

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

June 7, 2018

*Immediately following the Special Establishment and Project Review Committee meeting
which is to begin immediately following the Committee on Codes, Regulations and
Legislation meeting
(Codes scheduled to begin at 9:30 a.m.)*

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

I. INTRODUCTION OF OBSERVERS

Gary Kalkut, M.D.

II. APPROVAL OF MINUTES

April 12, 2018 Meeting Minutes

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

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

C. Report of the Office of Public Health Activities

Brad Hutton, Deputy Commissioner, Office of Public Health

D. Report of the Office of Quality and Patient Safety

Jeanne Alicandro, M.D., M.P.H., Medical Director, Office of Quality and Patient Safety

IV. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Information

18-03 Amendment of Section 405.4 of Title 10 NYCRR (Medical Staff – Sepsis Protocols)

18-04 Amendment of Parts 402, 403, 700, 763, 765, 766, 793, 794, and 1001 of Title 10 NYCRR (Criminal History Record Checks and Advanced Home Health Aides)

V. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Gary Kalkut, M.D., Vice Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181108 C	White Plains Hospital Center (Westchester County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172064 C	NYU Langone Hospitals (Kings County) Dr. Kalkut – Recusal	Contingent Approval
2.	181054 C	United Memorial Medical Center Bank Street Campus (Genesee County) Ms. Baumgartner - Recusal	Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181051 C	South Nassau Communities Hospital (Nassau County) Dr. Martin - Recusal	Presented at the 6/7/18 Special Establishment/Project Review Committee No Recommendation

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181066 B	Greece ASC, LLC d/b/a Cornerstone Eye Surgery Center (Monroe County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172413 B	Oneida Health Roswell Park Oncology, LLC (Madison County)	Contingent Approval
2.	172423 B	MediDental Group LLC d/b/a MediDental Care (Queens County)	Contingent Approval
3.	181137 E	CFDSHC, Inc. (Albany County)	Contingent Approval

Hospice Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 181065 E	The Caring Coalition of Central New York (Onondaga County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 171416 E	Oak Hill Operating Co., LLC d/b/a Oak Hill Rehabilitation and Nursing Care Center (Tompkins County)	Contingent Approval
2. 171417 E	River View Facility Operations, LLC d/b/a River View Rehabilitation and Nursing Care Center (Tioga County)	Contingent Approval
3. 172292 E	Grand Mohawk Valley, LLC d/b/a The Grand Rehabilitation and Nursing at Mohawk (Herkimer County)	Contingent Approval
4. 181218 E	Heritage Operating Associates, LLC d/b/a The Grand Rehabilitation and Nursing at Utica (Oneida County)	Contingent Approval

Certified Home Health Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 181047 E	Gamzel NY, Inc. d/b/a Centers Home Health Care of Downstate (Kings County)	Contingent Approval
2. 181085 E	QC – Medi New York, Inc. d/b/a Kindred at Home (Saratoga County)	Contingent Approval

Certificates

Certificate of Amendment of the Certificate of Incorporation

Applicant

Century Medical and Dental Center, Inc.

St. James Mercy Foundation, Inc.

St. James Mercy Hospital

E.P.R.C. Recommendation

Approval

Approval

Approval

Certificate of Amendment of Articles of Organization

Applicant

Yonkers Gardens LLC

E.P.R.C. Recommendation

Approval

Certificate of Dissolution

Applicant

Keser Services, Inc.

Menorah Foundation, Inc.

E.P.R.C. Recommendation

Approval

Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181103 B	WNY Medical Management (Erie County) Ms. Baumgartner – Recusal	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181119 E	Premium Health (Kings County) Dr. Kalkut - Interest	Approval

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172293 E	Grand Batavia, LLC d/b/a The Grand Rehabilitation and Nursing at Batavia (Genesee County) Ms. Baumgartner - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181278 E	Liberty Endoscopy Center (New York County) Dr. Martin – Recusal	Presented at the 6/7/18 Special Establishment/Project Review Committee No Recommendation

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	172364 E	True North IV DC, LLC (Queens County) Mr. Kraut – Recusal Dr. Strange – Recusal	No Recommendation
2.	172411 E	True North V DC, LLC (Kings County) Mr. Kraut – Recusal Dr. Strange - Recusal	No Recommendation

Residential Health Care Facilities – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	181120 E	Chapin Acquisition I, LLC d/b/a Jamaica Estates Nursing and Rehabilitation Center (Queens County) Mr. La Rue – Recusal	Presented at the 6/7/18 Special Establishment/Project Review Committee No Recommendation

Certified Home Health Agencies – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	171041 E	Shining Star Home Health Care (Kings County)	Deferral for two PHHPC cycles
2.	172408 E	Prospect Acquisition III, LLC d/b/a Responsive Home Health Care (Kings County) Mr. La Rue – Recusal	Presented at the 6/7/18 Special Establishment/Project Review Committee No Recommendation
3.	181191 E	Always There Home Care (Ulster County) Mr. La Rue – Recusal	Presented at the 6/7/18 Special Establishment/Project Review Committee No Recommendation

HOME HEALTH AGENCY LICENSURES

New LHCSAs – Affiliated with Assisted Living Programs (ALPs)

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
	162303	Western NY Care Services, LLC (Erie County) Ms. Baumgartner – Interest	Approval
	171385	Home Care for Generations, LLC d/b/a Generations Home Care (Rockland County)	Approval
	172286	Magnolia Home Care Services, (Rockland County)	Approval
	161033	2600 Niagara Falls Boulevard AL Operating Company, LLC d/b/a Elderwood Home Care at Wheatfield (Niagara County) Ms. Baumgartner – Recusal	Contingent Approval

162292

571 Main Street Operating
Company, LLC
d/b/a Elderwood Home Care at
Williamsville
(Erie County)
Ms. Baumgartner – Recusal

Contingent Approval

VI. NEXT MEETING

July 19, 2018 - Albany
August 2, 2018 – Albany

VII. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
April 12, 2018

The meeting of the Public Health and Health Planning Council was held on Thursday, April 12, 2018 at the Empire State Plaza, Concourse Meeting Room 6, Albany. Chairman, Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Ms. Judy Baumgartner	Dr. Glenn Martin
Dr. Howard Berliner	Ms. Ellen Rautenberg
Dr. Jo Ivey Boufford	Mr. Peter Robinson
Dr. Lawrence Brown	Dr. John Ruge
Ms. Kathleen Carver-Cheney	Ms. Nilda Soto
Dr. Angel Gutierrez	Dr. Theodore Strange
Mr. Thomas Holt	Dr. Anderson Torres
Mr. Jeffrey Kraut	Dr. Kevin Watkins
Mr. Scott La Rue	Dr. Patsy Yang
Mr. Harvey Lawrence	Commissioner Zucker – Ex-officio

DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|-------------------------|------------------------|
| Mr. Charles Abel | Ms. Adrienne Mazeau |
| Mr. Udo Ammon | Mr. Mark Noe |
| Ms. Suzanne Barg | Ms. Tracy Raleigh |
| Ms. Barbara DelCogliano | Ms. Gilda Riccardi |
| Ms. Alejandra Diaz | Mr. Daniel Sheppard |
| Mr. Mark Furnish | Ms. Lisa Thomson |
| Ms. Colleen Leonard | Ms. Lisa Ullman |
| Mr. George Macko | Dr. Lloyd Wilson |
| Ms. Karen Madden | Mr. Richard Zahnleuter |

INTRODUCTION

Mr. Kraut called the meeting to order and welcomed Commissioner Zucker, Council members, meeting participants and observers.

APPROVAL OF THE 2019 PHHPC MEETING DATES

Mr. Kraut asked for a motion to approve the 2019 Public Health and Health Planning Council Meeting Dates. Dr. Brown Mr. Lawrence motioned for approval which was seconded by Dr. Gutiérrez. The 2019 meeting dates were unanimously adopted. Please refer to page 3 of the attached transcript.

APPROVAL OF THE MINUTES OF FEBRUARY 8, 2018

Mr. Kraut asked for a motion to approve the February 8, 2018 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutiérrez motioned for approval which was seconded by Dr. Torres. The minutes were unanimously adopted. Please refer to page 3 of the attached transcript.

Office of Primary Care and Health Systems Management Activities

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

Mr. Sheppard began his report by updating the Council on the enacted budget. He explained the budget includes \$525 million of new transformational capital funds and of that \$525 million there is set aside a minimum of \$60 million for community-based healthcare providers, \$45 million for nursing homes, and \$20 million in connection with assisted living program expansion initiative. OPCHSM is in the process prior to the enactment of this \$525 million, the Department is in the process of administering over \$3.5 billion of healthcare transformation capital that has been provided by the Governor in legislature over the past four years.

Mr. Sheppard stated the executive budget included a number of proposals related to the Regulatory Modernization Initiative. The first one relates to integrated physical and behavioral healthcare. The second approval in the budget for a proposal to allow telehealth services to be delivered anywhere the patient might be, and it also clarifies that other provider types can deliver telehealth services. There were two proposals recommended by the RMI that were not in the enacted budget. Those related to retail practices and community paramedicine.

Mr. Sheppard noted that also in the budget was an expansion of the assisted living programs (ALPs) which authorized a process for expedited approval previously awarded out beds that had been withdrawn by either the applicant or withdrawn by the applicant because the applicant had enacted on the proposals. Also included was authorized an Alzheimer voucher program. This is a demonstration program that provides up to 200 vouchers that will subsidize the cost of assisted living for individuals who have either Alzheimer's disease or dementia who are not Medicaid eligible. The other major proposal was regarding the moratorium of Licensed Home Health Care Agencies.

Mr. Sheppard concluded his report. To view the complete report and questions from the members, please see pages 3 through 7 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

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

Opioid Epidemic

Dr. Zucker began his report by speaking about the expansion of the opioid epidemic measures. In the budget, there is an opioid stewardship fund which imposes a surcharge on opioid manufacturers and distributors. That will result in \$100 million new funding for New York's efforts to combat opioids. The money will be used to help defray the State's ongoing costs regarding prevention, treatment and recovery services. The budget now allocated \$200 million for the heroin and opioid crisis. More than \$30 million of that money will go towards operating and capital support for the Office of Alcoholism and Substance Abuse Services so they can build on prevention on treatment and recovery programs as well as residential services and public awareness and education. The enacted budget also includes provisions that require providers to have written treatment plan when they prescribe opioids to a patient who is just starting on opioids. They must also have a written treatment plan for patients being maintained on opioid treatment for pain and has lasted longer than three months or past the time that one would expect for normal tissue healing. This is not applicable to patients being treated for cancer that is not in remission, nor does it apply to patients in hospice or others in end-of-life care or palliative care. The intent is to reduce the unnecessary use of opioid medications.

Dr. Zucker also noted that the Department is taking steps to protect the youngest New Yorkers impacted by the opioid epidemic. The budget includes funding that will enable the Department to develop a children's and recovering mothers or CHARM program. The CHARM program is aimed at providing healthcare providers, hospitals, and mid-wifery birth centers with guidance with education, with assistance, can provide care to expectant mothers with a substance use disorder. Under a pilot program we also plan to implement up to four infant recovery centers which will provide cost effective and necessary services for substance exposed infants under one year of age.

Dr. Zucker explained that the Department is taking other actions on opioids. The Department expanded the prescription monitoring program. Since 2013 there has been a steadily growing of the interoperability of the PMP, first with the bordering states and then with a rest of the North East and now along the Eastern seaboard of the United States and beyond. The PMP is interoperable with 25 states as well as the District of Columbia. This means New York can securely share data with other states which gives us the providers access to nearly 150 million patients control substance history records. Whenever a patient's being considered for a controlled substance prescription pain killer providers can get a more complete picture of that patient's history of controlled substance prescribing. By seeing that history the providers can more easily detect and prevent doctor shopping, which is important in combating the opioid epidemic. Since the Department first began requiring practitioners to check the PMP before prescribing controlled substances, New York has reduced the doctor shopping by over 98 percent.

Dr. Zucker also stated the Department is training the Department's narcotics investigators to carry and administer Naloxone. These investigators work in the Bureau of Narcotic Enforcement and are often on the front lines of the epidemic. They work with law enforcement, they work with health professionals and others to investigate suspicious drug activities in a variety of settings. Naloxone can reverse an opioid overdose and put someone struggling with addiction on the path to treatment as well as recovery.

Dr. Zucker advised that the Department working with OASAS have provided hospitals with a time limited waiver that expands the detox services they permitted to provide. The label lets hospitals admit and treat the number of qualifying patients above regulatory limits without the need for an OASAS detox operating certificate. Under this waiver, the hospital simply has to notify by OASAS and the department of health of its intent to provide such services, and this waiver will be valid until December 31, 2018 when both agencies will reevaluate the need for a continuing waiver. We also want to remind hospitals that emergency department physicians are allowed to treat addiction using medication assisted treatment. In an emergency, federal law allows a physician to administer Methadone or buprenorphine once a day within a 72 hour period while connection to addiction treatment is made. These measures will help strengthen our arsenal while we continue to fight the opioid epidemic which is happening on all fronts and aggressively.

Public Housing

Dr. Zucker next discussed the New York State Housing Authority (NYSHA) in New York City. The Department released a report to the Governor about the inspections of the properties managed by New York City Housing Authority. The Department did an investigation into the conditions at the residential developments in all five boroughs managed by NYSHA. The Department completed more than 300 environmental quality assessments, they found poor conditions such as peeling and chipping paint, in some cases contained lead, there were insects, rodents, water damage, mold covering the ceiling and the walls, there was lack of heat and lack of hot water during the cold winter months, there was broken smoke and carbon monoxide detectors. These conditions pose truly a potential threat to the health and safety of more than 400,000 public housing tenants, many of them are children. The Governor signed the executive order declaring a state disaster emergency in NYSHA housing to expedite repairs and to immediately address public health hazards in these properties. The Governor has committed an additional \$250 million on top of the existing \$300 million to remedy these deplorable housing conditions. The executive order also requires the selection of an independent emergency manager to oversee the development in completion of a comprehensive emergency remediation plan which will include repairs, will include upgrades, and it will include construction. The manager will be selected by the New York City Mayor, the Speaker of the New York City Council on behalf of the Council, and the president of the New York City Housing Authority citywide council of presidents. The enacted budget also allows design build authorization for NYSHA that will help speed up the process of these urgent repairs. The Department stands ready to contribute to this effort of enabling the tenants of NYSHA the opportunity to help lead much healthier lives.

Cigarette Smoking

Dr. Zucker shared the good news that New York State smoking rate has fallen to a new low, with 14.2 percent. That is a 22 percent reduction since 2011, it is also well below the national average of 15.5 percent, and among young adults between the ages of 18 and 24 the drop was even more dramatic falling by 46 percent to 11.7 percent. There is also a lower smoking rate for those with less than a high school education, those with an annual income below \$25,000 and those with mental health, behavioral health issues. The decline is a result of the aggressive and wide ranging tobacco cessation efforts and to our prevention agenda efforts that the Department has made and will continue to make.

Harmful Algae Blooms

Dr. Zucker next spoke on the topic of harmful algae blooms. The Department has been working closely with the Department of Environmental Conservation (DEC) to host four regional harmful algae blooms to discuss the threats posed by this environmental hazard. There have been summits in New Paltz, Syracuse, Ticonderoga, and in Rochester, and together with DEC's Commissioner Seggos. Dr. Zucker stated that he has been co-chairing these events around the State where leading experts have come together to discuss the causes of harmful algae blooms and how to prevent them. This has been very interesting and informative discussions. They are a threat to the quality of our drinking water and also pose a threat to the recreational use of these lakes that are vital to our upstate economy. These are areas that many people go to vacation and the many summer camps. At the summits we heard from national and state experts including scientists from Kansas and Ohio, from Vermont and Tennessee. We also heard from experts from our State University of New York College of Environmental Sciences and Forestry. SUNY Stonybrook, Cornell, DEC, DOH, Ag and Markets, the New York State soil and water conservation committee and local stakeholders, and hearing from the public who truly understand and are concerned. The results of these gatherings will be customized action plans to address the 12 priority water bodies across the state. The action plans will be completed by the end of May, in time for as the weather changes. Each action plan will be used to guide and develop a priority projects including new monitoring and treatment technologies, and the lessons we learn will be applied to other impacted water bodies. The Department's goal is to keep these vulnerable water bodies safe and clean now and in the years to come.

Capital Projects

Dr. Zucker gave some good news on the capital projects in the enacted state budget which will continue to support the health system transformation. The budget includes \$525 million to support projects to create financially sustainable systems of care to preserve or improve access to essential services to modernize facilities and foster participation in alternative payment models. The funds are going to help integrate physical and behavioral health systems. It will improve the delivery of homecare. It will expand the availability of assisted living beds across the state.

Regulatory Modernization Initiative

Dr. Zucker advised that the budget reflected several items that came out of the Regulatory Modernization Initiative (RMI). The RMI was launched by Department in 2017 to overhaul the policies of the regulations that govern the licensure and oversight of healthcare facilities. The efforts involve sweeping changes to the health system delivery system with the goal of improving delivery of healthcare in the State. Major recommendations adopted in the budget include the measures to integrate primary care, behavioral care, and substance abuse treatment in a single setting, and authorization to deliver telehealth to patients at any location including their homes. These are steps to truly move forward in how we address care across the state and make it sort of state of the art. Through these and other recommendations that are being implemented administratively or through regulatory changes we hope to create a coordinated health care system that enables seamless care transitions especially for patients who are in post-acute care settings. Dr. Zucker thanked Council members who served on the various workgroups and had been involved and helped develop the RMI recommendations.

Physical Therapy

Dr. Zucker noted that also included in the budget was a measure to increase the limit on physical therapy visits covered by Medicaid. The budget raises the limit of PT visits for people on Medicaid from 20 visits a year to 40 visits per year.

HIV/AIDS Epidemic and Hepatitis C

Dr. Zucker advised that the AIDS Institute issued a progress report based on the data that from 2016, the entire year, and found that 75 percent of New Yorkers newly diagnosed with HIV are demonstrating entry to care within 30 days of their diagnosis. The Department also found that 80 percent of all New Yorkers living with diagnosed HIV showed evidence of receiving some care over the course of the year and approximately 70 percent of New Yorkers diagnosed with HIV were virally suppressed. New York is on track to meet its goals to reduce the number of new HIV infections below the number of HIV related deaths by the end of 2020, realizing the first ever decrease in HIV prevalence.

Dr. Zucker noted that the success in ending the epidemic has given rise to the next topic which is the elimination of Hepatitis C. The Governor recently announced the nation's first state level Hepatitis C comprehensive elimination strategy which covers prevention, screening, and treatment. The goal is to stop Hepatitis C in its tracks by increasing access to medications that can cure Hepatitis C and committing more funds for education, prevention, and services and Hepatitis C testing here and treatment. Injection drug use is the primary mode of transmission of Hepatitis C and the opioid epidemic has led to a rise in the new cases of Hepatitis C. The good news is the studies show that more than 90 percent of people who are treated can be cured, and new direct acting antiviral drugs have minimal side effects and they can prevent the need for liver transplant, liver failure, cirrhosis of the liver, liver cancer as well, and clearly... Since 2007 Hepatitis C related deaths have exceeded HIV related deaths in the State outside of New York City. The two diseases are closely linked. One in five persons with HIV is co-infected with Hepatitis C.

Flu

Dr. Zucker advised that even though flu is still geographically widespread, the number of cases has declined since the seasons peak which occurred in the week of February 17, 2018. That week New York had more than 18,250 of lab confirmed flu, and the numbers have started to go down. In the most recent report, there was an uptick. During the week of March 31, 2018, the number of laboratory confirmed cases rose 17 percent from the previous week, where it had fallen 10 percent the week prior to that. In the same time period hospitalizations with flu fell just one percent after dropping 20 percent the week before. Dr. Zucker explained it was a rough flu season this year with five pediatric deaths related to flu, the fact the numbers are going down is a very positive trend.

Department's Reaccreditation

Dr. Zucker spoke on the issue of the Department's reaccreditation. The Department has begun the process of reaccreditation four years ago. The Department became one of the first state health departments to be credited by the health accreditation board. In 2019 we will submit our application for reaccreditation and going through the process requires the Department to update many of the core initiatives and reports that we created prior to the accreditation back four years ago such as the New York State Health Assessment and the Prevention Agenda and our State Health Improvement Plan. Most important, it will enable us to continue to strengthen our performance. Reaccreditation encourages us to evolve and advance in our rolls as a leader in the community regarding health. The Department will be engaging many members of the Department to create narratives about the impact the Department has had which is significant in these past four years is a tremendous amount of areas that we've tackled. The Department will also be engaging PHHPC as our official governing entity in this effort.

National Donate Life Month

Lastly, Dr. Zucker advised the members of the National Donate Life month. Dr. Zucker was wearing a Donate Life and noted that the following day is national blue and green day which highlights the importance of organ donation and the need for more donors. Organ donation remains a priority for the Department of Health. 10,000 New Yorkers are in need of an organ transplant and New Yorkers make up 10 percent of the national organ transplant waiting list. Ten percent. One organ donor can save eight lives and it really improves the lives of about 75 other people and touches on so many families. Dr. Zucker encouraged people to sign up as an organ donor. More information can be found at DonateLife.ny.gov and that will provide you with more information about what the Department is doing. New York will be lighting up different buildings and bridges and other things across the state to raise the awareness, and the more people are aware, the more likely they will donate or sign up to donate with the goal of those 10,000 people on that list those numbers will come down.

Commissioner Zucker concluded his report. To read the complete report, please see pages 7 through 21 of the attached transcript.

PUBLIC HEALTH SERVICES

Mr. Kraut introduced Dr. Boufford to give her Report of the Public Health Committee activities.

Dr. Boufford updated the Council on the Prevention Agenda and the revision of the Prevention Agenda are reflected in the Governor's 2017 State of the State message and most recently in 2018 declaring for health across all policies approach to the work of all state agencies and to make New York the first age friendly state. These considerations are part of the revision process and enabling us to involve other state agencies in both the Ad Hoc Leadership Group and working with the existing coalitions in the counties across the state. The Agriculture and Markets, NYSERDA have joined in with the initiatives. Mr. Francis has been convening across agencies to engage them in this work. The Ad Hoc Leadership Group is populated by the Public Health Committee and 33 other entities in addition to the 11 PHIPS the entities in the counties around the state that are bringing together the healthcare delivery system and the public health system as well as the public health committee.

Dr. Boufford noted that the Ad Hoc Committee met on February 15, 2018 to review the plans and presented a power point presentation providing the next phases of the Prevention Agenda and described the work of the Committee's next steps and thanked Mr. Francis, Commissioner Zucker, Mr. Hutton and Ms. Pirani and her team for their hard work.

Dr. Boufford stated the progress on maternal mortality has continued. A statewide summit was held on February 14 at the New York Academy of Medicine. It was planned by Joint Committee of the New York State Health Department, New York City Health Department, HANYS, Greater New York, and the ACOG OBGYN region two group. A white paper was prepared which documents progress including the work and goals of the Council, and the paper that the Council approved in January 2017. Over 450 people come to the session and it was being broadcast around the State to about another 200. The areas that will be coming back with recommendations on are continuing to address the issue of racial disparities which have improved, looking at deepening the hospital-based interventions on prevention of management of crisis, continuing to look at the prehospital and pre-pregnancy, and then the final area that was identified in the planning is community and patient engagement.

Dr. Boufford concluded her report. To read the complete report, please see pages 21 through 35 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Adoption

17-16 Amendment of Part 405 of Title 10 NYCRR (Hospital Policies and Procedures for Individuals with Substance Use Disorders)

Dr. Gutiérrez described the proposed Amendment of Part 405 of Title 10 NYCRR (Hospital Policies and Procedures for Individuals with Substance Use Disorders). The proposed regulation was adopted. Please see pages 35 through 37 of the transcript.

17-19 Amendment of Subpart 5-1 of Title 10 NYCRR
(Public Water Systems - Revised Total Coliform Rule)

Dr. Gutiérrez described the proposed Amendment of Amendment of Subpart 5-1 of Title 10 NYCRR (Public Water Systems - Revised Total Coliform Rule). The proposed regulation was adopted. Please see page 37 of the transcript.

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Mr. Peter Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	172305 C	Faxton-St Lukes Healthcare St Lukes Division (Oneida County) Dr. Bennett – Interest (not present at meeting)	Contingent Approval
2.	181016 C	Maimonides Medical Center (Kings County) Mr. Kraut – Recusal Mr. Lawrence – Recusal Dr. Brown- Abstained	Contingent Approval

Mr. Robinson called application 172305 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 39 of the transcript.

Mr. Robinson called application 181016 and noted for the record that Mr. Kraut and Mr. Lawrence have declared conflicts and have exited the meeting room. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion, Dr. Brown abstained. The motion passed with Mr. Kraut and Mr. Lawrence’s recusals and Dr. Brown’s abstention. Mr. Kraut and Mr. Lawrence returned to the meeting room. Please see pages 39 and 40 of the transcript.

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

HOME HEALTH AGENCY LICENSURES

Changes in Ownership

172062	J&A Health Services, LLC (Kings, Bronx, Queens, Richmond, New York and Nassau Counties)	Deferred
172310	Caring Professionals Inc. (Queens County)	Deferred

New LHCSA

2471 L	Bonjour Home Care NY, LLC (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Deferred
2488 L	Family Residences and Essential Enterprises, Inc. (Nassau, Suffolk and Queens Counties)	Deferred
161021	Active Home Care, Inc. (Nassau and Queens Counties)	Deferred
161066	Shelly A. Bacchus d/b/a Believe Again Home Care (Dutchess, Orange, Columbia, Ulster, and Green Counties)	Deferred
161075	Apon Home Care, LLC (Bronx, Queens, Kings, Westchester and New York Counties)	Deferred
161084	Age Friendly Homecare Corp. (Kings, New York, Queens, Bronx, Richmond and Westchester Counties)	Deferred

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

New LHCSAs – Affiliated with Assisted Living Programs (ALPs)

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

Mr. Robinson motioned for a deferral of applications 172062, 172310, 2471, 2488, 161021, 161066, 161075, 161084, 161092, 161125, 161139, 161149, 161187, 161207, 161221, 161287, 161296, 161033, 162292, 162303, 171385, and 172286. Dr. Berliner seconded the motion. The motion to defer passed with Dr. Martin opposing the motion. Please see pages 40 and 41 of the attached transcript.

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

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

Mr. Robinson called application 172363 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see pages 41 and 42 of the transcript.

Dialysis Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	171380 B	New York Continuum Services, LLC (Kings County)	Contingent Approval

Mr. Robinson called application 171380 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see page 42 of the transcript.

Certificates

Certificate of Incorporation

<u>Applicant</u>	<u>Council Action</u>
Cayuga Medical Center Auxiliary, Inc	Approval

Certificate of Amendment of the Articles of Organization

<u>Applicant</u>	<u>Council Action</u>
Endo Group, LLC	Approval

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>Council Action</u>
The Martin Luther King, Jr., Health Center, Inc.	Approval

Mr. Robinson calls for approval for consent to file their certificates for Cayuga Medical Center Auxiliary, Inc., Endo Group, LLC and The Martin Luther King, Jr. Health Center, Inc. and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see pages 42 and 43 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 181031 E	Westchester County Health Care Corporation (Ulster County) Dr. Bennett – Interest (not present at meeting) Mr. Berliner - Interest	Contingent Approval

Mr. Robinson called application 181031 and noted for the record that Dr. Berliner and Dr. Bennet have declared interests and stated that Dr. Bennet is not present at the meeting. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see page 43 of the transcript.

Residential Health Care Facilities – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 172428 E	Montclair Care Center, Inc. d/b/a Marquis Rehabilitation & Nursing Center (Nassau County) Ms. Carver-Cheney – Recusal	Contingent Approval

Mr. Robinson called application 172428 and noted for the record Ms. Carver-Cheney had declared a conflict and has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney returned to the meeting room. See pages 43 and 44 of the transcript.

Certificates

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>Council Action</u>
Long Island Jewish Medical Center Mr. Kraut – Recusal Dr. Strange – Recusal	Approval

Plainview Hospital Mr. Kraut – Recusal Dr. Strange - Recusal	Approval
Southside Hospital Mr. Kraut – Recusal Dr. Strange – Recusal	Approval
Staten Island University Hospital Mr. Kraut – Recusal Dr. Strange - Recusal	Approval

Mr. Robinson calls for approval for consent to file their certificates for Long Island Jewish Medical Center, Plainview Hospital, Southside Hospital, and Staten Island University Hospital and noted for the record that Mr. Kraut and Dr. Strange have declared a conflict and have exited the meeting Room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries with the noted recusals. Mr. Kraut and Dr. Strange return to the meeting room. Please see page 44 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	181002 E	New York Endoscopy Center (Westchester County)	Contingent Approval

Mr. Robinson called application 181002 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries. Please see page 45 of the transcript.

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	172347 B	Southern Tier Women’s Health Services (Broome County) Mr. La Rue – Abstained	Contingent Approval

Mr. Robinson called application 172347 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries with Mr. La Rue abstaining. See pages 45 and 46 of the transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	181106 E	Eastern Niagara Hospital – Lockport Division (Niagara County) Ms. Baumgartner – Recusal Dr. Brown – Abstained Dr. Watkins - Abstained	Contingent Approval
2.	171446 E	St. Josephs Hospital Health Center (Onondaga County) Dr. Bennett – Interest (not present at meeting) Dr. Brown - Abstained	

Mr. Robinson called application 181106 and notes for the record that Ms. Baumgartner has declared a conflict has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries with Ms. Baumgartner’s recusal, and Dr.’s Brown and Watkins abstaining. Ms. Baumgartner returns to the meeting room. Please see pages 46 and 47 of the transcript.

Mr. Robinson called application 171446 and noted for the record that Dr. Bennet had declared and interest and was not present at the meeting motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries with Dr. Brown abstaining. See page 47 of the transcript.

Acute Care Services – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	172230 E	St. Joseph’s Hospital Health Center CHHA (Onondaga County) Dr. Bennett – Interest (not present at meeting) Dr. Brown – Abstained	Contingent Approval

172296 E

NYU Winthrop Hospital
(Nassau County)
Dr. Kalkut – Recusal (not present at meeting)
Dr. Brown – Abstained

Contingent Approval

Mr. Robinson called application 172230 and noted for the record that Dr. Bennet had declared an interest and was not present at the meeting motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries with Dr. Brown abstaining. Please see pages 47 and 48 of the transcript.

Mr. Robinson called application 172296 and noted for the record that Dr. Kalkut has declared a conflict and was not present at the meeting. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carries with Dr. Brown abstention. Please see page 48 of the transcript.

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Dialysis Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	172364 E	True North IV DC, LLC (Queens County) Mr. Kraut – Recusal	No Recommendation
2.	172411 E	True North V DC, LLC (Kings County) Mr. Kraut – Recusal	No Recommendation

Mr. Robinson called application 172364 and noted for the record that Mr. Kraut and Dr. Strange have declared conflicts and have exited the meeting room. Mr. Robinson motioned for approval. Dr. Martin seconded the motion. The motion to approve did not pass. Please see pages 48 through 51 of the transcript.

Mr. Robinson called application 172411 and noted for the record that Mr. Kraut and Dr. Strange have declared conflicts and has remained outside the meeting room. Mr. Robinson motioned for approval. Dr. Martin seconded the motion. The motion to approve did not pass. Mr. Kraut and Dr. Strange returned to the meeting room. See pages 51 through 53 of the transcript.

ADJOURNMENT:

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

1 NEW YORK STATE DEPARTMENT OF HEALTH

2 PUBLIC HEALTH AND HEALTH PLANNING COUNCIL MEETING

3 APRIL 12, 2018

4 EMPIRE STATE PLAZA, CONCOURSE MEETING ROOM 6, ALBANY

5

6 JEFF KRAUT: Thank you very much. Good morning - Good
7 afternoon! I'm Jeff Kraut and I have the privilege to call to
8 order the meeting of the Public Health and Health Planning
9 Council and welcome the members. The commissioner, participants,
10 and observers. I'd like to remind the council members, staff,
11 and the audience the meeting is subject to the open meeting law,
12 and is broadcast over the internet. The webcast can be accessed
13 through the Department of Health website at NYHealth.gov. These
14 webcasts will be available on demand, no later than seven days
15 after the meeting for a minimum of 30 days, and copy will then
16 be retained with the Department for up to four months. In order
17 to make the meeting successful we have synchronized captioning.
18 It's important that we don't speak over each other. You can't
19 really do that well if two people are speaking at the same time.
20 The first time you speak, please state your name and briefly
21 identify yourself as a council member or DOH staff member. This
22 will be helpful to us, and please remember that the microphones
23 are hot. They pick up every sound. Please keep and avoid the
24 rustling of papers and be very sensitive about side
25 conversations as they tend to get recorded for eternity. As a

1 reminder for our audience, there's a form that needs to be
2 filled out before you enter the room which records your
3 attendance at today's meeting. It's required by the Joint
4 Commission on Public Ethics in accordance with the executive law
5 section 166. The form is also posted on the Department of
6 Health's website, www.nyhealth.gov under Certificate of Need, so
7 in the future you can fill out the form prior to the council
8 meetings. And we thank you for your cooperation fulfilling our
9 duties as prescribed. And while I'm mentioning the Joint
10 Commission on Public Ethics, I just want to remind all the
11 council members your financial filing is going to be due, should
12 be up on the website I believe sometime, ... May 15 or it's due
13 around May 15. So please make sure you check your email and you
14 do your annual financial filings.

15 Today's meeting, we're going to hear from the Department of
16 Health Reports followed by public health, regulation, and codes
17 committee. Then Establishment and Project Review. Members of
18 the council, most of our guests who regularly attend the
19 meetings are now familiar with the organization of the agenda by
20 topics or categories and the reorganization of the agenda
21 includes the batching of CON applications. Please take the
22 time, members, to review the batched applications and have
23 thought whether you'd like a project moved to a different
24 category. And if you do so please inform Colleen as we get to
25 that part of the meeting.

1 The first thing I'd like to call is the, ... first is the,
2 before we do the minutes, ok, the first agenda item is the
3 adoption of the 2019 dates for the Public Health and Health
4 Planning Council. You have a list of them in front of you and
5 before we post this up to the public website, we need a motion
6 to adopt them. Motion, Dr. Brown. Second Dr. Gutierrez. All
7 those in favor, aye?

8 [Aye]

9 Opposed? Abstentions? The motion carries. Not much of a
10 debate.

11 Oh... so we have a special request for February 14 meeting
12 and we will certainly show you the love. So that's it. OK. And
13 then next thing I'd like to call agenda items, the adoption of
14 our minutes and have a motion for the adoption of the February
15 8, 2108 PHHPC minutes. So moved, Dr. Gutierrez. Second Dr.
16 Torrez. And I'm going to hold off because of our schedule we've
17 thrown everyone else's schedule a little off kilter, so when Dr.
18 Zucker comes, I think we'll defer to him at any time during the
19 meeting. And I'll turn to Mr. Sheppard to give us an update on
20 the Office of Primary Care and Health Systems Management.

21

22 DAN SHEPPARD: Ok. Thank you. So, Dr. Zucker will cover a
23 little bit of the budget in his remarks. Let me go into a
24 little more detail about what was in the enacted budget that
25 relates to the Office of Primary Care and Health Systems

1 Management. One of the items the Commissioner will mention is
2 that the budget includes \$525 million of new transformational
3 capital funds and of that \$525 million there is set aside a
4 minimum of \$60 million for community-based healthcare providers,
5 \$45 million for nursing homes, and \$20 million in connection
6 with assisted living program expansion initiative that I'll
7 describe in a few minutes. I think what's ... we are in the
8 process prior to the enactment of this \$525 million, we are in
9 the process of administering over \$3.5 billion of healthcare
10 transformation capital that's been provided by the Governor in
11 legislature over the past four years. What we see each time and
12 is clearly there is a demand for new capital by broad array of
13 healthcare providers, I mean, just by way of example the most
14 recent capital RFA request for applications which was making
15 available \$203 million and we just received those applications
16 now, we received 458 applications, totaling \$2.5 billion, so
17 there's clearly a demand for these dollars, and we will continue
18 to administer these funds that have been provided through the
19 budget process.

20 There were, as some of you may recall from my report when
21 we were describing what was in the executive budget a few months
22 ago, we had a number of proposals related to the regulatory
23 modernization initiative that the Department embarked on over
24 last summer/fall and some of you were participants in. I'd like
25 to report on some of the items that were in the enacted budget.

1 The first one relates to integrated physical and behavioral
2 healthcare. We included in the budget was approval for
3 provisions that make it easier to integrate these services by
4 authorizing the Department of Health, the Office of Mental
5 Health and the Office of Alcoholism and Substance Abuse to issue
6 regulations that allow for either licensed primary care
7 providers, mental health clinics, or substance use disorder
8 service clinics to provide primary care or behavioral health
9 services without volume limitations and without having to obtain
10 an additional license or licenses. We also received approval in
11 the budget for a proposal to allow telehealth services to be
12 delivered anywhere the patient might be, and it also clarifies
13 that other provider types can deliver telehealth services. So
14 for example, credentialed alcoholism and substance abuse
15 counselors or CASACs. Early intervention providers, and certain
16 licensed providers licensed by the Office of Mental Health and
17 the Office of People with Developmental Disabilities all now can
18 deliver telehealth services from wherever the patient is. There
19 were two proposals recommended by the RMI that were not in the
20 enacted budget. Those related to retail practices and community
21 paramedicine.

22 As I mentioned earlier another item in the budget was an
23 expansion of the assisted living programs, beds or ALPS. The
24 legislation had a couple of different components. First, it
25 authorized a process for expedited approval previously awarded

1 out beds that had been withdrawn by either the applicant or
2 withdrawn by the applicant because the applicant had enacted on
3 the proposals. This provision would allow us to redistribute
4 these beds in an expeditious fashion. The limit will be nine
5 per existing provider and that low threshold allows a much more
6 streamlined review of the applications. There are about 900
7 beds that are available through this, to be administered through
8 this process. In addition, the budget authorized 1000 new ALP
9 slots and up to 500 of those were in counties that currently
10 have no or one ALP. So counties where there was lack of
11 availability. Or and then the balance of that 1000 would be in
12 counties where there is currently more than 85 percent
13 occupancy.

14 As I indicated when I mentioned capital, there's \$20
15 million that will support applications for these new beds, and
16 priority in terms of that allocation of that capital will be
17 given to those applications to those counties with no or one
18 ALP. Also, beginning on April 1, 2023 as authorized in the
19 budget, the Department will be able now to consider new ALP beds
20 on a case by case basis. So right now the current law and
21 previous authorizations have been authorizing a capped amount of
22 ALPS that get administered in a single competitive request for
23 applications. What beginning in 2023 we'll be able to do is
24 develop a need methodology and administer ALPs on a case by case
25 basis like other provider services.

1 Finally, there also was authorized an Alzheimer voucher
2 program. This is a demonstration program that provides up to 200
3 vouchers that will subsidize the cost of assisted living for
4 individuals who have either Alzheimer's disease or dementia who
5 are not Medicaid eligible. The goal of this would be to keep
6 people out of nursing homes and off Medicaid as long as
7 possible. The other major proposal had to do with LHCSAs and we
8 went into that extensively earlier in the meeting. That's the
9 end of my report.

10

11 JEFF KRAUT: Thank you Mr. Sheppard. Questions from the
12 council? Hearing none, I'll turn over to Dr. Zucker.

13

14 HOWARD ZUCKER: Thank you. Thank you very much, and
15 greetings. I wanted to go through a handful of things today. The
16 first is the expansion of the opioid epidemic measures that we
17 have. As everyone knows the opioid epidemic continues to be a
18 major public health problem, and New York is doing everything we
19 can to prevent the opioid addiction while also making treatment
20 more readily available. We also took several steps to meet
21 those goals. In the newly enacted budget, we've created an
22 opioid stewardship fund and the fund imposes a surcharge on
23 opioid manufacturers and distributors. That will result in \$100
24 million new funding for New York's efforts to combat opioids.
25 The money will be used to help defray the State's ongoing costs

1 regarding prevention, treatment and recovery services, and the
2 state budget now allocated \$200 million for the heroin and
3 opioid crisis. More than \$30 million of that money will go
4 towards operating and capital support for the office of
5 alcoholism and substance abuse services, OASAS so they can build
6 on prevention on treatment and recovery programs as well as
7 residential services and public awareness and education. The
8 enacted budget also includes provisions that require providers
9 to have written treatment plan when they prescribe opioids to a
10 patient who is just starting on opioids. They must also have a
11 written treatment plan for patients being maintained on opioid
12 treatment for pain and has lasted longer than three months or
13 past the time that one would expect for normal tissue healing.
14 This is not applicable to patients being treated for cancer
15 that's not in remission, nor does it apply to patients in
16 hospice or others in end-of-life care or palliative care. And
17 the intent is to reduce the unnecessary use of opioid
18 medications. We're also taking steps to protect the youngest New
19 Yorkers impacted by this epidemic. The budget includes funding
20 that will enable us to develop a children's and recovering
21 mothers or CHARM program. So the CHARM program is aimed at
22 providing healthcare providers, hospitals, and mid-wifery birth
23 centers with guidance with education, with assistance,
24 can provide care to expectant mothers with a substance use
25 disorder. This big article about this the other day as well as

1 reading about neonatal (absence) syndrome and some of the
2 challenges there was published in one of the medical journals.
3 And under a pilot program we also plan to implement up to four
4 infant recovery centers which will provide cost effective and
5 necessary services for substance exposed infants under one year
6 of age. The Department is taking other actions on opioids too.
7 First we expand our prescription monitoring program. So since
8 2013 we've been steadily growing the interoperability of the
9 PMP, first with our bordering states and then with a rest of the
10 North East and now along the Eastern seaboard of the United
11 States and beyond. And today I'm proud to announce that the PMP
12 is interoperable with 25 states as well as the District of
13 Columbia. This means we can securely share data with other
14 states which gives us the providers access to nearly 150 million
15 patients control substance history records. Whenever a patient's
16 being considered for a controlled substance prescription pain
17 killer providers can get a more complete picture of that
18 patient's history of controlled substance prescribing.
19 Obviously this is very helpful. By seeing that history the
20 providers can more easily detect and prevent doctor shopping,
21 which is important in combating the opioid epidemic. Since we
22 first began requiring practitioners to check the PMP before
23 prescribing controlled substances, New York has reduced the
24 doctor shopping by over 98 percent, which is pretty amazing.
25 Another step we took, we're training our narcotics investigators

1 to carry and administer Naloxone. These investigators work in
2 the Bureau of Narcotic Enforcement, BNE and are often on the
3 front lines of the epidemic. They work with law enforcement,
4 they work with health professionals and others to investigate
5 suspicious drug activities in a variety of settings. And
6 Naloxone as many of you know, can reverse an opioid - I'm sure
7 all of you know - opioid overdose and put someone struggling
8 with addiction on the path to treatment as well as recovery.
9 Finally working with OASAS we have provided hospitals with a
10 time limited waiver that expands the detox services they
11 permitted to provide. The label lets hospitals admit and treat
12 the number of qualifying patients above regulatory limits
13 without the need for an OASAS detox operating certificate.
14 Under this waiver, the hospital simply has to notify by OASAS
15 and the department of health of it's intent to provide such
16 services, and this waiver will be valid until December 31, 2018
17 when both agencies will reevaluate the need for a continuing
18 waiver. We also want to remind hospitals that emergency
19 department physicians are allowed to treat addiction using
20 medication assisted treatment. In an emergency, federal law
21 allows a physician to administer Methadone or buprenorphine once
22 a day within a 72 hour period while connection to addiction
23 treatment is made. These measures will help strengthen our
24 arsenal while we continue to fight the opioid epidemic which is
25 happening on all fronts and aggressively.

1 Next issue I wanted to bring up in NYSHA, New York State
2 Housing Authority. We also have news regarding the public
3 housing in New York City. Last week we released a report to the
4 Governor about our inspections of the properties managed by New
5 York City Housing Authority. The Department of Health did an
6 investigation into the conditions at the residential
7 developments in all five boroughs managed by NYSHA. In the
8 process we completed more than 300 environmental quality
9 assessments. What we found, and I saw this first hand, I was out
10 there multiple times, was deeply troubling. Peeling and chipping
11 paint, in some cases contained lead, there were insects, there
12 were rodents, there was water damage, there was holes in the
13 wall, there was mold covering the ceiling and the walls, there
14 was lack of heat and lack of hot water during the cold winter
15 months, there was broken smoke and carbon monoxide detectors.
16 These conditions pose truly a potential threat to the health and
17 safety of more than 400,000 public housing tenants, many of them
18 are children. The Governor signed the executive order declaring
19 a state disaster emergency in NYSHA housing to expedite repairs
20 and to immediately address public health hazards in these
21 properties. The Governor has committed an additional \$250
22 million on top of the existing \$300 million to remedy these
23 deplorable housing conditions. The executive order also requires
24 the selection of an independent emergency manager to oversee the
25 development in completion of a comprehensive emergency

1 remediation plan which will include repairs, will include
2 upgrades, and it will include construction. The manager will be
3 selected by the New York City Mayor, the Speaker of the New York
4 City Council on behalf of the Council, and the president of the
5 New York City Housing Authority citywide council of presidents.
6 And the enacted budget also allows design build authorization
7 for NYSHA that will help speed up the process of these urgent
8 repairs. The Department stands ready to contribute to this
9 effort of enabling the tenants of NYSHA the opportunity to help
10 lead much healthier lives.

11 Next issue is the record low numbers on cigarette smoking.
12 So, we have had some really great news about the adult smoking
13 rate in New York has fallen to a new low, it's at just a little
14 over 14 percent, 14.2 percent. That's a 22 percent reduction
15 since 2011. It's also well below the national average of 15.5
16 percent, and among young adults between the ages of 18 and 24
17 the drop was even more dramatic falling by 46 percent to 11.7
18 percent. So also seeing declines among groups who traditionally
19 have higher rates of smoking the general population such as
20 those with less than a highschool education, those with an
21 annual income below \$25,000 and those with mental health,
22 behavioral health issues. So this is all great news. We credit
23 these declines to the aggressive and wide ranging tobacco
24 cessation efforts and to our prevention agenda efforts that
25 we've made. But we're not going to rest on those laurels just

1 yet. We have work to do. We're going to get these numbers even
2 further down.

3 Another area is the harmful algae blooms. So we've had
4 some summits on this. We've been working closely with the DEC
5 to host four regional harmful algae blooms to discuss the
6 threats posed by this environmental hazard. We've had summits
7 in New Paltz, in Syracuse, in Ticonderoga, and in Rochester, and
8 together with DEC commissioner Basil Seggos. I've been co-
9 chairing these events around the State where leading experts
10 have come together to discuss the causes of harmful algae blooms
11 and how to prevent them. This has been very interesting and
12 informative discussions. Perhaps are a threat to the quality of
13 our drinking water and also pose a threat to the recreational
14 use of these lakes that are vital to our upstate economy. These
15 are areas that many people go to vacation and the many summer
16 camps. At the summits we heard from national and state experts
17 including scientists from Kansas and Ohio, from Vermont and
18 Tennessee. We also heard from experts from our State University
19 of New York College of Environmental Sciences and Forestry. SUNY
20 Stonybrook, Cornell, DEC, DOH, Ag and Markets, the New York
21 State soil and water conservation committee and local
22 stakeholders, and we're hearing from the public who truly
23 understand and are concerned, understandably concerned. The
24 results of these gatherings will be customized action plans to
25 address the in the 12 priority water bodies across the

1 state. The action plans will be completed by the end of May, in
2 time for as the weather changes. Each action plan will be used
3 to guide and develop a priority projects including new
4 monitoring and treatment technologies, and the lessons we learn
5 will be applied to other impacted water bodies. Our goal is to
6 keep these vulnerable water bodies safe and clean now and in the
7 years to come.

8 Next issue is the capital projects in the state budget. So
9 we have good news on that front as well from the enacted budget
10 which will continue to support the health system transformation.
11 The budget includes \$525 million to support projects to create
12 financially sustainable systems of care to preserve or improve
13 access to essential services to modernize facilities and foster
14 participation in alternative payment models. The funds are
15 going to help integrate physical and behavioral health systems.
16 It will improve the delivery of homecare. It will expand the
17 availability of assisted living beds across the state, and I'm
18 sure you've heard, Dan must've brought these issues up already.

19 Next is the regulatory modernization initiative. The
20 budget also reflected several items that came out of the RMI,
21 regulatory modernization initiative which was launched,
22 announced in February. The RMI was launched by DOH in 2017 to
23 overhaul the policies of the regulations that govern the
24 licensure and oversight of healthcare facilities. The efforts
25 involve sweeping changes to the health system delivery system

1 with the goal of improving delivery of healthcare in the State.
2 Major recommendations adopted in the budget include the measures
3 to integrate primary care, behavioral care, and substance abuse
4 treatment in a single setting, and authorization to deliver
5 telehealth to patients at any location including their homes.
6 These are steps to truly move forward in how we address care
7 across the state and make it sort of state of the art. Through
8 these and other recommendations that are being implemented
9 administratively or through regulatory changes we hope to create
10 a coordinated health care system that enables seamless care
11 transitions especially for patients who are in post-acute care
12 settings. Members of this body served on the various
13 workgroups. I know many of you have been involved and helped
14 develop the RMI recommendations, so I thank all of you for your
15 work. I know this was a real tour de force to move this forward,
16 but this was one of the best things that we can do in order to
17 get us to state of the art care on some of these issues and
18 regulations. Another issue is the PT visits in the new budget,
19 physical therapy. A budget measure increase the
20 limit on physical therapy visits covered by Medicaid. So the
21 enacted budget raises the limit of PT visits for people on
22 Medicaid from 20 visits a year to 40 visits per year. And this
23 is just one way we're working to improve patient care.

24 Another issue I've spoken about in the past is ending the
25 epidemic. We've had some good news on this front regarding the

1 end of the HIV AIDS epidemic. Last months the AIDS Institute
2 issued a progress report based on the data that we had from
3 2016, the entire year, and we found that 75 percent of New
4 Yorkers newly diagnosed with HIV are demonstrating entry to care
5 within 30 days of their diagnosis. We also found that 80
6 percent of all New Yorkers living with diagnosed HIV showed
7 evidence of receiving some care over the course of the year and
8 approximately 70 percent of New Yorkers diagnosed with HIV were
9 virally suppressed. So New York is on track to meet its goals to
10 reduce the number of new HIV infections below the number of HIV
11 related deaths by the end of 2020, realizing the first ever
12 decrease in HIV prevalence. And our success in ending the
13 epidemic has given rise to the next topic which is the
14 elimination of Hepatitis C. So the Governor recently announced
15 the nation's first state level Hepatitis C comprehensive
16 elimination strategy which covers prevention, screening, and
17 treatment. The goal is to stop Hepatitis C in its tracks by
18 increasing access to medications that can cure Hepatitis C and
19 committing more funds for education, prevention, and services
20 and Hepatitis C testing here and treatment. Injection drug use
21 is the primary mode of transmission of Hepatitis C and the
22 opioid epidemic has led to a rise in the new cases of Hepatitis
23 C. The good news is the studies show that more than 90 percent
24 of people who are treated can be cured, and new direct acting
25 antiviral drugs have minimal side effects and they can prevent

1 the need for liver transplant, liver failure, cirrhosis of the
2 liver, liver cancer as well, and clearly... Since 2007 Hepatitis C
3 related deaths have exceeded HIV related deaths in the State
4 outside of New York City. So the two diseases are closely
5 linked. One in five persons with HIV is co-infected with
6 Hepatitis C. Regarding Flu, we've had some news on the flu
7 epidemic and the flu concerns that we've had, even though flu is
8 still geographically widespread, the number of cases has
9 declined since the seasons peak which occurred in the week of
10 February 17. So that week we had more than 18,250 of lab
11 confirmed flu, and the numbers have started to go down. But in
12 our most recent report, we saw an uptick. During the week of
13 March 31 the number of laboratory confirmed cases rose 17
14 percent from the previous week, where it had fallen 10 percent
15 the week prior to that. In the same time period hospitalizations
16 with flu fell just one percent after dropping 20 percent the
17 week before. As you know, it's been a rough flu season this
18 year with five pediatric deaths related to flu, the fact the
19 numbers are going down is a very positive trend and I look
20 forward to seeing the season come to an end. That was a tough
21 season. Another issue is our reaccreditation and the Department
22 has begun the process of reaccreditation four years ago. The
23 Department became one of the first state health departments to
24 be credited by the health accreditation board. In 2019 we will
25 submit our application for reaccreditation and going through the

1 process requires the Department to update many of the core
2 initiatives and reports that we created prior to the
3 accreditation back four years ago such as the New York State
4 Health Assessment and the Prevention Agenda and our State Health
5 Improvement Plan. Most important, it will enable us to continue
6 to strengthen our performance. Reaccreditation encourages us to
7 evolve and advance in our rolls as a leader in the community
8 regarding health. We will be engaging many members of the
9 Department to create narratives about the impact we've had which
10 is significant in these past four years is a tremendous amount
11 of areas that we've tackled. So we will also be engaging PHHPC
12 as our official governing entity in this effort, and I know we
13 spoke with all of you in the past about this and I know that the
14 accrediting board also spoke with you at that time.

15 National Donate Life month. I'd like to wrap up with a
16 plug for National Donate Life month. I'm wearing my pin, Donate
17 Life. In fact I should note that tomorrow is national blue and
18 green day which highlights the importance of organ donation and
19 the need for more donors. Organ donation remains a priority for
20 the Department of Health. 10,000 New Yorkers are in need of an
21 organ transplant and New Yorkers make up 10 percent of the
22 national organ transplant waiting list. Ten percent. One organ
23 donor can save eight lives and it really improves the lives of
24 about 75 other people and touches on so many families. So
25 please, if you aren't already signed up as an organ donor

1 consider doing so. You can get more information on
2 DonateLife.NY.Gov and that will provide you with more
3 information about what we're doing. We will be lighting up
4 different buildings and bridges and other things across the
5 state to raise the awareness, and the more people are aware, the
6 more likely they will donate or sign up to donate. And the more
7 those 10,000 people on that list those numbers will come down.
8 So I will end with that issue, and open up for questions that
9 you may have about any of those issues or other things.

10

11 JEFF KRAUT: Dr. Berliner.

12

13 HOWARD BERLINER: Commissioner, thank you for your
14 report. I was wondering if you had any comments on the surgeon
15 general's request that more Americans use narcotic antagonists,
16 carry them with them?

17

18 HOWARD ZUCKER: So I cant comment on the report although the
19 states, the region one and region two which is our northeastern
20 states have sat down and we are going to be talking with HHS a
21 little bit more about that. And I will look at it a little bit
22 closer.

23

24 LAWRENCE BROWN: I want to echo the comments by our
25 chair that the Department has been quite busy and we salute you

1 for your leadership. I have two questions; one with respect to
2 the treatment plan. We're used to that in behavioral health. Is
3 there a template that's going to be provided to those in general
4 health so that they will have some sense about what that
5 entails?

6

7 HOWARD ZUCKER: You mean on the opioid? So we'll sit down
8 and provide you with some of the framework from which we would
9 work from there. We want to have a framework, we want to have a
10 strategy, but we also wanted to give a little bit of flexibility
11 for those who are working in the field on this issue.

12

13 LAWRENCE BROWN: And I want to commend you again with
14 respect to Hepatitis C. You're quite right. In my own program
15 we've been able to in fact, we've seen the rise and we've seen
16 the success of providing access for Hepatitis C and many of our
17 patients, so if there is a need for the Department of Health to
18 give stories about their success, our patients are will and able
19 to do so.

20

21 JEFF KRAUT: Other questions for the Commissioner? If
22 not, I thank you so much Commissioner, and appreciate the time
23 today. Sorry we messed up your schedule.

24

1 HOWARD ZUCKER: Thank you. I usually like to stay, but I
2 have to run back to the office.

3

4 JEFF KRAUT: I'm going to now turn over the Dr. Boufford
5 to give us an update on the activities of the Office of Public
6 Health.

7

8 JO IVEY BOUFFORD: Thank you. Thanks very much. I wanted
9 to provide the council an update on the Prevention Agenda
10 because this will, the revised version for the next six years
11 will be coming to you before the end of this calendar year. So
12 that's what this report is basically about. This is a year of
13 revision. So building on the current plan that was from 2013 to
14 2018. The two, so the big things that have happened to us in
15 thinking about the revision of the prevention agenda are
16 reflected in the Governor's state of the state message in 2017,
17 and most recently in 2018 declaring for health across all
18 policies approach to the work of all state agencies and to make
19 New York the first age friendly state. So these considerations
20 are very much a part of the revision process and it's really
21 enabled us to involve other state agencies in both the ad hoc
22 leadership group for the prevention agenda and eventually those
23 state agencies that have on the ground presence will get very
24 involved in we hope, working with the existing coalitions in the
25 counties across the state. These are examples of the first

1 agencies that have been really active. Ag and Markets jumped
2 out right away and came and presented to us what they were doing
3 on food systems which fits very nicely with the non-communicable
4 disease prevention. NYSERDA, the Commissioner mentioned, the
5 healthy homes initiative. We're hoping that DOT as well will
6 join us in regard to safe streets models in local communities.
7 Give you a sense of the results of conversations that have been
8 ongoing that Paul Francis has been convening across agencies to
9 engage them in this work. This is the current ad hoc leadership
10 group which is actually a vehicle of this council. It's
11 populated by the public health committee and these other
12 entities. Our current membership stands at 33 which is expanded
13 considerably since before, albeit in addition to the 11 FIPS the
14 entities in the counties around the state that are bringing
15 together the healthcare delivery system and the public health
16 system as well as the public health committee. We met most
17 recently February 15 basically to review the plans I'm going to
18 outline for you today and to begin and stimulate the process of
19 consultation. The decision will be to really try to manage this
20 wide consultation process which has been kicked off but also to
21 do it as led by the Department and by the committee itself.
22 This is the timeline. We're looking at if you start with the
23 blue column on your left is what we're calling that consultation
24 phase which will actually move into May, and this really
25 involves the meeting we just had with the ad hoc committee as

1 well as the preparation of a very extensive PowerPoint
2 presentation on all of the updated health data across the state
3 as well as the progress on the prevention agenda and evidence-
4 based interventions. That has been shared with the ad hoc
5 committee and is available as well on the website to promote the
6 capability really, of individuals to have consultation meetings
7 in their own local communities to bring back feedback to the ad
8 hoc committee. And we also have a Survey Monkey that's been
9 soliciting individual feedback for those that are in sort of
10 organized NGOs or agencies. The middle phase is May to
11 September. We'll take all of that consultation information. Our
12 next meeting of the ad hoc committee is going to be May 16, and
13 we sort of putting this together with this sort of oversight of
14 the sort of committees of the Department. We'll be staffing
15 groups which will have wide involvement and open to anyone who
16 wishes to participate to help develop the plans and then those
17 plans would come to the ad hoc committee sometime in October and
18 then on to you before the end of the calendar year, and we will
19 launch the new prevention agenda right after the turn of the
20 year in 2019. The additions to the agenda, the elements of the
21 agenda will be the updated New York State Health Assessment,
22 health status assessment. Considerations on evidence-based
23 interventions, dealing with the broad determinants of health,
24 enabled by our engagement with other agencies as well as
25 addressing healthy aging. And we're going to double down on our

1 effort to deal with health disparities and are not only going to
2 be looking at racial and ethnic disparities but disparities of
3 economic disparities and partnering with the council on minority
4 of health and the Department of State that has been really
5 terrific on the economic development side. So, we had an
6 initial meeting with that group following the ad hoc leadership
7 group to begin to look at how we can engage metrics and
8 interventions that can be very helpful to the local coalitions
9 who have identified this area as one that's still challenging
10 for action. And then finally we are as I mentioned part of the
11 solicitation is looking at getting additional goals. So let me
12 just touch on each of these very briefly.

13 This is really overall good news that the state is moving
14 up in the national, the America's Health Rankings. As we know
15 there are many kinds of health rankings but when you're doing
16 well you want to use the one that is certainly generally
17 accepted by many as the good politicians. But it's really true.
18 We have moved amazingly. We're now number 10 in the nation up
19 from number 40 in 1990 and 2008 and I think we were 17 two years
20 ago. So its really, I think a lot of it has to do with both the
21 healthcare reform as well as the prevention agenda, so I think
22 we can all pat ourselves on the back for that and continue to
23 work hard. This is the sort of status report on where the
24 prevention agenda is going and I'm happy to give you details,
25 I'll just tell you very briefly what's going on for the

1 inevitable questions of what about this. I'll have to talk about
2 it later. But the areas, there were 96 indicators being tracked
3 for the priority areas over the last phase of the prevention
4 agenda was sort of annual reporting and the overall improvement
5 in health status is sort of left-most bar and then you, was
6 broken out by the goals of the prevention agenda. There were 22
7 of the object indicators that were met. They're the ones that
8 are in green. Some of these include preventable hospitalization
9 rates, assault related hospitalization rates, heart attack
10 hospitalizations, newly diagnosed HIV cases as the Commissioner
11 mentioned. Teen pregnancy rates, and binge drinking among
12 adults. 71 indicators have not been met. These are in the sort
13 of light, the blue bars, and are moving in the right direction.
14 I'm sorry, let me get this right... of the 71 indicators, 22 have
15 been met, 12 are improving, and those are in the blue area, and
16 then the ones that are going in the wrong direction are in the
17 green area at the bottom. And the ones that are, the ones that
18 are in red my colors... let me read my notes slowly rather than
19 trying to jump ahead. The blue bars show where things are
20 unchanged and the red bars show indicators that have worsened
21 and some of the major issues in the worsening part are related
22 to obesity and chronic disease prevention. So they're areas
23 that will continue to get a lot of attention in the revision
24 process. This is where we want to be, which is where we wanted
25 to be before and as I mentioned before, we are moving ahead, and

1 some of these changes I mentioned, in demographics are really
2 interesting, especially with the involvement of the State
3 Department of the Aging has been very helpful. They have
4 fabulous data on aging and older persons, so that dimension
5 adding that across the board will be very helpful. There are a
6 set of cross cutting principles that we'll be using as we go
7 through the revision to improve health outcomes and address the
8 equity question. And the, we will now be incorporating health
9 across all policies and healthy aging across the lifecycle based
10 on the Governor's addition of his call for that work across
11 agencies. And really strengthening collaboration across sectors.
12 And dealing with the link to the health care delivery system.
13 We don't want to say we totally stop short of the door. We
14 don't go into the door of the healthcare delivery system. We
15 try to make sure people who enter get their preventive services,
16 but really focusing on the community-based interventions. So
17 that's to complement the healthcare reform.

18 There's been a goodbit of discussion within the
19 Department, and I think at this point the decision has been to
20 essentially renew the five goals that we've been working on for
21 the last five years. What we will be doing is based on the
22 demographic data and the health status data. Maybe modifying
23 objectives within those goals and then obviously the
24 consultation process that we're underway now may modify the sub
25 objectives that will be identified. Two things to draw your

1 attention to here coming out of the Department's discussion has
2 been shifting some of the particular focus of the preventing
3 infectious disease area to focus on current priorities including
4 HIV and healthcare associated infections. And similarly the
5 language was changed in the goal promoting prevention of mental
6 health and substance, what was substance abuse disorders now
7 says promote wellbeing and prevent mental health and substance
8 use disorders, and this was after consultation with OASAS and
9 OMH. And now our challenge is to help define the objectives for
10 wellbeing and prevention of these areas. So that's going to be
11 an area of focus going forward. The other area that will be
12 getting a lot of attention in these cross cuts is the all ages
13 piece, so we will be calling out attention to populations over
14 65.

15 This is an example of the kind of revision that's going on.
16 This is chronic disease. I'm not going to go into the others
17 but the items in blue are revisions of sub objectives relative
18 to what they had been, the blacks are the ones that are still
19 there, and the top ones I think are interesting. Before the top
20 one had really been about obesity prevention and now that's
21 being broken out to look at nutrition, food availability, and
22 exercise, which kind of brings in our Ag and Markets, our
23 transport people, and other local zoning as well as the
24 Department of State's work on investing in regional economic
25 development councils. And the chronic disease preventive care

1 where is broken down by specific areas that have been identified
2 as needing attention. And this kind of thing is available for
3 all of the goals at this point now and these will be presented
4 in these consultations that I talked about, that for
5 modification.

6 So the next steps, we'll get the feedback as I mentioned.
7 We've already had comments from over 120 people and
8 organizations to date. This has been on the street for about a
9 month, less than a month, and that process will be open as these
10 consultations are going forward. We'll collect that feedback
11 and review it with the committee on the 16th at our meeting
12 there. We'll probably try to schedule a separate meeting of the
13 public health committee that same day so that we can sift it
14 through a little bit before we start coming to you. Then the
15 process of priority specific consultation will continue over the
16 summer, bring that together in the fall, and as I said it will
17 come to you before the end of the calendar year. So I want to
18 thank the commissioner, Brad Hutton, Sylvia Pirani and her team
19 as always for their fantastic work. Also, I think a special
20 thanks for Paul Francis with all he has on his plate, he has
21 really been fantastic and continuing to work and have his staff
22 work with the other agencies which has made this process along
23 with the commissioner very, very helpful. The only other note
24 for the public health committee is that progress on maternal
25 mortality has continued. We had a statewide summit on February

1 14 at the New York Academy of Medicine. It was planned by joint
2 committee of the New York State Health Department, New York City
3 Health Department, HANYS, Greater New York, and the ACOG OBGYN
4 region two group. We had sort of two half days, white paper was
5 prepared which documents progress including the work against the
6 goals of this council, and the paper that we approved January
7 2017 and after a very wide set of presentations, Commissioner
8 Zucker was there, we were pleased, and Commissioner (Basis)
9 representative she was away, and then the second half of the day
10 was working groups that were put together. We had over 450
11 people come to the session and it was being broadcast around the
12 State to about another 200, and I understand there were about 75
13 or 80 on outside of New York State in the region which was
14 great. It was a live webcast. And the areas that we will be
15 coming back with recommendations on are continuing to address
16 the issue of racial disparities which have improved somewhat,
17 but there's lots to do. Looking at deepening the hospital-based
18 interventions on prevention of management of crisis. Continuing
19 to look at the prehospital and pre-pregnancy areas which we
20 talked about here and had several meetings here for the council
21 and the committee. And then the final area that was identified
22 in the planning is community and patient engagement and we're
23 going to have some interesting, I think, ideas around that. So
24 those recommendations will come hopefully to the public health
25 committee. We should have a report of that meeting available

1 maybe not by May 16, I hope so, and then be able to bring that
2 back around to a future meeting. So that's our activity report.
3 Thank you. Happy to take questions.

4

5 JEFF KRAUT: I'm going to take them in a moment, but you
6 know, I just want to on behalf of all of us I want to just thank
7 you for the leadership that you have here. I mean, the passion
8 and we're very fortunate that you've taken and led this on our
9 behalf, and I think we're all going to really... when those
10 recommendations come back, I would just say that we should
11 structure the agenda so we're not trying to cram that in the end
12 of a meeting, that it has to be at the front end and it has to
13 be the centerpiece of it. And the second... I notice as became
14 the 10th healthiest state, I can only... I don't know if it's a
15 cause and effect, it seems to really took off when we merged the
16 councils and created the public health council, but I don't know
17 if I can. But ...

18

19 JO BOUFFORD: Unintended consequences.

20

21 JEFF KRAUT: But I have to tell you in all seriousness,
22 there's just for the public in particular but also for the
23 council, at the retreat last year, we talked about the
24 importance of this work, and how we're trying to do prevention
25 in all policies and the agenda, and to take note that the

1 expectation is that as you engage with us be it a policy, CON,
2 or regulatory way, that the public applicants, the industry,
3 there's an expectation if you're sitting in the front of this
4 table and engaging with us in a conversation, you can absolutely
5 expect that we will be asking questions of how you relate to the
6 agenda and the objectives. It may not be codified as a criteria
7 of need, but it certainly is, we've made it very clear that we
8 expect to understand it and we hope, and we expect - look, 400
9 people - I'm assuming we have a broad support across our
10 industry, but we're certainly going to question on that basis.

11

12 JO BOUFFORD: You reminded me of two comments, if I may,
13 one is, and they're very aligned with this, they were in these
14 notes I was moving too fast, one of them is the Commissioner's...
15 The Governor's statement actually in his last State of the State
16 of aligning the community benefit, especially the community
17 health improvement investments of hospitals with the prevention
18 agenda which is very important. The Commissioner letter will go
19 out requesting that sort of public reporting of that which we
20 are excited about, and then similarly the issue that we talked
21 about at the September retreat about linking the CON process on
22 the health effects which we were very pleased. Dr. Brown gave a
23 dress rehearsal I gather in the last council meeting asking some
24 questions about that, but as you said, beginning in June with
25 the acute care hospitals and moving on to the other ambulatory

1 care centers, they will be asked to talk about how they're
2 aligning their work with the prevention agenda, and then we hope
3 to connect up to long term care as the year proceeds. Thank
4 you.

5

6 LAWRENCE BROWN: Dr. Boufford, I want to thank you
7 again, for echoing the words of our Chair about your wonderful
8 leadership and your kind words about my behavior.

9

10 JEFF KRAUT: That doesn't happen often. Take it in.

11

12 LAWRENCE BROWN: And I just want to share in the
13 interest of exposure, I'm not just an MD, I have an MPH. So
14 prevention remains a thing that is important to me. So from my
15 standpoint since the prevention agenda is not new, even though
16 it's not been required, it's about time we begin to have the
17 conversation about to what extent our colleagues are engaged in
18 matters that are important to the citizens of New York State.
19 So again, I want to thank you for that and my colleagues who in
20 fact put up with me when I abstained. I would appreciate your
21 perseverance, but it is my intent to continue to represent
22 prevention in any form and fashion that I can. Thank you very
23 much.

24

1 HOWARD BERLINER: Dr. Boufford, thank you so much for
2 your report. I'm wondering that the only school of public health
3 mentioned in your report was the NYU Global program in health
4 and I'm wondering if other schools or is this just a quick plug
5 for the cause?

6

7 JO BOUFFORD: Cheryl (Helton) has been representing the
8 Deans of Public Health across the State in these meetings and
9 has been physically being there, but that was the reason why
10 that was called out. But I think one of the things that will be
11 really important, we've already reached out and asked, and I
12 think she's actually sent a letter to the deans asking for
13 greater engagement both locally as well as statewide and having
14 commentary and feedback on this.

15

16 SCOTT LARUE: I also want to thank you for your leadership
17 on this issue and to the point about the long term care, when I
18 was looking at the list of logos, I could've missed them and you
19 could've asked and they didn't either respond or participate,
20 but perhaps we want to get some post-acute association or
21 representation on the committee and they could be helpful as
22 their crafting how this is going to be included in terms of
23 expectations, etc., going forward.

24

1 JO BOUFFORD: Again, we don't imagine this group is going
2 to spend, along with Department for the Aging which has joined
3 us, we do have AARP and then there's another group that's sort
4 of state level NGOs, we probably won't be directly, that
5 directly involved in the CON conversation. That's kind of in
6 Dan's shop. But we're delighted to have anyone wishing to join
7 us. We have the medical societies, we have a number of the
8 specialty agencies, we have both hospital associations, and the
9 community health center associations, so that would be fantastic
10 to get them involved. Talk to me afterward.

11

12 JEFF KRAUT: Thank you so much. Thank you very much.
13 Yes, Mr. Lawrence.

14

15 HARVEY LAWRENCE: I'd like to thank you as well, and you
16 know, I've seen on television a lot of commercials promoting New
17 York State as a place to do business, a place to vacation. Is it
18 possible that we can have funds devoted to promoting the
19 prevention agenda in the communities around the State where it's
20 needed? The health information, the education, to inform people
21 about diet and about all of these things that we are requiring
22 and asking of the folks that come before us to appear to.

23

24 JO BOUFFORD: Yes, I hope so. We've been having good
25 support. I think there's been, there's increasing support from

1 the foundations around the State for this work especially the
2 upstate foundation is really working to focus on local
3 coalitions and we hope that we can make that case more strongly.
4 We did better this year; we didn't get a reduction. I think
5 there was really for the first time quite a robust and wide
6 ranging coalition of supporters for the public health segment of
7 the budget. But there's more work to be done. Thank you.

8

9 HARVEY LAWRENCE: I think I was asking whether the State
10 would make that commitment to have that type of a campaign
11 undertaking across the State.

12

13 HOWARD ZUCKER: So the State is always looking at those
14 issues, and we do get out there in the State Fair and to many
15 different areas to address public health issues and we'll bring
16 that back and sit down, but we are always trying to carry that
17 message about prevention.

18

19 JEFF KRAUT: Again, thank you for the report, thank you
20 for the comments and the conversation and I'd now like to turn
21 over to Dr. Gutierrez to give us the report on Codes,
22 Regulations, and Legislation.

23

24 ANGEL GUTIERREZ: Good afternoon. At today's meeting of
25 the committee on Codes, Regulations and Legislation the

1 committee reviewed two proposals for adoption. Hospital Policies
2 and Procedures for Individuals with substance use disorder was
3 adopted. This proposal would amend part 405 or Title 10 to
4 require hospitals to establish policies and procedures for the
5 identification, assessment and referral of individuals with
6 substance use disorders. The committee voted to recommend
7 adoption to the full council, and I so move.

8

9 JEFF KRAUT: I'm sorry. I have a motion. May I have a
10 second? Second, Dr. Berliner.

11

12

13 ANGEL GUTIERREZ: Ms. Ulman from the Department is
14 available to answer questions.

15

16 JEFF KRAUT: Is there any questions? Hearing none, I'll
17 call for a vote. All those in favor?

18

19 [Aye]

20 Opposed? The motion carries.

21

22 ANGEL GUTIERREZ: If I may express my satisfaction in
23 having passed this, I strongly support this, and I would like to
24 encourage the Department to put teeth into the policy. As a
25 practicing physician I use, I got used to the role of the

1 compliance patrol nurse. Somebody who is checking my charts to
2 see whether I was ordering my mammograms and pap smears and all
3 the other things the needed to be done.

4

5

6 ANGEL GUTIERREZ: ... And I think this important issue
7 epidemiologically hot item in New York State. We need to move on
8 this area.

9 It was the public water system revised total coliform rule
10 was also adopted. This proposal will revise subpart 5-1 of
11 Title 10 pertaining to the monitoring of total coliform bacteria
12 in public water systems, as originally required by the 1989
13 Federal Total Coliform rule. The committee voted to recommend
14 adoption to the full council, and I so move.

15

16 JEFF KRAUT: I have a motion. May I have second? Dr.
17 Torrez. Is there any questions from the council? Hearing none,
18 all those in favor, aye.

19

20 [Aye]

21 Opposed? Motion carries.

22

23 ANGEL GUTIERREZ: That concludes my report from the Codes
24 Committee.

25

1 JEFF KRAUT: Thank you very much. Before I ask Mr.
2 Robinson to give his report, I'm going to turn to Mr. Abel to
3 introduce a new staff member to us.

4
5 CHARLIE ABEL: Thank you. So I'd like to take the
6 opportunity to introduce the council and the applicant community
7 to Sue Barg. She takes over as our new director for our Bureau
8 of Project Management, sort of the heart of the CON program and
9 certainly where applicants ask a whole variety of questions. She
10 takes over for Bee Delcagliano who has advanced within our
11 organization, and over the course of the next few weeks we'll
12 give Sue the benefit of all of her years of knowledge and
13 experience. But we think that this is a great addition to our
14 center. Sue brings with her great experience from our
15 surveillance division and can only enhance our ability to serve
16 the healthcare applicants in our community. So two chairs to my
17 right, I just wanted to take the time to introduce her. Thank
18 you.

19
20 JEFF KRAUT: Thank you. Welcome. And Barbara thank you.
21 OK, I'll turn down Mr. Robinson to give the report of the
22 Establishment and Project Review committee actions.

23

1 PETER ROBINSON: Thank you Mr. Kraut. I will wherever
2 possible attempt to batch applications, but in the beginning we
3 have some individual ones to..

4 Application 172305C, Faxton St. Luke's Healthcare, St.
5 Luke's Division in Oneida County noting interest by Dr. Bennet
6 who is not here. To construct a 373 bed replacement hospital to
7 relocate and consolidate the majority of Faxton St. Luke's
8 Heathcare and St. Elizabeth Medical Center's inpatient services
9 to a new hospital campus site in Utica. The Department is
10 recommending approval with conditions and contingencies. As did
11 the committee, and I so move.

12

13 JEFF KRAUT: I have a motion and I have a second by Dr.
14 Gutierrez. Is there any questions of the Department? Hearing
15 none I'll call for a vote. All those in favor, aye.

16

17 [Aye]

18 Opposed? The motion carries.

19

20 PETER ROBINSON: Thank you. I'm going to note that Dr.
21 Boufford will chair this particular item, because both Mr. Kraut
22 and Mr. Lawrence are recusing themselves. I'm calling
23 application 181016C, Maimonides Medical Center in Kings County.
24 This is to renovate space to expand and modernize the emergency
25 department and convert 17 medical-surgical beds to neonatal

1 intensive care unit beds. The Department has recommended
2 approvals with conditions... an approval with conditions and
3 contingencies. The committee recommended approval with
4 conditions and contingencies, with one member abstaining, and I
5 so move.

6

7 JO BOUFFORD: We have a motion and second, Dr. Gutierrez.
8 Any discussion by the council? Alright, all in favor?

9

10 [Aye]

11 Opposed? Any abstentions? Dr. Brown abstains.

12 We'll move on.

13

14 PETER ROBINSON: Thank you. I am now going to go out of
15 order, and I'll wait for Mr. Kraut to return, and I am going to
16 bring forward the LHCSA applications that were the subject of
17 both the committee meeting several weeks ago, and the ... I'm
18 looking for my notes on that, I apologize for that. I just want
19 to make sure I have all the application numbers here. So, ... do I
20 have the whole list? So let me then first call these home
21 health agency licensure applications by number. 172062, 172310,
22 2471L, 2488L, 161021, 161066, 161075, 161084, 161092, 161125,
23 161139, 161149, 161187, 161207, 161221, 161287, 161296, 161033,
24 162292, 162303, 171385, and 172286. The committee met and
25 recommended approval of these applications. In the intervening

1 period the Department has indicated as a result of the passage
2 of the State budget and the proposed moratorium on LHCSA
3 applications the details of which were discussed at the earlier
4 special council meeting, the Department is now recommending that
5 these applications be deferred. And as a result of that I am
6 making that motion to defer these applications to the next
7 cycle. I have a motion to defer. Do I have a second? A second,
8 Dr. Berliner. Any questions? Hearing none, I'll call for a vote.
9 All those in favor, aye.

10

11 [Aye]

12 Opposed? Abstention? Excuse me? One no. Dr. Martin voted
13 no, and abstentions. And the motion carries.

14

15 PETER ROBINSON: Thank you. Get back on track here.
16 Excuse me. OK. I am now calling an application for ambulatory
17 surgery. 172363E, Flushing Endoscopy Center, LLC in Queens
18 County. This is a request for indefinite life for CON 111409.
19 The Department and the Committee recommended approval, and I so
20 move.

21

22 JEFF KRAUT: I have a motion, I have a second Dr.
23 Gutierrez. Is there any questions? All those in favor, aye?

24

25 [Aye]

1 Opposed? Abstentions? The motion carries.

2

3 PETER ROBINSON: Application 171380B, this is New York
 4 Continuum Services LLC in Kings County. This is to establish
 5 and construct a 24 station chronic renal dialysis center to be
 6 located at 85 Bartlett Street in Brooklyn. The Department is
 7 recommending approval with conditions and contingencies, as does
 8 the committee and I so move.

9

10 JEFF KRAUT: I have a motion, I have a second by Dr.
 11 Gutierrez. Are there any question? All those in favor, aye?

12

13 [Aye]

14 Opposed? Abstentions? The motion carries.

15

16 PETER ROBINSON: Thank you. The following are
 17 certificates of various kinds. Certificate of incorporation for
 18 Cayuga Medical Center Auxiliary Inc., Fundraising. A
 19 certificate of amendment of the articles of organization for the
 20 endo group, LLC amended to include new extension clinic.
 21 Certificates of amendment for the certificate of incorporation
 22 for the Martin Luther King Jr. Health Center Inc., with a
 23 corporate name change. The Department recommends approval as
 24 does the committee, and I so move.

25

1 JEFF KRAUT: I have a motion, I have a second by Dr.
2 Gutierrez. All those in favor, aye?

3
4 [Aye]

5 Opposed? Abstentions? The motion carries.

6
7 PETER ROBINSON: Application 181031E, Westchester County
8 Healthcare Corporation in Ulster County. Interest declared by
9 Dr. Berliner and Dr. Bennet who is not here. To establish
10 Westchester County Healthcare Corporation as the second active
11 parent and co-operator of the three Health Alliance affiliated
12 hospitals and disestablish WMC Healthcare Network Ulster Inc.,
13 as an active parent. Here the Department recommends approval
14 with a condition and contingencies, as does the committee, and I
15 so move.

16
17 JEFF KRAUT: I have a second by Dr. Gutierrez. All those
18 in favor, aye?

19
20 [Aye]

21 Opposed? Abstentions? The motion carries.

22
23 PETER ROBINSON: Thank you. Application 172428E,
24 Montclair Care Center Inc., d/b/a Marquis Rehabilitation and
25 Nursing Center in Nassau County. Noting a conflict and recusal

1 by Ms. Carver-Cheney who has left the room. This is to transfer
 2 100 percent ownership interest from 11 withdrawing stockholders
 3 to one new stockholder. The Department recommends approval with
 4 a condition and contingencies as does the committee and I so
 5 move.

6

7 JEFF KRAUT: I have a second by Dr. Gutierrez. Any
 8 questions? All those in favor, aye?

9

10 [Aye]

11 Opposed? Abstentions? The motion carries.

12

13 PETER ROBINSON: The next batch requires the recusal of
 14 Mr. Kraut and Dr. Strange who are leaving the room. And they
 15 have left the room. This is a certificate of amendment to the
 16 certificate of incorporation for Long Island Jewish Medical
 17 Center, Plainview Hospital, Southside Hospital, Staten Island
 18 University Hospital. The Department and the committee recommend
 19 approval and I so move.

20

21 JO BOUFFORD: I have a motion and seconded for approval.
 22 Is there any discussion by the council? All those in favor, aye?

23

24 [Aye]

25 Opposed? Any Abstentions? The motion passes.

1

2 PETER ROBINSON: Thank you. May I have Mr. Kraut and Dr.
3 Strange return. Application 181002E. New York Endoscopy Center
4 in Westchester County. Transfer of 51 percent ownership interest
5 to one new corporate not-for-profit member. The Department is
6 recommending approval with a condition and contingencies, as
7 does the committee noting that there was one member that
8 abstained, and I so move.

9

10 JEFF KRAUT: I have a second Dr. Gutierrez. Any
11 questions? All those in favor, aye?

12

13 [Aye]

14 Opposed? Abstentions? The motion carries.

15

16 PETER ROBINSON: 172347B, Southern Tier Women's Health
17 Services in Broome County. To establish and construct a
18 diagnostic and treatment center located at 149 Vestal Parkway
19 West. Vestal currently operating as a private practice. Here,
20 the Department is recommending approval with conditions and
21 contingencies, as does the committee noting one member
22 abstained, and I so move.

23

24 JEFF KRAUT: I have a second, Dr. Gutierrez. Any
25 questions on this applicant? All those in favor, aye?

1

2 [Aye]

3 Opposed? Abstentions? The motion carries.

4 I'm sorry. Mr. LaRue abstained? I'm sorry. We have one
5 abstention, Mr. LaRue. The motion still carries.

6

7 PETER ROBINSON: Thank you. So, application 181106E,
8 this is Eastern Niagara Hospital, Lockport Division in Niagara
9 County. Noting a conflict and recusal by Ms. Baumgartner. Who
10 has left the room. And this is to establish Kaleida Health as
11 the active parent and co-operator of Eastern Niagara Hospital. I
12 want to note that contingency one is withdrawn because OMH is
13 now recommended approval. So the Department, with that change,
14 the Department is recommended approval with a condition and
15 contingencies. The committee also recommended approval with
16 conditions and contingencies. Noting the abstention of one
17 member in opposition and one member abstaining. I make a motion
18 in support of the application.

19

20 JEFF KRAUT: I have a second by Dr. Gutierrez. Any
21 questions? Hearing none, I'll call for a vote. All those in
22 favor, aye?

23

24 [Aye]

1 Opposed? Abstentions? One abstention, Dr. Brown. Second
2 abstention Dr. Watkins. Two abstentions. The motion carries.

3
4 PETER ROBINSON: Thank you. 171446E, St. Joseph's
5 Hospital Health Center in Onondaga County. An interest by Dr.
6 Bennet who is not here. Establish St. Joseph's Health Inc., as
7 the active parent and co-operator of St. Joseph's Hospital
8 Health Center. Department is recommending approval with a
9 condition and contingencies, as does the committee with one
10 member abstaining, and I so move.

11
12 JEFF KRAUT: I have a second, Dr. Gutierrez. Any
13 questions on this matter. All those in favor, aye?

14
15 [Aye]

16 Opposed? Abstentions? One Abstention, Dr. Brown. The motion
17 carries.

18
19 PETER ROBINSON: Application 172230E, St. Joseph's
20 Hospital Health Center CHHA in Onondaga County with an interest
21 declared by Dr. Bennet. This is to establish St. Joseph's Health
22 Inc., as the parent and Trinity Health as the grandparent of the
23 CHHA. The Department is recommending approval with
24 contingencies. As does the committee with two members
25 abstaining, and I so move.

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JEFF KRAUT: We have a second Dr. Gutierrez. Any questions? All those in favor, aye?

[Aye]

Opposed? Abstentions? Dr. Brown. The motion carries.

PETER ROBINSON: Thank you. Application 172296E, NYU Winthrop Hospital in Nassau County. Dr. Kalkut is not here but noted a recusal of his. This is a full asset merger of Lutheran CHHA into the NYU Winthrop Hospital CHHA. The Department is recommending approval with a condition and contingencies, as does the committee with one member abstaining, and I so move.

JEFF KRAUT: I have a second Dr. Gutierrez. Any questions? All those in favor, aye?

[Aye]

Opposed? Abstentions? Dr. Brown. The motion carries.

PETER ROBINSON: Thank you. I'm noting Mr. Kraut's conflict and recusal from the next two applications. And Dr. Strange as well. Thank you very much.

First application, 172364E, True North Four DC, LLC in Queens County. This is to establish True North Four DC, LLC as

1 the new operator of Atlas Park Dialysis and Jamaica Hillside
 2 Dialysis, both currently operated by Knickerbocker Dialysis Inc.
 3 The Department is recommending approval with conditions and
 4 contingencies. The committee was unable to reach a vote of
 5 approval, and so this comes forward without a committee
 6 recommendation, but I make a motion for approval.

7

8 JO BOUFFORD: Second by Dr. Martin had his hand up first I
 9 think. So motion and second. Open for discussion? Members of
 10 the council wish to comment? Discuss? Questions? Hearing none
 11 we'll move to a vote. All in favor? We'll have a hand raise
 12 this time unless we end up having to do a... all in favor of the
 13 proposal?

14 [You better do a roll call.]

15 Can I get the roll then?

16

17 Baumgartner

18 Yes.

19 Berliner

20 No

21 Myself, Yes.

22 Lawrence Brown

23 Yes

24 Carver-cheney

25 Yes

- 1 Gutierrez
- 2 No
- 3 Holt
- 4 Yes
- 5 LaRue
- 6 No
- 7 Lawrence
- 8 No
- 9 Martin
- 10 Yes
- 11 Rautenberg
- 12 No
- 13 Robinson
- 14 Yes
- 15 Ruge
- 16 No
- 17 Soto
- 18 Yes
- 19 Strange, out of the room.
- 20 Torrez
- 21 No
- 22 Watkins
- 23 Yes
- 24 Yang
- 25 No

1

2 JO BOUFFORD: Oh, I didn't keep the count. I was assuming
3 colleen was. Didn't pass. Alright. 11-6. We have a quorum then.
4 We have a quorum and it did not pass. So that's that. Moving
5 on to the next application.

6

7 PETER ROBINSON: So the next application 172411E, True
8 North Five, DC LLC in Kings County, also noting the recusal on
9 this application by Mr. Kraut and Dr. Strange, is to establish
10 True North Five DC LLC as the new operator of a 24 station
11 chronic renal dialysis center located at 730 64th Street,
12 Brooklyn. Currently operated by Knickerbocker Dialysis Inc.
13 The Department recommends approval with conditions and
14 contingencies. The committee on this application as well was not
15 able to reach a recommendation and so we'll bring it forward
16 without a committee recommendation, but in order to bring this
17 process forward, I make a motion for approval.

18

19 JO BOUFFORD: Second for approval. Dr. Martin. Second.
20 Open for conversation, discussion, questions from the council.
21 Hearing none, shall we move to another roll call.

22 Baumgartner

23 ?

24 Berliner

25 No

- 1 Boufford, Yes.
- 2 Brown
- 3 Abstain
- 4 Carver-Cheney
- 5 Yes
- 6 Gutierrez
- 7 No
- 8 Holt
- 9 Yes
- 10 LaRue
- 11 No
- 12 Lawrence
- 13 No
- 14 Martin
- 15 Yes
- 16 Rautenberg
- 17 No
- 18 Robinson
- 19 Yes
- 20 Ruge
- 21 (no)
- 22 Soto
- 23 Yes
- 24 Torrez
- 25 No

1 Watkins

2 (yes)

3 Yang

4 No.

5 Have a count? Did not pass as well. What was the number? 9

6 No's?

7 [Not quite 13 so it did not pass]

8

9 JO BOUFFORD: So, that did not pass as well. So that's the
10 end of those. Any others? Or we're done.

11

12 PETER ROBINSON: So please have Mr. Kraut and Dr.
13 Strange return.

14 OK. So Mr. Kraut, that concludes the report of the
15 Establishment and Project Review Committee, and I turn it back
16 to you.

17

18 JEFF KRAUT: Thank you very much. Before we adjourn the
19 meeting and we have another meeting following this, the full
20 meeting of the Public Health and Health Planning Council will be
21 adjourned and the next committee day is on May 17 and the full
22 council meeting will convene on June 7 in New York City. I'd
23 now like to turn it over to Dr. Ruge and Mr. Robinson who will
24 have a joint meeting of the Health Planning Committee and the
25 Establishment and Project Review Committee.

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PETER ROBINSON: So, Dr. Rugge would you be so kind.

JOHN RUGGE: This could get tricky couldn't it. The two of us. In any case...

JEFF KRAUT: I'm deputizing you. You take it, he'll take the second share.

JOHN RUGGE: So there is a proposal coming for review not really a vote or approval by the council as a demonstration program for the establishment, observation beds in hospital extension clinics for the purpose of addressing the needs of cancer patients with active cancer. Once again, this legislation requires that we be apprised of this initiative. An initiative for up to five applicants for consideration for approval. Each of which would then return to the council through the Establishment committee for review and consideration. So we are not approving or disapproving the demonstration program, but apprising ourselves of it for further review as the applications come in. And with that I suspect we have a staff member prepared...

1 PETER ROBINSON: I think Ms. Raleigh is the person who
2 is going to kind of give us the details on that. Is that right?

3

4 TRACY RALEIGH: Thank you very much. I'm Tracy Raleigh. I'm
5 the director of the Center for Planning, Licensure, and Finance.
6 And I'll just keep the summary brief. We did provide two members
7 and to the public a white paper on this proposal, and so we are
8 bringing this proposal for information and feedback as Dr. Ruggie
9 said, under part 705 which allows the commissioner to bring to
10 PHHPC concepts for demonstration program. I think the last time
11 this body did that was back in 2010 with the proton beam therapy
12 services. So as Dr. Ruggie said, this proposal is for
13 observation services for a hospital extension clinic. So
14 observation services in a clinic setting, operated by a hospital
15 for patients that are undergoing treatment for cancer services
16 either medical oncology services or radiation oncology services.
17 It's not intended and I wanted to know for ambulatory surgery
18 patients who are wanting to have or expecting to have a recovery
19 session following surgery. So that's the focus.

20 Just a brief level set on regulations for observation
21 services. Observation services are covered by part 405.32 of
22 Title 10 and under these regulations, these were last updated in
23 2015. The regulations currently provide the establishment of
24 observation services to be limited to being provided in a
25 hospital setting. So, patients may be assigned to observation

1 services either only by a physician or appropriately licensed
2 practitioner. They may be assigned only through the emergency
3 department or by direct referral, and the regulations define
4 direct referral meaning that they're referred to the hospital
5 for observation by a nursing home, a hospital outpatient clinic,
6 an appropriately licensed practitioner, without receiving
7 emergency room services. So either, you're admitted through the
8 emergency room or a direct referral from one of these sources.
9 The referring physician must be a licensed physician or
10 appropriately licensed practitioner. The regulations and the
11 federal regulations require 24/7 medical oversight, and also
12 full non-medical services be provided such as dietary, toilet
13 facilities, the appropriate physical space requirements
14 commensurate with the services provided in a hospital. Also
15 ancillary services such as lab and radiology. That are
16 comparable with hospital inpatient care.

17 So the reason we're here, just a little background for
18 transparency is that we actually received an application back in
19 April of 2017 from Memorial Sloan Kettering and that application
20 was related to their licensed hospital extension clinic in West
21 Harrison and they were proposing to add a given capacity
22 constraints additional exam rooms, six additional exam rooms and
23 two observation beds. And the rationale that they provided in
24 the application was they were aiming to manage, better manage
25 their existing patients whose condition either post treatment or

1 between treatments required additional examination and possibly
2 including observation and currently for patients who were living
3 in the lower Hudson Valley and Southern Connecticut their
4 protocol in that instance would be to have to refer the patients
5 to Manhattan for those types of observation services. So they,
6 the intent of this was to allow same day clinic services in West
7 Harrison and also in instances where their attending physician
8 or the oncologist treating them was not available to be able to
9 go to 24/7 location for evaluation, observation, and then
10 appropriate either admission to the hospital or transfer or
11 discharge. So, we could not approve that application in 2017 so
12 as it stands, MSK removed the observation portion from that and
13 the application was contingently approved. They did go forward
14 with the eight rooms and built out capacity should this proposal
15 go forward. So we just wanted to let you know, sometimes a real
16 example is helpful in understanding why we bring this forward.
17 Given the advances in medical technology and the continued drive
18 for innovation to achieve triple aim goals such as increase in
19 quality and improving the patient experience and reducing costs,
20 the Department determined that a statewide 705 demonstration
21 program would be an appropriate vehicle, an effective avenue to
22 evaluate this model for health services for regional health
23 systems to see if this is more effected ability to manage
24 ambulatory care patients.

1 So just with that, I just want to touch briefly on process.
2 As Dr. Rugge said, the part 705 demonstration program
3 regulations call for two phase process. So this is phase one.
4 So we're bringing this to you for information and feedback to
5 review the concept and make recommendations to us and the
6 Commissioner based on factors such as cost, medical utility,
7 efficacy of the innovation, and then so we want to collect that
8 feedback to help us in phase two which will be developing an RFP
9 if you will, a request for applications that would be provided
10 to all eligible participants which would be any hospital
11 extension clinic that is offering cancer services such as I
12 defined which his primarily for the treatment of active,
13 patients with active cancer disease and for medical oncology and
14 radiation oncology services. As part of that phase two we
15 anticipate and the regulations call for a technical advisory
16 group to review and make recommendations related to the
17 selection of the applications and in the paper we gave you some
18 factors that we thought that advisory group would take up but
19 not be limited to and want your feedback on that. Such things
20 as the plan for data collection and analysis of the project, the
21 adequacy of the methodology that the applicant proposes for the
22 demonstration, the technical qualifications of the applicant,
23 and the proposed project staff, the reasonable with the budget,
24 the adequacy of the facility and the resources available, and
25 also on the number of applications that we would select. So the

1 demonstration projects selected by the Commissioner for approval
2 will come back to this council for review, consistent with the
3 requirements for construction projects. So, once the selection
4 has been made we would bring back that recommendation to this
5 council.

6 I'm going to fast forward a little bit just to summarize.
7 I mean, also covered in detail in the paper the parameters that
8 the Department will establish for this program, and Dr. Ruge
9 touched on them, such things as the number of projects a week,
10 proposed in the paper up to five projects statewide which would
11 cover geography throughout the State. We also anticipate that
12 there would be only one project for each hospital sponsor, so
13 there wouldn't be multiple sites within hospital. The size of
14 the observation bed unit. We proposed no more than three, but
15 would like your feedback on that. The beds must be located, as
16 I said, within a licensed hospital extension clinic and directly
17 controlled by the hospital sponsored governing body. Only
18 patients over the age of 18 would be considered. Services would
19 be limited to patients, as I said, with a primary diagnosis of
20 cancer—I think I covered that. It's not just a repeat. It's not
21 intended to be targeted for hospital extension clinics that
22 provide ambulatory surgery services that are looking for post-
23 surgical recovery. The clinic must operate 24/7 - I think I
24 touched on that - and be fully compliant with all the life
25 safety code and other physical environment standards that are

1 applicable to the services that currently exist in the hospital
2 setting. And then finally the Department doesn't anticipate
3 establishing any special Medicaid rates for this program or
4 otherwise providing any extraordinary funding to support the
5 demonstration program itself.

6 So lastly, just touched, summarized in the paper, we would
7 like to get members' feedback and input on the data in reporting
8 requirements for the demonstration program. It's anticipated
9 that demonstration program applicants would report on a six
10 month basis and also provide a final report once the
11 demonstration concludes. And I don't think I mentioned this,
12 but we anticipated to be over five years. So the demonstration
13 would be conducted over a five year period with six month
14 progress reports each year and a final report at the end. And
15 those progress reports the data in that what summarized as
16 recommendations that we had were such things as, but not limited
17 to utilization rates for the hospital extension clinics so the
18 use data for the clinic itself, and the impact on the
19 utilization rates at the main hospital. Because one of the
20 tenets of the application that we had before us that we couldn't
21 approve for MSK was that allowing for this service more locally
22 for patients back where they reside would free up services at
23 the main hospital site, you know, in terms of, if you will,
24 maybe higher acute cases. Other pieces of information we would
25 be looking to collect during this demonstration are discharge

1 status information including the patient demographic data; data
2 such as length of stay, and importantly the transfer rate to the
3 main hospital location or transfer to other hospitals; clinic
4 and insurance data including comorbidity analysis of the
5 hospital clinic versus... the hospital extension clinic versus the
6 main hospital location; the hospital inpatient admission or
7 readmission rates for patients, cost data, telemedicine use
8 because it is anticipated that the use of telemedicine could be
9 provided from the main hospital site to the extension clinic;
10 patient experience data, I mean this is very much a patient
11 centered demonstration project, so patient experience data in
12 the hospital extension clinic versus the main hospital site; the
13 physician experience particularly the primary care physician and
14 related to the care management coordination and the transfer of
15 necessary information. And then finally metrics related to the
16 timeliness of diagnostic services received by the observation
17 patients in the hospital extension clinic setting versus the
18 main hospital site.

19 So with that I would close and welcome any feedback or
20 questions.

21

22 PETER ROBINSON: Thank you for that report. Dr.
23 Berliner.

24

1 HOWARD BERLINER: Tracy, I don't think you addressed
2 patient finances in this. If it's an observation bed that means
3 it's handled by Part B rather than Part A if a patient is on
4 Medicare and therefore could have some cost consequences to
5 patients? I'm not sure of that, but maybe someone else knows?

6

7 TRACY RALEIGH: It's clear in the regulation today... it must
8 be clearly indicated to the patient that this is an observation
9 service. So if you're indicating what the rate would be at the
10 clinic setting, right now we're not anticipating that there
11 would be any Medicaid rate. You're talking about the cost to
12 the consumer? That would be subject to whatever the payers co-
13 payments are. And it certainly can be a factor that we built
14 into this program. Yeah. That's an excellent point.

15 Yeah, this is the same observation service as exists today.
16 It's just in a different location.

17

18 JOHN RUGGE: Does seem that cost-effectiveness though is
19 an issue given three beds, 24/7 coverage, taking a look at that,
20 and having some projections back to the council might prove
21 helpful.

22

23 HOWARD BERLINER: And John, look at the other side of
24 that which is the patient side of that, which is...

25

1 TRACY RALEIGH: I'm sorry... (no mic)

2 JO BOUFFORD: Yeah, I think this is really interesting and
3 as I understand it, because this is sort of new to me, but I
4 understand that provider is currently being paid for these beds
5 but only if they are in the acute care hospital, is that
6 correct? Something called observation beds but they have to be
7 on-site in the acute care hospital?

8

9 TRACY RALEIGH: That's correct.

10

11 JO BOUFFORD: So they would be paid for these beds in
12 another venue.

13

14 TRACY RALEIGH: Currently this is a demonstration...

15

16 JO BOUFFORD: But during the demonstration would they be?

17

18 DAN SHEPPARD: So, during the demonstration-- Tracy I can
19 take the finance stuff here--so during the demonstration... so the
20 reason why we thought this was, for all the very god questions
21 being raised and some of, Dr. Berliner, I think that's the kind
22 of input we're looking for an how to improve the parameters in
23 this paper and certainly making sure that there are some
24 assurances that patients who are participants end up utilizing
25 the services as a result of this demo are not otherwise

1 financially impacted, it may be a very important thing to put
2 into the parameters around the program and again, all the more
3 reason why we went the demo approach on this, and so it will be,
4 as indicated in the paper, the applicants that move forward with
5 this will need to understand there is no supplemental funding
6 for it to the extent they might be able to, on the commercial
7 side, work out an arrangement with one of the plans that they
8 contract with because the plan may view this in an enterprise
9 way as being a more cost-effective approach, they could come up
10 with a rate that would be outside of the Department's purview.

11

12 JO BOUFFORD: I was trying to get that information to make
13 the point, or raise the point, this seems to me a bit like an
14 intermediary solution to a problem, and so I'm wondering if in
15 the context of a demo, that's why I was asking about the
16 financing part. You've just said the telehealth is freed up, so
17 it's going to be able to be from anywhere to anywhere, and many
18 patients probably would prefer to stay home. If with the
19 appropriate homecare services, and if I understand it, it's not
20 an early discharge program, necessarily. It may be an element of
21 that sort of, somebody goes home and then something happens or
22 they may be at risk for something happening. So I'm just
23 wondering if there was a way of building into the demonstration
24 the idea of the provider option using their homecare services to
25 look at telehealth and homecare and doing a comparative analysis

1 of both patient satisfaction as well as cost-effectiveness,
2 because it strikes me if the people are on 24/7 and somebody
3 could telehealth, and/or go out or tell the people to come into
4 the local ER, that seems to me something we ought to be looking
5 at in the context of something that's going to go for five
6 years, because...

7

8 JEFF KRAUT: My recollection in reading this and little
9 about the application, it's actually solving a different issue.
10 And the issue is, there's in addition to whatever cancer
11 services may be provided, there's also urgent care opportunities
12 if there's an urgent situation where the individual comes to the
13 center as a consequence of a clinical evaluation not quite sick
14 enough to be admitted, but cautiously wants to put them in an
15 observation bed to make sure because, it's usually clinically
16 not safe enough to go home either, but the want to need to have
17 an extended observational period, and it's that group of
18 patients that I think they're trying to do because the other
19 consequence in these satellite centers is the mother or the
20 sponsoring institution is in a remote location and then they go
21 into another clinical delivery system and it disassociates their
22 care. So they're trying to create a continuity of care for a
23 very narrow group. That's why you only need two beds.

24

1 JO BOUFFORD: I think that's my point. I mean, you didn't
2 convince me that my point isn't still valid as an exploratory
3 question. Because the patients will know they're enrolled in the
4 program, so maybe they could have an option in some instances, I
5 think it's homecare.

6

7 DAN SHEPPARD: I think that option and, I think the
8 telehealth option currently exists. I mean, ...

9

10 JO BOUFFORD: Well, the observation bed option exists too,
11 it's just in a hospital...

12

13 JEFF KRAUT: They show up at 7:00 or 8:00 at night, but
14 they can't organize to get into homecare that evening. You just
15 can't do it.

16

17 JO BOUFFORD: No, but I'm saying these are people... I just
18 was here, what I thought you were saying, these are people, we
19 know who they are. You sort of know who they are. And other
20 countries really install telehealth capacity in the homes of
21 people that are under certain kinds of situations. I'm just
22 suggesting that you might explore the possibility that this is
23 an intermediary step towards something that might be more
24 creative and cost-effective.

25

1 JOHN RUGGE: It does seem that this is simply extends the
2 continuum of care. And so, intermediary and that's fine; one
3 more building block to have a whole range of options based on
4 the severity and the acuity of the patient.

5

6 JO BOUFFORD: It's just if you're going to look at it for
7 five years and you have an expert advisory group, could you toss
8 in the notion that you might think about... because most of these
9 institutions have homecare capabilities and whether a patient is
10 pre-enrolled and acutely ill cancer patient in active treatment,
11 I'm just arguing we should try to think about how to set up
12 situations at home that might be reimbursable as well and more
13 comfortable for a patient.

14

15 DAN SHEPPARD: I see no reason why we can't consider that.
16 I just want to make sure, maybe we can have some subsequent
17 discussions and just make sure again, that the purpose of the
18 demo and to keep it manageable efficient is to keep it
19 relatively narrow. This doesn't preclude other parallel demos or
20 even discussion as to something that can relate here. So we'll
21 give some further thought to what you're saying and see if we
22 can incorporate that piece of it. But I think as Mr. Kraut
23 said, there's a subset of patients...

24

25 JO BOUFFORD: I understand..

1

2 DAN SHEPPARD: that this directed to.

3

4 JO BOUFFORD: But they're being sent home, is my point.

5

6 DAN SHEPPARD: Right now they're being sent and again...

7

8 JO BOUFFORD: Some of them are. Some of them are going to
9 be discharged to these beds.

10

11 DAN SHEPPARD: And the ones that were sent home, there's
12 likely to be and hopefully will be telehealth capability to
13 continue to monitor them. This is largely targeted at patients
14 who would otherwise have to travel some distance from their
15 community to get a level of care that's not currently available.

16

17 JO BOUFFORD: No, I understand. All I'm saying, if you've
18 got the care, the sort of distance care giver in the community
19 there are ways in which they can operate to make it more
20 convenient to the patient then perhaps just having the patient
21 still have to come in. And it seems to me you're kind of
22 launching a natural experiment that you might think about
23 something different, rather than waiting to see how this goes
24 after five years. I think we're going to be passed by

1 technology and it's going to be obsolete by the time you get an
2 answer. That's my point I'm making.

3

4 DAN SHEPPARD: I think that's fair.

5

6 JO BOUFFORD: If you've got a group and you've got
7 something organize, why not look at this notion in the context
8 of the demo.

9

10 PETER ROBINSON: So just a couple... oh I'm sorry, did
11 somebody else have a ... so a couple of things. One, given the
12 fact that this is a five year demonstration I'm concerned about
13 maybe the limited number of demonstration sites. Five may be
14 too small to get both geographic dispersion and to actually
15 allow that experiment to have a real foundation and work. So
16 consider at least more of that. Secondly you need to do
17 whatever you can to make sure that it is a one system, one
18 demonstration project so you don't sort of back door coalition
19 of multiples, even though they may have on the surface different
20 names. I think there ought to be that clear distribution as you
21 move that forward. So just a couple thoughts. Dr. Martin.

22

23 GLENN MARTIN: I think this is one of these situations
24 where knowing actually in very granularly what's going on with
25 individual patients is going to be key. Because I have to admit,

1 I'm sitting here and I'm very confused. Observation beds are
2 usually used by somebody who you can't get out of the ER and you
3 think will be able to be discharged within 24 hours or you
4 wouldn't be paid if you put them upstairs, to hold on to them in
5 a good environment with a lot of supervision, but with the whole
6 hospital backing you up and with an emergency room there because
7 either way, sometimes you're in the ER, sometimes you're
8 upstairs on the floors. So it's a little unclear to me what sort
9 of patients they were then transporting from Westchester all the
10 way down to Manhattan which appears to be the back up plan that
11 is mentioned in this document that now if they were that sick,
12 how did they get there to begin with? So the whole thing is a
13 little confusing to me about what the acuity actually is that
14 we're dealing with. And then they talk about sort of walk-ins
15 which strikes me as a little bit odd because it has to be just
16 cancer-related walk-ins and the like. I just said, it sounds
17 intriguing, it's just a little hard to know exactly what I would
18 be looking for because I don't know what it is you're starting
19 with.

20

21 DAN SHEPPARD: Dr. Martin, I just want to be clear. I
22 mean, while, in the interest of transparency we indicated sort
23 of the impetus for this demo which was an unsuccessful
24 application by Memorial Sloan Kettering. We saw this as an
25 opportunity to take a small step in an area that's got a growing

1 level of interest from various provider communities which is the
2 use of short stay or recovery, sometime home recovery beds in a
3 non-hospital setting. And there are lots of implications of, as
4 we indicate in the paper of a broad expansion of that. This
5 struck us as a narrow opportunity to look at from a clinical
6 standpoint, from a patient experience standpoint, from an impact
7 on other providers in the community standpoint, to look at how
8 observation services, what we currently call observation
9 services, which you're right from a regulatory standpoint is
10 hospital-based term and you did correctly characterize the
11 primary way that they're utilized how it could be used to
12 improve patient experience, free up space for higher acuity
13 patients at a main hospital site, and potentially on an
14 enterprise basis reduce costs. So, I think, I'm sorry if the
15 paper confuses you a little bit because we focused, because of
16 transparency we wanted to focus on the Sloan Kettering potential
17 approach to this, but I think fundamentally, I think the
18 concepts or the pillars that we're thinking about testing here
19 have to do with keeping patients from having to be transported
20 distances unnecessarily and having access to more services
21 closer to home that are specific, in this case, cancer care
22 services. So that's really the key here. And again, I suspect
23 that the, in addition to Sloan Kettering, this is pretty much
24 geared toward regional healthcare systems that have quaternary

1 car at a hub site and want to provide more appropriate levels of
2 care throughout their system. So that sort of focus.

3

4 GLENN MARTIN: I understand that, and I appreciate having a
5 use case to look at, but I mean, again, I tend to look at
6 negative things so it's right for abuse also and problematic
7 issues that can occur. I mean, just the very idea that if... I'm
8 not saying it's accurate, but if we say people that are that
9 sick were to be schlepped down from Westchester all the way down
10 to Manhattan in order to get care that they needed, that was an
11 interesting CON that we, why would we have approved that in the
12 first place if that was their backup? Not saying it happened,
13 I'm just saying that there are reasons that moving patients
14 around, may or may not be in the patient's best interest. And
15 again, patient satisfaction is wonderful, but as you know,
16 patient satisfaction is not a proxy for outcome. It's related,
17 but it's not the same, and frankly there's a lot of times where
18 there's a disconnect.

19

20 DAN SHEPPARD: So without delving into the use case, I
21 think again, the appropriateness of using this vehicle, this
22 part 705 demonstration vehicle for this is, as Tracy mentioned,
23 the actual once selected, the projects with all their detail
24 come before this body and approved on an individual basis...

25

1 GLENN MARTIN: Yeah, I understand. That's fine.

2

3 DAN SHEPPARD: ...So I think, so any of those potential
4 hypothetical concerns will be actually could be vetted here and to
5 the extent that the Department or PHHPC feel that some of the
6 abuses that you're suggesting may be present we would reject the
7 application.

8

9 GLENN MARTIN: And that's what I'm saying, I thought it was
10 fine. I was just commenting that without having a specific... it's
11 a little hard for me to figure out what things we want to track
12 without knowing... I can see very diverse use spaces coming before
13 you, eventually coming before us. I think we'll do a good job at
14 looking at possible intended and obvious unintended
15 consequences. I'm not worried about it, I think it should go
16 forward, it's wonderful, it's just figuring what track is a
17 little hard.

18

19 JO BOUFFORD: Again, I just want to add one possibility,
20 and you mentioned some of the criteria my colleagues have raised
21 to look at, but it also might be on the technical advisory
22 committee to be sure there's appropriate patient representation,
23 people involved in home care, people involved in other models so
24 they can have input, so it's not just a hospital-based group

1 that's looking at the sort of familiar pattern of getting rid of
2 bed blocking and cost-effectiveness in that regard.

3

4 JOHN RUGGE: As a point of information, Tracy, do you
5 have a timeframe in mind in terms of how long it will take to
6 (repair) the program, and when applications may be due?

7

8 TRACY RALEIGH: So we're still developing that, but I think
9 that we would anticipate having request for application by
10 sometime in the summer this year, and then having applications
11 due possibly towards the latter half of the year. So, but
12 that's still finalizing those timeframes.

13

14 JOHN RUGGE: Helps to make it real.

15

16 PETER ROBINSON: Sure does. Any other questions or
17 suggestions for the Department? I think we're good.

18

19 JOHN RUGGE: Comments from the public?

20

21 PETER ROBINSON: I think we don't... but if anybody from
22 the public does wish to speak, you're invited anyway. Doesn't
23 seem to be a lot of uprising from over there, so.

24

25 JEFF KRAUT: Well, my guess is if we put this out there..

1

2 JOHN RUGGE: Wait until the applications come in.

3

4 JEFF KRAUT: No, but I would just say, if you don't have
5 people here today, but once its posted and if there's people
6 that have comments in the industry, I'm sure we'll hear from
7 folks, and that should be fed back to us.

8

9 PETER ROBINSON: Exactly.

10 Well I think that our joint committee then is concluded and
11 adjourned. I don't know if we turn it back to you?

12

13 JEFF KRAUT: No, we adjourn the meeting. We are ended.
14 Thank you very much.

15

16 PETER ROBINSON: Class dismissed.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2800 and 2803 of the Public Health Law, Section 405.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (a) of Section 405.4 is amended to read as follows:

- (a) *Medical staff accountability.* The medical staff shall be organized and accountable to the governing body for the quality of the medical care provided to all patients.
- (1) The medical staff shall establish objective standards of care and conduct to be followed by all practitioners granted privileges at the hospital. Those standards shall:
 - (i) be consistent with prevailing standards of medical and other licensed health care practitioner standards of practice and conduct; and
 - (ii) afford patients their rights as patients in accordance with the provisions of this Part.
 - (2) The medical staff shall establish mechanisms to monitor the ongoing performance in delivering patient care of practitioners granted privileges at the hospital, including monitoring of practitioner compliance with bylaws of the medical staff and pertinent hospital policies and procedures.
 - (3) The medical staff shall review and, when appropriate, recommend to the governing body, the limitation or suspension of the privileges of practitioners who do not practice in compliance with the scope of their privileges, medical staff bylaws, standards of

performance and policies and procedures, and assure that corrective measures are developed and put into place, when necessary.

(4) The medical staff shall adopt, implement, periodically update and submit to the Department evidence-based protocols for the early recognition and treatment of patients with severe sepsis and septic shock (“sepsis protocols”) that are based on generally accepted standards of care. Sepsis protocols must include components specific to the identification, care and treatment of adults, and of children, and must clearly identify where and when components will differ for adults and for children. These protocols must include the following components:

- (i) a process for the screening and early recognition of patients with sepsis, severe sepsis and septic shock;
- (ii) a process to rapidly identify and document individuals appropriate for treatment through severe sepsis and septic shock protocols, including explicit criteria defining those patients who should be excluded from the protocols, such as patients with certain clinical conditions or who have elected palliative care;
- (iii) guidelines for hemodynamic support [with explicit physiologic and biomarker treatment goals, methodology for invasive or non-invasive hemodynamic monitoring], including monitoring, therapeutic endpoints and timeframe goals;
- (iv) for infants and children, guidelines for fluid resuscitation with explicit timeframes for vascular access and fluid delivery consistent with current, evidence-based guidelines for severe sepsis and septic shock with defined therapeutic goals for children; and

- (v) a procedure for identification of infectious source and delivery of early antibiotics with timeframe goals[; and
 - (vi) criteria for use, where appropriate, of an invasive protocol and for use of vasoactive agents].
- (5) The medical staff shall ensure that professional staff with direct patient care responsibilities and, as appropriate, staff with indirect patient care responsibilities, including, but not limited to laboratory and pharmacy staff, are periodically trained to implement sepsis protocols required pursuant to paragraph (4) of this subdivision. Medical staff shall ensure updated training when the hospital initiates substantive changes to the protocols.
- (6) Hospitals shall submit sepsis protocols required pursuant to paragraph (4) of this subdivision to the Department for review [not later than September 3, 2013]. Hospitals must implement these protocols after receipt of a letter from the Department indicating that the proposed protocols have been reviewed and determined to be consistent with the criteria established in this Part. [Protocols are to be implemented no later than December 31, 2013.] Hospitals must update protocols based on newly emerging evidence-based standards. Protocols are to be resubmitted at the request of the Department, not more frequently than once every two years unless the Department identifies hospital-specific performance concerns.
- (7) Collection and Reporting of Sepsis Measures.
- (i) The medical staff shall be responsible for the collection, use, and reporting of quality measures related to the recognition and treatment of severe sepsis for purposes of internal quality improvement and hospital reporting to the Department.

Such measures shall include, but not be limited to, data sufficient to evaluate each hospital's adherence [rate to its own sepsis protocols, including adherence] to timeframes and implementation of all protocol components for adults and children.

- (ii) Hospitals shall submit data specified by the Department to permit the Department to develop risk-adjusted severe sepsis and septic shock mortality rates in consultation with appropriate national, hospital and expert stakeholders. Hospitals shall submit data to the Department or the Department's designee in the form and format, and according to such specifications as may be required by the Department.
- (iii) Such data shall be reported annually, or more frequently at the request of the Department, and shall be subject to audit at the discretion of the Department.

(8) Definitions. Sepsis is a life threatening medical emergency that requires early recognition and intervention. For the purposes of [this section] hospital data collection, the following terms shall have the following meanings:

- (i) *sepsis* shall mean a [proven] confirmed or suspected infection accompanied by two [a] systemic inflammatory response syndrome (SIRS) criteria;
- (ii) [for adults,] *severe sepsis* shall mean sepsis complicated by [plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, *severe sepsis* shall mean sepsis plus one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more] organ [dysfunctions] dysfunction; and
- (iii) for adults, *septic shock* shall mean [severe sepsis with persistent] sepsis-induced hypotension persisting [or cardiovascular organ dysfunction] despite adequate IV fluid resuscitation; for pediatrics, septic shock shall mean [severe] sepsis and cardiovascular organ dysfunction [despite adequate IV fluid resuscitation].

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (“PHL”) Section 2800 provides that “[h]ospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, . . . the department of health shall have the central, comprehensive responsibility for the development and administration of the state’s policy with respect to hospital related services . . .”

PHL Section 2803 authorizes the Public Health and Health Planning Council (“PHHPC”) to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

Needs and Benefits:

Sepsis is a range of clinical conditions caused by the body’s systemic response to an infection

and affects more than 1.5 million people in the U.S. each year.

In New York State 47,081 cases of sepsis were reported in 2016 with 11,982 deaths – a mortality rate of approximately 25 percent. However, the number of sepsis cases and the sepsis mortality rate varies widely from one hospital to another. The morbidity rate largely depends on how quickly patients are diagnosed and treated with powerful antibiotics to battle the bacterial infection. A patient may have a greater chance of dying from sepsis if care is provided by an institution poorly prepared to deal with this illness or from providers not thoroughly trained in identifying and treating sepsis.

In response to alarming sepsis statistics, regulations were enacted effective May 1, 2013 to require all hospitals licensed to operate in New York State to have in place and implement evidence-based protocols for the early identification and treatment of severe sepsis and septic shock. The sepsis regulations as originally drafted included guidelines and a definition of sepsis that is no longer consistent with the current international guidelines. This amendment will refine the guideline requirements and the definition to assure complete consistency. The amendment also makes other, minor technical changes to clarify language without changing the meaning or intent.

COSTS:

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

Existing sepsis regulations that require all hospitals to submit evidence-based protocols for the early identification and treatment of sepsis to NYSDOH are unchanged. Costs to the regulated entities are expected to be minimal and to be primarily associated with efforts needed to update internal protocols and definitions to align with the proposed changes. There is no impact on consumers or providers. This change ensures consistency in definitions but in no way alters the intent or impact of the current regulations.

Costs to Local and State Government:

There is no anticipated fiscal impact to State or local government as a result of this regulation, except that hospitals operated by the State or local governments will incur minimal costs as discussed above.

Costs to the Department of Health:

There will be no additional costs to the Department of Health associated with this definition change.

Local Government Mandates:

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork:

There is no additional paperwork associated with this change in wording.

Duplication:

These regulations do not duplicate any State or Federal rules and assure consistency with established and clinically accepted definitions in use throughout the Nation.

Alternative Approaches:

There are no viable alternatives. Stakeholders requested that this change be made to assure absolute consistency with established definitions and to avoid any possible confusion on the part of hospitals and clinicians.

Federal Requirements:

Currently there are no federal requirements regarding the adoption of sepsis protocols or for reporting adherence to protocols or risk adjusted mortality.

Compliance Schedule:

These regulations will take effect upon publication of a Notice of Adoption in the New York *State Register*.

Contact Person:

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

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

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

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

JOB IMPACT STATEMENT

Pursuant to the State Administrative Procedure Act (SAPA) section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

SUMMARY OF EXPRESS TERMS

This proposal would amend various provisions within Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) to reflect the enactment of legislation: (1) requiring criminal history record checks (CHRCs) for adult homes, enriched housing programs, and residences for adults licensed pursuant to Article 7 of the Social Services Law (SSL); (2) requiring CHRCs for hospice programs certified pursuant to Article 40 of the Public Health Law (PHL); (3) authorizing the performance of advanced tasks by advanced home health aides supervised by registered professional nurses employed by home care services agencies, hospice programs, and enhanced assisted living residences (EALRs); (4) requiring the inclusion of information related to workers employed by hospice programs in the Home Care Worker Registry (Registry); and (5) requiring the inclusion of information related to the training and testing of advanced home health aides in the Registry.

Part 402 (Criminal History Record Check)

This proposal would amend 10 NYCRR Part 402 to provide for CHRCs for individuals employed by adult homes, enriched housing programs, residences for adults, and hospice programs. Specifically, this proposal would amend:

- Section 402.1 to update the statement of legislative requirements related to CHRCs to refer to adult homes, enriched housing programs, and residences for adults, consistent with Chapters 60 and 94 of the Laws of 2014, and hospice programs, consistent with Chapter 471 of the Laws of 2016 and Chapter 206 of the Laws of 2017;

- Section 402.2, which identifies the entities to which Part 402 is applicable, to include adult homes, enriched housing programs, residences for adults, and hospice programs;
- Section 402.3 to: (1) expand the definition of “employee in direct care or supervision” to include each unlicensed person employed by or used by an adult home, enriched housing program, or residences for adult who provides face-to-face care or has physical access to resident living quarters; (2) expand the definition of “employee in direct care or supervision” to include unlicensed persons employed by or used by a hospice program to provide face-to-face care; and (3) expand the definition of “provider” to include any adult home, enriched housing program, residence for adults, or hospice program;
- Section 402.4 to include provisions for the supervision of temporary employees by adult homes, enriched housing programs, residences for adults, or hospice programs pending determination of their CHRCs;
- Section 402.9 to require documentation of supervision of temporary employees by adult homes, enriched housing programs, residences for adults, and hospice programs; and
- Section 402.10 to authorize reimbursement for adult homes, enriched housing programs, residences for adults, and hospice programs for the costs of securing CHRCs of prospective employees.

Part 403 (Home Care Services Worker Registry)

This proposal would amend 10 NYCRR Part 403 to add workers employed by hospice programs and home health aides and advanced home health aides employed by EALRs to the Registry and to indicate in the Registry when individuals are qualified to work as advanced home health aides. Specifically, this proposal would amend:

- Section 403.1 to include advanced home health aides within the list of workers and to include EALRs and hospice programs within the list of entities to which Part 403 is applicable;
- Section 403.2 to define an “Advanced Home Health Aide” as a certified home health aide who has met all requirements pursuant to Education Law § 6908(2) and is listed in the Registry; and
- Section 403.5 to prohibit home care services entities from permitting advanced home health aides to provide advanced home health aide services unless they are listed in the Registry.

Part 700 (State Hospital Code – General Provisions)

This proposal would amend 10 NYCRR § 700.2 to define an “advanced home health aide” as a certified home health aide who is qualified to carry out advanced tasks, subject to supervision by a registered professional nurse, and is listed in the Registry, and to add other references to advanced home health aides where appropriate.

Part 763 (Certified Home Health Agencies, Long Term Home Health Care Programs and AIDS Home Care Programs Minimum Standards)

This proposal would amend 10 NYCRR Part 763 to set forth provisions pertaining to advanced home health aides employed by certified home health agencies (CHHAs) and long term home health care programs (LTHHCPS) and the supervision thereof by registered professional nurses. Specifically, this proposal would amend:

- Section 763.2, which lists the rights of patients served by CHHAs/LTHHCPS, to provide that a patient has the right to refuse the provision of advanced tasks by an advanced home health aide, in which case the CHHA/LTHHCPS must ensure that such tasks are provided by a registered professional nurse;
- Section 763.4 to set forth requirements for CHHAs/LTHHCPS pertaining to the supervision of advanced home health aides;
- Section 763.7 to set forth requirements for CHHAs/LTHHCPS pertaining to reports made by advanced home health aides to supervising registered professional nurses; and
- Section 763.13 to set forth requirements for CHHAs/LTHHCPS pertaining to in-service education for advanced home health aides.

Part 765 (Approval and Licensure of Home Care Services Agencies)

This proposal would amend 10 NYCRR § 765.2-1, which provides that home care services agencies must obtain approval by the Public Health and Health Planning Council and be issued a license pursuant to PHL Article 36, to include a reference to advanced home health aides.

Part 766 (Licensed Home Care Services Agencies – Minimum Standards)

This proposal would amend 10 NYCRR Part 766 to set forth provisions pertaining to advanced home health aides employed by licensed home care services agencies (LHCSAs) and the supervision thereof by registered professional nurses. Specifically, this proposal would amend:

- Section 766.1, which lists the rights of patients served by LHCSAs, to provide that a patient has the right to refuse the provision of advanced tasks by an advanced home health aide, in which case the LHCSA must ensure that such tasks are provided by a registered professional nurse;
- Section 766.2(b) to include “advanced home health aide services” in the list of services that constitute “health care services;”

- Section 766.4 to provide that a LHCSA must ensure that there is an order for advanced home health aide services from the patient's authorized practitioner;
- Section 766.5(c)(4) to set forth requirements for the clinical supervision of advanced home health aides by supervising registered professional nurses;
- Section 766.6(a)(6) and (7) to provide for reports by advanced home health aides to supervising registered professional nurses; and
- Section 766.11 to: (1) provide that LHCSAs must ensure that qualifications for advanced home health aides, as set forth in 700.2, are satisfied; and (2) require that advanced home health aides participate in 18 hours of in-service education each year.

Part 793 (Hospice Patient/Family Care Services)

This proposal would amend Part 793 to set forth provisions related to services provided by advanced home health aides supervised by registered professional nurses employed by hospice programs. Specifically, this proposal would amend:

- Section 793.1 to reflect that a patient of a hospice program has the right to refuse the provision of advanced tasks by an advanced home health aide, in which case the hospice program must ensure that such tasks are provided by a registered professional nurse;

- Section 793.7(k) to provide that services must be provided by an aide with appropriate training which, in the case of an advanced home health aide, means a training program as required by section 700.2(b)(54);
- Section 793.7(l) to provide that services provided by an advanced home health aide must be ordered by a physician, assigned by the supervising registered professional nurse, and included in the plan of care and consistent with training and advanced tasks permitted to be performed by advanced home health aides; and
- Section 793.7(o) to include within the responsibilities of a hospice program the supervision of an advanced home health aide by a registered professional nurse.

Part 794 (Hospice Organization and Administration)

This proposal would amend 10 NYCRR Part 794 pertaining to advanced home health aides employed by hospice programs and the supervision thereof by registered professional nurses. Specifically, this proposal would amend section 794.3(k) to provide that, at a minimum, advanced home health aides shall participate in 18 hours of in-service education per year.

Part 1001 (Assisted Living Residences)

This proposal would amend 10 NYCRR Part 1001 to set forth provisions pertaining to advanced home health aides employed by EALRs and the supervision thereof by registered professional nurses. Specifically, this proposal would amend:

- Section 1001.8(b)(2) to reflect that a resident of an EALR has the right to refuse the provision of advanced tasks by an advanced home health aide, in which case the operator must ensure that such tasks are provided by a registered professional nurse; and
- Section 1001.11(r) to provide that advanced home health aides in an EALR must be listed on the Registry, trained, and supervised by registered professional nurses.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 2899-a(4), 3602(17), 3612(5), and 4010(4) of the Public Health Law and section 845-b(12) of the Executive Law, sections 402.1, 402.2, 402.3, 402.4, 402.9, 402.10, 403.1, 403.2, 403.5, 700.2, 765-2.1, 763.2, 763.4, 763.7, 763.13, 766.1, 766.2, 766.4, 766.5, 766.6, 766.11, 793.1, 793.7, 794.3, 1001.8, and 1001.11 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register:

10 NYCRR Part 402 (Criminal History Record Checks)

Subdivision (a) of section 402.1 is amended to read as follows:

(a) (1) Chapter 769 of the Laws of 2005, as amended by Chapters 331 and 673 of the Laws of 2006, imposed the requirement for review of the criminal history record of certain prospective employees of residential health care facilities licensed under Article 28 of the Public Health Law and certified home health agencies, licensed home care services agencies or long term home health care programs certified, licensed, or authorized under Article 36 of the Public Health Law who are hired or used on or after September 1, 2006 and who will provide direct care or supervision to patients, residents or clients of such providers.

(2) Chapter 60 of the Laws of 2014, Part A, sections 22 and 24, as amended by Chapter 94 of the Laws of 2014, imposed the requirement for review of the criminal history record of certain employees of adult homes, enriched housing programs, and residences for adults licensed under

Article 7 of the Social Services Law who are hired or used on or after January 1, 2015 and who will provide direct care or supervision to residents of such providers.

(3) Chapter 471 of the Laws of 2016, as amended by Chapter 206 of the Laws of 2017, imposed the requirement for review of the criminal history record of certain employees of providers certified under Article 40 of the Public Health Law who are hired on or after April 1, 2018 and who will provide direct care or supervision to patients of such providers.

Section 402.2 is amended to read as follows:

This part shall apply to every provider of services to patients, residents, or clients that is:

(a) a residential health care facility [which is] licensed under Article 28 of the Public Health Law [, and any];

(b) a certified home health agency, licensed home care services agency, or long term home health care program certified, licensed, or authorized under Article 36 of the Public Health Law[, to provide services to patients, residents or clients];

(c) an adult home, enriched housing program, or residence for adults licensed under Article 7 of the Social Services Law; or

(d) a hospice program licensed, certified, or authorized under Article 40 of the Public Health Law.

Subdivisions (i), (j), and (k) of section 402.3 are amended to read as follows:

(i) "Employee in direct care and supervision" means

(1) any unlicensed person employed by or used by a nursing home, licensed pursuant to Article 28 of the Public Health Law, who has physical access to a resident's living quarters, or

any unlicensed person providing face-to-face care following the resident's care plan in accordance with Section 410.2(h) of this Title; [or]

(2) any unlicensed person employed by or used by a certified home health agency, licensed home [health] care [program] services agency, or long term home health care [services] program pursuant to Article 36 of the Public Health Law, providing face-to-face care following the professional or paraprofessional plan of care developed for the individual patient in accordance with section 766.3 or 763.6 of this Title[.];

(3) any unlicensed person employed by or used by an adult home, enriched housing program, or residence for adults who provides residents face-to-face care or has physical access to a resident's living quarters; or

(4) any unlicensed person employed by or used by a hospice program certified under Article 40 of the Public Health Law who provides patients face-to-face care following the professional or paraprofessional plan of care developed for the individual patient in accordance with section 793.4 of this Title.

(j) "Prospective employee" means any person to be employed or used by a provider [beginning on or after September 1, 2006], including those persons provided by a temporary employment agency, to provide direct care or supervision to patients, residents or clients, and whom the provider reasonably expects to hire, employ or use, where such person is hired, employed or used by:

(i) a residential health care facility on or after September 1, 2006;

(ii) a certified home health agency, licensed home care services agency, or long term home health care program on or after September 1, 2006;

(iii) an adult home, enriched housing program, or residence for adults on or after January 1, 2015; or

(iv) a hospice program on or after April 1, 2018.

Persons licensed pursuant to Title 8 of the Education Law or Article 28-D of the Public Health Law are excluded from the meaning of the term. Such term shall not include volunteers.

(k) "Provider" means [any residential health care facility licensed under Article 28 of the Public Health Law; or any certified home health agency, licensed home care services agency, or long term home health program licensed, certified, or authorized under Article 36 of the Public Health Law] any entity subject to this Part as enumerated in section 402.2 of this Part.

New subparagraphs (iv) and (v) are added to paragraph (2) of subdivision (b) of section 402.4 to read as follows:

(iv) Adult homes, enriched housing programs, and residences for adults shall provide appropriate direct observation and evaluation of the temporary employee by utilizing an individual employed by the provider to conduct on-site supervision. Such individual must know the identity and assignment of each temporary employee so supervised in the adult home, enriched housing program, or residence for adults at all times. Supervision must be documented in writing on a weekly basis and maintained in the temporary employee's personnel folder.

(v) Hospice programs certified under Article 40 of the Public Health Law shall provide appropriate direct observation and evaluation of the temporary employee by utilizing an individual employed by such provider with a minimum of one year's experience working for a provider certified, licensed or approved under Article 40 the Public Health Law or through a contract with another provider certified, licensed or approved under Article 36 of the Public

Health Law. Such observation and evaluation shall occur on a weekly basis provided, however, that such direct observation and evaluation shall occur on-site in the home the first week by a licensed health care professional, senior aide or other paraprofessional who meets the one year requirement of employment in home care or hospice and at least once every other week thereafter by an individual meeting the minimum one year experience as set forth in this subparagraph. On alternate weeks direct observation and evaluation may be on-site in the home or by phone call to the patient or the patient's representative. The results of such observations shall be documented in the temporary employee's personnel file and shall be maintained.

Subparagraphs (iv) and (v) of paragraph (1) of subdivision (a) of section 402.9 are amended and a new subparagraphs (vi) and (vii) are added to paragraph (1) of subdivision (a) of section 402.9 to read as follows:

(iv) for each such name recorded pursuant to subparagraph (ii) hereof, the results of the criminal history record check and determination of the Department with regard to the employment; [and]

(v) for certified home health care agencies, licensed home care services agencies or long term home health care programs licensed or certified under Article 36 of the Public Health Law, the onsite supervision and alternate week contacts made for assessment of temporary employees as set forth in Section 402.4(b)(2)(ii) of this Title;

(vi) for adult homes, enriched housing programs, and residences for adults licensed under Article 7 of the Social Services Law, the onsite supervision of temporary employees as set forth in section 402.4(b)(2)(iv) of this Title; and

(vii) for hospice programs certified under Article 40 of the Public Health Law, the onsite supervision and alternate week contacts made for assessment of temporary employees as set forth in section 402.4(b)(2)(v) of this Title.

Subdivisions (a) and (b) of section 402.10 are amended to read as follows:

(a) In the event that funds are appropriated in any given fiscal year for reimbursement for the costs of obtaining criminal history information required by this Part, reimbursement shall be made available in an equitable and direct manner for the projected cost of the fee established pursuant to law by the Division for processing a criminal history record check, the fee imposed by the FBI for a national criminal history check, and costs associated with obtaining the fingerprints to all providers licensed, but not certified, under Article 36 of the Public Health Law, and all adult homes, enriched housing programs, and residences for adults licensed under Article 7 of the Social Services Law, including those that are subject to this Part and are unable to access direct reimbursement from state and/or federally funded health programs.

(b) Residential health care facilities licensed pursuant to Article 28 of the Public Health Law, [and] certified home health care agencies and long-term home health care programs certified or approved pursuant to Article 36 of the Public Health Law, and hospice programs certified pursuant to Article 40 of the Public Health Law, may, subject to the availability of federal financial participation, claim as reimbursable costs under the medical assistance program, costs reflecting the fee established pursuant to law by the Division for processing a criminal history information check, the fee imposed by the FBI for a national criminal history check, and costs associated with obtaining the fingerprints, provided, however, that for the purposes of determining rates of payment pursuant to Article 28 of the Public Health Law for residential

health care facilities, such reimbursable fees and costs shall be reflected as timely as practicable in such rates within the applicable rate period.

10 NYCRR Part 403 (Home Care Worker Registry)

Subdivisions (a) and (b) of section 403.1 are amended to read as follows:

(a) This part shall apply to every home care services agency certified, licensed or authorized under Article 36 of the Public Health Law, including agencies exempt under Public Health Law Section 3619; to every hospice program certified under Article 40 of the Public Health Law; to every enhanced assisted living residence licensed under Article 7 of the Social Services Law and certified under Article 46-B of the Public Health Law; and any education or training program for advanced home health aides or home health aides or personal care aides that is authorized, licensed or approved by either the Department or the New York State Education Department; and any person who has successfully completed a state approved education or training program.

(b) Nothing in this part shall be construed to amend, supersede or otherwise modify any requirements of the regulations of the Department of Health relating to the education or training of advanced home health aides or home health aides or personal care aides by New York State authorized education or training programs.

A new subdivision (a) is added to section 403.2 and existing subdivisions (a), (b), (c), (d), (e), (f), (g), (h), and (i) are renumbered to read as follows:

(a) “Advanced home health aide” is a certified home health aide who has satisfied all requirements to perform advanced tasks set forth in subdivision two of section 6908 of the

Education Law and regulations issued by the state education department thereunder and who is currently listed in the home care services worker registry maintained by the department pursuant to subdivision nine of section 3613 of the Public Health Law as having satisfied all applicable requirements for performing advanced tasks as an advanced home health aide. An advanced home health aide shall have successfully completed a training program for advanced home health aides that is approved by the department or the state education department.

[(a)](b)"Commissioner" means the Commissioner of Health of the State of New York.

[(b)](c)"Department" means the New York State Department of Health.

[(c)](d)"Home care services entity" or "entity" means: (i) a home care services agency or other entity providing home care services subject to Article 36 of the Public Health Law or exempt under section 3619 of such law; (ii) for purposes of compliance with the home care worker registry, an enhanced assisted living residence licensed under Article 7 of the Social Services Law and certified under Article 46-B of the Public Health Law and providing enhanced assisted living services; and (iii) for purposes of compliance with the home care worker registry, a hospice program certified under Article 40 of the Public Health Law and providing hospice care.

[(d)](e)"Home care services worker" or "worker" means any person engaged in or applying to become engaged in providing home health aide services, as defined in Public Health Law section 3602(4); [or] personal care aide services, as defined in Public Health Law section 3602(5); or advanced home health aide services, as defined in subdivision (a) of this section.

[(e)](f)"Home care services worker registry" or "registry" means the home care services worker registry established by Public Health Law section 3613.

[(f)](g)"Home care services worker trainee" or "trainee" means an individual who has applied for and been accepted into a state approved education or training program.

[(g)](h)"State approved education or training program" or "program" means a program that provides education or training for persons to meet any requirement established by the Department for providing home health aide services or personal care services, or advanced home health aide services, which program is approved by the Department or the New York State Education Department.

[(h)](i)"Successfully completed" or "successful completion" means, in connection with home health aide training, compliance with 10 NYCRR section 700.2(b)(9); in connection with personal care aide training, it means compliance with [18 NYCRR section 505.14(e)] 10 NYCRR section 700.2(b)(14); in connection with advanced home health aide training, it means compliance with 10 NYCRR section 700.2(b)(54).

[(i)](j)"Senior official" means an individual with responsibility for oversight of a training program and who is authorized to execute a legally binding instrument on behalf of the operator of the program. The senior official may be the operator if the operator is a natural person.

Subdivision (a) of section 403.5 is amended to read as follows:

(a) A home care services entity will have the following responsibilities with respect to home care services workers employed on or after September 25, 2009:

(1) For any home care services worker who began their training on or after September 25, 2009, a home care services entity shall access the worker's registry information prior to the worker beginning to provide home care services for that entity.

(2) A person who successfully completed a state approved education or training program for home health aides or personal care aides that began on or after September 25, 2009, may not

provide home care services unless the person's information has been posted to the registry by the education or training program.

(3) within 10 business days after the worker has been employed by the home care services entity, enter the information required by section 3613(3)(f) of the Public Health Law into the registry in the form and manner required by the Department;

(4) A person who successfully completed a state approved education or training program for advanced home health aides may not provide advanced home health aide services unless the person's information has been posted to the registry by the department.

Part 700 (State Hospital Code – General Provisions)

Paragraph (6) of subdivision (a) of section 700.2 is amended to read as follows:

(6) Home care services agency shall mean an organization primarily engaged in arranging and/or providing, directly or through contract arrangement, one or more of the following: nursing services, home health aide services, advanced home health aide services, medical supplies, equipment and appliances, and other therapeutic and related services which may include, but shall not be limited to, physical and occupational therapy, speech pathology, nutritional services, medical social services, personal care services, homemaker services and housekeeper services which may be of a preventive, therapeutic, rehabilitative, health guidance and/or supportive nature to persons at home.

A new paragraph (54) is added to subdivision (b) of section 700.2 to read as follows:

(54) Advanced home health aide shall mean a certified home health aide who has satisfied all requirements to perform advanced tasks set forth in subdivision two of section 6908 of the

education law and regulations issued by the state education department thereunder and who is currently listed in the home care worker registry maintained by the department pursuant to subdivision nine of section 3613 of the Public Health Law as having satisfied all applicable requirements for performing advanced tasks as an advanced home health aide. An advanced home health aide shall have successfully completed a training program for advanced home health aides that is approved by the department or the state education department.

Paragraphs (14), (15), (16) and (17) of subdivision (c) of section 700.2 are amended to read as follows:

(14) [Reserved.] Home care services shall mean one or more of the following services provided to persons at home:

(i) those services provided by a home care services agency;

(ii) home health aide services;

(iii) personal care services;

(iv) advanced home health aide services;

(iv) homemaker services; or

(v) housekeeper services.

(15) Home health aide services shall mean health care tasks, personal hygiene services, housekeeping tasks and other related supportive services essential to the patient's health.

(16) [Home care services shall mean one or more of the following services provided to persons at home:

(i) those services provided by a home care services agency;

(ii) home health aide services;

(iii) personal care services;

(iv) homemaker services;

(v) housekeeper services.] Personal care services shall mean assistance to the patient with personal hygiene, dressing, feeding and household tasks essential to his/her health.

(17) [Personal care services shall mean assistance to the patient with personal hygiene, dressing, feeding and household tasks essential to his/her health.] Advanced home health aide services shall mean assistance to the patient with advanced tasks defined in subdivision two of section 6908 of the education law and regulations issued by the state education department thereunder and assigned by the supervising registered professional nurse.

Part 763 (Certified Home Health Agencies, Long Term Health Care Programs and AIDS Home Care Programs Minimum Standards)

Paragraphs (10) and (11) of subdivision (a) of section 763.2 is amended and a new paragraph (12) is added to read as follows:

(10) privacy, including confidential treatment of patient records, and refusal of their release to any individual outside the agency except in the case of the patient's transfer to a health care facility, or as required by law or third-party payment contract; [and]

(11) be advised in writing of the availability of the Department of Health toll-free hotline, the telephone number, the hours of its operation and that the purpose of the hotline is to receive complaints or answer questions about home care agencies; and

(12) refuse consent to advanced tasks performed by an advanced home health aide, in which case the agency shall provide for the performance of such tasks by a registered professional nurse.

Paragraph (7) of subdivision (h) of section 763.4 is amended and new paragraphs (8), (9) and (10) are added to read as follows:

(7) in-home supervision, by professional personnel, of home health aides and personal care aides takes place:

(i) to demonstrate to and instruct the aide in the treatments or services to be provided, with successful [redemonstration] re-demonstration by the aide during the initial service visit, or where there is a change in personnel providing care, if the aide does not have documented training and experience in performing the tasks prescribed in the plan of care;

(ii) where any of the changes in paragraph (4) of this subdivision occur, to evaluate the change and initiate any revision in the plan of care which may be needed; and

(iii) to instruct the aide as to the observations and written reports to be made to the supervising community health nurse or therapist[.];

(8) direct supervision of an advanced home health aide is conducted by a registered professional nurse who:

(i) provides training, guidance, direction and oversight, and evaluation related to the performance of advanced tasks by the advanced home health aide;

(ii) assigns advanced tasks to be performed by the advanced home health aide after completing a nursing assessment to determine the patient's current health status and care needs;

(iii) provides case specific training to the advanced home health aide to verify and ensure the advanced home health aide can safely and competently perform the advanced tasks for the patient;

(iv) provides written, patient specific instructions for performing advanced tasks, including the criteria for identifying, reporting, and responding to problems, errors or complications;

(v) conducts a comprehensive medication review including evaluation of the patient's current medication use, and prescribed drug regimen and identifies and resolves any discrepancies prior to assigning the advanced home health aide to administer medications;

(vi) determines direct supervision of the advanced home health aide based on the complexity of advanced tasks, the skill and experience of the advanced home health aide assigned to perform the advanced tasks, and the health status of the patient for whom the advanced tasks are being performed;

(vii) while on duty is continuously available to communicate with the advanced home health aide by phone or other means;

(viii) conducts home visits or arranges for another qualified registered professional nurse whenever necessary to protect the health and safety of the patient;

(ix) performs an initial and ongoing assessments of the patient's needs; and

(x) conducts a home visit at least every two weeks and more frequently as determined by the registered professional nurse, to observe, evaluate, and oversee services provided by the advanced home health aide;

(9) a process is in place to document the limitation or revocation of the assignment of advanced tasks by an advanced home health aide when deemed appropriate by a supervising

registered professional nurse and to ensure that such information is available to other registered professional nurses that may supervise such aide; and

(10) any failure by a supervising registered professional nurse to comply with the requirements of paragraph eight of this subdivision shall be reported to the department.

Paragraph (7) of subdivision (a) of section 763.7 is amended to read as follows:

(7) observations and reports made to the registered professional nurse, licensed practical nurse or supervising therapist by the advanced home health aide, home health aide or personal care aide, including activity sheets;

Subdivision (l) of section 763.13 is amended to read as follows:

(l) that all personnel receive orientation to the policies and procedures of the agency operation, in-service education necessary to perform his/her responsibilities and continuing programs for development and support. At a minimum:

(1) home health aides shall participate in 12 hours of in-service education per year; [and]

(2) personal care aides shall participate in six hours of in-service education per year; and

(3) advanced home health aides must participate in 18 hours of in-service education per year, which must include medication management, infection control, and injection safety, and which must be directly supervised by a registered professional nurse.

Part 765 (Approval and Licensure of Home Care Services Agencies)

Subdivision (a) of section 765-2.1 is amended to read as follows:

(a) No home care services agency, other than those exempt from licensure requirements as provided in subdivision (c) of this section, shall provide nursing, advanced home health aide, home health aide, or personal care services to persons in their home unless it has been approved by the Public Health and Health Planning Council and has been issued a license pursuant to the provisions of Article 36 of the Public Health Law and this Part.

Part 766 (Licensed Home Care Services Agencies – Minimum Standards)

Paragraphs (10) and (11) of subdivision (a) of section 766.1 is amended and a new paragraph (12) is added to read as follows:

(10) be treated with consideration, respect and full recognition of his/her dignity and individuality; [and]

(11) privacy, including confidential treatment of patient records, and to refuse release of records to any individual outside the agency except in the case of the patient's transfer to a health care facility, or as required by law or third-party payment contract; and

(12) refuse consent to advanced tasks performed by an advanced home health aide, in which case the agency shall provide for the performance of such tasks by a registered professional nurse.

Subdivision (b) of section 766.2 is amended to read as follows:

(b) For purposes of this Part, health care services shall include nursing, advanced home health aide services, home health aide services, personal care, physical therapy, occupational therapy, speech/language pathology, nutrition services, social work, respiratory therapy, physician services and medical supplies, equipment and appliances.

Paragraph (3) of subdivision (a) of section 766.4 is amended to read as follows:

766.4 Medical orders. (a) The governing authority or operator shall ensure that an order from the patient's authorized practitioner is established and documented for the health care services the agency provides to those patients who:

(1) are being actively treated by an authorized practitioner for a diagnosed health care problem;

(2) have a health care need or change in physical status requiring medical intervention; or

(3) are advanced home health aide, home health aide, or personal care services patients of a certified home health agency.

Subdivision (c) of section 766.5 is amended and new subdivisions (e), (f) and (g) are added to read as follows:

(c) home health aides or personal care aides are supervised, as appropriate, by a registered professional nurse [or licensed practical nurse], or a therapist if the aide carries out simple procedures as an extension of physical therapy, occupational therapy or speech/language pathology; [and]

(d) in-home supervision by professional staff of home health aides and personal care aides occurs:

(1) to demonstrate to and instruct the aide in the treatments or services to be provided with successful [redemonstration] re-demonstration by the aide during the initial service visit or where there is a change in personnel providing care, if the aide does not have documented training and experience in performing the tasks prescribed in the plan of care;

(2) where any of the conditions set forth in paragraph (3) of subdivision (b) of this section occur, to evaluate the condition and initiate any revision in the plan of care which may be needed; and

(3) to instruct the aide as to the observations and written reports to be made to the supervising nurse or therapist; and

(e) direct supervision of an advanced home health aide is conducted by a registered professional nurse who:

(i) provides training, guidance, direction and oversight, and evaluation related to the performance of advanced tasks by the advanced home health aide;

(ii) assigns advanced tasks to be performed by the advanced home health aide after completing a nursing assessment to determine the patient's current health status and care needs;

(iii) provides case specific training to the advanced home health aide to verify and ensure the advanced home health aide can safely and competently perform the advanced tasks for the patient;

(iv) provides written, patient specific instructions for performing advanced tasks, including the criteria for identifying, reporting, and responding to problems, errors or complications;

(v) conducts a comprehensive medication review including evaluation of the patient's current medication use, and prescribed drug regimen and identifies and resolves any discrepancies prior to assigning the advanced home health aide to administer medications;

(vi) determines direct supervision of the advanced home health aide based on the complexity of advanced tasks, the skill and experience of the advanced home health aide assigned to perform the advanced tasks, and the health status of the patient for whom the advanced tasks are being performed;

(vii) while on duty is continuously available to communicate with the advanced home health aide by phone or other means;

(viii) conducts home visits or arranges for another qualified registered professional nurse whenever necessary to protect the health and safety of the patient;

(ix) performs an initial and ongoing assessments of the patient's needs; and

(x) conducts a home visit at least every two weeks and more frequently as determined by the registered professional nurse, to observe, evaluate, and oversee services provided by the advanced home health aide;

(f) a process is in place to document the limitation or revocation of the assignment of advanced tasks by an advanced home health aide when deemed appropriate by a supervising registered professional nurse and to ensure that such information is available to other registered professional nurses that may supervise such aide; and

(g) any failure by a supervising registered professional nurse to comply with the requirements of paragraph (e) of this subdivision shall be reported to the department.

Paragraph (6) and (7) of subdivision (a) of section 766.6 are amended to read as follows:

(6) supervisory reports of the registered professional nurse, licensed practical nurse or the therapist, if applicable, of the advanced home health aide, home health aide, or personal care aide;

(7) observations and reports made to the registered professional nurse, licensed practical nurse or therapist by the advanced home health aide, home health aide, or personal care aide, including activity sheets;

Paragraph (1) of subdivision (b) of section 766.11 is amended to read as follows:

(b) (1) that qualifications for advanced home health aides, home health [aide]aides, and personal care [aide]aides as specified in section 700.2 of this Title are met; and

Subdivision (i) of section 766.11 is amended to read as follows:

(i) that all personnel receive orientation to the policies and procedures of the home care services agency operation and in-service education necessary to perform his/her responsibilities.

At a minimum:

(1) home health aides must participate in 12 hours of in-service education per year; [and]
(2) personal care aides must participate in six hours of in-service education per year; and
(3) advanced home health aide must participate in 18 hours of in-service education per year which must include medication management, infection control, and injection safety, and must be directly supervised by a registered professional nurse;

Part 793 (Hospice Operation - Patient/Family Care Services)

Paragraphs (18) and (19) of subdivision (a) of section 793.1 is amended and a new paragraph

(20) is added to read as follows:

(18) exercise his or her rights without fear of discrimination or reprisal; [and]
(19) have his or her person and property treated with respect and to be free from mistreatment, neglect, or verbal, mental, sexual and/or physical abuse, including injuries of unknown source, and misappropriation of property; and

(20) refuse consent to advanced tasks performed by an advanced home health aide, in which case the hospice shall provide for the performance of such tasks by a registered professional nurse.

Subdivisions (k) and (l) of section 793.7 are amended to read as follows:

(k) All aide services must be provided by individuals who:

(1) have successfully completed a home health aide training and competency evaluation program as required by paragraph (9) of subdivision (b) of section 700.2 of this Part or an advanced home health aide training program as required by paragraph (54) of subdivision (b) of section 700.2 of this Part; and

(2) are currently listed in good standing on the Home Care Registry in the State.

(l) Aide services must be ordered by a member of the interdisciplinary team, included in the plan of care and consistent with training and tasks permitted to be performed by home health aides, including but not limited to personal care and simple procedures as an extension of nursing or therapies or, in the case of advanced home health aide services, ordered by a physician, assigned by the supervising registered professional nurse, included in the plan of care and consistent with training and advanced tasks permitted to be performed by advanced home health aides.

Paragraphs (8) and (9) of subdivision (o) of section 793.7 are amended, and new paragraphs (10), (11) and (12) are added to read as follows:

(8) supervision of a home health aide is conducted by a registered professional nurse; [and]

(9) in-home supervision, by professional personnel, of home health aides takes place:

(i) to demonstrate to and instruct the aide in the treatments or services to be provided, with successful [redemonstration] re-demonstration by the aide during the initial service visit, or where there is a change in personnel providing care, if the aide does not have documented training and experience in performing the tasks prescribed in the plan of care;

(ii) to evaluate changes in patient condition reported by the aide and initiate any revision in the plan of care which may be needed; and

(iii) to instruct the aide as to the observations and written reports to be made to the supervising nurse; and

(10) direct supervision of an advanced home health aide is conducted by a registered professional nurse who:

(i) provides training, guidance, direction and oversight, and evaluation related to the performance of advanced tasks by the advanced home health aide;

(ii) assigns advanced tasks to be performed by the advanced home health aide after completing a nursing assessment to determine the patient's current health status and care needs;

(iii) provides case specific training to the advanced home health aide to verify and ensure the advanced home health aide can safely and competently perform the advanced tasks for the patient;

(iv) provides written, patient specific instructions for performing advanced tasks, including the criteria for identifying, reporting, and responding to problems, errors or complications;

(v) conducts a comprehensive medication review including evaluation of the patient's current medication use, and prescribed drug regimen and identifies and resolves any discrepancies prior to assigning the advanced home health aide to administer medications;

(vi) determines direct supervision of the advanced home health aide based on the complexity of advanced tasks, the skill and experience of the advanced home health aide assigned to perform the advanced tasks, and the health status of the patient for whom the advanced tasks are being performed;

(vii) while on duty is continuously available to communicate with the advanced home health aide by phone or other means;

(viii) conducts home visits or arranges for another qualified registered professional nurse whenever necessary to protect the health and safety of the patient;

(ix) performs an initial and ongoing assessments of the patient's needs; and

(x) conducts a home visit at least every two weeks and more frequently as determined by the registered professional nurse, to observe, evaluate, and oversee services provided by the advanced home health aide;

(11) a process is in place to document the limitation or revocation of the assignment of advanced tasks by an advanced home health aide when deemed appropriate by a supervising registered professional nurse and to ensure that such information is available to other registered professional nurses that may supervise such aide; and

(12) any failure by a supervising registered professional nurse to comply with the requirements of paragraph ten of this subdivision shall be reported to the department.

Part 794 (Hospice Operation – Organization and Administration)

Subdivision (k) of section 794.3 is amended to read as follows:

(k) that all personnel, including hospice employees, volunteers and contract staff with direct patient and family contact, receive orientation to the concept of hospice care, his or her specific job duties, and the policies and procedures for the hospice operation, in-service education necessary to perform his/her responsibilities and continuing programs for development and support.

(1) At a minimum home health aides shall participate in 12 hours of in-service education per year, which may occur while the aide is furnishing care. In-service may be offered by any organization and must be supervised by a registered nurse; and

(2) advanced home health aides shall participate in 18 hours of in-service education per year which must include medication management, infection control, and injection safety, and must be directly supervised by a registered professional nurse.

Part 1001 (Assisted Living Residences)

A new subparagraph (xviii) is added to paragraph (2) of subdivision (b) of section 1001.8 to read as follows:

(xviii) Every resident of an enhanced assisted living residence shall have the right to refuse consent to advanced tasks performed by an advanced home health aide, in which case the operator shall provide for the performance of such tasks by a registered professional nurse.

A new subdivision (r) is added to section 1001.11 to read as follows:

(r) If an enhanced assisted living residence employs or uses advanced home health aides, the operator must ensure that every advanced home health aide:

(1) is listed on the home care worker registry maintained by the department; and

(2) is trained as specified in section 700.2 of this title and receives 18 hours of in-service education annually to include medication management, infection control, injection safety and other topics relevant to their responsibilities which must be directly supervised by a registered professional nurse; and

(3) is directly supervised by a registered professional nurse who:

(i) provides training, guidance, direction and oversight, and evaluation related to the performance of advanced tasks by the advanced home health aide;

(ii) assigns advanced tasks to be performed by the advanced home health aide after completing a nursing assessment to determine the resident's current health status and care needs;

(iii) provides case specific training to the advanced home health aide to verify and ensure the advanced home health aide can safely and competently perform the advanced tasks for the resident;

(iv) provides written, patient specific instructions for performing advanced tasks, including the criteria for identifying, reporting, and responding to problems, errors or complications;

(v) conducts a comprehensive medication review including evaluation of the resident's current medication use, and prescribed drug regimen and identifies and resolves any discrepancies prior to assigning the advanced home health aide to administer medications;

(vi) determines direct supervision of the advanced home health aide based on the complexity of advanced tasks, the skill and experience of the advanced home health aide assigned to perform

the advanced tasks, and the health status of the resident for whom the advanced tasks are being performed;

(vii) while on duty is continuously available to communicate with the advanced home health aide by phone or other means;

(viii) conducts home visits or arranges for another qualified registered professional nurse whenever necessary to protect the health and safety of the resident;

(ix) performs an initial and ongoing assessments of the resident's needs; and

(x) visits the resident in the residence at least every two weeks and more frequently as determined by the registered professional nurse, to observe, evaluate, and oversee services provided by the advanced home health aide;

(4) a process is in place to document the limitation or revocation of the assignment of advanced tasks by an advanced home health aide when deemed appropriate by a supervising registered professional nurse and to ensure that such information is available to other registered professional nurses that may supervise such aide; and

(5) any failure by a supervising registered professional nurse to comply with the requirements of paragraph three of this subdivision shall be reported to the department.

REGULATORY IMPACT STATEMENT

Statutory Authority:

This proposal will implement amendments to Public Health Law (PHL) Article 28-E requiring certain providers licensed by the Department of Health (Department) to request criminal history record checks (CHRCs) of prospective employees in conformance with Executive Law § 845-b. PHL § 2899-a(4) requires the Commissioner of Health (Commissioner) to promulgate regulations implementing PHL Article 28-E, and Executive Law § 845-b(12) requires the Department to promulgate regulations to implement criminal history information requests.

This proposal also will implement Chapter 471 of the Laws of 2016, which authorized advanced home health aides to perform advanced tasks under the supervision of registered professional nurses employed by home care services agencies, hospice programs, and enhanced assisted living residences (EALRs). PHL § 3602(17), added by Chapter 471, requires the Commissioner to issue regulations pertaining to advanced home health aides.

PHL § 3612(5) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend regulations pertaining to certified home care services agencies and long term home health care programs approved pursuant to PHL Article 36, subject to approval of the Commissioner. PHL § 4010(4) authorizes PHHPC to adopt and amend regulations for hospice providers approved pursuant to PHL Article 40, subject to approval of the Commissioner.

Legislative Objectives:

PHL Article 28-E requires “providers” to request that the Department conduct a CHRC of each “prospective employee.” PHL § 2899(3) provides that an “employee” means any person

to be employed or used by a “provider” to provide “direct care or supervision” to patients or residents. Individuals licensed under Education Law Title 8 (various health care professionals) or PHL Article 28-D (nursing home administrators) or who are volunteers are excluded from the definition of “employee.” A “prospective employee,” as defined by PHL § 2899(5), is an individual who files an employment application and the provider expects to hire as an employee.

Chapters 60 and 94 of the Laws of 2014 amended PHL § 2899(6) to include within the definition of “provider” adult homes, enriched housing programs, and residences for adults licensed under Social Services Law (SSL) Article 7. SSL § 461-t similarly states that these entities must request CHRCs of their prospective direct care employees. PHL § 2899(10) was also amended to permit such employees to be temporarily approved to work pending the results of their CHRCs under the condition that the provider conducts direct observation and evaluation of the employee.

The definition of “provider” in PHL § 2899(6) was again expanded by Chapter 471 of the Laws of 2016 to include hospice programs certified under PHL Article 40 with respect to employees hired on or after April 1, 2018. Chapter 206 of the Laws of 2017 amended PHL § 2899(10) to permit these employees to be temporarily approved to work pending the results of their CHRCs under the direct observation and evaluation of the provider.

Chapter 471 also added Education Law § 6908(2) to permit advanced tasks to be performed by advanced home health aides with appropriate training and under supervision by registered professional nurses employed by home care services agencies, hospice programs, and EALRs. Regulations issued by the State Education Department in consultation with the Department will specify the types of advanced tasks that can be performed by advanced home health aides and set forth the qualifications, training and competency requirements for advanced

home health aides. This proposal will implement other provisions of the law by amending regulations applicable to home care services agencies, hospice programs, and EALRs to address the supervision of advanced home health aides.

These provisions will further the statutory goal of enabling more people to live in home and community based settings and provide support to family caregivers and their loved ones.

See Built to Lead, 2016 State of the State, Governor Andrew M. Cuomo, at

https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016_State_of_the_State_Book.pdf (p. 271-72).

Needs and Benefits:

The proposed changes to Part 402 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) will implement laws requiring CHRCs for adult homes, enriched housing programs, residences for adults, and hospice programs. As reflected in the regulations, these entities must request that the Department obtain criminal history information from the Division of Criminal Justice Services and a national criminal history check from the Federal Bureau of Investigation (FBI) concerning each prospective unlicensed employee who will provide direct care or supervision. Before such employees can begin working, they must consent to a digital scan of their fingerprints, which will be electronically transmitted to the Division of Criminal Justice Services (Division) for processing. The Division will subsequently provide criminal history information back to the Department.

Consistent with PHL Article 28-E, the Department will then review the information based on criteria in Executive Law § 845-b. The Department will advise the provider whether the applicant has a criminal history, and, if so, whether the history is of such a nature that the

Department disapproves eligibility for employment. The individual will have 30 days to provide rehabilitation documentation in support of their application before the Department makes a final disapproval determination. In some cases, a person may have a criminal background, but any convictions may not rise to the level requiring disapproval of eligibility for employment based on Executive Law § 845-b criteria. In other cases, there may be open charges that, if they resulted in a conviction, would result in denials, and the Department will hold such applications in abeyance until the charges are resolved.

Individuals are afforded an opportunity to explain, in writing, why their eligibility for employment should not be disapproved before the Department makes its final determination disapproving eligibility for employment. If the Department makes a final determination disapproving eligibility, the provider must notify the person that the criminal history information is the basis for such disapproval.

The proposed regulations set forth certain responsibilities of providers in implementing the CHRC requirements. Providers also must ensure that prospective employees who will be subject to the CHRC requirement are notified of the provider's right to request their criminal history information, and that they have the right to obtain, review, and seek correction of such information in accordance with regulations of the Division or, with regard to federal criminal history information, to seek correction of information with the FBI.

This proposal will also implement PHL § 3602(17), added by Chapter 471 of the Laws of 2016, defining advanced home health aides as home health aides who are authorized to perform advanced tasks as set forth in Education Law § 6908(2). The regulations also reflect the inclusion of hospice programs and EALRs in the definition of "home care services entity" set forth in PHL § 3613(1)(a) for purposes of the Home Care Services Worker Registry (Registry).

PHL§ 3613(9) provides that the Department must indicate within the Registry when a home health aide is qualified to serve as an advanced home health aide because he or she has satisfied all applicable training and competency requirements. Accordingly, this proposal will amend 10 NYCRR Part 403 to add advanced home health aides, advanced home health aide training programs, EALRs, and hospice programs to the Registry.

This proposal further will amend Part 700 to define an “advanced home health aide” as a certified home health aide who has met all requirements to perform advanced tasks and is listed in the Registry. Parts 763, 766, 793, 794, and 1001 also will be amended to reflect requirements related to advanced home health aides and the supervisions thereof by registered professional nurses employed by home care agencies – meaning certified home health agencies (CHHAs), long term home health care programs (LTHHCs), and licensed home care services agencies (LHCSAs) – as well as EALRs and hospice programs.

COSTS:

Costs to Private Regulated Parties:

The proposed regulatory changes related to CHRCs would apply to adult homes, enriched housing programs, residences for adults, and hospice programs. As explained above, when such an entity determines to hire or otherwise use an individual who is unlicensed and will have access to patients or residents or their living quarters, it must request a CHRC pursuant to PHL Article 28-E. The entity must include with the request a fee, currently \$99. Of this amount, \$75 covers the fee established by the Division for processing a State criminal history record check and \$24.00 is for a national criminal history record check. Further, obtaining the fingerprints used for CHRC requests, which is accomplished through a vendor, costs approximately \$12.00 per individual. Pursuant to PHL § 2899-a(9)(a) and as reflected in the

proposed amendments to 10 NYCRR § 402.10, providers will be reimbursed for such fees and costs when funds are appropriated in the state budget.

The proposed regulatory changes related to advanced home health aides apply to home care services agencies (CHHAs, LTHHCPs, and LHCSAs), EALRs, and hospice programs only to the extent they desire to use such aides. The registered professional nurses who supervise advanced home health aides will spend additional time carrying out the supervisory obligations set forth in the law and proposed regulations, but to some extent this will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Costs to Local Government:

The proposed changes are not expected to impose any costs upon local governments, unless they operate one of the afore-referenced entities. In such cases, the impact will be the same as for regulated parties, discussed above.

Costs to the Department of Health:

The proposed regulations will not impose costs upon the Department in addition to any imposed as a result of the statutory changes enacted with respect to CHRCs and advanced home health aides. Additional work by Department staff that process CHRC requests or participate in regulatory activities involving adult homes, enriched housing programs, residences for adults, home care services agencies, or hospice programs, is being managed within existing resources.

Costs to Other State Agencies:

Due to the legislative enactments reflected in this proposal, the volume of CHRC requests fulfilled by the Division will be higher but should be managed within existing resources.

Similarly, the State Education Department, in consultation with the Department of Health, will approve programs that train advanced home health aides, which is expected to be managed within existing resources.

Local Government Mandate:

The proposed regulations do not impose any new mandates on local governments, except where they operate local providers such as a home care services agency or a hospice program. In such cases, the impact will be the same as for regulated parties, discussed above.

Paperwork:

Consistent with the statutory provisions, the proposed regulations will require the completion of additional paperwork by adult homes, enriched housing programs, residences for adults, and hospice programs that request CHRCs. For example, providers will need to complete and submit a form to notify the Department of a prospective employee needing to be fingerprinted. A provider may also be asked to submit information not known to the Department to assist the Department in vetting and perfecting the criminal history of a prospective employee. Further, providers will need to document the supervision of employees that they temporarily approve to work pending the results of the CHRC.

Home care service agencies, EALRs, and hospice programs are already required to establish written policies and procedures related to various operational requirements, including

the training and supervision of employees. Therefore, although additional paperwork will be required to ensure that advanced home health aides are properly trained and supervised, this type of documentation should be familiar to these providers. Accessing the Registry is new for EALRs and hospice programs, but the Department has and will continue to make training and assistance available to guide them through these changes.

Duplication:

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

Alternatives:

There are no alternatives to this proposal, which is necessary to implement legislative enactments expanding the provider types subject to the CHRC program and authorizing the use of advanced home health aides.

Federal Standards:

The proposed regulations do not duplicate or conflict with any federal regulations.

Compliance Schedule:

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

To the extent this proposal implements statutory requirements related to criminal history record checks (CHRCs), it will be applicable to adult homes, enriched housing programs, residences for adults, and hospice programs. The provisions of the proposal related to advanced home health aides will apply to certified home health agencies (CHHAs), long term care home health care programs (LTHHCPs), or licensed home care services agencies (LHCSAs), hospice programs, or enhanced assisted living residences (EALRs) that choose to use advanced home health aides. Any of these entities, depending on their size, could constitute a small business. This proposal will only impact local governments if they operate one of these entities.

Compliance Requirements:

This proposal will require adult homes, enriched housing programs, residences for adults, and hospice programs to request CHRCs pursuant to PHL Article 28-E whenever they determine to hire or otherwise use unlicensed individuals who provide direct care or supervision to patients or residents. Consistent with the statutory provisions, compliance with the proposed regulations will require the completion of additional paperwork by these entities; for example, by completing a form that notifies the Department of a prospective employee who needs to be fingerprinted. A provider may also be asked to submit information not known to the Department to assist the Department in vetting and perfecting the criminal history of a prospective employee. Further, providers will need to document the supervision of employees that they temporarily approve to work pending the results of the CHRC.

The proposed regulatory changes related to advanced home health aides are applicable to home care services agencies (meaning CHHAs, LTHHCPs, and LHCSAs), EALRs, and hospice programs only to the extent they desire to use such aides under the supervision of registered professional nurses they employ. The registered professional nurses who supervise advanced home health aides will spend additional time carrying out the supervisory obligations set forth in the law and proposed regulations, but to some extent this will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Home care service agencies, EALRs, and hospice programs are already required to establish written policies and procedures related to various operational requirements, including the training and supervision of employees. Therefore, although additional paperwork will be required to ensure that advanced home health aides are properly trained and supervised, this type of documentation should be familiar to these providers. Accessing the Registry is new for EALRs and hospice programs, but the Department has and will continue to make training and assistance available to guide them through these changes.

Professional Services:

The CHRC provisions of this proposal are not expected to require any additional use of professional services. The proposed regulatory changes related to advanced home health aides are applicable to home care services agencies (meaning CHHAs, LTHHCPs, and LHCSAs), EALRs, and hospice programs only to the extent they desire to use such aides, in which case they must ensure that the aides are supervised by registered professional nurses. The registered professional nurses who supervise advanced home health aides will spend additional time carrying out the supervisory obligations set forth in the law and proposed regulations, but to

some extent this will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Compliance Costs:

Entities submitting CHRC requests must submit a fee, currently \$99, together with a CHRC request, and will incur costs of approximately \$12.00 per individual for obtaining the fingerprints. Pursuant to PHL § 2899-a(9)(a), and as reflected in the proposed amendments to 10 NYCRR § 402.10, providers will be reimbursed for such fees and costs when funds are appropriated in the state budget.

If CHHAs, LTHHCPs, LHCSAs, EALRs, and hospice programs choose to use advanced home health aides, they must do so under the supervision of registered professional nurses they employ. The registered professional nurses will spend additional time carrying out the supervisory obligations set forth in the law and proposed regulations, but to some extent this will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. As indicated above, providers will be reimbursed for fees and costs associated with the CHRC requirements. Providers that can and choose to use advanced home health aides must do so under the supervision of registered professional nurses. It is expected that in many cases the additional time spent by the registered professional nurses in supervising the advanced home health aides will be offset by the ability to

use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Minimizing Adverse Impact:

There are no alternatives to the proposed regulations, which are consistent with the statutory provisions regarding CHRCs and advanced home health aides enacted by Chapters 60 and 94 of the Laws of 2014, Chapter 471 of the Laws of 2016, and Chapter 206 of the Laws of 2017.

Small Business and Local Government Participation:

Development of these regulations included input from organizations including those whose members include providers that constitute small businesses or are operated by local governments.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

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

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

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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



**Project # 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:

	Year One (2021)		
	Article 28	Non-Art. 28	Total
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

	Year Three (2023)		
	Article 28	Non-Art. 28	Total
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:

	Year One	Year Three
Payor	<u>(2021)</u>	<u>(2023)</u>
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 # 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>
Totals	9,134	10,137

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:

	<u>Article 28</u>	<u>Shell Space</u>	<u>Total</u>
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:

<u>Outpatient ASC</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
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 # 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 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 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
Total	20	2	22

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%
	337	2,551			

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%
	1,446	32,306			

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.

Financial Analysis

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>Year One & Three</u>	
	<u>(2017)</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 & 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 # 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 & 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
Total	455	0	455

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 & 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 & 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.

Attachments

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



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
Total Visits		32,961	31,122

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%
Total	3,701	100.00%	3,926	100.00%

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 st Year / 3 rd 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
Omar Hanuch, M.D.	50%
Steve B. Park, M.D. , <i>Medical Director</i>	50%
TOTAL	100%

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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new single-specialty ambulatory surgery center for ophthalmology to be located at 135 Canal Landing Boulevard, Greece, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181066 B

FACILITY/APPLICANT:

Greece ASC, LLC d/b/a Cornerstone Eye
Surgery Center

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the centers 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]

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



Project # 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).

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 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 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:

	LINAC Need in Central NY Region	Total
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 ¹ [(7)/6,500]	20
9	Existing/Approved Resources (Upon Approval of CON 172413)	16
10	Remaining Need for LINAC Machines [(8) -(9)]	4

¹Each 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
Total Central NY Region	6	3	9	12	1	15

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 st Year / 3 rd 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 & 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new cancer care diagnostic and treatment center to be located at 601 Seneca Street, Oneida – EHCPSP, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

172413 B

FACILITY/APPLICANT:

Oneida Health Roswell Park Oncology, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed 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]

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



Project # 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 31st 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 st Year / 3 rd 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:

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

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 rd 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 22-46 31st Street, Astoria for the provision of dental services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

172423 B

FACILITY/APPLICANT:

MediDental Group LLC d/b/a MediDental Care

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]

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



Project # 181137-E
CFDSHC, Inc.

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Albany
Acknowledged: March 5, 2018

Executive Summary

Description

CFDSHC, Inc. (CFDSHC), an existing New York not-for-profit corporation, requests approval to be established as the new operator of an Article 28 diagnostic and treatment center (D&TC) currently operated by Center for Disability Services, Inc. (CFDS). The D&TC operates under the assumed name of Center Health Care (the Center) with a main clinic site located at 314 South Manning Blvd., Albany (Albany County). The Center is currently certified to operate at five extension clinic locations in the Capital Region. The following three sites are included in this transaction request:

- 700 South Pearl Street, Albany (Albany County);
55 Helping Hand Lane, Glenville (Schenectady County); and
121 Opportunity Lane, Schoharie (Schoharie County).

Two extension sites, 27 Hackett Boulevard, Albany and 939 Route 146, Clifton Park are not operational and will not be re-opened. The Center is certified for Medical Services – Primary Care, Medical Services – Other Medical Specialties, Certified Mental Health O/P and Dental O/P services, providing primary medical and dental services to individuals (infants to seniors) with developmental disabilities. Through this transaction, 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 (WYH), an existing FQHC in the Capital Region. WYH has provided a letter of support for the Center to become a sub-recipient of its HRSA Section-330 Community Health Center Grant. There will be no change in authorized services

or disruption in services. CFDSHC will lease the Center’s main and extension clinic sites from CFDS. Upon approval, the Center will continue to use “Center Health Care” as its assumed name.

On February 12, 2018, CFDS entered into an asset purchase agreement with CFDSHC, Inc. to sell, transfer and convey all rights, title and interest in the Center, as well as its utilized equipment, inventory and supplies currently valued at \$597,528. CFDS will fund this transaction plus provide ongoing operating financial support to CFDSHC.

CFDSHC is governed by a nine-member community-based board. Converting the Center to an FQHC will allow the D&TC to receive the best reimbursement rates to preserve the medical services it provides to clients. To comply with FQHC regulations, and for CFDS to retain the operatorship of its other entities under its existing board, a new operating entity and board is required to be established to operate the Center.

CFDS will provide administrative services to the Center. Maria Kansas Devine, M.D. will continue to serve as the Center’s Medical Director. The existing hospital transfer and affiliation agreement with Albany Medical Center Hospital will be assigned to the new operator.

OPCHSM Recommendation
Contingent Approval

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:

Site	Facility Type
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 *** This site is no longer operational and is to be removed from the Operating Certificate
Center for Disability Service – St. Margaret's Center*** 27 Hackett Boulevard Albany, NY 12208 (Albany County)	Diagnostic and Treatment Center Extension Clinic *** This site is no longer operational and is to be removed from the Operating Certificate

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:

Acquisition:	
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.
Administrative Services:	
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>	<u>\$11.11</u>	<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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish CFDSHC, Inc. as the new operator of an existing Article 28 diagnostic and treatment center currently operated by Center for Disability Services, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181137 E

CFDSHC, Inc.

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]

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



Project # 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:

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

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

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to merge Comfortcare of Cayuga County, Inc. d/b/a Hospice of the Finger Lakes into Hospice of Central New York Hospice & Palliative Care Associates, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181065 E

FACILITY/APPLICANT:

The Caring Coalition of Central New York

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]

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



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

Program: Residential Health Care Facility
Purpose: Establishment

County: Tompkins
Acknowledged: June 15, 2017

Executive Summary

Description

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

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

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

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

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

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]

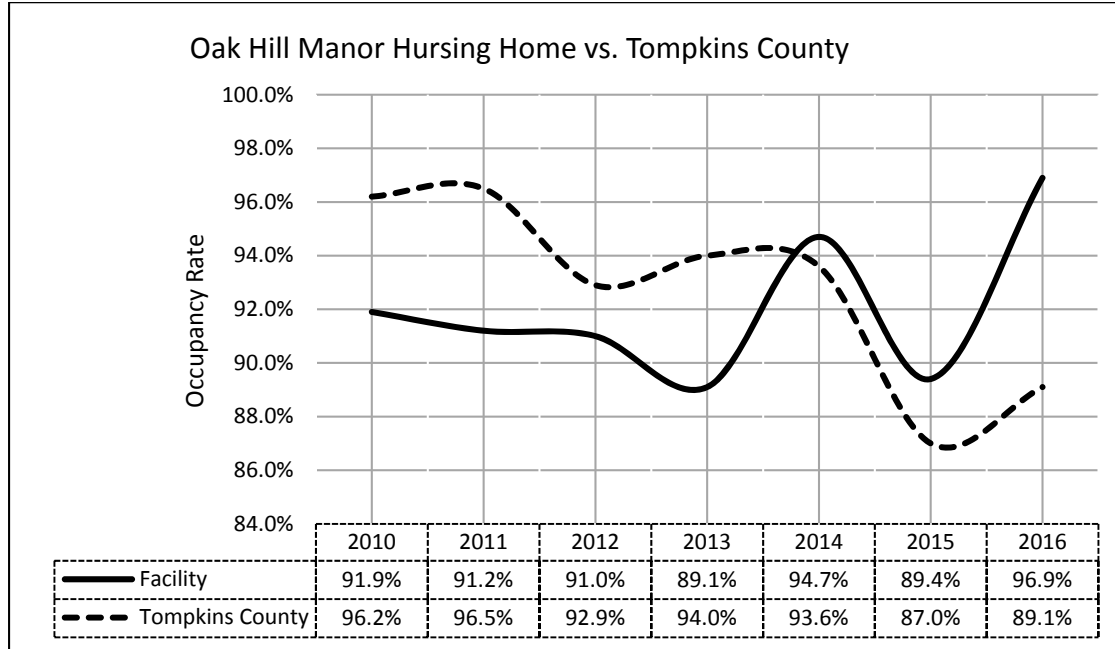
Council Action Date

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.

Program Analysis

Facility Information

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

Character and Competence - Background

Facilities Reviewed

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

Individual Background Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Character and Competence – Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Quality Review

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

The rating for Staffing is not available from the Medicare.gov site for Affinity Skilled Living and Rehabilitation Center.

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.

Please note the applicant’s explanation above does not address staffing for Sunrise Manor Center for Nursing or Valley View Manor Nursing Home because the staffing information was only recently added to the Medicare.gov site.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicants do not intend to utilize any staffing agencies upon their assumption of ownership.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Oak Hill Operating Company, LLC as the new operator of the 60-bed residential health care facility located at 602 Hudson Street, Ithaca, that is currently operated as Oak Hill Manor Nursing Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171416 E

Oak Hill Operating Co., LLC d/b/a Oak Hill
Rehabilitation and Nursing Care Center

APPROVAL CONTINGENT UPON:

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

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



Project # 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)

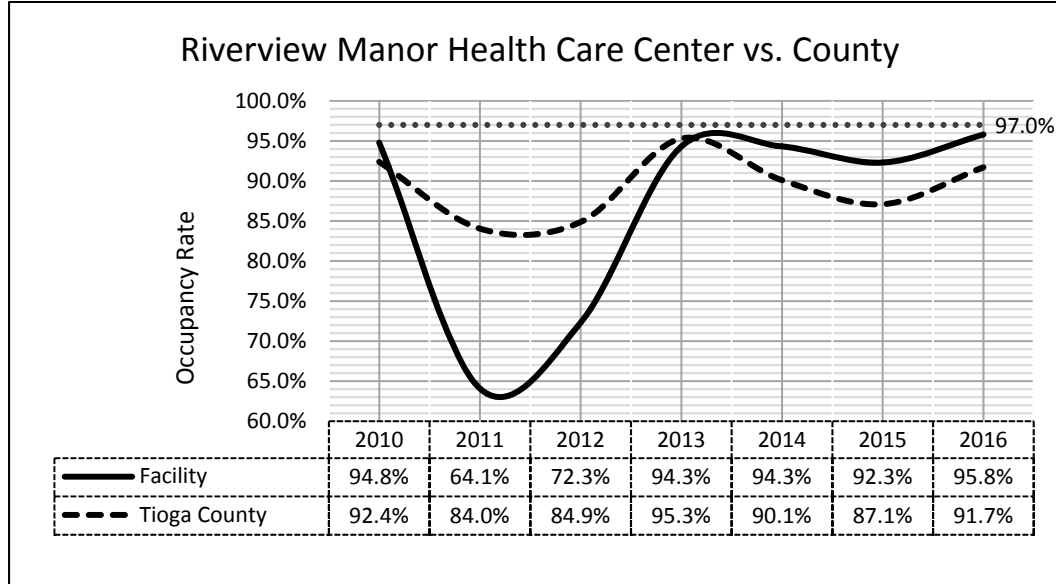
Council Action Date

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.

Percent of New RHCFA Admissions that are Medicaid	2014	2015	2016
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

	Existing	Proposed
Facility Name	Riverview Manor Health Care Center	River View Rehabilitation and Nursing Care Center
Address	510 Fifth Avenue Owego, NY 13827	Same
RHCF Capacity	77	Same
ADHC Program Capacity	11	0
Type of Operator	Proprietary	Same
Class of Operator	LLC	Same
Operator	Riverview Acquisition Company, LLC	Oak Hill Operating Company, LLC *Rivky Klein 20.00% *Anna Appel 20.00% Hinda Landa 10.00% Yossi Mayer 10.00% Suri Reich 10.00% Mordechai Berman 5.00% Helen Majerovic 10.00% Steven Landa 8.00% Andrea Mayer 5.00% David Landa 2.00% <i>*Managing Member</i>

Character and Competence - Background

Facilities Reviewed

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

Individual Background Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Character and Competence – Analysis

No negative information has been received concerning the character and competence of the applicants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Quality Review

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

The rating for Staffing is not available from the Medicare.gov site for Affinity Skilled Living and Rehabilitation Center.

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.

Please note the applicant’s explanation above does not address staffing for Sunrise Manor Center for Nursing or Valley View Manor Nursing Home because the staffing information was only recently added to the Medicare.gov site.

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 th Avenue, LLC
Buyer:	River View 510 Holding, LLC
Purchase Price:	\$4,799,000
Assets Transferred:	Real Property located at 510 and 530 Fifth Ave, Owego, NY 13827
Payment of Purchase Price:	\$15,000 down payment at signing, plus \$15,000 per month until closing, provided that the monthly down payment shall be increased to \$22,500 per month starting on May 1, 2017. (All down payments shall be applied to purchase price.) Balance due at closing.

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

Equity- River View 510 Holding, LLC Members	\$ 959,000
Loan (10 years, 25-years amortizing, Fixed at interest rate Swap (10-year amortizing loan rate is approximately 5.62% as of 12/12/2017))	<u>3,840,000</u>
Total	<u>\$4,799,000</u>

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

BFA Attachment A is the net worth summaries for the proposed members of Riverview Facility Operations, LLC and River View 510 Holding, LLC, which reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interests. David Landa and Andrea Mayer, members of both the operating and real property entities, have provided affidavits stating their willingness to contribute resources disproportionate to their ownership interest in the operating and realty entities to make up any member's equity shortfall. David Landa and Andrea Mayer have also provided affidavits to fund the real property loan balloon payment, should terms acceptable to the Department be unavailable at the time of refinancing.

Lease Agreement

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

Premises:	77-bed RHC located at 510 Fifth Ave, Owego, NY 13827
Landlord:	River View 510 Holding LLC
Lessee:	Riverview Facility Operations, LLC
Term:	10 Years
Rental:	\$25,000 + Debt Service (interest + principal estimated at \$23,857 per month) per lease, minimum monthly rent is \$65,000
Provisions:	Triple Net

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

Operating Budget

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

	<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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish River View Facility Operations, LLC as the new operator of the 77-bed residential health care facility located at 510 Fifth Avenue, Oswego, that is currently operated as Riverview Manor Health Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

171417 E

River View Facility Operations, LLC
d/b/a River View Rehabilitation and Nursing
Care Center

APPROVAL CONTINGENT UPON:

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

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



Project # 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

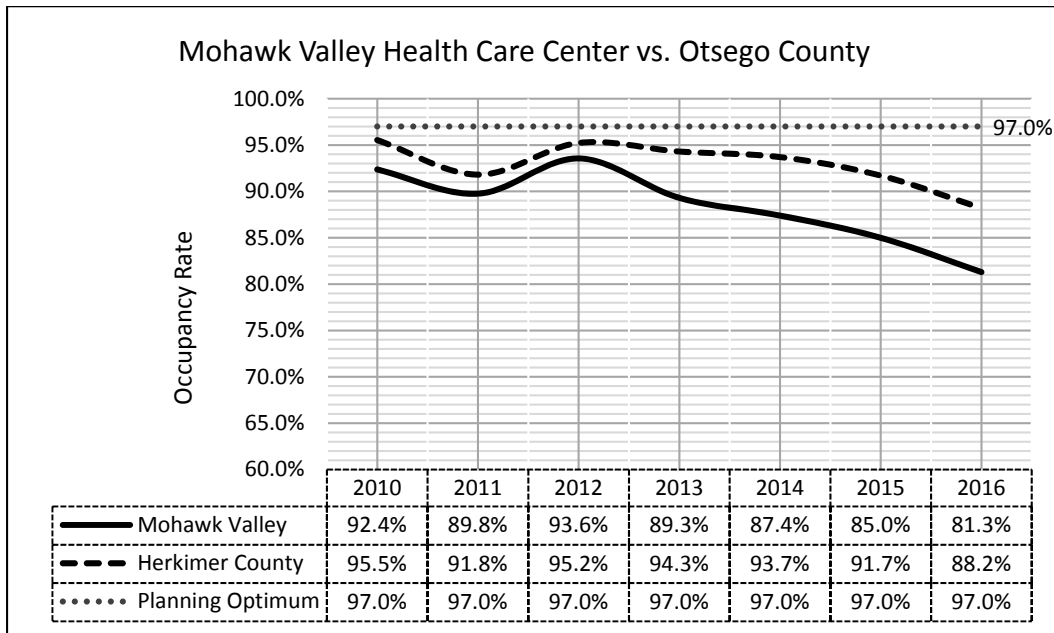
Analysis

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

	Existing	Proposed
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.

<h2>Financial Analysis</h2>

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:	MVNH Associates, LLC
Buyer:	Grand Mohawk Valley, 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 "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.
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.
Purchase Price:	\$3,000,000 plus assumed liabilities of \$1,520,387 as of December 31, 2017.
Payment of Purchase Price:	\$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>
Total	\$3,000,000

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 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:

Revenues	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
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 ¹	\$163.08	\$869,705	\$114.15	\$927,601	\$114.15	\$927,601
Ancillary PT		\$14,972		\$0		\$0
Other Income ²		\$10,983		\$0		\$0
Total Revenue		\$9,051,627		\$10,568,629		\$10,568,629
Expenses						
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
Total Expenses	\$263.55	\$9,410,091	\$253.20	\$10,534,303	\$252.69	\$10,512,814
Net Income		<u>(\$358,464)</u>		<u>\$34,326</u>		<u>\$55,815</u>
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%

¹ 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.

² 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Grand Mohawk Valley, LLC d/b/a The Grand Rehabilitation and Nursing at Mohawk as the new operator of Mohawk Valley Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172292 E

Grand Mohawk Valley, LLC d/b/a The Grand
Rehabilitation and Nursing at Mohawk

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]

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



Project # 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:

Table with 1 column: Current Operator. Row: Faxton-Sunset-St. Luke's Health Care Center, Inc. Voluntary Not-For-Profit

Table with 1 column: Proposed Operator. Row: Heritage Operating Associates, LLC Members. Sub-rows: 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

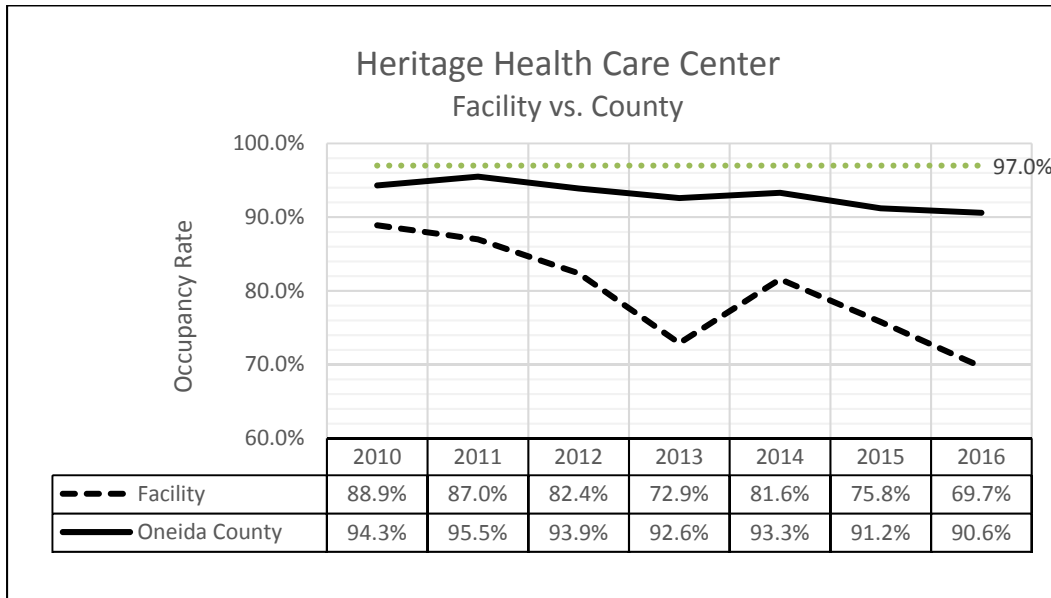
Analysis

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
Oneida County	94.3%	95.5%	93.9%	92.6%	93.3%	91.2%	90.6%
Heritage Center	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

	Existing	Proposed
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, Faxon-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 RHCFs 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 RHCFs and Financial Summary
BFA Attachment G	Members of Landlord, Heritage Real Estate Operations Associates, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Heritage Operating Associates, LLC as the new operator of the 220-bed residential health care facility located at 1657 Sunset Avenue, Utica currently operated as the Heritage Health Care Center (Faxton-St Lukes), and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181218 E

Heritage Operating Associates, LLC d/b/a The
Grand Rehabilitation and Nursing at Utica

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]

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



Project # 181047-E
**Gamzel NY, Inc. d/b/a Centers Home Health Care of
Downstate**

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	

CHHA Quality of Patient Care Star Ratings as of May 8, 2018	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
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.

Financial Analysis

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 rd 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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer of 100% ownership interest from the sole shareholder to one (1) new shareholder, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

181047 E

Gamzel NY, Inc. d/b/a Centers Home Health
Care of Downstate

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 CONDITIONED UPON:

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

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



Project # 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, 2nd Floor, Liverpool (Onondaga County), serving Cayuga, Onondaga and Oswego counties;
- OpCert # 2910601 located 865 Merrick Avenue, 3rd 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>Adam M. Fliss, Esq. (CA, MA) – Director, Secretary General Counsel, TPG Capital, L.P.</p>	<p>Kendall R. Garrison – Director, VP and Treasurer Principal, TPG Capital</p>	<p>Jeffrey K. Rhodes – 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>Joseph C. Ventura, Esq. (NY, KY) – Director, Vice President, Corporate Secretary Enterprise VP, Associate General Counsel, Corporate Secretary, Humana Inc.</p>	<p>William K. Fleming –PharmD (KY, OH), TPA (NM), Resident Administrator (KY) – Director, President President, Healthcare Services Segment, Humana Inc</p>
<p>Ralph M. Wilson, J.D. (KY) – Director, Vice President VP, Associate General Counsel, Humana Inc.</p>	<p>Alan J. Bailey – 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>Michael A. LaGatta, Esq. (NY, TX) – Limited Partner General Counsel, TPG Holdings</p>	<p>Kentucky Homecare GP, Inc. – 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>Jeffrey K. Rhodes – Director, President Disclosed above</p>	<p>Kendall R. Garrison – Director, Vice President, Treasurer Disclosed above</p>
<p>Adam M. Fliss, Esq. (CA, MA) – Director, Secretary Disclosed above</p>	<p>Edward P. Sobol – Director General Partner, Welsh, Carson, Anderson & 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:

Michael A. LaGatta , Esq. (NY, TX) – Limited Partner	TPG VII Kentucky GP, Inc. – 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:

David Bonderman , Esq. (DC, TX) – Shareholder Founding Partner, TPG Global, LLC	James G. Coulter – 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:

Michael A. LaGatta , Esq. (NY, TX) – Director, President, Treasurer Disclosed above	Adam M. Fliss , 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:

Ralph M. Wilson , J.D. (KY) – Director, Vice President Disclosed above	Brian P. LeClaire – Chief Information Officer Senior VP, Chief Information Officer, Humana Inc.
Elizabeth D. Bierbower – Segment President, Group Business, Humana Inc.	Christopher M. Todoroff , Esq. (CT, FL, KY, PA, NY) – Chief Legal Officer Senior VP, General Counsel, Humana Inc.
Jody L. Bilney – Chief Consumer Officer Senior VP, Chief Consumer Officer, Humana Inc.	Frank A. D’Amelio – Director Executive Vice President, Chief Financial Officer and Business Operations, Pfizer Inc.
Marissa T. Peterson – Director CEO & President, Mission Peak Executive Consulting (CA)	David A. Jones, Jr. , Esq. (KY) – Director Director, Humana Inc. Chairman, Chrysalis Ventures, LLC
James J. O’Brien – Director Retired since 12/31/2014	David B. Nash , MD (PA) – Director Founding Dean, Jefferson School of Population Health at Thomas Jefferson University
William K. Fleming – Segment President, Healthcare Services Disclosed above	William J. McDonald – Director Managing Partner, Wild Irishman Advisory, LLC

Samir M. Deshpande – Chief Risk Officer CRO, Humana Inc.	Roy A. Beveridge , MD (VA) – Chief Medical Officer Senior VP, CMO, Humana Inc.
Timothy S. Huval – Chief Human Resources Officer Senior VP, Chief Human Resources Officer, Humana Inc.	Bruce D. Broussard – Director, President and CEO Director, President and CEO, Humana Inc.
Brian A. Kane - Chief Financial Officer Senior VP, CFO, Humana Inc.	Alan J. Bailey – Vice President, Treasurer Disclosed above
Heidi S. Margulis - Chief Corporate Affairs Officer Senior Vice President- Corporate Affairs, Humana Inc.	Kurt J. Hilzinger – Director, Chairman of the Board Partner, Court Square Capital Partners, LP
Karen B. DeSalvo , MD (LA), MPH, MSc – Director Part Time Faculty, University of Texas at Austin Dell School of Medicine	Cynthia H. Zipperle , CPA (KY)– Senior Vice President, Chief Accounting Officer Senior VP, Chief Accounting Officer and Controller, Humana Inc.
Frank J. Bisignano – Director Chairman, Humana Inc. Chief Executive Officer, First Data Corporation	Webster Roy Dunbar , RPh (Great Britain)– Director Retired since April 2010
William E. Mitchell – Director Partner, Sequel Venture Partners, LLC	Christopher H. Hunter - Chief Strategy Officer Senior VP, Chief Strategy Officer, Humana Inc.
Timothy Alan Wheatley – 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 1943.

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 rd 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to request a change in indirect ownership at the great-grandparent level for five Article 36 CHHAs that it operates, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

181085 E

QC-Medi New York, Inc.
d/b/a Kindred at Home

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the by-laws of QC-Medi New York, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

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

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



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: 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

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**
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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:

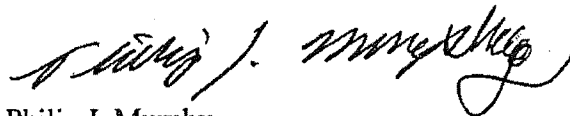
Century Medical and Dental Center, Inc. ("Century Medical") is hereby requesting approval to amend its Certificate of Incorporation to reflect in its purposes the ownership and operation of the following extension clinics in addition to its main site at 260 Avenue X, Brooklyn, New York:

<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

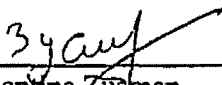
SIXTH:

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.

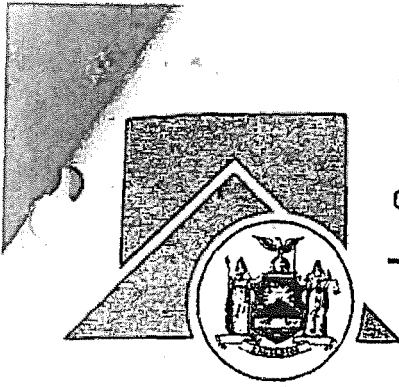
SEVENTH:

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 6th 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

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 15th 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*

030107000986

2ccs
STATE OF NEW YORK
DEPARTMENT OF STATE

JAN 07 2003

FILED
TAXS
BY:

JOB
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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.

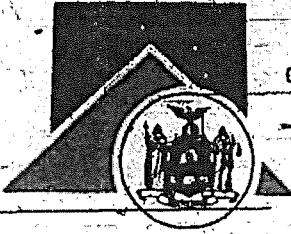
3. The certificate of incorporation is hereby amended to add a new paragraph
"Eighth" which shall read as follows:

"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 16th 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 19th 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 be "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

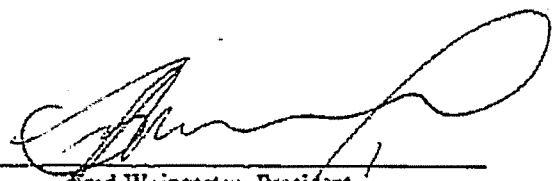
The undersigned, being the President of Century Medical and Dental Center, Inc.,
do hereby certify and set forth:

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."

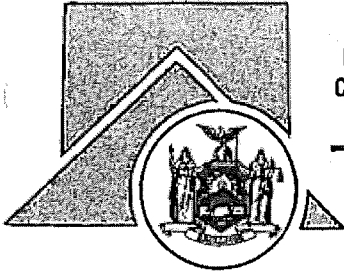
4. This amendment to the certificate of incorporation was authorized by the unanimous written consent of the board of directors and the unanimous written consent, setting forth the actions so taken, signed by the holders of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned has executed and signed this certificate on this 11th 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

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 15th 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

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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:

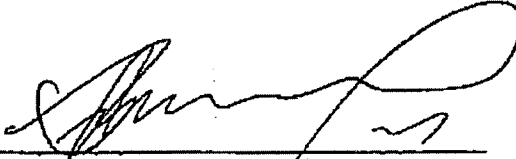
1. The name of the corporation is Century Medical and Dental Center, Inc.
2. The certificate of incorporation of Century Medical and Dental Center, Inc. was filed by the Department of State on the 7th day of January, 2003.

3. Paragraph "Eighth" which provides for the duration of the corporate existence of the corporation is hereby amended to read as follows:

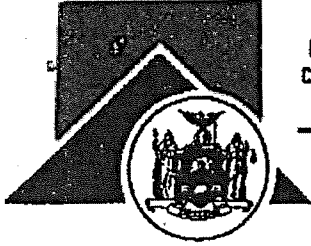
"EIGHTH: The duration of the corporate existence of this corporation shall be perpetual."

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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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.

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 long horizontal stroke at the end.

Charles P. Abel
Deputy Director
Center for Health Care Facility
Planning, Licensure and Finance

Enclosure

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of June 2018 approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Century Medical and Dental Center, Inc., dated as attached.



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).

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.

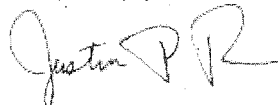
Dear Ms. Leonard:

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

140701000 255

**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:

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.

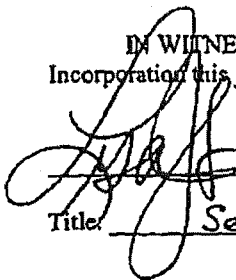
TENTH: Subject to any approvals described in this Certificate of Incorporation or the Bylaws of the Corporation, upon the dissolution and final liquidation of the Corporation, all of its assets, after paying or making provision for payment of all its known debts, obligations and liabilities, and returning, 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
Direct Line (585) 327-3219

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**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

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**DRAWDOWN
ACCT # J8**

**STATE OF NEW YORK
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262

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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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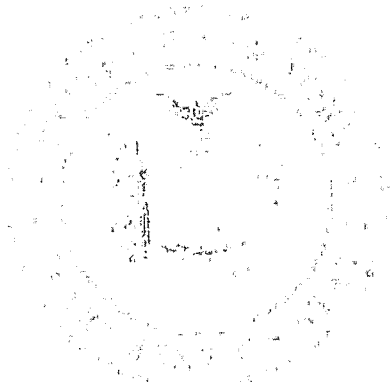
FILED: 07/01/2014 DURATION: ***** CASH#: 140701000262 FILM #: 140701000255

FILER:

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
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		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:

150501000183

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

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^{1ca}
STATE OF NEW YORK
DEPARTMENT OF STATE

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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:

KAREN E. SOSLER, ESQ.
ISEMAN CUNNINGHAM RIESTER & HYDE
9 THURLOW TERRACE
ALBANY, NY 12203

ADDRESS FOR PROCESS:

THE CORPORATION
411 CANISTEO STREET
HORNELL, NY 14843

REGISTERED AGENT:



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SERVICE COMPANY: ISEMAN, CUNNINGHAM, RIESTER & HYDE, LL SERVICE CODE: J8

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FILING 30.00
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CERT 0.00
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CASH 0.00
CHECK 0.00
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


RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of June 2018 approves the filing of the Certificate of Amendment of the Certificate of Incorporation of St. James Mercy Foundation, Inc., dated March 12, 2018.



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).

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.

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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

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BY: LUC

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184

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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

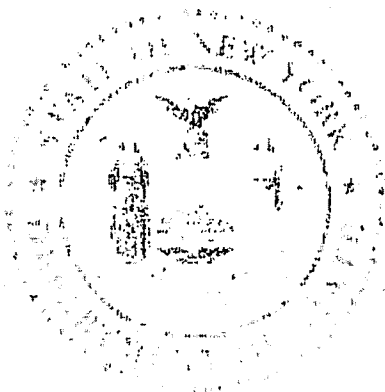
FILER:

KAREN E. SOSLER, ESQ.
ISEMAN CUNNINGHAM RIESTER & HYDE
9 THURLOW TERRACE
ALBANY, NY 12203

ADDRESS FOR PROCESS:

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	PAYMENTS	190.00
FILING	30.00	CASH	0.00
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HANDLING	150.00	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 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;

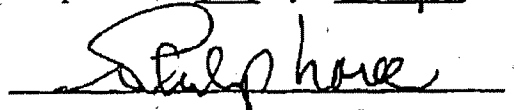
- (vii) Approve any change to the structure or operation of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c) of the Internal Revenue Code, or if CHE Trinity, Inc., receives a recommendation as to any such action, approve such action as recommended;
- (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 27th 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

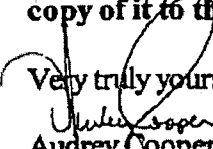
Dear Ms. Sosler:

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
Direct Line (585) 327-3219

FILING RECEIPT

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ENTITY NAME: ST. JAMES MERCY HOSPITAL

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) TYPE: C COUNTY: STEU
PURPOSES NFP TYPE PROVISIONS RESTATED

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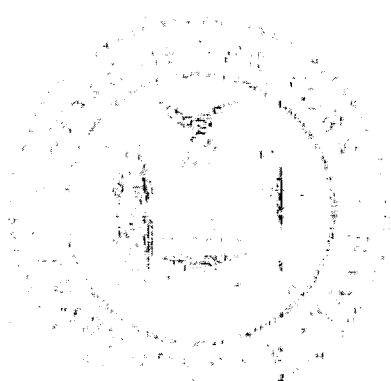
FILED:07/01/2014 DURATION:***** CASH#:140701000170 FILM #:140701000169

FILER:

KAREN E. SOSLER, ESQ.
ISEMAN CUNNINGHAM RIESTER & HYDE,
LLP 9 THURLOW TERRACE
ALBANY, NY 12203

ADDRESS FOR PROCESS:

REGISTERED AGENT:



=====

SERVICE COMPANY: ISEMAN, CUNNINGHAM, RIESTER & HYDE, LL SERVICE CODE: J8

FEE	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

=====

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of June 2018 approves the filing of the Certificate of Amendment of Certificate of Incorporation of St. James Mercy Hospital, dated March 12, 2018.



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.

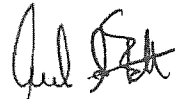
Included with this letter, please find the following:

- 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

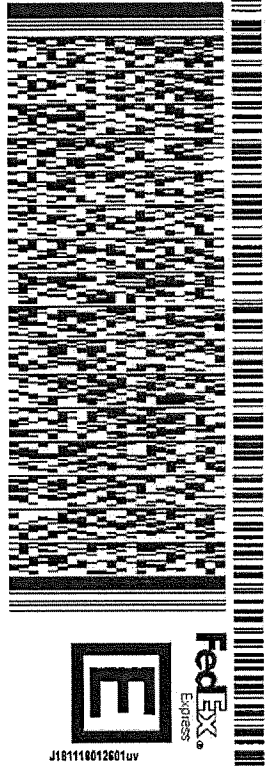
Cc: Yonkers Gardens, LLC
Neiman & Mairanz, PC

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



TRK# 7721 4909 7597
0201
FRI - 04 MAY 3:00P
STANDARD OVERNIGHT

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MARVIN NEIMAN *
THEODORE T. MAIRANZ *

*MEMBER N.Y. AND N.J. BARS

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*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

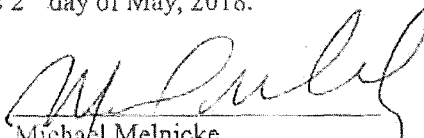
SECOND: The date of filing of the articles of organization is: December 24, 2015.

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 2nd 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

=====

ENTITY NAME: YONKERS GARDENS LLC

DOCUMENT TYPE: AMENDMENT (DOM LLC)
PROVISIONS

COUNTY: WEST

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FILER:

NEIMAN & MAIRANZ P.C.
39 BROADWAY, 25TH FLOOR

NEW YORK, NY 10006

ADDRESS FOR PROCESS:

REGISTERED AGENT:

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SERVICE CODE: 37

FEES	95.00	PAYMENTS	95.00
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YONKE59061

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 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

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- 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.

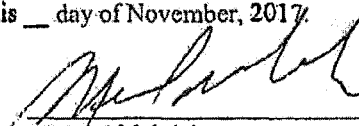
- C) A new Paragraph 9 of the Articles of Organization relating to the purpose of the limited liability company, is hereby added and will read as follows:

Notwithstanding anything to the contrary in the Articles of Organization or the Operating

171219000123

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

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

2017 DEC 19 AM 8:53

FILED

CUST REF # YONKE590601

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 1st 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 Premised 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 – 25th 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:

(b) Notices will be deemed received the next day if sent by overnight courier and on the fifth (5th) 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.

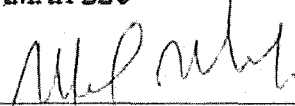
34.5 The covenants, conditions and agreements in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors and permitted assigns.

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.

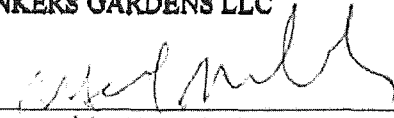
[remainder blank]

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)

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of June 2018 approves the filing of the Certificate of Amendment of the Articles of Organization of Yonkers Gardens LLC, dated May 2, 2018.



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.

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.

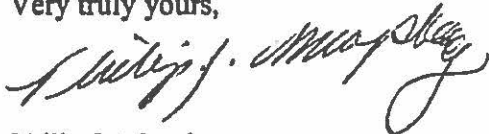
Dear Ms. Leonard:

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, 3rd 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 th Avenue Brooklyn, New York 11219
Heshy Licht	Director/Vice President	1958 52 nd 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 th Avenue Brooklyn, New York 11219
Heshy Licht	Director/Vice President	1958 52 nd 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

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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

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 13th 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

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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

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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:



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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

CASH 0.00
CHECK 65.00
CHARGE 0.00
DRAWDOWN 0.00
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 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

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.

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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.

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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

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

<u>NAME</u>	<u>ADDRESS</u>
Aaron Elbogen	1650 49 th Street Brooklyn, NY 11204
Simon Friedman	166 Hewes Street Brooklyn, NY 11211
Hershe Greenzweig	36 Concord Drive Monsey, NY 10952
Barry Braunstein	1849 56 th Street Brooklyn, NY 11204

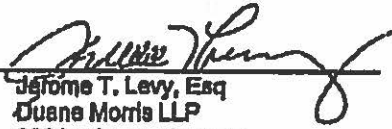
ARTICLE X

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 20th day of April, 2004

Incorporator



Jerome T. Levy, Esq
Duane Morris LLP
380 Lexington Avenue
New York, New York 10168

NY162837 1

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING 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

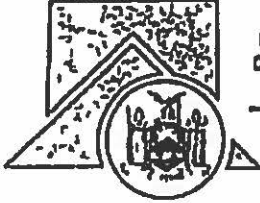
AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 12th day of March, 2004 I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Keser Nursing and Rehabilitation Center, Inc , 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, 14th 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
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Y. Be

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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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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of June 2018, approves the filing of the Certificate of Dissolution of Keser Services, Inc., dated as attached.



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.

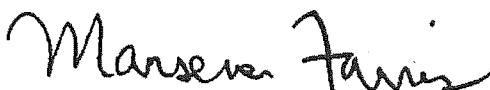
By way of background, the Corporation was established in 1998 to solicit, receive and maintain funds and property for the benefit of Menorah Home and Hospital for the Aged and Infirm, a skilled nursing facility ("Menorah"). The filing of the Certificate of Incorporation of the Corporation was consented 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,

A handwritten signature in black ink that reads "Marsena Farris". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail on the 's'.

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**
 : **OF DISSOLUTION**
 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.

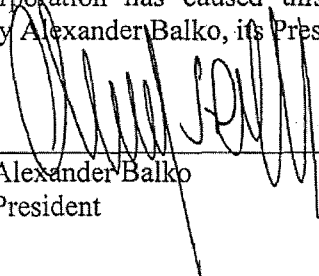
2. The name, addresses and titles of the Corporation's officers and directors are as follows:

<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 5th day of April, 2018 by Alexander Balko, its President.



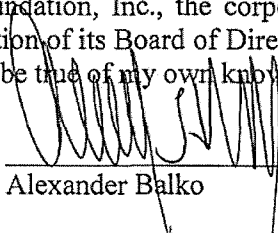
Alexander Balko
President

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
5th 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.

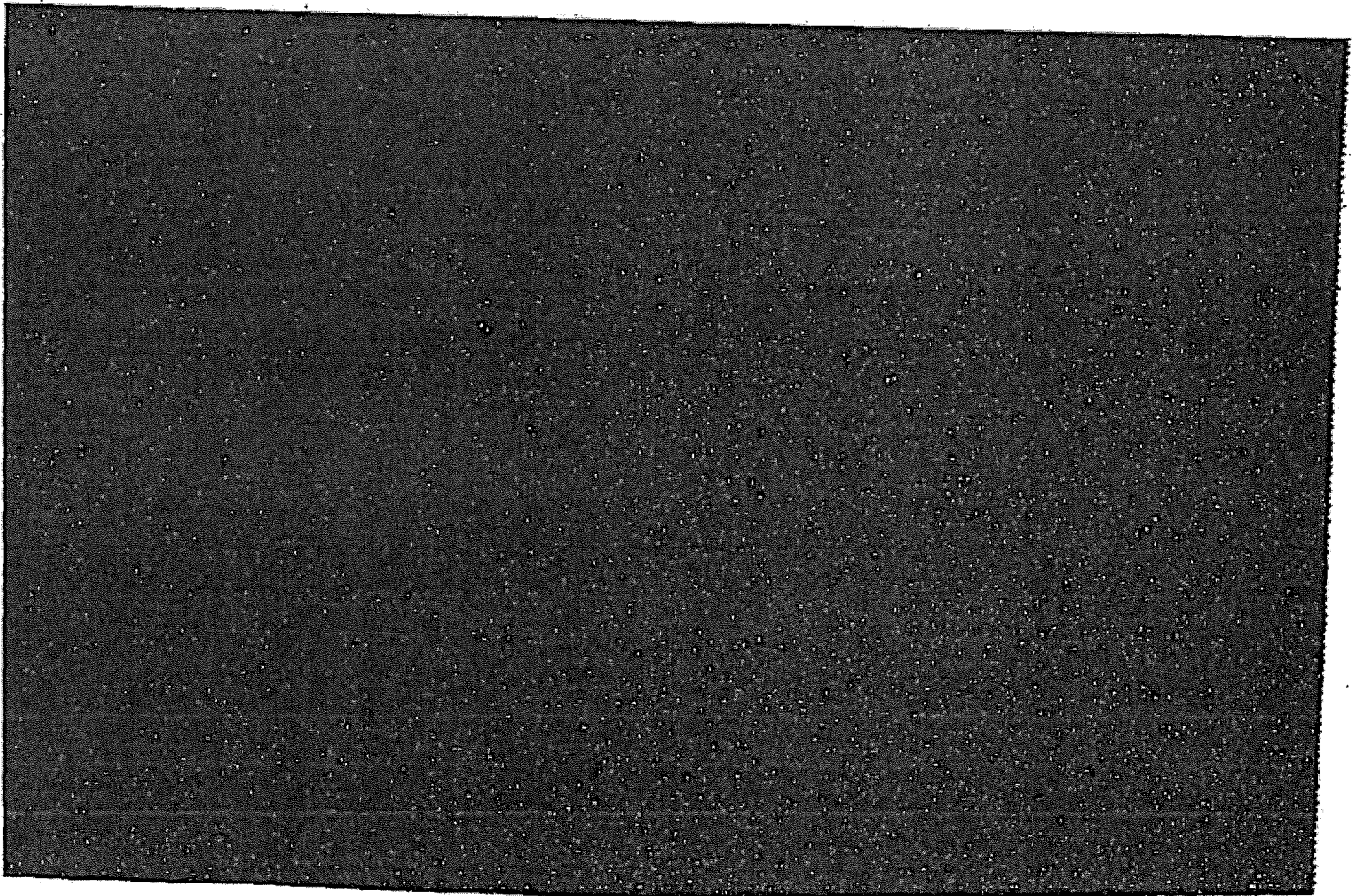
Witness my hand and seal of the Department of State on **AUG 12 1998**



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)



CT-07

F-980810000477

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

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
47 Murran Hill Terrace
Marlboro, NJ 07746 | 3. Robert Abrams
3 Sagamore Drive South
Jericho, NY 11753 |
| 2. Fred Abrams
270-15d Grand Central Parkway
Floral Park, NY 11005 | 4. Sol Glickstein
150 Barlow Drive
Brooklyn, NY 11234 |

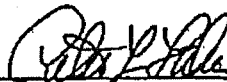
2

5. Paul Melinger
65 Oriental Boulevard
Brooklyn, NY 11235

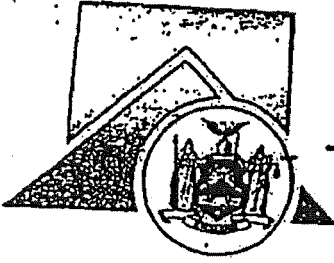
ARTICLE EIGHT. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any such process so served 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 25th 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;

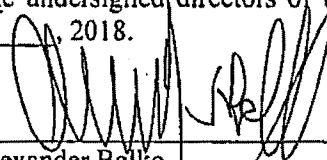
NOW, THEREFORE, BE IT

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.

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 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.
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.

For DOS Use Only

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of June 2018, approves the filing of the Certificate of Dissolution of Menorah Foundation, Inc., dated April 5, 2018.



**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]
9. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH. 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 all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans.[RNR]

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

May 17, 2018, Establishment and Project Review Committee: Recommended Approval of Indefinite Life for the main site. Recommended Approval of the extension clinic with an expiration of the operating certificate three years from the date of its issuance, with contingencies and conditions.

June 7, 2018, Public Health and Health Planning Council:

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 (2014-1st full year) and Year Three (2016) based on CON 092069.

CON 092069- Procedures	Year 1 (2014)		Year 3 (2016)	
WNY Medical Management	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.

Payor	CON 092069 Projected Year 3 (2016)	CON 092069 Actual Year 3 (2016)	CON 181103 Projections Year 1
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 st Year / 3 rd 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	<u>\$3,557,340</u>

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.

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for an indefinite life for CON #092069 and certify and construct a multi-specialty ambulatory surgery extension clinic to be located at 3112 Sheridan Drive, Amherst, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181103 B

WNY Medical Management

APPROVAL CONTINGENT UPON:

Approval for indefinite life, with an expiration of the operating certificate for the extension clinic located at 3112 Sheridan Drive, Amherst, three years from the date of 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 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]
9. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH. 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 all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

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]

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



**Project # 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
Premium Health						
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to for indefinite life for CON #102147, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

181119 E

FACILITY/APPLICANT:

Premium Health



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

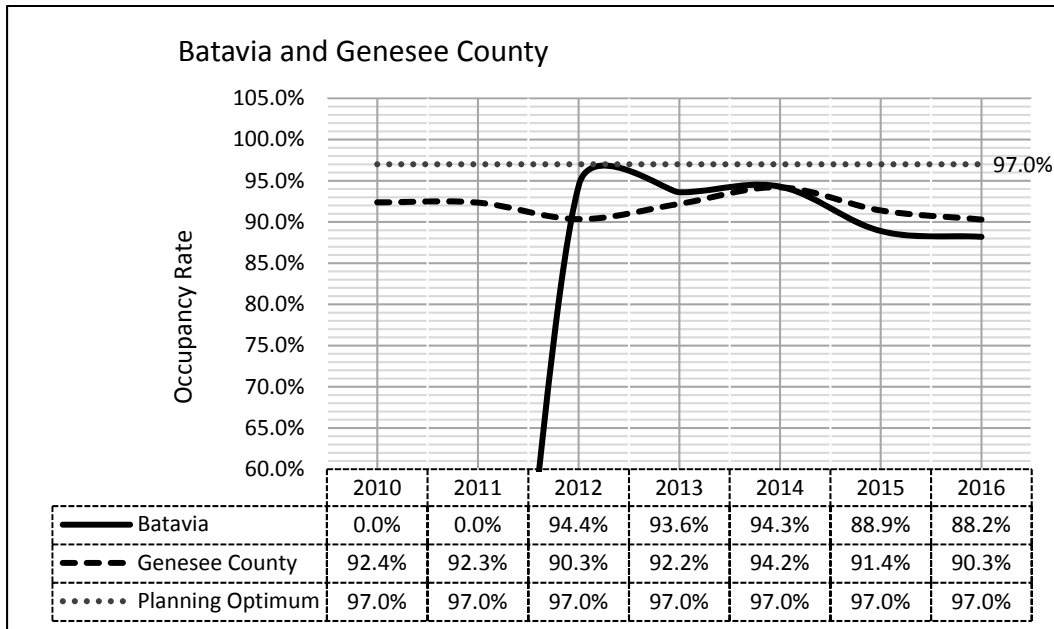
Need Analysis

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.

Program Analysis

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.

Financial Analysis

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 RHCFC 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

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 RHCFCs
BFA Attachment G	Financial Summary of Proposed Members' Affiliated RHCFCs
BFA Attachment H	Budget Sensitivity

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Grand Batavia, LLC d/b/a The Grand Rehabilitation and Nursing at Batavia as the new operator of Batavia Health Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172293 E

Grand Batavia, LLC d/b/a The Grand
Rehabilitation and Nursing at Batavia

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]

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



**Project # 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:

Member Name	Current Membership Interest	Proposed Membership Interest
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%
*Martin Wolff, M.D.	-----	4.00%
*Michael Glick, M.D.	-----	4.00%
*Neal Joseph, M.D.	-----	4.00%
*Valerie Antoine-Gustave, M.D.	-----	4.00%
*Veronika Dubrovskaya, M.D.	-----	4.00%
*Deborah Chua, M.D.	-----	4.00%
TOTAL	100%	100%

***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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer a total of 24% ownership interest to six (6) new members (Amends and Supercedes Project No. 172325), and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181278 E

Liberty Endoscopy Center

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

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



Project # 172364-E
True North IV DC, LLC

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

Executive Summary

Description

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

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

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

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

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

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

OPCHSM Recommendation
Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

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

The proposed budgets are as follows:

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

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

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

Council Action Date

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 st Year / 3 rd Year)	6.25 FTEs / 14.83 FTEs	7.05 FTEs / 17.79 FTEs
Medical Director(s)	Ljubisa Micic, M.D.	Stafford D. John, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by: Long Island Jewish Forest Hills 2.7 miles / 16 minutes	Will be provided by: Long Island Jewish Forest Hills 5.0 miles / 16 minutes

Character and Competence

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

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

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

The Officers of True North IV DC, LLC are:

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

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

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

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

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

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

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

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

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

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

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

The Department has taken the following actions against Northwell affiliates:

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

Northwell has made the following additional legal disclosures:

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

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

DaVita has made the following legal disclosures:

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

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

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

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

Conclusion

The locations, service areas, and services will remain the same after approval, with no impact on the need or capacity for dialysis services. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community

Recommendation

From a need and programmatic perspective, approval is recommended.

Financial Analysis

Contribution and Asset Purchase Agreements

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

Atlas Park Dialysis

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

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

Jamaica Hillside Dialysis

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

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

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

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

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

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Agreements

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

Atlas Park Dialysis

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

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

Jamaica Hillside Dialysis

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

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

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

Consulting and Administrative Services Agreement

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

Atlas Park Dialysis

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

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

Jamaica Hillside Dialysis

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

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

While DaVita, Inc. will be providing all the above services, True North IV DC, LLC retains ultimate control in all the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

Atlas Park Dialysis

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

	<u>First Year</u>		<u>Three Year</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$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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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish True North IV DC, LLC as the new operator of Atlas Park Dialysis and Jamaica Hillside Dialysis both currently operated by Knickerbocker Dialysis, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172364 E

True North IV DC, LLC

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]

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



Project # 172411-E
True North V DC, LLC

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

Executive Summary

Description

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

OPCHSM Recommendation
Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

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

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

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

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

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

Council Action Date

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 st Year / 3 rd Year)	5.4 FTEs / 12.3 FTEs
Medical Director(s)	Li E. Yang, M.D., Ph.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by: Maimonides Medical Center 1.3 miles / 8 minutes

Character and Competence

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

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

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

The Officers of True North V DC, LLC are:

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

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

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

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

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

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

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

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

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

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

The Department has taken the following actions against Northwell affiliates:

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

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

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

Northwell has made the following additional legal disclosures:

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

DaVita has made the following legal disclosures:

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

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

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

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on nine measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

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

Conclusion

There will be no change to services provided or the number of dialysis stations operated and therefore has no effect on need. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community

Recommendation

From a need and programmatic perspective, approval is recommended.

Financial Analysis

Contribution and Asset Purchase Agreement

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

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

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

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

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

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

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Agreement

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

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

Assignment and Assumption of Lease Agreement

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

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

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

Consulting and Administrative Services Agreement

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

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

Assignment, Assumption and Restatement of CASA

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

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

While DaVita, Inc. will be providing all of the above services, the Company retains ultimate control in all of the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

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

	<u>First Year</u>		<u>Three Year</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$871.10	\$398,091	\$902.35	\$1,341,795
Medicare MC	\$286.51	881,694	\$292.05	2,714,875
Medicaid MC	\$247.08	48,428	\$252.69	161,977
Total Revenues		\$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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish True North V DC, LLC as the new operator of a 24-station chronic renal dialysis center located at 730 64th Street, Brooklyn, currently operated by Knickerbocker Dialysis, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

172411 E

True North V DC, LLC

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]

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



Project # 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:

<u>Current Operator</u>	
Margaret Tietz Center for Nursing Care, Inc. Not-For-Profit Corporation (100%)	

<u>Proposed Operator</u>	
Chapin Acquisition I, LLC	
<u>Members</u>	
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

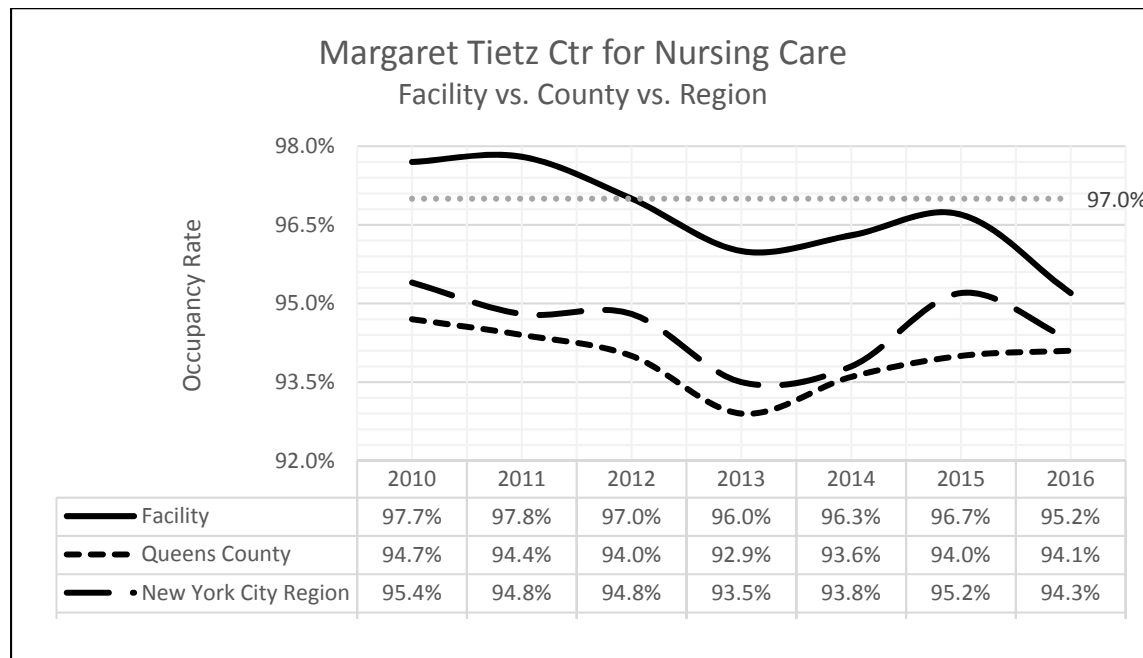
Need Analysis

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

	Existing	Proposed
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

Provider Name	Overall Rating	Health Inspection Rating	Quality Measure Rating	Staffing Rating	NYS Quintile
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 th month and 25 th 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 th 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 st 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Chapin Acquisition I, LLC as the new operator of the 200-bed residential health care facility located at 164-11 Chapin Parkway, Jamaica, currently operated as Margaret Tietz Center for Nursing Care, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

181120 E

Chapin Acquisition I, LLC d/b/a Jamaica Estates Nursing and Rehabilitation Center

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]

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



**Project # 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 18th 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 st Full Year)	Actual 2014	Actual 2015 (3 rd 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
Total	34,752	175,268	2,069	5,743	6,679	2,999

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 18th 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>(2016)</u>					
	Visits	%	Visits	%	Visits	%
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 off \$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.

Attachments

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, 4th 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, 4th 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 https://www.medicare.gov/homehealthcompare/search.html , 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 th 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 th 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Prospect Acquisition III, LLC as the new operator of the certified home health agency located at 1000 Gates Avenue, 4th Floor, Brooklyn, currently operated as CenterLight Certified Home Health Agency, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

172408 E

Prospect Acquisition III, LLC d/b/a
Responsive Home Health Care

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 CONDITIONED UPON:

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

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



Project # 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:

Table with 2 columns: Category, Year One. Rows: Revenue (\$4,165,378), Expenses (\$4,321,423), 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>Timothy M. Dolan, PhD Archbishop, Archdiocese of New York</p>	<p>William Whiston Chief Financial Officer, Archdiocese of New York</p>
<p>Gregory A. Mustaciuolo Vicar General, Archdiocese of New York</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Carmel Richmond Healthcare & Rehabilitation Center (2009-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home & 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>Gerald T. Walsh, MSW Vicar for Clergy, Archdiocese of New York</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Carmel Richmond Healthcare & Rehabilitation Center (2013-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home & 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>Francis J. Serbaroli, 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 & Rehabilitation Center (2008-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home & Rehabilitation Center (2008-present)</p>	<p>Karl P. Adler, 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 & 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 & 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 & 2010-2012) Terence Cardinal Cooke Health Care Center (2001-present)</p>
<p>Thomas M. O'Brien, Vice Chairman President & CEO, Sun National Bank</p> <p><u>Affiliations:</u> ArchCare at Home (2015-present) Carmel Richmond Healthcare & Rehabilitation Center (2005-present) Empire State Home Care Services, Inc. (2015-10/4/2016) Ferncliff Nursing Home & 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>Charles J. Fahey, 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 & Rehabilitation Center (2006-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home & 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>John T. Dunlap, Esq., Partner, Dunnington, Bartholow & Miller LLP</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Carmel Richmond Healthcare & Rehabilitation Center (2006-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home & 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>Eric P. Feldmann Retired – April 30, 2015</p> <p><u>Affiliations:</u> Carmel Richmond Healthcare & Rehabilitation Center (2005-present) Ferncliff Nursing Home & 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>Rory Kelleher, JD Senior Counsel, Sidley Austin LLP</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Carmel Richmond Healthcare & Rehabilitation Center (1/12008-3/1/2012 & 1/1/2013-present)</p>	<p>Jeffrey J. Hodgman 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) Fencliff Nursing Home & Rehabilitation Center (1/12008-3/1/2012 & 1/1/2013-present) Kateri Residence (2005-3/1/2012 & 1/1/2013-8/28/2013) Mary Manning Walsh Home (1/12008-3/1/2012 & 1/1/2013-present) St. Teresa's Nursing Home (1/12008-3/1/2012 & 1/1/2013-2/1/2013) St. Vincent de Paul Residence (1/12008-3/1/2012 & 1/1/2013-present) Terence Cardinal Cooke Health Care Center (1/12008-3/1/2012 & 1/1/2013-present)</p>	<p>Carmel Richmond Healthcare & Rehabilitation Center (7/1/2016-present) Empire State Home Care Services, Inc. (7/1/2016-10/4/2016) Fencliff Nursing Home & 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>Gregory A. Mustaciuolo Disclosed above</p>	<p>Gerald T. Walsh, MSW Disclosed above</p>
<p>Kathryn K. Rooney, Esq. Attorney, Law Offices of Kathryn K. Rooney</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Carmel Richmond Healthcare & 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>Thomas E. Alberto Retired – October 31, 2013</p> <p><u>Affiliations:</u> ArchCare at Home (1990-present) Carmel Richmond Healthcare & Rehabilitation Center (2013-present) Empire State Home Care Services, Inc. (1990-10/4/2016) Fencliff Nursing Home & 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>Gerald T. Sweeney 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 & Rehabilitation Center (2012-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Fencliff Nursing Home & 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>Gennaro J. Vasile, PhD Retired – December 24, 2015</p> <p><u>Affiliations:</u> ArchCare Advantage (2014-present) ArchCare Senior Life (2014-present) Carmel Richmond Healthcare & Rehabilitation Center (1/1/2013-present) Fencliff Nursing Home & 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>Thomas J. Fahey, Jr., MD Retired</p> <p><u>Affiliations:</u> ArchCare at Home (5/1/2014-present) Calvary Hospital (2000-present) Carmel Richmond Healthcare & Rehabilitation Center (2009-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home & 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>Tara Cortes, PhD, RN 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 & Rehabilitation Center (2013-present) Empire State Home Care Services, Inc. (2014-10/4/2016) Ferncliff Nursing Home & 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>Clarion E. Johnson, MD (Maryland) Retired - March 31, 2013</p> <p><u>Affiliations:</u> ArchCare at Home (7/1/2016-present) Carmel Richmond Healthcare & Rehabilitation Center (7/1/2016-present) Empire State Home Care Services, Inc. (7/1/2016-10/4/2016) Ferncliff Nursing Home & 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>George B. Irish Eastern Director, Hearst Foundations</p> <p><u>Affiliations:</u> ArchCare at Home (3/8/2017-present) Carmel Richmond Healthcare & Rehabilitation Center (3/8/2017-present) Ferncliff Nursing Home & 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.

CHHA Quality of Patient Care Star Ratings as of April 27, 2018	
New York Average: 3 out of 5 stars National Average: 3.5 out of 5 stars	
CHHA Name	Quality of Care Rating
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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Catholic Health Care System d/b/a ArchCare as the sole corporate member of Always There Family Home Health Services, an existing certified home health agency located at 918 Ulster Avenue, Kingston, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

181191 E

Always There Home Care

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 CONDITIONED UPON:

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

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

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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

162303

Western NY Care Services, LLC
d/b/a Western NY Care Services

APPROVAL CONDITIONAL UPON:

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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

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
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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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

171385

Home Care for Generations, LLC
d/b/a Generations Home Care

APPROVAL CONDITIONAL UPON:

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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

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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

172286

Magnolia Home Care Services, LLC
d/b/a Magnolia Home Care Services

APPROVAL CONDITIONAL UPON:

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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

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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

161033

2600 Niagara Falls Boulevard AL Operating Company,
LLC d/b/a Elderwood Home Care at Wheatfield
(Niagara County)

APPROVAL CONTINGENT UPON:

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]

APPROVAL CONDITIONAL UPON:

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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

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)
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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.

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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.

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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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 7th day of June 2018, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

162292

571 Main Street Operating Company, LLC
d/b/a Elderwood Home Care at Williamsville

APPROVAL CONTINGENT UPON:

1. A copy of the amended and restated articles of organization of the applicant, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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