand Rehabilitation and Nursing at Barnwell (95%)	12/2017 to present

**Meryl Strauss** discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. She has a BA Degree from Queens College. Ms. Strauss discloses the following health facility interests:

The Grand Rehabilitation and Nursing at Guilderland (5%)	11/2016 to present
The Grand Rehabilitation and Nursing at River Valley (5%)	09/2016 to present
The Grand Rehabilitation and Nursing at Rome (2%)	08/2016 to present
The Grand Rehabilitation and Nursing at Chittenango (2%)	07/2016 to present
The Grand Rehabilitation and Nursing at Barnwell (5%)	12/2017 to present

**Rebecca Strauss** expects to graduate from Stern College/Yeshiva University in June of 2018 with a double degree in Social Work/Judaic Studies. Ms. Strauss discloses no work history or health facility ownership interests.

### Character and Competence - Analysis

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-.034 issued on January 5, 2016 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.



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

A review of operations of the Grand Rehabilitation and Nursing at Guilderland for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
- A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order # 17-042 issued on July 25, 2017 for surveillance findings on April 14, 2017. Deficiencies were found under 10 NYCRR 415.3(e)(2)(ii)(b) Notification of Changes Significant Changes in Condition-Complications and /or Life Threatening.

An assessment of the underlying causes of the 2015 enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-16-118 issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

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

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 19, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.
- A federal CMP of \$7,283.25 was assessed for December 16, 2016 survey findings.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-18-009 issued for surveillance findings on October 20, 2017. Deficiencies were found under 10 NYCRR 483.24 and 483.25(k)(l) Provide Care/Services for Highest Well Being

A review of the operations of The Grand Rehabilitation and Nursing at Rome for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.
- A federal CMP of \$8,541 was assessed for the September 11, 2015 survey findings.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The review of operations for the above nursing homes indicates there were only single enforcements, and the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Holliswood Center for Rehabilitation and Healthcare, Steuben Center for Rehabilitation and Healthcare, The Grand Rehabilitation and Nursing at Queens, The Grand Rehabilitation and Nursing at River Valley, The Grand Rehabilitation and Nursing at Pawling and The Grand Rehabilitation and Nursing at Barnwell for the time periods indicated above reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements. Information provided by the Bureau of Emergency Services indicates there have been issues involving crashing ambulances and vehicle maintenance.

A review of operations for Washington Center Adult Home, (Argyle Center for Independent Living) for the periods identified above, reveals the following:

- The facility was fined \$455.00 pursuant to Stipulation and Order # ACF-16-149 issued on 11/21/2016 for surveillance findings on 1/7/2016 and 4/5/2016. Deficiencies were found under 18 NYCRR 487.8, Food Service.

Quality Review

Provider Name	Overall	Health Inspection	Quality Measures	Staffing	Quintile
The Grand Rehabilitation & Nursing at Pawling	*****	****	*****	***	4
The Grand Rehabilitation & Nursing at Queens	*****	****	*****	***	5
The Grand Rehabilitation & Nursing at Rome	**	*	*****	**	5
The Grand Rehabilitation & Nursing at Chittenango	*	*	****	*	3
The Grand Rehabilitation & Nursing at Guilderland	*	*	***	***	N/A*
The Grand Rehabilitation & Nursing at River Valley	**	**	***	**	5
The Grand Rehabilitation & Nursing at Barnwell	*	*	**	**	5

*\*Not applicable because the facility was a special focus facility*

With regard to the nursing homes with a quality score of 1 or 2, the applicant indicates in general the low star ratings are attributed to inconsistent practices among staff due to varying comprehension of policies/procedures and technical skill proficiencies. The applicants have stated they have responded by implementing staffing incentives to recruit and retain employees. The incentives include enhanced training and education, and housing to augment staff recruitment and retention. Other measures implemented across the board include changes to policies and procedures, audits of staff practices and increased oversight. The applicant also mentions that two of the facilities provide care to clinically complex residents that other facilities are unwilling or unable to accept, and this can affect the performance rating for quality measures.

It is noted that there have been improvements in some of the star ratings since the applicant has taken ownership, and that two of their 2-star facilities have been owned for less than two years.

The Grand Rehabilitation and Nursing at Guilderland was a Special Focus facility from July 2015 until November 2016. Mr. Strauss acquired a 9% membership interest of Guilderland Center Rehabilitation and Extended Care Facility Operating Company, the previous operator, in November 2014. Mr. Strauss was hired as a consultant to the operator, and the facility showed sufficient improvement to graduate from Special Focus. In November 2016 the ownership of Guilderland Center changed, with Mr. Strauss serving as managing member.

In response to the 2017 enforcement at this facility the applicant explained that a review of staff practices indicated a lack of clarity among staff regarding notification protocol. The applicant indicates that the issues with leadership and staff at the facility have been remedied. The facility has taken steps including hiring a new Administrator. The Grand, the operating consultant, has added Support and Regional Assessment nurses and a Corporate Director of Education. Specific staffing initiatives at Guilderland Center include hiring a staff recruiter for the Capital Region, the execution of a staffing contract to provide additional night and weekend staffing, introduction of a new benefit package for staff recruitment and retention and the implementation of an on-call transportation support program to provide assistance to staff getting to work.

In response to the most recent October 2017 enforcement at The Grand Rehabilitation and Nursing at Chittenango the root cause was inconsistency and inadequate monitoring by the nursing and medical staff. The facility has taken steps which include immediate re-education of nurses on the proper procedure for documenting all labs, quality assurance monitoring and the review of lab audits by the quality assurance committee.

### Project Review

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Healthcare System. The Grand is a related party with Jeremy Strauss serving as CEO. The applicant intends to utilize staffing agencies following their assumption of ownership.

### Conclusion

No negative information has been received concerning the character and competence of the proposed applicant members

### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

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

Date:	January 31, 2017
Seller:	Faxton-Sunset-St. Luke's Health Care Center, Inc
Buyer:	Heritage Operating Associates, LLC
Asset Acquired:	Rights, title and interest in business basic assets free and clear of liens including: trade name "Heritage Health Care Center" tangible assets, cash equivalents, accounts receivable, retroactive rate increases, inventory, supplies, books & records related to facility, assigned & assumed contracts, Medicaid and Medicare provider numbers, assignable licenses and permits, trade name, resident funds, goodwill, security deposits for future services, patients & employee records, manuals & computer software, phone and telefax numbers.
Excluded Assets:	Seller's rights, title and interest on the closing date in all personal property.
Assumed Liabilities:	Accounts Payable totaling \$2,347,839 as of April 25, 2018, expected to be offset by accounts receivables.
Purchase Price	\$1,000 plus assumed liabilities of \$2,347,839 as of April 25, 2018
Payment:	\$1,000 paid upon execution

BFA Attachment A is the net worth summary for Heritage Operating Associates, LLC members, which reveals sufficient resources to meet the equity requirement. Jeremy Strauss has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interest in the operating entity to make up any member's equity shortfall.

BFA Attachment B provides additional details on the assumed liabilities of \$2,347,839 as of April 25, 2018.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of April 26, 2018, the facility has no outstanding Medicaid liabilities.

### 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:	January 31, 2017
Seller:	Faxton-Sunset-St. Luke's Health Care Center, Inc.
Purchaser:	Heritage Real Estate Operations Associates, LLC
Asset Transferred Realty:	Real Property located at 1643 and 1657 Sunset Avenue and 2,4, and 8 Burrstone Road (all in Utica, NY) tax map 318.70-3-46, 318.78-1-1, 318.78-1-2, 318.78-1.24, 318.78-1.25 and 318.78-1-26
Purchase Price:	\$1,000 plus assumption of notes payable for \$11,312,767
Payment of the Purchase Price:	\$1,000 paid upon execution; \$11,312,767 Balance due at closing.

The remaining \$11,312,767 real property purchase price pertains to two notes payable due to Sunset Utica, LLC. On December 13, 2016, the notes payable were combined and acquired by Utica Acquisitions LLC, whose sole member is Jeremy Strauss. The Terms of Agreement require interest only payments for the first 24 months, with intent to obtain permanent long-term financing by the end of the 24-month period. The purchase of the real property will be funded, to the extent needed, via a personal line of credit available to Mr. Strauss until permanent financing is obtained. Harborview Capital Partners provided a letter confirming their commitment to provide Mr. Strauss a line of credit of up to \$25 million at 6% interest payable over no more than five years to support any and all operational expenses that may arise. This commitment is based upon Harborview's historical relationship with Mr. Strauss on other loans they have arranged for his businesses and ventures, and the equity value/overall portfolio strength of his affiliated companies. Mr. Strauss has provided an affidavit stating his willingness to contribute resources disproportionate to his ownership interest in the realty entity to make up any member's equity shortfall. There are no project costs associated with this application.

### Lease Agreement

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

Premises:	220-bed RHCF located at 1657 Sunset Avenue, Utica, NY 13502
Lessor:	Heritage Real Estate Operations Associates, LLC
Lessee:	Heritage Operating Associates, LLC
Term:	10 years
Rent:	\$1,600,000 per year (\$133,334 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement.

### Consulting Services Agreement

The applicant has provided a draft Consulting Services Agreement (CSA), with terms summarized below:

Contractor:	Strauss Ventures, LLC d/b/a The Grand Health Care System
Facility:	Heritage Operating Associates, LLC
Services:	Consulting/advisory services related to administration and operational functions, including advice/assistance with regards to the following: regulatory monitoring, compliance and quality assurance, development and implementation of marketing plan, responsible for the assistance and supervision of all functions related to accounts receivable, billing and analytics, preparing reports, bookkeeping, reimbursement, back office financial activities and group purchasing.
Term:	One Year with automatic one-year renewals, unless terminated through mutual consent, default or by one party with 30-day written notice.
Fee:	\$50,000 per month. Periodically fees will be adjusted based on quarterly review of fairness and appropriateness of the fees.

Jeremy Strauss, a member of the applicant, is the CFO of the Strauss Ventures, LLC. The draft CSA provides that Heritage Operating Associates, LLC retains ultimate authority, responsibility and control in all final decisions associated with the services. In accordance with the Department's Administrative Service Agreement (ASA) and Contract Standardization policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes and regulations. The applicant has submitted an executed attestation acknowledging understanding of the reserve powers that cannot be delegated and that they will not willfully engage in any such illegal delegations of authority.

On December 13, 2016, Faxton-Sunset-St. Luke's Health Care Centers' Board voted to retain Strauss Ventures, LLC d/b/a The Grand Healthcare as consultants for the day-to-day operations of the RHCF. On January 9, 2017, the facility entered into a CSA with Strauss Ventures, LLC for a term of one year (renewable) at a fee of \$50,000 per month to assist with the administrative and day-to-day operations of the RHCF. Per the applicant, improvements implemented by Strauss Ventures, LLC include the following:

- Occupancy has gone from an average of 140 beds to 200 beds;
- They have brought in agency staff to help fill in gaps and to boost services to the residents;
- They hired a recruiter to source qualified local employees;
- Management positions have been filled including hiring an Assistant Director of Nursing (never had one before) as well as unit managers;
- Ongoing mandatory education and training has been provided to ensure staff is providing residents with appropriate medical care and enhanced customer service;
- They have helped in settlement negotiations for the long-suspended union contract;
- Helped in redesigning scheduling software (include HR & payroll function) with a goal to increase efficiency and improve employee retention rate; and
- Upgraded the facility including acquiring a new computer system, acquiring new kitchen equipment and purchasing new beds for the facility.

#### Operating Budget

The applicant has provided the current year (2016) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	<u>Current Year</u>		<u>First Year</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid-FFS	\$200.67	\$6,875,230	\$177.06	\$8,331,558
Medicaid-MC	\$189.91	2,520,268	\$189.91	3,460,920
Medicare FFS	\$436.00	1,374,706	\$436.00	1,888,752
Private	\$258.91	1,410,559	\$258.91	1,937,941
All Other*		<u>114,791</u>		<u>0</u>
Total		\$12,295,554		\$15,619,171
<u>Expenses</u>				
Operating	\$206.02	\$11,564,582	\$156.19	\$12,041,480
Capital	<u>\$27.67</u>	<u>1,553,253</u>	<u>\$24.41</u>	<u>1,881,749</u>
Total Expenses	\$233.69	\$13,117,835	\$180.60	\$13,923,229
Gain/(Loss)		<u>(\$822,281)</u>		<u>\$1,695,942</u>
Patient Days		56,133		77,096
Utilization %		69.9%		96.01%

\*Cash discounts & rebates on purchases

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

- The breakeven utilization is projected at 85.6% for first year.
- The current year reflects the facility's 2016 revenues and expenses.
- Medicaid revenue is based on the facility's current 2017 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2016 and the forecasted year one and year three Medicare rate is the actual daily rate experienced during 2017. The Private Pay rates were based on the current operator's average rates for 2017.
- Expense and staffing assumptions were based on the current operator's model and then adjusted based on the applicant's experience. There are no anticipated staff reductions. RNs are budgeted to increase by two FTEs in the first year, with another four FTEs added in year three. LPNs will increase by 2.6 FTEs in year one and 5.2 FTEs in year three.
- The projected utilization for Year One and Three is 96.01% and 97.01%, respectively. Utilization for the past three years has averaged 75.76%, with occupancy at 96.8% as of January 24, 2018.
- Utilization by payor for the first and third year after the change in ownership is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>
Medicaid-FFS	61.04%	61.03%
Medicaid-MC	23.64%	23.64%
Medicare-FFS	5.62%	5.62%
Private Pay	<u>9.70%</u>	<u>9.71%</u>
Total	100%	100%

#### Capability and Feasibility

Heritage Operating Associates, LLC will acquire the RHCF operations for \$1,000 funded via equity, plus the assumption of accounts payable (\$2,347,839 as of April 25, 2018, to be offset by accounts receivables). Heritage Real Estate Operations Associates, LLC will purchase the real property for \$1,000 plus the assumption of a notes payable for \$11,312,767. This liability pertains to two notes payable that are due to Sunset Utica, LLC. On December 13, 2016, the notes payable were combined and acquired by Utica Acquisitions LLC, whose sole member is Jeremy Strauss. The Terms of Agreement require interest only payments for the first 24 months, with intent to secure permanent long-term financing by the end of the 24-month period. The purchase of the real property will be funded, as needed, via a personal line of credit available to Mr. Strauss at 6% interest, until permanent financing of the debt can be obtained. Harborview Capital Partners has provided a letter of confirmation for the line of credit at the stated terms. There are no project costs associated with this application

The working capital requirement, estimated at \$4,668,377, is based on two months of first year expenses of \$2,320,538 plus \$2,347,839 in assumed liabilities as of April 25, 2018. Funding for the \$2,320,538 first year expenses will be provided via \$1,160,269 in members equity with remaining \$1,160,269 satisfied through a five-year loan at 5% interest. Harborview Capital Partners has provided a letter of interest. The \$2,347,839 in assumed liabilities will be offset by accounts receivables. Review of BFA Attachment A, proposed members' net worth summaries, reveals sufficient equity overall. Proposed member Jeremy Strauss has submitted an affidavit stating he is willing to contribute resources disproportionate to his membership interest in the operating and realty entities to make up any member's equity shortfall. Mr. Strauss has provided an affidavit that if the permanent long-term financing includes a balloon payment, he will contribute resources to fund it should terms acceptable to the Department be unavailable at the time of refinancing.

The submitted budget projects a first-year profit of \$1,695,942 after the change in ownership. Revenues are expected to increase by \$3,3,23,617 (from 2016). Overall expenses are expected to increase by \$805,394 coming from a \$476,898 increase in operating expenses and a \$328,496 increase in capital expense (primarily from rent). The increase in operating expenses comes primarily from a \$294,250 increase in salary & wages, a \$99,773 increase in employee benefits (percentage to salaries stay at 33.84%), and a \$82,875 increase in professional fees. BFA Attachment C is Heritage Operating Associates pro forma balance sheet, which shows the entity will start with \$3,158,763 in member's equity. The budget appears reasonable.

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

BFA Attachment D is the Financial Summary of Faxton-Sunset-St. Luke's Health Care Center, Inc. d/b/a Heritage Health Care Center for 2014 through 2016. The RHCf had an average net loss of \$924,241, negative average net assets of \$7,423,128 and negative average working capital of \$9,816,102. BFA Attachment E is their internal financial statement as of December 31, 2017, which shows negative net assets, a negative working capital and a loss of \$2,810,337.

BFA Attachment F is proposed members' ownership interest in the NYS affiliated RHCf's and their financial summaries. Review of BFA Attachment F indicates the affiliated homes had average positive net asset, average positive working capital and average positive net income positions for the period shown, except for the following:

- Clearview Operating Co, LLC d/b/a The Grand Nursing & Rehab at Queens shows positive net assets and positive operating income during the period. The facility had a negative working capital position in 2015, but turned the working capital position to positive in 2016.
- Guilderland Operator Co, LLC d/b/a The Grand Rehab and Nursing at Guilderland shows negative working capital, negative net assets and an operating loss during the period. The facility was acquired in November 2016. The negative result is due to an accounts receivable write-off of \$680,000 and \$340,000 recorded depreciation during 2016-2017. The cumulative effect of both transactions will result in a positive position in 2017.
- River Valley Operating Associates, LLC d/b/a The Grand Rehab and Nursing at River Valley shows negative working capital, negative net assets and an operating loss during 2016 and 2017. The facility was acquired in July 2016. The operator plans to mitigate losses through several measures such as modification of the lease for rent reduction, focusing on CMI to increase admissions of short term residents, appealing real estate taxes, providing consistently better service to maintain high occupancy, investment in the facility's infrastructure, and seeking an abatement in the FHA/Mortgage insurance premium.

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

Recommendation

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

## Attachments

BFA Attachment A	Net Worth of Proposed Members of Heritage Operating Associates, LLC
BFA Attachment B	Details of Assumed Liabilities as of April 25, 2018
BFA Attachment C	Pro Forma Balance Sheet, Heritage Operating Associates, LLC and Heritage Real Estate Operations Associates as of December 31, 2018
BFA Attachment D	Financial Summary and 2016 Certified Financial Statement of Faxton-Sunset-St. Luke's Health Care Center, Inc
BFA Attachment E	Faxton-Sunset-St. Luke's Health Care Center, Inc December 31, 2017 Internal Financial Statement
BFA Attachment F	Proposed Members' Ownership Interest in Affiliated RHCf's and Financial Summary
BFA Attachment G	Members of Landlord, Heritage Real Estate Operations Associates, LLC





**Project # 171041-E  
Shining Star Home Health Care**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** January 19, 2017

**Executive Summary**

**Description**

Shining Star Home Care, LLC (Shining Star), a proprietary, Article 36 certified home health agency (CHHA), requests approval for a three-year extension to its limited life operating certification. The agency was established as a special pilot program CHHA, certified to serve individuals at higher risk for hospitalization due to heart disease, stroke and diabetes. The agency is authorized to serve individuals in Bronx, Kings, New York and Queens Counties. The CHHA was approved through CON 072094 with a conditional five-year limited life and began operations effective January 17, 2012. The applicant notified the Department before their limited life expiration, requesting a three-year extension. The CHHA currently operates from leased office space located at 5922 18<sup>th</sup> Avenue, Brooklyn (Kings County).

Shining Star's services are limited to the special pilot program population authorized under its initial operating certificate. The CHHA is certified for the following services: home health aides, medical social services, medical supplies equipment and appliances, nursing, nutrition, occupational therapy, physical therapy, and speech language pathology

The current membership of Shining Star Home Care, LLC consists of Yechiel Landau (80%) and Yvette Henriquez (20%).

OPCHSM Recommendation  
Disapproval

**Need Summary**

Utilization has been significantly below projected visits. In its original 2007 application, Shining Star projected in excess of 175,000 visits by Year Three. Shining Star reports that 2016 visits were only 2,999. The applicant reports an unaudited visit volume of 4,119 for 2017. The applicant believes they can continue to increase visits over the next three years. Additionally, the agency did not meet their 2% charity care requirement in in any of its five years of operation.

**Program Summary**

From its initial date of operation of January 17, 2012, through the present time, Shining Star Home Care, LLC d/b/a Shining Star Home Health Care has remained in compliance with all Conditions of Participation, with no history of any enforcement actions taken against this CHHA.

**Financial Summary**

The applicant demonstrated poor operating performance, failing to achieve projected breakeven utilization and sustaining operating losses in each of the six years it has been operating, including a reported loss of \$499,025 in 2016 and an unaudited loss of \$99,517 in 2017.

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

	<u>Year One</u>	<u>Year Three</u>
Revenue	\$735,600	\$757,662
Expenses	<u>718,308</u>	<u>725,843</u>
Net Income	\$17,292	\$31,819

The projected net income is marginal breakeven and dependent upon the applicant sustaining a substantial increase in utilization compared to historical performance. The applicant also requires substantial working capital to fund operations, which is to be provided via an

interest free personal loan from a friend with repayment if and when the operations becomes profitable. The applicant has not demonstrated the capability to proceed in a financially feasible manner.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Disapproval**

Council Action Date

**June 7, 2018**

## Need Analysis

### Background

Utilization	072094 Projected Year One	072094 Projected Year Three	Actual 2013 (1 <sup>st</sup> Full Year)	Actual 2014	Actual 2015 (3 <sup>rd</sup> Full Year)	Actual 2016
Nursing	7,199	21,783	240	1,773	3,176	2,261
Occupational Therapy	196	320	0	43	16	1
Physical Therapy	561	1,336	39	278	522	184
Speech/Language Pathology	27	57	0	17	37	1
Medical Social Services	21	307	2	14	4	12
Home Health Aide	26,748	151,465	1,788	3,618	2,924	540
<b>Total</b>	<b>34,752</b>	<b>175,268</b>	<b>2,069</b>	<b>5,743</b>	<b>6,679</b>	<b>2,999</b>

Source of Actual is Agency's Cost Reports

Utilization has been significantly below projected visits. Utilization has not grown significantly over the CHHA's five years of operations, however, in 2017 unaudited total visit volume grew to 4,119 visits. The applicant believes it can continue to increase visits over the next three years, but has not demonstrated a viable plan to significantly increase volume. Additionally, the agency did not meet its 2% charity care requirement in any of its five years of operation.

### Analysis

The original approval of this CHHA was to permit a special pilot program to serve those individuals at risk for hospitalization due to heart disease, stroke and diabetes in communities within Kings, Queens, Bronx and New York Counties. It is not clear that this CHHA has served a distinctly different special population from that of other CHHAs, nor has the program of care been found to be unique.

## Program Analysis

### Review Summary

This special pilot program CHHA operates from its sole practice location in leased office space located at 5922 18<sup>th</sup> Avenue, Brooklyn, New York 12204. It serves mostly the approved special pilot program population of individuals identified as being at higher risk for hospitalization due to heart disease, stroke, and diabetes, in the approved geographic service area of Bronx County, Kings County, New York County, and Queens County. Shining Star offers the services of home health aide, medical social services, medical supplies/equipment/appliances, nursing, nutritional services, occupational therapy, physical therapy, and speech language pathology.

As required in the Public Health Council conditional approval, annual reports by an outside independent agency have been submitted to NYSDOH for years 2012/2013, 2014, 2015 and 2016. The 2016 report was recently submitted on March 9, 2018 and the 2017 annual report has not yet been submitted.

In its establishment application, Shining Star Home Care, LLC, d/b/a Shining Star Home Health Agency, cited the NYSDOH Prevention Quality Indicators that reports that low income minority neighborhoods located in the four above named counties have up to two to three times more hospital admissions and readmissions due to heart disease, stroke, and diabetes than the statewide average. In its five years of operation, the CHHA reports that it has served predominantly the target population.

The applicant reports the following:

- In 2012 (total of three patients served) and 2013 (total of 24 patients served), the applicant reports that one patient visited an Emergency Department, and two patients were readmitted to a hospital. None of those Shining Star patients was readmitted due to diabetes, heart disease, or stroke. The statewide averages for Emergency Department visits, and potentially preventable hospital readmission rates for Bronx, Kings, New York, and Queens Counties, for years 2012 and 2013, were unreported.
- In 2014, the applicant reports that seven of Shining Star's 205 patients (3.4%) visited an Emergency Department, compared to a statewide average that year of 23.13%, and three of those seven visits were due to unrelated occurrences (one injury due to a fall, one urinary tract infection, and one decline in three or more activities of daily living). Seven of Shining Star's 205 patients (3.4%) were readmitted to a hospital, compared to a potentially preventable hospital readmission rate that year for Bronx, Kings, New York, and Queens Counties ranging from 6.1% to 7.54%. None of those Shining Star patients was readmitted due to diabetes, heart disease, or stroke.
- In 2015, the applicant reports that eight of Shining Star's 214 patients (3.7%) visited an Emergency Department, compared to a statewide average that year of 23.53%, and five of those eight visits were due to unrelated occurrences (four injuries due to a fall, and one urinary tract infection). Eight of Shining Star's 214 patients (3.7%) were readmitted to a hospital, compared to a potentially preventable hospital readmission rate that year for Bronx, Kings, New York, and Queens Counties ranging from 6.1% to 7.54%. One of those Shining Star patients was readmitted due to diabetes, and none were readmitted due to heart disease or stroke.
- In 2016, the applicant reports two (1.3%) of Shining Star's patients went to the ED, compared with a New York average of 10.7% and a national average of 12.9%. Two (1.3%) of Shining Star's patients were admitted to the hospital, compared to a New York average of 16.4% and a national average of 15.9%.
- Shining Star reports that in 2016 it abandoned its Allscripts clinical software medical record system which had proven to be overly expensive and unreliable for information reporting purposes. Shining Star instead invested in a new clinical software system called Home Care Home Base. The applicant states that implementing this new intake and clinical documentation software system during 2016 affected its ability to accept admissions, process intake data, and properly maintain clinical data during 2016, which was a factor in the decrease in admissions by 74 patients from 2015 to 2016, and the increase in hospital readmissions in 2016. Looking forward, Shining Star had also taken the following initiatives to both increase intake and utilization, and prevent future Emergency Department visits and hospital readmissions:
  - Renegotiating various HMO and MLTCP contracts, resulting in better reimbursement rates for services and improved financial stability
  - Partnering with Relias Learning to customize orientation and inservice education curriculum used to train the CHHA's skilled professionals
  - Creating an advanced wound care program with staff trained as specialists to treat complex wounds, providing an advantage over other CHHAs who typically do not accept such patients
  - Hiring a specialized Case Manager to provide extensive clinical oversight for patients who are at risk for hospital readmission
  - Engaging in weekly conference calls with patients, families, doctors, nurses, and case managers. Patients at higher risk for hospital readmission receive daily telephone calls at home from clinical professionals to ensure proper medications were taken in the proper dosages and at the proper times of day. If additional services or care are required, the clinical professional will immediately contact the patient's nurse to provide timely intervention before an emergency situation arises.
  - Partnering with a particular pharmacy that pre-packages patient medications in small packets, to help ensure the patient is taking the correct dose at the correct time, in order to alleviate medication errors, a leading reason for both Emergency Department visits and hospital readmissions.

- In 2017 (through December 20, 2017), the applicant reports that only 15 of Shining Star's 726 patients (2.1%) were discharged to a hospital or Emergency Department. The applicant reports that, per statistics published by the Agency for Healthcare Research and Quality, the average readmission rate for patients seven days after discharge from a hospital was 7.5%, and 30 days after discharge from a hospital was 21.1%.

All 2017 data is self-reported and lacks the required verification of an outside independent entity. It is noted that the 2016 report was only submitted in March 2018. The failure to submit a timely 2016 annual report as required by the terms of the CHHA's Public Health Council approval represents a violation of a condition of the Certificate of Need approval for CON 072094.

The applicant reports that three of the three patients served in 2012, 18 of the 24 patients served in 2013, 168 of the 205 patients served in 2014, 161 of the 214 patients served in 2015, 132 of the 152 patients served in 2016, and 672 of the 768 patients served in 2017, had diagnoses that identified the patient as being at higher risk for hospitalization due to heart disease, stroke, or diabetes. Accordingly, 100% in 2012, 75% in 2013, 82% in 2014, 75% in 2015, 87% in 2016, and 87.5% in 2017 of the patients served by Shining Star Home Care, during its first six years of operation, had diagnoses that identified the patient as being at higher risk for hospitalization due to heart disease, stroke, or diabetes.

Per a check of the Medicare.gov Home Health Compare website on May 7, 2018 (website updated on April 11, 2018), quality measure ratings, both overall rating and ratings for individual quality measures, were provided for the patients whose end of care occurred during the 12-month reporting period July 1, 2016 through June 30, 2017. A minimum of 20 end-of-care episodes must have occurred during that particular reporting period in order for overall and specific quality measure to receive any rating. Shining Star did not have a minimum of 20 end-of-care episodes that occurred during that particular reporting period and thus could not receive a

The NYSDOH Division of Home and Community Based Services reports that, from its initial date of operation of January 17, 2012, through the present time, Shining Star Home Care, LLC, d/b/a Shining Star Home Health Care, has remained in compliance with all Conditions of Participation, with no history of any enforcement actions taken against this CHHA.

## Financial Analysis

### Operating Budget

The applicant submitted their current year (2016) results, and their first and third year operating budgets subsequent to approval, in 2017 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Revenues</u>			
Medicare	\$147,110	\$556,806	\$573,504
Medicaid	15,692	57,940	59,678
All Other	<u>33,344</u>	<u>120,854</u>	<u>124,480</u>
Total Revenues	\$196,146	\$735,600	\$757,662
<u>Expenses</u>			
Operating	\$672,194	\$691,449	\$693,675
Space Occupancy	<u>22,977</u>	<u>26,859</u>	<u>32,168</u>
Total Expenses	\$695,171	\$718,308	725,843
Net Income/(Loss)	<u>(\$499,025)</u>	<u>\$17,292</u>	<u>\$31,819</u>
Utilization (visits)	2,999	5,258	5,416
Cost per Visit	\$231.80	\$136.61	\$134.02

Budget observations:

- Medicare and Medicaid services are reimbursed on an episodic basis. The projected revenues for Year One are based on Shining Star's annualized revenues from October 1, 2017 through November 30, 2017. This amount was then increased by 3% for Year Three to account for inflation.
- All other revenue represents payments from other insurance payors including United Health Care, Fidelis, and HealthFirst. All other revenues are based on existing rates.
- The first and third year utilization projections are based on annualizing averages experienced during the October through November 2017 period (October at 429 visits, November at 430 visits).
- Internal reports submitted by the applicant indicate that the number of visits through December 31, 2017 grew to 4,119, representing a 37.3% increase over 2016. This increase in utilization is projected to be sustainable to stabilized operations going forward.
- The cost per visit declined from \$231 in 2016 to \$157 in 2017. The results stem mostly from the increase in utilization, and efficiencies through better management of staff time/productivity. The applicant has also improved information technology through the implementation of a new clinical software system (Home Care Home Base), and has partnered with QIRT (Quality In Real Time) to conduct audits on clinical documentation that is expected to ensure access to data for decisions that support preventing re-hospitalizations.
- The applicant will continue to work with the local Department of Health including the New York City Department of Health and Mental Hygiene to target the special needs population they are certified to serve.
- Utilization by payor source to the submitted operating budget is as follows:

<u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicare	2,261	75.4%	3,882	73.8%	4,000	73.9%
Medicaid	243	8.1%	422	8.0%	435	8.0%
All Other	495	16.5%	850	16.2%	874	16.1%
Charity Care	<u>0</u>	<u>0%</u>	<u>104</u>	<u>2.0%</u>	<u>107</u>	<u>2.0%</u>
Total	2,999	100%	5,258	100%	5,416	100%

In its establishment application, the applicant committed to 2% Charity Care and 67% Medicaid utilization in Year One, and 2% Charity Care and 54% Medicaid utilization in Year Three. The applicant acknowledges that they did not fulfill that commitment. The decline in Medicaid utilization is attributed to lower than projected visits and a proportional increase in the number Medicare post-discharge hospital patients served by the agency.

To address the utilization issues and the financial results shown above, the applicant has identified Mr. Ari Goldberger as an individual who possesses home care experience and has been informally advising the operator regarding day-to-day operations and developing relationships with local hospitals and several Managed Care Organizations. The applicant indicated that they are realizing the benefit of Mr. Goldberger's experience and resources, and have begun to receive patient referrals. The applicant anticipates entering into a Consulting Agreement with Mr. Goldberger soon, and expects that Mr. Goldberger will become a majority owner.

The applicant cites the following recent activities as beneficial to the long-term performance of the facility: recently renegotiated various Managed Care contracts; increasing reimbursement; implementation of a new clinical software system; a partnership with Quality In Real Time; a partnership with Relias Learning for customized orientation and education curriculum; the creation of an advanced wound care program; hiring of a specialized case manager; and a partnership with a pharmacy to provide pre-packaged patient medication. Paul Rosenstock, M.D. and Robert Goodman, M.D. provide letters of support for the CHHAs mission. The applicant asserts that the requested extension will allow them to continue their mission.

### Capability and Feasibility

There are no project costs associated with this application. The submitted budget shows net income in Year One and Year Three of \$17,292 and \$31,819, respectively. Year One projects a 75.3% increase in utilization over the Current Year (2016). Using recently provided unaudited 2017 utilization data, the Year One projection represents a more modest 37.3% increase over 2017. Concurrent with the projected increase in utilization, the applicant projects revenue per visit to increase by 45.8%, going from \$96 in 2017 (annualized) to a budgeted per visit rate of \$140. As noted above, budgeted revenue and utilization projections were based upon actual stated results obtained during October and November 2017. Per the recently provided unaudited 2017 data, the cost per visit has declined 47% between the Current Year (2016) and 2017 (going from \$232 in 2016 to \$123 in 2017).

Working capital is estimated at \$119,719 based on two months of Year One expenses. However, as shown on BFA Attachments A, B and C (Shining Star's certified 2015, 2016 and internal 2017 financial statements), the CHHA has been sustaining ongoing operating losses. Although they are projecting a small operating surplus going forward, the past losses and ongoing working capital needs must be funded for this agency to remain financially sustainable. The applicant provided a letter of interest from New Capital Ventures, LLC expressing willingness to provide a personal loan to Mr. Yechiel Landau, a majority member of the applicant, in the amount of \$1,410,000 to be used to fund the agency's working capital needs. The letter states that this would be a personal loan between friends, with no interest charged and repayment of the principal amount to be provided whenever funds become available. Capital One bank statements for New Capital Ventures, LLC for the period ending September 30, 2017, indicates sufficient resources are available to fund this transaction. Going forward, Shining Star intends to cover any operating losses with the proceeds of this personal loan, as well as with the personal liquid assets of Mr. Yechiel Landau. The applicant indicated that during its limited life, Mr. Landau has funded operating losses with his personal liquid assets, as well as from the proceeds of other personal loans provided to him from Hiram Capital, LLC (an entity related to New Capital Ventures, LLC).

BFA Attachment A is the 2015 certified financial statements of Shining Star Home Care, LLC. As shown, the entity had a negative working capital position and a negative net asset position in 2015. Also, the entity demonstrated a net loss of \$666,069. BFA Attachments B and C provides the certified 2016 and internal financial statements of Shining Star Home Care, LLC as of December 31, 2017. As shown, the entity had ongoing negative working capital and negative net asset positions, and achieved an operating loss of \$493,675 in 2016 and \$99,514 in 2017 (accrual basis). The applicant attributes the 2016 loss to low utilization, while results through December 2017 improved based improved efficiency and increased utilization. The applicant asserts that their focus is on providing services to patients who required specialized services and, while they did not meet their utilization targets and their financial statements demonstrate the negative results referenced above, the applicant believes it achieved its primary mission of serving individuals at high-risk of ED visits and hospital readmission due to heart disease, stroke, and diabetes.

Despite repeated requests by the Department, the applicant has failed to provide audited 2017 and 2018 financial reports. Self-reported, unaudited, fiscals showing improved performance is not verified and the applicant has not provided a viable business plan to support significantly improved future performance.

### Conclusion

The applicant has failed to demonstrate financial feasibility during its limited life and its projected Year One and Year Three utilization and financial projections appear unsupported and unrealistic. The applicant has not demonstrated the capability to proceed in a financially feasible manner, and disapproval is recommended.

### Recommendation

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



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## Attachments

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BFA Attachment A 2015 Certified financial statement of Shining Star Home Care, LLC  
BFA Attachment B 2016 Internal financial statement of Shining Star Home Care, LLC  
BFA Attachment C 2017 Internal financial statements of Shining Star Home Care, LLC



**Project # 172408-E**  
**Prospect Acquisition III, LLC d/b/a Responsive Home Health  
Care**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Kings  
**Acknowledged:** December 28, 2017

**Executive Summary**

**Description**

Prospect Acquisition III, LLC d/b/a Responsive Home Health Care, a New York State limited liability company, requests approval to be established as the operator of CenterLight Certified Home Health Agency, a voluntary not-for-profit, Article 36 certified home health agency (CHHA) whose main office is located at 1000 Gates Avenue, Brooklyn (Kings County). The CHHA is currently operated by CenterLight Certified Home Health Agency and was certified to begin operations effective September 9, 2013. The CHHA is licensed to provide Nursing, Personal Care, Home Health Aide, Homemaker, Housekeeper, Nutrition, Medical Social Services, Medical Supplies/Equipment and Appliances, Speech Language Pathology Therapy, Audiology, Physical Therapy, Occupational Therapy and Respiratory Therapy services, and is authorized to serve the five boroughs of New York City, Nassau, Suffolk, Rockland and Westchester counties. Upon approval, there will be no change in services provided or in the geographical service area covered by the CHHA.

On January 31, 2017, Prospect Acquisition III, LLC entered into a Purchase and Sale Agreement (PSA) with the current operator to acquire the assets used in connection with the Seller's CHHA business, contingent upon obtaining all necessary approvals, including the approval of the Public Health and Health Planning Council (PHHPC). The purchase price for the CHHA assets is \$2,200,000.

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

<u>Current Operator</u>
CenterLight Certified Home Health Agency Voluntary Not-For-Profit

<u>Proposed Operator</u>	
Prospect Acquisition III, LLC	
<u>Members</u>	<u>%</u>
Pasquale DeBenedictis	30%
Alex Solovey	30%
Leopold Friedman	30%
Solomon Rutenberg	10%

In anticipation of PHHPC approval, the parties entered into a Management Agreement whereby the applicant would assume day-to-day management of the CHHA until approval of this application is finalized. Concurrent with submission of the Management Agreement to the Department of Health for review and approval, the parties also entered into an interim consulting arrangement whereby the applicant would, pending Department review and approval of the Management Agreement, provide certain administrative and consulting services in the ordinary course of operation of the Seller's CHHA business. Both agreements were submitted to the Department on April 3, 2017. The interim consulting services agreement did not need Department approval. The Management Agreement was approved on November 29, 2017.

CenterLight Health System (the System) is the parent of CenterLight CHHA. The System's Board of Directors made the decision to sell the CHHA as part of a strategic initiative to focus the company's efforts and resources on its Program of All-inclusive Care for the Elderly (PACE). CenterLight developed a due diligence package that was shared on a confidential basis with several healthcare organizations with both long term care and home care operations, and selected Prospect Acquisition III, LLC due to its attractive offer and extensive experience in home care operations. CenterLight plans to invest the sale proceeds into its PACE program.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

This project will have no effect on the need for or utilization of services in the counties affected.

#### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the LLC members and managers of Prospect Acquisition III, LLC, d/b/a Responsive Home Health Care, to adversely affect their positions with the organization.

#### Financial Summary

The purchase price of \$2,200,000 will be met via equity. The proposed budget will be as follows:

	<u>Year One</u>
Revenues	\$11,484,501
Expenses	<u>11,283,743</u>
Net Income	\$200,758

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Lease License Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed copy of the asset purchase agreement of the applicant, acceptable to the Department. [CSL]
3. Submission of an executed copy of the lease agreement of the applicant, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**June 7, 2018**

## Need and Program Analysis

### Program Description

Prospect Acquisition III, LLC d/b/a Responsive Home Health Care (Responsive CHHA), a proprietary Limited Liability Company, proposes to purchase and become the new owner / operator of the Article 36 Certified Home Health Agency (CHHA) currently owned and operated by CenterLight Certified Home Health Agency (CenterLight CHHA), a voluntary not-for-profit corporation.

CenterLight CHHA is currently approved to serve Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Rockland, and Westchester Counties, and the CHHA's main parent office practice location is currently located in Kings County at 1000 Gates Avenue, 4<sup>th</sup> Floor, Brooklyn, New York 11221. Since CenterLight CHHA's initial date of operation, it has also been approved for two branch office additional practice locations: one in Suffolk County at 555 Albany Place, Amityville, NY 11701 (Branch Office ID # 33Q7441001), and one in Westchester County at 335 Old Tarrytown Road, White Plains, NY 10601 (Branch Office ID # 33Q7441002). Responsive CHHA will continue to be approved to serve the same nine counties noted above, and the CHHA's main practice location will remain located in Kings County at 1000 Gates Avenue, 4<sup>th</sup> Floor, Brooklyn, New York 11221. Responsive CHHA does not plan to operate the two approved CenterLight CHHA branch office additional practice locations identified above, or any other branch office additional practice locations, at this time. The legal entity / corporate operator, Prospect Acquisition III, LLC, will be located in Nassau County at 225 Crossways Park Drive, Woodbury, New York 11797.

Responsive CHHA plans to continue to provide the following home health care services: Audiology; Home Health Aide; Homemaker; Housekeeper; Medical Social Services; Medical Supplies, Equipment and Appliances; Nursing; Nutritional; Personal Care; Occupational Therapy; Physical Therapy; Respiratory Therapy; and Speech Language Pathology.

Responsive CHHA has no parent, sibling, or child entities or organizations in its LLC's corporate organizational structure. However, as disclosed below, the members of Responsive CHHA are also the LLC members and stockholders of several other legal entities that operate New York State and out-of-state health care providers and facilities.

### **Nursing Homes / Adult Day Health Care Programs Reviewed**

- JOPAL, LLC, d/b/a Barnwell Nursing and Rehabilitation (RHCF)
- PALJR, LLC, d/b/a East Neck Nursing and Rehabilitation Center (RHCF)
- JOPAL at St. James, d/b/a Mills Pond Nursing and Rehabilitation (RHCF)
- JOPAL Sayville, LLC, d/b/a Sayville Nursing and Rehabilitation Center (RHCF)
- JOPALS Bronx, LLC, d/b/a Workmen's Circle MultiCare Center (RHCF)
- Shore View Acquisition I, LLC, d/b/a Shore View Nursing and Rehabilitation (RHCF)
- Morningside Acquisition I, LLC, d/b/a Morningside Nursing and Rehabilitation Center (RHCF and ADHCPs)
- Cardiff Bay Center, LLC, d/b/a Peninsula Nursing and Rehabilitation Center (RHCF)
- DeWitt Rehabilitation and Nursing Center, Inc., d/b/a Upper East Side Rehabilitation and Nursing Center (RHCF)
- Sea Crest Acquisition I, LLC, d/b/a Sea Crest Nursing and Rehabilitation Center (RHCF)
- Terrace Acquisition II, LLC, d/b/a Fordham Nursing and Rehabilitation Center (RHCF)
- MLAP Acquisition I, LLC, d/b/a Long Beach Nursing and Rehabilitation Center (RHCF)
- Providence Care, Inc., d/b/a Brooklyn Gardens Nursing and Rehabilitation (RHCF)
- Hendon Garden Center, LLC, d/b/a Beach Gardens Rehabilitation and Nursing Center (RHCF)
- Highland View Care Center Operating Company, LLC, d/b/a The Citadel Rehabilitation and Nursing Center at Kingsbridge (RHCF)
- Hudson Pointe Acquisition, LLC, d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (RHCF)
- SBNH Acquisition, LLC, d/b/a Bronx Gardens Rehabilitation and Nursing Center (RHCF)

- TCPRNC, LLC, d/b/a The Plaza Rehabilitation and Nursing Center (RHCF)
- Ross Acquisition, LLC, d/b/a Ross Center for Nursing and Rehabilitation (RHCF)
- Stamford Acquisition I, LLC, d/b/a Cassena Care at Stamford (RHCF in CT)
- New Britain Acquisition I, LLC, d/b/a Cassena Care at New Britain (RHCF in CT)
- Norwalk Acquisition I, LLC, d/b/a Cassena Care at Norwalk (RHCF in CT)

#### **Diagnostic and Treatment Centers Reviewed**

- Workmen's Circle Dialysis Management, LLC, d/b/a Workmen's Circle Dialysis Center (D&TC/ESRD)
- Mills Pond Dialysis, LLC, d/b/a East Neck Dialysis Center (D&TC/ESRD)
- Peninsula Continuum Services, LLC, d/b/a Cassena Care Dialysis at Peninsula (D&TC/ESRD)
- Sea Crest Dialysis Center (D&TC/ESRD)

#### **Certified Home Health Agency Reviewed**

- Jamaica Acquisition III, LLC, d/b/a Hillside Certified Home Care Agency (CHHA)

#### **Long Term Home Health Care Programs Reviewed**

- Morningside Acquisition I, LLC, d/b/a Morningside Nursing and Rehabilitation Center (LTHHCP) – voluntarily closed December 20, 2017
- Highland View Care Center Operating Company, LLC, d/b/a Citadel Home Care (LTHHCP) – voluntarily closed July 31, 2017

#### **Licensed Home Care Services Agency Reviewed**

- Ultimate Care, LLC (LHCSA)

#### **Additional Affiliated Providers Pending Approval / Licensure / Not Yet Operational**

- Morningside Acquisition III, LLC (ACF/ALP and LHCSA - pending)
- Morningside Dialysis Center, LLC (D&TC/ESRD - pending)
- Brooklyn Gardens Dialysis Center, LLC (D&TC/ESRD - pending)
- Yonkers Gardens Center for Rehabilitation and Nursing (RHCF – pending)
- Prospect Acquisition I, LLC, d/b/a Downtown Brooklyn Nursing and Rehabilitation Center (RHCF - pending)

The members and managers of Responsive CHHA, and the percentage of LLC membership / ownership for each, are as follows:

**Pasquale DeBenedictis, 30% LLC Membership, LLC Manager**, is licensed but is no longer registered as a Certified Public Accountant (CPA) in New York State. Mr. DeBenedictis no longer practices as a CPA, but lists current employment as Managing Member of Cassena Care, LLC (Financial Consulting), Chief Financial Officer at Center for Nursing and Rehabilitation (RHCF), and Controller at Jamaica Acquisition III, LLC, d/b/a Hillside Certified Home Care Agency (CHHA). Mr. DeBenedictis discloses the following affiliations:

- JOPAL, LLC, d/b/a Barnwell Nursing and Rehabilitation (RHCF)
- PALJR, LLC, d/b/a East Neck Nursing and Rehabilitation Center (RHCF)
- JOPAL at St. James, d/b/a Mills Pond Nursing and Rehabilitation (RHCF)
- JOPAL Sayville, LLC, d/b/a Sayville Nursing and Rehabilitation Center (RHCF)
- JOPALS Bronx, LLC, d/b/a Workmen's Circle MultiCare Center (RHCF)
- Shore View Acquisition I, LLC, d/b/a Shore View Nursing and Rehabilitation (RHCF)
- Morningside Acquisition I, LLC, d/b/a Morningside Nursing and Rehabilitation Center (RHCF, ADHCPs, and LTHHCP)
- Morningside Acquisition III, LLC (ACF/ALP and LHCSA - pending)
- Cardiff Bay Center, LLC, d/b/a Peninsula Nursing and Rehabilitation Center (RHCF)
- DeWitt Rehabilitation and Nursing Center, Inc., d/b/a Upper East Side Rehabilitation and Nursing Center (RHCF)

- Sea Crest Acquisition I, LLC, d/b/a Sea Crest Nursing and Rehabilitation Center (RHCF)
- Terrace Acquisition II, LLC, d/b/a Fordham Nursing and Rehabilitation Center (RHCF)
- MLAP Acquisition I, LLC, d/b/a Long Beach Nursing and Rehabilitation Center (RHCF)
- Workmen's Circle Dialysis Management, LLC, d/b/a Workmen's Circle Dialysis Center (D&TC/ESRD)
- Mills Pond Dialysis, LLC, d/b/a East Neck Dialysis Center (D&TC/ESRD)
- Peninsula Continuum Services, LLC, d/b/a Cassena Care Dialysis at Peninsula (D&TC/ESRD)
- Morningside Dialysis Center, LLC (D&TC/ESRD - pending)
- Jamaica Acquisition III, LLC, d/b/a Hillside Certified Home Care Agency (CHHA)
- Sea Crest Dialysis Center (D&TC/ESRD)
- Prospect Acquisition I, LLC, d/b/a Downtown Brooklyn Nursing and Rehabilitation Center (RHCF - pending)
- Stamford Acquisition I, LLC, d/b/a Cassena Care at Stamford (RHCF in CT)
- New Britain Acquisition I, LLC, d/b/a Cassena Care at New Britain (RHCF in CT)
- Norwalk Acquisition I, LLC, d/b/a Cassena Care at Norwalk (RHCF in CT)

**Alex Solovey, 30% LLC Membership, LLC Manager**, is licensed and registered as a Registered Physical Therapist (RPT) in New York State. Mr. Solovey lists current employment as Director of Rehabilitation at Theradynamics (Outpatient Physical Rehabilitation), Chief Operating Officer at Center for Nursing and Rehabilitation (RHCF), and Director of Operations at Jamaica Acquisition III, LLC, d/b/a Hillside Certified Home Care Agency (CHHA). Mr. Solovey discloses the following affiliations:

- JOPAL, LLC, d/b/a Barnwell Nursing and Rehabilitation (RHCF)
- PALJR, LLC, d/b/a East Neck Nursing and Rehabilitation Center (RHCF)
- JOPAL at St. James, d/b/a Mills Pond Nursing and Rehabilitation (RHCF)
- JOPAL Sayville, LLC, d/b/a Sayville Nursing and Rehabilitation Center (RHCF)
- JOPALS Bronx, LLC, d/b/a Workmen's Circle MultiCare Center (RHCF)
- Shore View Acquisition I, LLC, d/b/a Shore View Nursing and Rehabilitation (RHCF)
- Morningside Acquisition I, LLC, d/b/a Morningside Nursing and Rehabilitation Center (RHCF, ADHCPs, and LTHHCP)
- Morningside Acquisition III, LLC (ACF/ALP and LHCSA - pending)
- Cardiff Bay Center, LLC, d/b/a Peninsula Nursing and Rehabilitation Center (RHCF)
- DeWitt Rehabilitation and Nursing Center, Inc., d/b/a Upper East Side Rehabilitation and Nursing Center (RHCF)
- Sea Crest Acquisition I, LLC, d/b/a Sea Crest Nursing and Rehabilitation Center (RHCF)
- Terrace Acquisition II, LLC, d/b/a Fordham Nursing and Rehabilitation Center (RHCF)
- MLAP Acquisition I, LLC, d/b/a Long Beach Nursing and Rehabilitation Center (RHCF)
- Workmen's Circle Dialysis Management, LLC, d/b/a Workmen's Circle Dialysis Center (D&TC/ESRD)
- Mills Pond Dialysis, LLC, d/b/a East Neck Dialysis Center (D&TC/ESRD)
- Peninsula Continuum Services, LLC, d/b/a Cassena Care Dialysis at Peninsula (D&TC/ESRD)
- Morningside Dialysis Center, LLC (D&TC/ESRD - pending)
- Jamaica Acquisition III, LLC, d/b/a Hillside Certified Home Care Agency (CHHA)
- Sea Crest Dialysis Center (D&TC/ESRD)
- Prospect Acquisition I, LLC, d/b/a Downtown Brooklyn Nursing and Rehabilitation Center (RHCF - pending)
- Stamford Acquisition I, LLC, d/b/a Cassena Care at Stamford (RHCF in CT)
- New Britain Acquisition I, LLC, d/b/a Cassena Care at New Britain (RHCF in CT)
- Norwalk Acquisition I, LLC, d/b/a Cassena Care at Norwalk (RHCF in CT)

**Leopold Friedman, 30% LLC Membership**, lists current employment as Receiver / Operator of Peninsula Nursing and Rehabilitation Center (RHCF), Chief Executive Officer at Advanced Care Staffing (Nurse Staffing/Employment Agency), and 33.3% Owner/Operator of Ultimate Care, Inc. (LHCSA). Mr Friedman discloses the following affiliations:

- Cardiff Bay Center, LLC, d/b/a Peninsula Nursing and Rehabilitation Center (RHCF)
- Providence Care, Inc., d/b/a Brooklyn Gardens Nursing and Rehabilitation (RHCF)
- Ultimate Care, LLC (LHCSA)
- Hendon Garden Center, LLC, d/b/a Beach Gardens Rehabilitation and Nursing Center (RHCF)
- Highland View Care Center Operating Company, LLC, d/b/a The Citadel Rehabilitation and Nursing Center at Kingsbridge (RHCF) and d/b/a Citadel Home Care (LTHHCP)
- DeWitt Rehabilitation and Nursing Center, Inc., d/b/a Upper East Side Rehabilitation and Nursing Center (RHCF)
- MLAP Acquisition I, LLC, d/b/a Long Beach Nursing and Rehabilitation Center (RHCF);
- Peninsula Continuum Services, LLC, d/b/a Cassena Care Dialysis at Peninsula (D&TC/ESRD)
- Brooklyn Gardens Dialysis Center, LLC (D&TC/ESRD - pending)
- Hudson Pointe Acquisition, LLC, d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (RHCF)
- SBNH Acquisition, LLC, d/b/a Bronx Gardens Rehabilitation and Nursing Center (RHCF)
- TCPRNC, LLC, d/b/a The Plaza Rehabilitation and Nursing Center (RHCF)
- Ross Acquisition, LLC, d/b/a Ross Center for Nursing and Rehabilitation (RHCF)
- Jamaica Acquisition III, LLC, d/b/a Hillside Certified Home Care Agency (CHHA)
- Yonkers Gardens Center for Rehabilitation and Nursing (RHCF – pending)
- Prospect Acquisition I, LLC, d/b/a Downtown Brooklyn Nursing and Rehabilitation Center (RHCF - pending)

**Soloman Rutenberg, 10% LLC Membership**, lists current employment as Chief Executive Officer at Workmen's Circle MultiCare Center (RHCF). Mr. Rutenberg discloses the following affiliations:

- JOPAL at St. James, LLC, d/b/a Mills Pond Nursing and Rehabilitation (RHCF)
- JOPALS Bronx, LLC, d/b/a Workmen's Circle MultiCare Center (RHCF)
- Shore View Acquisition I, LLC, d/b/a Shore View Nursing and Rehabilitation (RHCF)
- Morningside Acquisition I, LLC, d/b/a Morningside Nursing and Rehabilitation Center (RHCF, ADHCPs, and LTHHCP)
- Morningside Acquisition III, LLC (ACF/ALP and LHCSA - pending)
- DeWitt Rehabilitation and Nursing Center, Inc., d/b/a Upper East Side Rehabilitation and Nursing Center (RHCF)
- Sea Crest Acquisition I, LLC, d/b/a Sea Crest Nursing and Rehabilitation Center (RHCF)
- MLAP Acquisition I, LLC, d/b/a Long Beach Nursing and Rehabilitation Center (RHCF);
- Terrace Acquisition II, LLC, d/b/a Fordham Nursing and Rehabilitation Center (RHCF)
- Workmen's Circle Dialysis Management, LLC, d/b/a Workmen's Circle Dialysis Center (D&TC/ESRD)
- Morningside Dialysis Center, LLC (D&TC/ESRD - pending)
- Jamaica Acquisition III, LLC, d/b/a Hillside Certified Home Care Agency (CHHA)
- Sea Crest Dialysis Center (D&TC/ESRD)
- Prospect Acquisition I, LLC, d/b/a Downtown Brooklyn Nursing and Rehabilitation Center (RHCF - pending)
- Stamford Acquisition I, LLC, d/b/a Cassena Care at Stamford (RHCF in CT)
- New Britain Acquisition I, LLC, d/b/a Cassena Care at New Britain (RHCF in CT)
- Norwalk Acquisition I, LLC, d/b/a Cassena Care at Norwalk (RHCF in CT)

A search of all the above-named LLC members and managers, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List. The NYS Education Department, Office of the Professions, indicates no disciplinary issues with either the Certified Public Accountant licensure of Mr. DeBenedictis or the Registered Physical Therapist licensure of Mr. Solovey.



### **Facility Compliance / Enforcement**

The applicant disclosed that Cardiff Bay Center, LLC, d/b/a Peninsula Nursing and Rehabilitation Center (RHCF), had an enforcement action taken by the United States Department of Labor, Office of Safety and Health Administration (OSHA), based on OSHA inspections conducted from December 28, 2016, through May 11, 2017. OSHA cited violations in Respiratory Protection Program, Hazards Communication Program, and Sharps Injury Log. A monetary penalty of \$12,468 was imposed and paid.

The NYS Department of Health Division of Hospitals and Diagnostic and Treatment Centers has reviewed the compliance histories of the affiliated Diagnostic and Treatment Centers for the time-period 2011 through 2018, and reported that during that time-period, the affiliated Diagnostic and Treatment Centers had no enforcement actions taken.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID reviewed the compliance histories of all affiliated Nursing Homes and Adult Day Health Care Programs for the time-period 2011 to 2018, and reported that during that time-period, the following enforcement actions were taken:

- An enforcement action was taken against PALJR, LLC, d/b/a East Neck Nursing and Rehabilitation Center, in 2015 based on a March 2014 survey citing violations in Residents Rights: Right to Accept/Refuse Treatment, Right to Formulate Advance Directives; Administration; and Administration: Quality Assessment and Assurance. This enforcement action was resolved with a \$6,000 civil penalty.
- An enforcement action was taken against Highland View Care Center Operating Company, LLC, d/b/a The Citadel Rehabilitation and Nursing Center at Kingsbridge, in 2016 based on an August 2016 survey citing violations in Quality of Care: Accident Free Environment; and Administration. This enforcement action was resolved with a \$4,000 civil penalty. In addition, a federal Civil Monetary Penalty of \$20,737.60 was imposed and paid.
- An enforcement action was taken against JOPAL, LLC, d/b/a Barnwell Nursing and Rehabilitation, in 2015 based on a March 2012 survey citing violations in Quality of Care: Accidents / Supervision. This enforcement action was resolved with a \$2,000 civil penalty. In addition, a federal Civil Monetary Penalty of \$3,250 was imposed and paid.
- An enforcement action was taken against JOPAL, LLC, d/b/a Barnwell Nursing and Rehabilitation, in 2015 based on a February 2013 survey citing violations in Quality of Care: Significant Medication Errors; Administration; and Quality Assurance. This enforcement action was resolved with a \$8,000 civil penalty. In addition, a federal Civil Monetary Penalty of \$5,000 was imposed and paid.
- An enforcement action was taken against JOPAL, LLC, d/b/a Barnwell Nursing and Rehabilitation, in 2015 based on a September 2013, survey citing violations in Residents Rights: Freedom from Mistreatment, Neglect, and Misappropriation of Property; and Quality of Care: Highest Practicable Potential. This enforcement action was resolved with a \$10,000 civil penalty. In addition, a federal Civil Monetary Penalty of \$8,000 was imposed and paid.
- An enforcement action was taken against JOPAL at St. James, d/b/a Mills Pond Nursing and Rehabilitation, in 2017 based on a July 2017, survey citing violations in Quality of Care: Significant Medication Errors. This enforcement action was resolved with a \$10,000 civil penalty.
- An enforcement action was taken against DeWitt Rehabilitation and Nursing Center, Inc., d/b/a Upper East Side Rehabilitation and Nursing Center, in 2018 based on a February 2018, survey citing violations in Quality of Care: Significant Medication Errors; and Physician Services: Visits and Responsibilities. This enforcement action was resolved with a \$12,000 civil penalty.

The NYS Department of Health Division of Nursing Homes and Intermediate Care Facilities/IID reports that the remaining affiliated Nursing Homes and Adult Day Health Care Programs had no enforcement actions taken for the time-period 2011 through 2018.

The Division of Home and Community Based Services reviewed the compliance histories of the affiliated Certified Home Health Agency, Long Term Home Health Care Programs, and Licensed Home Care Services Agency, for the time-period 2011 to 2018, and reported that during that time-period, the affiliated Certified Home Health Agency, Long Term Home Health Care Programs, and Licensed Home Care Services Agency have all remained in compliance with no history of enforcement action taken.

The NYS Department of Health Division of Adult Care Facilities and Assisted Living reports that the change of ownership for the pending ACF/ALP has not yet become legally effective, and therefore, no compliance or enforcement history is applicable at this time for that pending affiliation.

Out-of-state compliance information was provided by both the State of Connecticut, and the applicant via the signed and notarized Schedule 2As.

Stamford Acquisition I, LLC, d/b/a Cassena Care at Stamford (CT) is currently in compliance, with no enforcement actions taken during the time-period 2011 through 2018.

New Britain Acquisition I, LLC, d/b/a Cassena Care at New Britain (CT) is currently in compliance, but was subject to the following enforcement action during the time-period 2011 through 2018:

- An enforcement action was taken against Cassena Care at New Britain based on a survey conducted from September 15, 2016 through October 28, 2016, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; Quality of Care: Accidents / Hazards / Environment / Supervision / Devices; and Quality of Care: Sufficient Fluid to Maintain Hydration. A state civil penalty of \$1730 was imposed and paid, a federal Civil Monetary Penalty of \$17,821.05 was imposed and paid, and a federal prohibition was imposed on Nurse Aide Training and Competency Evaluation programs offered by, or in, the facility for the time-period September 15, 2016 through September 14, 2018.

Norwalk Acquisition I, LLC, d/b/a Cassena Care at Norwalk (CT) is currently in compliance, but was subject to the following enforcement actions during the time-period 2011 through 2018:

- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in September 2013, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; and Quality of Care: Accidents / Hazards / Environment / Supervision / Devices. A state civil penalty of \$1020 was imposed and paid, and a federal Civil Monetary Penalty of \$7850 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in October 2013, citing violations in Quality of Care: Accidents / Hazards / Environment / Supervision / Devices. A state civil penalty of \$360 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in December 2013, citing violations in Quality of Care: Accidents / Hazards / Environment / Supervision / Devices. A state civil penalty of \$1160 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in February 2014, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; and Quality of Care: Pressure Sores. A state civil penalty of \$1370 was imposed and paid, and a federal Civil Monetary Penalty of \$13,650 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in January 2016, citing violations in Quality of Care: Accidents / Hazards / Environment / Supervision / Devices; and Resident Behavior and Facility Practice: Resident Abuse. A state civil penalty of \$3000 was imposed and paid, and a federal Civil Monetary Penalty of \$6500 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in March 2016, citing violations in Quality of Care: Necessary Care and Services for Highest Practicable Well Being; and Resident Behavior and Facility Practice: Staff Treatment of Residents. Two separate state civil penalties of \$3000 and \$2370 were imposed and paid, and a federal Civil Monetary Penalty of \$8750 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in September 2016, citing violations in Quality of Care: Significant Medication Errors. A federal Civil Monetary Penalty of \$2315.95 was imposed and paid.
- An enforcement action was taken against Cassena Care at Norwalk based on a survey conducted in July 2017, citing violations in Quality of Care: Accidents / Hazards / Environment / Supervision / Devices. A state civil penalty of \$2530 was imposed and paid.

CHHA Quality of Patient Care Star Ratings	
(per <a href="https://www.medicare.gov/homehealthcompare/search.html">https://www.medicare.gov/homehealthcompare/search.html</a> , as of 04/09/2018)	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
Hillside Certified Home Care Agency	4 out of 5 stars
CenterLight Certified Home Health Agency	3 out of 5 stars

**Conclusion**

A review of all personal qualifying information indicates there is nothing in the background of the LLC members and managers of Prospect Acquisition III, LLC d/b/a Responsive Home Health Care, to adversely affect their positions with the organization. The applicant has the appropriate character and competence under Article 36 of the Public Health Law. There will be no changes to services offered or counties served as a result of this application.

**Recommendation**

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

**Financial Analysis**

**Purchase and Sale Agreement**

The applicant has submitted an executed PSA for the purchase of the CHHA, summarized below:

Date:	January 31, 2017
Seller:	CenterLight Certified Home Health Agency
Buyer:	Prospect Acquisition III, LLC
Assets Acquired:	All assets, inventory, supplies and/or other personal property located or principally used in the operation of the CHHA; copies of all records relating to and used in the operation of the CHHA; all clinical protocols, policies and procedures, review tools and forms, intellectual property, and information technology and trademarks, which are used in and integral to operation of the CHHA; all computers, computer applications, operating, security or programmatic software used in the operation of the CHHA; all security deposits and prepayments held by Seller with respect to the CHHA for services provided on or after the Effective Date; all goodwill in or arising from the CHHA, and after the Closing, Seller shall transfer custody of its Business Records to Buyer pursuant to a records custodial agreement.
Excluded Assets:	All accounts receivable related to services rendered by the CHHA, all bank accounts in the name of Seller, any investments, marketable securities and accrued interest and divided thereon to the extent owned by Seller as of the Effective Date.
Assumed Liabilities:	All debt will remain with the Seller.
Purchase Price:	\$2,200,000
Payment of the Purchase Price:	\$2,200,000 due at the Closing (to be met via equity).

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/r surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid liabilities.

#### Lease License Agreement

The applicant has submitted a draft license agreement for the site that they will occupy, which is summarized below:

Premises:	1,000 sq. ft. located at 1000 Gates Ave., 4 <sup>th</sup> Fl., Brooklyn, NY 11221
Licensor:	Ultimate Care, Inc. (Current tenant under an Agreement of Lease with Gates Avenue Properties, LLC (landlord) dated June 29, 2016, for the 4 <sup>th</sup> floor premises at 1000 Gates Ave., Brooklyn, NY)
Licensee:	Prospect Acquisition III, LLC
Term:	In effect until May 31, 2026.
License Fee (Rent):	\$25,680 First Year (through 5/31/18), \$26,400 Second Year, and increasing moderately thereafter. Licensee agrees to pay Licensor up to \$300,000 for construction costs for the Premises to be built out for Licensee's business operations.

The License Agreement provides that the Agreement of Lease remains in full force and effect and that Ultimate Care, Inc. is authorized to enter into the License Agreement.

The applicant has attested that the lease is a non-arm's length arrangement. Leopold Friedman, a member of the applicant, is a 33.34% shareholder of Ultimate Care, Inc.

#### Operating Budget

The applicant has submitted the CHHA's current results for 2016, and the projected first and third year operating budgets, in 2018 dollars, as summarized below:

<u>Revenues</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	\$533,385	\$3,695,573	\$11,486,705
Medicare MC	5,263,482	4,862,350	15,086,150
Medicaid MC	640,324	2,926,578	9,080,134
Other Operating	<u>18,856</u>	<u>0</u>	<u>0</u>
Total Revenues	\$6,456,547	\$11,484,501	\$35,652,989
 <u>Expenses</u>			
Operating	\$11,240,731	\$11,005,743	\$33,712,461
Capital	<u>19,230</u>	<u>278,000</u>	<u>264,750</u>
Total Expenses	\$11,259,961	\$11,283,743	\$33,977,211
 Net Income (Loss)	 <u>(\$4,803,414)</u>	 <u>\$200,758</u>	 <u>\$1,675,778</u>
 Utilization: (Visits)*	 38,650	 167,439	 539,010

\* Nursing, PT, OT, SP, Medical Social Service, and Home Health Aid visits

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

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	41.91%	24.45%	24.45%
Medicare MC	52.87%	48.90%	48.90%
Medicaid MC	5.22%	24.45%	24.45%
Charity Care	<u>0.00%</u>	<u>2.20%</u>	<u>2.20%</u>
Total	100.00%	100.00%	100.00%

The following is noted with respect to the submitted budget:

- The Medicaid managed care episodic payment is estimated at \$3,731.69, and the Medicare managed care episodic payment is estimated at \$3,065.61.
- Charity care is expected to be 2%. The applicant states their policy is to assess individual based on income to determine eligibility fee, reduced fees, and/or charity care. Their commitment includes providing uncompensated services to uninsured patients lacking the financial resources to pay.
- As explanation of the substantial increase in utilization projected for year one forward, the applicant indicated that for the first six months of 2016, the current operator had minimal case volume and the core business was more focused on nursing home operations, rather than the CHHA or LTHHCP. In July 2016, the proposed operator entered into a Management Agreement and an interim administrative consulting services arrangement to oversee the operation of the CHHA, which resulted in an uptick in case volume. New staff was recruited and trained and case volume continued to increase in the fourth quarter of 2016. The proposed operator has a significant healthcare footprint in the NYC area, including 12 skilled nursing facility operations (4,100 beds) in the CHHA's service area. They plan is to leverage continuity of care and a vertical integration of patients released from nursing home care to increase CHHA services.
- Expense assumptions are based on current historical experience of the CHHA, accounting for the increase in visits from historical.

#### Capability and Feasibility

Prospect Acquisition III, LLC will acquire the CHHA's operations for \$2,200,000 funded by members' equity. The working capital requirement is estimated at \$1,880,624 based on two months of first year expenses and will be funded from the members' equity. BFA Attachment A is the net worth statements for the proposed members of Prospect Acquisition III, LLC, which reveals sufficient resources to meet the equity requirements.

The submitted budget indicates that net income of \$200,758 will be generated for the first year after the change in ownership. Revenues are estimated to increase from the current year due to the applicant stating that they plan to leverage continuity of care and a vertical integration of patients released from nursing home care to increase CHHA services. Expense assumptions are based on current historical experience of the CHHA, accounting for the increase in visits from historical.

BFA Attachment B is a financial summary of CenterLight Certified Home Health Agency for 2016 and 2015 (certified) and the internal financials for the year ending December 31, 2017. Centerlight has negative working capital, negative net assets, and net deficit for all periods shown. The current operator, with the guidance of the buyer via a management agreement, has been working to identify areas to increase revenue and cut costs. In addition, marketing efforts have been expanded and utilization has increased, which should lead to a stable operating position.

#### Recommendation

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

## Attachments

BFA Attachment A Personal Net Worth Statement-Proposed Members of Prospect Acquisition III, LLC  
BFA Attachment B 2015 & 2016 certified financial summary and internals as of December 31, 2017



**Project # 181047-E**  
**Gamzel NY, Inc. d/b/a Revival Home Health Care**

**Program: Certified Home Health Agency**  
**Purpose: Establishment**

**County: Kings**  
**Acknowledged: January 25, 2018**

**Executive Summary**

**Description**

Gamzel NY, Inc. d/b/a Centers Home Health Care of Downstate (previously known as Revival Home Health Care), a proprietary, Article 36 certified home health agency (CHHA), requests approval to transfer 100% ownership interest (200 shares) from the sole shareholder, Isaac Soskin, to one new shareholder, Kenneth Rozenberg. The CHHA is currently certified to provide the following services: nursing, physical therapy, occupational therapy, speech language pathology, medical social services, nutritional, home health aide, and medical supplies/equipment/appliances. The agency serves Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk, Sullivan and Westchester counties. There will be no change in services provided or counties served upon approval of this application.

On January 8, 2018, Mr. Rozenberg executed a Stock Purchase Agreement (SPA) with Mr. Soskin for the sale and acquisition of all common stock (200 shares) of Gamzel NY, Inc. for a purchase price of \$1, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. The SPA discloses that the Company entered into a Stipulation and Settlement with the New York State Office of the Medicaid Inspector General (OMIG) of Audit # 09-5587 for overpayment of Medicaid claims covering the period January 1, 2004 – December 31, 2009. The settlement terms require the Company to repay \$1,506,412 in 120 monthly installments at 3% interest with repayment beginning in August 2017. The OMIG verified that the Company is up-to-date with payments (\$14,211.43 per month) and that the remaining balance due on this recoupment

was \$1,378,509 as of April 2018. The Stipulation is a liability of the legal entity, Gamzel NY, Inc. The Buyer has submitted a written request to OMIG to ensure that the payment schedule for the liability will remain in place upon transfer of the stock within the existing legal entity. As an ongoing Company, OMIG indicated to the Department that the liability will remain in effect at the current terms.

The SPA also indicates that an OMIG audit for a subsequent period is underway (Audit # 5017273-013K). The applicant advised that a draft audit report shows the liability for Gamzel NY, Inc. would equal \$796,463. The audit has uncontested findings in an approximate amount of \$283,000 plus interest, and contested findings in the amount of \$451,353 plus interest. On preliminary evaluation, the applicant states the OMIG has accepted the basis of the arguments for a portion of the contested claims and it is expected that the overpayment amount in the final audit report will be assessed at approximately \$550,000. The Seller believes additional reductions beyond what the OMIG has preliminarily agreed to are warranted and that further reductions are possible. The final liability for Audit 5017273-013K would be paid pursuant to a payment schedule to be determined by the OMIG and, regardless of the final total, will be paid by the Buyer under the Stock Purchase Agreement with Seller.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will be no Need Review of this stock transfer.

Program Summary

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Certified Home Health Agency.

Financial Summary

There are no project costs associated with this application. The purchase price for the shares is \$1 to be paid at closing. The value of the business assets and liabilities, inclusive of all known outstanding OMIG liabilities, will be determined at closing. The proposed budget is as follows:

	<u>Year One</u>
Revenues	\$29,716,282
Expenses	<u>\$28,377,885</u>
Net Income	\$1,338,397



## 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 original affidavit, acceptable to the Department of Health, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the entity. [BFA]
2. Submission of a copy of the by-laws of the applicant, acceptable to the Department. [CSL]
3. Submission of an executed copy of the lease agreement of the applicant, which is acceptable to the Department. [CSL]
4. Submission of a copy of the management agreement of the applicant, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**June 7, 2018**

## Program Analysis

### Program Description

Gamzel NY, Inc. d/b/a Centers Home Health Care of Downstate (formally known as Revival Home Health Care), a business corporation, requests approval for a change in ownership of a certified home health agency under Article 36 of the Public Health Law.

Gamzel NY, Inc, an existing Certified Home Health Agency, is submitting this application for approval to transfer all of the common stock of Gamzel NY, Inc. owned by Isaac Soskin to Kenneth Rozenberg.

On January 8, 2018, Isaac Soskin and Kenneth Rozenberg entered into a Stock Purchase Agreement for the sale and acquisition of all of the common stock in Gamzel NY, Inc. The purchase price for the acquisition of the stock is \$1.00 and a payment of an agreed upon OMIG settlement amount.

Effective April 12, 2018, the New York State Department of Health and the New York State Department of State, Divisions of Corporations approved a new assumed name for this agency. The new assumed name is Centers Home Health Care of Downstate.

Gamzel NY, Inc. has authorized 200 shares of stock which are to be solely owned by Kenneth Rozenberg.

**Kenneth N. Rozenberg**, EMT, LNHA  
Chief Executive Officer, Centers Health Care  
Chief Executive Officer, Bronx Center for Rehabilitation & Health Care

### Affiliations

Amazing Home Care	(LHCSA, 5/2006-present)
Argyle Center for Independent Living	(AH, 2/2014-present)
Bannister Center for Rehabilitation and Health Care	(RI, RHCF, 2/2016-present)
Beth Abraham Center for Rehabilitation and Nursing	(RHCF, 3/2017-present)
Boro Park Center for Rehabilitation and Healthcare	(RHCF, 5/2011-present)
Bronx Center for Rehabilitation & Health Care	(RHCF, 10/1997-present)
The Bronx Center for Renal Dialysis	(D&TC, 1/2011-present)
Brooklyn Center for Rehabilitation and Residential Health Care	(RHCF, 5/2007-present)
Buffalo Center for Rehabilitation & Nursing	(RHCF, 6/2014-present)
Bushwick Center for Rehabilitation and Health Care	(RHCF, 6/2008-present)
Bushwick Center for Renal Dialysis	(D&TC, 6/2014-present)
Centers Home Care of Otsego	(CHHA, 1/2018-present)
Centers Home Health Revival – Bronx	(CHHA, 7/2008-present)
Centers Home Health Revival – Buffalo	(CHHA, 9/2016-present)
Centers Plan for Healthy Living	(MLTC, 1/2013-present)
Cooperstown Center for Rehabilitation and Nursing	(RHCF, 1/2018-present)
Corning Center for Rehabilitation and Healthcare	(RHCF, 7/2013-present)
Ellicot Center for Rehabilitation	(RHCF, 12/2012-present)
Essex Center for Rehabilitation and Healthcare	(RHCF, 3/2014-present)
Far Rockaway Center for Rehabilitation and Nursing	(RHCF, 4/2017-present)
Fulton Center for Rehabilitation and Healthcare	(RHCF, 4/2012-present)
The Grand Rehabilitation and Nursing at Chittenango	(RHCF, 5/2011-5/2017)
The Grand Rehabilitation and Nursing at Pawling	(RHCF, 8/2004-3/2016)
The Grand Rehabilitation and Nursing at Queens	(RHCF, 10/2004-3/2016)
The Grand Rehabilitation and Nursing at Rome	(RHCF, 5/2011-5/2017)
Holliswood Care Center	(RHCF, 11/2010-4/2013)
Holliswood Center for Rehabilitation and Healthcare	(RHCF, 4/2013-present)
Hope Center for HIV and Nursing Care	(RHCF, 4/2015-present)
Indian River Rehabilitation and Nursing Center	(RHCF, 12/2014-present)
Kingston Center for Rehabilitation and Health Care	(RI, RHCF, 10/2016-present)

Martine Center for Rehabilitation and Nursing	(RHCF, 3/2017-present)
Northwoods Rehabilitation and Nursing Center at Moravia	(RHCF, 11/2014-3/2016)
Oak Hill Center for Rehabilitation and Healthcare	(RI, RHCF, 7/2017-present)
Oneida Center for Rehabilitation and Nursing	(RHCF, 1/2018-present)
Park View Center for Rehabilitation and Health Care	(RI, RHCF, 5/2016-present)
Richmond Center for Rehabilitation and Specialty Healthcare	(RHCF, 4/2012-present)
Senior Care EMS	(Ambulance, 6/2005-present)
Steuben Center for Rehabilitation and Healthcare	(RHCF, 7/2014-present)
Triboro Center for Rehabilitation and Nursing	(RHCF, 8/2013-present)
University Center for Rehabilitation and Nursing	(RHCF, 8/2001-present)
Washington Center for Rehabilitation and Healthcare	(RHCF, 2/2014-present)
Waterfront Health Care Center	(RHCF, 8/2011-12/2012)
Williamsbridge Manor Nursing Home	(RHCF, 11/1996-present)

A search of the individuals (and entities where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. The Bureau of Professional Credentialing has indicated that Kenneth Rozenberg NHA license #04036 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license. The Bureau of Emergency Medical Services has indicated that Kenneth Rozenberg holds a Paramedic Certification #082942 and is in good standing. Disciplinary action against this individual or his certification has never been taken.

A seven-year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

**New York Nursing Homes**

Beth Abraham Center for Rehabilitation and Nursing	(3/2017-present)
Boro Park Center for Rehabilitation and Healthcare	(5/2011-present)
Bronx Center for Rehabilitation & Health Care	
Brooklyn Center for Rehabilitation and Residential Health Care	
Buffalo Center for Rehabilitation & Nursing	(12/2015-present)
Bushwick Center for Rehabilitation and Health Care	(5/2011-present)
Corning Center for Rehabilitation and Healthcare	(7/2013-present)
Daughters of Jacob Nursing Home	(8/2013-9/2016)
Delaware Nursing and Rehabilitation Center	(6/2014-12/2015)
Ellicot Center for Rehabilitation	(12/2012-present)
Essex Center for Rehabilitation and Healthcare	(3/2014-present)
Far Rockaway Center for Rehabilitation and Nursing	(4/2017-present)
Fulton Center for Rehabilitation and Healthcare	(4/2012-present)
The Grand Rehabilitation and Nursing at Chittenango	(5/2011-5/2017)
The Grand Rehabilitation and Nursing at Pawling	(3/2011-3/2016)
The Grand Rehabilitation and Nursing at Rome	(5/2011-5/2017)
The Grand Rehabilitation and Nursing at Queens	(3/2011-3/31/2016)
Granville Center for Rehabilitation and Nursing	(12/2014-present)
Holliswood Care Center	(3/2011-4/2013)
Holliswood Center for Rehabilitation and Healthcare	(4/2013-present)
Hope Center for HIV and Nursing Care	(4/2015-present)
Martine Center for Rehabilitation and Nursing	(3/2017-present)
Northwoods Rehabilitation and Nursing Center at Moravia	(11/2014-present)
Queens Center for Rehabilitation and Residential Healthcare	(3/2011-3/31/2016)
Richmond Center for Rehabilitation and Specialty Healthcare	(4/2012-present)
Steuben Center for Rehabilitation and Healthcare	(7/2014-present)
Triboro Center for Rehabilitation and Nursing	(9/2016-present)
University Center for Rehabilitation and Nursing	
Washington Center for Rehabilitation and Healthcare	(2/2014-present)
Wartburg Nursing Home	(3/2011-5/2011)
Waterfront Health Care Center	(8/2011-12/2012)
Williamsbridge Manor Nursing Home	

### **Rhode Island Nursing Homes**

Oak Hill Center for Rehabilitation and Healthcare (RI)	(7/2017-present)
Kingston Center for Rehabilitation and Health Care (RI)	(10/2016-present)
Park View Center for Rehabilitation and Health Care (RI)	(5/2016-present)
Bannister Center for Rehabilitation and Health Care (RI)	(2/2016-present)

### **Skilled Nursing Facilities**

Cooperstown Center for Rehabilitation and Nursing	(1/2018-present)
Oneida Center for Rehabilitation and Nursing	(1/2018-present)

### **Certified Home Health Agencies**

Centers Home Health Revival – Bronx	
Centers Home Health Revival – Buffalo	(9/2016-present)
Centers Home Health Care of Downstate)	

### **Long Term Home Health Care Program**

Centers Home Care of Otsego	(1/2018-present)
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### **Licensed Home Care Services Agency**

Amazing Home Care

### **Diagnostic & Treatment Centers**

The Bronx Center for Renal Dialysis	
Bushwick Center for Renal Dialysis LLC	(6/2014-present)

### **Adult Home**

Argyle Center for Independent Living	(2/2014-present)
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### **Managed Long Term Care Plan**

Centers Plan for Healthy Living	(1/2013-present)
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### **Ambulance**

Senior Care EMS

A review of operations of **Boro Park Center for Rehabilitation and Healthcare** for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-006 for complaint survey findings on November 27, 2017. Deficiencies were found under tag 309-G-Harm. Specifically, Resident #1 had multiple doctor's orders that were not carried out including orders for lab tests of blood and urine and scheduling for an outpatient surgical appointment. Additionally, Medical Doctor #2 examined Resident #1 on two occasions and did not document resident status or MD recommendations in Resident #'s medical record. Medical Doctor #2 also recommended transfer of Resident #1 to the hospital. Medical Doctor #2 did not write a doctor's order for the transfer, did not direct staff to transfer the resident and did not take necessary steps to accomplish transfer of the resident to the hospital.

A review of operations of **Bronx Center for Rehabilitation and Health Care** for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of operations of **Essex Center for Rehabilitation and Health Care** for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of **Fulton Center for Rehabilitation and Healthcare** for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
- A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

A review of operations of **Northwoods Rehabilitation and Nursing Center at Moravia** for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on October 6, 2017. Deficiencies were found under tags F-Treatment/Services to prevent/heal pressure sores and G-Harm. Resident #1 was not provided with adequate pressure relief to prevent pressure ulcers and when she developed a pressure ulcer, it was not assessed and treated timely. In addition, when the pressure ulcer worsened, the physician was not notified timely. This resulted in actual harm that is not immediate jeopardy.
  - A federal CMP of \$11,053.25 was assessed for the October 6, 2017 survey findings.

A review of operations of **Steuben Center for Rehabilitation and Healthcare** for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-18-005 for complaint survey findings on November 17, 2017. Deficiencies were found under tag 333-G-Harm-Residents are free of Significant Med Errors. The facility did not ensure to administer the correct concentration/dosage of Methadone as ordered by the medical provider, resulting in Narcan (treatment for Opioid overdose) administration and hospital admission for Resident #1.
- A federal CMP of \$14,505 was assessed for the November 17, 2017 survey findings.

A review of operations of **Richmond Center for Rehabilitation and Specialty Healthcare** for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
  - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12 and 415.12(b)(2)(iii) Quality of Care: Accidents.
- The facility was fined \$12,000 pursuant to a Stipulation and Order issued for surveillance findings on June 9, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential and 415.12(h)(2) Resident Assessment.
- The facility was fined \$12,000 pursuant to a Stipulation and Order NH-17-051 for recertification survey findings on June 9, 2017. Deficiencies were found under tags 309-G-Harm-Provide Care/Services for Highest Well Being and 386-G-Harm-Physical Visits-Review Care/Notes/Orders. Specifically, ongoing assessment, monitoring and medical/surgical follow-up of a mass on the left side of a resident's neck was not provided to the resident in a timely manner. The resident was eventually diagnosed with Stage IV Squamous Cell Cancer of the neck and treatment was delayed because of the late diagnosis. The facility did not ensure that the unit physician reviewed and followed up on the resident's entire plan of care and identified the development of a Stage IV cancerous tumor.
  - A federal CMP of \$7,803.25 was assessed for the June 9, 2017 survey findings.

A review of the operations of **The Grand Rehabilitation and Nursing at Chittenango** for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

A review of the operations of **The Grand Rehabilitation and Nursing at Rome** for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of **Washington Center for Rehabilitation and Healthcare** for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of **Waterfront Center for Rehabilitation and Healthcare** (nka Ellicott Center for Rehabilitation) for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
- A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-17-046 issued August 16, 2017 for surveillance findings on May 11, 2017. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of **Williamsbridge Manor Nursing Home** for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The applicant attests to the following for **Oak Hill Center for Rehabilitation and Healthcare (Rhode Island)**.

- Civil Monetary Penalties (CMPs) of \$210,084 were imposed as a result of the following survey findings on December 20, 2017:
  - F0600—S/S: J—483.12(a)(1)—Free From Abuse and Neglect
  - F0686—S/S: J—483.25(b)(1)(i)(ii)—Treatment/Services to Prevent/Health Pressure Ulcer
  - F0692—S/S: J—483.25(g)(1)-(3)—Nutrition/Hydration Status Maintenance
  - F0695—S/S: J—483.25(i)—Respiratory/Tracheostomy Care and Suctioning
- CMPs of \$12,960 were imposed as a result of the following survey finding on January 11, 2018
  - F0689—S/S: J—483.25(d)(1)(2)—Free of Accident Hazards/Supervision/Devices

The Information provided by the Bureau of Quality and Surveillance has indicated that the remaining residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Emergency Medical Services and Trauma Systems has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant will continue to serve the residents of the following counties from an office located at 5350 Kings Highway, Brooklyn, New York 11203:

Kings	Queens	Bronx	New York
Richmond	Rockland	Sullivan	Orange
Nassau	Westchester	Suffolk	

The applicant will continue to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	Medical Social Services
Medical Supply Equipment	Nutrition	

<b>CHHA Quality of Patient Care Star Ratings as of May 8, 2018</b>	
<b>New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars</b>	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
Centers Home Health Revival - Buffalo	3 out of 5 stars
Centers Home Health Revival - Bronx	2.5 out of 5 stars
Centers Home Health Care of Downstate (f/k/a Revival Home Health Care)	3 out of 5 stars

**Conclusion**

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Certified Home Health Agency.

**Recommendation**

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

<b>Financial Analysis</b>
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**Stock Purchase Agreement**

The applicant has submitted an executed stock purchase agreement. The terms are summarized below:

Date:	January 8, 2018
Company:	Gamzel NY, Inc.
Seller:	Isaac Soskin
Purchaser:	Kenneth Rosenberg
Shares Bought:	200 shares (100%) of the common stock in the company
Purchase Price:	\$1.00
Payment Terms:	\$1.00 Due at closing.

The value of the business assets and liabilities, inclusive of all known outstanding OMIG liabilities, will be determined at closing. As a contingency for approval, the Purchaser must provide an executed original Medicaid affidavit acknowledging agreement to be liable and responsible for any Medicaid overpayments made to the Company.

**Management Agreement**

The applicant has submitted an executed management agreement, summarized below:

Date:	July 1, 2014, amended January 8, 2018
Company:	Gamzel NY, Inc.
Manager/Consultant:	Alpine Home Health Care, LLC
Services Provided:	Manage the day-to-day operations of the CHHA including: human resources; payroll; employee training; regulatory and licensure compliance; recordkeeping and reporting; accounting services including cost report preparation; financial statements, auditing; development of annual budgets; submission of bills to insurer and governmental payors; negotiation of 3 <sup>rd</sup> party payor participation agreements; fraud and abuse detection; and delivery of patient care services.
Term:	Initial term of 3 years, with successive 3-year renewal options as approved by the Department of Health. The Agreement was amended to extend the term 2 years to June 30, 2019.
Compensation:	Fee of \$5,000 per month



The Gamzel NY, Inc. submitted the Management Agreement to the Department for review and approval on June 6, 2014, and approval was granted effective July 1, 2014. The amendment to extend the term by two years was also noticed to and approved by the Department, providing a revised end date of June 30, 2019. Kenneth Rozenberg, the proposed sole stockholder of the Company per this application request, is the sole member of Alpine Home Health Care, LLC.

#### Lease Agreement

The applicant submitted an executed lease for the site to be occupied. The terms are summarized below:

Date:	February 1, 2005
Premises:	14,000 sq. ft. of space located at 4326 Kings Highway, Brooklyn, NY
Lessor:	5350 Kings Highway LLC
Lessee:	Centers Home Health Care of Downstate
Term:	Initial 10-year term ending February 28, 2015, renewal option for one extended term of up to 5 years (exercised).
Rental:	\$25,750 per month or \$309,000 per year.
Provisions:	Alterations, repairs and routine repairs will be paid by lessee. Lessee will pay property taxes, insurance, and utilities.

The applicant has provided an affidavit attesting that the lease is an arms-length agreement, as there is no relationship between landlord and tenant. The Tenant has the right without Landlord's consent to assign the lease to a corporation that the tenant may merge or consolidate with. The applicant stated intent to seek renewal of the lease upon expiration of the current term.

#### Operating Budget

The applicant has submitted their current year (2016) results and an operating budget, in 2018 dollars, for the first year of operations, summarized below:

	<u>Current Year</u>	<u>Year One</u>
<u>Revenues</u>		
Commercial	\$5,839,984	\$9,610,620
Medicare	13,492,100	13,340,270
Medicaid	8,290,409	7,322,950
Private Pay	11,583	10,000
Allowance for Charity Care *	<u>0</u>	<u>(567,558)</u>
Total Revenue	\$27,634,076	\$29,716,282
<u>Expenses</u>		
Operating:	\$26,056,478	\$27,878,262
Capital:	<u>499,623</u>	<u>499,623</u>
Total Expenses	\$26,556,101	\$28,377,885
Net Income	<u>\$1,077,975</u>	<u>\$1,338,397</u>
Visits (incl. HHA)	182,642	182,642
HHA Hours	365,327	365,327

\* Charity care is listed as revenue reduction in the Year One, rather than as a reduction to expenses.

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>
Commercial	21.1%	31.3%
Medicare	48.8%	44.0%
Medicaid	30.0%	24.7%
Private Pay	.10%	0%

Expense, utilization and revenue assumptions are based on the historical experience of the CHHA. Per the 2016 cost report filed with the Department, the current year results above include approximately \$1.46 million of expense reductions to offset for bad debt expense, revenue recoveries (sale of medical records), business development expense, corporate taxes, amortization of goodwill, and the cost of providing charity care. During 2016, free care (charity) accounted for 19 nursing visits, 13 physical therapy visits and 213 HHA hours. Revenues reflect current payment rates, which are expected to remain flat for Year One.

#### Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$1 will be met with cash. Assumed total liabilities net of assets totaled \$4,086,210 per the internal financial statements as of September 30, 2017. Included in this amount is the August 2017 OMIG settlement of \$1,506,412 that is being recouped via monthly payments at 3% interest for a ten-year term. Payments are current per the OMIG amortization schedule submitted, with an outstanding liability of \$1,378,509 as of April 2018. The proposed new shareholder has submitted a request to the OMIG to continue the payment schedule.

An OMIG audit is in progress for the period May 1, 2013 - December 31, 2016 (Audit # 5017273-013K). The applicant indicated that, per a draft audit report, the liability would equal \$796,463. The audit has uncontested findings in an approximate amount of \$283,000 plus interest, and contested findings in the amount of \$451,353 plus interest. On preliminary evaluation, the applicant states the OMIG has accepted the basis of the arguments for a portion of the contested claims and it is expected that the overpayment amount in the final audit report will be assessed at approximately \$550,000. The applicant has not submitted the draft report as it has not been finalized and is still being negotiated.

The working capital requirement is estimated at \$7,238,448 based on two months of the first-year expenses of \$4,729,648, plus current liabilities net of current assets, which totaled negative \$2,508,800 as of September 30, 2017. BFA Attachment D is the agency's balance sheet as of September 30, 2017, which is the latest available per the applicant. BFA Attachment A is the applicant's personal net worth statement, which supports the ability to meet the working capital requirements.

BFA Attachment B, the 2015-2016 certified financial summary of Gamzel NY, Inc., shows the entity experienced an average negative working capital position and average negative net asset position. Also, the entity incurred an operating loss in 2016 of \$325,275 and achieved an operating income of \$285,065 in 2015. The applicant stated the reason for the negative working capital and stockholder's equity was due to reimbursement adjustments and an increase in notes payable. The notes payable increase is due in part to the Management Agreement whereby the administrative provider has made working capital advances to the Company to be paid back without interest when cash flow permits. Amounts owed as of December 31, 2016 and 2015 were \$1,465,000 in both years. Overall, general expenses increased by \$2,417,224 over 2015. The agency's auditor for the 2016 certified financial statements has rendered a Going Concern opinion for the Company.

The applicant projects an operating excess of \$1,338,397 in the first year of operations. Revenues are based on current reimbursement methodologies. Cost efficiencies and a renegotiation of commercial rates are anticipated to help improve operations going forward. The budget appears reasonable.

As shown on BFA Attachment C, the internal financial statement summary for Gamzel NY, Inc. as of September 30, 2017, the agency experienced negative working capital and negative stockholder's equity. Upon approval, the applicant intends to offset losses by expanding the CHHA's business through increased outreach and education to the communities served, increasing patient volume using homecare services in his network of providers, and generating savings in administrative efficiencies.

Based on the preceding and 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.**

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## Attachments

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- BFA Attachment A Net Worth Statement
- BFA Attachment B 2015 & 2016 Gamzel Certified Financial Statement
- BFA Attachment C Internal Financial Statement of Gamzel NY, Inc. as of September 30, 2017
- BFA Attachment D Pro forma – Gamzel NY



**Project # 181085-E**  
**QC-Medi New York, Inc. d/b/a Kindred at Home**

**Program: Certified Home Health Agency**  
**Purpose: Establishment**

**County: Saratoga**  
**Acknowledged: February 9, 2018**

**Executive Summary**

**Description**

QC-Medi New York, Inc. (QC), a New York proprietary business corporation, requests a change in indirect ownership at the great-grandparent level for the following five Article 36 Certified Home Health Agencies (CHHA) that it operates (referred to as the Kindred at Home CHHAs):

- OpCert # 2801600 located at 100 Saratoga Village Blvd, Suite 5, Ballston Spa (Saratoga County), serving Montgomery and Saratoga counties;
- OpCert # 3301605 located at 200 Elwood Davis Road, 2<sup>nd</sup> Floor, Liverpool (Onondaga County), serving Cayuga, Onondaga and Oswego counties;
- OpCert # 2910601 located 865 Merrick Avenue, 3<sup>rd</sup> Floor, Westbury (Nassau County), serving Nassau county;
- OpCert # 5157600 located at 888 Veterans Memorial Hwy, Suite 210, Hauppauge (Suffolk County), serving Suffolk county; and
- OpCert # 0752601 located at 11849 East Corning Road, Suite 108, Corning (Steuben County), serving Chemung and Steuben counties.

The services, primary service areas and operations of the CHHAs will not change significantly. The existing leases will continue unchanged.

On December 19, 2017, Kindred Healthcare, Inc. entered into an Agreement and Plan of Merger with Kentucky Hospital Holdings, LLC, Kentucky Homecare Holdings, Inc. and

Kentucky Homecare Merger Sub, Inc. whereby Kentucky Homecare Merger Sub, Inc. will merge into Kindred Healthcare, Inc. and Kindred Healthcare, Inc. will continue as the surviving corporation. Concurrently, these same entities entered into a Separation Agreement whereby, immediately following the closing of the merger, Kindred Healthcare, Inc. will convert to a Delaware limited liability company, convey its interests in the home health, hospice and community care businesses to Kentucky Homecare Holdings, Inc., and be acquired by Kentucky Hospital Holdings, LLC—effectively separating from the Homecare Business.

Due to these transactions, a group of purchasers comprised of TPG Capital (TPG), Welsh, Carson, Anderson & Stowe (WCAS), other minority investors, who will not individually hold 10% or more of the ownership interest in the Homecare Business, and Humana Inc. will purchase, via their indirect interests in Kentucky Homecare Holdings, Inc., all of Kindred Healthcare, Inc.’s homecare business. As a result, Humana Inc. will own a 40% indirect interest in QC-Medi New York, Inc., and TPG, WCAS, and other minority investors will collectively own a 60% indirect interest in QC-Medi New York, Inc.

QC-Medi New York, Inc. will continue to be the wholly-owned subsidiary of Gentiva Health Services Holding Corp., which is the wholly-owned subsidiary of Gentiva Health Services, Inc., previously approved by the Public Health and Health Planning Council (PHHPC) under

CON 142193. Upon PHHPC approval, Gentiva Health Services, Inc. will, via the steps outlined in the Separation Agreement above, become the wholly-owned subsidiary of Kentucky Homecare Holdings, Inc., which will be the wholly-owned subsidiary of Kentucky Homecare Parent, Inc., which will be owned by Humana Inc. (direct 40% ownership interest) and TPG, WCAS, and other minority investors (collectively with an indirect 60% ownership interest through Kentucky Homecare JV Holdings, L.P). The direct corporate operator of the five CHHAs will remain QC-Medi New York, Inc.

OPCHSM Recommendation  
Contingent Approval

#### Need Summary

This project is a change of ownership at the great-grandparent level and is not expected to significantly impact services or the counties served by the agencies.

#### Program Summary

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

#### 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 copy of the by-laws of QC-Medi New York, 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

**June 7, 2018**

## Need and Program Analysis

### Program Description

QC-Medi New York, Inc. d/b/a Kindred at Home, a business corporation, requests approval for a change in indirect ownership of five (5) Certified Home Health Agencies (CHHA) under Article 36 of the Public Health Law.

Currently, QC-Medi New York, Inc. d/b/a Kindred at Home is wholly owned by Gentiva Health Services Holding Corp., which is wholly owned by Gentiva Health Services, Inc. The sole owner of Gentiva Health Services, Inc. is Kindred Healthcare Operating, Inc. The parent of Kindred Healthcare Operating, Inc. is Kindred Healthcare, Inc., a publicly traded business corporation. This structure was previously approved by the Public Health and Health Planning Council in Project No. 142193.

The applicant proposes for a group of purchasers comprised of TPG VII Kentucky Holdings II, LP, Welsh, Carson, Anderson & Stowe, Humana, Inc. and other minority investors to take indirect ownership of all of Kindred Healthcare, Inc.'s homecare business.

On December 19, 2017, Kindred Healthcare, Inc. entered into an Agreement and Plan of Merger with Kentucky Hospital Holdings, LLC, Kentucky Homecare Holdings, Inc. and Kentucky Homecare Merger Sub, Inc. Kindred Homecare Merger Sub, Inc. will merge with Kindred Healthcare, Inc., with Kindred Healthcare, Inc. being the surviving corporation. Concurrently, these same entities entered into a Separation Agreement. Once the merger has closed, Kindred Healthcare, Inc will convey all of its home health, hospice, and community care interests to Kentucky Homecare Holdings, Inc.

Once the Merger and Separation transactions are completed, the new parent company of Gentiva Health Services, Inc will be Kentucky Homecare Holdings, Inc., which is a wholly owned subsidiary of Kentucky Homecare Parent, Inc.

Forty percent (40%) of Kentucky Homecare Parent, Inc. will be owned directly by Humana, Inc. The remaining sixty percent (60%) will be collectively and indirectly owned by TPG VII Kentucky Holdings II, LP, Welsh, Carson, Anderson & Stowe, and other minority investors through their interest in Kentucky Homecare JV Holdings, LP.

As a result of these transactions, Humana Inc. will own a 40% indirect interest in QC-Medi New York, Inc., and TPG VII Kentucky Holdings II, LP, Welsh, Carson, Anderson & Stowe (WCAS), and other minority investors will collectively own a 60% indirect interest in QC-Medi New York, Inc.

For further detail regarding this transaction, please see Programmatic Attachment A to view the Before and After Organizational Charts.

The applicant has stated that the post-transaction boards have not yet been determined, but has confirmed that only the individuals who are disclosed below will form the post-transaction Board of Directors for each entity disclosed below.

Kentucky Homecare Holdings, Inc., a business corporation in Delaware, has authorized 1,000 shares of stock, with two shares issued and outstanding. At closing, Kentucky Homecare Holdings, Inc. will be solely owned by Kentucky Homecare Parent, Inc.

The Board of Directors of Kentucky Homecare Holdings, Inc. is comprised of the following individuals:

<p><b>Adam M. Fliss</b>, Esq. (CA, MA) – Director, Secretary General Counsel, TPG Capital, L.P.</p>	<p><b>Kendall R. Garrison</b> – Director, VP and Treasurer Principal, TPG Capital</p>	<p><b>Jeffrey K. Rhodes</b> – Director, President Partner, TPG Global</p> <p><u>Affiliation</u> Surgical Care Affiliates, Inc. (Owner/Operator of Surgical Care Centers and a Health Maintenance Organization) (07/2010 – 3/2017)</p>
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Kentucky Homecare Parent, Inc., a business corporation in Delaware, has authorized ten shares of stock. The Board of Directors of Kentucky Homecare Parent, Inc., is comprised of the following individuals:

<p><b>Joseph C. Ventura</b>, Esq. (NY, KY) – Director, Vice President, Corporate Secretary Enterprise VP, Associate General Counsel, Corporate Secretary, Humana Inc.</p>	<p><b>William K. Fleming</b> –PharmD (KY, OH), TPA (NM), Resident Administrator (KY) – Director, President President, Healthcare Services Segment, Humana Inc</p>
<p><b>Ralph M. Wilson</b>, J.D. (KY) – Director, Vice President VP, Associate General Counsel, Humana Inc.</p>	<p><b>Alan J. Bailey</b> – Vice President, Treasurer VP, Treasurer, Humana Inc.</p>

The applicant has stated that at closing, the Board of Directors of Kentucky Homecare Parent, Inc. will have ten directors. Five of these directors will be appointed by Kentucky Homecare JV Holdings, LP, three will be Humana, Inc. appointees as well as a CEO and Executive Chairman. The Executive Chairman will be nominated by Kentucky Homecare JV Holdings, LP and be subjected to approval by Humana, Inc.

The current partnership of Kentucky Homecare JV Holdings, LP, a limited partnership in Delaware, is as follows:

<p><b>Michael A. LaGatta</b>, Esq. (NY, TX) – Limited Partner General Counsel, TPG Holdings</p>	<p><b>Kentucky Homecare GP, Inc.</b> – General Partner</p>
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At the close of this transaction, Kentucky Homecare GP, Inc. will remain the general partner of Kentucky Homecare JV Holdings, LP, and the limited partners will be TPG VII Kentucky Holdings II, LP, WCAS, and other minority investors.

Kentucky Homecare GP, Inc., a business corporation in Delaware, has authorized 1,000 shares of stock. The Board of Directors of Kentucky Homecare GP, Inc. is comprised of the following individuals:

<p><b>Jeffrey K. Rhodes</b> – Director, President Disclosed above</p>	<p><b>Kendall R. Garrison</b> – Director, Vice President, Treasurer Disclosed above</p>
<p><b>Adam M. Fliss</b>, Esq. (CA, MA) – Director, Secretary Disclosed above</p>	<p><b>Edward P. Sobol</b> – Director General Partner, Welsh, Carson, Anderson &amp; Stowe</p> <p><u>Affiliations</u> Emerus Group Holdings (TX) Total Community Options d/b/a InnovAge PACE</p>



Although Welsh, Carson, Anderson & Stowe will have approximately 11.03% indirect ownership interest in QC-Medi New York, Inc. d/b/a Kindred at Home, the applicant understands that these investors will not have any direct control over the operation of the Kindred at Home CHHAs. Therefore, information regarding the governing body and Board of Directors of this entity was not disclosed to the Department. However, Edward P. Sobol represents these directors and currently sits on the board of Kentucky Homecare GP, Inc.

The current partnership of TPG VII Kentucky Holdings II, LP, a limited partnership in Delaware, is as follows:

<b>Michael A. LaGatta</b> , Esq. (NY, TX) – Limited Partner	<b>TPG VII Kentucky GP, Inc.</b> – General Partner
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TPG VII Kentucky GP, Inc., a business corporation in Delaware, is the general partner of TPG VII Kentucky Holdings II, LP. As the general partner, TPG VII Kentucky GP, Inc. manages and controls TPG VII Kentucky Holdings II, LP. The applicant has stated that none of the ultimate limited partners of TPG VII Kentucky Holdings II, LP (which are indicated on the TPG Organizational Chart included in Attachment A) will have a 10% or greater ownership in the five CHHAs associated with this project.

TPG VII Kentucky GP, Inc. is authorized to issue 1,000 shares of stock and is owned 50/50 by the following individuals:

<b>David Bonderman</b> , Esq. (DC, TX) – Shareholder Founding Partner, TPG Global, LLC	<b>James G. Coulter</b> – Shareholder Founding Partner, TPG Global, LLC
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The Board of Directors of TPG VII Kentucky GP, Inc. is comprised of the following individuals:

<b>Michael A. LaGatta</b> , Esq. (NY, TX) – Director, President, Treasurer Disclosed above	<b>Adam M. Fliss</b> , Esq. (CA, MA) – Director, Vice President, Secretary Disclosed above
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Humana, Inc., a publicly traded business incorporated in Delaware, is authorized to issue three hundred million shares of Common Stock and ten million shares of Preferred Stock. Currently, there are 137,687,326 outstanding shares of Common Stock.

The Board of Directors of Humana, Inc. is comprised of the following individuals:

<b>Michael A. LaGatta</b> , Esq. (NY, TX) – Director, President and Treasurer Disclosed above	<b>Ralph M. Wilson</b> , J.D. (KY) – Director, Vice President Disclosed above
<b>Elizabeth D. Bierbower</b> – Segment President, Group Business, Humana Inc.	<b>Brian P. LeClaire</b> – Chief Information Officer Senior VP, Chief Information Officer, Humana Inc.
<b>Jody L. Bilney</b> – Chief Consumer Officer Senior VP, Chief Consumer Officer, Humana Inc.	<b>Christopher M. Todoroff</b> , Esq. (CT, FL, KY, PA, NY) – Chief Legal Officer Senior VP, General Counsel, Humana Inc.
<b>Marissa T. Peterson</b> – Director CEO & President, Mission Peak Executive Consulting (CA)	<b>David A. Jones, Jr.</b> , Esq. (KY) – Director Director, Humana Inc. Chairman, Chrysalis Ventures, LLC
<b>Edward P. Sobol</b> – Board Member Disclosed above	<b>Frank A. D’Amelio</b> – Director Executive Vice President, Chief Financial Officer and Business Operations, Pfizer Inc.
<b>James J. O’Brien</b> – Director Retired since 12/31/2014	<b>David B. Nash</b> , MD (PA) – Director Founding Dean, Jefferson School of Population Health at Thomas Jefferson University

<b>William K. Fleming</b> – Segment President, Healthcare Services Disclosed above	<b>William J. McDonald</b> – Director Managing Partner, Wild Irishman Advisory, LLC
<b>Samir M. Deshpande</b> – Chief Risk Officer CRO, Humana Inc.	<b>Roy A. Beveridge, MD (VA)</b> – Chief Medical Officer Senior VP, CMO, Humana Inc.
<b>Timothy S. Huval</b> – Chief Human Resources Officer Senior VP, Chief Human Resources Officer, Humana Inc.	<b>Bruce D. Broussard</b> – Director, President and CEO Director, President and CEO, Humana Inc.
<b>Brian A. Kane</b> - Chief Financial Officer Senior VP, CFO, Humana Inc.	<b>Alan J. Bailey</b> – Vice President, Treasurer Disclosed above
<b>Heidi S. Margulis</b> - Chief Corporate Affairs Officer Senior Vice President- Corporate Affairs, Humana Inc.	<b>Kurt J. Hilzinger</b> – Director, Chairman of the Board Partner, Court Square Capital Partners, LP
<b>Karen B. DeSalvo, MD (LA), MPH, MSc</b> – Director Part Time Faculty, University of Texas at Austin Dell School of Medicine	<b>Cynthia H. Zipperle, CPA (KY)</b> – Senior Vice President, Chief Accounting Officer Senior VP, Chief Accounting Officer and Controller, Humana Inc.
<b>Frank J. Bisignano</b> – Director Chairman, Humana Inc. Chief Executive Officer, First Data Corporation	<b>Webster Roy Dunbar, RPh (Great Britain)</b> – Director Retired since April 2010
<b>William E. Mitchell</b> – Director Partner, Sequel Venture Partners, LLC	<b>Christopher H. Hunter</b> - Chief Strategy Officer Senior VP, Chief Strategy Officer, Humana Inc.
<b>Timothy Alan Wheatley</b> – Segment President, Retail President, Retail Segment, Humana Inc.	

Humana, Inc. provided a list of health care facilities in which they have ownership interest. Please see Programmatic Attachment B, Humana, Inc. Facilities, for more information regarding these facilities. A seven-year review of the operations of these facilities/agencies was performed as part of this review.

The State of Florida reported that SeniorBridge Family Companies (FL), Inc., a healthcare facility in which Humana, Inc. has ownership, located at 4023 N. Armenia Ave, Suite 470, Tampa, Florida 33607, had enforcement actions taken against it during the past seven years. The violations cited are 2011003428, 2013002786, 2014000896, 2015009275. These violations have been resolved.

For a list of facilities in which Emerus Group Holdings and Total Community Options d/b/a InnovAge PACE (Affiliations of Edward P. Sobol) have ownership interest please see Programmatic Attachment C, Edward P. Sobol Affiliations. A seven-year review of the operations of these facilities/agencies was performed as part of this review.

Jeffrey K. Rhodes submitted a signed affidavit stating that to the best of his knowledge, during his time on the Surgical Care Affiliates, Inc. (SCA) Board of Directors, none of the surgery centers or surgical hospitals owned and operated by SCA had any conditional level non-compliance issues or exclusions from the Medicare or Medicaid programs.

Jeffrey K. Rhodes disclosed that on October 5, 2017 he was involved in a Civil Action case in the Northern District Court of Indiana, Docket # 3:16-cv-00815-PPS-MGG. This case alleges violation of numerous securities laws, including the Securities Act of 1933 and the Securities and Exchange Act of 1934.

Michael A. LaGatta disclosed that in December 2013 he was involved in a Small Claims action in Tarrant County, Texas.

Both David Bonderman and James G. Coulter disclosed records of legal actions. Nothing disclosed caused concern from a character and competence perspective.

The Kentucky Board of Accountancy indicates no issues with the licensure of the CPA associated with this application. A Certificate of Good Standing has been received for all attorneys. The Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, the Louisiana State Board of Medical Examiners, and the Virginia Department of Health Professions, indicate no issues with the licensure of the health professionals associated with this application. The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

In addition to the change in indirect ownership, the applicant proposes to remove Personal Care services from the services provided by Kindred at Home in Ballston Spa, operating certificate 2801600. The applicant also proposes to remove Respiratory Therapy from the services provided by Kindred at Home in Hauppauge, operating certificate 5157600. This transaction will have no impact on the operation certificates of the Kindred at Home locations in Liverpool, Westbury and Corning. Please see the below chart for more detail regarding the current services provided by each Kindred at Home CHHA.

Primary Address	Branch Address	Counties Served	Services Provided	Operating Certificate
100 Saratoga Village Blvd, Suite 5 Ballston Spa, NY 12020	4908 Route 30 Amsterdam	Saratoga, Montgomery	Nursing, Nutrition, Home Health Aide, Speech/Language Pathology, Personal Care, Physical Therapy, Medical Social Services, Occupational Therapy, Medical Supplies & Equipment	2801600
200 Elwood Davis Rd, 2nd Floor Liverpool, NY 13088	19 Fourth Ave Oswego  425 Grant Ave Auburn	Cayuga, Onondaga, Oswego	Nursing, Nutrition, Home Health Aide, Speech/Language Pathology, Physical Therapy, Medical Social Services, Occupational Therapy, Medical Supplies & Equipment	3301605
865 Merrick Avenue, 3 <sup>rd</sup> Floor Westbury, NY 11590	N/A	Nassau	Nursing, Respiratory Therapy, Nutrition, Home Health Aide, Speech/Language Pathology, Physical Therapy, Medical Social Services, Occupational Therapy, Medical Supplies & Equipment	2910601
888 Veterans Memorial Highway, Suite 210 Hauppauge, NY 11788	N/A	Suffolk	Nursing, Respiratory Therapy, Nutrition, Home Health Aide, Speech/Language Pathology, Physical Therapy, Medical Social Services, Occupational Therapy, Medical Supplies & Equipment.	5157600
11849 East Corning Road, Suite 108 Corning, NY 14830	N/A	Chemung, Steuben	Nursing, Nutrition, Home Health Aide, Speech/Language Pathology, Physical Therapy, Medical Social Services, Occupational Therapy, Medical Supplies & Equipment	0752601

CHHA Quality of Patient Care Star Ratings as of May 4, 2018	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
QC-Medi New York, Inc. d/b/a Kindred at Home (Ballston Spa)	5 out of 5 stars
QC-Medi New York, Inc. d/b/a Kindred at Home (Corning)	4 out of 5 stars
QC-Medi New York, Inc. d/b/a Kindred at Home (Hauppauge)	4 out of 5 stars
QC-Medi New York, Inc. d/b/a Kindred at Home (Liverpool)	4 out of 5 stars
QC-Medi New York, Inc. d/b/a Kindred at Home (Westbury)	3.5 out of 5 stars

## Conclusion

There will be no significant changes to services or counties served as a result of this application. 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

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

# Financial Analysis

## Financial Analysis

There are no projected changes in the revenues or expenses of as a direct result of this project. The services, primary service areas and operations of the CHHAs will remain the same.

## Capability and Feasibility

There are no project costs or budgets associated with this application.

BFA Attachment A is the Consolidated Balance Sheet of Kindred Healthcare, Inc. for years ended December 31, 2017, 2016 and Consolidated Statement of Operations of Kindred Healthcare, Inc. for years ended December 31, 2017, 2016 and 2015. As shown, the entity maintained positive working capital and net asset positions in 2017, but experienced a loss from continuing operations of \$404,317,000 due to the following: impairment charges, restructuring charges, insurance restructuring costs, customer contract litigation cost, litigation contingency expense, debt amendment fees, and business interruption settlements totaling \$505,000,000 offset by an \$88,000,000 increase in tax asset valuation allowance.

BFA Attachment B is the Consolidated Financial Statements of Humana Inc. for the years ended December 31, 2017, 2016 and 2015. As shown, the entity experienced positive working capital, a positive total stockholders' equity position and had an operating income of \$4,262,000,000 as of December 31, 2017.

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	Before and After Organizational Charts
Programmatic Attachment B	Humana, Inc. Affiliations
Programmatic Attachment C	Edward P. Sobol Affiliations
BFA Attachment A	Kindred Healthcare, Inc. – December 31, 2017, 2016 and 2015 Consolidated Financial Statements
BFA Attachment B	Humana Inc. – December 31, 2017, 2016 and 2015 Consolidated Financial Statements
BFA Attachment C	Kindred Home Health Agencies – Current and proposed organizational charts



**Project # 181191-E**  
**Always There Family Home Health Services**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Ulster  
**Acknowledged:** March 23, 2018

**Executive Summary**

**Description**

Catholic Health Care System (CHCS) d/b/a ArchCare, a New York not-for-profit corporation located at 205 Lexington Avenue, New York (New York County), requests approval to become the sole corporate member of Ulster Home Health Services Inc. d/b/a Always There Family Home Health Services (Always There), a voluntary not-for-profit, Article 36 Certified Home Health Agency (CHHA) located at 918 Ulster Avenue, Kingston (Ulster County). The sole member of ArchCare Providence Health Services, a New York not-for-profit corporation, will also be established as the ultimate (grandparent) corporate member through this application. UMC, Inc. is the current sole corporate member of the CHHA and an affiliated Licensed Home Care Service Agency (LHCSA), and will be dissolved upon the completion of the project.

There is no acquisition cost or purchase agreement involved in the transition to establish ArchCare as sole corporate member and Providence as the grandparent. Additionally, the proposed change will not result in a change to the CHHA's operating certificate or any of the programs and services offered by the CHHA, or its service area.

The new arrangement is expected to:

- Promote the sharing of clinical best practices and joint training opportunities;
- Integrate and centralize administrative functions;

- Produce cost savings and efficiencies through group purchasing;
- Improve staff recruitment and retention; and
- Enhance the system's marketing presence.

There will be no change in lease arrangements.

OPCHSM Recommendation  
Contingent Approval.

**Need Summary**

Always There Family Home Health Services is certified to provide services in Ulster County. The establishment of ArchCare as the sole corporate member and Providence as the grandparent will not result in any changes to the counties being served or to the CHHA's operating certificate.

**Program Summary**

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Certified Home Health Agency.

**Financial Summary**

There are no project costs associated with this project and there will be no change in the daily operations. The proposed budget is as follows:

	<u>Year One</u>
Revenue	\$4,165,378
Expenses	<u>\$4,321,423</u>
Net Income	\$156,045

## 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 Ulster Home Health Services, 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

**June 7, 2018**

## Need and Program Analysis

### Program Description

Ulster Home Health Services, Inc. d/b/a Always There Family Home Health Services, a New York not-for-profit corporation is an existing CHHA serving Ulster County. UMC, Inc. is the current sole corporate member of the CHHA.

Catholic Health Care System d/b/a ArchCare is a not-for-profit corporation located at 205 Lexington Avenue, 3rd Floor, New York (New York County), New York 10016. The sole member corporation of ArchCare is Providence Health Services, a not-for-profit corporation. ArchCare is seeking approval to become the sole corporate member of the Always There Family Home Health Services CHHA and Providence Health Services is seeking to become the ultimate parent. Upon approval, UMC, Inc. will be dissolved.

The Board of Directors of **Providence Health Services** is as follows:

<p><b>Timothy M. Dolan</b>, PhD Archbishop, Archdiocese of New York</p>	<p><b>William Whiston</b> Chief Financial Officer, Archdiocese of New York</p>
<p><b>Gregory A. Mustaciuolo</b> Vicar General, Archdiocese of New York</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Carmel Richmond Healthcare &amp; Rehabilitation Center (2009-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home &amp; Rehabilitation Center (2009-present) Kateri Residence (2009-8/28/2013) Mary Manning Walsh Home (2009-present) St. Teresa's Nursing Home (2009-8/28/2013) St. Vincent de Paul Residence (2009-present) Terence Cardinal Cooke Health Care Center (2009-present)</p>	<p><b>Gerald T. Walsh</b>, MSW Vicar for Clergy, Archdiocese of New York</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present) Isabella Geriatric Center (7/1/1999-present) Kateri Residence (2013-8/28/2013) Mary Manning Walsh Home (2013-present) St. Teresa's Nursing Home (2013-2/1/2013) St. Vincent de Paul Residence (2013-present) Terence Cardinal Cooke Health Care Center (2013-present)</p>

The Board of Directors of **Catholic Health Care System d/b/a Archcare** is as follows:

<p><b>Francis J. Serbaroli</b>, Esq., Chairman Partner, Greenberg Traurig, LLP</p> <p><u>Affiliations:</u> ArchCare Advantage (1/2008-present) ArchCare at Home (5/2014-present) ArchCare Senior Life (11/2008-present) Carmel Richmond Healthcare &amp; Rehabilitation Center (2008-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home &amp; Rehabilitation Center (2008-present)</p>	<p><b>Karl P. Adler</b>, MD, Vice Chairman Retired - 2015</p> <p><u>Affiliations:</u> ArchCare Advantage (2007-present) ArchCare at Home (2012-2014) ArchCare Senior Life (2007-present) Carmel Richmond Healthcare &amp; Rehabilitation Center (2001-present) Center for Comprehensive Health Practice (1988-2015) Empire State Home Care Services, Inc. (2012-2014)</p>
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<p>Kateri Residence (2008-8/28/2013)  Mary Manning Walsh Home (2008-present)  St. Teresa's Nursing Home (2008-2/1/2013)  St. Vincent de Paul Residence (2008-present)  Terence Cardinal Cooke Health Care Center (2008-present)</p>	<p>Ferncliff Nursing Home &amp; Rehabilitation Center (2001-present)  Kateri Residence (2001-8/28/2013)  Mary Manning Walsh Home (2001-present)  St. Francis Hospital (2001-2013)  St. Teresa's Nursing Home (2001-2/1/2013)  St. Vincent de Paul Residence (2001-present)  St. Vincent's Hospital (1990-1993 &amp; 2010-2012)  Terence Cardinal Cooke Health Care Center (2001-present)</p>
<p><b>Thomas M. O'Brien</b>, Vice Chairman  President &amp; CEO, Sun National Bank</p> <p><u>Affiliations:</u>  ArchCare at Home (2015-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (2005-present)  Empire State Home Care Services, Inc. (2015-10/4/2016)  Ferncliff Nursing Home &amp; Rehabilitation Center (2005-present)  Kateri Residence (2005-8/28/2013)  Mary Manning Walsh Home (2005-present)  St. Teresa's Nursing Home (1/1/2013-2/1/2013)  St. Vincent de Paul Residence (2005-present)  Terence Cardinal Cooke Health Care Center (2005-present)</p>	<p><b>Charles J. Fahey</b>, MSW  Retired - 2001</p> <p><u>Affiliations:</u>  ArchCare Advantage (2014-present)  ArchCare at Home (5/1/2014-present)  ArchCare Senior Life (2014-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (2006-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  Ferncliff Nursing Home &amp; Rehabilitation Center (2006-present)  Kateri Residence (2006-8/28/2013)  Mary Manning Walsh Home (2006-present)  St. Teresa's Nursing Home (2006-2/1/2013)  St. Vincent de Paul Residence (2006-present)  Terence Cardinal Cooke Health Care Center (2006-present)</p>
<p><b>John T. Dunlap</b>, Esq.,  Partner, Dunnington, Bartholow &amp; Miller LLP</p> <p><u>Affiliations:</u>  ArchCare at Home (5/1/2014-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (2006-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  Ferncliff Nursing Home &amp; Rehabilitation Center (2006-present)  Kateri Residence (2006-8/28/2013)  Mary Manning Walsh Home (2006-present)  St. Teresa's Nursing Home (2006-2/1/2013)  St. Vincent de Paul Residence (2006-present)  Terence Cardinal Cooke Health Care Center (2006-present)</p>	<p><b>Eric P. Feldmann</b>  Retired – April 30, 2015</p> <p><u>Affiliations:</u>  Carmel Richmond Healthcare &amp; Rehabilitation Center (2005-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (2009-present)  Kateri Residence (2009-2013)  Mary Manning Walsh Home (2009-present)  St. Teresa's Nursing Home (2009-2/1/2013)  St. Vincent de Paul Residence (2009-present)  Terence Cardinal Cooke Health Care Center (2009-present)</p>
<p><b>Rory Kelleher</b>, JD  Senior Counsel, Sidley Austin LLP</p> <p><u>Affiliations:</u>  ArchCare at Home (5/1/2014-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (1/12008-3/1/2012 &amp; 1/1/2013-present)</p>	<p><b>Jeffrey J. Hodgman</b>  Retired – August 19, 2005</p> <p><u>Affiliations:</u>  ArchCare at Home (11/2014-present)  ArchCare at Home (7/1/2016-present)</p>



<p>Empire State Home Care Services, Inc. (2014-10/4/2016)  Ferncliff Nursing Home &amp; Rehabilitation Center (1/12008-3/1/2012 &amp; 1/1/2013-present)  Kateri Residence (2005-3/1/2012 &amp; 1/1/2013-8/28/2013)  Mary Manning Walsh Home (1/12008-3/1/2012 &amp; 1/1/2013-present)  St. Teresa's Nursing Home (1/12008-3/1/2012 &amp; 1/1/2013-2/1/2013)  St. Vincent de Paul Residence (1/12008-3/1/2012 &amp; 1/1/2013-present)  Terence Cardinal Cooke Health Care Center (1/12008-3/1/2012 &amp; 1/1/2013-present)</p>	<p>Carmel Richmond Healthcare &amp; Rehabilitation Center (7/1/2016-present)  Empire State Home Care Services, Inc. (7/1/2016-10/4/2016)  Ferncliff Nursing Home &amp; Rehabilitation Center (7/1/2016-present)  Mary Manning Walsh Home (7/1/2016-present)  St. Vincent de Paul Residence (7/1/2016-present)  Terence Cardinal Cooke Health Care Center (7/1/2016-present)</p>
<p><b>Gregory A. Mustaciuolo</b>  Disclosed above</p>	<p><b>Gerald T. Walsh, MSW</b>  Disclosed above</p>
<p><b>Kathryn K. Rooney, Esq.</b>  Attorney, Law Offices of Kathryn K. Rooney</p> <p><u>Affiliations:</u>  ArchCare at Home (5/1/2014-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (1/2001-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  Safe Harbor Healthcare Services (1988-present)  Kateri Residence (2005-8/28/2013)  Mary Manning Walsh Home (2005-present)  Richmond University Medical Center (1/2007-present)  St. Vincent de Paul Residence (2005-present)  Terence Cardinal Cooke Health Care Center (2005-present)</p>	<p><b>Thomas E. Alberto</b>  Retired – October 31, 2013</p> <p><u>Affiliations:</u>  ArchCare at Home (1990-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present)  Empire State Home Care Services, Inc. (1990-10/4/2016)  Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present)  Kateri Residence (2013-8/28/2013)  Mary Manning Walsh Home (2013-present)  St. Teresa's Nursing Home (2008-2/1/2013)  St. Vincent de Paul Residence (2008-present)  Terence Cardinal Cooke Health Care Center (2008-present)  Vising Nurse Association of Brooklyn (1990-5/1/2014)</p>
<p><b>Gerald T. Sweeney</b>  Chief Information Officer, Healthfirst</p> <p><u>Affiliations:</u>  ArchCare Advantage (2012-present)  ArchCare at Home (5/1/2014-present)  ArchCare Senior Life (2012-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (2012-present)  Empire State Home Care Services, Inc. (2014-10/4/2016)  Ferncliff Nursing Home &amp; Rehabilitation Center (2012-present)  Kateri Residence (2012-8/28/2013)  Mary Manning Walsh Home (2012-present)  St. Teresa's Nursing Home (2012-2/1/2013)  St. Vincent de Paul Residence (2012-present)</p>	<p><b>Gennaro J. Vasile, PhD</b>  Retired – December 24, 2015</p> <p><u>Affiliations:</u>  ArchCare Advantage (2014-present)  ArchCare Senior Life (2014-present)  Carmel Richmond Healthcare &amp; Rehabilitation Center (1/1/2013-present)  Ferncliff Nursing Home &amp; Rehabilitation Center (1/1/2013-present)  Kateri Residence (1/1/2013-8/28/2013)  Mary Manning Walsh Home (1/1/2013-present)  St. Teresa's Nursing Home (1/1/2013-2/1/2013)  St. Vincent de Paul Residence (1/1/2013-present)  Terence Cardinal Cooke Health Care Center (1/1/2013-present)</p>

<p>Terence Cardinal Cooke Health Care Center (2012-present)</p>	
<p><b>Thomas J. Fahey, Jr., MD</b> Retired</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Calvary Hospital (2000-present) Carmel Richmond Healthcare &amp; Rehabilitation Center (2009-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home &amp; Rehabilitation Center (2009-present) Kateri Residence (2009-8/28/2013) Mary Manning Walsh Home (2009-present) St. Teresa's Nursing Home (2009-2/1/2013) St. Vincent de Paul Residence (2009-present) Terence Cardinal Cooke Health Care Center (2009-present)</p>	<p><b>Tara Cortes, PhD, RN</b> Executive Director/Professor, The Hartford Institute for Geriatric Nursing at NYU College of Nursing</p> <p><u>Affiliations:</u> ArchCare at Home (2013-present) Carmel Richmond Healthcare &amp; Rehabilitation Center (2013-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home &amp; Rehabilitation Center (2013-present) Kateri Residence (2013-8/28/2013) Mary Manning Walsh Home (2013-present) St. Teresa's Nursing Home (2013-2/1/2013) St. Vincent de Paul Residence (2013-present) Terence Cardinal Cooke Health Care Center (2013-present) Vising Nurse Association of Brooklyn (9/2009-5/1/2014)</p>
<p><b>Clarion E. Johnson, MD (Maryland)</b> Retired - March 31, 2013</p> <p><u>Affiliations:</u> ArchCare at Home (7/1/2016-present) Carmel Richmond Healthcare &amp; Rehabilitation Center (7/1/2016-present) Empire State Home Care Services, Inc. (7/1/2016-10/4/2016) Ferncliff Nursing Home &amp; Rehabilitation Center (7/1/2016-present) Mary Manning Walsh Home (7/1/2016-present) St. Vincent de Paul Residence (7/1/2016-present) Terence Cardinal Cooke Health Care Center (7/1/2016-present)</p>	<p><b>George B. Irish</b> Eastern Director, Hearst Foundations</p> <p><u>Affiliations:</u> ArchCare at Home (3/8/2017-present) Carmel Richmond Healthcare &amp; Rehabilitation Center (3/8/2017-present) Ferncliff Nursing Home &amp; Rehabilitation Center (3/8/2017-present) Mary Manning Walsh Home (3/8/2017-present) St. Vincent de Paul Residence (3/8/2017-present) Terence Cardinal Cooke Health Care Center (3/8/2017-present)</p>

The Board members of **Catholic Health Care System d/b/a Archcare** have attested to being the subject of an investigation by either federal or state law enforcement agencies on issues related to Medicare or Medicaid fraud. In 2013, the U.S. Attorney's Office, District of Massachusetts, undertook an investigation of therapy provided in three of the nursing homes sponsored by Catholic Health Care System (CHCS) by a subcontractor, an affiliate of Kindred Healthcare, Inc. CHCS and its nursing homes were not the target of the investigation. The investigation focused on allegations that the three facilities submitted claims to Medicare that sought inflated amounts of reimbursement based on either the provision of unreasonable or unnecessary rehabilitation therapy. On February 24, 2014, CHCS entered into a settlement agreement regarding this investigation. On March 12, 2014, CHCS made a \$3.5 million payment to the U.S. Department of Justice in connection with this matter. There were no findings of False Claims Act violations, the Department of Justice noted CHCS's cooperation and the changes it made in reaching the resolution.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application. A search of the individuals and entities

named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

The applicant proposes to continue to serve the residents of Ulster County from an office located at 918 Ulster Avenue, Kingston.

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	Medical Social Services
Nutrition	Medical Equipment and Supplies	

A seven year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

**Hospital**

Calvary Hospital	
Richmond University Medical Center	
St. Francis Hospital	(2011-2013)
St. Vincent's Hospital	(2011-2012)

**Certified Home Health Agencies (CHHAs)**

Always There Family Home Health Services	
ArchCare at Home	(5/1/2014-present)
Empire State Home Care Services, Inc.	(2012-10/4/2016)
Visiting Nurse Association of Brooklyn	(2011-5/1/2014)

**Diagnostic & Treatment Center (D&TC)**

Center for Comprehensive Health Practice	(2011-2015)
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**Nursing Homes**

Carmel Richmond Healthcare & Rehabilitation Center	
Ferncliff Nursing Home & Rehabilitation Center	
Isabella Geriatric Center	
Kateri Residence	(2010-2013)
Mary Manning Walsh Home	
St. Teresa Nursing Home	(2010-2013)
St. Vincent de Paul Residence	
Terence Cardinal Cooke Health Care Center	

**PACE**

Archcare Senior Life

**Managed Long Term Care (MLTC)**

Archcare Advantage

**Licensed Home Care Services Agency (LHCSA)**

Safe Harbor Healthcare Services

The information provided by the Division of Home and Community Based Services has indicated that **ArchCare at Home, Safe Harbor Healthcare Services and Visiting Nurse Association of Brooklyn** have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Division of Home and Community Based Services has indicated that **Empire State Home Care Services, Inc.** was fined one thousand dollars (\$1,000) pursuant to a stipulation and order in 2014 for failure to submit information and materials relating to the 2014 Home Care Emergency Response Survey Drill. Deficiencies were found under 10 NYCRR 763.14(a)(3)(vi).

The Division of Home and Community Based Services has indicated that **Safe Harbor Healthcare Services** was fined one thousand dollars (\$1,000) pursuant to a stipulation and order in 2014 for failure to submit information and materials relating to the 2014 Home Care Emergency Response Survey Drill. Deficiencies were found under 10 NYCRR 763.14(a)(3)(vi).

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Bureau of Quality and Surveillance has indicated that **Ferncliff Nursing Home Company, Inc.** was fined thirty-seven thousand seven hundred dollars (\$37,700) pursuant to a stipulation and order dated February 27, 2013 for complaint surveillance findings of April 27, 2011. Deficiencies were found under 10 NYCRR 415.11(c)(3)(i) Service Meets Professional Standards, 415.12 Quality of Care Highest Practicable Potential, 415.15(b)(2)(ii) Physician Visits Review Notes/Care/Orders, 415.18(c)(2) Drug Regimen Review, Report Irregular, Act On, 415.15(a) Medical Director and 415.26 Administration.

The Bureau of Quality and Surveillance has indicated that **Terrence Cardinal Cooke Health Care Center** was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated September 22, 2015 for complaint surveillance findings of September 9, 2013. Deficiencies were found under 10 NYCRR 415.29(b) Physical Environment Emergency Power.

The Bureau of Quality and Surveillance has indicated that **Terrence Cardinal Cooke Health Care Center** was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated September 26, 2011 for recertification surveillance findings of April 9, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

The Bureau of Quality and Surveillance has indicated that **Mary Manning Walsh Home** was fined six thousand five hundred dollars (\$6,500) pursuant to a stipulation and order dated June 24, 2015 for recertification surveillance findings of January 25, 2013. Deficiencies were found under 10 NYCRR 415.

The Bureau of Quality and Surveillance has indicated that **Carmel Richmond Healthcare & Rehabilitation Center, Isabella Geriatric Center, Kateri Residence, St. Vincent de Paul Residence and St. Teresa Nursing Home** have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Managed Care Certification and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

<b>CHHA Quality of Patient Care Star Ratings as of April 27, 2018</b>	
<b>New York Average:</b> 3 out of 5 stars <b>National Average:</b> 3.5 out of 5 stars	
<b>CHHA Name</b>	<b>Quality of Care Rating</b>
ArchCare at Home	2.5 out of 5 stars
Always There Family Home Health Services	2.5 out of 5 stars

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a Certified Home Health Agency.

Recommendation

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

## Financial Analysis

### Financial Analysis

There are no projected changes in the utilization, revenues or expenses of Always There as a result of this project, although the CHHA anticipates cost benefits in the future from the establishment of ArchCare as its sole corporate member.

### Capability and Feasibility

There are no issues of capability or feasibility associated with this application. There will be no change in the daily operations of the CHHA. The agency is expected to experience cost benefits and group purchasing efficiencies from the sole corporate member designation.

BFA Attachment B is the pro-forma balance sheet of Ulster Home Health Services Inc. post closing of CHCS becoming its sole member, which shows positive net assets of \$3,685,062. BFA Attachment C is the financial summary of Ulster Home Health Services, Inc., which indicates the CHHA has maintained both average positive net asset and working capital positions and generated an average net income of \$116,095 from 2015-2016. In 2017, the agency achieved both positive net asset and working capital positions and generated a net income of \$97,200. The loss in 2016 was attributed to high personnel expenses, particularly those allocated to management. In 2017, the agency reduced expenses through attrition and select position eliminations, which reduced salary and benefit expenses as well as management fees.

BFA Attachment D is the financial summary of Catholic Health Care System, Inc., which indicated the entity has maintained both average negative working capital and net asset positions, and experienced an average net income from operations of \$1,330,890 for the years 2015-2017. The loss in 2016 was due to the acquisition of multiple financially struggling home care agencies whose services needed to be maintained in the communities. Expenses attributed to implement all the Medicaid Redesign Team directives, and loans and transfers to other CHCS-sponsored programs also contributed to the loss. Planned program improvements and the consolidation of home care services are expected to result in cost efficiencies that will lead to positive working capital and net asset positions. In the interim, operating deficits will be covered by grants from the Catholic Health Care Foundation of the Archdiocese of New York, Inc.

The submitted budget indicates a net gain of \$156,046 during the first and third years, respectively. Revenues are reflective of current reimbursement rates for CHHAs.

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

### Recommendation

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

## Attachments

BFA Attachment A	Organizational Chart before and after change in ownership of Always There
BFA Attachment B	Pro Forma Balance Sheet of Ulster Home Health Services Inc. d/b/a Always There Family Home Health Services
BFA Attachment C	2015-2017 Financial Summaries of Ulster Home Health Services, Inc. d/b/a Always There Family Home Health Services
BFA Attachment D	2015-2017 Financial Summaries of Catholic Health Care System, Inc.

Name of Agency: 2600 Niagara Falls Boulevard AL Operating Company, LLC d/b/a Elderwood Home Care at Wheatfield  
Town/City: 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 (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 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 will be restricted to serving the residents of the associated Assisted Living Program in 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]

Conditions

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

Name of Agency: 5271 Main Street Operating Company, LLC d/b/a Elderwood Home Care at Williamsville  
Town/City: 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 will be restricted to serving the residents of the associated Assisted Living Program in 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 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)
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]

Condition

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

Name of Agency: Western NY Care Services, LLC d/b/a Western NY Care Services  
Town/City: 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 are:

**Israel Sherman**, LNHA (NY & NJ), Member – 45%  
Owner/Operator, Absolut Care Homes

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)

**Samuel Sherman**, Member – 1%  
Owner/CFO, Sunharbor Manor Nursing Home

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 (100%)

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 will be restricted to serving the residents of the associated Assisted Living Program in Erie County from an office located at 660 Armor Road, Orchard Park, New York 14127:

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 with Condition**

Condition

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

Name of Agency: Home Care for Generations, LLC d/b/a Generations Home Care  
Town/City: 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:  
**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 will be restricted to serving residents of the associated Assisted Living Program in Rockland County from an office located at 156 West Clarkstown Road, New City, New York 10956.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
---------	------------------	---------------

A seven (7) year review the operations of L'Dor - Adult Home was performed as part of this review. 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 with Condition**

Condition

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

Name of Agency: Magnolia Home Care Services, LLC d/b/a Magnolia Home Care Services  
Town/City: 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 – 50% Member  
Owner/Operator, Green Hills Estate HFA

**Manuel Sanchez**, Esq. – 50% 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 will be restricted to serving the residents of the associated Assisted Living Program in Rockland County from an office located at 1 South Route 9W, Haverstraw, New York 10927.

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 Green Hills Estate HFA (Adult Home) operations was performed as part of this review (unless otherwise noted). 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 with Condition**


Condition

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** April 27, 2018

**Subject:** Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc. Relative to Applications 162049 and 162334

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Century Medical and Dental Center, Inc. ("CMDC") submitted applications 162049 and 162334 pursuant to NY Pub Health § 2802 and 10 NYCRR Part 710 in order to certify two new extension clinics to be located at 770 Flatbush Avenue, Brooklyn, New York 11226 and 200 Livingston Street, Brooklyn, New York 11201 in accordance with the Department's administrative, limited review process.

Those applications were approved through the Architectural and Engineering Self Certification process; see the attached "all contingencies satisfied" letters, dated December 6, 2016 and October 24, 2016, that the Department issued to CMDC.

CMDC now wishes to file an amended certificate of incorporation, modifying its purposes to reflect the operation of these new extension sites. PHHPC approval of such, and for the filing of the Certificate, is requested. PHHPC approval to file the amendment is required by New York State Public Health Law § 2801-a.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the proposed Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc. and it is in legally acceptable form.

Attachments

**HINMAN  
STRAUB**  
ATTORNEYS AT LAW

121 STATE STREET  
ALBANY, NEW YORK 12207-1693  
TEL: 518-436-0751  
FAX: 518-436-4751

PHILIP J. MURPHY  
DIRECT PHONE: 518-689-7218  
E-MAIL: PMURPHY@HINMANSTRAUB.COM

April 23, 2018

Colleen Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

Re: Century Medical and Dental Center, Inc.

Dear Ms. Leonard:

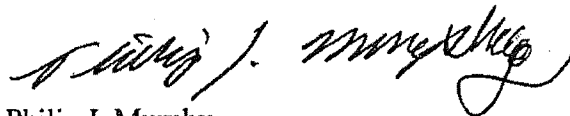
Century Medical and Dental Center, Inc. ("Century Medical") is hereby requesting approval to amend its Certificate of Incorporation to reflect in its purposes the ownership and operation of the following extension clinics in addition to its main site at 260 Avenue X, Brooklyn, New York:

<u>Approved Project #</u>	<u>Name of Facility</u>	<u>Address</u>
162049	Century Medical and Dental Center, Inc.	770 Flatbush Avenue Brooklyn, NY 11226
162334	Century Medical and Dental Center, Inc.	200 Livingston Street Brooklyn, NY 11201

Enclosed for your review are copies of the existing Certificate of Incorporation and all Amendments. I have also enclosed a copy of the executed proposed Certificate of Amendment reflecting the addition of the above two approved extension clinics for your review.

Please contact me if you require any additional information with regard to this request.

Very truly yours,



Philip J. Murphy

PJM:sd  
Enclosures

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

Century Medical and Dental Center, Inc.

*(Insert Name of Domestic Corporation)*

Under Section 805 of the Business Corporation Law

FIRST: The name of the corporation is:

Century Medical and Dental Center, Inc.

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The date of filing of the certificate of incorporation with the Department of State is:

January 7, 2003

THIRD: The amendment effected by this certificate of amendment is as follows:

*(Set forth each amendment in a separate paragraph providing the subject matter and full text of each amended paragraph. For example, an amendment changing the name of the corporation would read as follows: Paragraph First of the Certificate of Incorporation relating to the corporation name is hereby amended to read as follows: First: The name of the corporation is... (new name) ...)*

Paragraph SECOND of the certificate of incorporation relating to  
the purposes for which the corporation was formed

is hereby amended to read in its entirety as follows:

"SECOND: The purposes for which the corporation is formed are to own and operate one or more diagnostic and treatment centers licensed pursuant to Article 28 of the Public Health Law at the following locations: Century Medical and Dental Center, Inc., 260 Avenue X, Brooklyn, New York 11223, Century Medical and Dental Center, Inc., 770 Flatbush Avenue, Brooklyn, New York 11226, and Century Medical and Dental Center, Inc., 200 Livingston Street, Brooklyn, New York 11201.



**FOURTH:** The certificate of amendment was authorized by: *(Check the appropriate box)*

- The vote of the board of directors followed by a vote of a majority of all outstanding shares entitled to vote thereon at a meeting of shareholders.
- The unanimous written consent of the board of directors and holders of all outstanding shares.

  
\_\_\_\_\_  
*(Signature)*

Valentin Zusman  
\_\_\_\_\_  
*(Name of Signer)*

Secretary  
\_\_\_\_\_  
*(Title of Signer)*

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
Century Medical and Dental Center, Inc.

*(Insert Name of Domestic Corporation)*

Under Section 805 of the Business Corporation Law

Filer's Name Philip J. Murphy, Esq.

Address Human Straub P.C.

City, State and Zip Code Albany, New York 12207

NOTE: This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$60 filing fee.

*For Office Use Only*

F030107000986

**CERTIFICATE INCORPORATION**

**OF**

**CENTURY MEDICAL AND DENTAL CENTER, INC.**

(Under Section 402 of the Business Corporation Law)

The undersigned, being over the age of eighteen years, under Section 402 of the New York Business Corporation Law ("BCL"), does hereby set forth:

- FIRST:** The name of the corporation (the "Corporation") is Century Medical and Dental Center, Inc.
- SECOND:** The purposes for which the Corporation is formed are:
- A. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and
  - B. To own and/or operate the facility named in Article THIRD hereof at the location set forth in Article THIRD hereof; and
  - C. To take any actions or engage in any activities incidental to, connected with, in furtherance of, or necessary and convenient for the purposes enumerated herein.
- THIRD:** The principal office of the Corporation is to be located at 260-270 Avenue X, Brooklyn, New York 11223, in the County of Kings, State of New York.
- FOURTH:** The aggregate number Shares of stock that the Corporation shall have the authority to issue is ten thousand (10,000) shares, which shall consist of a single class of common stock of the par value of \$60 per share. No person may own ten percent (10 %) or more of the stock of the Corporation who has not been approved for the ownership of such stock by the Public Health Council. No stock or voting rights of the Corporation may be owned or controlled by another corporation.
- FIFTH:** The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

260-270 Avenue X, Brooklyn, New York 11223

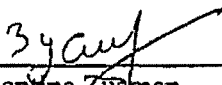
SIXTH:

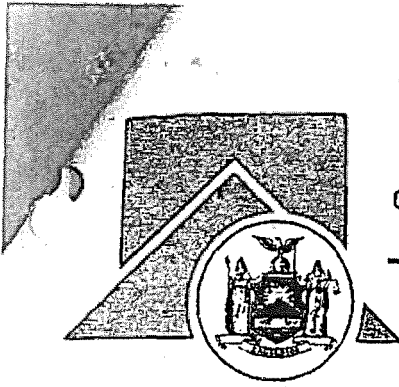
The Corporation may, to the fullest extent permitted by the BCL, indemnify any and all directors and officers whom it shall have power to indemnify under the BCL from and against any and all of the expenses, liabilities, or other matters referred to in or covered by the BCL, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which the persons so indemnified may be entitled under any By-Law, agreement, vote of shareholders, or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity by holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

SEVENTH:

Except as may otherwise be specifically provided in this Certificate of Incorporation, no provision of this Certificate of Incorporation is intended by the Corporation to be construed as limiting, prohibiting, denying, or abrogating any of the general or specific powers or rights conferred under the Business Corporation Law upon the Corporation, upon its shareholders, bondholders, and security holders, and upon its directors, officers and other corporate personnel.

IN WITNESS WHEREOF, this Certificate has been subscribed this 6<sup>th</sup> day of May, 2002 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

  
\_\_\_\_\_  
Valentine Zusman  
Incorporator  
260-270 Avenue X  
Brooklyn, NY 11223



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

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January 7, 2003


Mr. David N. Tannenholz  
Project Consultant  
UGMA  
2601 Ocean Parkway  
Brooklyn, New York 11235

Re: Certificate of Incorporation of Century Medical and Dental Center, Inc.

Dear Mr. Tannenholz:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 15<sup>th</sup> day of March, 2002, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Century Medical and Dental Center, Inc., dated May 2002, copy attached.

Sincerely,

  
Karen S. Westervelt  
Executive Secretary *for*

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2ccs  
STATE OF NEW YORK  
DEPARTMENT OF STATE

JAN 07 2003

FILED  
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BY:

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CERTIFICATE OF INCORPORATION  
OF

CENTURY MEDICAL AND DENTAL CENTER, INC.

Under Section 402 of the Business Corporation Law

Philip J. Murphy, Esq.

HINMAN  
STRAUB  
ATTORNEYS AT LAW

121 STATE STREET  
ALBANY, NEW YORK 12207-1693

2003 JAN -7 PM 3:41

FILED

2003 JAN -7 PM 2:03

RECEIVED

*Handwritten signature/initials*

*State of New York }  
Department of State } ss:*

*I hereby certify that the annexed copy has been compared with the original document filed by the Department of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on April 2, 2004*



A handwritten signature in black ink, appearing to read "R. A. S.", is written over the printed name of the Secretary of State.

*Secretary of State*

(03110600028)

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION OF  
CENTURY MEDICAL AND DENTAL CENTER, INC.

Under Section 805 of the Business Corporation Law

The undersigned, being the President of Century Medical and Dental Center, Inc.,  
does hereby certify and set forth:

1. The name of the corporation is Century Medical and Dental Center, Inc.  
2. The certificate of incorporation of Century Medical and Dental Center,  
Inc. was filed by the Department of State on the 7th day of January, 2003.

3. The certificate of incorporation is hereby amended to add a new paragraph  
"Eighth" which shall read as follows:

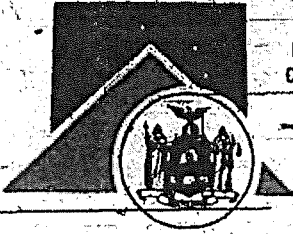
"EIGHTH: The corporation shall continue in existence until  
September 19, 2006, unless an amendment is filed on or before  
such date extending the existence of the corporation, and the  
approval of the Public Health Council is annexed to such  
certificate."

4. This amendment to the certificate of incorporation was authorized by the  
unanimous written consent of the board of directors and the unanimous written consent, setting  
forth the actions so taken, signed by the holders of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned has executed and signed this  
certificate on this 16<sup>th</sup> day of October, 2003.

  
Fred Weingarten, President





STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

October 29, 2003

Mr. Valentin Zusman  
Administrator  
Century Medical and Dental Center  
260 Avenue X  
Brooklyn, New York 11223

Re: Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc.

Dear Mr. Zusman:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 19<sup>th</sup> day of September, 2003, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc., dated October 16, 2003, for a limited life duration of three years expiring on September 19, 2006.

Sincerely,

Karen S. Westervelt  
Executive Secretary

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION OF  
CENTURY MEDICAL AND DENTAL CENTER, INC.

Under Section 805 of the Business Corporation Law

STATE OF NEW YORK  
DEPARTMENT OF STATE

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Philip J. Murphy, Esq.  
**HINMAN  
STRAUB**  
ATTORNEYS AT LAW  
121 STATE STREET  
ALBANY NEW YORK 12207 1693

State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on* **September 19, 2006**



A handwritten signature in black ink, appearing to read "D. J. ...", is written over the seal area.

*Special Deputy Secretary of State*

F060919000709

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION OF  
CENTURY MEDICAL AND DENTAL CENTER, INC.

Under Section 805 of the Business Corporation Law

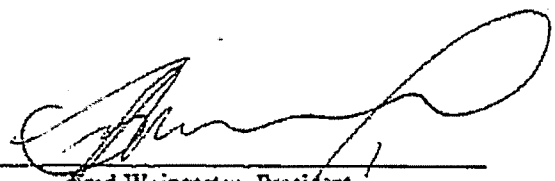
The undersigned, being the President of Century Medical and Dental Center, Inc.,  
do hereby certify and set forth:

1. The name of the corporation is Century Medical and Dental Center, Inc.
2. The certificate of incorporation of Century Medical and Dental Center, Inc. was filed by the Department of State on the 7th day of January, 2003.
3. Paragraph "Eighth" which provides for the duration of the corporate existence of the corporation is hereby amended to read as follows:

"EIGHTH: The corporation shall continue in existence until March 19, 2007, unless an amendment is filed on or before such date extending the existence of the corporation, and the approval of the Public Health Council is annexed to such certificate."

4. This amendment to the certificate of incorporation was authorized by the unanimous written consent of the board of directors and the unanimous written consent, setting forth the actions so taken, signed by the holders of all outstanding shares entitled to vote thereon.

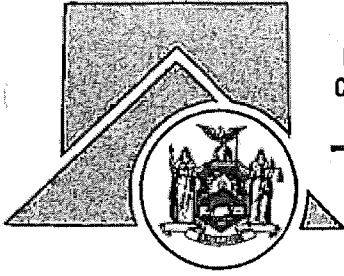
IN WITNESS WHEREOF, the undersigned has executed and signed this certificate on this 11<sup>th</sup> day of August, 2006.



---

Fred Weingarten, President

1



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

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September 19, 2006

Mr. Philip J. Murphy  
Hinman Straub P.C.  
121 State Street  
Albany, New York 12207

Re: Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc.

Dear Mr. Murphy:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 15<sup>th</sup> day of September, 2006, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc., dated August 11, 2006, for an additional six month period to expire on March 19, 2007.

Sincerely,

Donna W. Peterson  
Executive Secretary

/md

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION OF  
CENTURY MEDICAL AND DENTAL CENTER, INC.

Under Section 805 of the Business Corporation Law

Philip J. Murphy, Esq.  
**HINMAN  
STRAUB**  
ATTORNEYS AT LAW

121 STATE STREET  
ALBANY, NEW YORK 12207-1693

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP 19 2006

TAX \$

BY:

*King*

*3*

*173*

*060919000709*

*K*

State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

*Witness my hand and seal of the Department of State on*

**March 15, 2007**



A handwritten signature in black ink, appearing to read "D. J. ...", is written over the seal area.

*Special Deputy Secretary of State*

070315000 ;

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**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION OF  
CENTURY MEDICAL AND DENTAL CENTER, INC.**

**Under Section 805 of the Business Corporation Law**

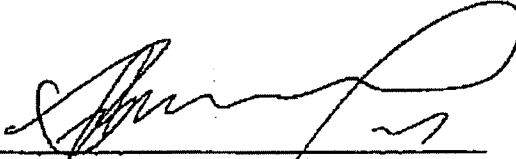
The undersigned, being the President of Century Medical and Dental Center, Inc.,  
does hereby certify and set forth:

1. The name of the corporation is Century Medical and Dental Center, Inc.
2. The certificate of incorporation of Century Medical and Dental Center, Inc. was filed by the Department of State on the 7th day of January, 2003.
3. Paragraph "Eighth" which provides for the duration of the corporate existence of the corporation is hereby amended to read as follows:

"EIGHTH: The duration of the corporate existence of this corporation shall be perpetual."

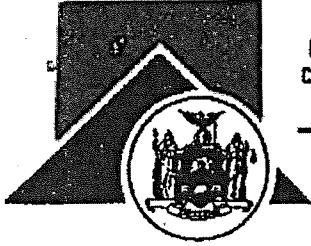
4. This amendment to the certificate of incorporation was authorized by the unanimous written consent of the board of directors and the unanimous written consent, setting forth the actions so taken, signed by the holders of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned has executed and signed this certificate on this 23rd day of January, 2007.



\_\_\_\_\_  
Fred Weingarten, President





STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

March 12, 2007

Valentin Zusman  
Administrator  
Century Medical and Dental Center  
260 Avenue X  
Brooklyn, New York 11223

Re: Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc.

Dear Mr. Zusman:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 10th day of November, 2006, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc., dated January 23, 2007.

Sincerely,

Donna W. Peterson  
Executive Secretary

/cf

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION OF  
CENTURY MEDICAL AND DENTAL CENTER, INC.

Under Section 805 of the Business Corporation Law

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAR 15 2007

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RECEIVED

Philip J. Murphy, Esq.

**HINMAN  
STRAUB**  
ATTORNEYS AT LAW

121 STATE STREET

ALBANY, NEW YORK 12207-1693

2007 MAR 15 AM 10:05

FILED



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

October 24, 2016

Mr. Philip Murphy  
Legal Counsel  
Hinman Straub  
121 State Street  
Albany, New York 12207

Re: 162049-C  
Century Medical & Dental Center, Inc.  
(Kings County)  
Certify a new extension clinic to be located at  
770 Flatbush Avenue, Brooklyn  
**Total Project Cost: \$393,932**

Dear Mr. Murphy:

The Department of Health has reviewed the documentation addressing the contingencies that were related to the proposed approval of the above project. As of this date, all contingencies on this project have been satisfied.

At the time that construction begins, please complete the enclosed form and return it to the Bureau of Project Management.


The Department considers the commencement of construction your acknowledgment that project costs will not exceed the total project costs indicated above. Additional costs will not be eligible for reimbursement without the prior approval of the Department.

Per 710.9 you must notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date, so that the pre-opening survey can be scheduled. You must contact the Regional Office using the "Regional Office" tab in NYSE-CON. The "Regional Office" tab enables applicants to propose pre-opening survey dates and request Department staff to schedule surveys. Additionally, the tab enables entry of applicant contact information and electronic communications during the pre-opening process. If you have questions, please contact your Regional Office.

Certificate of Need staff are interested in your experience with the CON process for this project. Please take a short survey to let us know how we are doing. The web address to the survey is <https://www.surveymonkey.com/s/9Y6258P>

If you have any questions regarding this letter, please contact the Bureau of Project Management at 518-402-0911, New York State Department of Health, Center for Health Care Facility Planning, Licensure and Finance, Room 1842, Corning Tower, Empire State Plaza, Albany, New York 12237.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles P. Abel". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Charles P. Abel  
Deputy Director  
Center for Health Care Facility  
Planning, Licensure and Finance

Enclosure



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

December 6, 2016

Mr. Philip Murphy  
Legal Counsel  
Hinman Straub  
121 State Street  
Albany, New York 12207

Re: 162334-C  
Century Medical & Dental Center, Inc.  
(Kings County)  
Certify a new extension clinic to be located at  
200 Livingston Street, Brooklyn  
**Total Project Cost: \$701,019**

Dear Mr. Murphy:

The Department of Health has reviewed the documentation addressing the contingencies that were related to the proposed approval of the above project. As of this date, all contingencies on this project have been satisfied.

At the time that construction begins, please complete the enclosed form and return it to the Bureau of Project Management.

The Department considers the commencement of construction your acknowledgment that project costs will not exceed the total project costs indicated above. Additional costs will not be eligible for reimbursement without the prior approval of the Department.

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Sincerely,

A handwritten signature in black ink, appearing to read "Charles P. Abel". The signature is fluid and cursive, with a long horizontal stroke at the end.


Charles P. Abel  
Deputy Director  
Center for Health Care Facility  
Planning, Licensure and Finance

Enclosure



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** March 26, 2018

**Subject:** St. James Mercy Foundation, Inc.: Name Change Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(2).

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St. James Mercy Hospital (the Hospital) has asked PHHPC to approve a change to its corporate name; likewise, St. James Mercy Foundation, Inc. concurrently wishes to change its corporate name to St. James Hospital Foundation, Inc. (the Foundation) in order to align the corporation's name to the newly proposed name of the Hospital, the facility that the Foundation sponsors.

Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(2), PHHPC must consent to these changes prior to the filing of any amended certificate.

There is no legal objection to the name change and the Certificate of Amendment of the Certificate of Incorporation of St. James Mercy Foundation, Inc. is in legally acceptable form.

Attachments.

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

March 15, 2018

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

**JUSTIN P. RUNKE**  
MEMBER  
DIRECT: (585) 419-8734  
FAX: (585) 419-8818  
JRUNKE@HARRISBEACH.COM

**VIA FEDERAL EXPRESS**

Ms. Colleen Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza  
Corning Tower  
Room 1805  
Albany, New York 12237

Re: Certificate of Amendment to the Certificate of Incorporation  
of St. James Mercy Foundation, Inc.

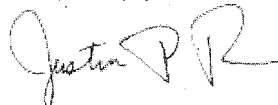
Dear Ms. Leonard:

I have enclosed a photocopy of the proposed Certificate of Amendment of the Certificate of Incorporation of St. James Mercy Foundation, Inc. (the "Corporation") which changes the name of the Corporation from "St. James Mercy Foundation, Inc." to "St. James Hospital Foundation, Inc." For your reference, I have also enclosed a copy of the current Restated Certificate of Incorporation of the Corporation together with a filed Certificate of Amendment thereof.

The Corporation was organized and operates exclusively to provide funds to or for the benefit of St. James Mercy Hospital and its not-for-profit, tax-exempt affiliates, if any. The Board of Directors of St. James Mercy Hospital has approved changing the name of St. James Mercy Hospital to "St. James Hospital", and has requested the approval of the Public Health and Health Planning Council for such name change. To align the name of the Corporation with the name of St. James Mercy Hospital, St. James Mercy Hospital, as the sole member of the Corporation, believes it is in the best interests of the corporation to change the name of the Corporation to "St. James Hospital Foundation."

If the Public Health and Health Planning Council needs any further information relating to this application, please do not hesitate to contact me with your request.

Very truly yours,



Justin P. Runke



**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ST. JAMES MERCY FOUNDATION, INC.**

**Under Section 803 of the Not-For-Profit Corporation Law**

The undersigned, being the Executive Director of St. James Mercy Foundation, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is St. James Mercy Foundation, Inc.
2. The Certificate of Incorporation was filed by the Department of State on November 29, 1994 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, as now in full force and effect, is hereby amended to effect the following change as authorized by Section 801 of the Not-For-Profit Corporation Law:

(a) Paragraph FIRST of the Certificate of Incorporation regarding the name of the corporation is hereby amended to read in its entirety as follows:

FIRST: The name of the corporation is St. James Hospital Foundation, Inc.

(b) To change the name of the entity which the Corporation supports, Subparagraph (a) of Paragraph THIRD of the Certificate of Incorporation is hereby amended to read as follows:

(a) The Corporation shall be organized and operated exclusively to provide funds to or for the benefit of St. James Hospital, a New York not-for-profit corporation, and its not-for-profit tax-exempt affiliates, if any, by:

(c) To change the name of the sole member of the Corporation, Subparagraph (a) of Paragraph EIGHTH of the Certificate of Incorporation is amended to read as follows:

(a) St. James Hospital is the sole member of the Corporation.

(d) To modify the name of the entity to which the disposition of assets of the Corporation shall be made upon dissolution, Article TENTH of the Certificate of Incorporation is amended to read in full as follows:

TENTH: In the event of dissolution, all of the remaining assets and properties of the Corporation shall, after necessary expenses thereof, be distributed to St. James Hospital, provided that if St. James Hospital does not then exist or fails to qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), distribution shall occur to one or more organizations that shall then qualify under Section 501(c)(3) of the Code, subject to the approval of the Attorney General of the State of New York or a Justice of the Supreme Court of the State of New York.

5. This Amendment to the Certificate of Incorporation was authorized by affirmative vote of the Corporation's sole member.

6. The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the corporation may be served and the post office address to which the Secretary of State shall mail a copy of any process served upon him/her is St. James Hospital Foundation, Inc., 411 Canisteo Street, Hornell, New York 14843, Attn.: Executive Director.

IN WITNESS WHEREOF, I have signed this Certificate of Amendment this 12 day of March, 2018.



\_\_\_\_\_  
Dustin Hewit, Executive Director

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ST. JAMES MERCY FOUNDATION, INC.**

**Under Section 803 of the Not-For-Profit Corporation Law**

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**Restated Certificate of Incorporation of  
ST. JAMES MERCY FOUNDATION, INC.**

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the Secretary of St. James Mercy Foundation, Inc. (the "Corporation"), does hereby certify that:

1. The name of the Corporation is ST. JAMES MERCY FOUNDATION, INC.
2. The Corporation's original Certificate of Incorporation was filed in the office of the Secretary of State on November 29, 1994.
3. The text of the Certificate of Incorporation is restated to effect the following changes:
  - a. REPLACE in its entirety Article Second with the following new paragraph, both of which address the definition of the Corporation:

"SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPC-L") and is a charitable corporation under Section 201 of the NPC-L."
  - b. INSERT the following as the first paragraph of Article Third, which addresses the Corporation's charitable, tax-exempt purposes:

"THIRD: The Corporation is organized and shall be operated exclusively for religious, charitable, scientific and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the Corporation shall carry out its purposes in a manner that advances, promotes, and supports the purposes of CHE Trinity, Inc., an Indiana nonprofit corporation, or its successor, and to further the apostolate and charitable works of Catholic Health Ministries on behalf of and as an integral part of the Roman Catholic Church in the United States. Without limiting the generality of the foregoing, the specific purposes of the Corporation shall include the following:"
  - c. INSERT (a) for the first paragraph in Article Third and RENUMBER paragraphs a., b., and c. of Article Third as (i), (ii) and (iii), respectively.

ST. JAMES MERCY FOUNDATION, INC.

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- d. ADD the following additional purposes after renumbered paragraph (a)(iii) of Article Third, which are standard provisions required by CHE Trinity, Inc., for all subsidiary organizations:

"(b) The Corporation's purposes shall also include the following:

- (i) To promote, support and further any and all charitable, scientific, religious and educational purposes within the meaning of Section 501(c)(3) of the Code;
- (ii) To coordinate and oversee the activities of Affiliates;
- (iii) To acquire, purchase, own, loan and borrow, erect, maintain, hold, use, control, manage, invest, exchange, convey, transfer, sell, mortgage, lease and rent all real and personal property of every kind and nature, which may be necessary or incidental to the accomplishment of any and all of the above purposes;
- (iv) To accept, receive and hold, in trust or otherwise, all contributions, legacies, bequests, gifts and benefactions which may be left, made or given to the Corporation, or its predecessor or constituent corporations, by any person, persons or organizations;
- (v) To take all such actions as may be necessary or desirable to accomplish the foregoing purposes within the restrictions and limitations of this Certificate of Incorporation, the Bylaws of the Corporation and applicable law, provided that no substantial part of the activities of the Corporation shall be to carry out propaganda, or to otherwise attempt to influence legislation; and the Corporation shall not participate or intervene in any political campaign on behalf of or in opposition of any candidate for public office (by the publishing or distribution of statements or otherwise), in violation of any provisions applicable to corporations exempt from taxation under Section 501(c)(3) of the Code and the regulations promulgated thereunder as they now exist or as they may be amended;
- (vi) The Corporation shall not be operated for the pecuniary gain or profit, incidental or otherwise, of any private individual, and no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Directors, Officers or other private individuals, except the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth herein consistent with applicable law;

- (vii) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not carry on any activity not permitted to be carried on by: (A) a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (B) a corporation, contributions to which are deductible under Section 170(c)(2) of the Code; and
  - (viii) The Corporation is organized and, in carrying out the purposes referenced above, the Corporation at all times shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the Corporation and its Controlled Affiliates. For this purpose, the "Controlled Affiliates" are hospitals and health care delivery organizations which are both (A) closely related to the Corporation, in purpose or function through control or common control, ownership, lease or management, and (B) classified as a publicly supported organization as described in Section 509(a)(1) or 509(a)(2) of the Code."
- e. REPLACE in its entirety Article Fourth with the following new paragraph, both of which address the Corporation's mission and philosophy:

**"FOURTH:** The activities of the Corporation shall be carried out in a manner consistent with the teachings of the Roman Catholic Church and "Founding Principles of Catholic Health Ministries" or successor documents which set forth principles describing how the apostolic and charitable works of Catholic Health Ministries are to be carried out, as well as the values and principles inherent in the medical-moral teachings of the Roman Catholic Church (such as the Ethical and Religious Directives for Catholic Health Care Services as promulgated from time to time by the United States Conference of Catholic Bishops (or any successor organization), as amended from time to time). Under Canon Law, Catholic Health Ministries shall retain its canonical stewardship with respect to those facilities, real or personal property, and other assets that constitute the temporal goods belonging, by operation of Canon Law, to Catholic Health Ministries. No alienation, within the meaning of Canon Law, of property considered to be stable patrimony of Catholic Health Ministries shall occur without prior approval of Catholic Health Ministries."
- f. DELETE in its entirety Article Fifth, regarding the Corporation's tax-exempt status, which is now addressed in the new provisions added to Article Third.
- g. RENUMBER Articles Sixth through Thirteenth as Articles Fifth through Twelfth, respectively.
- h. REPLACE in its entirety renumbered Article Eighth with the following new paragraph, both of which address powers reserved by the Corporation:

**"EIGHTH:** St. James Mercy Health System is the sole member of the Corporation and shall be entitled to all rights and powers of a member under New York law, this Certificate of Incorporation and the Bylaws of the Corporation. CHE Trinity, Inc., is the sole member of St. James Mercy Health System. Certain rights and powers related to the Corporation are reserved to St. James Mercy Health System and CHE Trinity, Inc., under the Corporation's Governance Documents. Action by the Corporation shall not be taken or authorized until St. James Mercy Health System and CHE Trinity, Inc., as required, shall have exercised their respective reserved powers in the manner provided in the Governance Documents.

The following powers are reserved to St. James Mercy Health System and CHE Trinity, Inc.:

- (a) As reserved to St. James Mercy Health System:
  - (i) Approve the amendment or restatement of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, and recommend the same to CHE Trinity, Inc., for adoption;
  - (ii) Elect and remove members of the Corporation's Board of Directors;
  - (iii) Elect and remove the Executive Director of the Corporation;
  - (iv) Approve the strategic plan of the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated strategic plan of St. James Mercy Health System;
  - (v) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of St. James Mercy Health System, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (vi) Approve the annual operating and capital budgets of the Corporation, and recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated operating and capital budgets of St. James Mercy Health System;
  - (vii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;

- (viii) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (ix) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (x) Approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (xi) Approve any change to the structure or operations of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and recommend the same to CHE Trinity, Inc., for approval; and
  - (xii) Approve all other matters and take all other actions reserved to members of nonprofit corporations (or shareholders of for-profit corporations, as the case may be) by the laws of the state in which the Corporation is domiciled or as reserved in the Governance Documents of the Corporation.
- (b) As reserved to CHE Trinity, Inc.:
- (i) Adopt, amend, modify or restate the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (ii) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of CHE Trinity, Inc., or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (iii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and



transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;

- (iv) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (v) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (vi) Subject to the requirements of the New York Not-for-Profit Corporation Law, approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (vii) Approve any change to the structure or operation of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c) of the Internal Revenue Code, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (viii) Appoint and remove the independent fiscal auditor of the Corporation; and
- (ix) Require the Corporation to timely participate in such programs and services as CHE Trinity, Inc., provides to its other Regional Health Ministries and which CHE Trinity, Inc., in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE Trinity, Inc.'s system policies and the Corporation's mission and purposes."

- i. REPLACE in its entirety renumbered Article Tenth with the following new paragraph, both of which address the dissolution of the Corporation:

"TENTH: Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final

liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, and upon approval of the New York attorney general or order of a Justice of the Supreme Court of the State of New York, shall be distributed to St. James Mercy Health System, as the member of this Corporation, or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to CHE Trinity Inc., an Indiana nonprofit corporation or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any assets not so disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Catholic Health Ministries have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation and applicable law. Any assets not so disposed of shall be disposed of by shall be disposed of by the New York attorney general or a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation."

4. The text of the Certificate of Incorporation is restated as amended to read as set forth in full below:

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## Certificate of Incorporation of

### ST. JAMES MERCY FOUNDATION, INC.

Under Section 402 of the NYS Not-for-Profit Corporation Law

- FIRST:** The name of the Corporation is: ST. JAMES MERCY FOUNDATION, INC.
- SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPC-L") and is a charitable corporation under Section 201 of the NPC-L.
- THIRD:** The Corporation is organized and shall be operated exclusively for religious, charitable, scientific and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the Corporation shall carry out its purposes in a manner that advances, promotes, and supports the purposes of CHE Trinity, Inc., an Indiana nonprofit corporation, or its successor, and to further the apostolate and charitable works of Catholic Health Ministries on behalf of and as an integral part of the Roman Catholic Church in the United States. Without limiting the generality of the foregoing, the specific purposes of the Corporation shall include the following:
- (a) The Corporation shall be organized and operated exclusively to provide funds to or for the benefit of St. James Mercy Health System, a New York not-for-profit corporation, and its not-for-profit tax-exempt affiliates, currently including, but not limited to, St. James Mercy Hospital, Inc., by
    - (i) soliciting, accepting, holding, investing, reinvesting and administering gifts, grants, bequests, contributions, devises, benefits of trusts, endowments and property of any kind, without limitation as to amount or value;
    - (ii) using, disbursing, or paying the income or principal thereof exclusively for the foregoing purposes; and
    - (iii) performing any other act or thing incidental to or connected with the foregoing purposes or in the advancement thereof.

- (b) The Corporation's purposes shall also include the following:
- (i) To promote, support and further any and all charitable, scientific, religious and educational purposes within the meaning of Section 501(c)(3) of the Code;
  - (ii) To coordinate and oversee the activities of Affiliates;
  - (iii) To acquire, purchase, own, loan and borrow, erect, maintain, hold, use, control, manage, invest, exchange, convey, transfer, sell, mortgage, lease and rent all real and personal property of every kind and nature, which may be necessary or incidental to the accomplishment of any and all of the above purposes;
  - (iv) To accept, receive and hold, in trust or otherwise, all contributions, legacies, bequests, gifts and benefactions which may be left, made or given to the Corporation, or its predecessor or constituent corporations, by any person, persons or organizations;
  - (v) To take all such actions as may be necessary or desirable to accomplish the foregoing purposes within the restrictions and limitations of this Certificate of Incorporation, the Bylaws of the Corporation and applicable law, provided that no substantial part of the activities of the Corporation shall be to carry out propaganda, or to otherwise attempt to influence legislation; and the Corporation shall not participate or intervene in any political campaign on behalf of or in opposition of any candidate for public office (by the publishing or distribution of statements or otherwise), in violation of any provisions applicable to corporations exempt from taxation under Section 501(c)(3) of the Code and the regulations promulgated thereunder as they now exist or as they may be amended;
  - (vi) The Corporation shall not be operated for the pecuniary gain or profit, incidental or otherwise, of any private individual, and no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Directors, Officers or other private individuals, except the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth herein consistent with applicable law;
  - (vii) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not carry on any activity not permitted to be carried on by: (A) a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (B) a

corporation, contributions to which are deductible under Section 170(c)(2) of the Code; and

- (ix) The Corporation is organized and, in carrying out the purposes referenced above, the Corporation at all times shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the Corporation and its Controlled Affiliates. For this purpose, the "Controlled Affiliates" are hospitals and health care delivery organizations which are both (A) closely related to the Corporation, in purpose or function through control or common control, ownership, lease or management, and (B) classified as a publicly supported organization as described in Section 509(a)(1) or 509(a)(2) of the Code.

**FOURTH:** The activities of the Corporation shall be carried out in a manner consistent with the teachings of the Roman Catholic Church and "Founding Principles of Catholic Health Ministries" or successor documents which set forth principles describing how the apostolic and charitable works of Catholic Health Ministries are to be carried out, as well as the values and principles inherent in the medical-moral teachings of the Roman Catholic Church (such as the Ethical and Religious Directives for Catholic Health Care Services as promulgated from time to time by the United States Conference of Catholic Bishops (or any successor organization), as amended from time to time). Under Canon Law, Catholic Health Ministries shall retain its canonical stewardship with respect to those facilities, real or personal property, and other assets that constitute the temporal goods belonging, by operation of Canon Law, to Catholic Health Ministries. No alienation, within the meaning of Canon Law, of property considered to be stable patrimony of Catholic Health Ministries shall occur without prior approval of Catholic Health Ministries.

**FIFTH:** In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to solicit and receive grants and contributions from private and public sources.

**SIXTH:** Nothing contained herein 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), 404(p)-(s) or 404(u)-(v) of the New York Not-for-Profit Corporation Law.

**SEVENTH:** Nothing contained herein shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital, or to provide hospital services or health related services, or to operate a drug maintenance program, a certified home health agency, a hospice or a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 33, 36, 40 & 44, respectively, of the Public Health Law.

**EIGHTH:** St. James Mercy Health System is the sole member of the Corporation and shall be entitled to all rights and powers of a member under New York law, this Certificate of Incorporation and the Bylaws of the Corporation. CHE Trinity, Inc., is the sole member of St. James Mercy Health System. Certain rights and powers related to the Corporation are reserved to St. James Mercy Health System and CHE Trinity, Inc., under the Corporation's Governance Documents. Action by the Corporation shall not be taken or authorized until St. James Mercy Health System and CHE Trinity, Inc., as required, shall have exercised their respective reserved powers in the manner provided in the Governance Documents.

The following powers are reserved to St. James Mercy Health System and CHE Trinity, Inc.:

- (a) As reserved to St. James Mercy Health System:
- (i) Approve the amendment or restatement of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, and recommend the same to CHE Trinity, Inc., for adoption;
  - (ii) Elect and remove members of the Corporation's Board of Directors;
  - (iii) Elect and remove the President and Chief Executive Officer of the Corporation;
  - (iv) Approve the strategic plan of the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated strategic plan of St. James Mercy Health System;
  - (v) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of St. James Mercy Health System, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (vi) Approve the annual operating and capital budgets of the Corporation, and recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated operating and capital budgets of St. James Mercy Health System;
  - (vii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;

- (viii) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (ix) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (x) Approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
  - (xi) Approve any change to the structure or operations of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and recommend the same to CHE Trinity, Inc., for approval; and
  - (xii) Approve all other matters and take all other actions reserved to members of nonprofit corporations (or shareholders of for-profit corporations, as the case may be) by the laws of the state in which the Corporation is domiciled or as reserved in the Governance Documents of the Corporation.
- (b) As reserved to CHE Trinity, Inc.:
- (i) Adopt, amend, modify or restate the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (ii) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of CHE Trinity, Inc., or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
  - (iii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and

transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;

- (iv) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (v) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (vi) Subject to the requirements of the New York Not-for-Profit Corporation Law, approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (vii) Approve any change to the structure or operation of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c) of the Internal Revenue Code, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (viii) Appoint and remove the independent fiscal auditor of the Corporation; and
- (ix) Require the Corporation to timely participate in such programs and services as CHE Trinity, Inc., provides to its other Regional Health Ministries and which CHE Trinity, Inc., in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE Trinity, Inc.'s system policies and the Corporation's mission and purposes.

**NINTH:** In any taxable year in which the Corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, the Corporation shall:



- a. not engage in any act of self-dealing that is subject to tax under Section 4941 of the Code;
- b. distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax under Section 4943 of the Code;
- c. not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of the Code;
- d. not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code; and
- e. not make any expenditures that are subject to tax under Section 4945 of the Code.

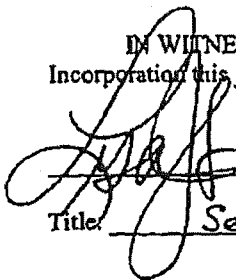
**TENTH:** Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, and upon approval of the New York attorney general or order of a Justice of the Supreme Court of the State of New York, shall be distributed to St. James Mercy Health System, as the member of this Corporation, or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to CHE Trinity Inc., an Indiana nonprofit corporation or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any assets not so disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Catholic Health Ministries have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation and applicable law. Any assets not so disposed of shall be disposed of by shall be disposed of by the New York attorney general or a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation."

ELEVENTH: The office of the Corporation is located in the County of Steuben, State of New York.

TWELFTH: The Corporation hereby designates the Secretary of State of New York as agent upon whom any process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him is 411 Canisteo Street, Hornell, New York 14843.

5. This restated Certificate of Incorporation was authorized by the Corporate Member as provided in Section 802(a)(1) of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned has signed this restated Certificate of Incorporation this 27 day of May, 2014.

  
\_\_\_\_\_  
Title: Secretary

**NEW YORK**  
state department of  
**HEALTH**

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

Sue Kelly  
Executive Deputy Commissioner

June 30, 2014

Karen E. Sosler, Esq.  
Iscman, Cunningham, Riester and Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203

Re: Restated Certificate of Incorporation of St. James Mercy Foundation, Inc.

Dear Ms. Sosler:

The above referenced Restated Certificate of Incorporation, dated May 27, 2014 and signed by Lisa Schwartz, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law, since the restated certificate neither changes the corporation's name nor changes substantively a purpose the inclusion of which requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the restated certificate being filed with the Department of State.

Sincerely,



Michael M. Stone  
Assistant Counsel  
Bureau of House Counsel



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES  
ROCHESTER REGIONAL OFFICE

July 1, 2014

Karen E. Sosler, Esq.  
Iseman, Cunningham, Riester & Hyde LLP  
9 Thurlow Terrace  
Albany, New York 12203

Re: St. James Mercy Foundation, Inc.  
Restated Certificate of Incorporation

Dear Ms. Sosler:

Thank you for providing this office with a copy of the restated certificate of incorporation executed on May 27, 2014 and supporting papers, pursuant to Article 8 of the Not-For-Profit Corporation Law.

This office has reviewed your submission and the Attorney General has no objection to the filing of the restated certificate of incorporation with the Secretary of State.

When you receive a filing receipt from the Department of State, please send a copy of it to the undersigned so I may close the Attorney General's file.

Very truly yours,

  
Audrey Cooper

Assistant Attorney General  
[Audrey.Cooper@ag.ny.gov](mailto:Audrey.Cooper@ag.ny.gov)  
Direct Line (585) 327-3219

285

**Restated  
Certificate of Incorporation of  
ST. JAMES MERCY FOUNDATION, INC.**

Under Section 805 of the NYS Not-for-Profit Corporation Law

**FILED**  
2014 JUL -1 AM 11:00

Filed by:

Karen E. Sosler, Esq.  
Iseman, Cunningham, Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203  
(518) 462-3000

**RECEIVED**  
2014 JUL -1 AM 9:10

**DRAWDOWN  
ACCT # J8**

**STATE OF NEW YORK  
DEPARTMENT OF STATE**  
FILED JUL 01 2014  
TAXS \_\_\_\_\_  
BY:           JY          

262

FILING RECEIPT

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ENTITY NAME: ST. JAMES MERCY FOUNDATION, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) TYPE: C COUNTY: STEU  
PURPOSES NFP TYPE PROVISIONS RESTATED

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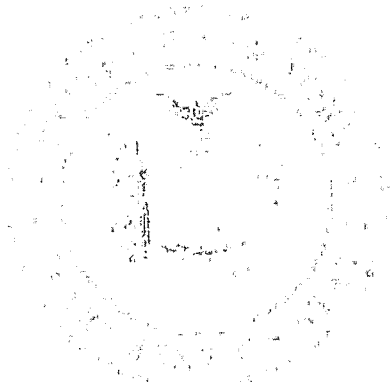
FILED: 07/01/2014 DURATION: \*\*\*\*\* CASH#: 140701000262 FILM #: 140701000255

FILER:

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KAREN E. SOSLER, ESQ.  
ISEMAN, CUNNINGHAM RIESTER & HYDE,  
LLP 9 THURLOW TERRACE  
ALBANY, NY 12203

ADDRESS FOR PROCESS:

REGISTERED AGENT:



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SERVICE COMPANY: ISEMAN, CUNNINGHAM, RIESTER & HYDE, LL SERVICE CODE: J8

FEES	190.00	PAYMENTS	190.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	190.00
HANDLING	150.00	OPAL	0.00
		REFUND	0.00

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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 July 2, 2014.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

150501000183

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ST. JAMES MERCY FOUNDATION, INC.

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Executive Director of St. James Mercy Foundation, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is: St. James Mercy Foundation, Inc.
2. The Corporation's Certificate of Incorporation was filed by the Department of State on November 29, 1994 under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 201 of the Not-for-Profit Corporation Law, and it is and shall remain a charitable corporation under Section 201 of said Law.

4. To change the purposes of the Corporation, the initial paragraph of Article THIRD of its Certificate of Incorporation is hereby amended to read as follows:

The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the specific purposes of the Corporation shall include the following:

5. To change the purposes of the Corporation, paragraph (a) of Article THIRD of its Certificate of Incorporation is hereby amended to read as follows:

The Corporation shall be organized and operated exclusively to provide funds to or for the benefit of St. James Mercy Hospital, a New York not-for-profit corporation, and its not-for-profit tax-exempt affiliates, if any, by:

6. To change the purposes of the Corporation, subparagraph (i) of paragraph (b) of Article THIRD of its Certificate of Incorporation is hereby amended to read as follows:

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To promote, support and further any and all charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Code;

7. To eliminate references to the Corporation's former relationship with the Roman Catholic Church and former conformance with its teachings and principles, the Corporation's Certificate of Incorporation is hereby amended to delete Article FOURTH in its entirety.

8. To change the sole member of the Corporation and the member's reserved powers, Article EIGHTH of the Corporation's Certificate of Incorporation is hereby amended to read as follows:

- a. St. James Mercy Hospital is the sole member of the Corporation.
- b. In addition to all other rights and powers of membership prescribed by New York law, this Certificate of Incorporation and/or the Bylaws of the Corporation, the following governance and management powers shall be reserved to the member:
  - (i) To approve and interpret the statement of philosophy and mission of the Corporation including the stated purposes of the Corporation as set forth in the Certificate of Incorporation, and to require that the Corporation operates in accordance with an agreed upon strategic plan and in conformance with the Corporation's philosophy, mission and stated purposes;
  - (ii) To approve and amend the Certificate of Incorporation and Bylaws of the Corporation;
  - (iii) To appoint and remove, with or without cause, the directors of the Corporation;
  - (iv) To appoint and remove, with or without cause, the executive director of the Corporation;
  - (v) To approve any plan of merger, consolidation or reorganization of the Corporation;
  - (vi) To approve any plan of dissolution of the Corporation and the distribution of the assets of the Corporation upon dissolution; and
  - (vii) To approve the sale, acquisition, lease, transfer, mortgage, pledge or other alienation of real or personal property of the Corporation which constitutes all or substantially all of the assets of the Corporation.

9. To modify the disposition of the assets of the Corporation upon dissolution, Article TENTH of its Certificate of Incorporation is hereby amended to read in full as follows:

In the event of dissolution, all of the remaining assets and properties of the Corporation shall, after necessary expenses thereof, be distributed to St. James Mercy Hospital, provided that if St. James Mercy Hospital does not then exist or fails to qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), distribution shall occur to one or more organizations that shall then qualify under Section 501(c)(3) of the Code, subject to the approval of the Attorney General of the State of New York or a Justice of the Supreme Court of the State of New York.

10. The foregoing amendments to the Corporation's Certificate of Incorporation were authorized by the written consent of the Corporation's sole member.

11. The New York Secretary of State is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation that may be served upon the Secretary is: St. James Mercy Foundation, Inc., 411 Canisteo Street, Hornell, New York 14843.

IN WITNESS WHEREOF, the subscriber has signed this Certificate of Amendment this 23 day of March, 2015.

  
\_\_\_\_\_  
Sylvia Bryant, Executive Director



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Acting Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

April 21, 2015

Robert C. Scutt, Esq.  
Harris Beach, PLLC  
99 Gansey Road  
Pittsford, New York 14534

Re: Certificate of Amendment of the Certificate of Incorporation of St. James Mercy  
Foundation, Inc.

Dear Mr. Scutt:

The above referenced and enclosed Certificate of Amendment of the Certificate of Incorporation, dated March 23, 2015 and signed by Sylvia Bryant, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law, since the certificate neither changes the corporation's name nor changes substantively a purpose the inclusion of which requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the certificate being filed with the Department of State.

Sincerely,

Michael M. Stone  
Assistant Counsel  
Bureau of House Counsel

Enclosure



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES  
ROCHESTER REGIONAL OFFICE

The Attorney General hereby approves pursuant to N-PCL §804(a)(ii)(A) the Certificate of Amendment of the Certificate of Incorporation of **ST. JAMES MERCY FOUNDATION, INC.** Said approval is conditioned on submission to the Department of State for filing within sixty (60) days. A copy of the filed certificate shall be provided to the Attorney General.

April 27, 2015  
Date

A handwritten signature in black ink, appearing to read 'Audrey Cooper', written over a horizontal line.

Audrey Cooper  
Assistant Attorney General

150 50 1000 183

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ST. JAMES MERCY FOUNDATION, INC.

Under Section 803 of the Not-for-Profit Corporation Law

FILED

MAY -1 AM 9:56

Filed by:

Karen E. Sosler, Esq.  
Iseman Cunningham Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203  
518-462-3000

DRAWDOWN ACCOUNT #J8

RECEIVED  
MAY -1 AM 9:39

<sup>1ca</sup>  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY 01 2015

TAX \$ \_\_\_\_\_

BY: IMC

190

FILING RECEIPT

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ENTITY NAME: ST. JAMES MERCY FOUNDATION, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)  
PURPOSES PROCESS PROVISIONS

COUNTY: STEU

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FILED:05/01/2015 DURATION:\*\*\*\*\* CASH#:150501000190 FILM #:150501000183

FILER:

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KAREN E. SOSLER, ESQ.  
ISEMAN CUNNINGHAM RIESTER & HYDE  
9 THURLOW TERRACE  
ALBANY, NY 12203

ADDRESS FOR PROCESS:

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THE CORPORATION  
411 CANISTEO STREET  
HORNELL, NY 14843

REGISTERED AGENT:



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SERVICE COMPANY: ISEMAN, CUNNINGHAM, RIESTER & HYDE, LL      SERVICE CODE: J8

FEEs                    190.00  
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FILING                  30.00  
TAX                      0.00  
CERT                    0.00  
COPIES                 10.00  
HANDLING              150.00

PAYMENTS              190.00  
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CHARGE                 0.00  
DRAWDOWN              190.00  
    OPAL                 0.00  
REFUND                 0.00

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on May 4, 2015.




*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** March 26, 2018

**Subject:** St. James Mercy Hospital: Name Change Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(1).

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St. James Mercy Hospital wishes to change its corporate name to St. James Hospital in order to align the corporation's name to what it is commonly referred to in the community and to reflect that the corporation is no longer affiliated with the Roman Catholic Church.

Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(1), PHHPC must consent to these changes prior to the filing of any amended certificate.

There is no legal objection to the name change and the Certificate of Amendment of the Certificate of Incorporation of St. James Mercy Hospital is in legally acceptable form.

Attachments.



**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

March 15, 2018

99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

JUSTIN P. RUNKE  
MEMBER  
DIRECT: (585) 419-8734  
FAX: (585) 419-8818  
JRUNKE@HARRISBEACH.COM

**VIA FEDERAL EXPRESS**

Ms. Colleen Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza  
Corning Tower  
Room 1805  
Albany, New York 12237

Re.: Certificate of Amendment to the Certificate of Incorporation  
of St. James Mercy Hospital

Dear Ms. Leonard:

I have enclosed a photocopy of the proposed Certificate of Amendment of the Certificate of Incorporation of St. James Mercy Hospital (the "Corporation") which changes the name of the Corporation from "St. James Mercy Hospital" to "St. James Hospital." For your reference, I have also enclosed a copy of the current Restated Certificate of Incorporation of the Corporation together with a filed Certificate of Amendment thereof.

From the time of formation until recently, the Corporation was affiliated with the Roman Catholic Church through its sponsorship by the Sisters of Mercy and its membership in Trinity Health. In 2015, the Corporation's affiliation with the Roman Catholic Church and Trinity Health was ended, and the Corporation became an independent, secular hospital. In recognition of this change and to align the name of the Corporation with what it is commonly referred to throughout the community, the Board of Directors of the Corporation believe it is in the best interest of the Corporation to change the name of the Corporation to "St. James Hospital."

If the Public Health and Health Planning Council needs any further information relating to this application, please do not hesitate to contact me with your request.

Very truly yours,



Justin P. Runke

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ST. JAMES MERCY HOSPITAL**

**Under Section 803 of the Not-For-Profit Corporation Law**

The undersigned, being the Interim President and Chief Executive Officer of St. James Mercy Hospital (the "Corporation"), hereby certifies:

1. The name of the Corporation is St. James Mercy Hospital. The Corporation was formed under the name Saint James Mercy Hospital.

2. The Certificate of Incorporation was filed by the Department of State on February 7, 1890 under Chapter 319 of the Laws of 1848.

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, as now in full force and effect, is hereby amended to effect the following change as authorized by Section 801 of the Not-For-Profit Corporation Law:

(a) Paragraph FIRST of the Certificate of Incorporation regarding the name of the corporation is hereby amended to read in its entirety as follows:

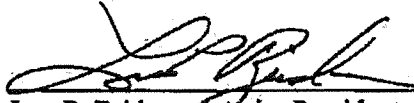
FIRST: The name of the corporation is St. James Hospital.

5. This Amendment to the Certificate of Incorporation was authorized by affirmative vote of a majority of the entire Board of Directors. The Corporation has no members.

6. The Secretary of State of the State of New York is designated as the agent of the corporation upon whom process against the corporation may be served and the post office address to which the Secretary of State shall mail a copy of any process served upon him/her is

St. James Hospital, 411 Canisteo Street, Hornell, New York 14843, Attn.: Chief Executive Officer.

IN WITNESS WHEREOF, I have signed this Certificate of Amendment this 12 day of March, 2018.



Leo P. Brideau, Interim President and  
Chief Executive Officer

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ST. JAMES MERCY HOSPITAL**

**Under Section 803 of the Not-For-Profit Corporation Law**

150501000177

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ST. JAMES MERCY HOSPITAL

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the President of St. James Mercy Hospital (the "Corporation"), hereby certifies:

1. The name of the Corporation is: St. James Mercy Hospital. The Corporation was formed under the name Saint James Mercy Hospital.

2. The Corporation's Certificate of Incorporation was filed by the Department of State on February 7, 1890 under Chapter 319 of the Laws of 1848.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 201 of the Not-for-Profit Corporation Law, and it is and shall remain a charitable corporation under Section 201 of said Law.

4. To change the purposes of the Corporation, the initial paragraph of Article THIRD of its Certificate of Incorporation is hereby amended to read as follows:

The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the specific purposes of the Corporation shall include the following:

5. To eliminate references to the Corporation's former relationship with the Roman Catholic Church and former conformance with the Ethical and Religious Directives for Catholic Health Care Services, its Certificate of Incorporation is hereby amended to delete Article FIFTH in its entirety.

6. To eliminate the sole member of the Corporation and the reserved powers of the member and the member's sole member, the Corporation's Certificate of Incorporation is hereby amended to delete Article SIXTH in its entirety.

150501000177

7. To modify the disposition of the assets of the Corporation upon dissolution, Article SEVENTH of its Certificate of Incorporation is hereby amended to read in full as follows:

In the event of dissolution, all of the remaining assets and properties of the Corporation shall, after necessary expenses thereof, be distributed to one or more organizations that shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to the approval of the Attorney General of the State of New York or a Justice of the Supreme Court of the State of New York.

8. The foregoing amendments to the Corporation's Certificate of Incorporation were authorized by the unanimous consent of the Corporation's sole member.

9. The New York Secretary of State is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation that may be served upon the Secretary is: St. James Mercy Hospital, 411 Canisteo Street, Hornell, New York 14843.

IN WITNESS WHEREOF, the subscriber has signed this Certificate of Amendment this 23 day of March, 2015.

  
Jennifer L. Sullivan, President



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Acting Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

April 21, 2015

Robert C. Scutt, Esq.  
Harris Beach, PLLC  
99 Gamsey Road  
Pittsford, New York 14534

Re: Certificate of Amendment of the Certificate of Incorporation of St. James Mercy Hospital

Dear Mr. Scutt:

The above referenced and enclosed Certificate of Amendment of the Certificate of Incorporation, dated March 23, 2015 and signed by Jennifer L. Sullivan, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law, since the certificate neither changes the corporation's name nor changes substantively a purpose the inclusion of which requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the certificate being filed with the Department of State.

Sincerely,

Michael M. Stone  
Assistant Counsel  
Bureau of House Counsel

Enclosure



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES  
ROCHESTER REGIONAL OFFICE

The Attorney General hereby approves pursuant to N-PCL §804(a)(ii)(A) the Certificate of Amendment of the Certificate of Incorporation of **ST. JAMES MERCY HOSPITAL**. Said approval is conditioned on submission to the Department of State for filing within sixty (60) days. A copy of the filed certificate shall be provided to the Attorney General.

April 27, 2015

Date

A handwritten signature in black ink, appearing to read 'Audrey Cooper', written over a horizontal line.

Audrey Cooper

Assistant Attorney General



150501000 177

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
ST. JAMES MERCY HOSPITAL

Under Section 803 of the Not-for-Profit Corporation Law

FILED

2015 MAY -1 AM 9:56

Filed by:

Karen E. Sosler, Esq.  
Iseman Cunningham Riester & Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203  
518-462-3000

DRAWDOWN ACCOUNT #J8

1cc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY 01 2015

TAX \$ \_\_\_\_\_  
BY: LUC

RECEIVED  
2015 MAY -1 AM 9:39

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FILING RECEIPT

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ENTITY NAME: ST. JAMES MERCY HOSPITAL

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)  
PURPOSES PROCESS PROVISIONS

COUNTY: STEU

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FILED:05/01/2015 DURATION:\*\*\*\*\* CASH#:150501000184 FILM #:150501000177

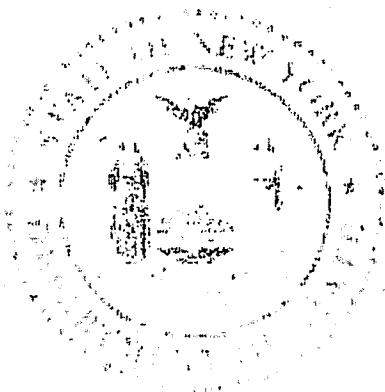
FILER:

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KAREN E. SOSLER, ESQ.  
ISEMAN CUNNINGHAM RIESTER & HYDE  
9 THURLOW TERRACE  
ALBANY, NY 12203

ADDRESS FOR PROCESS:

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THE CORPORATION  
411 CANISTEO STREET  
HORNELL, NY 14843

REGISTERED AGENT:



=====

SERVICE COMPANY: ISEMAN, CUNNINGHAM, RIESTER & HYDE, LL SERVICE CODE: J8

FEEs	190.00	PAYMENTS	190.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	190.00
HANDLING	150.00	OPAL	0.00
		REFUND	0.00

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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 May 4, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

**Restated Certificate of Incorporation of  
ST. JAMES MERCY HOSPITAL**

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the Secretary of St. James Mercy Hospital (the "Corporation"), does hereby certify that:

1. The name of the Corporation is ST. JAMES MERCY HOSPITAL.
2. The Corporation's original Certificate of Incorporation was filed in the office of the Secretary of State on February 7, 1890 under the name Saint James Mercy Hospital.
3. The text of the Certificate of Incorporation is restated to effect the following changes:
  - a. REPLACE in its entirety Article Second with the following new paragraph, both of which address the definition of the Corporation:
 

**"SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPC-L") and is a charitable corporation under Section 201 of the NPC-L."
  - b. INSERT the following as the first paragraph of Article Third, which addresses the Corporation's charitable, tax-exempt purposes:
 

**"THIRD:** The Corporation is organized and shall be operated exclusively for religious, charitable, scientific and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the Corporation shall carry out its purposes in a manner that advances, promotes, and supports the purposes of CHE Trinity, Inc., an Indiana nonprofit corporation, or its successor, and to further the apostolate and charitable works of Catholic Health Ministries on behalf of and as an integral part of the Roman Catholic Church in the United States. Without limiting the generality of the foregoing, the specific purposes of the Corporation shall include the following:"

ST. JAMES MERCY HOSPITAL

(00875153)

c. ADD the following additional purposes after paragraph c. of Article Third, which are standard provisions required by CHE Trinity, Inc., for all subsidiary organizations:

"d. The Corporation's purposes shall also include the following:

- (i) To promote, support and further any and all charitable, scientific, religious and educational purposes within the meaning of Section 501(c)(3) of the Code;
- (ii) To coordinate and oversee the activities of Affiliates;
- (iii) To acquire, purchase, own, loan and borrow, erect, maintain, hold, use, control, manage, invest, exchange, convey, transfer, sell, mortgage, lease and rent all real and personal property of every kind and nature, which may be necessary or incidental to the accomplishment of any and all of the above purposes;
- (iv) To accept, receive and hold, in trust or otherwise, all contributions, legacies, bequests, gifts and benefactions which may be left, made or given to the Corporation, or its predecessor or constituent corporations, by any person, persons or organizations;
- (v) To take all such actions as may be necessary or desirable to accomplish the foregoing purposes within the restrictions and limitations of this Certificate of Incorporation, the Bylaws of the Corporation and applicable law, provided that no substantial part of the activities of the Corporation shall be to carry out propaganda, or to otherwise attempt to influence legislation; and the Corporation shall not participate or intervene in any political campaign on behalf of or in opposition of any candidate for public office (by the publishing or distribution of statements or otherwise), in violation of any provisions applicable to corporations exempt from taxation under Section 501(c)(3) of the Code and the regulations promulgated thereunder as they now exist or as they may be amended;
- (vi) The Corporation shall not be operated for the pecuniary gain or profit, incidental or otherwise, of any private individual, and no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Directors, Officers or other private individuals, except the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth herein consistent with applicable law;

- (vii) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not carry on any activity not permitted to be carried on by: (A) a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (B) a corporation, contributions to which are deductible under Section 170(c)(2) of the Code; and
- (ix) The Corporation is organized and, in carrying out the purposes referenced above, the Corporation at all times shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the Corporation and its Controlled Affiliates. For this purpose, the "Controlled Affiliates" are hospitals and health care delivery organizations which are both (A) closely related to the Corporation, in purpose or function through control or common control, ownership, lease or management, and (B) classified as a publicly supported organization as described in Section 509(a)(1) or 509(a)(2) of the Code."

- d. REPLACE in its entirety Article Fifth with the following new paragraph, both of which address the Corporation's relationship with the Roman Catholic Church and conformance with the Ethical and Religious Directives for Catholic Health Care Services:

**"FIFTH:** The activities of the Corporation shall be carried out in a manner consistent with the teachings of the Roman Catholic Church and "Founding Principles of Catholic Health Ministries" or successor documents which set forth principles describing how the apostolic and charitable works of Catholic Health Ministries are to be carried out, as well as the values and principles inherent in the medical-moral teachings of the Roman Catholic Church (such as the Ethical and Religious Directives for Catholic Health Care Services as promulgated from time to time by the United States Conference of Catholic Bishops (or any successor organization), as amended from time to time). Under Canon Law, Catholic Health Ministries shall retain its canonical stewardship with respect to those facilities, real or personal property, and other assets that constitute the temporal goods belonging, by operation of Canon Law, to Catholic Health Ministries. No alienation, within the meaning of Canon Law, of property considered to be stable patrimony of Catholic Health Ministries shall occur without prior approval of Catholic Health Ministries."

- e. REPLACE in its entirety Article Sixth with the following new paragraph, both of which address powers reserved by the Corporation:

**"SIXTH:** St. James Mercy Health System is the sole member of the Corporation and shall be entitled to all rights and powers of a member under New York law, this Certificate of Incorporation and the Bylaws of the Corporation. CHE Trinity, Inc., is the sole member of St. James Mercy Health System. Certain rights and powers related to the Corporation are reserved to St. James Mercy

Health System and CHE Trinity, Inc., under the Corporation's Governance Documents. Action by the Corporation shall not be taken or authorized until St. James Mercy Health System and CHE Trinity, Inc., as required, shall have exercised their respective reserved powers in the manner provided in the Governance Documents.

The following powers are reserved to St. James Mercy Health System and CHE Trinity, Inc.:

- (a) As reserved to St. James Mercy Health System:
  - (i) Approve the amendment or restatement of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, and recommend the same to CHE Trinity, Inc., for adoption;
  - (ii) Elect and remove members of the Corporation's Board of Directors;
  - (iii) Elect and remove the President and Chief Executive Officer of the Corporation;
  - (iv) Approve the strategic plan of the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated strategic plan of St. James Mercy Health System, provided that such right shall not permit St. James Mercy Health System to exercise any of the governance authority prohibited under applicable regulations unless St. James Mercy Health System has received establishment approval from the New York State Public Health and Health Planning Council;
  - (v) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of St. James Mercy Health System, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law or the execution of hospital contracts for management or clinical services, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization, provided that such right of adoption and authorization shall not permit CHE Trinity, Inc., to exercise any of the governance authority prohibited under applicable regulations unless CHE Trinity, Inc., has received establishment approval from the New York State Public Health and Health Planning Council;
  - (vi) Approve the annual operating and capital budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation, and recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated

operating and capital budgets of St. James Mercy Health System, provided that such right of adoption shall not permit CHE Trinity, Inc., to exercise any of the governance authority prohibited under applicable regulations unless CHE Trinity, Inc., has received establishment approval from the New York State Public Health and Health Planning Council;

- (vii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (viii) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (ix) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (x) Approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (xi) Approve any change to the structure or operations of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and recommend the same to CHE Trinity, Inc., for approval; and
- (xii) Approve all other matters and take all other actions reserved to members of nonprofit corporations (or shareholders of for-profit corporations, as the case may be) by the laws of the state in which the Corporation is domiciled or as reserved in the Governance Documents of the Corporation.



(b) As reserved to CHE Trinity, Inc.:

- (i) Adopt, amend, modify or restate the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (ii) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of CHE Trinity, Inc., provided that CHE Trinity, Inc., shall not have approval authority over the incurrence of debt necessary to finance the cost of compliance with operational or physical plant standards required by law or the execution of hospital contracts for management or clinical services, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (iii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (iv) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (v) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (vi) Subject to the requirements of the New York Not-for-Profit Corporation Law, approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), except for pledges or encumbrances necessary to finance the cost of compliance with operational or physical plant standards required by law, or if CHE Trinity, Inc.,

receives a recommendation as to any such action, approve such action as recommended;

- (vii) Approve any change to the structure or operation of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c) of the Internal Revenue Code, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (viii) Appoint and remove the independent fiscal auditor of the Corporation; and
- (ix) Require the Corporation to timely participate in such programs and services as CHE Trinity, Inc., provides to its other Regional Health Ministries and which CHE Trinity, Inc., in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE Trinity, Inc.'s system policies and the Corporation's mission and purposes."

f. REPLACE in its entirety renumbered Article Seventh with the following new paragraph, both of which address the dissolution of the Corporation:

**"SEVENTH:** Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, and upon approval of the New York attorney general or order of a Justice of the Supreme Court of the State of New York, shall be distributed to St. James Mercy Health System, as the member of this Corporation, or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to CHE Trinity Inc., an Indiana nonprofit corporation or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any assets not so disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Catholic Health Ministries have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation and applicable law. Any assets not so disposed of shall be disposed of by shall be disposed of by the New York

attorney general or a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation."

4. The text of the Certificate of Incorporation is restated as amended to read as set forth in full below:

## Certificate of Incorporation of

### ST. JAMES MERCY HOSPITAL

Under Section 402 of the NYS Not-for-Profit Corporation Law

- FIRST:** The name of the Corporation is ST. JAMES MERCY HOSPITAL.
- SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPC-L") and is a charitable corporation under Section 201 of the NPC-L.
- THIRD:** The Corporation is organized and shall be operated exclusively for religious, charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Corporation shall have no power to act in a manner which is not exclusively within the contemplation of Section 501(c)(3) of the Code, and the Corporation shall not engage directly or indirectly in any activity which would prevent it from qualifying, and continuing to qualify, as a Corporation as described in Section 501(c)(3) of the Code. Without limiting the generality of the foregoing, the Corporation shall carry out its purposes in a manner that advances, promotes, and supports the purposes of CHE Trinity, Inc., an Indiana nonprofit corporation, or its successor, and to further the apostolate and charitable works of Catholic Health Ministries on behalf of and as an integral part of the Roman Catholic Church in the United States. Without limiting the generality of the foregoing, the specific purposes of the Corporation shall include the following:
- a. The purposes of the Corporation are the establishment, ownership, operation and maintenance of a hospital and long term care facilities and services for the care and treatment of sick, infirm, and injured persons, without regard to race, color, creed, sex, age, disability or country of national origin.

- b. The purposes of the Corporation shall also include the establishment, maintenance and operation, in the vicinity of Steuben County, New York and in perpetuity, of one or more day care centers for children.
- c. The purpose of the Corporation shall include serving the developmentally disabled population including, but not limited to, service coordination and day habilitation services.
- d. The Corporation's purposes shall also include the following:
  - (i) To promote, support and further any and all charitable, scientific, religious and educational purposes within the meaning of Section 501(c)(3) of the Code;
  - (ii) To coordinate and oversee the activities of Affiliates;
  - (iii) To acquire, purchase, own, loan and borrow, erect, maintain, hold, use, control, manage, invest, exchange, convey, transfer, sell, mortgage, lease and rent all real and personal property of every kind and nature, which may be necessary or incidental to the accomplishment of any and all of the above purposes;
  - (iv) To accept, receive and hold, in trust or otherwise, all contributions, legacies, bequests, gifts and benefactions which may be left, made or given to the Corporation, or its predecessor or constituent corporations, by any person, persons or organizations;
  - (v) To take all such actions as may be necessary or desirable to accomplish the foregoing purposes within the restrictions and limitations of this Certificate of Incorporation, the Bylaws of the Corporation and applicable law, provided that no substantial part of the activities of the Corporation shall be to carry out propaganda, or to otherwise attempt to influence legislation; and the Corporation shall not participate or intervene in any political campaign on behalf of or in opposition of any candidate for public office (by the publishing or distribution of statements or otherwise), in violation of any provisions applicable to corporations exempt from taxation under Section 501(c)(3) of the Code and the regulations promulgated thereunder as they now exist or as they may be amended;
  - (vi) The Corporation shall not be operated for the pecuniary gain or profit, incidental or otherwise, of any private individual, and no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Directors, Officers or other private individuals, except the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered

to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth herein consistent with applicable law;

- (vii) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation shall not carry on any activity not permitted to be carried on by: (A) a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (B) a corporation, contributions to which are deductible under Section 170(c)(2) of the Code; and
- (viii) The Corporation is organized and, in carrying out the purposes referenced above, the Corporation at all times shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the Corporation and its Controlled Affiliates. For this purpose, the "Controlled Affiliates" are hospitals and health care delivery organizations which are both (A) closely related to the Corporation, in purpose or function through control or common control, ownership, lease or management, and (B) classified as a publicly supported organization as described in Section 509(a)(1) or 509(a)(2) of the Code.

**FOURTH:** The office of the Corporation is to be located in the County of Steuben in the State of New York.

**FIFTH:** The activities of the Corporation shall be carried out in a manner consistent with the teachings of the Roman Catholic Church and "Founding Principles of Catholic Health Ministries" or successor documents which set forth principles describing how the apostolic and charitable works of Catholic Health Ministries are to be carried out, as well as the values and principles inherent in the medical-moral teachings of the Roman Catholic Church (such as the Ethical and Religious Directives for Catholic Health Care Services as promulgated from time to time by the United States Conference of Catholic Bishops (or any successor organization), as amended from time to time). Under Canon Law, Catholic Health Ministries shall retain its canonical stewardship with respect to those facilities, real or personal property, and other assets that constitute the temporal goods belonging, by operation of Canon Law, to Catholic Health Ministries. No alienation, within the meaning of Canon Law, of property considered to be stable patrimony of Catholic Health Ministries shall occur without prior approval of Catholic Health Ministries.

*Deleted -* **SIXTH:** St. James Mercy Health System is the sole member of the Corporation and shall be entitled to all rights and powers of a member under New York law, this Certificate of Incorporation and the Bylaws of the Corporation. CHE Trinity, Inc., is the sole member of St. James Mercy Health System. Certain rights and powers related to the Corporation are reserved to St. James Mercy Health System and CHE Trinity, Inc., under the Corporation's Governance Documents. Action

by the Corporation shall not be taken or authorized until St. James Mercy Health System and CHE Trinity, Inc., as required, shall have exercised their respective reserved powers in the manner provided in the Governance Documents.

The following powers are reserved to St. James Mercy Health System and CHE Trinity, Inc.:

- (a) As reserved to St. James Mercy Health System:
  - (i) Approve the amendment or restatement of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, and recommend the same to CHE Trinity, Inc., for adoption;
  - (ii) Elect and remove members of the Corporation's Board of Directors;
  - (iii) Elect and remove the President and Chief Executive Officer of the Corporation;
  - (iv) Approve the strategic plan of the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated strategic plan of St. James Mercy Health System, provided that such right shall not permit St. James Mercy Health System to exercise any of the governance authority prohibited under applicable regulations unless St. James Mercy Health System has received establishment approval from the New York State Public Health and Health Planning Council;
  - (v) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of St. James Mercy Health System, except for debt necessary to finance the cost of compliance with operational or physical plant standards required by law or the execution of hospital contracts for management or clinical services, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization, provided that such right of adoption and authorization shall not permit CHE Trinity, Inc., to exercise any of the governance authority prohibited under applicable regulations unless CHE Trinity, Inc., has received establishment approval from the New York State Public Health and Health Planning Council;
  - (vi) Approve the annual operating and capital budgets of the Corporation to ensure that such budgets conform to the mission and philosophy of the Corporation, and recommend the same to CHE Trinity, Inc., for adoption as part of the consolidated operating and capital budgets of St. James Mercy Health System, provided that such right of adoption shall not permit CHE Trinity,

Inc., to exercise any of the governance authority prohibited under applicable regulations unless CHE Trinity, Inc., has received establishment approval from the New York State Public Health and Health Planning Council;

- (vii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (viii) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (ix) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (x) Approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), and if required by the System Authority Matrix, recommend the same to CHE Trinity, Inc., for adoption and authorization;
- (xi) Approve any change to the structure or operations of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and recommend the same to CHE Trinity, Inc., for approval; and
- (xii) Approve all other matters and take all other actions reserved to members of nonprofit corporations (or shareholders of for-profit corporations, as the case may be) by the laws of the state in which the Corporation is domiciled or as reserved in the Governance Documents of the Corporation.

(b) As reserved to CHE Trinity, Inc.:

- (i) Adopt, amend, modify or restate the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (ii) Approve those Significant Finance Matters which pursuant to the System Authority Matrix are subject to the authority of CHE Trinity, Inc., provided that CHE Trinity, Inc., shall not have approval authority over the incurrence of debt necessary to finance the cost of compliance with operational or physical plant standards required by law or the execution of hospital contracts for management or clinical services, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (iii) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries), or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (iv) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (v) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (vi) Subject to the requirements of the New York Not-for-Profit Corporation Law, approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by CHE Trinity, Inc., (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries), except for pledges or encumbrances necessary to finance the cost of compliance with operational or physical plant standards required by law, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;



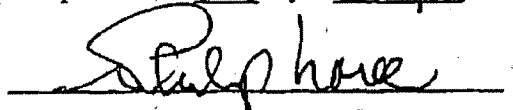
- (vii) Approve any change to the structure or operation of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c) of the Internal Revenue Code, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (viii) Appoint and remove the independent fiscal auditor of the Corporation; and
- (ix) Require the Corporation to timely participate in such programs and services as CHE Trinity, Inc., provides to its other Regional Health Ministries and which CHE Trinity, Inc., in its sole discretion after consultation with the Corporation, believes to be of value to the Corporation consistent with CHE Trinity, Inc.'s system policies and the Corporation's mission and purposes.

*Ann* - SEVENTH: Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, and returning, transferring or conveying assets held by the Corporation conditional upon their return, transfer or conveyance upon dissolution of the Corporation, and upon approval of the New York attorney general or order of a Justice of the Supreme Court of the State of New York, shall be distributed to St. James Mercy Health System, as the member of this Corporation, or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any such assets not disposed of in accordance with the foregoing shall be distributed to CHE Trinity Inc., an Indiana nonprofit corporation or its successor, so long as such distributee is an organization exempt from federal income tax by virtue of being an organization as described in Section 501(c)(3) of the Code. Any assets not so disposed of in accordance with the foregoing shall be distributed to one or more corporations, trusts, funds or organizations which at the time appear in the Official Catholic Directory published annually by P.J. Kenedy & Sons or any successor publication, or are controlled by any such corporation, trust, fund or organization that so appears, and are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code, as in the sole judgment of the Catholic Health Ministries have purposes most closely aligned to those of the Corporation, subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation and applicable law. Any assets not so disposed of shall be disposed of by shall be disposed of by the New York attorney general or a court of competent jurisdiction exclusively to one or more corporations, trusts, funds or other organizations as said court shall determine, which at the time are exempt from federal income tax as organizations described in Section 501(c)(3) of the Code and which are organized and operated exclusively for such purposes. No private individual shall share in the distribution of any Corporation assets upon dissolution of the Corporation.

**EIGHTH:** The Corporation designates the Secretary of State of New York as agent upon whom any process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him is: Office of the President, St. James Mercy Hospital, 411 Canisteo Street, Hornell, New York 14843

5. This restated Certificate of Incorporation was authorized by the Corporate Member as provided in Section 802(a)(1) of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned has signed this restated Certificate of Incorporation this 27<sup>th</sup> day of May, 2014.

  
Title: Secretary of the Corporation

**NEW YORK**  
state department of  
**HEALTH**

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

Sue Kelly  
Executive Deputy Commissioner

June 30, 2014

Karen E. Sosler, Esq.  
Iseman, Cunningham, Riester and Hyde, LLP  
9 Thurlow Terrace  
Albany, New York 12203

Re: Restated Certificate of Incorporation of St. James Mercy Hospital

Dear Ms. Sosler:

The above referenced Restated Certificate of Incorporation, dated May 27, 2014 and signed by Philip Loree, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law, since the restated certificate neither changes the corporation's name nor changes substantively a purpose the inclusion of which requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the restated certificate being filed with the Department of State.

Sincerely,



Michael M. Stone  
Assistant Counsel  
Bureau of House Counsel



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES  
ROCHESTER REGIONAL OFFICE

July 1, 2014

Karen E. Sosler, Esq.  
Iseman, Cunningham, Riester & Hyde LLP  
9 Thurlow Terrace  
Albany, New York 12203

Re: St. James Mercy Hospital  
Restated Certificate of Incorporation

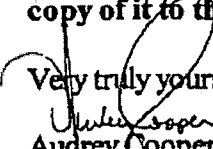
Dear Ms. Sosler:

Thank you for providing this office with a copy of the restated certificate of incorporation executed on May 27, 2014 and supporting papers, pursuant to Article 8 of the Not-For-Profit Corporation Law.

This office has reviewed your submission and the Attorney General has no objection to the filing of the restated certificate of incorporation with the Secretary of State.

When you receive a filing receipt from the Department of State, please send a copy of it to the undersigned so I may close the Attorney General's file.

Very truly yours,

  
Audrey Cooper

Assistant Attorney General  
[Audrey.Cooper@ag.ny.gov](mailto:Audrey.Cooper@ag.ny.gov)  
Direct Line (585) 327-3219



FILING RECEIPT

=====

ENTITY NAME: ST. JAMES MERCY HOSPITAL

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) TYPE: C COUNTY: STEU  
PURPOSES NFP TYPE PROVISIONS RESTATED

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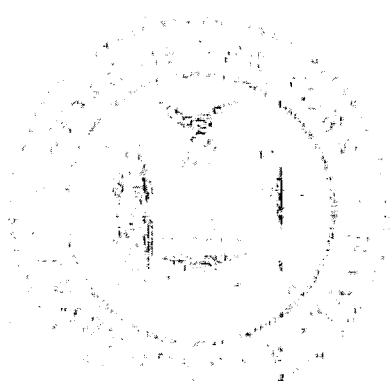
FILED:07/01/2014 DURATION:\*\*\*\*\* CASH#:140701000170 FILM #:140701000169

FILER:

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KAREN E. SOSLER, ESQ.  
ISEMAN CUNNINGHAM RIESTER & HYDE,  
LLP 9 THURLOW TERRACE  
ALBANY, NY 12203

ADDRESS FOR PROCESS:  
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REGISTERED AGENT:  
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SERVICE COMPANY: ISEMAN, CUNNINGHAM, RIESTER & HYDE, LL SERVICE CODE: J8

FEEs	190.00	PAYMENTS	190.00
FILING	30.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	190.00
HANDLING	150.00	OPAL	0.00
		REFUND	0.00

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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 July 2, 2014.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State



## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** May 4, 2018

**Subject:** Certificate of Amendment of Articles of Organization of Yonkers Gardens LLC

---

Yonkers Gardens LLC (Yonkers) was approved as the new owner and operator of what is now known as Yonkers Gardens Center for Nursing and Rehabilitation pursuant to application 162385.

The consultant and the attorney for Yonkers inform the Department that the address for the corporation is incorrectly stated on the company's Articles of Organization which has led to numerous problems. Please see the attached letters from Andrew Blatt of Pinnacle Health Consultants, LLC, and from Marvin Neiman, Esq. of Neiman & Mairanz P.C. for further details. The Yonkers facility lease is also attached as evidence of the company's true address.

To remedy this problem, Yonkers wishes to amend its Articles of Organization and requests PHHPC approval of the change and for filing the amendment with the New York State Secretary of State. PHHPC approval is required pursuant to New York State Public Health Law § 2801-a.

There is no legal objection to the proposed Certificate of Amendment of Articles of Organization of Yonkers Gardens LLC and it is in legally acceptable form.

Attachments



**PINNACLE HEALTH CONSULTANTS, LLC**

1890 Palmer Avenue, Suite 204  
Larchmont, New York 10538  
(914) 630-4543 FAX (646) 349-5889  
ablatt@pinnaclehealthny.com

**VIA FEDERAL EXPRESS and EMAIL**

May 3, 2018

Ms. Barbara DelCogliano, Deputy Director  
Deputy Director, Division of Planning & Licensure  
NEW YORK STATE DEPARTMENT OF HEALTH  
Tower Building, Empire State Plaza  
Room 1842, Corning Tower  
Albany, New York 12237

**RE: Yonkers Gardens, LLC**  
**(Westchester County)**  
**Project No.: 162385**  
**Certificate of Need Application for the Establishment of a New Operator and Owner of**  
**St. Joseph's Hospital Nursing Home**

Dear Ms. DelCogliano:

On behalf of our client, Yonkers Gardens, LLC, and as a follow up to our email communication, we are hereby submitting to the New York State Department of Health for review, approval and presentation to the Public Health and Health Planning Council a Certificate of Amendment of the Articles of Organization for Yonkers Gardens, LLC.

As explained in the letter from Neiman & Mairanz PC, as counsel for the client, upon the change in ownership of the subject nursing home, there was a need to change the mailing address from 127 South Broadway to 115 South Broadway. Upon recognition of the change in address, we would seek to have a new operating certificate issued so we can update any and all applicable other documentation including but not limited to correspondence with the New York State Medicaid Program, Controlled Substance license verification and Centers for Medicare and Medicaid Services.

Included with this letter, please find the following:

- Letter dated May 2, 2018 from Neiman & Mairanz, PC
- Proposed Certificate of Amendment of the Articles of Organization
- Previously filed Amendment of the Articles of Organization with the New York State Filing Receipt – dated December 19, 2017
- Existing Lease Agreement as approved by the New York State Department of Health

Ms. Barbara DelCogliano, Director  
May 3, 2018  
Page 2 of 2

Should you have any questions or require any additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew S. Blatt". The signature is stylized and cursive.

Andrew S. Blatt

Cc: Yonkers Gardens, LLC  
Neiman & Mairanz, PC

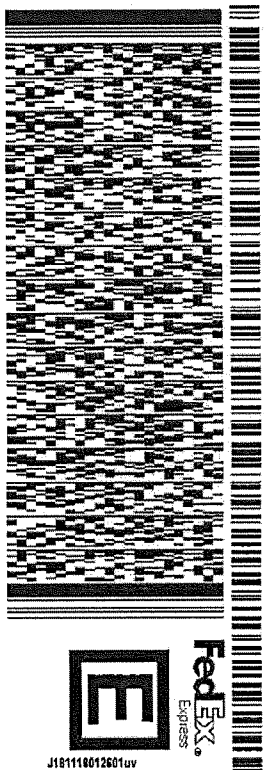
ORIGIN ID: AXBA (914) 630-4543  
ANDREW BLATT  
PINNACLE HEALTH CONSULTANTS  
1890 PALMER AVENUE  
SUITE 204  
LARCHMONT, NY 10538  
UNITED STATES US

SHIP DATE: 03MAY18  
ACTMGT: 0.50 LB  
CAD: 7849075/NET/3980

BILL SENDER

TO BARBARA DELCOGLIANO  
NEW YORK STATE DEPARTMENT OF HEALTH  
TOWER BUILDING, EMPIRE STATE PLAZA  
ROOM 1842  
ALBANY NY 12237  
REF: YONKERS GARDENS  
DEPT:  
PO:  
INV: (518) 402-0911

552.I2/782B/DCA5

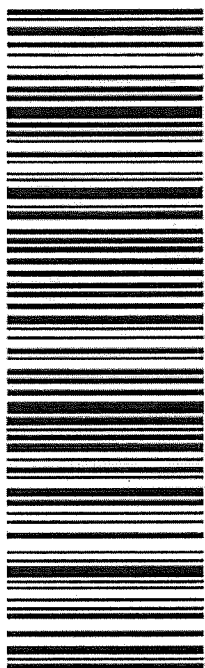


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FRI - 04 MAY 3:00P  
STANDARD OVERNIGHT

EI ALBA

12237  
ALB  
NY-US



**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

MARVIN NEIMAN \*  
THEODORE T. MAIRANZ \*

\*MEMBER N.Y. AND N.J. BARS

HEALTH CARE DIVISION  
ISAAC ZOLDAN, CPA<sup>o</sup>  
MARK KERN, CPA<sup>o</sup>  
<sup>o</sup>NON-ATTORNEY STAFF

**NEIMAN & MAIRANZ P.C.**

ATTORNEYS AT LAW  
39 BROADWAY  
25<sup>TH</sup> FLOOR  
NEW YORK, N.Y. 10006-3003

(212) 269-1000  
FAX: (212) 635-9302  
www.ngmpc.com

1616 49<sup>TH</sup> STREET  
BROOKLYN, N.Y. 11204  
(718) 851-9000

520 WESTFIELD AVENUE  
ELIZABETH, N.J. 07208  
(908) 436-1666  
FAX: (908) 436-2766

\*NOT FOR SERVICE OF PAPERS

May 2, 2018

Ms. Barbara DelCogliano, Deputy Director  
Division of Licensure and Certification  
New York State Department of Health  
Tower Building, Empire State Plaza  
Room 1842, Corning Tower  
Albany, New York 12237

Re: **Yonkers Gardens Center for Rehabilitation & Nursing**

Dear Ms. DelCogliano:

This firm represents Yonkers Gardens LLC d/b/a Yonkers Gardens Center for Rehabilitation & Nursing.

Our client recently became the operator of the former St. Joseph's Hospital Nursing Home of Yonkers, New York, Inc., located in Westchester County. When the SNF was part of the overall St. Joseph's Hospital ownership and operation, all management of the health entities was located at, or utilized, the same mailing address; 127 South Broadway, Yonkers, New York; the address of the hospital. Of course, once our client was approved by the Public Health Council, it has created a separate management office located at the address of the nursing home entity.

It has now been brought to our attention that the correct address for the nursing home is 115 South Broadway, Yonkers, New York. Because of the address on the operating certificate being the address of the hospital, our client is not receiving its mail directly.

Our client needs to change the address on the operating certificate to reflect the correct address and so as to avoid confusion with the remaining ongoing St. Joseph's entities. Because of the official address of our client is listed at the existing St. Joseph's Hospital, all official correspondence is being routed to the hospital and not to our client.

This causes problems and delays in our client's ability to respond to official inquiries from New York State agencies as well as federal and local agencies, because of the delay in our client's receipt of the inquiries, which are now being routed through the hospital. Additionally, billing and payments issues, too, are being delayed. In effect, the incorrect address is causing numerous other

NEIMAN & MAIRANZ P.C.

Ms. Barbara DelCogliano, Deputy Director

May 2, 2018

Page 2

problems to our client and the entities it deals with; regulatory and business.

We are writing this letter to you to seek your advice and assistance as to how we can effectuate this change of address. We look forward to your expeditious response and thank you in advance for your assistance.

Very truly yours,

NEIMAN & MAIRANZ P.C.



Marvin Neiman

MN:kl

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF ORGANIZATION  
OF  
YONKERS GARDENS LLC

Under Section 211 of the Limited Liability Company Law

FIRST: The name of the limited liability company is: **YONKERS GARDENS LLC**

If the name of the limited liability company has been changed, the name under which it was organized is: N/A

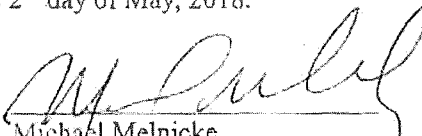
SECOND: The date of filing of the articles of organization is: December 24, 2015.

THIRD: The amendment effected by this certificate of amendment is as follows:

A) Paragraph 2 of the Articles of Organization relating to the purpose of the limited liability company, is hereby amended and will read as follows:

The purpose of the limited liability company is to own and operate the following Article 28 facility - YONKERS GARDENS CENTER FOR NURSING AND REHABILITATION, located at 115 South Broadway, Yonkers, NY 10701, in Westchester County, with it's principal office also located at 115 South Broadway, Yonkers, NY 10701.

IN WITNESS WHEREOF, I have subscribed this certificate and do hereby affirm the foregoing as true under the penalties of perjury, this 2<sup>nd</sup> day of May, 2018.

  
Michael Melnicke  
Manager

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF ORGANIZATION  
OF  
YONKERS GARDENS LLC

Under Section 211 of the Limited Liability Company Law

Filed By:

Neiman & Mairanz P.C.  
39 Broadway, 25th Floor  
New York, New York 10006  
(212) 269-1000

FILING RECEIPT

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ENTITY NAME: YONKERS GARDENS LLC

DOCUMENT TYPE: AMENDMENT (DOM LLC)  
PROVISIONS

COUNTY: WEST

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FILED:12/19/2017 DURATION:\*\*\*\*\* CASH#:171219000124 FILM #:171219000123

FILER:

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NEIMAN & MAIRANZ P.C.  
39 BROADWAY, 25TH FLOOR

NEW YORK, NY 10006

ADDRESS FOR PROCESS:

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REGISTERED AGENT:

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SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37

FEES	95.00	PAYMENTS	95.00
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CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	95.00
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DOS-1025 (04/2007)



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**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 20, 2017.



A handwritten signature in black ink, appearing to read "B. Fitzgerald", is written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

171219000 123

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF ORGANIZATION  
OF  
YONKERS GARDENS LLC

Under Section 211 of the Limited Liability Company Law

FIRST: The name of the limited liability company is: YONKERS GARDENS LLC

If the name of the limited liability company has been changed, the name under which it was organized is: N/A

SECOND: The date of filing of the articles of organization is: December 24, 2015.

THIRD: The amendment effected by this certificate of amendment is as follows:

- A) Paragraph 2 of the Articles of Organization relating to the purpose of the limited liability company, is hereby amended and will read as follows:

The purpose of the limited liability company is to own and operate the following Article 28 facility - YONKERS GARDENS CENTER FOR NURSING AND REHABILITATION, located at 127 South Broadway, Yonkers, NY 10701, in Westchester County, with it's principal office also located at 127 South Broadway, Yonkers, NY 10701.

- B) Paragraph 5 of the Articles of Organization relating to the management of the limited liability company, is hereby amended to read as follows:

The limited liability company shall be managed by one or more of its members. Neither the management structure nor this provision may be deleted, modified or amended without the prior approval of the New York State Department of Health.

- C) A new Paragraph 9 of the Articles of Organization relating to the purpose of the limited liability company, is hereby added and will read as follows:

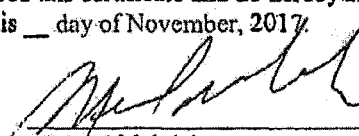
Notwithstanding anything to the contrary in the Articles of Organization or the Operating

171219000123

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Agreement, transfers, assignments or other dispositions of New York State Department of Health membership interests or voting rights must be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law.

IN WITNESS WHEREOF, I have subscribed this certificate and do hereby affirm the foregoing as true under the penalties of perjury, this \_\_\_ day of November, 2017.



Michael Melnicke  
Manager



***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.ny.gov

December 14, 2017

Andrew S. Blatt  
Pinnacle Health Consultants, LLC  
1890 Palmer Avenue  
Larchmont, New York 10538

Re: Certificate of Amendment of Articles of Organization of Yonkers Gardens LLC

Dear Mr. Blatt:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 8th day of June 2017, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of Articles of Organization of Yonkers Gardens LLC, dated November 30, 2017.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at [HFISmb@health.ny.gov](mailto:HFISmb@health.ny.gov)

Sincerely,

A handwritten signature in cursive script that reads "Colleen M. Leonard".

Colleen M. Leonard  
Executive Secretary

/cl

123

UNI-37

DRAWDOWN

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF ORGANIZATION  
OF  
YONKERS GARDENS LLC

Under Section 211 of the Limited Liability Company Law

RECEIVED  
2017 DEC 18 PM 4:02

Filed By:

Neiman & Mairanz P.C.  
39 Broadway, 25th Floor  
New York, New York 10006  
(212) 269-1000

CUST REF # YONKE590601

2017 DEC 19 AM 8:53

FILED

RECEIVED  
2017 DEC 15 PM 2:07  
*Jee*

*ICC*  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 19 2017

TAXS \_\_\_\_\_  
BY: *Jee*

124

**LEASE**

**Between**

**ADAMAH LLC**

**Landlord**

**and**

**YONKERS GARDENS LLC**

**Tenant**

**Premises: 115 South Broadway, Yonkers, New York 10701**

**Date: As of OCTOBER 1, 2017**

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**AGREEMENT OF LEASE** (the "Lease") is made of as of the 1<sup>st</sup> day of SEPTEMBER, 2017 by and between Adamah LLC having an address 127 South Broadway, Yonkers, NY 10701 (the "Landlord"), and Yonkers Gardens LLC, having an address at 127 South Broadway, Yonkers, NY 10701 (the "Tenant").

#### Article 1 DEMISED PREMISES

Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Demised Premises consisting of a 200 bed nursing home located in Westchester County at 115 South Broadway, Yonkers, NY 10701 (the "Demised Premises"), as more particularly set forth on Schedule A-1, together with all the personal property of Landlord set forth as in Schedule A-1. The Demised Premises includes the easements, if any, appurtenant to the ownership of the land and all rights, title and interest of Landlord in and to the land lying in the streets and roads in front of and adjoining the premises to the center line thereof.

This Lease is subject to:

1.1 Zoning regulations and ordinances of the Municipality, Town, City and State in which the Demised Premises lie, provided the structure of the Demised Premises do not violate same;

1.2 Consents of Landlord for the erection of any structure or structures on, under or above any street or streets on which the premises abut;

1.3 Recorded rights, easements and licenses, if any, in favor of, and agreements, if any, with any public utility company, including but not limited to gas, electricity, telephone and cable service, pipe and sewer lines, if any, provided the structure and operations of the Demised Premises does not violate same;

1.4 Party walls and party wall agreements of record, if any;

1.5 Covenants and restrictions of record provided the Demised Premises and its current use do not violate same; and

1.6 Any and all Mortgages, renewals, modifications, consolidations, extensions or replacements thereof to which this Lease is subject and subordinate pursuant to Article 21 hereof.

#### Article 2 DEFINITIONS

When used herein, and unless the context clearly requires otherwise:

2.1 "Additional Rent" shall mean all payments payable under this Lease (whether or not denominated as Additional Rent, Rent or rent) by Tenant to Landlord other than Basic Annual Rent, and all Additional Rent shall be deemed to be rent for all purposes under this Lease, so that the failure to pay any Additional Rent within the applicable grace period

hereunder shall give rise to the same rights and remedies reserved to Landlord under this Lease, at law or in equity, as if such non-payment were of Basic Annual Rent reserved hereunder.

2.2 "Basic Annual Rent" shall mean the amounts set forth in Section 4.3.

2.3 "Demised Premises" means the real property described in Article 1, including all buildings, structures or improvements placed thereon, all appurtenances thereto, and all alterations and substitutions thereof.

2.4 "Department" or "DOH" means the New York State Department of Health or any component part thereof, including without limitation the Public Health and Health Planning Council or any successor agency with jurisdiction over the regulation and licensing of skilled nursing facilities in the State of New York.

2.5 "Expiration Date" shall mean the last day of the one hundred twentieth (120) month after the Commencement Date.

2.6 "Facility" means the 200 bed nursing home located on the Demised Premises.

2.7 "Impositions" means all taxes (except as provided in Section 5.4), assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature, whatsoever, which at any time the term of this Lease may have been or may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Demised Premises or any part thereof or any appurtenance thereto.

2.8 "Insurance Premiums" means the premiums for fire and other hazard insurance, business interruption insurance and such other insurance as required under Article 8 of this Lease.

2.9 "Landlord" means only the fee owner of the Demised Premises, so that in the event of a sale of the Demised Premises, if the purchaser shall assume the covenants and obligations of Landlord hereunder, Landlord shall be relieved of all covenants and obligations hereunder and Tenant shall look solely to such new owner of the Demised Premises for satisfaction of the covenants and obligations of Landlord hereunder; provided, however, that Landlord shall not be relieved of any obligations that accrued prior to the date such sale was consummated.

2.10 "Lease Year" shall mean each twelve (12) consecutive month period during the Term hereof, except that the last Lease Year shall end upon the Expiration Date or the date on which this Lease sooner terminates. The first Lease Year shall commence on the Commencement Date or, if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall commence on the first day of the next succeeding calendar month. Each subsequent Lease Year shall commence on the day next following the end of the preceding

Lease Year. The Lease Year shall commence after approvals of the New York Public Health Council and the DOH is obtained of the establishment and operation of Sapphire HC LLC

2.11 "Mortgagee" means any current and future holder of a mortgage to which this Lease is subordinate pursuant to Article 21 hereof; "Mortgage" means any existing mortgage and any subsequent mortgage.

2.12 "Personal Property" means the Landlord's furnishings, furniture, fixtures and equipment to be used at or in conjunction with the conduct of the operation of a nursing home at the Demised Premises and all required replacements thereof existing now or hereafter acquired.

2.13 "Real Property Taxes" means all taxes, assessments, vault rentals and other charges special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority during the term of this Lease, and which, if not paid, will become a lien, on the Demised Premises.

2.14 "Sewer Rental and Charges" means, to the extent applicable, the yearly water and sewer charges which may be levied on all or any part of the Demised Premises.

2.15 "Tenant" shall mean Tenant named herein only so long as this Lease is not assigned or transferred, and from and after any assignment or transfer of this Lease the term "Tenant" shall mean only the then assignee or transferee thereof. The foregoing provision shall apply to each and every successive assignment or transfer of this Lease. The foregoing provisions of this subparagraph shall not be construed to permit any assignment or transfer of this Lease other than as provided in Article 19 of this Lease.

2.16 "Tenant's Property" means all the personal property belonging to Tenant but excluding the Personal Property.

2.17 "Water Charges" means any charges levied directly via a meter reading for actual water use.

### Article 3 TERM OF LEASE; RIGHT OF FIRST REFUSAL

3.1 Lease Term. The term of this Lease will commence (the "Commencement Date") on the date of closing of that certain Asset Purchase Agreement dated as of May 16, 2016 between Tenant and St. Joseph's Hospital Nursing Home of Yonkers, New York, Inc. (the "APA") The parties will sign a memorandum of the Commencement Date. This Lease shall continue until the Expiration Date unless sooner terminated as provided herein.

3.2 If Landlord sells the Demised Premises to a new owner other than Tenant during the Lease Term, this Lease shall continue in full force and effect.

Article 4 RENT

4.1 Notwithstanding anything to the contrary contained herein, it is the purpose and intent of Landlord and Tenant that the rent provided hereafter shall be absolutely net to Landlord so that this Lease shall yield to Landlord during the Term hereof the Basic Annual Rent as provided hereinafter. Tenant shall pay all costs, charges and expenses for Impositions relating to the Demised Premises or any part thereof which may arise or become due during the Term, except as specifically provided to the contrary herein. Tenant shall indemnify and save harmless Landlord from and against the same.

4.2 Tenant shall pay to Landlord the rent in lawful money of the United States, in equal monthly installments in advance, on the first day of each month during the Term of this Lease commencing on the Commencement Date as set forth herein, without any set-off, abatement or deduction except as provided in Article 22. If the payment of rent commences on any day of the month other than the first day of the month, then the amount due for the partial month will be prorated and paid on the Commencement Date and payment of the first full monthly rent will be made on the first day of the next succeeding calendar month.

4.3 Basic Annual Rent: The Basic Annual Rent shall be as follows:

\$ 2,800,000 Lease Year one  
\$ 2,830,000 + \$50,000 Lease Years two through twelve  
PER YEAR THEREAFTER.

4.4 Late Charges: Tenant acknowledges that Tenant's failure to promptly pay rent may cause Landlord to incur unanticipated costs which are impractical or extremely difficult to ascertain and may include, without limitation, processing and accounting charges and late charges imposed on Landlord by any Mortgagee. As a result, if Landlord does not receive payment of Rent within five (5) days after the due date, Landlord may impose a late charge equal to five percent(5%) of the overdue amount, which charge Landlord and Tenant agree represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment. Landlord's acceptance of the late charge shall in no event constitute a waiver of Tenant's default with respect to any overdue amount nor prevent Landlord from exercising any other rights or remedies granted under this Lease and/or applicable law. In the event that any payment of Rent or other amount due under this Lease from Tenant to Landlord is not paid within fifteen days (15) days after the due date, Tenant shall pay interest from the date due until the date paid at the rate of twelve percent 12% per annum (the "Default Rate").

4.5 Rental Absolute: Tenant and Landlord acknowledge that the use and occupancy of the Demised Premises for the purposes herein contemplated are subject to the regulations of DOH concerning the operation of like facilities. However, it is understood that the obligation of Tenant to pay the Basic Annual Rent, and any Additional Rent as herein provided will not be conditional upon any right of Tenant to seek or obtain reimbursement of such sums from any occupancy of the Facility or of any third-party or other governmental or non-governmental payor.

Article 5 PAYMENT OF TAXES, ASSESSMENTS AND ESCROW FUND

5.1 Tenant covenants and agrees to pay or cause to be paid, as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all taxes, assessments, water charges, sewer rental and charges, charges for public utilities, excises, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the term of this Lease may have been or may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Demised Premises or any part thereof or any appurtenance relating thereto (the "Imposition" or "Impositions" also defined in Section 2.7).

5.2 To the extent required by any Mortgagee to which this Lease is subject and subordinate, Tenant covenants and agrees to pay to the Mortgagee the taxes, assessments and other Impositions described in this Article, and the premiums for insurance as provided in Article 8, in equal monthly installments in advance on the first day of each and every calendar month during the term hereof, on the basis of reasonable estimate of the amount that will be payable during the ensuing year. Such estimates will be based upon current payments and any notification of future increases or decreases received from the taxing authority. The monthly escrow deposits required by this Article will be deemed a material covenant for all purposes of this Lease. The Mortgagee will only be permitted to draw from the fund to pay the taxes, assessments, other Impositions and insurance premiums for which the fund is established. Despite the foregoing, if the provisions of any Mortgage covering the Demised Premises require that Landlord make real estate tax or insurance premium escrow deposits, then Landlord will be authorized to pay such deposits from the sums required to be deposited by Tenant pursuant to this Section. The interest earnings on such funds paid by the Mortgagee to Landlord, if any, will be paid or credited to Tenant when and as received by Landlord, and Landlord will have no further responsibility toward the payment of interest thereon. Landlord will be authorized to delegate to the Mortgagee the right and power to draw from the escrow funds held by the Mortgagee such sums as may be required from time to time to pay the Impositions and insurance premiums for which the fund will be established. At the end of the Term or upon earlier termination of the Lease as set forth hereunder, Landlord shall reimburse Tenant for any amounts paid in advance pursuant to this provision and attributable to any period of time after the end of the Term or earlier termination of the Lease.

5.3 It is the intention of the parties that the provisions of Section 5.2 and any other Lease requirements with respect to the prepayment of such Impositions and insurance premiums will conform to the customary requirements of any Mortgage covering the Demised Premises, and if any of the requirements set forth in this Lease are in conflict with those of the Mortgage, the Mortgage will control.

5.4 Nothing herein contained will require Tenant to pay income taxes assessed against Landlord, capital levy, gift, excise, franchise, estate, succession, inheritance or transfer taxes of Landlord, provided, however, that if any time during the term of this Lease the present

method of taxation or assessment is changed so that the whole or any part of the taxes, assessments, levies, Impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, are levied, assessed and imposed wholly or partially as (i) a capital levy or otherwise on the rents received therefrom, or as (ii) any tax, corporate franchise tax, assessment, levy, Imposition or charge, or any part thereof which will be measured by or based, in whole or in part, upon the present buildings on or constituting a portion of the Demised Premises or the Personal Property, and will be imposed upon Landlord, then all such taxes, assessments, levies, Impositions or charges or the part thereof so measured or based will be deemed to be included with the term "Impositions" for the purposes hereof, to the extent that such tax would be payable, if the Demised Premises or Personal Property were the only property of Landlord subject to such tax, and Tenant will pay and discharge the same as herein provided with respect to the payment of the Impositions.

5.5 In the event Impositions are paid by Tenant, Tenant, upon request of Landlord, will furnish to Landlord and, if requested by Landlord, to any Mortgagee, within five (5) days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence satisfactory to Landlord or such Mortgagee, evidencing the payment thereof.

5.6 Tenant will have the right to contest the amount, applicability or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition, unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which case, Tenant may postpone or defer payment of such Imposition if:

(a) neither the Demised Premises nor any part thereof would by reason of such postponement or deferment be in danger of being forfeited or lost, or

(b) Tenant has deposited with Landlord, to be held in trust by Landlord in an interest bearing savings account for the benefit of Tenant at a federally insured institution designated by Landlord and acceptable to Tenant, the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that might be assessed against or become a charge on the Demised Premises or any part thereof in such proceedings. If the amount thus deposited with Landlord is reasonably deemed insufficient by Landlord during the prosecution of the proceedings, Tenant will deposit additional amounts with Landlord, as herein provided, so as to fully protect Landlord and the Demised Premises from any lien arising from such disputed Imposition.

(c) Any adjustments in tax rates that are made after the end of the Lease Term or earlier termination but relate to periods prior to the end of the Lease Term or earlier termination whether arising from a tax certiorari proceeding or otherwise shall be paid to Tenant within fifteen (15) days after receipt by Landlord of any applicable refund relating thereto.

5.7 Upon the termination of any such proceedings, Tenant will pay the amount of such Imposition, or part thereof as finally determined in such proceedings, the payment of which

may have been deferred during the prosecution of the proceedings, together with any costs, fees, interest, penalties or other liability in connection therewith and upon such payment, Landlord will, provided Tenant is not in default hereunder for which Landlord has served a notice, return with earnings thereon, any amount deposited with Landlord with respect to such Imposition, or at Tenant's request, payment will be made directly by Landlord from the deposited amount to the extent that such amount, together with accumulated interest, is sufficient therefor, and the balance due, if any, will be paid by Tenant.

5.8 Landlord will not be required to join in any proceedings referred to in Section 5.6 unless the provisions of any law, rule or regulation at the time in effect requires that such proceedings be brought by and/or in the name of Landlord or any owner of the Demised Premises, in which event Landlord will join in such proceedings or permit the same to be brought in its name. Landlord will not ultimately be subjected to any liability for the payment of any costs or expenses in connection with any proceedings, and Tenant will indemnify Landlord from any such costs and expenses. Tenant will be entitled to a refund of any Imposition and penalties or interest thereon received by Landlord within fifteen (15) days after receipt thereof by Landlord which has been previously paid by Tenant provided Tenant is not otherwise in default under this Lease for which Landlord has served a notice.

#### Article 6 USE AND OPERATION OF PREMISES

6.1 Tenant covenants and agrees that during the Term of this Lease, Tenant shall use or occupy the Demised Premises solely as a skilled nursing facility as approved by the Department of Health, and any other uses customarily ancillary to the operation of a skilled nursing facility. Tenant will not use or allow the Demised Premises or any part thereof to be used or occupied for any unlawful purpose or in violation of any certificate of occupancy covering the use of the Demised Premises or any part thereof, or in violation of any permit or license connected with the use of the Demised Premises or any part thereof, and will not suffer any act to be done or any condition to exist on the Demised Premises or any part thereof or any article to be brought thereon which creates a structural or environmental hazard (unless safeguarded as required by law), or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

6.2 Tenant will comply with all governmental laws and regulations related to Tenant's use, including but not limited to, those of the United States of America and the State of New York and their agencies and departments with respect to the operation in all respects of the Demised Premises. Tenant shall have the right to contest, appeal and defer compliance with the above provided that such deferral shall not (a) result in a cancellation or revocation of any license or permit for the operation of the Facility or forfeiture of the fee of the Demised Premises, or (b) subject Landlord or Tenant to any criminal liability. Tenant hereby indemnifies Landlord from and against any penalties, fines or other liabilities of any nature whatsoever resulting from such deferral.

6.3 This Article concerning the use and operation of the Demised Premises is of the essence of this Lease.

Article 7 TENANT'S FINANCIAL REPORTING REQUIREMENTS.

7.1 If required by a Mortgagee, after the close of its fiscal years or tax years as applicable, Tenant shall provide annual financial statements audited by a firm (selected by Tenant) of independent certified public accountants experienced in the long term care industry.

7.2 Throughout the term of any Mortgage, Tenant with reasonable promptness, will deliver to Landlord such other information as Mortgagee may reasonably request from time to time.

Article 8 INSURANCE

8.1 Tenant, at its sole cost and expense, will, throughout the entire term of this Lease, keep the buildings erected upon the Demised Premises and the Personal Property insured for the mutual benefit of Landlord and Tenant, for an amount not less than the replacement value, against loss or damage by fire and against loss or damage by other risks now embraced by "Extended Coverage," and such other risks or hazards as are customarily insured against at the time in connection with Personal Property and buildings of similar type in the locality, with due regard to the type of construction, use and occupancy, as Landlord from time to time reasonably may designate, in amounts sufficient to prevent Landlord from becoming a co-insurer under the terms of the applicable policies, but in any event in an amount not less than ninety percent (90%) of the then full insurable value of such buildings and Personal Property. The term "full insurable value" will mean the actual replacement value, or such greater amount as may be required by a Mortgagee.

8.2 Tenant, at its sole cost and expense, for the mutual benefit of Landlord and Tenant, will throughout the entire term of this Lease, maintain:

(a) General public liability insurance against claims for bodily injury, death or property damage, occurring upon, in or about the Demised Premises or the elevators or any escalator thereon and on, in or about the vacant and parking spaces, such insurance to afford immediate protection, at the time of the commencement of the term of this Lease, to the limit of not less than one million dollars (\$1,000,000) with respect to bodily injury or death to any one person, and to the limit of not less than five million dollars (\$5,000,000) with respect to any one accident, and to the limit of not less than five million dollars (\$5,000,000) for property damage or such other limits as may be reasonable and customary from time to time.

(b) Boiler and pressure vessel insurance, including pressure pipes, in such amount or amounts as Landlord may from time to time reasonably require but not less than \$500,000 per occurrence.

(c) During any construction at the Premises, builder's risk insurance in such form and amount as shall be reasonably required by Landlord.



(d) Such other insurance, including without limitation, sprinkler leakage, workers' compensation, disability, and flood, in such form and amount as shall be reasonably required by Landlord.

(e) War risk insurance and/or terrorism insurance upon the Demised Premises as and when such is obtainable and a state of war or national or public emergency exists, and in the reasonable judgment of Landlord, such state of war or national or public emergency threatens, in an amount not less than the full insurable value thereof.

(f) Business interruption insurance for an amount equal to the Annual Basic Rent and all Additional Rent payable by Tenant hereunder for the current Lease year; in the event that the buildings upon the Demised Premises or the Personal Property are destroyed or damaged, Tenant will assign the insurance to Landlord and the amount thereof and all proceeds, when collected by Landlord, will be applied towards payment of such Annual Basic Rent and the Additional Rent hereunder as the same become due and payable by Tenant. In the event of collection of such rent insurance and payment thereof to Landlord, Tenant will be relieved of liability for rent for any period for which rent insurance is paid and any insurance collected in excess of Tenant's rent obligations shall be paid by Landlord to Tenant within fifteen (15) days following Landlord's receipt thereof.

(g) During the whole period of making each and every construction, alteration and improvement, contingent or protective liability insurance covering any claim not covered by or under the terms and provisions of the general public liability insurance policy and covering Landlord and Tenant.

8.3 All insurance provided for in this Article will be effected under valid and enforceable policies of insurers of recognized responsibility, in such forms and, in such case not expressly provided herein, in amounts, as may from time to time, be reasonably satisfactory to Landlord. Simultaneously with the commencement of the term of this Lease and thereafter not less than thirty (30) days prior to the expiration dates of the expiring policies, originals of the policies (or, in the case of general public liability insurance, certificates of the insurers reasonably satisfactory to Landlord) bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payment, will be delivered by Tenant to Landlord.

8.4 All policies of insurance required under this Article will be carried in favor of Tenant, naming Landlord as an additional insured, and, to the extent that the holder of any Mortgage requires such insurance coverage, such policies will also name the Mortgagee, as its interests may appear.

8.5 Each such policy or certificates issued by the insurer will, to the extent obtainable, provide that: (i) any loss will be payable to Landlord and, if required by the holder of any Mortgage, such Mortgagee, notwithstanding any act or negligence of Landlord or Tenant which might otherwise result in forfeiture of insurance, and (ii) each such policy will not be

canceled without at least thirty (30) days prior written notice to Landlord and to any Mortgagee to whom loss thereunder may be payable.

#### Article 9 LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

9.1 If Tenant at any time fails to pay an Imposition at the time and in the manner provided above, or to secure, pay for, maintain or deliver any of the insurance policies provided for herein, or fails to make any other payment or perform any other act on its part to be made or performed, then Landlord, after fifteen (15) days written notice to Tenant (and, without notice in case of an emergency), and without waiving or releasing Tenant from any obligation contained in this Lease, may (but will be under no obligation to):

- (a) pay any Imposition payable by Tenant hereunder, or
- (b) secure, pay for and maintain any of the insurance policies provided for herein, and
- (c) make any other payment or perform any other act on Tenant's part to be made or performed as provided in this Lease, upon Tenant's failure to perform after demand by Landlord, and may enter upon the Demised Premises for any such purpose, and take all such action thereon, as may be necessary.

9.2 All sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the rate of twelve (12%) percent per annum, from the respective dates of Landlord's making of each such payment or incurring of such costs and expenses, will constitute Additional Rent payable by Tenant under this Lease and will be paid by Tenant to Landlord within thirty days after written demand. Landlord will not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord will also be entitled to recover as damages for such breach the uninsured amount of any loss, to the extent of any deficiency in the insurance required by the provisions of this Lease, reasonable damages, costs and expenses of suit suffered or incurred by reason of damage to, or destruction of any building on the Demised Premises occurring during any period when Tenant has failed or neglected to provide insurance as provided herein. Upon the expiration of this Lease, the unearned premiums upon any such insurance policies lodged with Landlord by Tenant will be apportioned if Tenant is not then in default in the performance of any of Tenant's covenants, agreements and undertakings in this Lease.

## Article 10 REPAIRS AND MAINTENANCE

10.1 Throughout the term of this Lease, Tenant, at its sole cost and expense, will take good care of the Demised Premises, and all fixtures used in connection with the maintenance or operation thereof, all alleyways and passageways, parking areas and the sidewalks, curb cuts, curbs and vaults adjoining the Demised Premises and will keep the same in good order and condition, and make all necessary repairs thereto, interior and exterior, nonstructural, ordinary, and foreseen and unforeseen, except that any structural or major repairs shall be the obligation of the Landlord. When used in this Article, the term "repairs" will include all reasonably necessary replacements and renewals. All repairs made by Tenant will be equal in quality and class to the original construction, and shall meet the requirements of the government agencies having jurisdiction. Tenant will do or cause others to do all necessary shoring of foundations and walls of the buildings and every other act or thing for the safety and preservation thereof which may be necessary by reason of any excavation or other building operation upon any adjoining property or street, alley or passageway.

10.2 Landlord will not be required to furnish any service or facilities or to make any repairs or alterations in or to the Demised Premises. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Demised Premises as limited by the above.

10.3 The necessity for and adequacy of repairs to any building on the Demised Premises pursuant to this Article will be measured by the standard which is appropriate for buildings of similar construction, use and class in Landlord's reasonable judgment.

10.4 Tenant shall repair and replace the Personal Property as necessary.

10.5 At the end of the Lease, Tenant shall leave the Facility and the Personal Property including any replacements thereof, in substantially the same condition as upon commencement of the Lease, reasonable wear and tear and the provisions hereof with respect to responsibility for repairs excepted.

## Article 11 CHANGES AND ALTERATIONS BY TENANT

11.1 Unless required by law or as otherwise set forth in this Lease, Tenant shall make no additions or improvements costing \$250,000 or more, in or to the Premises of any nature without Landlord's prior written consent, which shall not be unreasonably withheld or delayed. Unless required by regulatory authorities, Tenant may not alter the bed capacity of the Facility without Landlord's prior written consent, which may be withheld in Landlord's sole discretion. In the event of a bed reduction required by regulatory authorities, the parties shall negotiate a reduction in the Basic Annual Rent which reduction shall be calculated based on the pro-rata bed reduction from the certified bed capacity of the Facility.

11.2 Notwithstanding Section 11.1 of this Lease, Tenant shall have the right to make non-structural additions or improvements costing less than \$250,000 without Landlord's consent. If any addition or improvement is contemplated which (a) has an estimated cost of \$250,000 or more, or (b) involves structural alterations, Landlord's consent shall be required, not to be unreasonably withheld or delayed. In all cases requiring Landlord's consent, the provisions of Sections 11.3 through 11.7 shall apply.

11.3 Prior to the commencement of any work by Tenant requiring Landlord's consent ("Tenant's Work"), or any other work that is subject to Landlord's consent, Tenant shall submit to Landlord for its approval two sets of complete plans, if such plans are required by any government authority, drawings and specifications, suitable for filing ("Tenant's Plans"), including, without limitation, all mechanical, electrical, air conditioning and other utility systems and facilities, for Tenant's Work, or other work, prepared by an architect and/or engineer duly licensed in the State of New York. Within thirty days following Landlord's receipt of Tenant's Plans, Landlord shall review or cause the same to be reviewed and shall thereupon return to Tenant one set of Tenant's Plans with Landlord's approval (which shall not be unreasonably withheld, conditional or delayed; provided, if same shall be disapproved in any respect Landlord shall state the reasons for such disapproval). If Landlord does not act within forty-five days, Landlord shall be deemed to have approved Tenant's Plans. If Landlord does not approve Tenant's Plans and Tenant wishes to proceed, Tenant shall, as soon as practicable, cause its architect or engineer to make such changes to Tenant's Plans as Landlord reasonably requires and shall thereupon resubmit the same to Landlord for its approval. To the extent required pursuant to any Mortgage affecting the Premises, Tenant's Plans shall also be subject to the prior approval of the holder of such mortgage. Following the approval of Tenant's Plans, the same shall be final and shall not be changed by Tenant without the prior approval of Landlord (and such mortgagee, if required), except for *de minimis* changes or as may be required by law. Tenant shall give prior notice to Landlord of any changes required by law and shall furnish Landlord (and such mortgagee, if required) with copies of all such required changes in Tenant's Plans. Landlord's approval of Tenant's Plans or of any revisions shall not constitute an opinion or agreement by Landlord that the same are structurally sufficient or that Tenant's Plans are in compliance with law, nor shall such approval impose any present or future liability on Landlord or waive any of Landlord's rights under this Lease. Landlord's approval of Tenant's Plans shall be conditioned upon Tenant employing licensed persons and firms (where required by law) and

labor for the performance of Tenant's Work, or any other work. In any event, all contractors Tenant proposes to employ shall be bonded and shall be subject to Landlord's prior approval, which will not be unreasonably withheld or delayed. Such approval shall be requested by Tenant prior to the commencement of any Tenant's Work, or any other work. Before undertaking any work which would require Department of Health approval, Tenant shall obtain the required approval and provide a copy thereof to Landlord.

11.4 Promptly following Landlord's approval of Tenant's Plans, Tenant shall secure or cause to be secured, at Tenant's expense, all necessary approvals of Tenant's Plans from all governmental authorities having jurisdiction and all permits and licenses necessary to perform Tenant's Work, or any other work. Prior to the commencement of any Tenant's Work, or any other work, Tenant shall furnish Landlord with copies of Tenant's Plans as approved by such governmental authorities, if required, and, promptly upon Landlord's request, copies of such permits and licenses; provided, however, that the filing of any applications with any governmental authorities for such approval or for any permits or licenses required to perform Tenant's Work or any other work shall be done by a person or entity approved by Landlord, which approval shall not be unreasonably withheld, delayed or conditioned. Landlord confirms that the Demised Premises are fully sprinklered in accordance with Federal requirements.

11.5 Upon Tenant having secured the approvals from Landlord and from governmental authorities as required under this section, Tenant shall upon Landlord's request, furnish Landlord with a copy of each executed contract. Tenant shall also maintain during the term a full maintenance contract covering the heating and air conditioning system.

11.6 Following compliance by Tenant with its obligations under the foregoing provisions of this section, Tenant shall promptly commence or cause to be commenced Tenant's Work or other work and shall complete or cause the same to be completed with reasonable diligence, in a first-class, workmanlike manner in accordance with the approved Tenant's Plans, all licenses and permits, all liens, encumbrances and other matters affecting title to the Premises, this Lease, all applicable laws, ordinances and regulations of all governmental and insurance authorities and all applicable requirements of the Board of Fire Underwriters.

11.7 Promptly following the completion of Tenant's Work, or any other work, Tenant shall obtain and, promptly upon Landlord's request, submit to Landlord copies of all final governmental and fire underwriters' approvals or certificates evidencing the completion thereof in compliance with all governmental and fire underwriters' requirements. Effective on the expiration or sooner termination of this Lease, all warranties and guaranties, if any, in connection with Tenant's Work shall be assigned to Landlord.

Article 12 COMPLIANCE WITH LAWS AND ORDINANCES

12.1 Throughout the term of this Lease and subject to the provisions of Section 10.2 Tenant, at its sole cost and expense, will promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of federal, state and municipal governments, departments, commission boards and officers and all orders, rules and regulations of the National Board of Fire Underwriters, or any other body or bodies exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Personal Property and to the Demised Premises and including, but not limited to, the sidewalks, alleyways, passageways, vacant land, parking areas, curb cuts, curbs and vaults adjoining the Demised Premises.

12.2 Tenant will likewise observe and comply with the requirements of all policies of public liability and fire insurance and all other policies of insurance at any time in force with respect to the Demised Premises.

## Article 13 DISCHARGE OF LIENS

13.1 Tenant will not create or permit to remain, and will discharge, any lien, encumbrance or charge levied on account of any Imposition or any mechanic's, laborer's or materialman's lien or any Mortgage, conditional sale, title retention agreement or chattel Mortgage, or otherwise other than a lien, encumbrance, charge, Mortgage, conditional sales, title retention or chattel Mortgage caused or created by Landlord or any prior tenant or owner, which might be or become a lien, encumbrance or charge upon the Demised Premises, or any part thereof, having any priority or preference over or ranking on a parity with the estate, rights and interest of Landlord in the Demised Premises or any part thereof or the income therefrom, and Tenant will not suffer any other matter or thing whereby the estate, rights and intent of Landlord in the Demised Premises might be impaired; provided that any Imposition may, after the same becomes a lien on the Demised Premises, be paid or contested in accordance with Article 5 hereof and any mechanic's, laborer's or materialman's lien may be discharged in accordance with Section 13.2 hereof.

13.2 If any mechanic's, laborer's or materialman's lien is at any time filed against the Demised Premises or any part thereof, except those arising from Landlord's acts or upon the acts of any prior tenant or owner, Tenant, within thirty (30) days after notice of the filing thereof, will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant fails to cause such lien to be discharged within the time period allowed, then, in addition to any other right or remedy, Landlord may, but is not obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord will be entitled, if Landlord so elects, without prejudice to any other remedies provided to Landlord under this Lease, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all customary and prevailing costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of twelve percent (12%) per annum from the respective date of Landlord's making of the payment or incurring of the cost and expenses will constitute Additional Rent payable by Tenant under this Lease and will be paid by Tenant to Landlord within fifteen (15) days after written demand.

13.3 Nothing contained in this Lease will be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any material for any specific improvement, alteration to or repair of the Demised Premises or any part thereof, or the furnishing of any Personal Property. Notice is hereby given that Landlord will not be responsible for any labor or materials or Personal Property furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor, materials or Personal Property will attach to or affect the reversionary or other estate or interest of Landlord in and to the Demised Premises or the Personal Property.

Article 14 NO WASTE

Tenant will not do or suffer any waste or damage, disfigurement or injury to any portion of the Demised Premises or to the Personal Property reasonable wear and tear excepted.

Article 15 ENTRY ON PROPERTY BY LANDLORD

15.1 Tenant will permit Landlord and its authorized representatives to enter the Demised Premises after five (5) days' notice during normal business hours for the purpose of:

- (a) inspecting the Demised Premises; and
- (b) making any necessary repairs thereto and performing any work therein that may be necessary by reason of Tenant's failure to make any such repairs or perform any such work or to commence the same after written notice from Landlord. Nothing herein will imply any duty on the part of Landlord to do any such work after Tenant's default in failing to perform the same.

15.2 Landlord will have the right to enter the Demised Premises at all reasonable times and after five (5) days' notice during normal business hours for the purpose of showing the same to prospective purchasers and to Mortgagees, insurers and appraisers of the Demised Premises.

Article 16 INDEMNIFICATION OF LANDLORD

16.1 Tenant will indemnify Landlord against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (the "Claims") including reasonable architects' and attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord, or against Landlord's fee in the Demised Premises or the Personal Property by reason of any of the following occurring during the term of this Lease:

- (a) Any work or thing done in, on or about the Demised Premises or any part thereof by Tenant, its agents, contractors, servants, employees, licensees or invitees;
- (b) Any use, non-use, possession, occupation, condition, operation, maintenance or management by Tenant, its agents, contractors, servants, employees, licensees or invitees of the Demised Premises or any part thereof, or any street, alley, parking area, sidewalk, curb, vault, passageway or space adjacent thereto;
- (c) Any negligence, including without limitation professional liability, on the part of Tenant, or any of its agents, contractors, servants, employees, licensees or invitees;
- (d) Any accident, injury or damage to any person or property occurring in, on or about the Demised Premises or any part thereof, or any street, alley, parking area, sidewalk, curb, vault, passageway or space adjacent thereto; or



(e) Any other failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.

16.2 In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant upon written notice from Landlord will, at Tenant's expense, resist or defend such action or proceeding. If the entire complaint or claim is covered under a policy(ies) of insurance provided by Tenant as otherwise required hereunder, then Tenant's insurer(s) will have the right to designate counsel to undertake Landlord's defense. If any portion of a complaint or claim is not covered by insurance, then Tenant will nonetheless be responsible for all costs and expenses of defense incurred by Landlord with respect to such claims and Tenant will have the right to designate counsel for such defense provided that such counsel has the prior written approval of Landlord, such approval not to be unreasonably withheld, delayed or conditioned.

16.3 The provisions of this Article 16 will not apply to negligent or willful acts or omissions of Landlord and Landlord's agents or employees.

16.4 In case of damage or destruction of all or part of the Demised Premises or of any of the Personal Property during the Term of this Lease, by fire, explosion, windstorm or other casualty, Tenant shall promptly proceed with insurance proceeds, at its sole cost and expense (less insurance proceeds applicable thereto in accordance with the provisions of this Article) to repair, restore, replace or rebuild the Demised Premises as nearly as possible to the condition immediately prior to such damage or destruction, and (if the estimated cost of repair is \$15,000,000 or more) in accordance with plans and specifications prepared by an architect or professional engineer selected by Tenant and approved by Landlord, and by Mortgagee if applicable, and will prosecute such repairs, restoration, replacement or rebuilding with due diligence until completion; provided however, that if such destruction involves loss of use of more than 50% of the licensed bed capacity of the Facility, Tenant shall have the option, to terminate the Lease after (a) giving Landlord thirty (30) days' notice to arrange for a receiver, and (b) after tendering all insurance proceeds to Landlord.

16.5 If Landlord fails to receive insurance proceeds sufficient to restore the Demised Premises as the result of the Mortgagee's refusal to release such proceeds, Landlord shall apply to one or more institutional lenders for a loan in an amount not less than the amount of the insurance proceeds not released by the Mortgagee, to be used for necessary restorations, and make such funds available for such restorations (the "Restoration Loan"). If Landlord applies for a Restoration Loan, Tenant shall pay to Landlord on demand all amounts reimbursed to Tenant, if any, by the Medicaid program for application fees, commitment fees, points, legal fees, appraisal fees, title premiums and other charges payable by Landlord to or for an institutional lender in connection with the loan application.

16.6 Except as otherwise specifically provided to the contrary herein, no destruction of or damage to the building or buildings erected upon the Demised Premises or any part thereof, by fire or any other casualty whatsoever, whether such destruction or damage be partial or total, shall permit Tenant to surrender or terminate this Lease or shall relieve Tenant from its liability

to pay the Rent and other charges payable under this Lease or from any of its other obligations under this Lease, and Tenant waives any rights now or hereafter conferred upon it by statute or otherwise to quit or surrender this Lease or the Demised Premises or any part thereof or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage, except to the extent to which Landlord shall have received and retained a net sum as proceeds of any rent insurance. Where required, all construction shall be first approved by the Department.

16.7 If Tenant erects any new building, in accordance with the provisions of this Article 17, all of the provisions of this Lease with respect to the obligations of Tenant in connection with the existing buildings on the Demised Premises shall apply with equal force and effect to such new building and new Personal Property.

16.8 Upon certification by Landlord's counsel that a final order of dispossession from the Demised Premises has been made against Tenant, and the time to appeal such order has expired without an appeal having been taken or that no appeal may be taken therefrom or that this Lease has been otherwise finally terminated, all such insurance proceeds, or the balance thereof then in the possession of the Mortgagee, shall be paid over to Landlord, but in such case the liability of Tenant to perform its obligations under this Article shall survive and continue as provided herein.

16.9 If at any time during the Term of this Lease any of the buildings then on the Demised Premises are destroyed or damaged to an extent greater than fifty (50%) percent of the then replacement value of all the buildings then on the Demised Premises, Tenant shall have the option, within thirty (30) days from the date of such destruction or damage, to terminate this Lease by notice in writing, addressed to Landlord, which termination shall be effective as of the final date covered by the business interruption insurance to be obtained and maintained by Tenant pursuant to Article 8 and Tenant shall assign to Landlord all of its interest in the Proceeds payable by reason of such fire or casualty and upon executing any such assignment, Tenant shall not be required to repair or replace any of the damaged property.

## Article 17 EMINENT DOMAIN

17.1 If, during the Term of this Lease, so much of the Demised Premises shall be acquired or condemned by eminent domain or condemnation for any public or quasi-public use or purpose as shall result in there being less than fifty (50%) percent of the licensed skilled nursing facility beds available for use by Tenant in operating a skilled nursing facility or nursing home, then either Landlord or Tenant shall have the right, upon written notice to the other given after the date of title vesting in such proceeding, to terminate this Lease, and Tenant shall have no claim against Landlord for the value of any unexpired term of the Lease. All proceeds from the condemnation authority shall belong to Landlord.

17.2 If, at any time during the Term of this Lease, so much of the Demised Premises shall be taken as shall result in there being fifty (50%) percent or more of the licensed beds available for use by Tenant in operating a nursing home (or if less than fifty (50%) percent of such beds remain available and neither Landlord nor Tenant elect to terminate this Lease pursuant to Section 18.1, above) then this Lease shall continue, and the Annual Basic Rent payable under this Lease shall be reduced in proportion to the percentage of the original licensed beds rendered unusable for so long as such beds remain unusable. Tenant shall be entitled to move the unusable beds to a different location or otherwise use or dispose of such beds. Tenant, however, shall continue to pay the full amount of any and all other Additional Rents provided herein. All proceeds from the condemning authority shall belong to Landlord and Landlord shall pay for any costs necessary to render the Demised Premises usable as a nursing home with the remaining number of beds.

17.3 Notwithstanding any other provisions of this Lease, Tenant shall not be entitled to share in any award or awards made in condemnation proceedings except to the extent that the award is intended to compensate for Tenant's Property or the loss of Tenant's business. Notwithstanding the foregoing or any other provisions of this Lease, Tenant shall have a right to maintain an action or proceeding to recover for any loss to Tenant occasioned by the condemnation provided the Landlord's award is in no way reduced thereby.

17.4 If, as a result of any taking, repairs or renovations are required to be made to the premises, Landlord shall use the award to make such repairs.

## Article 18 ASSIGNMENT

Tenant may not assign this Lease or change any of the ownership of Tenant entity unless approved in advance by Landlord, which approval shall not be unreasonably withheld or delayed; provided that approval may be withheld on the basis of a proposed assignee's credit history, prior operating deficiencies or prior lease defaults. Assignment of interest to family members of Tenant shall be permitted without Landlord's consent. Any permitted assignee will be required to execute an Assignment and Assumption Agreement in form satisfactory to Landlord, which shall bind the assignee to all of the terms and provisions of this Lease as if the assignee were the original signatory. The assignor shall not be released from its payment and performance and obligations under this Lease, but shall be jointly and severally liable for such payment and performance unless Landlord agrees in writing to release such parties from their respective obligations.

## Article 19 EVENTS OF DEFAULT

19.1 Upon the occurrence of one or more of the following events (herein called "Events of Default"):

(a) Default in the payment of a monthly installment of rent, Additional Rent, or late fees or penalties, or interest hereunder for twenty (20) days after Tenant's receipt of notice of default (provided if Tenant fails to make such payments within thirty (30) days after they become due more than twice in any calendar year, such failure shall be an Event of Default without further notice from Landlord); or

(b) Default in the payment of any Imposition of every kind if such default continues for a period of twenty (20) days after Tenant's receipt of notice that the same has become due and payable; or

(c) Default in reimbursing Landlord for any advance or payment made by Landlord pursuant to Article 9 hereof if such default continues for a period of twenty (20) days after Tenants receipt of written notice or demand; or

(d) The commencement, without Landlord's prior written consent, of the demolition or removal of any Improvement or the making of any structural change, alteration or addition without complying with the provisions of Article 11 of this Lease; or the filing of a mechanic's lien or other statutory lien against the Demised Premises which is not vacated, bonded or discharged of record by Tenant as required by this Lease within thirty (30) days of the filing; or

(e) The violation of any of the conditions, provisions or requirements of any policy of insurance applicable to the Demised Premises, which violation is not corrected prior to the cancellation of such policy or by a replacement policy; or

(f) Tenant files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking reorganization, arrangements, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, or seeks or consents to or acquiesces to the appointment of any trustee, receiver (including, but not limited to a receiver pursuant to Section 2810(1) or 2810(2) of the Public Health Law) or liquidator of Tenant or of all or any substantial part of its properties or of the Demised Premises, and such appointment is not vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment has not been vacated; or

(g) Tenant fails to comply with the covenants and agreements set forth in Article 6 of this Lease, including Tenant's failure to comply with the laws and regulations of the United States of America and the State of New York and their agencies and departments with respect to the operation in all respects of the Demised Premises as a skilled nursing facility (including, without limitation, non-compliance with the conditions of participation in the Medicare or Medicaid program for or failure to maintain the Facility Operating Certificate or Medicare or Medicaid provider agreements), for a period of thirty (30) days after written notice from Landlord (or such additional reasonable period as necessary if compliance cannot be achieved within such thirty (30) day period after diligent efforts on the part of Tenant and Tenant commences such action to comply with such regulations and laws within such thirty (30) day period and proceeds continuously and diligently with such actions required for compliance with such regulations); provided that this provision shall not apply to routine correctable "quality of care" violations disclosed upon survey under Article 28 of the Public Health Law or its successor by the Department or its successor agency; or

(h) Tenant fails to prevent any license or permit for the operation of the Facility from being revoked on the basis of the conviction of any of the members of Tenant if Tenant is a limited liability company, or shareholders of Tenant if Tenant is a corporation, of a felony in connection with any activity or program subject to the regulation, supervision or administration of the Department or of the U.S. Department of Health and Human Services Center for Medicare and Medicaid Services ("CMS"); or

(i) Default in the observance or performance of one or more of the other covenants, agreements and conditions on the part of Tenant to be observed or performed under this Lease which are not referred to in (a) through (h) above, if such default continues for a period of thirty (30) days after written notice specifying such default or provided, however, that if such default is incapable of being cured within said thirty (30) day period, during such longer time as may be reasonably necessary provided that Tenant commences to cure the default within the thirty (30) day period and diligently continues to cure the default to completion.

Then, Landlord at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after

the giving of such notice, and upon the date specified in such notice, subject to the approval by the Department for a receiver or a new operator for the Facility, this Lease and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate.

19.2 In the event of cancellation or termination of this Lease after an Event of Default either by operation of law, by issuance of a dispossessory warrant, by service of notice of cancellation or termination as herein provided, or otherwise, Landlord may re-enter and repossess the Demised Premises, using such force for that purpose as may be necessary without being liable to prosecution therefor. If Landlord shall so re-enter, Landlord may repair and alter the Demised Premises in such manner as Landlord may deem necessary or advisable and/or let or relet the Demised Premises or any parts thereof for the whole or any part of the remainder of the Term herein originally demised or for a longer period, in Landlord's name or as the agent of Tenant, and out of any rent collected or received as a result of such letting or reletting, Landlord shall first pay to itself the cost and expense of retaking, repossessing, repairing and/or altering the Demised Premises, and the cost and expense of removing all persons and property therefrom; second pay to itself the cost and expense sustained in securing any new tenants and, if Landlord shall maintain and operate the Demised Premises, the cost and expense of operating and maintaining the Demised Premises; and, third, pay to itself any balance remaining on account of the liability of Tenant to Landlord for all rent and Additional Rent reserved herein and unpaid by Tenant for the remainder of the Term herein originally demised. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability hereunder.

19.3 Nothing contained in this Article 20 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding and in effect at the time when such damages are to be provided, whether or not such amount be greater, equal to or less than the amount of the damages referred to herein.

19.4 Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to re-enter provided in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant also waives any and all right of redemption or re-entry or repossession or to restore the operation of this Lease in case Tenant is dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter," "re-enter," "entry" or "re-entry" as used in this Lease are not restricted to their technical legal meaning.

19.5 No failure by Landlord or Tenant to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be

performed or complied with by Landlord or Tenant and no breach thereof shall be waived, altered or modified except by a written instrument executed by Landlord or Tenant. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

19.6 In the event of any Event of Default by Tenant under this Lease, Landlord shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided in this Lease.

19.7 Each right and remedy of Landlord provided in this Lease shall be cumulative and shall be in addition to every other right or remedy provided in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

19.8 No receipt of moneys by Landlord from Tenant, after the cancellation or termination hereof in any lawful manner, shall (a) reinstate, continue or extend the Term of this Lease or (b) affect any notice theretofore given to Tenant or (c) operate as a waiver of the right of Landlord to enforce the payment of rent and Additional Rent then due or thereafter falling due or (d) operate as a waiver of the right of Landlord to recover possession of the Demised Premises by proper suit, action, proceeding or other remedy, it being agreed that, after the service of notice to cancel or terminate as herein provided and the expiration of the time therein specified, after the commencement of any suit, action, proceeding or other remedy, or after a final order or judgment for possession of the Demised Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, suit, action, proceeding, order or judgment; and any and all such moneys so collected shall be deemed to be payments on account of the use and occupation of the Demised Premises, or at the election of Landlord, on account of Tenant's liability hereunder.

19.9 If a court of competent jurisdiction determines that notwithstanding the provisions of Article 20 hereof the Term of this Lease may not be terminated and that a trustee (or Tenant) in a proceeding or case under Title 11 of the United States Bankruptcy Code (the "Code") has the right to assign this Lease under the conditions specified in Section 365(f) of the Code and if there is an assignment by such trustee or by Tenant pursuant to Section 365(f) of the Code (or otherwise as authorized by a court order in such a proceeding or case), then subject to the approval of the Bankruptcy Court all proceeds and other consideration received by the trustee (or Tenant) from, in connection with, or attributable to the assignment of this Lease, shall constitute the property of, and be turned over upon receipt to, Landlord. It is agreed that subject to the Bankruptcy Court approval none of the proceeds of any such assignment shall become the property of the debtor's estate created by Section 541 of the Code.

19.10 Landlord acknowledges that its rights of re-entry into the Demised Premises set forth in this Lease do not confer on Landlord the authority to operate a residential health care facility defined in Article 28 of the Public Health Law on the Demised Premises and agrees that it will give the New York State Department of Health, Corning Tower Building, Empire State Plaza, Albany, New York 12237, notification by certified mail of Landlord's intent to re-enter the Demised Premises or to initiate dispossess proceedings or that the Lease is due to expire, at least fifteen (15) days prior to the date on which Landlord intends to exercise a right of re-entry or to initiate such proceedings or at least fifteen (15) days before expiration of the Lease.

19.11 Upon receipt of notice from Landlord of its intent to exercise its right of re-entry or upon the service of process in dispossess proceedings and fifteen (15) days prior to the expiration of the Lease, Tenant shall immediately notify by certified mail the New York State Department of Health, Corning Tower Building, Empire State Plaza, Albany, New York 12237, of the receipt of such notice or service of such process or that the Lease is about to expire. Tenant shall cooperate with Landlord as necessary to obtain approval for a receiver or new operator for the Facility. In the event of any default as set forth in this Article, Tenant is expressly prohibited from moving the CON for the beds to a different location.

#### Article 20 SUBORDINATION

20.1 This Lease is subject and subordinate to the lien of any existing Mortgage and to any future Mortgages which may affect the Demised Premises, and to all renewals, modifications, consolidations and extensions, or replacements thereof. Landlord will extend its best efforts to have any such Mortgage(s) contain:

(a) a covenant on the part of the holder thereof substantially to the effect that Tenant will be permitted to quietly enjoy the Demised Premises (a "Non-Disturbance Clause") and be entitled to Tenant's rights, privileges and options hereunder so long as Tenant is not in default under the provisions of this Lease; and

(b) a provision (A) that the holder thereof will give Tenant at least fifteen (15) days written notice prior to declaring any Mortgage in default, during which time Tenant may cure such default by making any payments or performing any act required to cure such default, and (B) that the holders thereof will not at any time join Tenant as a party defendant to any action which may be brought to foreclose the Mortgage or disturb Tenant's possession of the Demised Premises so long as Tenant is not in default under the Lease.

20.2 Despite the foregoing provisions requiring Landlord's best efforts, the procurement of the terms described in Sections 21.1 (a) and (b) above will not be a condition precedent to the placement of any new Mortgage upon the Demised Premises nor to any renewal, modification, consolidation or extension thereof. However, if Landlord does not obtain and deliver to Tenant a Non-Disturbance Clause, Tenant shall be permitted, upon notice to Landlord,



to pay the debt service or other obligations directly to the Mortgagee; provided that Tenant shall be liable for any penalties that result from late payments of such debt service paid by Tenant.

20.3 The provisions of this entire Article 21 will be self-operative and no further instrument of subordination need be required by any Mortgagee. In confirmation of such subordination, Tenant will promptly, upon Landlord's demand, and without expense to Landlord, execute, acknowledge and deliver any estoppel certificate or other written instrument to the foregoing effect. Tenant hereby constitutes and appoints Landlord Tenant's attorney-in-fact to execute any such certificate(s) for and on behalf of Tenant in the event that Tenant fails to deliver an executed certificate or other instrument so reasonably demanded by Landlord within fifteen (15) days of receipt of such demand.

#### Article 21 TENANT'S RIGHT TO CURE DEFAULT

If there is a default by Landlord in the payment of either the principal or interest or other amounts of any Mortgage or Mortgages now or hereafter affecting the Demised Premises, Tenant will have the right and privilege to pay the amount so in default, and the cost and expense, if any, of any foreclosure action or other suit or proceeding instituted by the Mortgagee upon such default, and upon making such payment Tenant will, in addition to other remedies, be entitled to deduct the amount so paid, with interest thereon at the rate of nine percent (9%) per annum, from any installment or installments of then due, or thereafter falling due, until the amount of such payment, with interest, is repaid to Tenant.

#### Article 22 NOTICES

22.1 All notices, demands and requests which may or are required to be given hereunder, will be in writing, may be sent by a party's attorney, and will be sent by nationally-recognized overnight courier or by United States certified mail, return receipt requested, postage prepaid addressed as follows:

(a) All notices, demands and requests by Landlord to Tenant will be deemed to have been properly given if sent addressed to Tenant at the Demised Premises, or to such other address in the State of New York as Tenant designates by written notice to Landlord, with a copy to:

Neiman & Mairanz PC  
39 Broadway – 25<sup>th</sup> Floor  
New York, NY 10006-3003  
Attn: Marvin Neiman

All notices demands and requests by Tenant to Landlord will be deemed to have been properly given if addressed to Landlord at its above listed address, or to such other address as Landlord designates by written notice to Tenant, with a copy to:

---

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(b) Notices will be deemed received the next day if sent by overnight courier and on the fifth (5<sup>th</sup>) business day after mailing.

Article 23 TITLE TO PROPERTY

Landlord represents that it is or will be on the Commencement Date the fee owner of the Demised Premises and the owner of the Personal Property, and that it has title sufficient to deliver to Tenant the Demised Premises as provided herein.

Article 24 QUIET ENJOYMENT

Tenant, upon paying the Basic Annual Rent and all Additional Rent and other charges as provided herein and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, will peaceably and quietly have and enjoy the Demised Premises during the Term of this Lease, subject, however, to the exceptions, reservations and conditions of this Lease. Upon the expiration of the Lease Term and subject to applicable regulatory requirements, Tenant will quit and peacefully surrender the Demised Premises, and the buildings thereon, and the Personal Property to Landlord, without any payment therefor by Landlord. At the time of surrender of possession Tenant will deliver possession of the Demised Premises and the Personal Property together with all other improvements thereafter made in good working order and condition (reasonable wear and tear excepted), and in material compliance with the minimum standards and requirements of governmental agencies having jurisdiction for the continued conduct of the operation of the Facility on the Demised Premises, other than Tenant's property which will remain the property of Tenant.

Article 25 EXCAVATION, SHORING

25.1 If any excavation is made or is contemplated to be made for building or other purposes upon property or streets adjacent to or nearby the Demised Premises, Tenant either:

(a) will afford to the person or persons causing or authorized to cause such excavation the right to enter upon the Demised Premises for the purpose of doing such work as such person or persons consider necessary to preserve any of the walls or structures of any building on the Demised Premises from injury or damage and to support the same by proper foundation; or

(b) will, at Tenant's expense, do or cause to be done such work as may be necessary to preserve any of the walls or structures of any building on the Demised Premises from injury or damages and to support the same by proper foundation.

Article 26 LANDLORD'S RIGHT TO ASSIGN RENTS

Landlord will have the right, without selling its interest in the Demised Premises or assigning its interest in this Lease, to assign from time to time the whole or any portion of the Basic Annual Rent and any Additional Rent at any time payable hereunder to persons, firms, corporations, trusts or other entities designated by Landlord in a written notice to Tenant and in any such case, Tenant will pay the Basic Annual Rent, or the portion thereof so assigned, subject to the terms of this Lease, to Landlord's designee or designees at the address or addresses set forth in any such notice.

Article 27 MEMORANDUM OF LEASE TO BE EXECUTED

Upon demand by either party, Landlord and Tenant agree to execute and deliver a short-form Memorandum of Lease in recordable form so that the same may be recorded by either party.

Article 28 CERTIFICATE OF COMMENCEMENT DATE

Landlord and Tenant will promptly, after all of the conditions for the commencement of the Lease Term have been satisfied, execute and deliver to each other a certificate in recordable form confirming the Commencement Date and Expiration Date of this Lease.

Article 29 LEASE STATUS CERTIFICATE TO BE GIVEN

Each party agrees at any time, and from time to time, upon not less than fifteen (15) days prior written request from the other party, to execute, acknowledge and deliver to the other party a statement in writing, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), the dates to which the Annual Basic Rent has been paid and the amount of the Additional Rent held by Landlord, if any, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective assignee, Mortgagee or purchaser of the fee interest in the premises or of this Lease.

Article 30 ENVIRONMENTAL MATTERS

30.1 For purposes of this Article, the following terms will have the following meaning:

(a) "Environmental Activity" means any storage, presence, existence, release, threatened release, use, generation, abatement, removal, disposal, handling or transportation of any Hazardous Material in, to, on, under, from or about the Demised Premises.

(b) "Environmental Laws" means any Laws which govern Environmental Activities on the Demised Premises, Hazardous Materials thereon, or any other matter pertaining to the physical environment condition of the Demised Premises.

(c) "Environmental Reports" means studies, reports, analyses, information, data or written records in Tenant's possession, or available to Tenant or prepared at the request of Tenant, regarding any Hazardous Materials in, at, on, under or near the Demised Premises, including, without limitation, any analytical results and interpretative conclusions based upon an investigation of the Demised Premises.

(d) "Governmental Agency" means any federal, state or local authority having jurisdiction over the Demised Premises with respect to Environmental Activities conducted, or alleged to be conducted, thereon or Hazardous Materials located, or alleged to be located thereon.

(e) "Hazardous Material" means any substance whose nature and/or quantity or existence, use, manufacture or effect render it subject to federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare.

(f) "Laws" means, collectively, all federal, state and local laws, rules regulations, ordinances and codes now or hereafter applicable to the Demised Premises or the Use of the Demised Premises, including, without limitation, the requirements of all permits, licenses, authorizations, judgments, decrees, agreements and other governmental restrictions and requirements relating to the Demised Premises or the Use of the Demised Premises.

(g) "Demised Premises," in addition to meaning the premises referred to in Article 1 hereof, will include all structures, fixtures, transformers, underground storage tanks, soil, groundwater, surface water and airspace at, in, on or under the Demised Premises and improvements.

(h) "Underground Storage Tank" has the meaning set forth for such term in Subtitle I of the Hazardous and Solid Waste Act Amendments of 1984, as amended from time to time (42 U.S.C. § 6991) and the regulations promulgated pursuant thereto from time to time.

(i) "Use" means use, ownership, development, construction, maintenance, management, operation or occupancy.

30.2 Landlord makes no covenants, representation or warranty as to the suitability of the Demised Premises for any purpose whatsoever or as to the physical condition thereof. Tenant acknowledges that portions of the Demised Premises were, or may have been, used by present or prior owners and/or Tenants for Environmental Activities incidental to the operation of a skilled nursing facility. Landlord has not received any notice of violation or required remediation under any Environmental Law. Tenant acknowledges that it has inspected the Demised Premises, observed its physical characteristics and existing conditions, and has had the opportunity to conduct such investigation and study of the Demised Premises as it deems necessary for its intended use and occupancy under this Lease.

30.3 Tenant will, at Tenant's sole cost and expense, comply with any and all Environmental Laws affecting Tenant's occupancy or use of the Demised Premises or otherwise

arising in connection with the Lease, sublease, surrender or other transfer of the Demised Premises by or to Tenant and will maintain the Demised Premises in compliance with any Environmental Laws, whether such law is enacted prior or subsequent to the Commencement Date of this Lease. Without limiting the foregoing, Tenant's obligations under this Section will include (1) promptly providing Landlord with true, accurate and complete copies of all required or requested permits, variances, approvals, notices, submissions, reports and other information to any from any and all Governmental Agencies having authority over the Demised Premises and environmental matters with respect thereto, (2) preparing all reports and providing all information requested by any applicable governmental authority having jurisdiction over the Demised Premises, (3) preparing appropriate plans for the approval of such authorities and Landlord with respect to the cleanup of any Hazardous Materials on the Demised Premises, which were introduced to the Demised Premises during the term of this Lease, (4) conducting the clean up of such Hazardous Materials which were introduced to the Demised Premises during the term of this Lease in accordance with all applicable Laws, and (5) otherwise fully cooperating with such authorities and with Landlord in bringing the Demised Premises and Tenant's occupancy and use thereof into compliance with all Environmental Laws. Tenant authorizes Landlord to communicate with any Governmental Agency regarding the Demised Premises or Tenant's activities or processes thereon.

30.4 Tenant will not cause, permit or suffer any Hazardous Material to be brought upon, treated, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Demised Premises or any portion thereof by Tenant, its agents, employees, contractors, subtenants or invitees other than Hazardous Materials, if any, of a nature and in amounts which are incidental to and customarily present at similar skilled nursing facilities. Such Hazardous Materials may only be brought upon, kept and used in or about the Demised Premises by such parties in strict compliance with all applicable Laws.

30.5 Should Tenant fail to perform or observe any of its obligations or agreement pertaining to Hazardous Materials or Environmental Activities under this Lease or under applicable Laws, then Landlord will have the right, but not the duty, without limitation upon any of the rights of Landlord under this Lease, to enter the Demised Premises personally or through its agents, consultants or contractors and perform the same. Tenant agrees to indemnify, reimburse, protect, defend and hold harmless Landlord for the costs thereof and liabilities arising or resulting therefrom or in connection therewith.

30.6 Landlord will have the right in its sole and absolute discretion, but not the duty, to enter and inspect the Demised Premises at any time to determine whether Tenant is complying with the terms of this Lease, including, but not limited to, the compliance of the Demised Premises and the activities thereon with applicable Laws. Tenant hereby grants to Landlord, its agents, employees, consultants and contractors the rights to enter the Demised Premises and to perform such tests on the Demised Premises as are reasonably necessary to conduct such reviews and investigations. Landlord will use reasonable efforts to minimize interference with the business of Tenant but Landlord will not be liable for any interference caused thereby.

30.7 In the event Landlord discovers any breaches under this Lease or any violations of applicable Laws pursuant to the foregoing inspections or otherwise, including, without limitation: (1) any contamination of the Demised Premises from Hazardous Materials caused or permitted to be on the Demised Premises by Tenant, its agents, employees, contractors, licensees or invitees (such parties being collectively referred to as "Tenant" for purposes of this Section); (2) a violation of any Laws with respect to any Hazardous Materials or any Environmental Activity conducted or permitted by Tenant at the Demised Premises; or (3) a breach by Tenant of its covenants and obligations under this Lease, then Tenant will immediately cease all operations on the Demised Premises involving the use of Hazardous Materials found in violation of applicable Laws until such operations are brought into compliance therewith. To the extent of any Hazardous Material contamination of the Demised Premises or other properties caused or permitted by Tenant, Tenant will promptly commence and pursue to completion, at Tenant's sole cost and expense, a remediation program with respect to such Hazardous Materials.

30.8 If any Environmental Laws or any permits, variances, licenses or similar entitlement, authorizations or approvals involve or contain closure or post-closure requirements or conditions, Tenant will comply with and satisfy all such requirements and conditions prior to the expiration or earlier termination of this Lease, and in no event later than Tenant's vacating the Demised Premises. Tenant will, upon Landlord's request, provide Landlord with security reasonably acceptable to Landlord to secure Tenant's obligations to comply with and satisfy such closure and post-closure requirements and conditions. If Landlord reasonably determines that Tenant will not or will be unable to comply with and satisfy such requirements and conditions prior to the expiration or earlier termination of this Lease, or prior to Tenant's vacating the Demised Premises, Landlord may, but will not be obligated to, comply with or satisfy such requirements and conditions on Tenant's behalf and may apply the security provided by Tenant for such purposes. Any such action by Landlord will not be deemed a waiver or excuse of any default by Tenant in the performance of its obligations under this Section, but will be in addition to and not in lieu of any other rights or remedies available to Landlord at law or in equity with respect to Tenant's default in such obligations.

30.9 If Tenant fails to comply with the provisions of this Article prior to the expiration or earlier termination of the Lease Term, or prior to Tenant's vacating the Demised Premises, then upon the expiration or earlier termination of the Lease Term or Tenant's vacation of the Demised Premises, Landlord will have the option either to consider the Lease terminated. If Landlord considers the Lease Terminated, then Tenant will not be released from its obligations set forth in this Article.

30.10 Tenant will promptly notify Landlord of any liens threatened or attached against the Demised Premises pursuant to any Environmental Law. In the event that such a lien is filed against the Demised Premises, (other than a lien resulting from or relating to any Hazardous Material introduced to, or Environmental Activity conducted on, the Demised Premises prior to the commencement of this Lease or after Tenant has vacated the Demised Premises) then Tenant will, within fifteen (15) days from the date that the lien is filed against the Demised Premises, and at any rate prior to the date any Governmental Agency or other party commences

proceedings to foreclose on such lien, either: (1) pay the claim and remove the lien from the Demised Premises; or (2) furnish either (i) a bond satisfactory to Landlord in the amount of the claim out of which the lien arises, (ii) a cash deposit in the amount of the claim out of which the lien arises, or (iii) other security satisfactory to Landlord in an amount sufficient to discharge the claim out of which the lien arises.

30.11 Tenant agrees to protect, indemnify, defend, reimburse and hold harmless (1) Landlord; (2) any other person who acquires an interest in this Lease whether by an assignment of Landlord's interest in this Lease or otherwise; (3) any other person who acquires all or a portion of the Demised Premises at a foreclosure sale or by a conveyance in lieu of foreclosure or otherwise through the exercise of the rights and remedies of Landlord under this Lease; and (4) the principals, directors, officers, shareholders, partners, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees and invitees of such persons listed in (1) through (3) above (any or all of which are referred to herein as an "Indemnitee") from and against any and all loss, cost, penalty, fine, liability, damage or expense (including, without limitation, attorneys' fees and costs) arising or resulting from or in any way connected with:

(a) the presence of any Hazardous Materials in, at, on, under or about the Demised Premises other than Hazardous Materials introduced to Demised Premises prior to the commencement of this Lease or after expiration or termination of this Lease;

(b) any Environmental Activity conducted or permitted by Tenant or any other party on the Demised Premises during the Lease Term, other than Landlord or Landlord's Agent;

(c) any violation of any Laws pertaining to the condition of the Demised Premises or any Environmental Activity thereon to the extent caused by Tenant at any time or caused by anyone else during the Lease Term, other than Landlord or Landlord's Agent;

(d) the breach of any warranty or covenant or the inaccuracy of any representation of Tenant contained in this Lease; or

(e) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based upon any of the matters described in this Section.

30.12 Tenant's obligations under this Article will survive the expiration or earlier termination of the Lease Term, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property (whether by sale, foreclosure, deed in lieu of foreclosure or otherwise).

Article 31      TERMINATION OF ESTABLISHMENT

In compliance with the terms and provisions of Section 2808 of the Public Health Law, this Lease and the leasehold interest of Tenant hereunder will terminate and all rights of Tenant to possession after the expiration or termination of this Lease of the Demised Premises be surrendered to Landlord after the Public Health and Health Planning Council has approved the establishment of a successor operator of the Facility and closing of the sale of the non-real estate assets and operations of the Facility under the APA. If this Lease is terminated hereunder, Landlord may, subject to Department of Health approval, designate a receiver to operate the facility until a new operator is established. Upon the occurrence of any event of termination, the Commissioner of Health of the State of New York, Landlord, or the new operator, will be entitled to maintain a summary proceeding against Tenant to recover possession of the Demised Premises (if not properly surrendered) in any court of competent jurisdiction.

Article 32      MORTGAGEE OR OTHER APPROVAL

In the event that any future Mortgagee requests a modification of any provisions of this Lease, Landlord and Tenant each agrees that it shall, promptly after notice from the Mortgagee, execute an amendment to this Lease to comply with the request of the Mortgagee provided that any such amendment shall not increase the obligations or decrease the rights of either party hereunder.

Article 33      BROKER

Landlord and Tenant mutually represent to each other that no consultant or real estate broker has been contacted or engaged by either party in connection with this Lease and that no fee or commission is or will be due or become due on account of the making of this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from all damages, arising from any claims or demands of any broker, agent or finder with whom such party has dealt for any commission or fee alleged to be due in connection with its participation in the negotiation of this Lease. The provisions of this Article 33 shall survive the expiration or earlier termination of this Lease.

Article 34      MISCELLANEOUS

34.1 All of the provisions of this Lease will be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof.



34.2 If any term or provision of this Lease, or the application thereof to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term or provisions to the persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

34.3 The headings and titles in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent neither of this Lease, nor in any way affect this Lease.

34.4 This Lease contains the entire agreement between the parties and any executory agreement hereafter made will be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Lease cannot be changed orally or terminated orally.

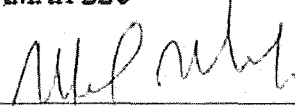
34.5 The covenants, conditions and agreements in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors and permitted assigns.

34.6 This Lease may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

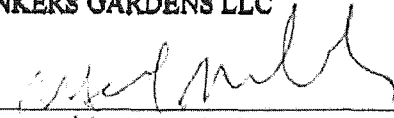
[remainder blank]

IN WITNESS WHEREOF, the parties have duly executed this Agreement of Lease,  
with the intention of being legally bound, as of the day and year first written above.

ADAMAH LLC

By:   
Name: MICHAEL MELNICK  
Title: MANAGER

YONKERS GARDENS LLC

By:   
Name: MICHAEL MELNICK  
Title: MANAGER

**SCHEDULE A-1 (Description)**



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard J. Zahnleuter, General Counsel  
**Date:** March 26, 2018  
**Subject:** Proposed Dissolution of Keser Services, Inc.

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Keser Services, Inc. requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

Keser Services, Inc. is a Not-For-Profit corporation formerly licensed to operate a Residential Healthcare Facility under its past corporate name, Keser Nursing and Rehabilitation Center, Inc. The corporation ceased operations once project number 132166E received full final approval on 02/23/2015 after all contingencies were satisfied – that project transferred ownership of the facility to Williamsburg Services, LLC d/b/a Bedford Center for Nursing and Rehabilitation. The corporation has no remaining assets or liabilities.

There is no legal objection to the dissolution and the proposed Certificate of Dissolution of Keser, Inc. is in legally acceptable form.

Attachments.

**HINMAN  
STRAUB**  
ATTORNEYS AT LAW

121 STATE STREET  
ALBANY, NEW YORK 12207-1893  
TEL: 518-436-0751  
FAX: 518-436-4751

PHILIP J. MURPHY  
DIRECT PHONE: 518-689-7218  
E-MAIL: PMURPHY@HINMANSTRAUB.COM

February 6, 2018

Colleen Leonard  
Executive Secretary  
Public Health and Health Planning Council  
Empire State Plaza  
Corning Tower, Room 1805  
Albany, New York 12237

Via FedEx

Re: Dissolution of Keser Services, Inc.

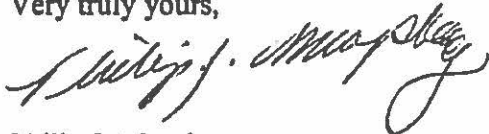
Dear Ms. Leonard:

Keser Services, Inc. (formerly known as Keser Nursing and Rehabilitation Center, Inc.) is hereby requesting approval to dissolve. Pursuant to Certificate of Need project number 132166 E, Keser Services, Inc. transferred ownership of the 200-bed voluntary residential health care facility (RHCF) located at 40 Heyward Street, Brooklyn to Williamsburg Services, LLC, d/b/a Bedford Center for Nursing and Rehabilitation. As part of project number 132166 E, Keser Nursing and Rehabilitation Center, Inc. changed its name to Keser Services, Inc. and amended its corporate purposes to eliminate operation of a skilled nursing facility as one of its corporate purposes (see enclosed copies of the Certificate of Incorporation and the Certificate of Amendment).

Keser Services, Inc. is now requesting approval to dissolve and has no assets. I have enclosed copies of the proposed Certificate of Dissolution and proposed Verified Petition.

Please contact me if you require any additional information with regard to this request.

Very truly yours,



Philip J. Murphy

PJM:sd  
Enclosures

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----  
In the Matter of the Application of  
Keser Services, Inc. for Approval of Certificate  
of Dissolution Pursuant to Section 1002  
of the Not-For-Profit Corporation Law.  
-----

VERIFIED PETITION

TO: New York State Attorney General  
Charities Bureau  
Trusts and Estates Section  
120 Broadway, 3<sup>rd</sup> Floor  
New York, New York 10271-0332

Petitioner, Keser Services, Inc. by Benzion Scharf, President of the corporation, for its Verified Petition alleges:

1. Keser Services, Inc., whose principal address is located in the county of Kings, was incorporated pursuant to New York's Not-for-Profit Corporation Law on April 13, 2005. A copy of the Certificate of Incorporation and all amendments are attached.

2. The names, addresses and titles of the corporation's directors and officers are as follows:

<u>Name</u>	<u>Director/Title</u>	<u>Address</u>
Benzion Scharf	Director/President	4716 14 <sup>th</sup> Avenue Brooklyn, New York 11219
Heshy Licht	Director/Vice President	1958 52 <sup>nd</sup> Street Brooklyn, New York 11219
Aaron Porges	Director/Secretary/Treasurer	278 Wallabout Street Brooklyn, New York 11206
Simon Friedman	Director	36 Concord Drive Monsey, New York 10952
Hershe Greenswieg	Director	166 Hews Street Brooklyn, New York 11211

3. The purposes for which the corporation was organized are as follows:

(a) To render voluntary support and assistance by means of contributions and grants to tax exempt organizations established to benefit the aged, sick, infirm, indigent, and destitute; to render support by means of

contributions and grants to established charitable, scientific, and medical endeavors; and generally to support activities of a charitable nature;

(b) To solicit and receive money and property for the foregoing purpose and to receive and accept for charitable purposes gift, donations, bequests and devises of money and property;

(c) The Corporation shall have all of 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;

(d) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the New York Not-for-Profit Corporation Law, Section 404(a) – (w);

(e) Nothing herein shall authorize the Corporation to carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or by a corporation contributions to which are deductible under Section 170(c)(2) of the Code;

(f) Nothing herein shall authorize the Corporation to operate or maintain a college or university or to grant degrees or credit leading to a degree; and

(g) Nothing herein shall authorize the Corporation to engage in the practice of the profession of medicine or any other profession required to be licensed by Title VIII of the Education Law.

4. The corporation is a charitable corporation.

5. The Board of Directors adopted a Plan of Dissolution and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. Attached is a copy of the Unanimous Written Consent of the Board of Directors adopting the Plan of Dissolution and authorizing the filing a Certificate of Dissolution.

6. The corporation has no members.

7. A certified copy of the corporation's Plan of Dissolution is attached.

8. The corporation has no assets or liabilities, and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the dissolution of the corporation must be obtained from the New York State Public Health and Health Planning Council whose approval is attached as Exhibit "A."

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-For-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of Keser Services, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed on \_\_\_\_\_, 2018, by

\_\_\_\_\_  
Benzion Scharf, President

#### VERIFICATION

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF \_\_\_\_\_ )

Benzion Scharf, being duly sworn, deposes and says:

I am the President of Keser Services, Inc., the corporation named in the above Petition, and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief, and as to those matters I believe them to be true.

\_\_\_\_\_  
Signature

Sworn to before me this

\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Notary Public



**CERTIFICATE OF DISSOLUTION  
OF  
KESER SERVICES, INC.**

Under Section 1003 of the Not-for-Profit Corporation Law

I, Benzion Scharf, the President of Keser Services, Inc. hereby certify:

1. The name of the corporation is Keser Services, Inc. The corporation was originally named Keser Nursing and Rehabilitation Center, Inc.

2. The Certificate of Incorporation of Keser Services, Inc. was filed by the New York State Department of State on April 13, 2005.

3. The names and addresses of the officers and directors of the corporation and the title of each are as follows:

<u>Name</u>	<u>Officer or Director/Title</u>	<u>Address</u>
Benzion Scharf	Director/President	4716 14 <sup>th</sup> Avenue Brooklyn, New York 11219
Heshy Licht	Director/Vice President	1958 52 <sup>nd</sup> Street Brooklyn, New York 11206
Aaron Porges	Director/Secretary/Treasurer	278 Wallabout Street Brooklyn, New York 11206
Simon Friedman	Director	36 Concord Drive Monsey, New York 10952
Hershe Greenswieg	Director	166 Hews Street Brooklyn, New York 11211

4. Dissolution of the corporation was authorized by unanimous written consent of the Board of Directors. The corporation has no members.

5. The corporation elects to dissolve.

6. At the time of dissolution, the corporation is a charitable corporation.

7. The corporation will file with the Attorney General a petition for approval of the Certificate of Dissolution with the original Certified Plan of Dissolution.

8. When the Board of Directors authorized the Plan of Dissolution, the corporation had no assets or liabilities and did not hold any assets required to be used for a restricted purpose.

9. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Keser Services, Inc. this \_\_\_ day of \_\_\_\_\_, 2018.

---

Benzion Scharf, President

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on November 6, 2017.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

171103000

539

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
KESER NURSING AND REHABILITATION CENTER, INC.

Under Section 803 of the  
Not-for-Profit Corporation Law

It is hereby certified that:

1. The name of the corporation is Keser Nursing and Rehabilitation Center, Inc. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on April 13, 2005. The Corporation was formed under the Not-for-Profit Corporation Law.

3. The Corporation is a Type B corporation as defined in Section 201 of the Not-for-Profit Corporation Law and shall remain a Type B after the filing of this Certificate of Amendment.

4. The Certificate of Incorporation of the Corporation is amended to amend the name of the Corporation from Keser Nursing and Rehabilitation Center, Inc. to Keser Services, Inc. Paragraph I is amended to read as follows:

I: "The name of the Corporation is KESER SERVICES, INC. (hereinafter called the "Corporation")."

5. The Certificate of Incorporation of the Corporation is amended to delete Paragraph IV and add the following purposes. Paragraph IV shall read:

~~Amending~~

II: "The purposes for which the Corporation is organized are:

(a) To render voluntary support and assistance by means of contributions and grants to tax exempt organizations established to benefit the aged, sick, infirm, indigent, and destitute; to render support by means of contributions and grants to established charitable, scientific, and medical endeavors; and generally to support activities of a charitable nature;

(b) To solicit and receive money and property for the foregoing purpose and to receive and accept for charitable purposes gifts, donations, bequests and devises of money and property;

(c) The Corporation shall have all of 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;

(d) Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in the New York Not-for-Profit Corporation Law, Section 404(a) - (w);

(e) Nothing herein shall authorize the Corporation to carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c) (3) of the Code or by a corporation contributions to which are deductible under Section 170(e)(2) of the Code;

(f) Nothing herein shall authorize the Corporation to operate or maintain a college or university or to grant degrees or credit leading to a degree;

(g) Nothing herein shall authorize the Corporation to engage in the practice of the profession of medicine or any other profession required to be licensed by Title VIII of the Education Law; and

(h) Nothing herein shall authorize the Corporation to provide professional training in the profession of medicine or any other profession required to be licensed by Title VIII of the Education Law."


6. The Certificate of Incorporation of the Corporation is amended to change the service of process address. The Certificate of Incorporation is amended to ~~delete~~ the address in Article X and replace it with the following:

*Change*

*The post office address to which the Secretary of State shall mail a copy of any process against the corporation is*

KESER SERVICES, INC.  
40 Heyward Street  
Brooklyn, New York 11211  
Attn: President

IN WITNESS WHEREOF, the undersigned has subscribed and affirmed this Certificate as true under the penalties of perjury this 1st day of May, 2014.



Name: Benjamin Scharf  
Title: President

# PHHPC

## ***PUBLIC HEALTH AND HEALTH PLANNING COUNCIL***

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Empire State Plaza, Corning Tower, Room 1805  
Albany, New York 12237

(518) 402-0964  
PHHPC@health.ny.gov

February 23, 2015


Meghan McNamara, Esq.  
Hinman Straub  
121 State Street  
Albany, New York 12207

Re: Certificate of Amendment of the Certificate of Incorporation of Keser Nursing and Rehabilitation Center, Inc.

Dear Ms. McNamara:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council and Health Planning Council held on the 13<sup>th</sup> day of February, 2014, 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 Keser Nursing and Rehabilitation Center, Inc. dated May 1, 2014.

Sincerely,



Colleen M. Leonard  
Executive Secretary

/cl

339

Certificate of Amendment

Of

Certificate of Incorporation

Of

Hrser Nursing and Rehabilitation Center, Inc.

(List Entity Name)

Under Section 803 of the Not-For-Profit Corporation Law

FILED

Filed by

2017 NOV -3 PM 4:41

Philip J. Murphy  
(Name)

121 State Street  
(Mailing address)

Albany, NY 12207  
(City, State and Zip Code)

1cc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED NOV 03 2017

TAXS  
BY: KWA

2017 NOV 03 AM 10:08

RECEIVED

595

FILING RECEIPT

=====

ENTITY NAME: KESER SERVICES, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)  
PURPOSES PROCESS NAME

COUNTY: KING

=====

FILED:11/03/2017 DURATION:\*\*\*\*\* CASH#:171103000595 FILM #:171103000539

FILER:

-----  
PHILIP J. MURPHY  
121 STATE STREET

ALBANY, NY 12207

ADDRESS FOR PROCESS:

-----  
THE CORPORATION  
ATTN: PRESIDENT  
BROOKLYN, NY 11211

40 HEYWARD STREET

REGISTERED AGENT:



=====

SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00

FEEs            65.00  
-----  
FILING           30.00  
TAX               0.00  
CERT              0.00  
COPIES           10.00  
HANDLING        25.00

PAYMENTS       65.00  
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CASH              0.00  
CHECK            65.00  
CHARGE           0.00  
DRAWDOWN        0.00  
OPAL              0.00  
REFUND           0.00

=====

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 16, 2013.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

NCR-26

CERTIFICATE OF INCORPORATION

05041300 0898

OF

KESER NURSING AND REHABILITATION CENTER, INC

Under Section 402 of the  
Not-For-Profit Corporation Law  
of the State of New York

---

The undersigned, being a natural person of at least eighteen years of age, for the purpose of forming a corporation pursuant to the Not-For-Profit Corporation Law of the State of New York, hereby certifies as follows

ARTICLE I

The name of the corporation is KESER NURSING AND REHABILITATION CENTER, INC (hereinafter called the "Corporation")

ARTICLE II

The Corporation is a corporation as defined in subparagraph (a)(6) of Section 102 and is a Type B corporation as defined in Section 201 of the Not-For-Profit Corporation Law of the State of New York

ARTICLE III

The period of duration of the Corporation is perpetual

ARTICLE IV

The purposes for which the Corporation is organized are to operate exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, and within such limits

(a) Subject to paragraph (f) and (g) of this Article, to apply for a license from the relevant New York State agencies, including the Public Health Council and the

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Department of Health, to establish and operate a skilled nursing facility located at 40 Heyward Street, Brooklyn, NY, pursuant to Article 28 of the Public Health Law of the State of New York

(b) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof and not prohibited by law or inconsistent with the other provisions of this Certificate of Incorporation

(c) In accordance with the above, to have and exercise all powers available to corporations organized pursuant to the Not-For-Profit Corporation Law of the State of New York

(d) Notwithstanding the foregoing, however, the Corporation shall neither have nor exercise any power or authority, either expressly, by interpretation or by operation of law, nor directly or indirectly engage in any activity, that would prevent it from qualifying (and continuing to qualify) as an organization described in Section 501(c)(3) of the Internal Revenue Code

(e) Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities set forth in subsections (b) through (v) of Section 404 of the Not-For-Profit Corporation Law of the State of New York

#### ARTICLE V

In all events and under all circumstances, and notwithstanding merger, consolidation, reorganization, termination, dissolution or winding up of this Corporation, voluntary and involuntary or by operation of law

(a) No part of the assets or net earnings of the Corporation shall inure to the benefit of or be distributable, as compensation or otherwise, to its incorporators.

2

members, directors, officers or other private persons having a personal or private interest in the Corporation, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered, to make reimbursement in reasonable amounts for expenses actually incurred, and to make payments or distributions in reasonable amounts, whether pursuant to contractual arrangements or otherwise, in furtherance of the purposes set forth in ARTICLE IV hereof. The foregoing provision shall not be construed to require the Corporation to pay compensation to or to reimburse incorporators, members, directors, officers or other private persons having an interest in the Corporation.

(b) No substantial part of the activities of the Corporation shall consist of the carrying on of propaganda, or otherwise attempting, to influence legislation, unless Section 501(h) of the Internal Revenue Code shall apply to the Corporation, in which case the Corporation shall not normally make lobbying or grass roots expenditures in excess of the amounts therein specified. The Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, nor shall it engage in any "prohibited transaction" as defined in Section 503(b) of the Internal Revenue Code.

(c) Neither the whole, nor any part or portion, of the assets or net earnings of the Corporation shall be used, nor shall the Corporation ever be operated, for objects or purposes other than those set forth in ARTICLE IV.

(d) (1) The Corporation shall distribute such amounts for each taxable year at such time and in such manner as not to subject it to tax on undistributed income under Section 4942 of the Internal Revenue Code.

3

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(2) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Internal Revenue Code

(3) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Internal Revenue Code

(4) The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code

(5) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Internal Revenue Code

ARTICLE VI

Upon any dissolution of the Corporation, all of its assets and property of every nature and description remaining after the payment of all liabilities and obligations of the Corporation (but not including assets held by the Corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution) shall be paid over and transferred, pursuant to a plan for the dissolution of the Corporation and the distribution of its assets adopted by the Board of Directors, or otherwise in accordance with the Not-For-Profit Corporation Law of the State of New York, and subject to an order of a Justice of the Supreme Court of the State of New York, to one or more organizations which engage in activities substantially similar to those of the Corporation, and which are then qualified for exemption from federal income taxes as organizations described in Section 501(c)(3) of the Internal Revenue Code

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**ARTICLE VII**

All references contained in this Certificate of Incorporation to the Internal Revenue Code shall be deemed to refer to the Internal Revenue Code of 1986, as amended, and to any corresponding provisions of any subsequent federal tax laws

**ARTICLE VIII**

The office of the Corporation is to be located in Kings County, New York

**ARTICLE IX**

The names and addresses of the persons constituting the initial Board of Directors of the Corporation until the first annual meeting, or until their successors be elected and qualified are

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>
Aaron Elbogen	1650 49 <sup>th</sup> Street Brooklyn, NY 11204
Simon Friedman	166 Hewes Street Brooklyn, NY 11211
Hersha Greenzweig	36 Concord Drive Monsey, NY 10952
Barry Braunstein	1849 56 <sup>th</sup> Street Brooklyn, NY 11204

**ARTICLE X**

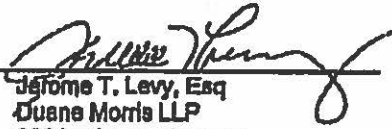
The Secretary of State is hereby the designated agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is

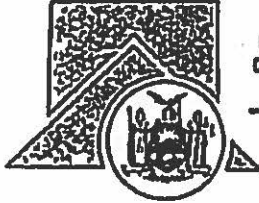
KESER NURSING AND REHABILITATION CENTER, INC  
c/o Duane Morris LLP  
380 Lexington Avenue  
New York, NY 10168  
Attn: Jerome T. Levy, Esq.

---

IN WITNESS WHEREOF, the undersigned incorporator has made, subscribed  
and acknowledged this Certificate this 20<sup>th</sup> day of April, 2004

Incorporator

  
\_\_\_\_\_  
Jerome T. Levy, Esq  
Duane Morris LLP  
380 Lexington Avenue  
New York, New York 10168



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
COWING TOWER BUILDING  
ALBANY, N.Y. 12237

## PUBLIC HEALTH COUNCIL

---

April 6, 2005

Jerome Levy  
Attorney-at-Law  
Duane Morris, LLP  
380 Lexington Avenue  
New York, New York 10168

Re Certificate of Incorporation of Keser Nursing and Rehabilitation Center, Inc

Dear Mr Levy

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 12<sup>th</sup> day of March, 2004 I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Keser Nursing and Rehabilitation Center, Inc , dated April 29, 2004

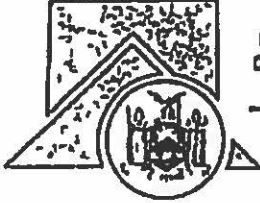
Sincerely,

Donna W Peterson  
Executive Secretary

lcf

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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY NY 12237

## PUBLIC HEALTH COUNCIL

April 6, 2005

Jerome Levy  
Attorney-at-Law  
Duane Morris LLP  
380 Lexington Avenue  
New York, New York 10168

Re Application No 032281 – Keeser Nursing and Rehabilitation Center a/k/a Alshel Avraham Residential Health Care Facility (Kings County)

Dear Mr Levy

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Keeser Nursing and Rehabilitation Center a/k/a Alshel Avraham Residential Health Care Facility is APPROVED, the contingencies having now been fulfilled satisfactorily. This approval is conditioned upon the applicant's continued compliance with the Medicaid access condition, as included in the Public Health Council's approval of the project. The Public Health Council had considered this application and imposed the contingencies at its meeting of March 12, 2004.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third-party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Metropolitan Area/Regional Office, 90 Church Street, 14<sup>th</sup> Floor, New York, New York 10007 or (212) 417-5000, within 30 days of receipt of this letter.

Sincerely,

Donna W Peterson  
Executive Secretary

ALF

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NCR-76

F05041300 0 898

CERTIFICATE OF INCORPORATION  
OF  
KESER NURSING AND REHABILITATION CENTER, INC  
UNDER SECTION 402 OF THE  
NOT-FOR-PROFIT CORPORATION LAW

Ice

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 13 2015  
TAXES Be  
Y. Be

RECEIVED  
2015 APR 13 AM 9 12

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Kj

Duane Morris LLP  
380 Lexington Avenue  
New York, New York 10168

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DRAWDOWN

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## MEMORANDUM

**To:** Public Health and Health Planning Council (PHHPC)

**From:** Richard J. Zahnleuter  
General Counsel 

**Date:** April 26, 2018

**Subject:** Dissolution: Menorah Foundation, Inc. (the "Foundation")

---

The Foundation is authorized to solicit funds for the benefit of an Article 28 hospital, a hospital originally named Menorah Home and Hospital for the Aged and Infirm and is now named Menorah Center for Rehabilitation and Nursing Care ("Menorah"). Menorah now receives foundation support via an affiliation with Metropolitan Jewish Health System. Therefore, the corporation deems its existence to be duplicative, it has elected to dissolve and it seeks PHHPC approval to proceed with dissolution. The Foundation has no remaining assets or liabilities. Please see the attached letter from the Foundation's law firm, Cadwalader, Wickersham & Taft LLP for further details.

Pursuant to Article 10 of the New York State Not-for-Profit Corporation Law, PHHPC approval of the dissolution must be received. PHHPC approval is also required pursuant to 10 NYCRR Part 650.

The documents submitted by the Corporation have been reviewed. There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments

# CADWALADER

Cadwalader, Wickersham & Taft LLP  
200 Liberty Street, New York, NY 10281  
Tel +1 212 504 6000 Fax +1 212 504 6666  
www.cadwalader.com

## FEDERAL EXPRESS

April 19, 2018

Ms. Colleen M. Leonard  
Executive Secretary, Public Health and Health Planning Council  
New York State Department of Health  
Corning Tower, Room 1805  
Empire State Plaza  
Albany, New York 12237

Re: Menorah Foundation, Inc. Dissolution

Dear Ms. Leonard:

Menorah Foundation, Inc., a New York not-for-profit corporation (the "Corporation") has elected to voluntarily dissolve as it has ceased operations and it has no assets or liabilities. Because the Public Health and Health Planning Council originally consented to the filing of the Certificate of Incorporation of the Corporation, the Corporation seeks Commissioner of Health consent to its dissolution as required by Section 1002(c) of the New York Not-for-Profit Corporation Law. Enclosed for review by the Bureau of House Counsel is a copy of the proposed form of Verified Petition, which includes as exhibits the Certificate of Incorporation of the Corporation, the required Board of Director and Member resolutions, and Plan of Dissolution. We also enclose the proposed form of Certificate of Dissolution.

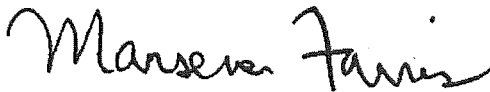
By way of background, the Corporation was established in 1998 to solicit, receive and maintain funds and property for the benefit of Menorah Home and Hospital for the Aged and Infirm, a skilled nursing facility ("Menorah"). The filing of the Certificate of Incorporation of the Corporation was consented to by the Public Health and Health Planning Council by letter dated July 28, 1998. Thereafter, Menorah became an affiliated agency with Metropolitan Jewish Health System ("MJHS") and was renamed "Menorah Center for Rehabilitation and Nursing Care." All of the assets previously held by the Corporation were used to benefit Menorah. However, MJHS operates its own affiliated charitable foundation to benefit its various health care centers and programs, including Menorah. Accordingly, the continued existence of the Corporation serves only to create duplicative and overlapping operations with those of the MJHS charitable foundation. The dissolution of the Corporation will therefore reduce administrative burdens and create economic efficiencies.

CADWALADER

Ms. Colleen M. Leonard  
April 19, 2018

Please call me at (212) 504-6095 if you have any questions or require further information. Thank you in advance for your assistance.

Sincerely yours,



Marsena M. Farris

MMF:cm  
Enclosures

cc: Paul W. Mourning, Esq.

----- X:  
 In the Matter of the Application of :  
MENORAH FOUNDATION, INC. : **VERIFIED PETITION FOR**  
 : **APPROVAL OF CERTIFICATE**  
 For Approval of a Certificate of Dissolution pursuant :  
 to Section 1002 of the Not-for-Profit Corporation :  
 Law ----- x

TO:

THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
 OFFICE OF THE ATTORNEY GENERAL  
 CHARITIES BUREAU  
 28 LIBERTY STREET  
 NEW YORK, NEW YORK 10005

Petitioner, Menorah Foundation, Inc. (the "Corporation") by Alexander Balko, the President of the Corporation, for its Verified Petition, respectfully alleges:

1. Petitioner is a corporation incorporated under the New York Not-for-Profit Corporation Law on August 10, 1998, with its principal office in the County of Kings, at 6323 Seventh Avenue, Brooklyn, New York 11220. A copy of the Certificate of Incorporation and all amendments thereto is attached as Exhibit A.

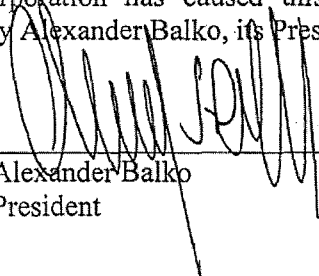
2. The name, addresses and titles of the Corporation's officers and directors are as follows:

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>
Alexander Balko	President and Director	105 Mineola Avenue Point Lookout, New York 11569
Jeffrey Davis	Chief Financial Officer and Director	6 Jennifer Court Colonia, New Jersey 07067
Robert E. Leamer	Assistant Secretary and Director	207 Noe Avenue Chatham, New Jersey 07928

3. The purposes for which the Corporation was organized are as follows:
  - (a) To solicit, receive and maintain funds and/or property, both real and personal, to use and apply the income therefrom and the principal thereof exclusively for the benefit of Menorah Home and Hospital for the Aged and Infirm ("Menorah") and any supporting organization operating for Menorah's benefit which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code.
4. The Corporation is a charitable corporation as defined under the Not-for-Profit Corporation Law.
5. Resolutions were adopted by the Board of Directors of the Corporation by unanimous written consent dated as of April 5, 2018, pursuant to which the Board adopted a Plan of Dissolution and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the certified resolutions of the Board of Directors adopting the Plan of Dissolution is attached hereto as Exhibit B.
6. The Plan of Dissolution of the Corporation was approved by Metropolitan Jewish Health System Foundation (formerly named Metropolitan Jewish Geriatric Foundation), the sole member of the Corporation (the "Member"), by unanimous written consent of the Board of Directors of the Member dated as of April 5, 2018. A copy of the certified resolutions of the Member approving the Plan of Dissolution is attached hereto as Exhibit B.
7. A certified copy of the Corporation's Plan of Dissolution is attached hereto as Exhibit C.
8. The Corporation has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.
9. Approval of the dissolution of the Corporation is required by the Public Health and Health Planning Council.
10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Menorah Foundation, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREOF, the Corporation has caused this Petition to be executed this 5<sup>th</sup> day of April, 2018 by Alexander Balko, its President.



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Alexander Balko  
President

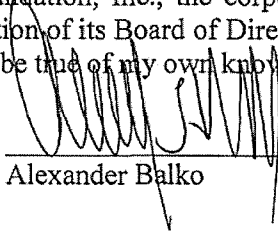


**Verification**

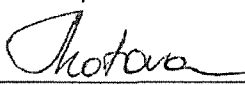
STATE OF NEW YORK    )  
                                  : ss.:  
COUNTY OF KINGS    )

I, the undersigned, Alexander Balko, being duly sworn, depose and say:

I am the President of Menorah Foundation, Inc., the corporation named in the above Petition. I make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge.

  
\_\_\_\_\_  
Alexander Balko

Sworn to before me this  
5<sup>th</sup> day of April, 2018

  
\_\_\_\_\_  
Notary Public

**Natalia Motov**  
Notary Public, State of New York  
No.01MO6240120  
Qualified in Richmond County  
Term Expires April 25, 2019

**EXHIBIT A**  
**CERTIFICATE OF INCORPORATION**

FILING RECEIPT

ENTITY NAME : MENORAH FOUNDATION, INC.

DOCUMENT TYPE : DOMESTIC (NOT-FOR-PROFIT) CORPORATION TYPE: B COUNTY: KING

SERVICE COMPANY : CT CORPORATION SYSTEM SERVICE CODE: 07

FILED: 08/10/1998 DURATION: PERPETUAL CASH #: 980810000500 FILM #: 9808100004

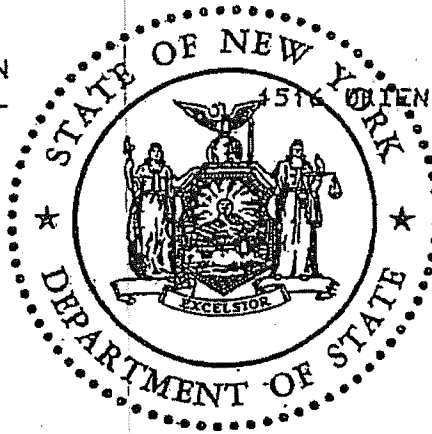
ADDRESS FOR PROCESS

RESIDENT MENORAH FOUNDATION  
70 MENORAH HOME AND HOSPITAL  
ROOKLYN, NY 11235

EXIST D

08/10/19

REGISTERED AGENT

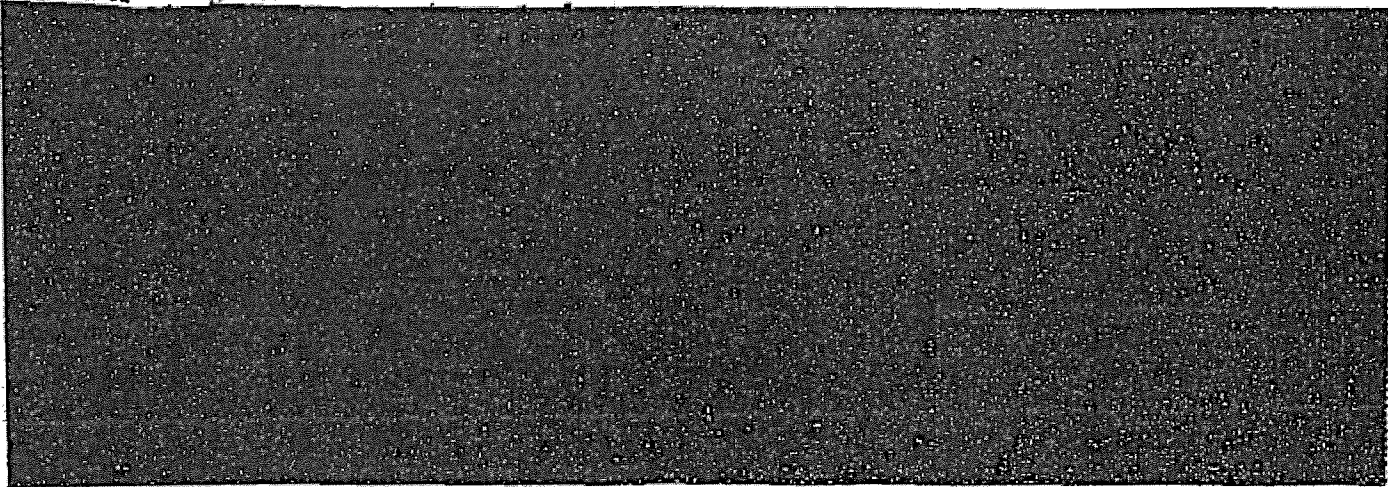


FILER

ATTN: JAMES L PETSCH  
MCDERMOTT WILL & EMERY  
50 ROCKEFELLER PLAZA  
NEW YORK, NY 10020-1605

FEES	110.00	PAYMENTS	110.
FILING :	75.00	CASH :	0.
TAX :	0.00	CHECK :	110.
CERT :	0.00	BILLED:	0.
COPIES :	10.00		
HANDLING:	25.00		
		REFUND:	0.

(11/89)



State of New York }  
Department of State } ss:

*I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.*

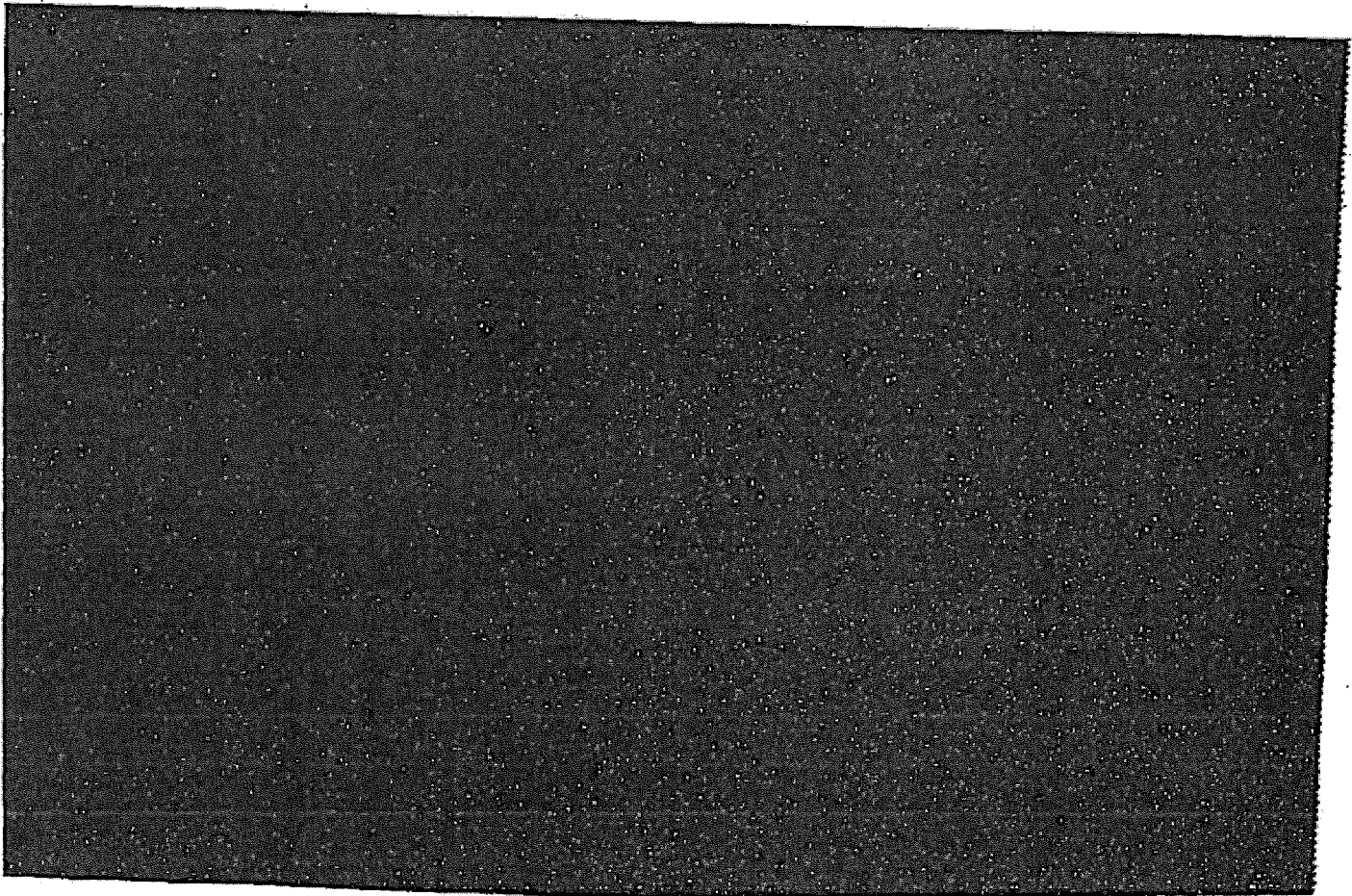
Witness my hand and seal of the Department of State on **AUG 12 1998**



A handwritten signature in cursive script, appearing to read "J. Clark", followed by a horizontal line.

*Special Deputy Secretary of State*

DOS-1266 (5/96)



F-980810000477

CT-07

**CERTIFICATE OF INCORPORATION**

**OF**

**MENORAH FOUNDATION, INC.**

**Under Section 402 of the Not-For-Profit  
Corporation Law**

The undersigned, for the purpose of forming a not-for-profit corporation under Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies that:

**ARTICLE ONE.** The name of the corporation is Menorah Foundation, Inc. (the "Corporation").

**ARTICLE TWO.** The Corporation is a corporation, as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, and is not formed, conducted or operated for purposes of pecuniary profit or financial gain. The Corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

**ARTICLE THREE.** The office of the Corporation in the State of New York shall be located in the County of Kings.

**ARTICLE FOUR.** The purposes for which the Corporation is organized are as follows:

(a) The Corporation is organized and shall be operated exclusively for the charitable, educational and scientific purposes as set forth in section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(b) The Corporation shall conduct its activities so that it will be exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code so that contributions to it will be deductible under sections 170(a), 2055(a), and 2522(a) of the Code within the limitations and subject to the conditions described therein. An organization meeting all of the requirements of the immediate preceding sentence shall be referred to herein as a "Qualifying Organization".

(c) The Corporation shall solicit, receive and maintain a fund or funds of property, both real and personal, to use and apply the income therefrom and the principal thereof exclusively for the benefit of Menorah Home and Hospital for the Aged and Infirm ("Menorah") and any supporting organization operating for Menorah's benefit, provided that Menorah and any such organization is a Qualifying Organization.

(d) No part of the assets or net earnings of the Corporation shall inure to the benefit of any trustee, director, or officer of the Corporation or any private person, except that

1

reasonable payment may be made for services, property, or the use of property provided to or for the Corporation.

(e) No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, except as permitted by section 501(h) of the Code. The Corporation shall not participate or intervene, by any means, including, without limitation, the publication or distribution of statements, in any political campaign on behalf of or in opposition to any candidate for public office.

(f) The Corporation shall not be controlled directly or indirectly by one or more disqualified persons, as defined in section 4946 of the Code, other than foundation managers and Menorah Home and Hospital for the Aged and Infirm.

(g) Notwithstanding any other provision contained herein, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by a Qualifying Organization.

(h) In the event of the liquidation, dissolution, or winding up of the Corporation, whether voluntary, involuntary or by operation of law, all of the remaining assets and property of the Corporation shall, after necessary expenses are paid, be distributed to the organizations identified or described in this Article Four of this certificate of incorporation which are then Qualifying Organizations. Should no such organization then qualify, such distribution shall be made to other organizations which are Qualifying Organizations to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this Corporation was formed.

**ARTICLE FIVE.** Nothing herein contained shall authorize the Corporation to establish or operate a hospital or to provide hospital services or health-related services or to operate a certified home health agency, a hospice, or a health maintenance organization or to provide a comprehensive health services plan as described in Articles 28, 36, 40 and 44, respectively, of the Public Health Law.

**ARTICLE SIX.** The names and addresses of the initial directors of the Corporation are:

Names and Addresses

- |  |   |
|--|---|
| 1. Shirley Windheim<br>47 Murran Hill Terrace<br>Marlboro, NJ 07746      | 3. Robert Abrams<br>3 Sagamore Drive South<br>Jericho, NY 11753 |
| 2. Fred Abrams<br>270-15d Grand Central Parkway<br>Floral Park, NY 11005 | 4. Sol Glickstein<br>150 Barlow Drive<br>Brooklyn, NY 11234     |

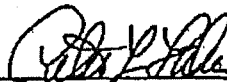
2

5. Paul Melinger  
65 Oriental Boulevard  
Brooklyn, NY 11235

**ARTICLE EIGHT.** The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process so served is:

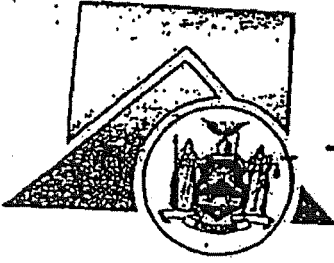
President  
Menorah Foundation  
c/o Menorah Home and Hospital  
1516 Oriental Boulevard  
Brooklyn, New York 11235

**IN WITNESS WHEREOF**, the undersigned incorporator, being at least, eighteen years of age, has signed this certificate this 16 day of April, 1998 and hereby affirms the truth of the statements contained herein under penalty of perjury.



---

Peter L. Faber, Incorporator  
50 Rockefeller Plaza  
New York, New York 10020



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

July 28, 1998

James L. Petsche, Esq.  
McDermott, Will & Emery  
50 Rockefeller Plaza  
New York, New York 10020-1605

Re: Certificate of Incorporation of Menorah Foundation, Inc.

Dear Mr. Petsche:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 24th day of July, 1998, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Certificate of Incorporation of Menorah Foundation, Inc., dated April 16, 1998.

Sincerely,

Karen S. Westervelt  
Executive Secretary

34



RESOLUTION

RESOLVED, that the Public Health Council, on this 24th day of July 1998, approves the filing of the Certificate of Incorporation of Menorah Foundation, Inc., a corporation for the solicitation, receipt, and maintenance of funds or funds of property for the benefit of the Menorah Home and Hospital for the Aged and Infirm and other supporting organizations operating for the beneficiary's benefit, dated April 16, 1998.

CT-07

F 980810000477

RECEIVED  
AUG 16 11:10 AM '98

CERTIFICATE OF INCORPORATION

OF

MENORAH FOUNDATION, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT BUSINESS CORPORATION LAW.

AUG 19 5 02 PM '98

RECEIVED

AUG 6 11 20 AM '98

*Handwritten:* V.H. TYPE B

*Handwritten:* 1-CC  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED AUG 10 1998

TAX \$ \_\_\_\_\_  
BY:     JW    

*Handwritten:* KINGS

RECEIVED

AUG 7 2 20 PM '98

MCDERMOTT WILL & EMERY  
50 ROCKEFELLER PLAZA  
NEW YORK, NY 10020-1605

ATTN: JAMES L PETSCH

*Handwritten:* 5  
980810000500


**EXHIBIT B**  
**CERTIFICATE OF ASSISTANT SECRETARY**  
**OF**  
**MENORAH FOUNDATION, INC.**

**EXHIBIT B TO VERIFIED PETITION**  
**CERTIFICATE OF ASSISTANT SECRETARY**  
**OF**  
**MENORAH FOUNDATION, INC.**

The undersigned hereby certifies that I am the duly appointed and acting Assistant Secretary of Menorah Foundation, Inc., a New York not-for-profit corporation (the "Corporation"), and I further certify as follows:

1. Attached hereto as Exhibit A is a true, correct and complete copy of resolutions adopted by unanimous written consent of the Board of Directors of the Corporation and dated as of April 5, 2018, which resolutions have not been modified, amended, annulled or revoked from the time of their adoption to the date hereof, and which resolutions are in full force and effect on the date hereof.
2. Attached hereto as Exhibit B is a true, correct and complete copy of resolutions adopted by unanimous written consent of the Board of Directors of the Member of the Corporation and dated as of April 5, 2018, which resolutions have not been modified, amended, annulled or revoked from the time of their adoption to the date hereof, and which resolutions are in full force and effect on the date hereof.
3. Attached hereto as Exhibit C is a true, and complete correct copy of the Plan of Dissolution that was attached to the unanimous written consent of the Board of Directors of the Corporation dated as of April 5, 2018 and was attached to the unanimous written consent of the Board of Directors of the Member of the Corporation dated as of April 5, 2018.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate on the 25<sup>th</sup> day of April, 2018.

  
\_\_\_\_\_  
Robert E. Leamer  
Assistant Secretary

**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS**

**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF  
MENORAH FOUNDATION, INC.  
TO ADOPT  
PLAN OF DISSOLUTION**

The undersigned, being all of the directors of Menorah Foundation, Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the directors pursuant to Section 708(b) of the New York Not-for-Profit Corporation Law:

**WHEREAS**, the Corporation is not operational and has wound up its business and affairs; and

**WHEREAS**, the Corporation has no assets to distribute, and no liabilities at the time of adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

**WHEREAS**, the Board of Directors had determined that it is in the best interests of the Corporation to dissolve;

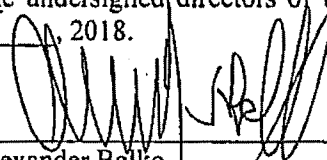
**NOW, THEREFORE, BE IT**

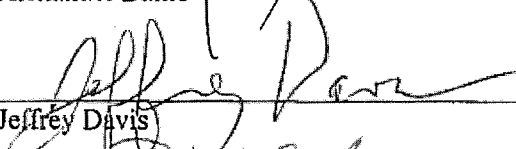
**RESOLVED**, that the dissolution of the Corporation be effected in accordance with the Plan of Dissolution, which is attached hereto as Exhibit A, after approval by Metropolitan Jewish Health System Foundation, the sole corporate member of the Corporation; and be it further

**RESOLVED**, that counsel to the Corporation be authorized and directed to prepare a Certificate of Dissolution and such other documents for execution by the officers of the Corporation as may be necessary to effect the dissolution; and be it further

**RESOLVED**, that the appropriate officers of the Corporation are hereby authorized to execute any and all documents and to take any and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

**IN WITNESS WHEREOF**, the undersigned, directors of the Corporation have executed this consent as of April 5, 2018.

  
\_\_\_\_\_  
Alexander Balko

  
\_\_\_\_\_  
Jeffrey Davis

  
\_\_\_\_\_  
Robert E. Leamer

**EXHIBIT A**  
**PLAN OF DISSOLUTION**

**PLAN OF DISSOLUTION**  
**OF**  
**MENORAH FOUNDATION, INC.**

The Board of Directors of Menorah Foundation, Inc. (the "Corporation") has adopted resolutions by unanimous written consent approving the dissolution of the Corporation dated as of April 5, 2018 and adopting a plan of dissolution ("Plan of Dissolution") and the sole corporate member of the Corporation, Metropolitan Jewish Health System Foundation, has adopted resolutions by unanimous written consent approving the Plan of Dissolution dated as of April 5, 2018.

The Plan of Dissolution is as follows:

1. Governmental approval of the dissolution shall be obtained from:
  - a. the Public Health and Health Planning Council;
  - b. the New York State Department of Taxation and Finance; and
  - c. the Commissioner of Finance of New York City, if applicable.
2. The Corporation is a charitable corporation and it has no assets to distribute and no liabilities at the time of the adoption of the Plan of Dissolution.
3. A Certificate of Dissolution shall be executed by an authorized Director or officer of the Corporation and all required governmental approvals shall be attached thereto before filing it with the Department of State.
4. Within 270 days after the date on which the Attorney General or the Supreme Court approves the Plan of Dissolution, the Corporation shall carry out the Plan.



**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF THE  
MEMBER**

**UNANIMOUS WRITTEN CONSENT OF THE  
BOARD OF DIRECTORS OF THE  
SOLE MEMBER OF  
MENORAH FOUNDATION, INC.,  
TO APPROVE PLAN OF DISSOLUTION**

The undersigned, being all of the directors of Metropolitan Jewish Health System Foundation, the sole member (the "Member") of Menorah Foundation, Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the Member pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

**WHEREAS**, the Corporation has no assets to distribute and no liabilities at the time of the adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

**WHEREAS**, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Member; and

**WHEREAS**, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Member of the Corporation; and

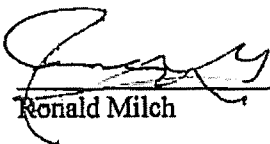
**WHEREAS**, the directors of the Member of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution is in the best interests of the Corporation.

**NOW, THEREFORE**, be it

**RESOLVED**, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Member of the Corporation; and be it further

**RESOLVED**, that the appropriate officers of the Member are hereby authorized to execute any and all documents and to take any appropriate and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

**IN WITNESS WHEREOF**, the undersigned directors of the Member of the Corporation have executed this consent as of April 5, 2018.

  
\_\_\_\_\_  
Ronald Milch

\_\_\_\_\_  
Shmuel Lefkowitz

\_\_\_\_\_  
Steven Topal

\_\_\_\_\_  
Eli Feldman

\_\_\_\_\_  
Alexander Balko

\_\_\_\_\_  
Arthur Goshin, M.D.

**UNANIMOUS WRITTEN CONSENT OF THE  
BOARD OF DIRECTORS OF THE  
SOLE MEMBER OF  
MENORAH FOUNDATION, INC.,  
TO APPROVE PLAN OF DISSOLUTION**

The undersigned, being all of the directors of Metropolitan Jewish Health System Foundation, the sole member (the "Member") of Menorah Foundation, Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the Member pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

**WHEREAS**, the Corporation has no assets to distribute and no liabilities at the time of the adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

**WHEREAS**, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Member; and

**WHEREAS**, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Member of the Corporation; and

**WHEREAS**, the directors of the Member of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution is in the best interests of the Corporation.

**NOW, THEREFORE**, be it

**RESOLVED**, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Member of the Corporation; and be it further

**RESOLVED**, that the appropriate officers of the Member are hereby authorized to execute any and all documents and to take any appropriate and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

**IN WITNESS WHEREOF**, the undersigned directors of the Member of the Corporation have executed this consent as of April 5, 2018.

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Ronald Milch

\_\_\_\_\_  
Steven Topal

\_\_\_\_\_  
Alexander Balko

\_\_\_\_\_  
Shmuel Lefkowitz

\_\_\_\_\_  
Eli Feldman

\_\_\_\_\_  
Arthur Goshin, M.D.

**UNANIMOUS WRITTEN CONSENT OF THE  
BOARD OF DIRECTORS OF THE  
SOLE MEMBER OF  
MENORAH FOUNDATION, INC.,  
TO APPROVE PLAN OF DISSOLUTION**

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**WHEREAS**, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Member; and

**WHEREAS**, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Member of the Corporation; and

**WHEREAS**, the directors of the Member of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution is in the best interests of the Corporation.

**NOW, THEREFORE**, be it

**RESOLVED**, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Member of the Corporation; and be it further

**RESOLVED**, that the appropriate officers of the Member are hereby authorized to execute any and all documents and to take any appropriate and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

**IN WITNESS WHEREOF**, the undersigned directors of the Member of the Corporation have executed this consent as of April 5, 2018.

\_\_\_\_\_  
Ronald Milch

\_\_\_\_\_  
Shmuel Lefkowitz

\_\_\_\_\_  
Steven Topol

\_\_\_\_\_  
Eli Feldman

\_\_\_\_\_  
Alexander Balko

\_\_\_\_\_  
Arthur Goshin, MD

**UNANIMOUS WRITTEN CONSENT OF THE  
BOARD OF DIRECTORS OF THE  
SOLE MEMBER OF  
MENORAH FOUNDATION, INC.,  
TO APPROVE PLAN OF DISSOLUTION**

The undersigned, being all of the directors of Metropolitan Jewish Health System Foundation, the sole member (the "Member") of Menorah Foundation, Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the Member pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

**WHEREAS**, the Corporation has no assets to distribute and no liabilities at the time of the adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

**WHEREAS**, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Member; and

**WHEREAS**, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Member of the Corporation; and

**WHEREAS**, the directors of the Member of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution is in the best interests of the Corporation.

**NOW, THEREFORE**, be it

**RESOLVED**, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Member of the Corporation; and be it further

**RESOLVED**, that the appropriate officers of the Member are hereby authorized to execute any and all documents and to take any appropriate and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

**IN WITNESS WHEREOF**, the undersigned directors of the Member of the Corporation have executed this consent as of April 5, 2018.

\_\_\_\_\_  
Ronald Milch

  
\_\_\_\_\_  
Shmuel Lefkowitz

\_\_\_\_\_  
Steven Topal

\_\_\_\_\_  
Eli Feldman

\_\_\_\_\_  
Alexander Balko

\_\_\_\_\_  
Arthur Goshin, M.D.

**UNANIMOUS WRITTEN CONSENT OF THE  
BOARD OF DIRECTORS OF THE  
SOLE MEMBER OF  
MENORAH FOUNDATION, INC.,  
TO APPROVE PLAN OF DISSOLUTION**

The undersigned, being all of the directors of Metropolitan Jewish Health System Foundation, the sole member (the "Member") of Menorah Foundation, Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the Member pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

**WHEREAS**, the Corporation has no assets to distribute and no liabilities at the time of the adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

**WHEREAS**, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Member; and

**WHEREAS**, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Member of the Corporation; and

**WHEREAS**, the directors of the Member of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution is in the best interests of the Corporation.

**NOW, THEREFORE**, be it

**RESOLVED**, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Member of the Corporation; and be it further

**RESOLVED**, that the appropriate officers of the Member are hereby authorized to execute any and all documents and to take any appropriate and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

**IN WITNESS WHEREOF**, the undersigned directors of the Member of the Corporation have executed this consent as of April 5, 2018.

\_\_\_\_\_  
Ronald Milch

\_\_\_\_\_  
Steven Topal

\_\_\_\_\_  
Alexander Balko

\_\_\_\_\_  
Shmuel Lefkowitz

  
\_\_\_\_\_  
Eli Feldman

\_\_\_\_\_  
Arthur Goshin, M.D.

**UNANIMOUS WRITTEN CONSENT OF THE  
BOARD OF DIRECTORS OF THE  
SOLE MEMBER OF  
MENORAH FOUNDATION, INC.,  
TO APPROVE PLAN OF DISSOLUTION**

The undersigned, being all of the directors of Metropolitan Jewish Health System Foundation, the sole member (the "Member") of Menorah Foundation, Inc., a New York not-for-profit corporation (the "Corporation"), do hereby adopt the following preambles and resolutions by unanimous written consent in lieu of a meeting of the Member pursuant to Section 614 of the New York Not-for-Profit Corporation Law:

**WHEREAS**, the Corporation has no assets to distribute and no liabilities at the time of the adoption of the plan attached hereto as Exhibit A (the "Plan of Dissolution"); and

**WHEREAS**, the Board of Directors of the Corporation has determined that it is in the best interests of the Corporation to dissolve, and in furtherance of the foregoing, has adopted the Plan of Dissolution and recommended its approval to the Member; and

**WHEREAS**, pursuant to Section 1002(a)(2) of the New York Not-for-Profit Corporation Law, the Plan of Dissolution is subject to the approval of the Member of the Corporation; and

**WHEREAS**, the directors of the Member of the Corporation have determined that the dissolution of the Corporation and the approval of the Plan of Dissolution is in the best interests of the Corporation.

**NOW, THEREFORE**, be it

**RESOLVED**, that the dissolution of the Corporation pursuant to the Plan of Dissolution be, and it hereby is, approved by the Member of the Corporation; and be it further

**RESOLVED**, that the appropriate officers of the Member are hereby authorized to execute any and all documents and to take any appropriate and all action necessary or desirable to effectuate the purpose and intent of these resolutions.

**IN WITNESS WHEREOF**, the undersigned directors of the Member of the Corporation have executed this consent as of April 5, 2018.

\_\_\_\_\_  
Ronald Milch

\_\_\_\_\_  
Shmuel Lefkowitz

\_\_\_\_\_  
Steven Topal

\_\_\_\_\_  
Eli Feldman

\_\_\_\_\_  
Alexander Balko

  
\_\_\_\_\_  
Arthur Goshin, M.D.

**EXHIBIT A**  
**PLAN OF DISSOLUTION**



**PLAN OF DISSOLUTION**  
**OF**  
**MENORAH FOUNDATION, INC.**

The Board of Directors of Menorah Foundation, Inc. (the "Corporation") has adopted resolutions by unanimous written consent approving the dissolution of the Corporation dated as of April 5, 2018 and adopting a plan of dissolution ("Plan of Dissolution") and the sole corporate member of the Corporation, Metropolitan Jewish Health System Foundation, has adopted resolutions by unanimous written consent approving the Plan of Dissolution dated as of April 5, 2018.

The Plan of Dissolution is as follows:

1. Governmental approval of the dissolution shall be obtained from:
  - a. the Public Health and Health Planning Council;
  - b. the New York State Department of Taxation and Finance; and
  - c. the Commissioner of Finance of New York City, if applicable.
2. The Corporation is a charitable corporation and it has no assets to distribute and no liabilities at the time of the adoption of the Plan of Dissolution.
3. A Certificate of Dissolution shall be executed by an authorized Director or officer of the Corporation and all required governmental approvals shall be attached thereto before filing it with the Department of State.
4. Within 270 days after the date on which the Attorney General or the Supreme Court approves the Plan of Dissolution, the Corporation shall carry out the Plan.

**EXHIBIT C**  
**PLAN OF DISSOLUTION**

**PLAN OF DISSOLUTION  
OF  
MENORAH FOUNDATION, INC.**

The Board of Directors of Menorah Foundation, Inc. (the "Corporation") has adopted resolutions by unanimous written consent approving the dissolution of the Corporation dated as of April 5, 2018 and adopting a plan of dissolution ("Plan of Dissolution") and the sole corporate member of the Corporation, Metropolitan Jewish Health System Foundation, has adopted resolutions by unanimous written consent approving the Plan of Dissolution dated as of April 5, 2018.

The Plan of Dissolution is as follows:

1. Governmental approval of the dissolution shall be obtained from:
  - a. the Public Health and Health Planning Council;
  - b. the New York State Department of Taxation and Finance; and
  - c. the Commissioner of Finance of New York City, if applicable.
2. The Corporation is a charitable corporation and it has no assets to distribute and no liabilities at the time of the adoption of the Plan of Dissolution.
3. A Certificate of Dissolution shall be executed by an authorized Director or officer of the Corporation and all required governmental approvals shall be attached thereto before filing it with the Department of State.
4. Within 270 days after the date on which the Attorney General or the Supreme Court approves the Plan of Dissolution, the Corporation shall carry out the Plan.

**PROPOSED FORM OF CERTIFICATE OF DISSOLUTION**



CERTIFICATE OF DISSOLUTION  
OF

MENORAH FOUNDATION, INC.

*(Name of Corporation)*

Under Section 1003 of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is

**Menorah Foundation, Inc.**

If the name of the corporation has been changed, the name under which it was formed is

**SECOND:** The certificate of incorporation was filed with the Department of State on

August 10, 1998

**THIRD:** The name and address of each officer and director of the corporation is:

Alexander Balko	President and Director	105 Mineola Avenue Point Lookout, NY 11569
Jeffrey Davis	Financial Officer and Director	6 Jennifer Court Colonia, New Jersey 07067
Robert E. Leamer	Assistant Secretary and Director	207 Noe Avenue Chatham, New Jersey 07928

**FOURTH:** The corporation is a *(check the appropriate box)*

charitable corporation     non-charitable corporation.

**FIFTH:** At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds

*(Check the appropriate statement)*

assets which are legally required to be used for a particular purpose.  
 no assets which are legally required to be used for a particular purpose.

**SIXTH:** The corporation elects to dissolve.

**SEVENTH:** *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

**EIGHTH:** *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

x   
(Signature)

ROBERT E. LEAMER  
(Print or Type Name of Signer)

Assistant Secretary & Director  
(Capacity of Signer)



**Division of Corporations,  
State Records and  
Uniform Commercial Code**

New York State  
Department of State  
Division of Corporations,  
State Records and  
Uniform Commercial Code  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231  
www.dos.ny.gov

---

**CERTIFICATE OF DISSOLUTION  
OF**

Menorah Foundation, Inc.

---

*(Name of Corporation)*

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Marsena M. Farris, Esq., c/o Cadwalader, Wickersham & Taft LLP

Address: 200 Liberty Street

City, State and Zip Code: New York, New York 10281

**NOTES:**

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at [www.dos.ny.gov](http://www.dos.ny.gov).
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

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