STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

September 27, 2018
10:00 a.m.

New York State Department of Public Service Offices
90 Church Street
4th Floor Conference Rooms, NYC

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services – Construction **Exhibit # 1**

	Number	Applicant/Facility
1.	172101 C	Coney Island Hospital (Kings County)
2.	181304 C	Arnot Ogden Medical Center (Chemung County)
3.	181334 C	Samaritan Hospital (Rensselaer County)
4.	181404 C	Albany Medical Center Hospital (Albany County)

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

Ambulatory Surgery Centers - Establish/Construct **Exhibit # 2**

	Number	Applicant/Facility
1.	181193 B	Northern New York ASC, LLC d/b/a Northern New York Center for Surgery (Jefferson County)
2.	181333 E	Lynbrook Surgery Center, LLC (Nassau County)
3.	181438 E	North County EC, LLC d/b/a The New York Eye Surgical Center (Saratoga County)
4.	181448 E	Brooklyn Surgery Center (Kings County)

Diagnostic and Treatment Centers - Establish/Construct **Exhibit # 3**

	Number	Applicant/Facility
1.	172420 B	Doral Medical and Multispecialty Facility, LLC d/b/a Doral Medical and Multispecialty Center (Kings County)
2.	181307 E	Ajay 28 LLC d/b/a New York Preventive Health Center (Queens County)

Dialysis Services - Establish/Construct **Exhibit # 4**

	Number	Applicant/Facility
1.	172364 E	True North IV DC, LLC (Queens County)
2.	172411 E	True North V DC, LLC (Kings County)
3.	181177 B	Adira Dialysis, LLC d/b/a Adira Dialysis Center (Westchester County)
4.	182012 B	Ditmas Park Dialysis Center, LLC (Kings County)
5.	181419 B	Ulster Dialysis, LLC (Ulster County)

Residential Health Care Facilities - Establish/Construct **Exhibit # 5**

	Number	Applicant/Facility
1.	172385 E	Grand Great Neck, LLC d/b/a The Grand Rehabilitation and Nursing at Great Neck (Nassau County)
2.	172387 E	Grand South Point, LLC d/b/a The Grand Rehabilitation and Nursing at South Point (Nassau County)
3.	181219 E	AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center (Monroe County)
4.	181050 E	Nesconset Operating LLC d/b/a The Hamlet Rehabilitation and Healthcare Center at Nesconset (Suffolk County)
5.	181366 E	Port Jefferson Operating, LLC d/b/a Waters Edge Rehab & Nursing at Port Jefferson (Suffolk County)

6.	181367 E	Glengariff Operating, LLC d/b/a Glengariff Rehabilitation and Healthcare Center (Nassau County)
7.	181387 E	Verrazano Nursing Home (Richmond County)

Certified Home Health Agency - Establish/Construct **Exhibit # 6**

	Number	Applicant/Facility
1.	181348 E	North Shore Home Care (Westchester County)

C. <u>Home Health Agency Licensures</u> **Exhibit # 7**

Affiliated with Assisted Living Programs (ALPs)

	Number	Applicant/Facility
1.	181421 E	Brookhaven Home Care, LLC (Suffolk County)
2.	181266 E	The Elliot at New Rochelle LLC (Westchester County)
3.	181436 E	The Sentinel of Mohegan Lake LLC (Westchester County)

D. <u>Certificates</u> **Exhibit # 8**

Restated Certificate of Incorporation

<u>Applicant</u>

Faxton-St. Luke’s Healthcare Foundation

Public Health and Health Planning Council

Project # 172101-C
Coney Island Hospital

Program:	**Hospital**	***County:***	**Kings**
Purpose:	**Construction**	***Acknowledged:***	**October 5, 2017**

Executive Summary

Description

Coney Island Hospital, a 371-bed, public municipality, Article 28 acute care hospital located at 2601 Ocean Parkway, Brooklyn (Kings County), requests approval to renovate space to repair flood damage incurred during Superstorm Sandy, protect the hospital from future storm damage, and to decertify 20 beds bringing the certified beds to 351.

The campus consists of three patient care buildings - the Hammett Building (1910), the Main Hospital (1954), and the Tower Building (2005). The two older buildings were significantly damaged by Superstorm Sandy and were closed for several months while infrastructure repairs were undertaken, significantly disrupting patient services. The renovations will enable the hospital to endure future natural disasters, improve the healthcare environment for patients and achieve greater operating efficiencies with a stronger, more resilient hospital.

Major components of the project include flood mitigation, infrastructure modernization, replacement of obsolete and failing structures, enhancement of the visual image of the campus and the provision of an identifiable Ambulatory Care Center. Based on extensive discussions with the Federal Emergency Management Agency (FEMA) and other governmental agencies, the project is envisioned to include the following code conforming components:

- A new 11-story, 350,000 sq. ft. acute care hospital tower, the Critical Services Structure (CSS), that will include a flood-resistant Emergency Department;
- Demolition of the Hammett Pavilion and Engineering Building 6 (built in 1934);
- Renovation of select portions of the existing Main Hospital and Tower Building; and
- Building a new permanent flood mitigation structure (e.g., a flood wall) around the campus to protect against natural disaster and storm events.

At the end of construction, all acute care and behavioral health inpatients will be in one of two facilities—either the Tower Building, which was able to function throughout Superstorm Sandy and Hurricane Irene disasters, or the new CSS, built with a focus on major disaster preparedness.

OPCHSM Recommendation

Contingent Approval

Need Summary

Coney Island Hospital's service area contains a growing population of more than 900,000 residents. Over the last seven years Kings County has experienced 5.8% growth. Coney Island Hospital is located adjacent to the westbound Belt Parkway, at Ocean Parkway and is also accessible to Brooklyn, Staten Island, and Queens-Long Island residents.

There will be a reduction of 20 certified beds from 371 to 351 upon project completion. The beds to be decertified are one intensive care bed, four medical/surgical beds, and fifteen physical medicine & rehabilitation beds.

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 $738,112,383 will be met with $4,037,401 equity and $734,074,982 to be funded via the proceeds of two Federal grants as follows: a FEMA Public Assistance Program (FEMA-PAP) E-Grant for $701,864,100 and a U.S. Housing and Urban Development (HUD) Community Development Block Grant-Disaster Recovery (HUD-CDBG-DR) Grant for $32,210,882. New York City Health and Hospitals Corporation (H+H) was awarded $1.7 billion from FEMA for Superstorm Sandy recovery with about $33 million to be provided via HUD-CDBG-DR funding. A total of $922.7 million of this overall Federal funding is approved to support repairs at Coney Island Hospital. The CDBR funding is included in FEMA's commitment plan in several the Hospital's Sandy projects. The projected budget is as follows:

	Year One	Year Three
Revenues	$131,245,861	$136,099,546
Expenses	127,131,073	128,966,245
Net Income	$4,114,788	$7,133,301

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 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]
3. The following open schematic design review comments are required to be resolved:
   a. Comment 306412: 3. In plan 1G/LS-102, when leaving southwest from NS Suite 3 or south from NS Suite 2, what (2) directions are provided for egress in the exit access Corridor 02-800-E? Plan 1D shows direction from Smoke Zone 2 through double doors 02-800-F but not in plan 1G. Secondly, when directing egress into Smoke Zone 2 from Smoke Zone 1 per plan 1D/LS-102, what (2) directions for exiting are provided? Corridor 02-800-D (with 02-800-E is one corridor) is an exit access corridor and occupants cannot enter suites or the smoke compartment of origin as exit access options. Given the number of exit option in Smoke Zone 1, an option may be not to direct occupants into Smoke Zone 2 at all, pending all other common path and travel distances are met. This would have to be presented in revised life-safety plans. 6. Not all exit options are required to be presented, only those intended to meet the minimum requirements for each level of compartmentation proposed. As a direct exit option from Smoke Zone 2, it was simply pointed out that exit Stair B would be a main and obvious choice for an intended exit. The MAXIMUM dead end, common path of travel and travel distances are also only required to be presented. 10. 2012 NFPA 18.2.5.7.3.4(A)- Plan 3D presents exit access STD from NS Suite 1 as 110ft. From the room shown, the distance is actually +115ft to doors shown, and +110ft to next doors south (east end of Circulation 02-300-J), which exceeds the TD allowed by the given citation (>100ft).
   b. Comment 306646: 3. Unless Clean Supply /Linen room 09-E33 and Soiled Holding room 09-E34 are actually workrooms, the only 'occupied' (habitable) space in both Non-sleeping Suite 3 and 1 is the Seclusion room 09-E22, requiring only the circulation connection to the corridor as a corridor extension. Anteroom 09-E22-B serves as circulation only and is also unoccupied space and like Circulation 09-E00-E, is accessory to the main exit access corridors 09-E00 and 09-E00-B. Please clarify. 4. Door 09-W19 for Documentation room 09-W19 is still shown as swinging into corridor on all attached plans.
   c. Comment 306674: 3. Unless Clean Supply /Linen room 10-E28-B and Soiled Holding room 10-E28-A are actually workrooms, the only 'occupied' (habitable) space in both Non-sleeping Suite 3 and 1 is Seclusion rooms 10-E29-A/10--E29-C, requiring only the circulation connection to the corridor as an extension. Anteroom 10-E29 serves as circulation, is also unoccupied space, and like Circulation 10-E28, is accessory to the main exit access corridors 10-E00 and 10-E00-B. Please clarify above and why double doors flanking Circulation 10-E00-C (vs. 'corridor') don't allow through exiting during an event. No exit signs shown going into Circulation 10-E00-C and space is not shown as part of NS Suite 3. 4. Door to Conf/MP 10-W23 is now shown as swinging into and infringing on the clear required width of Corridor 10-W00-B.
   d. Comment 306754: 2. Door swing for P Toilet room IT205A now does not provide proper approach clearances in attached plans LS-114.00 / AEX-121.00. [DAS]

<u>Approval conditional upon</u>:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before December 10, 2018 and construction must be completed by April 3, 2023, 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
October 11, 2018

Need Analysis

Background

Beds	**Current**	**Request**	**Proposed**
Chemical Depend. - Detox	15		15
Coronary Care	9		9
Intensive Care	22	-1	21
Maternity	14		14
Medical/Surgical	213	-4	209
Neonatal Intermediate Care	10		10
Pediatric	9		9
Physical Medicine & Rehab.	15	-15	0
Psychiatric	64		64
Total	**371**	**-20**	**351**

Medical/surgical, physical medicine and rehab, intensive care, and coronary care are collapsed into medical/surgical for utilization purposes.

Coney Island Hospital Bed Utilization						
	Current Beds	**2012**	**2013**	**2014**	**2015**	**2016**
Med/Surg	259	70.1%	55.3%	81.3%	83.0%	76.8%
Pediatric	9	27.7%	0.2%	13.1%	16.9%	16.6%
Obstetric	14	78.0%	40.4%	79.0%	80.7%	84.1%
General Psychiatric	64	80.3%	52.2%	81.4%	73.8%	90.6%
Chemical Dependence	15	98.3%	25.8%	120.5%	116.6%	112.2%
High Risk Neonate	10	15.0%	8.1%	12.2%	21.4%	18.6%
Total	371	70.8%	50.4%	79.3%	79.4%	77.9%

Source: SPARCS. 2017 SPARCs data is not complete as of press time.

With the reduction of 20 beds, the utilization rate should decrease to 83.3% which is closer to the planning optimum of 85%.

The following are the Strategic Objectives to recover and aid in the prevention of future super storms while improving patient care:

- Provide high quality, easily accessible health for the southern Brooklyn community and grow
- share to ensure quality and value.
- Provide uninterrupted service during the 100-year storm and, following evacuation for a 500-year storm, can recover and resume activities as soon as the event ends.
- Flood and disaster mitigation.
- Replacement of obsolete campus structures.
- Development of facilities and infrastructures designed for maximum efficiencies in staffing and operations.
- Operate in Code conforming infrastructures and facilities.
- Function as a community resource during normal operations and in emergent situations.
- Provide identifiable and easily accessible ambulatory care facilities.
- Enhance the visual image of the campus.
- Provide improved campus parking.

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.

Prevention Agenda

As a public hospital, Coney Island is not required to submit a community service plan or participate formally in the Prevention Agenda. However, in its response to the public heath questions, Coney Island described the way in which NYC Health + Hospitals and its OneCity PPS are addressing five public health issues that they identified as priorities in 2016 when they conducted a community health needs assessment for DSRIP: Diabetes, Cardiovascular disease, hypertension and cholesterol management, Care transitions for patients discharged from the hospital at high risk of readmission, Cancer and Smoking.

Coney Island Hospital reported strategies they are implementing for each of these five priorities, including: diabetes and cardiovascular disease registries to identify and improve disease management for patients, support groups, and increasing access to cancer screening and palliative care. The hospital also reported measures they are using to track progress for each initiative. As a public hospital, Coney Island is not obligated to report community benefit spending.

Coney Island Hospital should consider working with the NYC Department of Health and Mental Hygiene and other community partners to address these important public health issues. Doing so would enable the hospital's clinical initiatives to connect to policy efforts that address the underlying causes of these diseases.

Conclusion

The project will help ensure medical resources are available to the community, even during extreme weather.

Financial Analysis

Total Project Cost and Financing

Total project costs for new construction, renovation, and movable equipment is estimated at $738,112,383, broken down as follows:

New Construction	$429,754,793
Renovation & Demolition	29,174,861
Site Development	37,666,860
Temporary Utilities	578,796
Asbestos Abatement or Removal	2,460,000
Design Contingency	39,000,000
Construction Contingency	19,500,000
Fix Equipment	17,523,772
Architect/Engineering Fees	38,698,701
Construction Manager Fees	54,498,463
Movable Equipment	45,354,176
Telecommunications	19,862,560
CON Application Fee	2,000
CON Processing Fee	4,037,401
Total Project Cost	$738,112,383

Project costs are based on a construction start date in the December 2018 and a 52-month construction period.

The applicant's financing plan appears as follows:

Equity	$4,037,401
Federal Grants (FEMA-PAP E-Grant)	$701,864,100
U.S Housing & Urban Develop. (HUD-CDBG-DR Grant)	$32,210,882
Total	$738,112,383

The applicant has provided documentation of approval of the Federal grants allocated to Coney Island Hospital's Superstorm Sandy projects.

Operating Budget

The applicant has submitted the operating budgets for the first and third years for the departments moving into the new facility, using 2018 dollars, as summarized below:

Revenues	First Year		Third Year	
Inpatient	Per Disch.	Total	Per Disch.	Total
Medicaid	$8,125	$47,066,324	$8,453	$48,967,804
Medicare	$6,342	39,102,478	$6,598	40,682,218
Commercial	$6,184	5,212,973	$6,434	5,423,578
Private Pay	$139	58,224	$144	60,576
All Other #	$7,279	414,915	$7,573	431,676
Total Inpt. Revenue		$91,854,914		$95,565,852
Outpatient	Per Visit	Total	Per Visit	Total
Medicaid	$282	$17,288,206	$294	$17,986,649
Medicare	$257	5,867,668	$267	6,104,721
Commercial	$226	4,353,098	$235	4,528,963
Private Pay/Charity	$10	376,158	$10	391,354
All Other #	$376	400,693	$391	416,883
Total Outpt. Revenue		$28,285,823		$29,428,570
Other Operating Revenue *		11,105,124		11,105,124
Total Revenues		$131,245,861		$136,099,546
Expenses (Inpt & Outpt).				
Operating		$103,805,898		$105,641,070
Capital		23,325,175		23,325,175
Total Expenses		$127,131,073		$128,966,245
Net Income		$4,114,788		$7,133,301
Patient Discharges		13,279		13,279
Patient Visits		141,833		141,833

 # All Other pertains to No Fault, Workers Compensation and Government-Other payors.
** Other Operating Revenue represents payments for Disproportionate Share Hospital for $7,183,576 and Upper Payment Limit for $3,921,548.*

The following is noted with respect to the submitted budget:

- Revenues were projected based on FY 2017 Soarian Financial reports for the departments moving into the CSS Building except for Inpatient Medical/Surgical which based on the FY17 CDCR inpatient cash collections prorated to the project's Medical/Surgical inpatient beds. As a conservative measure reimbursement rates were held constant until Year-One (FY 2022), when they were estimated to increase by 2% through Year-Three (FY 2024). Also, the applicant states revenue enhancement projects are currently being undertaken by Health and Hospital Corporation.
- Expenses were based on actual expenses for the departments scheduled to move into the new CSS Building. Staffing FTEs and salaries were based on the February 2017 Active Staffing Roster. A 1% inflation factor was added beginning in the current year FY17 and compounded annually for eight years forward. OTPS costs were projected based on February 2017 OTPS expenses with current year starting FY17 with a 5% inflation factor for FY22 (Year One) remaining the same through FY24 (Year Three).
- Utilization by payor for the first and third years is summarized below:

	First and Third Years			First and Third Years	
Inpatient Payors	Disch.	%	**Outpatient Payors**	Visits	%
Medicaid	5,793	43.63%	Medicaid-FFS	61,223	43.17%
Medicare	6,166	46.43%	Medicare-FFS	22,860	16.12%
Commercial	843	6.35%	Commercial	19,275	13.58%
Private Pay/Charity	420	3.16%	Private Pay/Charity	37,410	26.38%
All Other	57	.43%	All Other	1,065	.75%
Total	13,279	100%	Total	141,833	100%

Capability and Feasibility

Project costs of $738,112,383 will be met with $4,037,401 equity and $734,074,982 to be funded via Federal grants consisting of a FEMA-PAP E-Grant for $701,864,100 and a HUD-CDBG-DR Grant for $32,210,882. H+H was awarded $1.7 billion from FEMA for Superstorm Sandy recovery with about $33 million to be provided via HUD disaster recovery block grant funding. A total of $922.7 million of this overall Federal funding is approved to support repairs at Coney Island Hospital. The CDBR funding is included in FEMA's commitment plan in several the Hospital's Sandy projects

Working capital requirements are minimum as the budget reflects moving existing services into to the new CSS Building. Any added working capital will be funded from operations. BFA Attachment A is Coney Island Hospital's financial summary from their 2017 Institutional Cost Report (ICR), which indicates the availability of sufficient funds for the project

The submitted budgets indicate a net income of $4,114,788 and $7,133,301 in the first and third years, respectively. The budgets are reasonable.

BFA Attachment B is New York City Health and Hospitals Corporation's 2017 certified financial statements, which shows negative working capital (which improved from 2015) and negative operating income.

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 - 2017 Coney Island Hospital financial summary from Institutional Cost Report
BFA Attachment B	Financial Summary – New York City Health and Hospital Corporation Certified Financial Statement as of June 30, 2017

Public Health and Health Planning Council

Project # 181304-C
Arnot Ogden Medical Center

Program:	**Hospital**	***County:***	**Chemung**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**May 21, 2018**

Executive Summary

Description

Arnot Ogden Medical Center (AOMC), a 266-bed, voluntary not-for-profit, Article 28 acute care hospital located at 600 Roe Avenue, Elmira (Chemung County), requests approval to certify St. Joseph's Hospital (SJH), a 125-bed, voluntary not-for-profit, Article 28 hospital located at 555 St. Joseph's Boulevard in Elmira, as a division of AOMC. The hospitals are located two miles apart and have operated with combined management under a common sole member and active parent, Arnot Health, Inc., since August of 2011. The full asset merger will facilitate service consolidation and a phased approach towards modernizing and rightsizing the facilities to meet current code requirements and patient health needs.

Due to long term fiscal pressures, the SJH building suffers from decades of under investment and has sizeable deferred maintenance issues and capital needs. While service alignment and rationalization began in 2011 under the Common Board and single management team, it is now necessary for a merger to facilitate continued consolidation designed to enhance financial sustainability and patient access to vital safety net health services. Arnot Health, Inc. operates the only hospital services in Chemung County and serves a disproportionate share of Medicare and Medicaid patients from the Southern Tier of Central New York State.

In 2016, a system-wide Master Facilities and Modernization Plan was commissioned to develop a transformation plan aimed at improving access to care, clinical quality and outcomes, operational optimization and fiscal stewardship. The Plan centers around removing service duplication through consolidation and relocation to better align with community needs, while reducing operating costs and improving system sustainability. As SJH currently lacks sufficient capital funds to completely replace the aging SJH building, a phased approach was established. The first phase in this transformation is a full asset merger with consolidation of beds and services from SJH's operating certificate onto AOMC's operating certificate. With the exception of some additional GME funding from Medicare, this project will not result in any material changes in revenues, expenses or services offered.

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

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

	Year One
Revenues	$341,757,618
Expenses	351,234,272
Gain (Loss)	($9,476,654)

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
2. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]

Approval conditional upon:

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

Council Action Date

October 11, 2018

Need and Program Analysis

Program Description

Arnot Ogden Medical Center (AOMC), a 266-bed, voluntary not-for-profit Article 28 acute care hospital, located at 600 Roe Avenue in Elmira (Chemung County), requests approval to acquire St. Joseph's Hospital (SJH), a 125-bed hospital located approximately two miles away, at 555 St. Joseph's Boulevard in Elmira.

As a result of service duplication and financial challenges, the NYS Berger Commission report recommended a consolidation of SJH and AOMC. To mitigate financial losses at St. Joseph's Hospital, the State of New York approved the establishment of Arnot Health, Inc. (AHI) as the Active Parent organization for the two facilities. Since August 2011, AOMC and SJH have operated with combined management under AHI as the common active parent.

The proposed full asset merger will consolidate beds and services from SJH's operating certificate onto AOMC's operating certificate and would facilitate a phased approach towards modernizing and rightsizing facilities to meet code requirements and patient health needs. Additionally, the consolidation would allow AOMC to be partially compensated by Medicare for its Graduate Medical Education program that rotates residents through the St. Joseph's Hospital psychiatric and substance abuse units.

Through this acquisition, AOMC aims to protect continued access to health services for area residents while improving financial sustainability through efficiencies and enhancing patients' experience of care. There will be no change in authorized services or number or types of beds as a result of this application.

Background

Arnot Ogden Beds, Source HFIS	
Bed Type	**Bed Count**
Coronary Care	17
Intensive Care	3
Maternity	25
Medical / Surgical	181
Neonatal Intensive Care	13
Neonatal Intermediate Care	7
Pediatric	20
Total	266

St. Joseph's Beds, Source HFIS	
Bed Type	**Bed Count**
Chemical Dependence - Rehabilitation	20
Coronary Care	4
Intensive Care	10
Physical Medicine and Rehabilitation	40
Psychiatric	25
Transitional Care	26
Total	125

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.

Prevention Agenda

Arnot Ogden Medical Center (AOMC) proposes to certify St. Joseph's Hospital as a division of AOMC. Both organizations have been operating under combined management with Arnot Health as the active parent. The merger would result in a consolidating and modernizing of the facility to meet today's code requirements. Project Capital Cost: $2,000

Arnot Ogden Medical Center (applicant) submitted a 2016 and 2017 "combined" CSP/CHIP update with Chemung County Department of Health. Within the CSP/CHIP the applicant has identified two Prevention Agenda priorities "Prevent Chronic Diseases" and "Promote Mental Health and Prevention Substance Abuse":

- Reduce obesity in children and adults
- Increase preventive care and management of chronic disease

The applicant identifies a number of evidence-based interventions that are being implemented and align with the workplan and updates. AOMC engages local community partners in its Prevention Agenda efforts as it relates to planning and/or implementation.
While AOMC uses output and input measures to track progress, this effort could be strengthened by using intermediate impact measures to track progress to advance local Prevention Agenda goals.
In the most recent Schedule H, AOMC did report Community Benefit spending in the Community Health Improvement Services category.

The applicant should develop intermediate impact measures to track progress on advancing Prevention Agenda goals. These measures would provide information on the impact of the policies and changes adopted, such as the impact of sodium reduction in hospital meals.

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 need and programmatic perspective, approval is recommended.

Financial Analysis

Merger Agreement

The applicant has submitted an executed merger agreement between Arnot Ogden Medical Center and St. Joseph's Hospital to be effectuated upon Public Health and Health Planning Council approval. The terms of the agreement are summarized below:

Date:	June 25, 2018 (Plan of Merger adopted by vote of the respective Boards)
Date:	June 26, 2018 (Certificate of Merger execution date)
Merging Entities:	Arnot Ogden Medical Center and St. Joseph's Hospital
Surviving Entity:	Arnot Ogden Medical Center
Assets Acquired:	All remaining assets
Liabilities Acquired:	All remaining liabilities
Purchase Price:	$0

Operating Budget

The applicant has submitted the current year (2017) and projected first year operating budgets, as 2018 dollars, as summarized below:

	AOMC	SJH	Combined
Revenues			
Inpatient	$107,496,932	$28,078,655	$135,575,587
Outpatient	191,007,070	21,922,935	212,930,005
Other Operating *	7,713,540	2,331,691	10,045,231
Non-Operating	2,874,851	49,028	2,923,879
Less: Charity Care	1,768,089	235,843	2,003,932
Less: Bad Debt	14,512,327	3,200,825	17,713,152
Total Revenues	$292,811,977	$48,945,641	$341,757,618
Expenses			
Operating	$285,233,947	$50,334,927	$335,568,774
Capital	13,071,200	2,594,298	15,665,498
Total Expenses	$298,305,047	$52,929,225	$351,234,272
Excess Revenues	($5,493,070)	($3,983,584)	($9,476,654)
Utilization Discharges	10,711	930	11,641
Utilization Visits	803,482	51,955	855,437

**Other operating: Grants, Commission and Sales, Investment Income and Misc. Income.*

	Current Combined	Year One
Revenues		
Inpatient	$135,575,587	$139,642,855
Outpatient	212,930,005	219,317,905
Other Operating	10,045,231	10,184,467
Non-Operating	2,923,879	2,923,880
Less: Charity Care	2,003,932	2,064,050
Less: Bad Debt	17,713,152	18,244,547
Total Revenues	$341,757,618	$351,760,510
Expenses		
Operating	$335,568,774	$343,207,224
Capital	15,665,498	15,665,498
Total Expenses	$351,234,272	$358,872,722
Excess Revenues	($9,476,654)	($7,112,212)
Utilization Discharges	11,641	11,757
Utilization Visits	855,437	881,100

Expense and utilization assumptions are based on the historical experience of the hospitals. The two Elmira hospitals have operated under a common charge master file and payer contracting process since alignment under Arnot Health in 2011. It is presumed that the payor rates for services will remain the same.

Utilization by payor source for inpatient and outpatient for the current year and year one is as follows:

Inpatient	Current Year	Year One
Medicaid FFS	3.66%	3.66%
Medicaid MC	19.10%	19.10%
Medicare FFS	33.04%	33.04%
Medicare MC	18.22%	18.22%
Commercial FFS	24.04%	24.04%
Private Pay	1.32%	1.32%
Other	0.62%	0.62%

Outpatient	Current Year	Year One
Medicaid FFS	0.87%	0.87%
Medicaid MC	16.53%	16.53%
Medicare FFS	36.62%	36.62%
Medicare MC	0.78%	0.78%
Commercial FFS	42.22%	42.22%
Private Pay	1.14%	1.14%
Other	1.84%	1.84%

Capability and Feasibility

There are no issues of capability as there are no project costs associated with this application. The submitted budget indicates an excess of expenses over revenues of $9,476,654 during the first year after the merger. The loss will be offset via operations. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

BFA Attachment B is the 2016 and 2017 certified financial statements of Arnot Health, Inc. As shown, Arnot Ogden Medical Center and Affiliates had a positive working capital position and a positive net asset position in 2017. The entity incurred a net loss of $8,577,438 in 2017. The applicant indicated that the reasons for the loss were the result of inpatient volume decreasing by 3.7%, charity care increased by $500,000 and total expenses increased by 2.3% due to increased costs for drugs and supplies and employee health care expenses and pension costs increases. The entity implemented the following steps to improve operations: engaged a consulting firm, combining ACMC and SJH's emergency department and working with Corning, Inc. through their loaned extension program to develop and implement quality and lean initiatives.

As shown on Attachment B, St. Joseph's Hospital had a positive working capital position and a positive net asset position in 2017. Also, the entity incurred a net loss of $3,989,311 in 2017. The entity indicated that the reasons for the losses were the result of the following: much of the facility is old with inefficient space, the hospital requires consolidated investments related to healthcare information technology and support, and the facility's size does not enable their ability to attract better prices for goods and supplies. To improve operations, the entity will merge with Arnot Ogden Hospital into a single entity with a long-range plan of constructing a new more efficiently built facility on the Arnot Campus to replace the old oversized facility.
The applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart Pre- and Post-Merger
BFA Attachment B	2016 and 2017 certified financial statements of Arnot Health, Inc.

Public Health and Health Planning Council

Project # 181334-C
Samaritan Hospital

Program:	**Hospital**	***County:***	**Rensselaer**
Purpose:	**Construction**	***Acknowledged:***	**May 10, 2018**

Executive Summary

Description

Samaritan Hospital of Troy NY, Inc. d/b/a Samaritan Hospital (Samaritan), a voluntary not-for-profit, Article 28 acute care hospital located at 2215 Burdett Avenue, Troy (Rensselaer County), requests approval to merge Seton Health System, Inc. d/b/a St. Mary's Hospital (St. Mary's), a voluntary not-for-profit, Article 28 hospital located at 1300 Massachusetts Avenue, Troy (Rensselaer County), into its operations. Samaritan will be the surviving hospital and corporation. Upon approval of the merger, the St. Mary's site will be known as Samaritan Hospital / St. Mary's Campus. St. Peter's Health Partners (SPHP), a not-for-profit healthcare system in New York's Capital Region that operates numerous health facilities, is the sole member, active parent and co-operator of both hospitals.

Since the formation of SPHP in 2011, SPHP has been implementing a Troy Master Facilities Plan (MFP) for acute care services at the Samaritan and St. Mary's campuses. The MFP includes the following changes:

- Samaritan Campus – This site will provide the principal inpatient services and include the emergency department (ED). Under CON 132378, Samaritan was approved to construct a new patient pavilion that included an ED, intensive care unit, a progressive care unit and two medical/surgical units. Approval of this application provided for the transfer of 60 beds from St. Mary's to Samaritan via an intra-network bed transfer, and the decertification of 15 chemical dependency (CD) – detoxification beds at Samaritan. This project is under construction and near completion.
- St. Mary's Campus – Under CON 172273, multiple services (including the ED) and all beds other than 20 CD – rehabilitation beds were decertified. The St. Mary's bed decertification (a decrease from 196 to 20 beds) enabled the intra-network transfer of 60 beds to Samaritan that were approved under CON 132378. The St. Mary's site will continue the 20-bed CD – rehabilitation inpatient service and will offer primarily outpatient and other health-related services including urgent care, cancer treatment and the Samaritan School of Nursing. This site also now houses SPHP's finance department, which eliminated rental expense systemwide.

At the end of the merger process, Samaritan Hospital will consist of two campuses with a net bed count of 277 certified beds (257 beds at the Samaritan campus and 20 CD – Rehabilitation beds at the St. Mary's campus).

Consistent with the physical reorganization of services in Troy, the rationale for maintaining separate legal status and licenses has disappeared. The merger is expected to deliver governance, administrative and operational efficiencies via one legal board, a single management structure, one set of policies and procedures, one medical and nursing staff, and many unified departments. Regulatory obligations imposed by federal and state agencies will also be cut in half.

Presently, SPHP, Samaritan and St, Mary's have mirror boards. Post-merger, SPHP and Samaritan will continue to have mirror boards and SPHP will retain the active parent reserve powers. St. Mary's will cease to exist as a separately licensed entity and will become a Division under Samaritan's operating certificate (surviving entity).

OPCHSM Recommendation

Contingent Approval

Need Summary

Through project 132378 the beds consolidations were processed for this merger and for consolidation of services project 172273 was submitted. There will not be any impact on need through the completion of this project.

Program Summary

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

Financial Summary

There are no project costs or acquisition price associated with this application. The proposed budget is as follows:

	Year One	Year Three
Total Revenues	$271,277,378	$280,285,831
Total Expenses	$281,825,534	$283,501,205
Net Income/ (Loss)	($10,548,156)	($3,215,374)

Since the creation of SPHP, Samaritan and St. Mary's have been proceeding with implementation of the MFP to functionally integrate the two Troy hospitals. As in the past, SPHP will continue to support the Troy MFP as they work towards improving the cost structure and identifying opportunities for growth. BFA Attachment C presents St. Peter's Health Partners 2016-2017 consolidated certified financial statements, which shows the financial ability to provide support.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the Office of Alcoholism and Substance Abuse, acceptable to the Department. [PMU]
2. Submission of a photocopy of a Board Resolution by Seton Health System Inc, approving of the merger with Samaritan Hospital of Troy, acceptable to the Department. [CSL]
3. Submission of a photocopy of the Board Resolution of the Samaritan Hospital of Troy approving of the merger with Seaton Health System Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the Board Resolution of St. Peters Health Partners approving of the merger of Seaton Health System Inc. with the Samaritan Hospital of Troy, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

October 11, 2018

Need and Program Analysis

Program Description

Samaritan Hospital of Troy NY, Inc. d/b/a Samaritan Hospital (Samaritan), a voluntary not-for-profit, Article 28 acute care hospital located at 2215 Burdett Avenue in Troy (Rensselaer County), requests approval to merge Seton Health System, Inc. d/b/a St. Mary's Hospital (St. Mary's), a voluntary not-for-profit, Article 28 hospital located at 1300 Massachusetts Avenue in Troy (Rensselaer County), into its operations, with Samaritan being the surviving hospital and corporation. Both hospitals have St. Peter's Health Partners (SPHP) as their sole member, active parent and co-operator. Upon approval of the merger, the St. Mary's site will be known as Samaritan Hospital/St. Mary's Campus. There will be no changes to beds or services as a result of this application.

St. Mary's 12 extension clinics (as listed in the chart below) shall become Samaritan Hospital extension clinics and will be renamed, as noted.

Extension Clinics	
Capital Region Family Health Center *To be renamed: Capital Region Family Health Care* 2 Empire Drive Rensselaer, NY 12144	Seton Health OB/GYN- Cohoes *To be renamed: Samaritan OB/GYN* 55 Mohawk Street Cohoes, NY 12047
Clifton Park Family Health Center *To be renamed: Clifton Park Family Practice* One Tallow Wood Drive Clifton Park, NY 12065	Seton Health OB/GYN – Latham *To be renamed: Samaritan OB/GYN* Capital Region Health Park 713 Troy-Schenectady Road, Suite 304 Latham, NY 12110
Massry Center *(No change in name)* 147 Hoosick Street Troy, NY 12180	Shaker Point Internal Medicine *To be renamed: Latham Primary Care Associates* 1 Bell Tower Drive Watervliet, NY 12189
Samaritan OB/GYN, operated by St. Mary's Hospital *To be renamed: Samaritan OB/GYN* 2231 Burdett Avenue Troy, NY 12180	St. Peter's OB/GYN at Clifton Park *To be renamed: Samaritan OB/GYN* 855 Route 146 Clifton Park, NY 12065
Seton Health Physical Rehab *To be renamed: Clifton Park Physical Rehabilitation* 648 Plank Road Clifton Park, NY 12065	Stillwater Health Center *To be renamed: Stillwater Family Health Center* North Hudson Avenue Stillwater, NY 12170
Seton Health Pediatrics *To be renamed: Troy Pediatric Health Center* 500 Federal Street, 6th Floor Troy, NY 12180	Troy Internal Medicine *(No change in name)* 1401 Massachusetts Avenue Troy, NY 12180

At the end of the merger process, Samaritan Hospital will consist of two campuses with a net bed count of 277 certified beds (257 beds at the Samaritan campus and 20 Chemical Dependence– Rehabilitation beds at the St. Mary's campus).

This merger is expected to deliver governance, administrative and operational efficiencies via one legal board, a single management structure, one set of policies and procedures, one medical and nursing staff, and many unified departments.

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.

Prevention Agenda

Samaritan Hospital is seeking approval of the merger of two hospital operators in Troy, NY:
(1) Seton Health System, Inc. d/b/a St. Mary's Hospital ("St. Mary's") and (2) Samaritan Hospital of Troy, NY d/b/a Samaritan Hospital ("Samaritan"), with Samaritan as the surviving hospital. Both hospitals have St. Peter's Health Partners as their sole member, "active parent," and co-operator. The merger would strengthen the organization's ability to sustain and perform community services that otherwise may be in jeopardy.

The applicant identified the priorities selected for action in Samaritan's most recent community service plan and they are in alignment with the Community Health Improvement Plan. These priorities include:

- Preventing chronic disease, focusing on reducing obesity and diabetes in children and adults; and
- Promoting mental health and preventing substance abuse, focusing on preventing substance abuse and other mental, emotional and behavioral diseases.

The applicant described the interventions based on evidence currently implemented by Samaritan Hospital to prevent chronic diseases: promoting pre-diabetes screenings and education by using evidence-based tools and adult self-management programs; implementing nutrition and beverage standards in public institutions, worksites, school districts, and childcare centers; and promoting physical activity in childcare centers, school districts, community venues, and worksites.

Interventions to prevent substance abuse and other mental, emotional, and behavioral diseases are: provider education about addiction and pain management, including educating patients about risk of harm and misuse; promoting safe storage and proper disposal of unused prescriptions; offering New York State Opioid Overdose Prevention Training; and establishing ambulatory detox service locations.

Samaritan Hospital engages with diverse local organizational partners in its Prevention Agenda efforts to plan and/or implement interventions.

While Samaritan Hospital uses output and input measures to track progress, this effort could be strengthened by using intermediate impact measures to track progress to advance local Prevention Agenda goals. For example, the outcomes of participants in their adult self-management programs, and how communities have been impacted by the Complete Streets policy.

In the most recent Schedule H for 2015, Samaritan Hospital reported Community Benefit Spending in the Community Health Improvement Services and Community Benefit operations category.

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 need and programmatic perspective, approval is recommended.

Financial Analysis

Merger Agreement

The applicant has submitted a proposed Merger Agreement between Samaritan Hospital of Troy, NY, Inc. and Seton Health System, Inc. to be effectuated upon Public Health and Health Planning Council approval. The terms of the agreement are summarized below:

Date:	January 1, 2019 (proposed effective date)
Merging Entities:	Samaritan Hospital of Troy, NY, Inc and Seton Health System, Inc
Surviving Entity:	Samaritan Hospital of Troy, NY, Inc
Purchase Price:	There will be no cash of other consideration paid for in exchange for any membership interest.

The sole member of Samaritan Hospital of Troy, NY, Inc. is SPHP, a New York not-for-profit corporation, and the sole member of SPHP is Trinity Health Corporation, an Indiana nonprofit corporation. The two members of Seton Health System, Inc. are SPHP and Ascension Health, a Missouri nonprofit corporation. Currently, SPHP is a Class A member and active parent of St. Mary's and Ascension Health is a Class B member and passive parent of St. Mary's. Per the applicant, effective June 3, 2018, Ascension has terminated its membership interest in Seton Health System, Inc. d/b/a St. Mary's Hospital. Ascension will not have a membership interest in Samaritan Hospital post-merger.

Operating Budget

The applicant has submitted the current year (FYE 6/30/17) and projected first and third year operating budgets, in 2018 dollars, as summarized below:

	Current	Year One	Year Three
Revenues			
Inpatient	$86,564,411	$96,416,478	$99,247,053
Outpatient	165,174,784	163,446,156	169,624,034
Other Operating Revenue*	7,885,952	7,885,952	7,885,952
Non-Operating Revenue**	7,223,861	3,528,792	3,528,792
Total Revenues	$266,849,008	$271,277,378	$280,285,831
Expenses			
Operating	$256,367,391	$267,143,805	$270,974,466
Capital	11,968,019	14,681,729	12,526,739
Total Expenses	$268,335,410	$281,825,534	$283,501,205
Net Income (Loss)	($1,486,402)	($10,548,156)	($3,215,374)
Utilization Discharges	9,227	9,724	9,986
Utilization Visits	413,607	470,184	475,908

**Grant revenue ($2M), Rent ($3.7M), Net Assets release from restrictions for operations ($1.3M) and Sales ($9K).*
***Investment returns are expected to continue, but at lower rate of return.*

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

Inpatient	Current	Year One	Year Three
Medicaid - FFS	5.79%	5.06%	5.06%
Medicaid - MC	16.53%	16.50%	16.48%
Medicare - FFS	32.20%	32.18%	32.21%
Medicare - MC	23.80%	24.83%	24.83%
Commercial - FFS	6.63%	6.63%	6.64%
Commercial - MC	12.74%	12.18%	12.20%
Private Pay	.40%	.75%	.75%
Charity	1.91%	1.87%	1.83%
Total	100%	100%	100%

Outpatient	Current	Year One	Year Three
Medicaid - FFS	2.30%	1.98%	1.98%
Medicaid - MC	16.34%	16.04%	16.03%
Medicare - FFS	22.83%	22.84%	22.85%
Medicare - MC	19.16%	18.86%	18.86%
Commercial - FFS	11.29%	12.07%	12.07%
Commercial - MC	25.76%	25.11%	25.13%
Private Pay	1.59%	2.40%	2.39%
Charity	.73%	.70%	.69%
Total	100%	100%	100%

Budget projections are based on the following:

- While the current year shows an operating loss, the applicant indicated that the combined facility results had a positive cash flow from operations.
- The Year One loss is expected to increase as additional non-clinical staff is used to support opening of the new Pavilion during FY 2018, along with an estimated $4M reduction in investment returns.
- By Year Three, the loss is expected to decline by $7.3M to a $3.2M loss, and cash flow is projected to be positive.
- Revenue assumptions include volume growth from the affiliated Medical Group, improved productivity and referrals along with increased volume from the MFP, and LINAC replacement.
- Reimbursement rate assumptions include the impact of Medicare geographic reclassification approval, combined disproportionate share impact, and Samaritan achieving 340(b) status.
- Cost assumptions include variable expenses related to the incremental volume, along with increased depreciation for the LINAC replacement and interest expense related to MFP completion.

Capability and Feasibility

There are no project costs or acquisition price associated with this application. BFA Attachment C is the 2016 and 2017 consolidated certified financial statements of St. Peter's Health Partners Albany, NY, which shows positive working capital and positive net asset positions. For 2017, operating income was $6,302,000 before other items and excess of revenue over expenses was $37,861,000. The applicant stated that for FY 2017, Samaritan had excess of revenues over expenses of $9,546,000 while St. Mary's had a deficiency of revenue over expenses of $11,033,000.

The applicant indicated that St. Peter's Health Partners has invested around $100 million in the MFP, which is expected to be complete by early 2019. The goal of the MFP is to consolidate inpatient services on the Samaritan campus and transition St. Mary's to an outpatient-focused campus. During 2017, St. Mary's acute inpatient and surgical services were transitioned to Samaritan Hospital.

The Budget shows first and third losses of $10,548,156 and $3,215,374, respectively (as previously noted by the third-year cash flow is projected to be positive). SPHP recently completed a FY 2019 operating budget that achieves an operating margin of $7,2M and is a glided path towards long-term sustainability. The foundation of the plan is built on functional integration, shifting the operating model and creating an organizational structure that supports systemness. Integration started at the time SPHP was created (2011) and the FY 2019 budget continues the efforts in16 areas. Management initiatives include functional integration, workforce productivity improvements, supply chain and clinical utilization improvements, strengthening St. Peter's Health Partners Medical Associates, P.C, SPHP's affiliated Medical Group, and targeted volume growth through a 5-point growth strategy. SPHP is also in the process of performing a Facility Rationalization Plan (FRP) to determine which facilities and programs best meet the needs of the community and contribute to SPHP's success. With the majority of the combined loss being generated by the St. Mary's campus this campus will be a significant area of focus of the FRP. The 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	St. Peter’s Health Partners Pre-Merger and Post-Merger Organizational Charts
BFA Attachment B	St. Peter’s Health Partners Albany, NY 2016 and 2017 consolidated certified financial statements (including Supplemental Schedules)
BFA Attachment C	Supplemental 2017 certified financial data - Samaritan & St Mary’s Hospitals

Public Health and Health Planning Council

Project # 181404-C
Albany Medical Center Hospital

Program:	**Hospital**	***County:***	**Albany**
Purpose:	**Construction**	***Acknowledged:***	**June 19, 2018**

Executive Summary

Description

Albany Medical Center Hospital (AMCH), a 716-bed, voluntary not-for-profit, Article 28 acute care hospital located at 43 New Scotland Avenue, Albany (Albany County), requests approval to renovate two floors of the M Building at the main hospital facility as Medical/Surgical units to add 32 net new Medical/Surgical beds. The facility is currently licensed for 399 Medical/Surgical beds. Upon completion of the project, the medical/surgical bed count will increase to 431 and the overall total certified bed capacity will increase to 748 beds.

The proposal represents the creation of additional Medical/Surgical unit space to reduce the existing two-bed patient rooms, decompress current capacity constraints, increase inpatient efficiencies, and provide a more patient-centered facility. The project consists of the interior renovation of existing space with no addition or increase in building area proposed.

The M Building consists of nine floors located at the center of the hospital and currently has patient rooms on the fourth and fifth floors. The M2 and M3 medical/surgical units located on the second and third floors of the building are currently in use as treatment units for apheresis and dialysis, including various support space, as well as office and storage functions. These functions will be relocated to the second floor of the A Building as part of a separate, previously submitted project (CON 172222). The proposed M Building renovation will result in contiguous inpatient care units on floors two through five, which will allow for increased efficiency of patient care. The renovated M2 floor will provide 16 private Medical/Surgical rooms for spine surgery patients, and M3 will provide 16 private Medical/Surgical rooms for general surgery patients. The M2 Spine unit will be approximately 12,295 gross square feet, and the M3 General Surgery unit will be approximately 12,240 gross square feet. Patient surgeries, including spine, are expected to be general and will not require intensive recovery support in terms of observation or equipment. Associated office functions will be located immediately adjacent to the unit in the A Building

OPCHSM Recommendation

Contingent Approval

Need Summary

Albany Medical Center's medical surgical utilization grown significantly the last few years. In 2013 the med/surg utilization was 78.1% and in 2016 that increased by 18% to 92.1%. The addition of these 32 beds will help bring utilization closer to the department's planning standard by reducing it to 86.8%.

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 $12,579,945 will be met via $1,286,285 accumulated funds, a $8,499,000 mortgage at 4.26% interest for a 25-year term amortized over 27-years, and a $2,794,660 equipment financing loan over 7 years at 4% interest. Bank of America has provided a letter of interest at the stated terms for the equipment financing. On April 11, 2017, AMCH entered into a $65,000,000 mortgage with Prudential Huntoon Paige Associates, LLC in which the proceeds of the loan would be used for capital projects, including the M2 and M3 medical surgical unit renovation project. The loan is insured by HUD. The incremental budget is as follows:

Revenues	$31,655,940
Expenses	18,416,349
Gain	$13,239,591

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval contingent upon:
1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-02. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:
1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before December 15, 2018 and construction must be completed by May 31, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date
October 11, 2018

Need and Program Analysis

Background
Albany Medical Center Hospital is seeking approval for the renovation of two floors of the M Building at the main hospital facility as medical surgical units, and a net increase of thirty-two beds.

Analysis

Table 1: Albany Medical Center Beds, Source: HFIS			
Bed Type	**Current Beds**	**Bed Change**	**Beds After Completion**
AIDS	15		15
Bone Marrow Transplant	6		6
Coronary Care	20		20
Intensive Care	60		60
Maternity	39		39
Medical / Surgical	399	32	431
Neonatal Continuing Care	14		14
Neonatal Intensive Care	13		13
Neonatal Intermediate Care	29		29
Pediatric	55		55
Pediatric ICU	19		19
Physical Medicine and Rehabilitation	21		21
Psychiatric	26		26
Total	**716**	**32**	**748**

Table2: Albany Medical Center Hospital, Bed Utilization, Source SPARCS							
	Current Beds	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Med/Surg	521	71.5%	73.8%	78.1%	85.3%	91.0%	92.1%
Pediatric	74	50.8%	52.3%	47.5%	50.3%	51.8%	50.0%
Obstetric	39	66.6%	62.5%	59.3%	64.5%	64.4%	66.9%
General Psychiatric	26	89.4%	99.6%	86.7%	102.5%	107.5%	101.7%
High-Risk Neonates	56	68.8%	65.9%	68.6%	72.4%	75.1%	75.6%
Total	**716**	**69.8%**	**71.5%**	**73.8%**	**80.6%**	**85.3%**	**86.0%**

SPARCS data for 2017 is not yet available.

Albany Medical Center is the area's trauma center and has a high inpatient medical/surgical utilization rate at 92.1 percent for 2016. With increasing demand and current capacity restraints, adding an additional 32 medical surgical beds will help improve delivery of care to recovering patients.

Prevention Agenda
Albany Med noted that the proposed project does not directly address the hospital's Prevention Agenda priorities. The priorities selected for action in the most recent community service plan include opiate abuse related to the goal of preventing substance abuse disorders and the prevention and management of chronic disease, with a focus on diabetes. To address these priorities, Albany Med stated that they are implementing the following evidence-based interventions:

- Prediabetes care with evidence-based screening tools and marketing;
- Adult self-management programs that include best practices/evidence-based strategies;
- Nutrition and beverage standards;
- Physical activity in childcare centers, school districts, community venues, and worksites; and
- Provider education, including prescribing guidelines, community resources and patient education, and New York State Opioid Overdose Prevention Training.

Through a regional approach led by the Healthy Capital District Initiative, Albany Med is collaborating with local health departments, other hospitals, and community-based organizations on community health improvement planning.

Albany Medical Center Hospital did not report spending on community health improvement services in the 2016 Schedule H filing, and is encouraged to increase investments in the Prevention Agenda initiatives they have committed to implement and reflect them on Schedule H. At the very least an estimate of community health improvement services spending by the hospital and its affiliated organizations is needed.

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

Increased inpatient utilization overall, and medical/surgical utilization in particular, necessitate additional medical/surgical beds.

Recommendation

From a need and programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment of $12,579,945, detailed as follows:

	Total
Renovation and Demolition	$7,033,400
Design Contingency	45,000
Construction Contingency	703,340
Architect/Engineering Fees	450,000
Other Fees	15,000
Moveable Equipment	4,010,000
Financing Costs	125,670
Interim Interest	126,735
CON Fee	2,000
Additional Processing Fee	68,800
Total Project Cost	$12,579,945

Project costs are based on a construction start date of December 15, 2018, and approximately a 5-month construction period.

The applicant will provide financing to meet the total project cost as follows:

Accumulated Funds	$1,286,285
FHA 241/HUD Insured Mortgage (4.26%, 25 years, 27-year amortization)	$8,499,000
Taxable Equipment Financing (over 7 years @ 4%)	$2,794,660

Bank of America has submitted a letter of interest for the equipment financing.

On April 11, 2017, AMCH entered into a $65,000,000 mortgage with Prudential Huntoon Paige Associates, LLC in which the proceeds of the loan would be used to fund for capital projects, including the M2 and M3 medical surgical unit renovation project. The loan is insured by HUD and subject to HUD's receipt and approval of plans and specifications for the project, a guaranteed maximum price for construction, and the CON approval from the New York State Department of Health.

Incremental Operating Budget

The applicant has submitted an incremental operating budget for the renovation of two floors of the M Building at the main hospital facility as medical surgical units, in 2018 dollars, during the first and third years after the completion of the project, summarized below:

	Year One		Year Three	
	Per Disch.	Total	Per Disch.	Total
Revenues	$13,379.19	$30,798,884	$13,379.52	$31,655,940
Expenses				
Operating	$7,271.40	$16,738,761	$7,207.27	$17,052,406
Capital	374.58	862,295	576.47	1,363,943
Total Expenses	$7,645.98	$17,601,057	$7,783.74	$18,416,349
Gain		$13,197,827		$13,239,591
Utilization (Discharges)		2,302		2,366
Cost Per Discharge		$7,645.98		$7,783.74

Revenue, expense and utilization assumptions are based on the historical experience of the hospital. Operating expenses are increasing due to an increase in patient volume during the third year. Capital expenses are increasing due to mortgage interest and moveable equipment depreciation.

Utilization broken down by payor source during the first and third years are as follows:

Payor	Year One & Year Three
Medicaid FFS	4.0%
Medicaid MC	13.0%
Medicare FFS	32.0%
Medicare MC	18.0%
Commercial FFS	18.0%
Commercial MC	12.0%
Private Pay/Other	3.0%

Capability and Feasibility

Total project cost of $12,579,945 will be met via $1,286,285 accumulated funds, a $8,499,000 mortgage at 4.26% interest for a 25-year term amortized over 27 years, and a $2,794,660 equipment financing loan over 7 years at 4%. Bank of America has provided a letter of interest at the stated terms for the equipment financing. On April 11, 2017, AMCH entered into a $65,000,000 mortgage with Prudential Huntoon Paige Associates, LLC in which the proceeds of the loan would be used for capital projects, including the M2 and M3 medical surgical unit renovation project. The loan is insured by HUD.

Working capital requirements are estimated at $3,069,392 based on two months of third year expenses. The applicant will fund working capital from operations. BFA Attachment A is the 2016 and 2017 certified financial statements of AMCH, which indicates the availability of sufficient funds for the equity contribution to meet the total project cost.

The submitted budget indicates an incremental excess of revenues over expenses of $13,197,827 and $13,239,591 during the first and third years, respectively. Revenues are based on the hospital's reimbursement rates. The submitted budget appears reasonable.

As shown on BFA Attachment A, the Hospital had a positive working capital position and net asset position from 2016 through 2017. Also, the Hospital achieved an operating income of $33,106,000 in 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 - 2016 and 2017 certified financial statements of Albany Medical Center Hospital

Public Health and Health Planning Council

Project # 181193-B
Northern New York ASC, LLC d/b/a Northern New York Center for Surgery

Program:	**Diagnostic and Treatment Center**	***County:***	**Jefferson**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**March 29, 2018**

Executive Summary

Description

Northern New York ASC, LLC d/b/a Northern New York Center for Surgery, 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 facility will be housed in approximately 4,300 square feet of leased space in a to-be-constructed, one-story addition to an existing medical office building located at 1815 State Street, Watertown (Jefferson County).

The proposed members of the FASC are:

Northern New York ASC, LLC	
CFS-Watertown Holdings, LLC	**85%**
Noaman Sanni, M.D. (100%)	
Debra A. Koloms, M.D.	**15%**

The building is owned by Dr. Sanni and houses the private medical practice, M.B. Kayani Physician, P.C. d/b/a Center for Sight, of which Dr. Sanni is the sole shareholder. The building shell will be constructed by the landlord,1815 State Street, LLC, and leased to Northern New York ASC, LLC who will complete the fit-out to include one operating room, one procedure room and the requisite support space.

Dr. Sanni, a Board-Certified ophthalmologist, will serve as Medical Director and will be a practicing physician at the FASC. The initial medical staff will also include Dr. Koloms, a member of the applicant, and William Grace Crane, Jr., D.O. Both ophthalmologists are employees of the Center for Sight. The procedures are currently being performed by the physicians in their private practice and in the various local hospitals within the Tug Hill Seaway region, including Samaritan Medical Center where approximately 940 of the estimated procedures are being performed.

OPCHSM Recommendation

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

Need Summary

The center will have one operating room and one procedure room. The FASC expects to draw patients from Jefferson, Lewis and St. Lawrence counties (the Tug Hill Seaway region), which represents the catchment area of the medical practice. Each physician has provided a letter in support of their volume estimates. The number of projected procedures is 3,346 in Year One with Medicaid at 3.0% and Charity Care at 2.0%.

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

The total project cost of $2,385,457 will be funded with $425,177 members' equity, a $1,185,000 leasehold improvement loan at 5% interest for a ten-year term, a $265,280 equipment loan at 5.5% interest for a seven-year term, and landlord funding for the shell space via a $510,000 construction loan for a ten-year term with a fixed interest rate (to be determined). Watertown Savings Bank has provided a letter of interest for the all respective financings. The proposed budget is as follows:

Revenues	$1,158,611
Expenses	818,763
Net Income	$339,848

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 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 satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
   a. Data displaying actual utilization including procedures;
   b. Data displaying the breakdown of visits by payor source;
   c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
   d. Data displaying the number of emergency transfers to a hospital;
   e. Data displaying the percentage of charity care provided;
   f. The number of nosocomial infections recorded during the year reported;
   g. A list of all efforts made to secure charity cases
   h. A 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 leasehold improvement loan commitment, 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 an executed construction loan commitment (landlord) for the shell space construction, acceptable to the Department of Health. [BFA]
10. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
11. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

12. Submission of MEP 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 December 17, 2018 and construction must be completed by July 31, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of 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
October 11, 2018

Need Analysis

Analysis

The primary service area consists of Jefferson County which has one single-specialty freestanding ambulatory surgery center and three hospitals providing multi-specialty surgery services. The table below shows the number of patient visits for facilities in Jefferson County for 2015 and 2016.

ASC Type	Facility Name	Total Patient Visits	
		2015	2016
Single	North Country Orthopedic Ambulatory Surgery Center, LLC	1,648	1,503
Multi	Samaritan Medical Center	8,383	8,184
Multi	River Hospital, Inc.	684	425
Multi	Carthage Area Hospital Inc	1,864	1,921
Total Visits		**12,579**	**12,033**

Source: SPARCS-2017

The number of projected procedures is 3,346 in Year One and 3,546 in Year Three. These projections are based on the current practices of participating surgeons. Initially, the new ambulatory surgery center will be operating two days per week. The table below shows the projected payor source utilization for Years One and Three.

Projections-181193	Year One		Year Three	
	Volume	%	Volume	%
Medicaid	100	3.0%	106	3.0%
Medicare	1,640	49.0%	1,738	49.0%
Commercial	1,305	39.0%	1,383	39.0%
Private Pay	67	2.0%	71	2.0%
Charity Care	67	2.0%	71	2.0%
Other (Tricare)	167	5.0%	177	5.0%
Total	**3,346**	**100.0%**	**3,546**	**100.0%**

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis - NYS, MVP Essential, and UHC Community Plan. The center will receive referrals from Community Health Centers of the North Country and North Country Family Health Center, both FQHC's. 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 an additional licensed ambulatory surgery center for the residents of Jefferson County and the Tug Hill Seaway region.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

Proposed Operator	Northern New York ASC, LLC
Doing Business As	Northern New York Center for Surgery
Site Address	1815 State Street Watertown, New York 13204 (Jefferson County)
Surgical Specialties	Ambulatory Surgery Single Specialty – Ophthalmology
Operating Rooms	1 (one)
Procedure Rooms	1 (one)
Hours of Operation	Initially, the Center will be open two days per week, 7:00 a.m. to 3:00 p.m. for regularly scheduled cases. Other hours will be available, if needed, to accommodate scheduling issues
Staffing (1st Year / 3rd Year)	3.0 FTEs / 3.0 FTEs
Medical Director(s)	Noaman Sanni, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Samaritan Medical Center 2.3 miles / 7 minutes
On-call service	If a patient requires assistance during hours when the Center is closed, the patient will call his surgeon's service and will be directed to the surgeon or to another ophthalmologist on call

Character and Competence

The members Northern New York ASC, LLC are:

Member	**%**
CFS-Watertown Holdings, LLC	**85%**
Noaman Sanni, M.D. (100%)	
Debra A. Koloms, M.D.	**15%**

Dr. Sanni is a board-certified practicing ophthalmologist with over 24 years of experience. Since July 1995, he has operated a private practice, the Center for Sight, in Watertown, New York. Dr. Koloms is also a board-certified ophthalmologist who works at the Center for Sight. She has 30 years of experience performing many cataract procedures and over 1,000 radial keratotomy procedures. In addition, she has performed many corneal transplants, oculoplastic procedures and a wide variety of ophthalmic procedures.

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. Koloms disclosed an incident that occurred in April 2013 and was reported in February 2015 involving a patient who alleged that removal of a cyst resulted in needing additional surgery and scarring. Dr. Koloms stated that she was not the original surgeon, however, she did revise the patient's scar. The claim was closed on March 21, 2016 for $10,500.

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

The center will encourage and facilitate the establishment of a relationship with a primary care provider if a patient has not already done so. The surgery center will work with (and accept referrals from) two local federally qualified health care centers as well as participate with traditional Medicaid and Medicaid managed care plans. In addition, the center will have a financial assistance policy and sliding fee schedule for services for those who express hardship in paying for services.

The applicant intends on utilizing an Electronic Medical Record and will consider participating in a Regional Health Information Organization (RHIO)/Health Information Exchange (HIE). Additionally, the applicant will consider participating in one or more Accountable Care Organizations (ACOs) subject to its eligibility to do so.

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 are summarized below:

Date:	March 5, 2018
Premises:	4,300 gross square feet located at 1815 State Street, Watertown, New York
Landlord:	1815 State Street, LLC
Tenant:	Northern New York ASC, LLC
Term:	15 Years with renewal options for 2 additional five-year terms.
Terms:	$107,500 ($25.00 per sq. ft.) Base rent will increase 2% annually starting in year six.
Provisions:	Tenant will pay for utilities, taxes 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 sole member of 1815 State Street, LLC is Noaman Sanni, M.D., the majority member of the proposed FASC. Letters have been provided from two New York licensed realtors attesting that the rental rate is of fair market value.

Administrative Services and Billing Agreement

The applicant submitted an executed Administrative Services and Billing Agreement, summarized below:

Date:	March 5, 2018
Contractor:	M.B. Kayani Physicians, P.C. d/b/a Center for Sight
Licensed Operator:	Northern New York Center ASC, LLC
Services Provided:	Billing, claims collections, tracking accounts receivable, monthly reporting, coordinate prior authorizations, pre-determinations, follow operator's charity care policies, budget services and computer support as well as human resource support.
Term:	1 year with automatic renewal each year thereafter.
Compensation:	Monthly Fee of $4,000 ($48,000 annually)

The Agreement provides that Northern New York Center ASC, LLC retains ultimate authority, responsibility and control in all final decisions associated with the services. In accordance with the Department's Administrative Services 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 to ensure that the Licensed Operator retains ultimate control for the operations. 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. Compensation was accounted for in the budget and depending on needs and services can vary slightly.

Total Project Costs and Financing

Total project costs are estimated at $2,385,457 broken down as follows:

New Construction	$1,557,938
Site Development	51,500
Design Contingency	153,375
Construction Contingency	76,688
Architect/Engineering Fees	159,413
Other Fees	50,000
Movable Equipment	286,506
Telecommunications	15,000
Interim Interest Expense	20,000
CON Application Fee	2,000
Additional CON Processing Fee	13,037
Total Project Cost	$2,385,457

Project costs are based on a construction start date of December 17, 2018, with an eight-month construction period.

The applicant's financing plan is a s follows:

Members' Equity	$425,177
Equipment Loan (7-year term, 5.5% interest)	265,280
Tenant Improvement Loan (10-year term, 5% interest)	1,185,000
Landlord Construction Loan (10-year term, fixed interest rate TBD)	510,000
Total	$2,385,457

BFA Attachment A is the personal Net Worth Statement of the applicant members, which indicate sufficient liquid resources exist to fund the equity requirement for project costs. Watertown Savings Bank has provided a letter of interest to finance the applicant's tenant improvement loan and the equipment loan at the stated terms, and the landlord's construction loan with a fixed interest rate to be determined.

Operating Budget

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

	Year One		Year Three	
Revenues	Per Proc.	Total	Per Proc.	Total
Medicaid (FFS & MC)	$289	$28,900	$289	$30,634
Medicare (FFS & MC)	$321	526,440	$321	557,898
Commercial (FFS & MC)	$353	460,665	$353	488,199
Private Pay	$353	23,651	$353	25,063
TriCare	$321	53,607	$321	56,817
Total Revenues		$1,093,263		$1,158,611
Expenses				
Operating	$146.66	$490,724	$148.73	$527,382
Capital	$98.21	328,619	$82.13	$291,216
Total Expenses	$244.87	$819,343	$230.86	$818,763
Net Income		$273,920		$339,848

Utilization (Procedures)	3,346	3,546
Cost Per Procedure	$244.87	$230.90

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

Payor	Years One & Three
Medicaid (FFS & MC)	3%
Medicare (FFS & MC)	49%
Commercial (FFS & MC)	39%
Private Pay	2%
Charity	2%
TriCare	5%

Revenues are based on the current 2018 Medicare fee schedule and adjusted as follows: the average Commercial and Private Pay rates are projected at 110% of the average Medicare rate, Medicaid is projected at 90% of the average Medicare rate, and TriCare is projected at 100% of the average Medicare rate.

Expense and utilization assumptions are based on the experience of the physicians in their private medical practice. The applicant has submitted physician letters in support of the utilization projections they expect to perform at the FASC. Also, data by CPT code detailing case volume, applicable Medicare payment rates, and cost per case have been provided in support of the budgeted revenue and expense projections. Close tear duct opening procedures (CPT 6761) account for 41.4% of the total year one projected procedures and have nominal cost associated with them. Cataract surgeries account for 18.5% of the total year one procedures. For such procedures, the cost of the lens is projected at $130 and the surgical supply pack cost is $100 for a total supply cost of $230. Other procedures (e.g., tear duct opening, trabeculoplasty, lesion removal) have nominal supply costs associated with the procedures. The budget appears reasonable given the relate costs and Medicare payment rates associated with the types of procedures to be performed at the FASC.

Capability and Feasibility

The total project cost is $2,385,457 for construction and moveable equipment. The applicant will fund the cost via members' equity of $425,177, a $265,280 equipment loan at 5.5% interest for a seven-year term, and a leasehold improvement loan for $1,185,000 at 5% interest for a ten-year term. The landlord, 1815 State Street, LLC, will provide the remaining $510,000 to fund the shell space construction via a ten-year loan with a fixed interest rate to be determined. Watertown Savings Bank has provided a letter of interest for the tenant improvement and equipment loans at the stated terms. Watertown Savings Bank has also provided a letter of interest for the landlord's construction loan at the stated terms with the interest rate to be determined.

Working capital requirements are estimated at $136,460 based on two months of third year expenses. Working capital will be funded via of $68,460 equity from the proposed members' personal assets with the $68,000 balance to be financed over a five-year term at 5% interest. Watertown Savings Bank has provided a letter of interest at the stated terms. Noaman Sanni, M.D. has submitted an affidavit indicating he will provide equity disproportionate to the ownership interest. BFA Attachment A is the net worth statements of the applicant members, which supports the ability to meet equity and working capital requirements. BFA Attachment B is Northern New York for Surgery, LLC's pro forma balance sheet, which shows operations will start with $229,693 in members' equity.

Northern New York for Surgery, LLC projects an operating excess of $274,000 and $339,848 in the first and third years, respectively. Revenues are based on the current 2018 Medicare fee schedule adjusted for Medicaid at 90%, TriCare at 100%, and Commercial and Private Pay at 110% of the average Medicare payment rates for ophthalmology cases. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Surrounding Hospitals

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. The Department sent letter to the following hospitals:

Samaritan Medical Center --- **See Response Below**
830 Washington Street
Watertown, New York 13601

Claxton-Hepburn Medical Center --- **See Response Below**
214 King Street
Ogdensburg, New York 13669

River Hospital, Inc. --- **See Response Below**
4 Fuller Street
Alexandria Bay, New York 13607

Gouverneur Hospital --- **No Response**
77 West Barney Street
Gouverneur, New York 13642

Carthage Area Hospital Inc --- **No Response**
1001 West Street
Carthage, New York 13619

Facility: Samaritan Medical Center

The three surgeons performed 930 cases in 2016 and 830 cases in 2017 at Samaritan Medical Center (SMC). Of the 830 cases in 2017, over 70% were Medicare and 12.4% were Medicaid. SMC indicates their ORs have excess capacity and the surgeons are allocated 34,650 minutes of block time, but only use about 68.5% of that time. The hospital can offer more time to the surgeons if needed and thus there is no need for another provider in the community. SMC contends that lost revenue from the service line will destabilize other surgical services by impacting the hospital's ability to cover fixed costs. SMC calculates the hospital received $2,126,962 in net patient service revenue from the 830 cases performed in 2017, and total operating expenses for this service of $1,418,167, for a net operating gain of $708,709 for this service line.

SMC's ambulatory eye surgery service is profitable and likely buffers losses related to other services (inpatient and outpatient) provided. In 2017, eye surgeries accounted for 10% of SMCs total net outpatient ambulatory surgery (AS) revenue and 3.5% of total net outpatient service revenue overall. Based on the cost for eye surgery cases in 2017 provided by SMC, eye cases accounted for 6.9% of total AS cost and 2.4% of total outpatient cost overall. Though outpatient utilization statistics are not available for 2017 (filling error), this revenue and cost data for ophthalmology services does not provide strong evidence that the loss of the cases generated by the three physicians would significantly impact their financial sustainability. In 2016, eye surgery cases accounted for 9.9% of total outpatient AS procedures, 14.8% of net outpatient AS service revenue and 4.7% of total net outpatient revenue overall, a somewhat bigger footprint, but not overly strong support for negatively impacting the financial sustainability of SMC.

SMC's 2014-2017 certified financial statements show a financially sustainable entity, although operating performance has shown compression and variability over the period. The hospital's operating income fluctuated from a $1.06 million gain in 2014 (0.44 margin) toa $10.17 million loss in 2015 (-3.9% margin) to a $2.89 million gain in 2016 (1.1% margin) to a $2.55 loss in 2017 (-0.90 margin. The loss in 2015 was driven largely by increased labor costs (salary increased $8 million, fringe increased another $4 million, supply costs increased by $12.6 million). Operating revenues increased 17.47% over the period, but operating costs increased 19.04% indicating that expenses are accelerating more than revenues from operations. Working capital has remained positive although declining, indicating ability to meet short-term debt. Their current ratio remains above 1.0 which is favorable but decreased from 2.02 (2014) to 1.37 (2017). The hospital received $13.47 million VAP funding over SFY 16-17 (last quarter) and SFY 17-18 to assist with restructuring their long-term care services (Samaritan Keep Home and Samaritan Senior Village, SMC's skilled nursing facility (SNF) affiliates). Although they had a $2,550,574 operating loss in 2017, without VAP funding the loss would have been close to $9 million. Effective May 10, 2017, SMC became the active parent/co-operator of the two SNFs allowing the facilities to access higher hospital-based Medicaid payment rates (a $15 per diem operating cost rate increase) that will favorably impact revenues going forward. Medicare and Medicaid account for 52% of total patient service revenue in 2017.

Per the Department's analysis, the loss of net income from this service line represents 0.2% of SMC's total operating revenue and will have a marginal negative impact on its financial sustainability.

Facility: Claxton-Hepburn Medical Center

According to Claxton-Hepburn Medical Center (Claxton), one of the participating surgeons performed approximately 165 procedures at the hospital last year, which represents approximately $367,093 of net patient service revenue or 0.3% of its total operating revenue based on the hospital's 2017 patient volume for ophthalmology surgery. The applicant, however, states that none of those procedures are projected to move to the ASC.

Per the hospital's 2014-2017 certified financial statements, operating income fluctuated widely over the period with notable losses of $8.4M in 2014 and $3M in 2016. However, the hospital achieved an operating gain of $694,894 in 2017. It is noted that in 2016, the hospital received a $14,376,607 EHCPSP Grant to retire debt which helped to improve profitability and cash flow. Operating revenues increased 20.4% overall from 2014 to 2017, with operating costs increasing 9.2% indicating that revenues accelerated more than costs from operations. Working capital has remained positive, indicating ability to meet short-term debt. Their current ratio decreased slightly from 1.61 (2014) to 1.41 (2017) with an average of 1.54 for the period shown.

Per the Department's assessment, even if the applicant moves all 165 cases currently performed at Claxton, that represents only 2.2% of the hospital's reported total ambulatory surgery net patient service revenue and 0.3% of its total operating revenue. The loss of revenue from the service line will have a marginal negative financial impact on the hospital.

Facility: River Hospital

River Hospital is opposing the application because they have made significant investments in ophthalmology technology with a goal of developing a robust ophthalmology center in the future. While the proposed ASC will be 30 miles from the hospital, and the surgeons have admitting privileges at the hospital, River acknowledges that none of the surgeons have performed procedures at the hospital.

There is no financial impact to River Hospital of the proposed ASC.

Supplemental Information from Applicant

Need and Source of Cases: The Center will provide ambulatory surgery services to patients of its medical staff members. All of the members of the Center's medical staff are employed by M.B. Kayani, Physician, P.C. d/b/a Center for Sight. The applicant feels that community members should have the opportunity to have cataract surgery performed at a free-standing, state-of-the-art ambulatory surgery center specializing in eye procedures, which will be more patient friendly, convenient and less intimidating than a hospital outpatient setting and will result in lower costs for patients and payers. The Center would be the first freestanding single-specialty (ophthalmology) ambulatory surgery center in the North Country.

Staff Recruitment and Retention: The Center would be the first freestanding single-specialty (ophthalmology) ambulatory surgery center in the North Country. The Center plans to offer competitive salary and benefits and will maintain good human resource and communication systems. In addition, the Center will provide a positive work environment and flexible working hours.

Office-Based Cases: The applicant states that 2,424 of the 3,364 projected procedures are currently performed in an office-based setting. The calculates to 940 procedures that would otherwise be performed in an area hospital, virtually all of which would be at Samaritan Medical Center.

DOH Comment

Per the Department's analysis, the loss of revenue from this service line will have a marginal negative financial impact on SMC and Claxton and no impact on River. The Department concludes that the comments from area hospitals provide no basis for reconsideration of the recommendation for approval of the proposed ASC.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members of Northern New York for Surgery, LLC
BFA Attachment B	Pro Forma Balance Sheet of Northern New York for Surgery, LLC
BFA Attachment C	Organizational Chart of the Proposed Members
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 181333-E
Lynbrook SC, LLC d/b/a Lynbrook Surgery Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Nassau**
Purpose:	**Establishment**	***Acknowledged:***	**May 10, 2018**

Executive Summary

Description

Lynbrook SC, LLC d/b/a Lynbrook Surgery Center, a New York limited liability company, is requesting to be established as the new operator of South Shore Ambulatory Surgery Center, LLC (the Center), a multi-specialty, proprietary, Article 28 freestanding ambulatory surgery center (FASC) located at 444 Merrick Road, 4th Floor, Lynbrook (Nassau County). South Shore Ambulatory Surgery Center, LLC (SSASC) is the current licensed operator of the facility, which that opened in October 2002. The business operation is not being sold. Rather, upon Public Health and Health Planning Council (PHHPC) approval, SSASC will close, Lynbrook SC, LLC will purchase certain assets used to operate the Center from the current entity that owns them, and the facility will be renamed Lynbrook Surgery Center. The FASC's existing lease agreement will remain in place and will be assigned to Lynbrook SC, LLC. The applicant is not proposing to add or change any services or to relocate or renovate the facility.

South Shore Operating Company, LLC (SSOC), a Delaware limited liability company, became the administrative service provider to the Center under the terms of an Administrative Services Agreement signed on July 31, 2002. ASC Interests, LLC, a New York limited liability company, owns 77.7% membership interest in SSOC. SSOC and ASC Interest, LLC own substantially all of the physical assets used in operating the FASC. On May 3, 2018, SSOC and ASC Interest, LLC, collectively the Sellers, entered into an Asset Purchase Agreement with Lynbrook SC, LLC for the sale of the physical assets for a net purchase price of $16,873,719 ($17,905,000 less $1,031,281 working capital adjustment). It is noted that the financial results of SSASC and SSOC are combined in the certified financial statements as required under generally accepted accounting principles (GAAP). Upon PHHPC approval of this application, SSOC will cease to provide administrative services to the FASC and SSASC will cease to exist (closure plan to be submitted to the Department under separate cover).

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

Current Operator South Shore Ambulatory Surgery Center, LLC	
Members	
George Petrossian, M.D.	33.4%
Jefferey Stahl, M.D.	33.3%
Robert Hamby, M.D.	33.3%

Proposed Operator Lynbrook SC, LLC	
Member	
Northwell Lynbrook ASC Ventures, LLC	100%

The sole member of Lynbrook SC, LLC is Northwell Lynbrook ASC Ventures, LLC, whose sole member is North Shore University Hospital (NSUH), an 804-bed, voluntary not-for-profit, Article 28 hospital located at 300 Community Drive in Manhasset, (Nassau County). NSUH's sole member is Northwell Healthcare, Inc., whose sole corporate member is Northwell Health, Inc., an integrated healthcare delivery system comprised of numerous hospitals across the New York metropolitan area, as well as physician practices and providers of subacute care including home care, long-term care and hospice services. Also, NSUH is a member of the Northwell Health Obligated Group, which was formed to provide its members with an enhanced credit position and expanded access to capital markets.

OPCHSM Recommendation

Contingent Approval

Need Summary

The number of projected visits is 7,500 in Year One with Medicaid at 4.50% and Charity Care at 0.51%.

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

Lynbrook SC, LLC will acquire physical assets used to operate South Shore Ambulatory Surgery Center, LLC for $16,873,719 funded by liquid resources from Northwell Health, Inc. Funding was confirmed via a letter. There are no project costs associated with this application. The projected budget is as follows:

	Year One	Year Three
Revenues	$13,207,825	$14,018,304
Expenses	$11,249,538	$12,187,109
Gain/(Loss)	$1,958,287	$1,831,195

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

<u>Approval, contingent upon:</u>

1. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed assignment and assumption of lease, acceptable to the Department of Health. [BFA]
3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
6. Submission of a photocopy of the Restated Articles of Organization of Lynbrook SC, LLC, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of an Administrative Services Agreement, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an Assignment and Assumption of Lease, which is acceptable to the Department. [CSL]

<u>Approval conditional upon</u>:

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

October 11, 2018

Need Analysis

Analysis

The primary service area is Nassau County. South Shore Ambulatory Surgery Center has been in operation since 2002. The center provides the following types of surgery: orthopedic, pain management, ophthalmology, plastic and podiatry services. The new operator expects to provide similar surgery types.

The table below shows the Medicaid and Charity Care utilization under the current operators of the ASC.

Payor	2015	2016	2017
Medicaid	0.69%	0.59%	0.43%
Charity Care	0.00%	0.00%	0.00%
Total	0.69%	0.59%	0.43%

The table below shows the Medicaid utilization of the operating ASC's in Nassau County for 2015 & 2016. Most of the ASC's in Nassau County were opened before the limited life approval process was initiated. The only ASC reporting charity care in the county was Meadowbrook Endoscopy Center which reported 1.6% for 2015 and 0.7% for 2016 for their charity care utilization.

Name	**City**	**Type**	**Medicaid**		**Year Opened**
			2015	**2016**	
Day OP of North Nassau Inc	Great Neck	Multi	0.09%	0.00%	1999
Day-OP Center of Long Island Inc	Mineola	Multi	8.72%	1.76%	1989
Endoscopy Center of Long Island	Garden City	Single	0.48%	0.67%	2003
Garden City Surgi Center	Garden City	Multi	6.81%	5.60%	2008
Island Eye Surgicenter	Carle Place	Single	6.98%	10.30%	1999
Long Island Ctr for Digestive Health	Garden City	Single	0.00%	0.00%	2006
Meadowbrook Endoscopy Center	Westbury	Single	20.68%	18.99%	2008
Pro Health Ambulatory Surgery Ctr	Lake Success	Multi	0.00%	0.04%	1998
South Shore Ambulatory Surgery Ctr	**Lynbrook**	**Multi**	**0.69%**	**0.59%**	**2002**
Average % for the County			**4.94%**	**4.22%**	

The number of projected visits is 7,500 in Year One and 7,727 in Year Three. The table below shows the projected payor source utilization for Years One and Three.

CON 181333	**Year 1**		**Year 3**	
Projections	**Volume**	**%**	**Volume**	**%**
Medicaid- MC	338	4.50%	348	4.50%
Medicare- FFS	1,733	23.11%	1,785	23.11%
Comm Ins - FFS	3,675	49.00%	3,786	49.00%
Private Pay	14	0.19%	15	0.19%
Charity Care	38	0.51%	39	0.50%
Other	1,702	22.69%	1,754	22.70%
Total	7,500	100.00%	7,727	100.00%

The Center states it is being cautious at projecting Medicaid at 4.5% and charity care at 0.5% based on the fact that no charity care has been provided at this site in the recent past. However, the number of Medicaid enrollees was approximately 13% of the county's population in 2016.

The Center plans to contact with the following Managed Medicaid care plans: United Healthcare Community and Healthfirst. The center plans to reach out to Family Health Center/Long Island FQHC and Advantage Care Health Center to provide service to the underinsured in the service area. For more outreach, Lynbrook Ambulatory Surgery Center, in partnership with Northwell Health Patient Access Center, will create a dedicated toll-free number, to be used exclusively to engage patients in need of ambulatory surgery.

Conclusion

Approval of this project will allow for continued access to multi-specialty surgery services to the residents of Nassau County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Proposal

The sole member of Lynbrook is Northwell Lynbrook ASC Ventures, LLC. Northwell Lynbrook ASC Ventures, LLCs sole member is North Shore University Hospital (NSUH), a voluntary, not-for-profit, 804-bed, tertiary care hospital located in Nassau County. The sole member of NSUH is Northwell Healthcare, Inc., whose sole member is Northwell Health, Inc. The boards of NSUH, Northwell Healthcare and Northwell Health, Inc. are mirror boards.

Lynbrook is not proposing to add any services or expand or renovate the Center at this time. Upon approval of this project, Lynbrook SC, LLC will change its name to Lynbrook Surgery Center, LLC.

Character and Competence

The proposed Board of Directors for Lynbrook SC, LLC will be comprised of the following individuals:

Frank J. Besignano	Alan I. Greene	John Mc Govern
Roger A. Blumencranz	Paul B. Guenther	Ralph A. Nappi
Robert W. Chasanoff	William O. Hiltz	Richard B. Nye
Mark L. Claster	Kenneth Jacoppi	Sharon Pattterson
Michael J. Dowling	Saul B. Katz	Lewis S. Ranieri
Michael A. Epstein	Cary Kravet	Robert D. Rosenthal
Michael E. Feldman	Jeffrey B. Lane	Barry Rubenstein
Catherine C. Foster	Seth Lipsay	Michael I. Schwartz
Loyd K. Friedlander	William L. Mack	Kenneth Taber
Lloyd M. Goldman	F. J. McCarthy	Donald Zucker
Richard D. Goldstein	Patrick F. McDermott	Roy J. Zuckerberg

The managers of both Lynbrook SC, LLC and Northwell Lynbrook ASC Ventures, LLC are: Adam Boll; Laurence Kraemer; and John McGovern.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted by the board members, managers, and the medical director 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 and relatives’ ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Mr. Greene disclosed an affiliation with Eisenhower Medical Center (EMC) in Rancho Mirage, California. The California Department of Health (CADOH) reported that EMC has been subject to ten administrative penalties and monetary fines. Specifically, California’s health regulations require adverse incidents to be reported within five days and a $100/day fine is assessed for each day late. The CADOH determined that EMC failed to timely report one incident of sexual assault (August 2015) and nine incidents (January 2009 through June 2015) of breach of protected health information (PHI). EMC has paid fines totaling $6,112 and has appealed four of the breach infractions and $15,100 of associated fines.

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.

The following information was disclosed regarding Northwell-affiliated facilities:

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General 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 an S&O dated July 8, 2010, Syosset Hospital was fined $42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

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 U.S. 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 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) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

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. And, 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. To date, the government has not indicated whether there is any potential liability in either 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, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHHs conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

In an S&O dated November 21, 2016, Long Island Jewish Medical Center was fined $4,000 for deficient practice related to infection control in surgical areas. The facility had 21 OR running and observations in 12 of the rooms revealed 24 staff were not following acceptable of standards of practice related to the use of proper attire and exposure of hair during procedures.

In an S&O dated March 6, 2017, Plainview Hospital was fined $4,000 for deficient practice related to infection control. Specifically, facility staff (including physicians, podiatrists, radiologists, transporters, and physical therapist) failed to use standard infection control practices related to the use of PPE, handwashing, equipment cleaning, and following isolation precautions for patients with identified infectious diseases.

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

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire physical assets of the FASC, to be effectuated upon PHHCP approval. The terms are summarized below:

Date:	May 3, 2018
Sellers:	South Shore Operating Company, LLC & ASC Interests, LLC
Buyer:	Lynbrook SC, LLC (together with Northwell Health, Inc. as guarantor)
Asset Acquired:	Rights, title and interest in the business assets used in operating a surgery center at 444 Merrick Road, Suite 400, Lynbrook, NY, clear of liens including: leasehold title to real property; tangible assets, all furniture/fixtures/equipment, supplies, books, facility records, assigned & assumed contracts, agreements, warranties, intellectual property rights, domain names/addresses, all claims, cause of actions/judgements in favor of seller, assignable licenses and permits, trade name, goodwill, security deposits, patient & employee records, and phone & telefax numbers.
Excluded Assets:	Sellers' rights, title and interest up to the closing date for all cash and cash equivalents and short-term investments, all accounts receivables, all payor contracts not assigned, the purchase price, all medical records and patient billing records, the governing documents, corporate seals, books, and other corporate records, capital stocks, all benefits plans, all tax credits, refunds and recoveries, all intellectual properties not conveyed.
Assumption of Liabilities:	Liabilities and obligations arising with respect to operation of the Facility on and after the closing date.
Purchase Price:	$16,873,719 ($17,905,000 less working capital adjustment $1,031,281)
Payment of Purchase Price:	$50,000 Escrow Deposit upon signing. $16,823,719 due at closing.

Northwell Health, Inc. (the guarantor) will fund the entire project from liquid resources. Funding was confirmed via a letter. BFA Attachment D is Northwell Health, Inc.'s 2017 certified financial statement, which indicates sufficient liquid assets to cover the purchase price.

Administrative Services Agreement

Lynbrook SC, LLC has submitted a draft Administrative Service Agreement (ASA) to be effective upon PHHPC approval. The terms are summarized below:

Operator:	Lynbrook SC, LLC d/b/a Lynbrook Surgery Center, LLC
Contractor:	Northwell Healthcare, Inc.
Administrative Services:	Administrative services related to management of operator's fund, overseeing collections of accounts, payment of accounts indebtedness, budget and financial planning, accounting and financial records, internal audit, contracts for services, purchases and leases, insurance, managed care contracting, strategic planning and marketing, legal support, health care analytics, recruitment, expansion, human resources advisory services, benefit plans, distributions, compliance with laws, licensing and accreditation.
Term:	Commence on the effective date. Terminate on third anniversary of the effective date or automatically renew for one-year terms unless either party provide 90 days prior notice in writing to terminate.
Fees:	$300,000 per year. ($25,000 per month) 3% increase on each anniversary date.

Lynbrook SC, LLC will retain 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.

Lease Rental Agreement

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

Date:	September 18, 1997
Premises:	The entire fourth floor (22,500 sq. ft.) on premises located at 444 Merrick Road, Lynbrook, NY 11563
Landlord:	HP Lynbrook, LLC
Lessee:	South Shore Ambulatory Surgery Center, LLC
Term:	Terminates on April 30, 2029. One five-year renewal option.
Rental:	$100,974.61 per month effective May 2017.
Provisions:	Tenant responsible for proportionate share (22%) of real estate taxes, insurance, utilities and maintenance.

The Center’s existing lease agreement will not change and will be assigned to Lynbrook SC, LLC.

Assignment and Assumption of Lease

The applicant provided a draft Assignment and Assumption of Lease, the terms are summarized below:

Assignor:	South Shore Ambulatory Surgery Center, LLC
Assignee:	Lynbrook SC, LLC d/b/a Lynbrook Surgery Center
Landlord:	HP Lynbrook, LLC
Assignment:	All of assignor's rights, title and interest as tenant under agreement of Lease
Price:	$1

The applicant has provided an affidavit stating that the lease agreement is an arm’s length agreement. Letters from two independent licensed relators have been provided attesting that the lease cost per square foot is at fair market value.

Operating Budget

The applicant has submitted the current year of operations (2017) and their operating budget for the first and third years, in 2018/19 dollars, as shown below:

	Current Year		Year One		Year Three	
Revenue	Per Proc.	Total	Per Proc.	Total	Per Proc.	Total
Medicaid-FFS	$1,734	$55,491		$0		$0
Medicaid-MC		$0	$1,767	$597,339	$1,822	$633,994
Medicare-FFS	$1,734	$2,967,049	$1,769	$3,066,340	$1,823	$3,254,501
Commercial-FFS	$1,734	$6,615,600	$1,770	$6,504,357	$1,823	$6,903,487
Private Pay	$1,734	$27,746	$1,896	$26,549	$1,879	$28,177
All Other *	$1,734	$3,173,406	$1,770	$3,013,240	$1,823	$3,198,145
Other Income		$185,062		$0		$0
Total Revenue		$13,024,354		$13,207,825		$14,018,304
Expenses						
Operating	$1,361	$10,077,154	$1,323	$9,921,425	$1,372	$10,600,296
Capital	$210	$1,558,418	$177	$1,328,113	$205	$1,586,813
Total Expenses	$1,571	$11,635,572	$1,500	$11,249,538	$1,577	$12,187,109
Net Income		$1,388,782		$1,958,287		$1,831,195
Procedures		7,404		7,500		7,727

**All Other revenue consist of Gov't payor source of Worker's Compensation and No Fault.*

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

	Current Year		Year One		Year Three	
Payor	Proc.	%	Proc.	%	Proc.	%
Medicaid-FFS	32	0.43%	-	0.00%	-	0.00%
Medicaid-MC	-	0.0%	338	4.50%	348	4.50%
Medicare-FFS	1,711	23.11%	1,733	23.11%	1,785	23.11%
Commercial-FFS	3,815	51.52%	3,675	49.00%	3,786	49.00%
Private Pay	16	0.22%	14	0.19%	15	0.19%
Charity Care	-	0.0%	38	0.51%	39	0.50%
All Other *	1,830	24.72%	1,702	22.69%	1,754	22.70%
Total	7,404	100%	7,500	100%	7,727	100%

**All Other revenue consist of Gov't payor source of Worker's Compensation and No Fault.*

Budget projections are based on the following:

- Revenue, utilization, and expense assumptions are based on the Center's actual results, increased by less than 2% annually.
- Charity Care of 0.50% is based upon a cautious projection. To improve the efforts in treating the underserved population, the Center will comply with and participate in Northwell Health's charity care program and adopt their financial assistant policy. The Department however, expects the Center to make reasonable efforts to achieve a 2% charity care rate.

Capability and Feasibility

There are no project costs associated with this application. Lynbrook SC, LLC will acquire the physical assets used to operate South Shore Ambulatory Surgery Center, LLC for $16,873,719 ($17,905,000 less $1,031,281, working capital adjustment). Northwell Health, Inc. (the guarantor) will fund the entire project at closing from its liquid resources. Funding was confirmed via a letter.

Working capital requirements are estimated at $1,874,923 based on two months of first year expenses. Northwell Health Inc. will provide the working capital from its liquid resources, as confirmed via letter.

BFA Attachment D is Northwell Health, Inc.'s 2017 certified financial statement, which indicates sufficient liquid assets to cover the purchase price and working capital needs.

The submitted budget projects first and third year profits of $1,958,287 and $1,831,195, respectively. Revenues are based on current reimbursement methodologies for FASC services. Expenses are based on the proposed operators' experience. BFA Attachment E is Lynbrook Surgery Center LLC's Pro Forma Balance Sheet, which shows the entity will start with $18,748,642 in members' equity. The budget appears reasonable.

BFA Attachment B is South Shore Ambulatory Surgery Center, LLC's financial summary for 2015 through 2017, shows the entity had an average negative working capital of $830,161, an average negative equity position of $1,517,912 and an average net income of $612,884 for the period.
The negative working capital during the year 2015 was due to the Center operating at a breakeven level. During the fourth quarter of 2015, the Center went in network with additional insurance carriers which improved patient access to the Center, increased the caseloads, and increased net profits. BFA Attachment C is the internal financial statements for South Shore Ambulatory Surgery Center, LLC as of April 30, 2018, which shows negative working capital, negative net assets and the operating income of $ 631,467. The negative working capital was due to a high level of accounts payable liabilities and an outstanding loan which will be paid off with the proceeds of the sale from this transaction.

BFA Attachment D is the 2016-2017 certified financial statement and internal financials as of March 31, 2018 of Northwell Health, Inc., which show that the entity maintained a positive working capital position, positive net assets position and generated positive net income. As of March 31, 2018, excess of revenue and gains and losses over expenses was $70,078,000.

BFA Attachment F is supplemental financial data on Northwell Health's 2017 Joint Venture Ambulatory Surgery Centers (positive net assets of $82,000.000 and positive operating income of $16,179,000).

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	Pre and Post Organizational Chart
BFA Attachment B	2015-2017 Financial Summary of South Shore Ambulatory Surgery Center, LLC
BFA Attachment C	2017 Certified Financial and Internal Financial Statement as of April 30, 2018 of South Shore Ambulatory Surgery Center, LLC
BFA Attachment D	2016-2017 Certified Financial Statements and Internal Financial Statement as of March 31, 2018 of Northwell Health, Inc
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Supplement 2017 certified financial data. Northwell Health Inc. Joint Venture Ambulatory Surgery Centers

Public Health and Health Planning Council

Project # 181438-E
North County EC, LLC d/b/a The New York Eye Surgical Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Saratoga**
Purpose:	**Establishment**	***Acknowledged:***	**July 6, 2018**

Executive Summary

Description

North Country EC, LLC d/b/a The New York Eye Surgery Center (NYESC), a proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 135 North Road, Wilton (Saratoga County), requests approval for indefinite life certification. The Center was approved by the Public Health and Health Planning Council (PHHPC) under CON 112382 as a single specialty FASC specializing in ophthalmology services. PHHPC approval was for a conditional five-year limited life and the Center began operation effective July 31, 2013. The applicant notified the Department before their limited life expiration requesting indefinite life status. There are no changes in services associated with this CON.

OPCHSM Recommendation

Approval

Need Summary

Data submission by the applicant, a contingency of CON 112382, has been completed.
Based on CON 112382, Medicaid procedures were projected at 2.0 % and Charity Care was projected at 2.0% for Year Three. In spite of referral relationships with Hudson Headwaters Heath Network, an FQHC, and Glens Falls Hospital Primary Care Network since the start of operations, and in spite of greater than 50% of patient referrals being from the FQHC and the hospital, actual Charity Care was nearly 0% and Medicaid was 2.6% in the third year. The Center's outreach efforts demonstrate reasonable efforts to provide service to the uninsured and under-insured in their service area.

Program Summary

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

Financial Summary

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

	Year One
Revenues	$4,217,900
Expenses	$3,580.392
Net Income	$637,508

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval

Council Action Date
October 11, 2018

Need Analysis

Analysis

The primary service area is Saratoga 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 112382.

CON 112382- Procedures	Year 1 (2014)		Year 3 (2016)	
NY Eye Surgical Center	Projected	Actual	Projected	Actual
Total	2,622	1,885	2,780	3,380

The table below provides Year Three utilization, projections and actual, by payor, for CON 112382, and projections for year one following approval.

Payor	CON 112382 Projected Year 3 (2016)	CON 112382 Actual Year 3 (2016)	CON 181438 Projections Year 1
Commercial FFS/MC	18.0%	33.3%	19.0%
Medicare FFS/MC	77.0%	63.8%	76.6%
Medicaid FFS/MC	2.0%	2.6%	4.0%
Private Pay	1.0%	0.3%	0.3%
Charity Care	2.0%	0.0%	0.1%
Total	100.0%	100.00%	100.00%

Regarding the center's commitment to provide service to the underinsured of New York County, the following information was provided to DOH. The Center currently has Medicaid Managed Care contracts with the following health plans: Blue Shield of Northeastern NY, Capital District Physicians' Health Plan (CDPHP), Empire Blue Cross Blue Shield, Fidelis Care NY, MVP Health Plan, Inc. This center was opened as a joint venture with Glens Fall Hospital (30% membership interest). Glens Falls Hospital has a network of primary care centers which have provided patient referrals to this ASC. Hudson Headwaters operates six (6) health centers within ten miles of the center. The table below shows the number of referrals from these two sources to the ASC since 2015.

Referrals	2015		2016		2017	
	Volume	%	Volume	%	Volume	%
Hudson Headwaters	850	34.6%	914	27.0%	919	24.8%
Glens Falls PC Network	861	35.1%	928	27.5%	937	25.3%
Total Procedures	**2,455**	**69.7%**	**3,380**	**54.5%**	**3,705**	**50.1%**

Over 50% of patient referrals since 2015 have come from the Federally Qualified Health Center (FQHC), Hudson Headwaters Health Network, and the local hospital. This center 's specialty is ophthalmology, which has generated a Medicare utilization above 60% for each year since 2014. The number of uninsured in Saratoga County has declined significantly since the center opened in 2013. In terms of additional outreach efforts, the center's staff attends health fairs in Saratoga, Washington, and Warren Counties and delivers copies of the Center's Financial Assistance brochures to these three counties Department of Public Health and/or their Department of Social Services.

Conclusion
The Ad Hoc Advisory Committee on Freestanding ASCs and Charity Care Report indicates that “single specialty freestanding ASCs offering ophthalmology are likely to serve an older clientele, a large portion of whom are 65 or over and eligible for Medicare; hence, it may be reasonable to expect a lower volume of Medicaid and charity care cases from these providers than from ASCs offering more general surgical services.” The center’s Medicare utilization has been above 60% each year of its existence and is projected to be above 75% going forward. Additionally, the Center’s outreach efforts demonstrate reasonable efforts to reach the uninsured and under-insured in their service area.

Recommendation
From a need perspective, approval is recommended.

Program Analysis

Program Description
There are no anticipated changes in services or staffing. The Center is accredited by The Joint Commission, and Steven Solomon, M.D. will continue to serve as the Medical Director.

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

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

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

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

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

	Current Year	Year One	Year Three
Revenues			
Commercial	$1,686,785	$1,720,521	$1,754,256
Medicaid FFS + MC	$70,473	$71,882	$73,292
Medicare FFS + MC	$2,372,970	$2,420,429	$2,467,889
Private Pay	$5,068	$5,068	$5,068
Charity Care	$0	$0	$0
Total Revenues	$4,135,296	$4,217,900	$4,300,505
Expenses			
Operating	$3,158,595	$3,253,247	$3,442,849
Capital	$472,647	$327,045	$266,175
Total Expenses	$3,631,242	$3,580,392	$3,709,024
Net Income	$504,054	$637,508	$591,481
Utilization (Visits)	3705	3780	3854
Cost Per Visit	$980.09	$947.19	$962.38

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

	Current Year		Year One		Year Three	
Payor	Visits	%	Visits	%	Visits	%
Commercial FFC/MC	704	19.0%	718	19.0%	732	19.0%
Medicare FFC/MC	2,839	76.6%	2,896	76.6%	2,953	76.6%
Medicaid FFC/MC	147	4.0%	150	4.0%	153	4.0%
Private Pay/Other	13	0,4%	13	0.3%	13	0.3%
Charity	2	0.1%	3	0.1%	3	0.1%
Total	3,705	100.0%	3,780	100.0%	3,854	100.0%

Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates net income of $637,508 and $591,481 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budgets are reasonable.

BFA Attachment B is the 2017 certified financial statements of North Country EC, LLC. As shown, the facility had a negative average working capital position and a positive net asset position in 2016. The negative working capital in 2016 was due to a $400,000 line of credit balance related to prior year start-up expenditures. An action plan was formed during 2016 to improve collections on receivables, increase revenues and pay down the line of credit. The facility's 2017 financial statements demonstrate positive working capital and net asset positions. Also, the entity achieved net income of $358,929 and $504,054 in 2016 and 2017, respectively

BFA Attachment C is the internal financial statements of North Country EC, LLC as of 6/30/2018. As shown, the entity had a positive working capital position and a positive net asset position and achieved a net income of $215,889 through 6/30/2018.

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	Organization chart for North Country EC, LLC
BFA Attachment B	Financial Summary - 2017 certified financial statements of North Country EC, LLC
BFA Attachment C	Financial Summary - Internal financial statements of North Country EC, LLC as of 6/30/2018

Public Health and Health Planning Council

Project # 181448-E
Brooklyn Surgery Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Kings**
Purpose:	**Establishment**	***Acknowledged:***	**July 9, 2018**

Executive Summary

Description
Brooklyn SC, LLC d/b/a Brooklyn Surgery Center, a proprietary, Article 28 diagnostic and treatment center (D&TC) located at 6010 Bay Parkway, Brooklyn (Kings County), requests approval for indefinite life status. The D&TC was approved by the Public Health and Health Planning Council (PHHPC) under CON 112222 as a multi-specialty freestanding ambulatory surgery center (FASC). PHHPC approval was for a five-year limited life and the Center began operations effective November 1, 2013. The applicant notified the Department before their limited life expiration date to request indefinite life status.

OPCHSM Recommendation
Approval

Need Summary
Data submission by the applicant, a contingency of CON 112222 has been completed. Medicaid procedures were projected at 6.0 % and Charity Care was projected at 2.0% for Year Three of operations. Actual Charity Care in Year Three (2016) was 0.31 % and Medicaid was 18.09%. The center's Medicaid utilization has steadily increased each year of operation, building from 10.8% in 2014 to 19.4% in 2017. This strong utilization, combined with the center's outreach efforts, demonstrate reasonable efforts to provide service to the under-insured in their service area.

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

Financial Summary
There are no project costs associated with this application. The proposed budget for Year One following approval is as follows:

Revenues	$10,304,659
Expenses	9,723,860
Net Income	$580,799

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval

Council Action Date
October 11, 2018

Need Analysis

Analysis

The primary service area is Kings County. The table below provides Year Three utilization, projections and actual, by payor, for CON 112222, and projections for year one following approval. The utilization data comes from the applicant's annual reports. There is an acknowledged difference in the utilization reported by the applicant between the annual report and the AHCF cost report. The applicant is in the process of re-submitting the 2016 AHCF cost report as requested by DOH staff.

Payor	CON 112222 Projected Year Three (2016)	CON 112222 Actual Year Three (2016)	CON 181448 Projections Year One
Medicaid FFS	2.0%	0.21%	0.21%
Medicaid MC	4.0%	17.88%	19.19%
Medicare FFS	27.0%	24.81%	27.20%
Medicare MC	2.0%	10.50%	8.38%
Commercial FFS	10.0%	10.20%	17.67%
Commercial MC	51.0%	28.42%	12.61%
Private Pay	2.0%	0.69%	1.04%
Other	0.0%	6.98%	11.70%
Charity Care	2.0%	0.31%	2.00%
Total	100.0%	100.00%	100.00%

The center has reached out to area health clinics such as; Erza Medical Center, Cumberland Diagnostic and Treatment Center, Blanche Kahn Family Health, East New York Diagnostic and Treatment Center, Health Care Choices Community Health Center, Caribbean House Health Center, Community Healthcare Network, as well as schools, churches and synagogues to identify Charity Cares. These efforts led to minimal success. The center has treated very few patients who have no health insurance, as most needy patients have obtained Medicaid coverage by the time the center provides services to the patients. During March, which is Colon Cancer Awareness Month, the center advertises free colonoscopies by posting banners on the façade of the center's building, posts flyers in local clinics and send ambassadors of the center throughout their service area promoting this initiative. The center meets with Maimonides Medical Center's Chief Financial Officer, who serves as a Board Member of the center, to secure Charity Care referrals from the hospital. The center participates in the New York State Cancer Registry.

Conclusion

Per the PHHPC Ad Hoc Committee recommendation, the department should exercise flexibility to evaluate each ASC according to its totality of its proposed and actual volume of service to the underserved whether Medicaid, Charity Care or a combination of the two. In analyzing the information provided by the Center, the Center has surpassed their original combined projections of 8% for service to the underserved populations in their service area of Kings County. The center's Medicaid utilization was 10.8% in 2014 and has steadily increased to 19.4% in 2017. The center has contacted area health centers, as well as schools, churches to identify charity cases, and met with minimal success. This outreach and their strong Medicaid utilization shows reasonable efforts to provide service to the underserved patients in Kings County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

The Center is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). It is open Monday through Friday, from 7:00 am to 6:00 pm, and extends its hours as necessary to accommodate need. Dr. Ira Mayer, M.D. will continue to serve as the Medical Director. There are no anticipated changes in services and staffing is expected to increase slightly—by 3.0 FTEs and 5.0 FTEs in Years 1 and 3 respectively—based on the center's forecasted increase in utilization in these years.

Compliance with Applicable Codes, Rules and Regulations

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

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

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted the current year (2017) and first and third year operating budget after receiving indefinite life certification, in 2018 dollars, summarized below:

	Current Year	Year One	Year Three
Revenues			
Medicaid-FFS	$142,400	$144,052	$152,695
Medicaid-MC	1,671,172	1,727,449	1,831,095
Medicare-FFS	1,367,045	1,413,723	1,498,547
Medicare-MC	469,922	486,121	515,310
Commercial-FFS	2,608,982	2,488,416	2,634,217
Commercial-MC	1,943,767	2,009,663	2,130,243
Private	1,121,913	1,159,692	1,229,273
All Other	846,268	875,543	928,076
Total Revenues	$10,171,469	$10,304,659	$10,919,456

Expenses			
Operating	$5,530,169	$6,643,860	$6,930,667
Capital	2,864,450	3,080,000	3,130,000
Total Expenses	$8,394,619	$9,723,860	$10,060,667
Net Income	$1,776,850	$580,779	$858,789
Utilization (Procedures)	9,664	10,048	10,649
Cost per Case	$868.65	$967.74	$944.75

The applicant indicated that the reason costs rise and profits dropped from the Current Year to Years One and Three is due to the planned hiring of non-member physicians starting in the first-year, and related expenses that will be incurred, such as: malpractice insurance, billing fees, marketing and web development costs.

Revenue, expense and utilization assumptions for Years One and Three are projected based upon the Center's current operations.

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

	Current Year		First Year		Third Year	
Payor	Proc.	%	Proc.	%	Proc.	%
Medicaid-FFS	20	0.21%	21	0.21%	22	0.21%
Medicaid-MC	1,854	19.19%	1,928	19.19%	2,044	19.19%
Medicare-FFS	2,628	27.19%	2,733	27.20%	2,897	27.20%
Medicare-MC	810	8.38%	842	8.38%	893	8.39%
Commercial-FFS	1,861	19.26%	1,775	17.67%	1,879	17.65%
Commercial-MC	1,218	12.60%	1,267	12.61%	1,343	12.61%
Private Pay	101	1.05%	105	1.04%	111	1.04%
Charity	41	0.42%	201	2.00%	213	2.00%
All Other	1,131	11.70%	1,176	11.70%	1,247	11.71%
Total	9,664	100%	10,048	100%	10,649	100%

Capability and Feasibility

There are no project costs associated with this application. Brooklyn SC, LLC projects an operating excess of $566,255 and $843,370 in Year One and Three, respectively. Revenues are based on current reimbursement rates. The budget appears reasonable

BFA Attachment B is Brooklyn SC, LLC's 2015-2016 certified financial statements, 2017 draft certified financial statements and their internal financial statements as of April 30, 2018. For the 2015 and 2016 periods, the Center had negative working capital, negative net assets and positive net income. The draft 2017 financials show negative working capital, while net assets where still negative in both years but trending towards positive based on positive net income in both years. Internals through April 30, 2018, which are on an accrual basis, show positive working capital, positive net assets and net income of $821,407.

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	Brooklyn SC, LLC, Membership
BFA Attachment B	Brooklyn SC, LLC's 2015 and 2016 Certified Financial Statements, Draft 2017 Financial Statements, and Internal Financial Statements as of April 30, 2018

Public Health and Health Planning Council

Project # 172420-B
Doral Medical and Multispecialty Facility, LLC d/b/a Doral Medical and Multispecialty Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Kings**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**January 26, 2018**

Executive Summary

Description
Doral Medical and Multispecialty Facility, LLC (Doral Medical), a New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 1797 Pitkin Avenue, Brooklyn (Kings County). The facility will be housed in 6,650 sq. ft. of leased space on the second floor of a three-story building that is being renovated to house other Article 28 and non-Article 28 programs. The D&TC will include 12 exam rooms, two treatment rooms, three blood work areas, a laboratory, radiology, ultrasound, mammogram and bone density rooms, as well as a pharmacy and the requisite support space. Upon approval, the Center will be known as Doral Medical and Multispecialty Center.

The members of Doral Medical are David Lipschitz (89%), Daniel Gurgov (10%), and Kaveh Askari (1%). Mr. Lipschitz has 85% ownership interest in Doral Dialysis Center, an Article 28 dialysis clinic approved under CON 151338 and currently under construction in the cellar floor of the same building as the proposed D&TC. Mr. Gurgov has health care management experience and Mr. Askari is a licensed pharmacist specializing in oncology.

OPCHSM Recommendation
Contingent Approval

Need Summary
Doral Medical and Multi-Specialty Facility, LLC proposes to establish and construct an Article 28 diagnostic and treatment center in Kings County. Proposed services to be provided are: Medical Services-Primary Care and Medical Services – Other Medical Specialties. The number of projected visits is 13,466 for Year One.

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

Financial Summary
Project costs of $2,407,786 will be met via members' equity of $240,779 and a $2,167,008 bank loan at 6% interest for a ten-year term. JPMorgan Chase Bank has provided a letter of interest for the bank loan. Additionally, an executed Promissory Note has been provided for a personal loan of up to $2,500,000 at 2.72% interest for a five-year term from Doral Insurance Company, Inc., a company solely owned by proposed member David Lipschitz, to cover any equity shortfall or first year operating cost needs. The proposed budget is as follows:

Revenues	$3,258,210
Expenses	$2,525,024
Net Income	$733,186

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 building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment, 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 documentation confirming that the Promissory Note advances have been made to cover any equity shortfall and first year operating losses, acceptable to the Department of Health. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
8. Submission of the applicant's executed and completed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
9. Submission of the applicant's Amended Operating Agreement, 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 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. Construction must start on or before January 1, 2019 and construction must be completed by April 30, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. 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

October 11, 2018

Need Analysis

Background and Analysis

The primary service area consists of the neighborhoods of Bedford-Stuyvesant, Crown Heights, Prospect Heights, and Brownsville which encompass the following zip codes: 11207, 1121, and 11233. The secondary service area is Kings County. The population of Kings County was 2,504,700 in 2010. Per the PAD projection data from the Cornell Program on Applied Demographics, the population of Kings County is estimated to grow to 2,583,413 by 2025, an increase of 3.1%.

The proposed center will provide the following services: Medical Services - Primary Care and Medical Services - Other Medical Specialties. East Flatbush and Brownsville are HRSA designated Health Professional Shortage Areas. Kings County is a HRSA designated Medically Underserved Area.

Prevention Quality Indicators-PQIs

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the service area is significantly higher than the rate for the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates: 2015	Zip Codes:11207, 11212 and 11233	New York State
All PQI's	2,182	1,380

Source – DOH data, 2018

The number of projected visits is 13,466 for Year One and 29,178 for 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 for improved access to a variety of medical services for the residents of Kings County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Proposed Operator	Doral Medical and Multispecialty Facility, LLC
To Be Known As	Doral Medical and Multispecialty Center
Site Address	1797 Pitkin Avenue Brooklyn, NY 11212 (Kings County).
Specialties	Medical Services – Primary Care Medical Services – Other Medical Specialties
Hours of Operation	Monday through Friday, 8 am to 6 pm If needs indicate, hours may expand.
Staffing (1st Year / 3rd Year)	13.23 FTEs / 22.29 FTEs
Medical Director(s)	Leon Shein, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Brookdale Hospital Medical Center 1.6 miles / 7 minutes away

Character and Competence

The members of Doral Medical and Multispecialty Facility, LLC are:

Name	**Interest**
David Lipschitz	89%
Daniel Gurgov	10%
Kaveh (“Kevin”) Askari, RPh	1%
Total	100%

Mr. Lipschitz has over 20 years of experience in the healthcare sector. He is the President of House Calls Home Care, a home care agency he founded in 2012. Prior to that, he had 19 years of experience in long-term care, including 16 years as Associate Administrator and then Administrator of Record for a 380-bed nursing home in Brooklyn. He is also a majority member of Doral Dialysis, LLC, a corporation currently constructing a dialysis center at the same address (approved in Project #151338).

Mr. Gurgov has operated E&J Management Group, Inc., specializing in healthcare management and consulting and business development. Prior to that, he was employed for 13 years by a private physician practice culminating in the position of Director of Operations where he was responsible for the overall day-to-day operations of the office.

Mr. Askari is a pharmacist who holds licenses in over a dozen states. Since 1998, he has been the owner of and staff pharmacist at Manhasset Park Drug Corp., a community retail pharmacy on the North Shore of Long Island. He was previously a member of Onco360/Sina Drug LLC, an oncology pharmacy that provided medications for the treatment of cancer.

Disclosure information was similarly submitted and reviewed for the Medical Director, **Leon Shein, M.D.** Dr. Shein earned his medical degree from the University of the East in the Philippines and completed a nephrology fellowship at Brookdale Hospital. He has over 30 years of experience with renal patients and is board-certified in internal medicine with sub-certification in nephrology. Dr. Shein currently serves as the Chief of Nephrology at Prospect Medical Group in Brooklyn where his responsibilities include running the dialysis unit and evaluating both acute and chronic renal failure patients and their associated problems.

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. Askari disclosed that he is a defendant in a civil suit which stemmed from the sale of his pharmacy business (Sina Drug Corp. d/b/a OncoMed Specialty, LLC). As a selling shareholder, Mr. Askari agreed to a restrictive covenant which specifically provided that he could engage in the practice of pharmacy as long as he did not engage in a competitive business and his ownership of a retail pharmacy was not deemed to be a violation. In December 2016, Pharmacy Corporation of America (PCA) alleged that two of Mr. Askari's companies improperly competed with OncoMed Specialty in violation of the non-competition provision. In June 2017, Mr. Askari filed a complaint against PCA. In August 2017, the court consolidated the two cases which, according to the Applicant, remain essentially dormant with only very basic documentary discovery.

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

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

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement
The applicant submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

Premises:	6,650 sq. ft. on the 2nd floor of a building located at 1797 Pitkin Avenue, Brooklyn, NY
Lessor:	Doral Realty Holdings LLC
Lessee:	Doral Medical and Multispecialty Facility LLC
Term:	10 Years with (1) 5-year renewal term
Rental:	Years One – Three $304,000 per year ($46 per sq. ft.). Rental will increase by 2.5% per year thereafter.
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The lease arrangement is a non-arm's length agreement. The applicant submitted an affidavit attesting to the relationship between the landlord and tenant in that there is common ownership between the entities. The applicant submitted letters from two NYS licensed realtors attesting to the rent reasonableness.

Total Project Cost and Financing

Total project cost is estimated at $2,407,786, further broken down as follows:

Renovation and Demolition	$1,712,375
Design Contingency	$85,619
Construction Contingency	$85,619
Architect/Engineering Fees	$133,000
Other Fees (Consultant)	$125,000
Moveable Equipment	$170,105
Financing Costs	$34,675
Interim Interest Expense	$46,234
CON Fee	$2,000
Additional Processing Fee	$13,159
Total Project Cost	$2,407,786

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

The applicant's financing plan appears as follows:

Equity	$240,778
Bank Loan (5.5% interest, 10-year term)	$2,167,008
Total	$2,407,786

JPMorgan Chase Bank provided a letter of interest for the mortgage loan. David Lipschitz has provided an executed Promissory Note for a personal loan of up to $2,500,000 from Doral Insurance Company, Inc., which he solely owns, to cover any shortfall in liquid resources and year one loss. The Promissory Note provides for a five-year term at 2.72% interest. Repayment of the total principal amount is due at term with no penalty for early prepayment. BFA Attachment A is the 2017 Certified Financial Statements of Doral Insurance Company, Inc., which show significant liquid resources to cover this loan.

Operating Budget

The applicant's operating budget, in 2018 dollars, during the first and third years, is summarized below:

	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Revenues				
Medicare FFS	$113.92	$153,448	$113.94	$166,235
Medicare MC	$113.94	$383,620	$113.95	$997,411
Commercial FFS	$113.95	$322,241	$113.94	$631,694
Private Pay/Other	$113.98	$122,758	$113.96	$265,976
Total Revenues		$1,503,790		$3,258,210
Expenses				
Operating	$81.63	$1,099,261	$65.82	$1,920,357
Capital	$46.44	$625,408	$20.72	$604,667
Total Expenses	$128.08	$1,724,669	$86.54	$2,525,024
Net Income/(Loss)		($220,879)		$733,186
Visits		13,466		29,178

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

Payor	Year One	Year Three
Medicaid Fee-For-Service	5.0%	2.0%
Medicaid Managed Care	29.0%	34.0%
Medicare Fee-For-Service	10.0%	5.0%
Medicare Managed Care	25.0%	30.0%
Commercial Fee-For-Service	21.0%	19.0%
Private Pay	8.0%	8.0%
Charity Care	2.0%	2.0%

Revenue assumptions are based on current average per visit payment rates by payors for D&TC services. Expense assumptions are based on the experience of other similar facilities in the geographical area. Additionally, information was obtained from Medicaid AHCF cost reports for similar type Article 28 D&TCs to confirm assumptions. The applicant anticipates an increase in utilization by Year Three based on the population density of the area and need for primary care and specialty services, referrals from other health care occupants of the building, and the marketing efforts of the applicant. Based on the applicant's assumptions, the budget appears reasonable.

Capability and Feasibility

Total project cost of $2,407,786 will be met via members' equity of $240,778 and a bank loan of $2,167,008 at the above stated terms. JPMorgan Chase Bank has provided a letter of interest.

Working capital requirements are estimated at $420,837 based on two months of third year expenses. The applicant will finance $210,419 at 5.25% interest for a three-year term. JPMorgan Chase Bank has provided a letter of interest for the working capital loan. The remaining $210,418 will be provided as equity from the proposed members of Doral Medical. David Lipschitz has provided a disproportionate share affidavit to cover any equity shortfall for the D&TC. BFA Attachment A is the proposed members' personal net worth statements and 2017 certified financial statements for Doral Insurance Company, Inc., which indicate the availability of sufficient funds to meet the equity requirements for the project. David Lipschitz has provided an executed Promissory Note for a personal loan of up to $2,500,000 from his solely owned company, Doral Insurance Company, Inc., to cover any shortfall in liquid resources. The Promissory Note is for a five-year term at 2.72% interest with no penalty for early prepayment. BFA Attachment B is the pro forma balance sheet of Doral Medical and Multispecialty Facility, LLC as of the first day of operation, which indicates a net asset position of $451,197.

The submitted budget indicates a net loss of $220,879 and a net gain of $733,186 during the first and third years, respectively. Revenues are reflective of current reimbursement rates for D&TCs. Mr. Lipschitz will cover the Year One loss via his personal assets and the personal loan from his insurance company. As shown on BFA Attachment A, Mr. Lipschitz has sufficient resources to cover the Year One losses as well as his portion of the equity and working capital requirement and any other members' equity shortfall.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement-Proposed Members and 2017 Certified Financial Statements of Doral Insurance Company, Inc.
BFA Attachment B	Pro Forma Balance Sheet of Doral Medical and Multispecialty Facility, LLC
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 181307-E
Ajay 28, LLC d/b/a New York Preventive Health Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Queens**
Purpose:	**Establishment**	***Acknowledged:***	**May 2, 2018**

Executive Summary

Description

Ajay 28, LLC, a recently formed New York limited liability company whose sole member is Ajay Kumar Lodha, M.D., requests approval to be established as the new operator of the main clinic site of Forest Hills Health Center (Forest Hills), a proprietary, Article 28 diagnostic and treatment center (D&TC) located at 68-60 Austin Street, Forest Hills (Queens County). E&A Medical Solutions, LLC, whose sole member is Araskya Gevorgyan, is the current operator of the D&TC that is also licensed to operate an extension clinic known as Bronx Health Center located at 253 East 142nd Street in the Bronx. The extension clinic location is not included in this transaction request. E&A Medical Solutions, LLC will retain ownership of the Bronx Health Center, which will become its main site of operation upon closure of this application.

On March 27, 2017, E&A Medical Solutions, LLC entered into an Asset Purchase Agreement (APA) with Ajay Lodha, M.D. for the sale and acquisition of the operating interests of Forest Hills' main clinic site. Concurrently, the parties to the APA entered into an Assignment and Assumption Agreement, whereby E&A Medical Solutions, LLC assigned its rights, title, obligations, and interest in all assumed contracts to Dr. Lodha. The assumed contracts include an equipment purchase agreement, an equipment lease agreement and the facility's lease agreement.

The D&TC is currently licensed for Medical Services – Primary Care and Dental, as well as several non-physican/non-dental services including podiatry, audiology, optometry, and physical, occupational and speech pathology therapy services. There will be no change to the certified services upon the change in ownership. Dr. Lodha, who is Board-Certified in Internal Medicine, will serve a Medical Director. Dr. Lodha has admitting privileges at Flushing Hospital Medical Center and the D&TC will have a Transfer and Affiliation agreement with the hospital, which is located 5.5 miles (15 minutes travel) from the facility. Upon approval by the Public Health and Health Planning Council (PHHPC), the facility will be known as New York Preventive Health Center.

OPCHSM Recommendation

Approval

Need Summary

Ajay 28, LLC proposes to become the new operator of an existing Article 28 diagnostic and treatment center in Queens County, currently operated by E & A Medical Solutions, LLC with no change in services. The number of projected visits is 12,430 for Year One.

Program Summary

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

Financial Summary

There are no project costs included in this application. The purchase price for the operations is $870,000 and will be met via equity. Dr. Lodha provided $300,000 towards the purchase price at execution of the APA. The remaining $570,000 balance is due at closing. The proposed budget will be as follows:

	Year One
Revenues	$1,183,197
Expenses	$901,323
Gain/(Loss)	$281,874

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
<u>Approval conditional upon</u>:
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
October 11, 2018

Need and Program Analysis

Program Description

Ajay 28, LLC, a recently formed New York limited liability company, requests approval to be established as the new operator of the main clinic site of Forest Hills Health Center, an existing Article 28 diagnostic and treatment center located at 68-60 Austin Street in Forest Hills (Queens County). E&A Medical Solutions, LLC (E&A) is the current operator.

E&A also operates an extension clinic known as Bronx Health Center, located at 253 East 142nd Street in the Bronx, which is not included in this transfer of ownership request. Upon conclusion of this transaction, the Bronx extension site will become E&A Medical Solutions' main site.

There are no changes to the certified services upon this change in ownership of the Forest Hills clinic. Upon approval, the clinic will be known as New York Preventive Health Center.

Proposed Operator	Ajay 28, LLC
To Be Named	New York Preventive Health Center
Site Address	68-60 Austin Street Forest Hills, NY 11375 (Queens County)
Services	Medical Services – Primary Care; Dental Speech Language Pathology Therapy; Occupational Therapy Podiatry; Physical Therapy Audiology; Optometry
Hours of Operation	Monday through Thursday 9 AM to 8 PM Friday through Sunday 9 AM to 5 PM
Staffing (1st Year / 3rd Year)	11.2 FTEs / 12.5 FTEs
Medical Director(s)	Ajay K. Lodha, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Flushing Hospital Medical Center 5.5 miles / 15 minutes

The primary service area is Queens County. The population of Queens County in 2010 was 2,230,722. Per PAD projection data from the Cornell Program on Applied Demographics, the population of the county is estimated to grow to 2,378,066 by 2025, an increase of 6.6%. The applicant plans to continue to provide the scope of services which are currently available at this site. The applicant will work closely with the current operator to ensure that the transfer of ownership will take place with minimal disruption to the provision of health care services. In recognition of the large percentage of residents of the primary service area who have a limited English proficiency, the new operator will employ staff with a number of language skills including Spanish, Russian, Hindi and Bengali. The number of projected visits is 12,430 for Year One and 15,803 for 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 sole member and manager of Ajay 28, LLC is Ajay Kumar Lodha, M.D.

Dr. Lodha has been a practicing physician for over 25 years. He attended medical school in India and completed his residency at Flushing Hospital Medical Center. He is Board-Certified in Internal Medicine and works as a primary care provider and administrator/operator at Queens Medical Services, PLLC in Jackson Heights. Dr. Lodha, who will serve as the center's medical director, has admitting privileges at Flushing Hospital Medical Center, the affiliated acute care facility.

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.

In his initial application, dated April 26 and May 15, 2018, Dr. Lodha made no disclosures. Following Department inquiry, Dr. Lodha submitted additional information and disclosed a settled malpractice case in 2013, in the amount of $87,500, for an alleged delay in treatment dating back to 2011 and the following pending malpractice cases:

- Case alleging failure to diagnose a myocardial infarction (in 2013) which resulted in greater cardiac muscle damage than would otherwise have been caused. A trial date has been set and counsel for Dr. Lodha and the co-defendant (a Queens hospital) have been in active settlement discussions.
- Case involving care rendered in 2012 to a hospitalized patient that led to bedsores, blisters and rashes. The deposition is not done, and discovery is just beginning.
- Case involving a nonagenarian nursing home resident with multiple co-morbidities who developed pressure ulcers in 2013. The deposition is complete and the case is nearing the completion of the discovery phase.
- Case alleging a nursing home resident had a fracture of the right femur and developed multiple pressure wounds in 2016. The case is in its earliest stages (no depositions or discovery).

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.

Dr. Lodha disclosed a 33.33% ownership interest in **Hilaire Farm Nursing Home** in Suffolk County which has the following enforcement history:

- On May 4, 2016, the Department issued a Stipulation and Order (S&O) and assessed a $12,000 fine against Hilaire connected to a complaint investigation that concluded on October 6, 2015. The S&O specifically related to deficient practice in the following areas: Notification of Changes/Significant Changes – Complications and/or Life Threatening, and Quality of Care – Highest Practicable Potential. According to the complaint, after a family member reported a change in the resident's condition to a licensed practical nurse on the morning of August 25, 2015, there was no documented evidence of an assessment or that the nursing supervisor or physician was notified. At 7:40 am the following morning, the resident was found without a heartbeat and respirations. The Certificate of Death documented immediate cause of death was cerebrovascular accident (CVA or stroke).

Conclusion

Approval of this project will provide for continued access to a variety of medical services to the residents of Queens County. 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

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the operating interests of the D&TC, which will become effective upon PHHPC approval. The terms are summarized below:

Date:	March 27, 2018
Seller:	E & A Medical Solutions, LLC d/b/a Forest Hills Health Center, LLC
Buyer:	Ajay K. Lodha, M.D.
Asset Acquired:	All of Seller's right, title and interest in and to all its assets and properties relating to the Clinic, whether real or personal, tangible or intangible ("Included Assets").
Excluded Assets:	Relating to the Clinic: Any claims, refunds to Seller, rights, actions, litigation by Seller, and proceeds thereof, irrespective of the date on which any such claim or right may arise or accrue; Seller's books/records, tax records/returns, accounting records, general ledger or books of account; trade names used by Seller/Clinic, including, without limitation, the names "E&A Medical Solutions", "Forest Hills Health Center" or any variation thereof; any security or deposits paid by Seller in connection with Clinic office leases and leases of personal property; contracts/contract rights assigned to the Buyer by agreement of the parties; insurance policies/prepaid premiums, other prepaid expenses; Seller's Federal Tax ID Number, and government and non-government provider agreements and supplier agreements and numbers.
Assumed Liabilities:	Liabilities for payment of any applicable federal, state or local taxes, if any (including any interest or penalties thereon); any liability or obligation arising out of a breach or default by Seller of any contract or governmental permit or license, any liability or obligation in respect of the Excluded Assets, accounts payable arising or accruing as of the Closing Date attributable to the operation of the Clinic prior to the Closing Date, including, audit liabilities attributable to actions or inactions of Buyer and extrapolated, in whole or in part, to an audit period prior to Closing, and any liability arising from the operation of the Clinic prior to Closing, except as specifically provided herein.
Assumed Contracts:	(1) Equipment Purchase Agreement for MyLab Five System, dated 3/8/15, between Esaote North America, Inc., and Forest Hills Health Center. (2) Equipment Lease Agreement for Gaby Urodynamics System, dated 4/2/15, between Laborie Medical Technologies Corp., and E&A Medical Solutions, LLC. (3) The Lease Agreement, dated 5/31/95, as amended, between 68-60 Austin Street Realty Corp., and Forest Hills Health Center (previously B&L Realty Corp.)
Purchase Price:	$870,000.00
Payment of the Purchase Price:	$100,000 to escrow agent; $200,000 deposit to escrow agent on date of execution; $570,000 due to seller at closing.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible and 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 liabilities.

Assignment and Assumption Agreement (all contracts of seller)

The applicant has submitted an executed assignment and assumption agreement, summarized below:

Date:	March 27, 2018
Assignor:	E & A Medical Solutions, LLC d/b/a Forest Hills Health Center
Assignee:	Ajay Kumar Lodha, M.D.
Assigned Assets:	Assignor's obligations, rights, title and interests in and to the Assumed Contracts.
Terms:	Terms of the APA, including Assignor's and Assignee's respective representations, warranties, covenants, agreements and indemnities, are incorporated herein by this reference. The parties acknowledge/agree that the representations, warranties, covenants, agreements and indemnities in the APA shall not be superseded hereby, but shall remain in full force and effect in the event of any conflict or inconsistency.

Amendment to Lease Agreement

The applicant has submitted an executed Amendment to the Lease Agreement for the site, which extends the term of the lease. The terms are summarized below:

Date:	May 7, 2018
Premises:	3,000 sq. ft. at 68-60 Austin Street, Forest Hills, New York, Stores 9 & 10
Owner/Landlord:	68-60 Austin Realty Corporation
Lessee/Tenant:	E&A Medical Solutions, LLC d/b/a Forest Hills Medical Center
Assignment:	Tenant may assign lease to any entity that may purchase E&A Medical Solutions LLC d/b/a. Forest Hills Health Center
Term:	5/7/18 to 6/30/28; or Until Asset Purchase Agreement between E&A Medical Solutions, LLC d/b/a Forest Hills Health Center, LLC & Ajay 28, LLC is terminated
Rental	$168,549 annual rent plus 5.0% increments per year
Provisions	triple net lease

Assignment of Lease and Consent to Assignment

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

Date:	March 27, 2018 (Date of Assignment and Assumption Agreement)
Premises:	3,000 sq. ft. at 68-60 Austin Street, Forest Hills, New York, Stores 9 & 10
Owner	68-60 Austin Realty Corporation
Assignor	E&A Medical Solutions LLC dba Forest Hills Medical Center
Assignee:	Ajay 28, LLC
Date of Assignment:	To be determined
Provisions	Assignor assigns all rights, title, interest and obligations in the lease and leasehold premises to assignee.
Term	Until Asset Purchase Agreement between E&A Medical Solutions, LLC d/b/a Forest Hills Health Center, LLC & Ajay 28, LLC is terminated.
Rental	$168,549 annual rent plus 5.00% increments per year
Provisions	triple net lease

The applicant has submitted a Lease Affidavit dated April 11, 2018, attesting to the lease assignment and that the lease is an arm’s length agreement in that the landlord and the tenant are not related in any way.

Operating Budget

The applicant has submitted the current year budget (main site) and first year operating budget, in 2018 dollars, summarized below:

	Current Year 2017		Year One 2019	
Revenues	Per Diem	Total	Per Diem	Total
Medicaid FFS	$118.99	$163,258	$118.99	$163,258
Medicaid MC	$93.75	$653,035	$93.73	$709,196
Medicare FFS	$142.67	$76,186	$144.78	$97,584
Medicare MC	$100.32	$65,308	$100.32	$65,308
Commercial FFS	$79.44	$76,187	$79.44	$84,126
Private Pay	$93.50	$54,419	$93.44	$63,725
Total Revenues		$1,088,393		$1,183,197
Expenses				
Operating	$61.32	$698,465	$57.96	$720,394
Capital	$15.18	172,908	$14.56	180,929
Total Expenses	$76.50	$871,373	$72.51	$901,323
Net Income (Loss)		$217,020		$281,874
Utilization (Visits)		11,390		12,430
Cost Per Visit		$76.50		$72.51

Utilization by payor for the current year and first year after the change in operator is summarized below:

Payor	Current Year	Year One
Medicaid FFS	12.05%	11.04%
Medicaid MC	61.16%	60.87%
Medicare FFS	4.69%	5.42%
Medicare MC	5.72%	5.24%
Commercial FFS	8.42%	8.52%
Private Pay	5.11%	5.49%
Charity Care	2.85%	3.42%
Total Visits	100.00%	100.00%

Utilization and expense assumptions are based on the historical experience of the operations of the main site.

Capability and Feasibility

There are no project costs included in this application. The purchase price of $870,000 will be met by equity. Dr. Lodha has already provided $300,000 towards the purchase price leaving a $570,000 balance due at closing.

Working capital requirements are estimated at $150,221, which is equivalent to two months of first year expenses. The working capital requirement will be met via equity from the personal funds of Dr. Lodha. BFA Attachment A, the net wort statement of the applicant member, indicates the availability of sufficient funds for the equity contributions for the purchase price and the working capital requirement. BFA Attachment D is the pro forma balance sheet of Ajay 28, LLC as of the first day of operation, which indicates a positive net asset position of $362,801.

BFA Attachment B is the 2016 certified financial statements and the 2017 internal financial statements of E&M Medical Solutions, LLC. As shown, the entity had an average negative working capital position and an average negative net asset position from 2016 through 2017. The applicant indicated that the reasons for the negative positions are increased current period payments on loans and substantial cash and infrastructure investments in the Bronx extension clinic site. The negative working capital balance is attributed to advance rent, utilities, contractors, and purchases of medical and office equipment for the extension site that did not receive approval to open until January 16, 2018. Also, the entity achieved average net income of $56,640 from 2016 through 2017.

BFA Attachment C is the internal financial statements of E&A Medical Solutions, LLC as of March 31, 2018. As shown, the entity had a negative working capital position and a negative net asset position through March 31, 2018. The reasons for the negative positions are increased current period payments on loans and substantial cash and infrastructure investments in the Bronx extension clinic site as previously noted. The entity achieved a net income of $40,939 through March 31, 2018.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of Dr. Ajay K. Lodha - Sole Member
BFA Attachment B	2016 & 2017 internal financial statements of E&A Medical Solutions, LLC
BFA Attachment C	March 31, 2018 internal financial statements of E&A Medical Solutions
BFA Attachment D	Pro Forma Balance Sheet

Public Health and Health Planning Council

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:

Atlas Park Dialysis

	Third Year
Revenues	$4,544,393
Expenses	3,885,796
Net Income	$658,597

Jamaica Hillside Dialysis

	Third Year
Revenues	$5,396,716
Expenses	4,739,221
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
March 22, 2018 Establishment and Project Review Committee – **Deferred**
April 12, 2018 Establishment and Project Review Committee – **No Recommendation**
April 12, 2018 Public Health and Health Planning Council – **No motions passed**
May 17, 2018 Establishment and Project Review Committee – **No Recommendation**
June 7, 2018 Public Health and Health Planning Council – **Deferred**

September 27, 2018 Establishment and Project Review
October 11, 2018 Public Health and Health Planning Council

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 (1st Year / 3rd 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		**88%**
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%)		
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%**

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:

	First Year		Three Year	
	Per Treatment	Total	Per Treatment	Total
Revenues				
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	369,046	$306.01	1,393,880
Total Patient Revenues		$1,339,303		$4,746,102
Less: Bad Debt		$56,920		$201,709
Total Net Patient Revenue		$1,282,383		$4,544,393
Expense				
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	614,818	$ 53.01	643,219
Total Expenses		$1,756,238		$3,885,796
Net Income (Loss)		($473,855)		$658,597
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:

	Year One		Year Three	
Payor	Treatments	%	Treatments	%
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:

	First Year		Three Year	
	Per Treatment	Total	Per Treatment	Total
Revenues				
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	477,375	$306.93	1,464,050
Total Patient Revenues		$1,777,599		$5,636,971
Less: Bad Debt		$75,681		$240,255
Total Net Patient Revenue		$1,701,918		$5,396,716
Expense				
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	637,448	$ 49.70	676,097
Total Expenses		$2,186,260		$4,739,221
Net Income (Loss)		($484,342)		$657,495
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:

	Year One		Year Three	
Payor	Treatments	%	Treatments	%
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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Public Health and Health Planning Council

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.

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

True North V DC, LLC	
Members	**%**
True North DC Holding, LLC	**80%**
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%)	
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%)	
TOTAL	**100%**

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:

	Third Year
Revenues	$4,037,794
Expenses	3,894,173
Gain	$143,621

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

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

Council Action

March 22, 2018 Establishment and Project Review Committee – **Deferred**
April 12, 2018 Establishment and Project Review Committee – **No Recommendation**
April 12, 2018 Public Health and Health Planning Council – **No motions passed**
May 17, 2018 Establishment and Project Review Committee – **No Recommendation**
June 7, 2018 Public Health and Health Planning Council – **Deferred**

September 27, 2018 Establishment and Project Review
October 11, 2018 Public Health and Health Planning Council

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 (1st Year / 3rd 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 ***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%)	**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 64th 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:

	First Year		Three Year	
	Per Treatment	Total	Per Treatment	Total
Revenues				
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
Expenses				
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)		($839,188)		$143,621
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:

Payor	Year One	Year Three
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

Public Health and Health Planning Council

Project # 181177-B
Adira Dialysis, LLC d/b/a Adira Dialysis Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Westchester**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**March 15, 2018**

Executive Summary

Description
Adira Dialysis, LLC, a to-be-formed New York limited liability company, requests approval to establish and construct a 20-station, Article 28 chronic renal dialysis center (the Center) to be located at 120 Odell Avenue, Yonkers (Westchester County). The Center will be housed in a new 9,618-square foot addition to be constructed adjacent to the main lobby of Adira at Riverside Rehabilitation and Nursing, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) operated by L&A Operations, LLC. The Center will serve the residents of the RHCF who require dialysis, as well as members of the community. The Center will provide for two entrances, one from the main lobby on the entrance floor for nursing home residents, and the other from a new lobby to be constructed adjacent to the main entrance of the RHCF. The applicant will lease the space from L&A Operations, LLC. Upon Public Health and Health Planning Council (PHHPC) approval, the facility will be known as Adira Dialysis Center.

The proposed members of Adira Dialysis, LLC are Allen Stein (43%), Lazer Strulivitch (43%), and Leopold Schwimmer (14%). Mr. Stein will be the managing member. There is a relationship between Adira Dialysis, LLC and L&A Operations, LLC in that the entities have identical membership and ownership interest.

OPCHSM Recommendation
Contingent Approval

Need Summary
The Center will be located adjacent to Adira at Riverside Rehabilitation and Nursing. The close vicinity to the nursing facility will allow for easy transport of the frail elderly nursing home residents needing ESRD treatment.

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

Financial Summary
Total project costs of $3,674,886 will be met with $2,978,328 equity from the proposed members and equipment lease financing of $696,558. Signature Financial has provided a letter of interest for the equipment financing. The proposed budget is as follows:

Revenues	$5,782,315
Expenses	5,165,511
Net Income	$616,804

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 building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed equipment lease, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER 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 March 1, 2019 and construction must be completed by September 1, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The 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

October 11, 2018

Need Analysis

Analysis

The primary service area for the new facility will be Westchester County, which had a population estimate of 974,542 for 2016. The percentage of the population aged 65 and over was 16.2%. The nonwhite population percentage was 26.2%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Westchester County and New York State are shown below.

	Westchester County	New York State
Ages 65 and Over	16.2%	15.4%
Nonwhite	26.2%	30.1%

Source: U.S. Census 2017

Capacity

Below are the Department's guidelines to estimate capacity for chronic dialysis stations:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free-standing station per year is 156.
- One hospital based station represents 499 treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.

Need Projections

Westchester County Chronic End Stage Renal Disease (Dialysis) Resources / Need Projected Through 2021

County	Existing Resources	Pending Resources	Total Current Resources	Total Need 2021	Unmet Need 2021	County-wide Stations Under Review	Unmet Need After Approval
	a	b	c	d	e	f	g
			(a + b)		(d - c)		(e - f)
Westchester	285	0	285	311	26	20	6

Column (a): Existing Resources: Stations in Operation

Column (b): Pending Resources: Includes Stations with Contingent Approval per the Bureau of Project Management and Stations with Recommendations of Approval by the Bureau of Public Need Review, but not yet Contingently Approved in the Bureau of Project Management.

Column (f): Submitted Projects / Stations Under Review

Conclusion

Additional dialysis resources will benefit county residents, and the location of this center adjacent to the nursing home will specifically benefit nursing home residents requiring dialysis.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Proposed Operator	Adira Dialysis, LLC
Doing Business As	Adira Dialysis Center
Site Address	120 Odell Avenue Yonkers, NY 10701 (Westchester County)
Approved Services	Chronic Renal Dialysis (20 Stations)
Shifts/Hours/Schedule	Will operate six days a week from 8 am to 10 pm and modified as needed.
Staffing (1st Year / 3rd Year)	10.0 FTEs / 25.32 FTEs
Medical Director(s)	Jackson Shaji, D.O.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by St. John's Riverside Hospital 0.3 miles / 2 minutes

Character and Competence

The members and managers of Adira Dialysis, LLC are:

Name	Title	Percentage
Allen Stein	Manager/Member	43.00%
Lazer Strulovitch	Member	43.00%
Leopold Schwimmer	Member	14.00%
		100.00%

Mr. Stein reported that he has been employed as a facility operator for L&A Operations, LLC since September 2015. L&A Operations is the Operator of Record for Adira at Riverside Rehabilitation and Nursing, a 120-bed residential health care facility located in Yonkers.

Mr. Strulovitch is the president/owner of Park Avenue Door and Hardware, a company that specializes in metal doors and frames, prefinished and architectural wooden doors and hardware. In addition, since 2010, he has been the owner of Park Avenue Management of Berry, LLC managing and developing real estate.

Mr. Schwimmer is President and owner of united Commercial Group, a real estate financing company located in Brooklyn.

All three of the proposed members are the owners/operators of Adira at Riverside Rehabilitation Center. In addition, they have ownership interest in Sprain Brook Nursing Home and other health-related entities, including adult homes.

Disclosure information was similarly submitted and reviewed for the proposed Medical Director, Jackson Shaji,D.O. Dr. Shaji graduated from the NY College of Osteopathic Medicine and completed a nephrology fellowship at Westchester Medical Center. He is board-certified in Internal Medicine and Nephrology and, for the past four years, has been an attending nephrologist at the Nephrology and Hypertension Specialists of Westchester office in Yonkers.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Agreement

The applicant has submitted a draft lease agreement for the site to be occupied, summarized below:

Premises:	New Addition, approximately 9,618 sq. ft. adjacent to the Adira RHCF located at 120 Odell Avenue, Yonkers
Landlord:	L&A Operations, LLC
Tenant:	Adira Dialysis, LLC
Term:	Five years, with three five-year option to extend.
Base Rent:	Years 1 and 2: $384,720 annually; Year 3: $392,414 annually; Year: $400,263 annually; and Year 5: $408,268 annually.
Provisions:	Triple-net: Maintenance, real estate taxes/assessments, insurance premiums, utilities.

The lease arrangement is a non- arm's length agreement in that the members of L&A Operations, LLC are the same proposed members of Adira Dialysis, LLC. The applicant has submitted an affidavit attesting to this relationship. The applicant has submitted letters from two real estate brokers attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of fixed and moveable equipment, is estimated at $3,674,886 broken down as follows:

Renovation and Demolition	$2,207,331
Design Contingency	110,367
Construction Contingency	110,367
Fixed Equipment	229,500
Architect/Engineering Fees	353,173
Other Fees (Consultant)	175,000
Moveable Equipment	467,058
CON Fee	2,000
Additional Processing Fee	20,090
Total Project Cost	$3,674,886

Project costs are based on a construction start date of March 1, 2019, and a six-month construction period. Funding for the project will be met with $2,978,328 equity from the proposed members, and equipment lease financing of $696,558 over a five-year term at 7% interest. Signature Financial has provided a letter of interest at the stated terms.

Operating Budget

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

	Year One		Year Three	
	Per Diem	Total	Per Diem	Total
Revenues				
Medicare MC	$308.73	$1,463,979	$308.70	$4,391,937
Medicaid MC	$269.04	206,621	$269.35	620,309
Commercial MC	$342.91	256,838	$342.86	770,069
Total Revenues		$1,927,438		$5,782,315
Expenses				
Operating	$287.72	$1,800,837	$222.26	$4,173,208
Depreciation & Rent	128.55	804,610	52.85	992,303
Total Expenses	$416.27	$2,605,447	$275.11	$5,165,511
Net Income (Loss)		($678,009)		$616,804
Utilization (treatments)		6,259		18,776
Cost Per Treatment		$416.27		$275.11

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

	Year One	Year Three
Medicare MC	76.0%	76.0%
Medicaid MC	10.7%	10.7%
Commercial MC	13.3%	13.3%

Revenue, expense and utilization assumptions are based upon review of cost reports from other dialysis facilities located in Westchester County, as well as financial statements for dialysis providers in Westchester and Rockland counties.

Capability and Feasibility

The project costs of $3,674,886 will be financed by the proposed members' equity of $2,978,328, with the remaining $696,558 financed through an equipment lease. Equipment includes but is not limited to dialysis machines, chairs and the reverse osmosis water treatment system. BFA Attachment A shows sufficient equity.

Working capital requirements have been estimated at $860,919 based on two months of third year expenses and will be provided by the proposed members' equity. BFA Attachment A is the net worth statement of the proposed members, which indicates sufficient resources to meet the equity requirements of this application. BFA Attachment B is the pro forma balance sheet of Adira Dialysis Center as of the first day of operation, which indicates positive members' equity of $3,839,246.

The submitted budget projects a net loss of $678,009 in Year One and net income of $616,804 in Year Three. The applicant has submitted an affidavit from proposed member, Allen Stein, stating that he will personally fund the first-year operating loss of the dialysis center. BFA Attachment A shows sufficient funds from proposed member, Allen Stein. Revenues are based on the current reimbursement methodologies for dialysis services. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of proposed members
BFA Attachment B	Pro Forma Balance Sheet of Adira Dialysis Center

Public Health and Health Planning Council

Project # 182012-B
Ditmas Park Dialysis Center, LLC

Program:	**Diagnostic and Treatment Center**	***County:***	**Kings**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**July 10, 2018**

Executive Summary

Description

This application amends and supersedes CON 092169. Ditmas Park Dialysis Center, LLC (the Center), a New York limited liability company, requests approval to establish and construct a 21-station, Article 28 chronic renal dialysis center on-site at Ditmas Park Care Center, a 200-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2107 Ditmas Avenue, Brooklyn (Kings County). Ditmas Park Care Rehabilitation and Care Center, LLC is the current RHCF operator. CON 092169 received final Public Health and Health Planning Council (PHHPC) approval in February 2016, and construction is underway with a planned completion date in late 2018. This amendment is required to revise the ownership of the Center due to the death of the previously approved sole member, Sander Oberlander. Under the terms of the decedent's will, ownership of the Center was bequeathed to Mr. Oberlander's children. This amendment also reflects a change in total project cost to include the landlord's contribution toward the construction. The renovations are being performed by Ditmas Park Care Rehabilitation and Care Center, LLC as landlord. Ditmas Park Dialysis Center, LLC will enter into a lease with the RHCF operator for site control. There is a relationship between Ditmas Park Dialysis Center, LLC and Ditmas Park Rehabilitation and Care Center, LLC in that the entities have several members in common. The Center will treat primarily the residents of Ditmas Park Care Center but will be available to serve the general public through a separate dedicated entrance.

The proposed members of Ditmas Park Dialysis Center, LLC are as follows:

Proposed Members	
Abraham Oberlander	11.11%
Gitty Gutman	14.81%
Miriam Harfenes	14.81%
Shabsey Oberlander	11.12%
Sholem Oberlander	14.82%
Zalmen Oberlander	11.11%
Zissy Indig	11.11%
BMO Family Holdings LLC:	11.11%
Boruch Oberlander (100%)	

Project cost has been revised to include the landlord's cost of construction as required ($1,752,165), bringing the total project cost to $2,658,826.

OPCHSM Recommendation

Contingent Approval

Need Summary

Currently, the RHCF's residents requiring dialysis services are being transported three times per week to an off-site dialysis facility. There are no changes to the approved construction plans as the result of this amendment. There will not be any additional stations added through this project nor will services or patients in the area be impacted through the approval of this project.

Program Summary

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

Financial Summary

Project cost of $2,658,826 will be met via $354,661 in members' equity, a five-year self-amortizing loan for $552,000 at 8% interest (applicant), and a five-year self-amortizing loan for $1,752,165 at 8% interest to be paid by Ditmas Park Rehabilitation and Care Center, LLC (sub-landlord). Northfield Bank has provided letters of interest for both loans. The proposed budget is as follows:

	Year One	Year Three
Revenues	$2,860,575	$3,380,680
Expenses	2,635,568	3,121,265
Net Income	$225,007	$259,415

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 construction loan commitment (applicant), acceptable to the Department of Health. [BFA]
3. Submission of an executed construction loan commitment (Sub-landlord), 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 a photocopy of Authority to Do Business in the State of New York for BMO Family Holdings LLC, acceptable to the Department. [CSL]
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 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. Construction must be completed by December 31, 2018. In accordance with 10 NYCRR Section 710.10(a), if construction is not completed on or before the approved completion date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any change to the completion date. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity’s clinical program space. [HSP]
4. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant’s start of construction for record purposes. [AER]

Council Action Date

October 11, 2018

Need and Program Analysis

Description

Ditmas Park Dialysis Center, LLC (the "Center") is submitting an amendment to approved CON 092169, which is currently under construction and expected to be complete by the end of 2018. This amendment is being submitted to revise the ownership of the Center due to the death of the approved sole member, as well as due to a change in the Total Project Cost.

Currently, the RHCF's residents requiring dialysis services are being transported three times per week to an off-site dialysis facility. There are no changes to the approved construction plans as the result of this amendment. There will not be any additional stations added through this project nor will services or patients in the area be impacted through the approval of this project.

Proposed Operator	Ditmas Park Dialysis Center, LLC
To Be Known As	Ditmas Park Dialysis Center
Site Address	2107 Ditmas Avenue Brooklyn, NY 11226 (Kings County)
Approved Services	Chronic Renal Dialysis (21 Stations)
Shifts/Hours/Schedule	Will operate six days a week with some flexibility or possible expansion in operating hours to accommodate patient needs.
Staffing (1st Year/3rd Year)	21.0 FTEs / 25.0 FTEs
Medical Director(s)	Subodh Saggi M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by: Maimonides Medical Center 3.0 miles / 18 minutes

Character and Competence

The members and managers of Ditmas Park Dialysis Center, LLC are:

Name	Percentage
Abraham Oberlander	11.11%
Gitty Guttman	14.81%
Miriam Harfenes	14.81%
Shabsey Oberlander	11.12%
Sholem Oberlander	14.82%
Zalmen Oberlander	11.11%
Zissy Indig	11.11%
BMO Family Holdings Boruch Oberlander (100%)	11.11%
Total	**100.00%**

Abraham Oberlander has a 20% ownership interest in Ditmas Park Care Center since January 2009 which has provided an opportunity to be involved in decision-making and experience in the operation of a health care facility. In addition, he has also had past responsibility for coordinating patient satisfaction surveys at the facility.

Gitty Guttman disclosed past work experience as a human resource manager for a healthcare staffing company as well as account executive for a credit card processing company.

Miriam Harfenes disclosed past work experience assisting with accounts payable and human resources for Fine Management Services Company (FMSC), the payroll company for Ditmas Park Care Center.

Shabsey Oberlander has a 40% ownership interest in Ditmas Park Care Center since January 2009 and serves as its Chief Executive Officer (CEO). As an owner of Ditmas Park Care Center, Mr. Oberlander is familiar with the needs of the residents of that facility and the elderly in general.

Sholem Oberlander is self-employed. For the last 25 years, he has owned Goodfine Diamond, LLC, a diamond manufacturing and wholesale business.
Zalmen Oberlander is the owner/operator of Apex Rehab Care Center. Between 1997 and 2005, he was the Assistant Administrator for Ditmas Park Care Center.

Zissy Indig has a 20% ownership interest in Ditmas Park Care Center since January 2009. Currently, she is the Director of Business Development for FMSC. Additional responsibilities include following up on discharged patients' feedback and addressing concerns and opening new markets for the facility. From 2008 to 2016, Ms. Indig worked at Southside Staffing Agency as a nursing staffing coordinator.

Boruch Oberlander, has a 20% ownership interest in Ditmas Park Care Center since January 2009 which has provided an opportunity to be involved in decision-making and experience in the operation of a health care facility. In addition, since May 2006, Mr. Oberlander has been the President and CEO of BHM Financial Group. Prior to that, he served for over 14 years as the President and CEO of Martex Textiles in Montreal.

Disclosure information was submitted and reviewed for the proposed Medical Director, **Subodh Saggi, MD**. Dr. Saggi has over 30 years of experience in the care and treatment of dialysis patients. He earned his medical degree in India and completed a nephrology fellowship at Mount Sinai and is board-certified in Internal Medicine with sub-certification in Nephrology. Since August 2008, Dr. Saggi has served as the Medical Director of SUNY Ambulatory Parkside Dialysis Center. In addition, he served for eight years as an advisory board member of IPRO/ESRD Network Region 2 and for three years on the Dialysis Advisory Committee with the American Society of Nephrology. Dr. Saggi is also a professor of medicine at SUNY Downstate Medical Center where he conducts clinical research and teaches medical students, residents and renal fellow in the pathophysiology of kidney diseases, acute kidney injury and renal replacement therapies.

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
The amended application results in no changes other than the members of the applicant corporation. 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

Total Project Cost and Financing

The total project cost for construction and fees is estimated at $2,658,826, broken down as follows:

New Construction	$1,343,061
Renovation & Demolition	177,926
Design Contingency	148,187
Construction Contingency	82,990
Architect/Engineering Fees	217,124
Other Fees	70,000
Movable Equipment	506,765
Telecommunications	30,000
Financing Costs	5,520
Interim Interest Expense	60,720
Application Fees	2,000
Additional Processing Fees	14,533
Total Project Cost	$2,658,826

The project is under construction with a March 7, 2016 start date and is expected to be completed by December 31, 2018.

The financing for this project will be as follows:

Members of Center - Equity	$354,661
Center's Loan (8% interest, 5-year term)	552,000
Sub-Landlord's Loan (8% Interest, 5-year term)	1,752,165
Total	$2,658,826

Northfield Bank has provided letters of interest for both loans. BFA Attachments A and B are, respectively, the net worth summaries of the proposed members of Ditmas Park Dialysis Center, LLC and the 2017 Certified Financial Statement of Ditmas Park Rehabilitation and Care Center, LLC, which show sufficient resources to meet the equity requirement.

Lease Rental Agreements

The applicant has submitted executed lease rental agreements for the proposed site. The terms are summarized below:

Lease:

Date:	June 25, 1980 (with various term extensions, latest December 1, 2016)
Premises:	Premises located at 2107 Ditmas Avenue, Brooklyn, NY
Landlord:	Gotham Associates predecessor to Dithold Associates, LLC
Tenant:	Ditmas Park Rehabilitation and Care Center, LLC
Term:	Lease extended to December 31, 2026.
Rental:	$1,200,000 per year.
Provisions:	Tenant is responsible for taxes, utilities, insurance and maintenance.

Sub-Lease:

Date:	November 4, 2015
Premises:	5610 sq. ft. on the 1st floor of premises located at 2107 Ditmas Avenue, Brooklyn, NY
Landlord:	Gotham Associates predecessor to Dithold Associates, LLC
Sub-Landlord:	Ditmas Park Rehabilitation and Care Center, LLC
Lessee:	Ditmas Park Dialysis Center, LLC
Term:	Ends at midnight on the last date of the main lease.
Rental:	$278,502 per year (based on $25 per sq. ft. or $140,250 plus debt service of $138,252)
Provisions:	Sub tenant is responsible for their portion of taxes, insurance, utilities and maintenance for subleases premises.

The applicant has submitted an affidavit attesting to the relationship between the property owner (Dithold Associates, LLC), the sub-landlord (Ditmas Park Rehabilitation & Care Center, LLC), and the tenant (Ditmas Park Dialysis Center, LLC) in that the entities have several members in common. The applicant has also submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

Operating Budget

The applicant has submitted an operating budget, in 2018 dollars, for Years One and Three, as summarized below:

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
Medicaid-FFS	$259.11	$123,077	$258.81	$145,454
Medicare-FFS	$293.98	2,430,933	$294.00	2,872,921
Commercial-FFS	$321.13	122,031	$321.20	144,219
Commercial MC	$600.25	228,096	$600.37	269,568
All Other-Bad Debt		-43,562		-51,482
Total Revenue		$2,860,575		$3,380,680
Expenses				
Operating	$225.75	$2,145,490	$236.28	$2,653,935
Capital	51.56	490,078	41.61	467,330
Total	$277.31	$2,635,568	$277.89	$3,121,265
Net Income		$225,007		$259,415
Total Treatments/visits		9,504		11,232
Cost per		$277.31		$277.89

Utilization by payor source for Year One and Year Three is as follows:

	Year One		Year Three	
Payor	Visits	%	Visits	%
Medicaid-FFS	475	5.0%	562	5.0%
Medicare-FFS	8,269	87.0%	9,772	87.0%
Commercial-FFS	380	4.0%	449	4.0%
Commercial MC	380	4.0%	449	4.0%
Total	9,504	100.0%	11,232	100.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions by payor are based on the experience of similar chronic renal dialysis providers in Kings County.
- Utilization assumptions are the based approved budget for CON 092169. The Center expects their patients will come primarily from Ditmas Park Rehabilitation Care Center, the RHCF where the dialysis center is located.
- Expense assumptions are based on the previously approved budget, updated to 2018 dollars. Expenses were calculated based on estimates as follows:
  - Medical and Pharmacy supplies at $75 per treatment,
  - Offices Supplies at $2 per treatment and Insurance cost at $3 per treatment,
  - Repairs, maintenance, waste and housekeeping costs at $2.50 per treatment.
  - Depreciation, rent and interest are based on projected costs.
- The breakeven utilization is approximately 8,756 treatments in Year One.

Capability and Feasibility

Project cost of $2,658,826 will be met via $354,661 in members' equity, a five-year self-amortizing loan for $552,000 at 8% interest (applicant), and a five-year self-amortizing loan for $1,752,165 at 8% interest to be paid by Ditmas Park Rehabilitation and Care Center, LLC (sub-landlord). Northfield Bank has provided letters of interest for both loans.

Working capital requirements are estimated at $520,211 based on two months of third year expenses. Funding for working capital will be provided as follows: $270,211 from members equity with the remaining balance of $250,000 being satisfied through a five-year loan with interest at 8%. Northfield Bank has provided a letter of interest. BFA Attachments A and B, the members' personal net worth statements and the 2017 certified financial statements of the Ditmas Park Rehabilitation and Care Center, LLC, respectively, show sufficient liquid resources to meet all the projects equity requirements.

BFA Attachment C is the pro-forma balance sheet for Ditmas Park Dialysis Center, LLC, which shows the operation will start with $2,377,038 in members' equity.

The submitted budget projects a net income of $225,007 and $259,415 during years one and three of operations, respectively. Medicare and Medicaid reimbursement rates are based on the current and projected federal and state government rates for dialysis treatment. The budget appears reasonable.

BFA Attachment B is the 2017 certified financial statements of Ditmas Park Rehabilitation and Care Center, which shows positive working capital position, positive equity position and positive net income position.

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 - Proposed Members of Ditmas Park Dialysis Center, LLC
BFA Attachment B	2017 Certified Financial Statements - Ditmas Park Rehabilitation & Care Center, LLC
BFA Attachment C	Pro-Forma balance sheet of Ditmas Park Dialysis Center, LLC

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Public Health and Health Planning Council

Project # 181419-B
Ulster Dialysis, LLC

Program:	**Diagnostic and Treatment Center**	***County:***	**Ulster**
Purpose:	**Establishment and Construction**	***Acknowledged:***	**June 21, 2018**

Executive Summary

Description
Ulster Dialysis, LLC, an existing New York limited liability company, requests approval to establish and construct a 13-station end stage renal dialysis (ESRD) Article 28 diagnostic and treatment center (D&TC) to be located in leased space at 900 Miron Lane, Kingston (Ulster County). The applicant requests certification for chronic renal dialysis (13-stations including one isolation station), home hemodialysis training and support, and home peritoneal dialysis training and support services. The members of the applicant are all local Nephrologists serving both the local community and ESRD population in Ulster and adjacent counties.

The proposed members of the Center are as follows:

Proposed Operator Ulster Dialysis, LLC	
Members	%
Shawn Dhupar, M.D.	25%
Paul Feldman, M.D.	25%
Beth Stefanchik, D.O.	25%
Geoffrey Lee, M.D.	25%

OPCHSM Recommendation
Contingent Approval

Need Summary
There is a current need projection of 18 dialysis stations in the county. This project will provide residents with in center Hemodialysis, Peritoneal Dialysis, Home Hemodialysis and training and education for all modalities.

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 $1,935,578 will be met via equity of $193,558 from the proposed members' personal resources and a bank loan of $1,742,020 at 5.25% interest for a 15-year term. Rhinebeck Bank has provided a letter of interest. The proposed budget is as follows:

	Year One	Year Three
Revenues	$1,506,934	$3,121,507
Expenses	$1,717,051	$2,971,153
Gain/(Loss)	($210,117)	$150,354

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 lease rental agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's Amended Articles of Organization, acceptable to the Department. [CSL]
6. Submission of the applicant's amended Operating Agreement, 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-1.0. [AER]

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. Construction must start on or before January 15, 2019 and construction must be completed by April 15, 2019, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU
3. 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

October 11, 2018

Need Analysis

Analysis

The primary service area for the new facility will be Ulster County, which had a population estimate of 179,417 for 2017. The percentage of the population aged 65 and over was 19.3%. The nonwhite population percentage was 12.6%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Ulster County and New York State are shown below.

	Ulster County	New York State
Ages 65 and Over	19.3%	15.9%
Nonwhite	12.6%	30.4%

Source: U.S. Census 2017

There are two freestanding dialysis centers currently operating in Ulster County. A four-station center in Olivera NY, approximately 38.3 miles from the applicant, and a 30-station center also in Kingston.

Capacity

Below are the Department's guidelines to estimate capacity for chronic dialysis stations:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free-standing station per year is 156.
- One hospital-based station represents 499 treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the number of annual treatments per hospital station is 499. One hospital-based station can treat 3 patients per year.

Need Projections

Ulster County:
Chronic End Stage Renal Disease (Dialysis) Resources / Need Projected Through 2021

County	Existing Resources	Pending Resources	Total Current Resources	Total Need 2021	Unmet Need 2021	County-wide Stations Under Review	Unmet Need After Approval
	a	b	c	d	e	f	g
			(a + b)		(d - c)		(e - f)
Ulster	34	0	34	52	18	23	-5

Effective August 14, 2018

Column (a): Existing Resources: Stations in Operation

Column (b): Pending Resources: Includes Stations with Contingent Approval per the Bureau of Project Management and Stations with Recommendations of Approval by the Bureau of Public Need Review, but not yet Contingently Approved in the Bureau of Project Management.

Column (f): Submitted Projects / Stations Under Review

Currently four of the existing 34 Ulster County stations are used specifically for pediatric purposes. They are specialty use and will have no impact on adult renal dialysis clinics and are therefore discounted from the need numbers when considering net new stations. Below are additional local factors in support of this application.

- All four of the members of Ulster Dialysis, LLC are local Nephrologist that are and have been vested in the community. Dr. Lee and Dr. Stefanchik are the only full-time active practicing Nephrologist located in Ulster County. These Nephrologist provide close to 100% of the community's nephrology care and have additional available capacity. The current situation is not a lack of access to high quality and caring Nephrologist. Rather, the lack of accessibility to available outpatient dialysis slots.
- Although Ulster County has a population exceeding 180,000 persons, it currently has only one provider of outpatient dialysis at one sole location. The residents of the County have no alternate or back-up choice for outpatient dialysis care in the area.
- The applicant states the current, sole provider in Ulster County has an approximate 15-patient wait list and is not accepting new patients, and that 20 Ulster County dialysis patients are forced to seek care outside of the county. These conditions contribute to extended LOS in the hospital.

Conclusion
The addition of these 13 stations will help provide needed services in Ulster County.

Recommendation
From a need perspective, approval is recommended.

Program Analysis

Program Description

Proposed Operator	Ulster Dialysis, LLC
Doing Business As	Ulster Dialysis
Site Address	900 Miron Lane Kingston, NY 12401 (Ulster County)
Approved Services	Chronic Renal Dialysis (13 Stations) Home Hemodialysis Training and Support Home Peritoneal Dialysis Training and Support
Hours of Operation	Monday through Saturday, 7 AM to 4 PM
Staffing (1st Year / 3rd Year)	9.77 FTEs / 16.39 FTEs
Medical Director(s)	Beth Stefanchik, DO
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Vassar Brothers Medical Center 21 mi. / 34 minutes

Character and Competence
The members of Ulster Dialysis, LLC are:

Name	Interest
Shawn Dhupar, MD	25%
Paul Feldman, MD	25%
Beth Stefanchik, DO	25%
Geoffrey Lee, MD	25%

Each of the four members is a practicing physician, board-certified in internal medicine with sub-certification in nephrology. Dr. Beth Stefanchik will serve as the center's medical director. She has seven years of experience as a full-time nephrologist specializing in the care of patients on hemodialysis.

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

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

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

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement
The applicant has submitted a draft lease agreement for the site that they will occupy, which is summarized below:

Premises:	8,025 square feet located at 900 Miron Lane Kingston, NY 12401.
Lessor:	Dena Marie II, LLC
Lessee:	Ulster Dialysis, LLC
Term:	12 years with three (3) five-year renewal options
Rental	Years 1-5: $114,356.25 annually ($14.25 per sq. ft.); Years 6-10: $126,393.75 annually ($15.75 per sq. ft.); and Years 11-12: $139,073.25 annually ($17.33 per sq. ft.)
Provisions	The lessee shall be responsible for maintenance, insurance and real estate taxes.

The applicant has submitted an affidavit indicating that the lease will be an arm's length lease arrangement. The applicant has submitted letters from two NYS realtors attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing
Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at $1,935,579, further broken down as follows:

New Construction	$1,105,318
Design Contingency	110,532
Construction Contingency	55,266
Fixed Equipment	163,200
Planning Consultant Fees	7,650
Architect/Engineering Fees	97,528
Other Fees	30,000
Moveable Equipment	340,615
Interest Expense	12,893
CON Fees	12,577
Total Project Cost	$1,935,579

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

The applicant's financing plan appears as follows:

Equity	$193,559
Bank Loan (5.25% interest rate for a 15-year term)	$1,742,020

The equity will be provided via the proposed members personal resources. BFA Attachment A indicates the applicant has sufficient resources for the equity contribution. Rhinebeck Bank had provided a letter if interest at the stated terms regarding the financing.

Operating Budget

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

	Year One		Year Three	
Revenues	Per Visit	Total	Per Visit	Total
Medicaid FFS	$269.17	$58,680	$268.92	$121,522
Medicare FFS	$279.63	$977,034	$279.62	$2,023,857
Commercial FFS	$750.23	$393,120	$749.83	$814,320
Commercial MC	$596.18	$78,100	$596.97	$161,778
Total Revenues		$1,506,934		$3,121,507
Expenses				
Operating	$300.16	$1,310,785	$284.53	$2,574,100
Capital	93.03	406,266	43.89	397,053
Total Expenses	$393.19	$1,717,051	$328.41	$2,971,153
Net Income		($210,117)		$150,354
Visits		4,367		9,047
Cost Per Treatment		$393.19		$328.41

The increase in projected visits from Year One to Year Three includes ramp-up and population growth factors. Specifically, the population to be served will be inclusive of the current 15 patients on the waiting list of the current sole dialysis provider in the County, an estimated ten additional patients migrating from the County for care, and future residents requiring dialysis estimated at approximate 3% due to annual growth in dialysis patients.

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

Payor	Year One	Year Three
Medicaid FFS	12.0%	12.0%
Medicare MC	3.0%	3.0%
Commercial FFS	80.0%	80.0%
Commercial MC	5.0%	5.0%

Expense and utilization assumptions are based on the historical experience of other D&TCs providing similar services in the geographical area. Revenue assumptions utilized renal dialysis reimbursement rates based on the following payors for similar scope D&TC services: Medicaid APG reimbursement, Medicaid Managed Care rates, Medicare Fee Schedule rates, and commercial payor rates.

Capability and Feasibility

Total estimated project cost of $1,935,578 will be met with members' equity of $193,558 and a bank loan of $1,742,020 at 5,25% interest for a 15-year term. Rhinebeck Bank has provided a letter of interest at the stated terms.

Working capital requirements are estimated to be $495,192, which is equivalent to two months of third year expenses. The applicant will provide equity from the proposed members personal resources to meet the working capital requirement. BFA Attachment A presents the personal net worth statements of the proposed members of Ulster Dialysis, LLC, which indicates the availability of sufficient resources to fund the working capital and project cost equity requirements for this project. BFA Attachment B is the pro forma balance sheet of Ulster Dialysis, LLC as of the first day of operation, which indicates a positive members' equity position of $888,770.

The submitted budget indicates a net loss of $210,117 in Year One and a net income of $150,354 in Year Three. The first-year loss will be offset from working capital funds. Revenues are based on current reimbursement methodologies for ESRD diagnostic and treatment services. The submitted budget appears reasonable.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of the Proposed Members of Ulster Dialysis, LLC
BFA Attachment B	Pro Forma Balance Sheet of Ulster Dialysis, LLC

Public Health and Health Planning Council

Project # 172385-E
Grand Great Neck, LLC d/b/a The Grand Rehabilitation and Nursing at Great Neck

Program:	**Residential Health Care Facility**	***County:***	**Nassau**
Purpose:	**Establishment**	***Acknowledged:***	**December 20, 2017**

Executive Summary

Description

Grand Great Neck, LLC d/b/a The Grand Rehabilitation and Nursing at Great Neck, a New York limited liability company, requests approval to be established as the new operator of Grace Plaza Nursing and Rehabilitation Center, a 214-bed, proprietary, Article 28 residential health care facility (RHCF) located at 15 St. Paul's Place, Great Neck (Nassau County). Pinegrove Manor II, LLC, a proprietary entity, is the current operator of the facility. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the facility will be named The Grand Rehabilitation and Nursing at Great Neck. There will be no change in beds or services provided.

On November 22, 2017, Pinegrove Manor II, LLC entered into an Asset Purchase Agreement (APA) with Grand Great Neck, LLC for the sale and acquisition of the RHCF's operating interests for the assumption of certain liabilities valued at $370,005 as of August 10, 2018, plus execution of the lease. The RHCF's real property is owned by Pinegrove Manor, LLC, which has members in common with the current operating entity. The applicant will enter into an arms-length lease with Pinegrove Manor, LLC for site control of the facility.

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

Current Operator	
Pinegrove Manor II, LLC	
Members	
Benjamin Landa	50%
Howard Fensterman	37%
Robert Fensterman	13%

Proposed Operator	
Great Grand Neck, LLC	
Members	
Jeremy Strauss*	95%
Meryl Strauss	5%

*Manager of the facility

At the PHHPC meeting held on the June 7, 2018, the applicant members of Great Grand Neck, LLC were contingently approved to acquire the operating interests in the following RHCFs:

- Batavia Health Care Center, LLC (62 beds, Genesee County, CON 172293);
- Mohawk Valley Health Care Center (120 beds, Herkimer County, CON 172292); and
- Heritage Health Care Center (220 beds, Oneida County, CON 181218).

Currently under review, the applicant members are seeking approval to acquire the operating interest in South Point Plaza Nursing and Rehabilitation Center, a 185-bed RHCF located in Nassau County (CON 172387).

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

Great Grand Neck, LLC will acquire the RHCF operations for the assumptions of certain liabilities, estimated at $370,005 as of August 10, 2018, plus execution of the lease. The applicant will lease the premises from Pinegrove Manor, LLC, a non-related entity. There are no project costs associated with this application. The projected budget is as follows:

	Year One	Year Three
Revenues	$25,088,632	$25,617,837
Expenses	24,817,775	24,883,829
Net Income	$270,857	$734,008

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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed credit line commitment acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. Submission of a photocopy of the applicant's fully executed Consulting Services Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed Assignment of Lease, 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 amended and executed lease agreement, acceptable to the Department. [CSL]

Approval conditional upon:

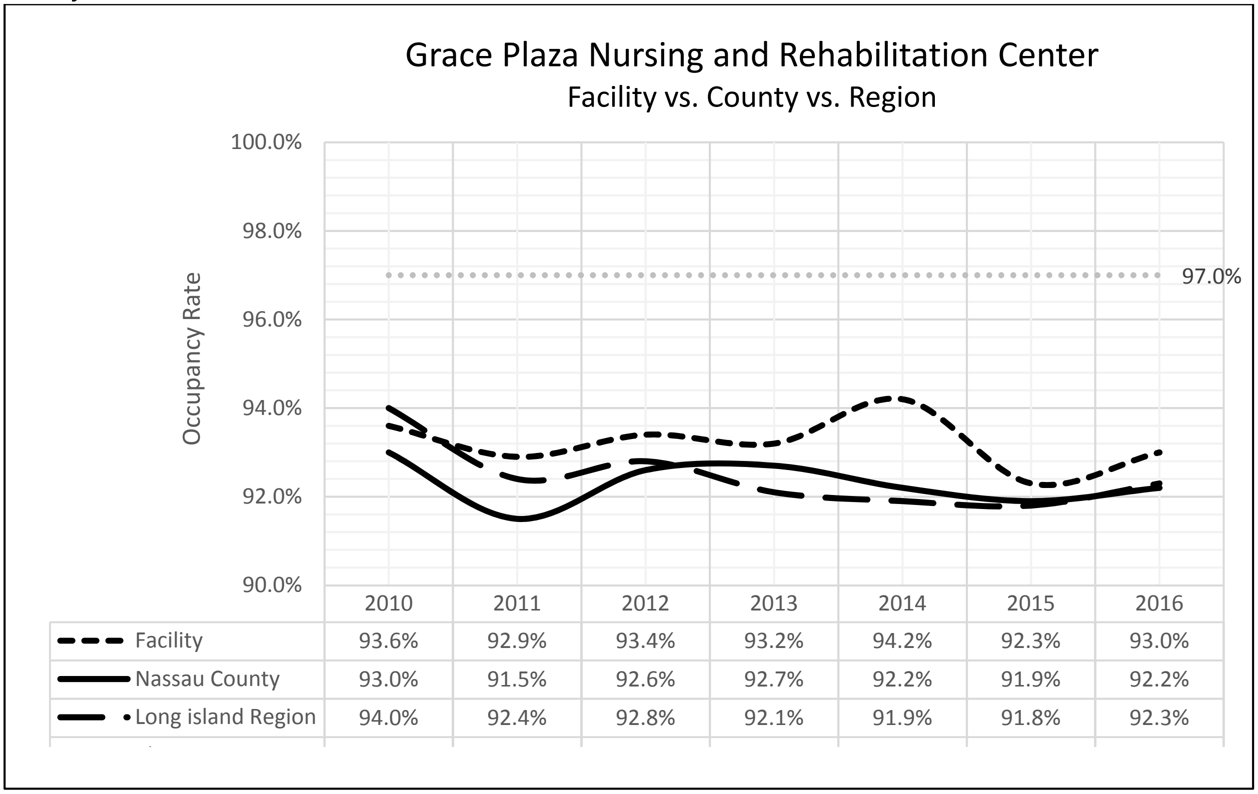
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 11, 2018

Need Analysis

Analysis



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.

Grace Plaza Nursing and Rehabilitation Center's Medicaid admissions rate has exceeded the threshold of 75% of the Nassau County rate, as demonstrated in the table below.

Percent of New RHCF Admissions that are Medicaid	2014	2015	2016
Nassau County 75% Threshold	9.4%	11.1%	9.2%
Grace Plaza Nursing and Rehabilitation Center	18.9%	28.6%	27.3%

Conclusion

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

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Grace Plaza Nursing and Rehabilitation Center	The Grand Rehabilitation and Nursing at Great neck
Address	15 St. Paul's Place Great Neck, NY 11021	Same
RHCF Capacity	214	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	LLC	Same
Operator	Pinegrove Manor II, LLC	Grand Great Neck, LLC *Jeremy Strauss 95% Meryl Strauss 5% *Managing Member

Character and Competence - Background

Facilities Reviewed

The Grand Rehabilitation & Nursing at Pawling	08/2008 to present
The Grand Rehabilitation & Nursing at Queens	08/2008 to present
Brooklyn Center for Rehabilitation & Residential Healthcare	08//2008 to 12/2015
Bushwick Center for Rehabilitation & Health Care	05/2011 to 12/2015
The Grand Rehabilitation & Nursing Center at Rome	05/2011 to present
The Grand Rehabilitation & Nursing Center at Chittenango	05/2011 to present
Boro Park Center for Rehabilitation & Heath Care	05/2011 to 03/2016
Fulton Center for Rehabilitation	04/2012 to 12/2015
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
Holliswood Center for Rehabilitation	05/2013 to 03/2016
Corning Center for Rehabilitation	07/2013 to 02/2016
Washington Center for Rehabilitation	02/2014 to 12/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Steuben Center for Rehabilitation	07/2014 to 05/2016
The Grand Rehabilitation & Nursing Center at Guilderland	11/2014 to present
The Grand Rehabilitation & Nursing Center at River Valley	09/2016 to present
The Grand Rehabilitation & Nursing at Barnwell	12/2017 to present
Senior Care EMS	08/2008 to present
Washington Center Adult Home	02/2014 to 05/2016

Individual Background Review

Jeremy 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 nursing home ownership interests:

The Grand Rehabilitation & Nursing at Pawling (98%)	01/2004 to present
The Grand Rehabilitation & Nursing at Queens (95%)	06/2004 to present
Brooklyn Center for Rehab (5%)	03/2007 to 12/2015
Bushwick Center for Rehabilitation & Health Care (10%)	05/2011 to 12/2015
The Grand Rehabilitation & Nursing Center at Rome (98%)	05/2011 to present
The Grand Rehabilitation & Nursing Center at Chittenango (67%)	05/2011 to present

Boro Park Center for Rehabilitation & Heath Care (2%)	05/2011 to 03/2016
Fulton Center for Rehabilitation (25%)	04/2012 to 12/2015
Richmond Center for Rehabilitation & Specialty Healthcare (5%)	04/2012 to 12/2015
Waterfront Center for Rehabilitation (30%)	01/2013 to 12/2015
Holliswood Center for Rehabilitation (7.5%)	05/2013 to 03/2016
Corning Center for Rehabilitation (25%)	07/2013 to 02/2016
Washington Center for Rehabilitation (30%)	02/2014 to 12/2015
Essex Center for Rehabilitation (30%)	03/2014 to 12/2015
Steuben Center for Rehabilitation (29%)	07/2014 to 05/2016
The Grand Rehabilitation & Nursing Center at Guilderland (95%)	11/2014 to present
The Grand Rehabilitation & Nursing Center at River Valley (95%)	09/2016 to present
The Grand Rehabilitation & Nursing at Barnwell (95%)	12/2017 to present
Senior Care EMS (23%)	05/2005 to present
Washington Center Adult Home (30%)	02/2014 to 05/2016

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. Mrs. Strauss discloses the following nursing home ownership interests:

The Grand Rehabilitation & Nursing Center at Guilderland (5%)	11/2016 to present
The Grand Rehabilitation & Nursing Center at River Valley (5%)	09/2016 to present
The Grand Rehabilitation & Nursing Center at Rome (2%)	08/2016 to present
The Grand Rehabilitation & Nursing Center at Chittenango (2%)	07/2016 to present
The Grand Rehabilitation & 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 June16, 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).

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

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

The review of operations of the other nursing homes and the Senior Care Emergency Ambulance Services, Inc, for the time periods indicated above reveals that there were no enforcements.

Quality Review

Provider Name	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing	NYS Quintile
The Grand Rehabilitation & Nursing at Pawling	01/2004	*****	****	*****	***	4
The Grand Rehabilitation & Nursing at Queens	06/2004	*****	****	*****	**	5
The Grand Rehabilitation & Nursing at Rome	05/2011	**	*	*****	**	5
The Grand Rehabilitation & Nursing at Chittenango	05/2011	**	*	*****	**	3
The Grand Rehabilitation & Nursing at Guilderland	11/2014	*	*	****	**	Information not available
The Grand Rehabilitation & Nursing at River Valley	09/2016	**	**	****	***	5
The Grand Rehabilitation & Nursing at Barnwell	12/2017	*	*	***	*	5

Notes: The Guilderland Staffing Rating is not available via Medicare.gov website. The star ratings for Barnwell are not applicable due to the recent acquisition.

With regard to the nursing homes with a quality score of 1 or 2, the applicant indicates the low star ratings, in general, are attributed to inconsistent practices among staff due to varying comprehension of policies/procedures and technical skill proficiencies. The applicant stated they 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.

Regarding the nursing homes with low staffing ratings, the applicant states, especially upstate area nursing homes, there is a difficulty in recruiting and retaining staff. This difficulty in recruiting and retaining direct care staff has forced the facilities to rely on agency staffing. While agency staffing satisfies an immediate need, extended reliance is not in the best interest of residents. Agency staff are not invested in either the operations of the facility or the residents and frequent utilization is disruptive to continuity of care.

The applicant's plan for corrective action to improve low staffing ratings is by implementing a decrease in reliance on agency staffing, implementing a global staffing initiative designed to improve quality and performance on staff at each of the facilities within the Grand Healthcare System. The operator, at some facilities, has implemented the following recruitment and retention initiatives by hiring a full-time recruiter dedicated to direct care staff, provision of longevity pay and bonuses, established a mentoring program for new and existing direct care staff to promote development, enhancement and refinement of skills.

It is noted that there have been improvements in some of the star ratings since the applicant has taken ownership, and that one 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.

Conclusion

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, a related entity with Jeremy Strauss as CEO. The applicant also intends to utilize staffing agencies upon assumption of ownership. 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

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the RHCF's operating interests, to be effective upon PHHPC approval. The terms are summarized below:

Date:	November 22, 2017
Seller:	Pinegrove Manor II, LLC
Buyer:	Great Grand Neck, 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 "Pinegrove Manor II"), 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 and computer software, phone and telefax numbers, and non-excluded accounts receivables.
Excluded Assets:	Seller's rights, title and interest on closing date in all insurance policies; all cash, deposits, refunds prior to closing date; 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; plus, assumptions of certain liabilities totaling $370,005 as of August 10, 2018.
Purchase Price:	Assumed liabilities of $370,005 as of August 10, 2018.

BFA Attachment A is the net worth summary of the Great Grand Neck, LLC members, which reveals sufficient resources to meet the equity requirements for funding the assumed liabilities.

Jeremy Strauss has provided a letter or interest from Harborview Capital Partners issued to Strauss Ventures, LLC for a credit line of up to $25,000,000 at 6% interest for a five-year term. Strauss Ventures, LLC is 100% owed by Jeremy and Meryl Strauss. Mr. 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 $370,005 as of August 10, 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 August 14, 2018, the facility has no outstanding Medicaid liabilities.

Lease Agreement

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

Premises:	214-bed located at 15 St. Paul’s Place, Great Neck, (Nassau County)
Landlord:	Pinegrove Manor, LLC
Lessee:	Great Grand Neck, LLC
Term:	25-year lease
Rental:	Years 1-5: $250,000 per month Years 6-10: $250,000 plus adjusted by the consumer price index (CPI) Years 11-15: $250,000, plus adjusted by (CPI) Years 16-20: $250,000, plus adjusted by (CPI) Years 21-25: $205,000, plus adjusted by (CPI)
Provisions:	CPI index will be used for increase in Northern NY, NJ-Long Island

The lease arrangement is an arm’s length agreement. The applicant has submitted letters from two New York Licensed Real Estate Brokers 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:	Great Grand Neck, LLC
Services:	Advisory services related to administration and operational functions, including assistance with regulatory monitoring, compliance/quality assurance, development/implementation of marketing plan, assistance/supervision of accounts receivable functions, billing/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:	$85,000 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. The draft Consulting Service Agreement provides that Grand Great Neck, LLC retains ultimate authority, responsibility, and control in all 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 stating that the applicant willfully engages in any illegal delegation and understands that the Department will hold the applicant accountable.

Operating Budget

The applicant has provided the current year (2017) results and first and third year operating budget after the change in ownership, in 2018 dollars, summarized as follows:

	Current Year		Year One		Year Three	
Revenues	Per Diem	Total	Per Diem	Total	Per Diem	Total
Commercial-FFS	$599.09	$265,995	$599.09	$266,595	$599.09	$272,586
Medicare-FFS	$493.14	$3,974,707	$493.14	$4,014,160	$493.14	$4,098,980
Medicare-MC	$493.14	$1,499,145	$493.14	$1,514,926	$493.14	$1,546,980
Medicaid-FFS	$290.11	$11,560,709	$275.73	$11,101,717	$275.73	$11,335,536
Medicaid-MC	$290.11	$4,788,485	$290.11	$4,839,325	$290.11	$4,941,154
Private Pay	$599.09	$3,318,949	$599.09	$3,351,909	$599.09	$3,422,601
Other Income*		$570,904		$0		$0
Total Revenue		$25,978,894		$25,088,632		$25,617,837
Expenses						
Operating	$330.04	$24,238,169	$287.05	$21,298,261	$282.69	$21,416,501
Capital	$30.38	2,231,183	$47.44	3,519,514	$45.77	3,467,328
Total Expenses	$360.42	$26,469,352	$334.49	$24,817,775	$328.46	$24,883,829
Net Income		($490,458)		$270,857		$734,008
Patient Days		73,440		74,196		75,760
Occupancy		94.02%		94.98%		96.99%

** Other Income consists of barber/beauty shops, unrestricted investment income, and other misc., which are discontinued in year one and three.*

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2017 revenues and expenses.
- Medicaid revenue is the based on the facility's current 2018 Medicaid Regional Pricing rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2017 and used for projections. The Commercial and Private pay rates are based on the current operator's average rates for 2017.
- Expenses and staffing assumptions were based on the current operator's model and adjusted based on the applicant's experience.
- Projected utilization for Year One is 94.98% and 96.99% for Year Three. It is noted that utilization for the past three years has averaged around 92.23% and occupancy was at 94.02% for 2017. Current occupancy was reported at 89.3% as of August 8, 2018.
- Breakeven utilization is projected at 93.96% in the first year.
- Utilization by payor source is summarized below for the first and third year after change in ownership is summarized below:

Payor	Current Year	Years One & Three
Medicaid-FFS	54.27%	54.27%
Medicaid-MC	22.48%	22.48%
Medicare-FFS	10.97%	10.97%
Medicare-MC	4.14%	4.14%
Commercial-FFS	.60%	.60%
Private Pay	7.54%	7.54%
RHCF Total	100%	100%

Capability and Feasibility

Great Grand Neck, LLC will acquire the RHCF operations for the assumptions of certain liabilities, estimated at $370,005 as of August 10, 2018, plus the execution of the lease. The applicant will lease the premises from Pinegrove Manor, LLC. There are no project costs associated with this application.

The working capital requirement is estimated at $4,506,301 based on two months of first year expense of $4,136,296, plus assumed liabilities of $370,005 as of August 10, 2018. The applicant will provide $2,253,150 from a working capital loan at 5% for a term of five-years. The remaining $2,253,151 will be funded via members' equity of $938,000 and $1,315,151 from a credit line issued to Strauss Ventures, LLC. Strauss Ventures, LLC is 100% owned by Jeremy Strauss and Meryl Strauss. Harborview Capital Partners has provided a letter of interest for a credit line of up to $25,000,000 at 6% interest for a five-year term. Harborview Capital Partners has provided a letter of interest for a working capital loan for a five-year term at 5% interest.

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 for the two RHCFs (this application and CON 172387 concurrently under review). As the result of potential equity shortfall, Jeremy Strauss has provided an affidavit stating his willingness to contribute resources disproportionate to his membership interest making up another member's equity shortfall. Jeremy Strauss has provided a letter of interest for a $25,000,000 credit line issued to his company, Strauss Ventures, LLC, at the above stated terms.

The submitted budget projects a first-year and third year net income of $270,857 and $734,008 after the change in ownership. Overall expense reductions include purchased services, employee benefits and professional fees, as the applicant will renegotiate these contracts. Expense reductions in Year One compared to the current year total $1,651,577.

BFA Attachment C is Grand Great Neck, LLC's pro forma balance sheet, which shows the entity will start with $4,653,420 in member's equity (which includes $370,005 assumed liabilities). The budget appears reasonable.

BFA Attachment D is the 2015 - 2017 Financial Summary of Pinegrove Manor II, LLC d/b/a Grace Plaza Nursing and Rehabilitation Center. The RHCF had average positive working capital and net asset positions for the period and generated an average positive net income. In 2017, the facility had a net loss of $490,458 for operations due to decreasing net patient revenue while overall general operating expenses (salary and benefits) increased. BFA Attachment E is their internal financial statement as of March 31, 2018, which shows positive net asset and working capital position. The facility incurred a net loss of $354,314 for the period shown due to nursing and medical staff increases and general and administration cost increases.

BFA Attachment F is the proposed members' ownership interest in the affiliated RHCFs and their financial summaries. All the RHCFs have maintained positive net income, working capital, and net assets for the periods 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 Great Neck, LLC
BFA Attachment B	Details of Assumed Liabilities as of August 10, 2018
BFA Attachment C	Pro Forma Balance Sheet (Grand Great Neck, LLC)
BFA Attachment D	Financial Summary 2015 thru 2017 of Great Grand Neck, LLC
BFA Attachment E	March 31, 2018 Internal Financial Statement
BFA Attachment F	Proposed Members' Ownership Interest in Affiliated RHCFs
BFA Attachment G	Owners of Pinegrove Manor, LLC (Realty Interest)

Public Health and Health Planning Council

Project # 172387-E
Grand South Point, LLC d/b/a The Grand Rehabilitation and Nursing at South Point

Program:	**Residential Health Care Facility**	***County:***	**Nassau**
Purpose:	**Establishment**	***Acknowledged:***	**December 20, 2017**

Executive Summary

Description

Grand South Point, LLC d/b/a The Grand Rehabilitation and Nursing at South Point, a New York limited liability company, requests approval to be established as the new operator of South Point Plaza Nursing and Rehabilitation Center, a 185-bed, proprietary, Article 28 residential health care facility (RHCF) located at One Long Beach Road, Island Park (Nassau County). Bayview Manor, LLC is the current operator of the facility. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the facility will be named The Grand Rehabilitation and Nursing at South Point. There will be no change in beds or services provided.

On November 22, 2017, Bayview Manor, LLC entered into an Asset Purchase Agreement (APA) with Grand South Point, LLC for the sale and acquisition of the RHCF operating interests for the assumption of certain liabilities valued at $304,638 as of August 10, 2018, plus execution of the facility lease. The RHCF's real property is owned by Tzvi Shoel, LLC, whose members are common to the members of the current operating entity. The applicant will enter into an arms-length lease with Tzvi Shoel, LLC for site control of the facility.

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

Current Operator Bayview Manor, LLC	
Members	
Benjamin Landa	56.75%
Bent Philipson	27.25%
Ronald Stern	6.00%
Mayer Fischl	5.00%
Girshas Minster	2.00%
Alan Chopp	1.00%
Simona Golman	1.00%
Frank Ianucci	1.00%

Proposed Operator Grand Batavia, LLC	
Members	
Jeremy Strauss	95%
Meryl Strauss	5%

At the PHHPC meeting held on June 7, 2018, the applicant members of Grand South Point, LLC were contingently approved to acquire the operating interests in the following RHCFs:

- Batavia Health Care Center, LLC (62 beds, Genesee County, CON 172293);
- Mohawk Valley Health Care Center (120 beds, Herkimer County, CON 172292); and
- Heritage Health Care Center (220 beds, Oneida County, CON 181218).

Currently under review, the applicant members are seeking approval to acquire the operating interest in Grace Plaza Nursing and Rehabilitation Center, a 214-bed RHCF located in Nassau County (CON 172385).

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

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

Financial Summary

Grand South Point, LLC will acquire the RHCF operations for the assumption of certain liabilities, estimated at $304,638 as of August 10, 2018, plus execution of the lease. Grand South Point, LLC will lease the premises from Tzvi Shoel, LLC. There are no project costs associated with this application. The projected budget is as follows.

	Year One	Year Three
Revenues	$20,325,777	$20,325,777
Expenses	19,421,815	19,288,708
Net Income	$903,962	$1,037,069

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 Consulting Services Agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed credit line commitment, acceptable to the Department of Health. [BFA]
5. 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)
6. 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)
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 amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Agreement of Lease, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Consulting Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended and executed Lease Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

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

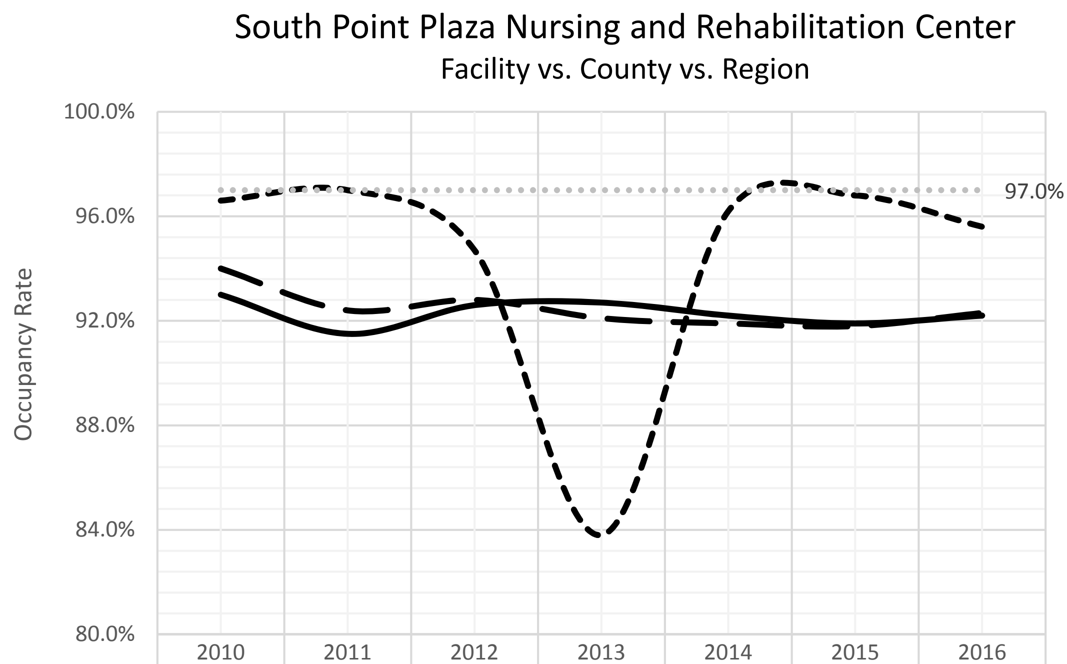
Council Action Date

October 11, 2018

Need Analysis

Analysis

Utilization has been relatively consistent except for 2013 when the facility was impacted by Superstorm Sandy.



	2010	2011	2012	2013	2014	2015	2016
Facility	96.6%	97.0%	94.7%	83.8%	96.2%	96.8%	95.6%
Nassau County	93.0%	91.5%	92.6%	92.7%	92.2%	91.9%	92.2%
Long island Region	94.0%	92.4%	92.8%	92.1%	91.9%	91.8%	92.3%

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.

South Point Plaza Nursing and Rehabilitation Center's Medicaid admissions rate has exceeded the threshold of 75% of the Nassau County rate, as demonstrated in the table below.

Percent of New RHCF Admissions that are Medicaid	**2014**	**2015**	**2016**
Nassau County 75% Threshold	9.4%	11.1%	9.2%
South Point Plaza Nursing and Rehabilitation Center	41.9%	33.8%	39.4%

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

Recommendation
From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	South Point Plaza Nursing & Rehabilitation Center	The Grand Rehabilitation & Nursing at South Point
Address	1 Long Beach Rd Island Park, NY 11558	Same
RHCF Capacity	185	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Same
Class of Operator	LLC	Same
Operator	Bayview Manor LLC	Grand South Point, LLC *Jeremy Strauss 95% Meryl Strauss 5% *Managing Member

Character and Competence - Background
<u>Facilities Reviewed</u>

The Grand Rehabilitation & Nursing at Pawling	08/2008 to present
The Grand Rehabilitation & Nursing at Queens	08/2008 to present
Brooklyn Center for Rehabilitation & Residential Healthcare	08//2008 to 12/2015
Bushwick Center for Rehabilitation & Health Care	05/2011 to 12/2015
The Grand Rehabilitation & Nursing Center at Rome	05/2011 to present
The Grand Rehabilitation & Nursing Center at Chittenango	05/2011 to present
Boro Park Center for Rehabilitation & Heath Care	05/2011 to 03/2016
Fulton Center for Rehabilitation	04/2012 to 12/2015
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
Holliswood Center for Rehabilitation	05/2013 to 03/2016
Corning Center for Rehabilitation	07/2013 to 02/2016
Washington Center for Rehabilitation	02/2014 to 12/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Steuben Center for Rehabilitation	07/2014 to 05/2016
The Grand Rehabilitation & Nursing Center at Guilderland	11/2014 to present
The Grand Rehabilitation & Nursing Center at River Valley	09/2016 to present
The Grand Rehabilitation & Nursing at Barnwell	12/2017 to present
Senior Care EMS	08/2008 to present
Washington Center Adult Home	02/2014 to 05/2016

Individual Background Review

Jeremy 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 nursing home ownership interests:

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

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. Mrs. Strauss discloses the following nursing home ownership interests:

The Grand Rehabilitation & Nursing Center at Guilderland (5%)	11/2016 to present
The Grand Rehabilitation & Nursing Center at River Valley (5%)	09/2016 to present
The Grand Rehabilitation & Nursing Center at Rome (2%)	08/2016 to present
The Grand Rehabilitation & Nursing Center at Chittenango (2%)	07/2016 to present
The Grand Rehabilitation & 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 June16, 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).

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

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

The review of operations of the other nursing homes and the Senior Care Emergency Ambulance Services, Inc, for the time periods indicated above reveals that there were no enforcements.

Quality Review

Provider Name	Ownership Since	Overall	Health Inspection	Quality Measures	Staffing	NYS Quintile
The Grand Rehabilitation & Nursing at Pawling	01/2004	*****	****	*****	***	**4**
The Grand Rehabilitation & Nursing at Queens	06/2004	*****	****	*****	**	**5**
The Grand Rehabilitation & Nursing at Rome	05/2011	**	*	*****	**	**5**
The Grand Rehabilitation & Nursing at Chittenango	05/2011	**	*	*****	**	**3**
The Grand Rehabilitation & Nursing at Guilderland	11/2014	*	*	****	**	Information not available
The Grand Rehabilitation & Nursing at River Valley	09/2016	**	**	****	***	**5**
The Grand Rehabilitation & Nursing at Barnwell	12/2017	*	*	***	*	**5**

Notes: The Guilderland Staffing Rating is not available via Medicare.gov website. The star ratings for Barnwell are not applicable due to the recent acquisition.

With regard to the nursing homes with a quality score of 1 or 2, the applicant indicates the low star ratings, in general, are attributed to inconsistent practices among staff due to varying comprehension of policies/procedures and technical skill proficiencies. The applicant stated they 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.

Regarding the nursing homes with low staffing ratings, the applicant states, especially upstate area nursing homes, there is a difficulty in recruiting and retaining staff. This difficulty in recruiting and retaining direct care staff has forced the facilities to rely on agency staffing. While agency staffing satisfies an immediate need, extended reliance is not in the best interest of residents. Agency staff are not invested in either the operations of the facility or the residents and frequent utilization is disruptive to continuity of care.

The applicant's plan for corrective action to improve low staffing ratings is by implementing a decrease in reliance on agency staffing, implementing a global staffing initiative designed to improve quality and performance on staff at each of the facilities within the Grand Healthcare System. The operator, at some facilities, has implemented the following recruitment and retention initiatives by hiring a full-time recruiter dedicated to direct care staff, provision of longevity pay and bonuses, established a mentoring program for new and existing direct care staff to promote development, enhancement and refinement of skills.

It is noted that there have been improvements in some of the star ratings since the applicant has taken ownership, and that one 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.

Conclusion

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, a related entity with Jeremy Strauss as CEO. The applicant also intends to utilize staffing agencies upon assumption of ownership. 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

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:	November 22, 2017
Seller:	Bayview Manor, LLC
Buyer:	Grand South Point, LLC
Asset Acquired:	Rights, title and interest in business assets including: tangible assets, inventory, supplies, books & records related to facility, assigned & assumed contracts, agreements, warranties, intellectual property rights (including the name "South Point Plaza Nursing and Rehabilitation 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.
Excluded Assets:	Seller's rights, title and interest on the closing date in all insurance policies; cash and cash equivalents, accounts receivables; Universal Settlement, and tax refunds.
Assumption of Liabilities:	Liabilities and obligations arising with respect to the operation of the Facility on and after the Closing Date; plus, assumption of certain liabilities totaling $304,638 as of August 10, 2018
Purchase Price:	Assumed liabilities of $304,638 as of August 10, 2018.

BFA Attachment A is the net worth summary for Grand South Point, LLC members, which reveals sufficient resources to meet the equity requirements for funding the assumed liabilities.

Jeremy Strauss has provided a letter or interest from Harborview Capital Partners issued to Strauss Ventures, LLC for a credit line of up to $25,000,000 at 6% interest for a five-year term. Strauss Ventures, LLC is 100% owed by Jeremy and Meryl Strauss. Mr. 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 $304,638 as of August 10, 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 August 14, 2018, the facility has no outstanding Medicaid liabilities.

Lease Agreement

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

Premises:	185-bed RHCF located at One Long Beach Road, Island Park, NY 11558
Landlord/Lessor:	Tzvi Shoel, LLC
Lessee:	Grand South Point, LLC
Term:	30 years
Rent:	Year 1-5: $2,500,000 ($208,334 per month). [CPI adjusted every five years.] Plus reimburse Lessor's monthly payments on a "not to exceed" $3,000,000 renovation loan.
Provisions:	Triple Net

The lease arrangement is an arm's length agreement. The applicant has submitted letters from two New York Licensed Real Estate Brokers 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 South Point, LLC
Consulting and 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:	$85,000 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 CFO of Strauss Ventures, LLC. The draft Consulting Service Agreement provides that Grand South Point, LLC retains ultimate authority, responsibility and control in all 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 insure 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 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 provided the current year (2017) results and the first and third year operating budgets subsequent to the change in ownership, in 2018 dollars, summarized as follows:

	Current Year		First Year		Third Year	
Revenues	Per Diem	Total	Per Diem	Total	Per Diem	Total
Medicaid -FFS	$266.11	$12,452,415	$270.11	$12,752,433	$270.11	$12,752,433
Medicare -FFS	$632.95	3,479,328	$632.95	3,498,948	$632.95	3,498,948
Commercial -FFS	$319.31	3,662,186	$319.31	3,695,694	$319.31	3,695,694
Private	$319.31	375,511	$319.31	378,702	$319.31	378,702
Non-Transferring*		577,685		0		0
Total Revenues		$20,547,125		$20,325,777		$20,325,777

Expenses						
Operating	$270.12	$17,540,614	$251.48	$16,472,086	$251.48	$16,472,086
Capital	$13.47	874,653	$45.03	2,949,729	$43.00	2,816,622
Total Expenses	$283.59	$18,415,267	$296.51	$19,421,815	$294.48	$19,288,708
Net Income (Loss)		$2,131,858		$903,962		$1,037,069
Patient Days		64,936		65,500		65,500
Utilization %		96.17%		97.00%		97.00%

** Nurse Aide Training $573,142 and Investment Income $4,543.*

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

- The current year reflects the facility's 2017 revenues and expenses.
- Medicaid revenue is based on the facility's current 2018 Medicaid Regional Pricing rate. The current year and forecasted Medicare rate is the actual daily rate experienced by the facility during 2017. The Commercial and 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.
- The facility's projected utilization for Year One and Three is 97.00%. It is noted that utilization for the past three years has averaged around 96.2%, with current occupancy being 92.4% as of August 1, 2018.
- The breakeven utilization is projected at 92.69% in the first year.
- Utilization by payor for the first and third year after the change in ownership is summarized below:

Payor	Current Year	Years One &Three
Medicaid-FFS	72.08%	72.08%
Medicare-FFS	8.44%	8.44%
Commercial-FFS	17.67%	17.67%
Private Pay	1.81%	1.81%
Total	100%	100%

Capability and Feasibility

Grand South Point, LLC will acquire the RHCF operations for the assumption of certain liabilities totaling $304,638 as of August 10, 2018, plus execution of the lease. Grand South Point, LLC will lease the premises from Tzvi Shoel, LLC. There are no project costs associated with this application.

The working capital requirement is estimated at $3,541,607 based on two months of first year expenses of $3,236,969, plus $304,638 in assumed liabilities as of August 10, 2018. Funding will be as follows: $737,000 from the members' equity, $1,033,804 from a credit line issued to Strauss Ventures LLC, and $1,770,803 via a working capital loan. Strauss Ventures, LLC is 100% owned by Jeremy Strauss and Meryl Strauss. Harborview Capital Partners has provided a letter of interest for a credit line of up to $25,000,000 at 6% interest for a five-year term. Harborview Capital Partners has provided a letter of interest for the working capital loan at 5% interest for a five-year term.

Review of 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 for the two RHCFs (this application and CON 172385 concurrently under review). As the result of potential equity shortfall, Jeremy Strauss has provided an affidavit stating his willingness to contribute resources disproportionate to his membership interest making up other member's equity shortfall. Jeremy Strauss has provided a letter of interest for a $25,000,000 credit line issued to his company, Strauss Ventures, LLC, at the above state terms.

The submitted budget projects a first and third profit of $903,962 and $1,037,069, respectively. Revenues are expected to increase by $356,337 (after excluding $577,685 in non-transferring revenues as noted above). Overall expenses are expected to increase by $1,006,548 coming from a $1,068,528 reduction in operating expense and a $2,075,076 increase in capital expense (primary from rent). The decline in operating expense is from all categories except salaries and wage, which increased by 1%. Employee benefits dropped $99,390 (percentage to salaries went from 37.6% to 35.9%), professional fees dropped $144,761, purchase services dropped $397,405, other direct expenses dropped $313,833, with the $113,139 balance netted from the remaining categories.

BFA Attachment C is Grand South Point, LLC's pro forma balance sheet, which shows the entity will start with $9,317,498 in member's equity (which includes $307,638 in assumed liabilities). Equity includes $5,297,734 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill were eliminated from the equation, the total net assets are a positive $4,019,764. The budget appears reasonable.

BFA Attachment D is the Financial Summary of Bayview Manor, LLC d/b/a South Point Plaza Nursing and Rehabilitation Center for 2015 through 2017. The RHCF had an average positive net income of $2,220,483 and positive average net assets of $6,593,736. Working capital was turned positive in 2017 beginning the average into positive territory.

BFA Attachment E is the proposed members' ownership interest in the affiliated RHCFs and their financial summaries. All the RHCFs have maintained positive net income, working capital and net assets for the periods 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 South Point, LLC
BFA Attachment B	Details of Assumed Liabilities as of August 10, 2018
BFA Attachment C	Pro Forma Balance Sheet, Grand South Point, LLC
BFA Attachment D	Financial Summary 2015 - 2017 and 2017 Certified Financial Statement of Bayview Manor, LLC
BFA Attachment E	Proposed Members' Ownership Interest in the Affiliated RHCFs and Financial Summary
BFA Attachment F	Members of Landlord, TZVI Shoel, LLC

Public Health and Health Planning Council

Project # 181219-E

AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center

Program:	**Residential Health Care Facility**	***County:***	**Monroe**
Purpose:	**Establishment**	***Acknowledged:***	**March 30, 2018**

Executive Summary

Description

AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center, a New York limited liability company, is requesting to be established as the new operator of Baird Nursing Home, a 28-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2150 St. Paul Street, Rochester (Monroe County). There will be no change in beds or services provided.

On October 17, 2017, Stephen T. Heard, LLC, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Larry Goldfarb for the sale and acquisition of the RHCF's operating interests. Concurrently, the Parties to the APA entered into a Sale of Real Property Agreement (SRPA) for the sale and acquisition of the RHCF's realty. Mr. Goldfarb will assign his rights, obligations and interests in the APA to AGA Operating LLC (the Assets Assignee) and his rights, obligations and interests in the SRPA to AGAL Realty LLC (the Real Estate Assignee). Per an Amendment to the APA and SRPA dated January 24, 2018, the total purchase price was reduced to $950,000 allocated as follows: $100,000 towards the operations and $850,000 towards the real estate. The applicant will lease the premises from AGAL Realty LLC. There is a relationship between AGA Operating LLC and AGAL Realty LLC in that the entities have identical membership. Upon approval of the proposed transaction, the facility will be known as The Brook at High Falls Nursing and Rehabilitation Center.

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

Current Operator	
Stephen T. Heard, LLC	
Member	%
Stephen T. Heard	100%

Proposed Operator	
AGA Operating LLC	
Members	%
Giorgio Mayer	50%
Aryeh Grinspan	25%
Abraham Mayer	25%

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

Financial Summary

The purchase price for the RHCF's realty and operations is $950,000. Larry Goldfarb will acquire both interests and assign this rights and obligations to AGA Operating LLC (operations) and AGAL Realty LLC (realty) via an Assignment Agreement. AGAL Realty LLC will finance the purchase price with $312,500 cash equity and a bank loan for $637,500 at 6% interest for a ten-year term and 25-year amortization period. Eastern Union Healthcare Group has provided a letter of interest at the stated terms. The projected budget is as follows:

Revenues	$2,458,600
Expenses	$2,211,800
Net Income	$246,800

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 Assignment Agreement to the Asset Purchase (operations) and Sale of Real Property (realty) Agreements, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
4. Submission of 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]
5. 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]
6. Submission of a photocopy of the applicant's executed Assignment to Asset Purchase Agreement and Agreement for Sale of Real Property, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
10. Submission of documentation that the current operator has completed the work necessary to resolve AER waiver 181W064.

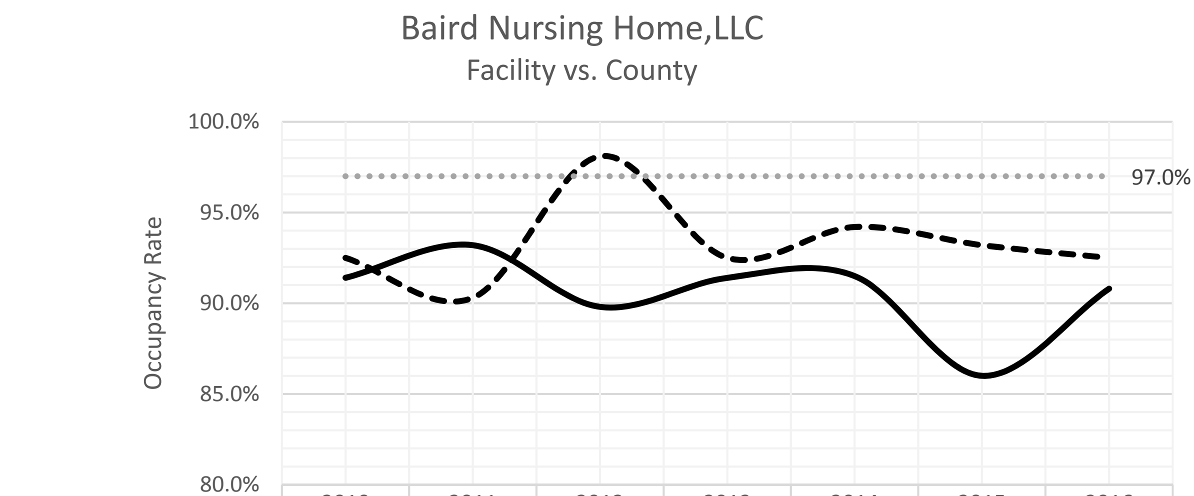
Approval conditional upon:
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration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

Council Action Date
October 11, 2018

Need Analysis

Analysis

Certified 2017 occupancy data for the county is not yet available. Based upon weekly census data, occupancy as of May 16, 2018 was 92.9% for the facility and 90.4% for Monroe County.



	2010	2011	2012	2013	2014	2015	2016
Facility	91.4%	93.2%	89.8%	91.4%	91.5%	86.0%	90.8%
Monroe County	92.5%	90.3%	98.1%	92.5%	94.2%	93.2%	92.5%

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.

Baird Nursing Home's Medicaid admissions rate has exceeded the threshold of 75% of the Monroe County rate, as demonstrated in the table below.

Percent of New RHCF Admissions that are Medicaid	2014	2015	2016
Monroe County 75% Threshold	15.3%	10.2%	10.9%
Baird Nursing Home	19.1%	22.9%	27.6%

Conclusion

There will be no change in beds or services in Monroe County as a result of this application.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Baird Nursing Home	The Brook at High Falls Nursing and Rehabilitation Center
Address	2150 St. Paul St Rochester, NY 14621	Same
RHCF Capacity	28	Same
ADHC Program Capacity	N/A	N/A
Current Overall Star Rating	***	N/A
Type of Operator	Proprietary	Same
Class of Operator	Limited Liability Corporation	Same
Operator	Stephen T Heard, LLC.	AGA Operating LLC Giorgio Mayer* 50.0% Aryeh Grinspan 25.0% Abraham Mayer 25.0% *Managing Member

Character and Competence - Background

Facilities Reviewed

Gold Crest Care Center	09/2008 to present
Sunnyside Care Center	09/2008 to present
Wellsville Manor Care Center	09/2008 to present
Valley View Manor Nursing Home	09/2008 to present
Bethany Gardens Skilled Living Center	09/2008 to present
Fieldston Lodge Care Center	09/2008 to present
Affinity Skilled Living and Rehabilitation	09/2008 to present
Elm Manor Nursing and Rehabilitation Center	12/2017 to present
Wedgewood Nursing and Rehabilitation Center	12/2017 to present
Whitney Rehabilitation Care Center (CT)	03/2015 to present

Individual Background Review

Giorgio Mayer is the President of GM Management I LLC in Brooklyn, which is a property management company. He is a licensed Real Estate Broker and his license is valid until Dec. 2021. Mr. Mayer is also a licensed Notary in the State of New York, which expires Dec. 2018. He has a Rabbinical degree from Rabbinical College of Canada. Mr. Mayer discloses the following nursing home ownership interests:

Gold Crest Care Center (5.00%)	02/1996 to present
Sunnyside Care Center (15.50%)	06/1998 to present
Wellsville Manor Care Center (11.125%)	12/1999 to present
Valley View Manor Nursing Home (18.00%)	12/2001 to present
Bethany Gardens Skilled Living Center (10.50%)	07/2002 to present
Fieldston Lodge Care Center (12.35%)	03/2004 to present
Affinity Skilled Living and Rehabilitation (7.50%)	03/2008 to present
Elm Manor Nursing and Rehabilitation Center (10.00%)	12/2017 to present
Wedgewood Nursing and Rehabilitation Center (10.00%)	12/2017 to present
Whitney Rehabilitation Care Center (CT) (50.00%)	03/2015 to present

Aryeh Grinspan is a licensed nursing home administrator in good standing. He is currently employed as the Operator/Administrator of Record at ILF Operating LLC/LFG Operating LLC (Elm Manor Nursing and Rehabilitation Center). Mr. Grinspan has two degrees from Brooklyn College. He was the Administrator of Record at Sans Souci Rehabilitation and Nursing, Midway Nursing Home and Little Neck Nursing Home.

Mr. Grinspan discloses the following nursing home ownership interests:

Elm Manor Nursing and Rehabilitation Center (15.00%)	12/2017 to present
Wedgewood Nursing and Rehabilitation Center (15.00%)	12/2017 to present

Abraham Mayer is the owner of AJ Vision, Inc. and Avi Mayer Management, Inc., which are medical staffing agencies. Mr. Mayer has a Talmudic Studies degree from Yeshiva Meor Enaim and discloses the following nursing home ownership interests.

Elm Manor Nursing and Rehabilitation Center (10.00%)	12/2017 to present
Wedgewood Nursing and Rehabilitation Center (10.00%)	12/2017 to present

Character and Competence – Analysis

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.

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 **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 Accident Hazards/Supervision/Devices and 415.26 Administration.
- The facility incurred a Civil Money Penalty of $4,550 on August 6, 2009.

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 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.

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 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.

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 at **Fieldston Lodge Care Center** for the period identified above reveals the following:

- 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.

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 at **Whitney Rehabilitation Care Center** for the period identified above reveals the following:

- The facility was fined $1,090 by the State of Connecticut for a Survey on July 23, 2015 for F-tag 223 Free from Abuse.
- The facility incurred a Civil Money Penalty of $7,053 for a Survey on July 13, 2016 under F-tag 323- Free of Accidents Hazards/Supervision/Devices.
- The facility was fined $2,570 by the State of Connecticut for a Survey on July 13, 2016 for F-tag 323 Free of Accidents Hazards/Supervision/Devices.
- The facility incurred a Civil Money Penalty of $7,150 for a survey on August 24, 2017 under F-tag 323- Free of Accidents Hazards/Supervision/Devices.

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 **Gold Crest Center, Affinity Skilled Living and Rehabilitation Center, Elm Manor Nursing and Rehabilitation Center and Wedgewood Nursing and Rehabilitation Center** for the period identified above reveals that there were no enforcements.

Quality Review

Provider Name	***Ownership Since***	***Overall***	***Health Inspection***	***Quality Measure***	***Staffing***	***NYS Quintile***
Gold Crest Care Center	02/1996	***	****	****	*	2
Sunnyside Care Center	06/1998	*	*	****	*	5
Wellsville Manor Care Center	12/1999	***	**	*****	**	2
Valley View Manor Nursing Home	12/2001	**	*	*****	*	4
Bethany Gardens Skilled Living Center	07/2002	**	*	*****	**	5
Fieldston Lodge Care Center	03/2004	***	***	*****	*	3
Affinity Skilled Living and Rehabilitation Ctr	03/2008	*	**	****	*	4
Elm Manor Nursing and Rehabilitation Center	12/2017	*****	****	*****	****	1
Wedgewood Nursing Rehabilitation Center	12/2017	***	**	****	****	3
CT						
Whitney Rehabilitation Care Center	03/2015	**	*	*****	****	N/A

Notes: The star ratings for Elm Manor and Wedgewood are not applicable due to applicant's recent acquisition.

With regard to the nursing homes with overall quality ratings of 1 or 2, the applicant noted the low ratings were from previous administrators who were not focused on staff retention and recruitment. For example, Fieldston Lodge Care Center, the Assistant Director of Nursing was replaced for HR reasons. He was a factor in staff leaving due to creating a hostile environment. The applicants have stated they have responded by hiring new administrators. These new administrators will focus on staff recruitment and retention, implementing extra funds to allocate for staff development, training, recruitment and advertising. Additional corporate or regional RN's were hired as well to focus on wound care, quality measures and overall nursing support. These steps that have been implemented by five of the related entities that the operators anticipate having a positive impact on the particular facilities as well as improving overall care with an emphasis on staffing.

Whitney Rehabilitation and Care Center low star ratings were attributed from the facility being poorly operated by the prior operator. A change in operator occurred mid-2015. In 2015 the facility was cited for 36 deficiencies on their federal survey and in 2016 and 2017, the facility had 11 deficiencies each year. Since the change in operator, the facility has hired a new facility administrator, director of nursing and support staff. All employees were retrained and or attended the required ongoing in-service program. Lastly the operators have been seeking to recruit additional RN's and LPN's who will focus on special needs of the residents such as wound care, quality measures and provide overall nursing support.

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

Conclusion
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

Asset Purchase Agreement and Sale of Real Property Agreement
The applicant submitted an executed APA and executed SRPA to acquire the RHCF interests, as summarized below:

Date:	October 17, 2017 (amended January 24, 2018)
Sellers:	Stephen T. Heard, LLC
Purchaser:	Larry Goldfarb, or an entity to which he assigns
Assets Acquired (Operations):	All tangible Personal Property associated with the RHCF operations including: all tangible assets (furniture/fixtures, equipment, materials and supplies); telephone, fax numbers; websites domain names; manufactures' and vendors' warranties; business trade names, service/trademarks and logos; seller's rights in any agreements; seller's book and records, licenses, certificates and approvals to do business; resident funds held in trust in connection with the nursing home; Medicaid and Medicare provider numbers; all goodwill; plus the business associated with the Nursing home including the adult day care and outpatient services programs.
Assets Acquired (Real Estate):	All seller's right, title and interest in and to the Real Property (land, buildings and improvements) located at 2150 Saint Paul Street, Rochester, NY (Monroe County).
Excluded Assets (Operations):	All seller's cash, cash equivalents, bank deposits or similar cash items, insurance policies accounts receivable generated prior to the closing date, deposits or prepaid charges and expenses, any rights to refunds, settlements and retroactive adjustments for periods ending on or prior to the closing date, and any intellectual property/rights, personal, tangible and intangible property identified by the Seller.

Excluded Assets (Real Estate):	N/A
Assumed Liabilities:	None
Purchase Price:	$950,000
Payment of the Purchase Price:	$100,000 deposit at execution held in escrow; $850,000 due at closing.

Assignment Agreement

The applicant submitted a draft Assignment Agreement for assignment of the RHCF operations and realty, summarized below:

Assignor:	Larry Goldfarb
Assignee (Operations):	AGA Operating LLC
Assignee (Realty):	AGAL Realty LLC
Assets Transferred (Op.):	All the acquired operating assets listed in the APA
Excluded Op. Assets:	All the excluded operating assets listed in the APA
Realty Assets Transferred:	All rights, title and interest in and to the RHCF's real property per the SRPA
Assigned Purchase Price:	$950,000

The purchase price will be allocated between the operating entity ($100,000) and realty entity ($851,000) upon closing of this transaction. AGAL Realty LLC will finance the mortgage.

The financing plan is as follows:

Equity	$312,500
Mortgage (6% interest, 10-year term, 25-year amortization)	$637,500
Total	$950,000

Eastern Union Healthcare Group had provided a letter of interest for the mortgage at the stated terms.

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

Lease Rental Agreement

The applicant submitted a draft lease rental agreement for the site, summarized below:

Premises:	A 28-bed nursing home located at 2150 Saint Paul Street, Rochester, NY (Monroe County)
Lessor:	AGAL Realty LLC
Lessee:	AGA Operating LLC
Term:	20 years with two (2) additional five (5) year extensions upon written notice
Rental:	$150,000 per year
Provisions:	Lessee pays all real estate taxes, utilities, insurance and maintenance costs

The lease agreement is a non-arm's length lease arrangement in that the realty and operating entities have common ownership. The applicant submitted an affidavit attesting to the relationship between the landlord and tenant.

Operating Budget

The applicant submitted their current year (2017) results and the first and third year operating budgets after the change in operator, in 2018 dollars, summarized below:

	Current Year		Year One		Year Three	
	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid FFS/MC	$191.00	$1,144,258	$174.52	$1,124,800	$174.52	$1,124,800
Medicare FFS/MC	$321.24	$88,021	$450.11	$401,500	$454.15	$405,100
Commercial FFS	$0.00	$0.00	$350.19	$555,400	$353.47	$560,600
Private Pay/Other	$270.49	$782,542	$350.25	$347,100	$350.25	$350,700
Other		$466		$29,800		$30,600
Total Revenues		$2,015,287		$2,458,600		$2,471,800
Expenses						
Operating	$219.65	$1,986,534	$198.42	$1,967,100	$198.47	$1,967,600
Capital	$6.89	$62,017	$24.68	$244,700	$24.37	$240,586
Total Expenses	$226.54	$2,048,551	$223.10	$2,211,800	$222.83	$2,208,186
Net Income (Loss)		($33,264)		$246,800		$263,614
Utilization (days)		9,158		9,914		9,914
Max days		10,220		10,220		10,220
Utilization %		89.61%		97.00%		97.00%

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

- Governmental payor rates for the Current Year reflect Fee for Service (FFS) reimbursement, whereas the Year One and Year Three rates reflect anticipated Managed Care (MC) payments. The Medicaid MC rate is projected based on the reimbursement methodology under statewide pricing with the FFS rate as benchmark. The Medicare MC rate is projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2016 increased by 2% per annum for inflation. Private and Other rates are projected based on similar facilities in the same geographical area and increased by 2.5% per annum for inflation.
- The applicant projects no staff reductions.
- The submitted budget projects $246,800 of net income in Year One after the change in ownership with an occupancy level at 97% (a fill level of 27 beds). Bed occupancy is currently at 25 filled beds and given that the facility is very small, filling and additional 2 beds appears attainable. Revenues are based on the current reimbursement methodologies. The submitted budget appears reasonable.
- Utilization by payor source during the first year after the change in operator is as follows:

Payor	Current	Year One	Year Three
Medicaid FFS/MC	65.42%	65.00%	65.00%
Medicare FFS/MC	2.99%	9.00%	9.00%
Commercial FFS	0%	16.00%	16.00%
Private Pay/Other	31.59%	10.00%	10.00%

Capability and Feasibility

The overall purchase price for the RHCF operations and real estate is $950,000 to be allocated between the operations and realty at closing. The realty entity will finance the purchase price via members' equity of $312,500 and a $637,500 bank loan, at the above stated terms.

Working capital requirements are estimated at $368,633 based on two (2) months of first year expenses. The working capital requirement will be met with $368,633 in members' equity, apportioned equivalent to their ownership percentages. BFA Attachment A is the personal net worth statements of the proposed members of AGA Operating LLC. It is noted that the proposed realty and operating entities have identical members with identical ownership interest percentages. Given this identical membership, the personal net worth statements indicate the availability of sufficient funds overall for the equity contributions to meet the purchase price and working capital requirements. However, liquid resources may not be available in proportion to the members proposed ownership interest. Giorgio Mayer has provided an affidavit stating he is willing to contribute personal resources disproportionate to his ownership interest to meet all equity requirements.

BFA Attachment C is a summary of Baird Nursing Home's 2015-2017 certified financial statements. As shown, the entity had an average negative working capital position of $143,221; average positive net asset position of $64,867; and average operating income of $7,896.

BFA Attachment D is the pro forma balance sheet of AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center, which indicates a positive members' equity of $363,250 as of the first day of operations.

BFA Attachments E and F are, respectively, the percentage ownership and financial summaries of all proposed members NYS affiliated nursing homes. The applicant indicated that the affiliated facilities that incurred net operating losses were due to the write-off of bad debt to cleanup old receivables. The affiliated facilities with negative working capital are improving and have no issues meeting their financial obligations. The most prominent negative working capital issue is Gold Crest Care Center, which stems from a balloon payment of $10.9M on their mortgage being classified as "current" in 2016 because it came due in 2017. The mortgage was re-financed in March 2018. Affinity Skilled Living and Rehabilitation Center's negative working capital issue is due to their writing off bad debts and having more than $2M owed from appeals not recorded on their financial statements.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements - Proposed Members of AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center
BFA Attachment B	Proposed Ownership of the Operations and Real Property
BFA Attachment C	Financial Summary – Baird Nursing Home for period 1/1/2015 – 12/31/2017
BFA Attachment D	Pro Forma Balance Sheet of AGA Operating LLC d/b/a The Brook at High Falls Nursing and Rehabilitation Center
BFA Attachment E	All proposed owner's affiliated NYS RHCFs and ownership percentages
BFA Attachment F	Financial Summary - Affiliated nursing homes for the period 1/1/2015 – 12/31/2017

Public Health and Health Planning Council

Project # 181050-E
Neconset Operating LLC d/b/a The Hamlet Rehabilitation and Healthcare Center at Nesconset

Program:	**Residential Health Care Facility**	***County:***	**Suffolk**
Purpose:	**Establishment**	***Acknowledged:***	**January 26, 2018**

Executive Summary

Description

Nesconset Operating LLC, a New York limited liability company, requests to be established as the new operator of Nesconset Center for Nursing and Rehabilitation, a 240-bed, proprietary, Article 28 residential health care facility (RHCF) located at 100 Southern Boulevard, Nesconset (Suffolk County). The RHCF operates two off-site Adult Day Health Care Programs (ADHCPs) in Suffolk County, a 90-registrant ADHCP located at 575 Clayton Street in Central Islip and a 75-registrant ADHCP located at 45 Rocky Point Road in Middle Island, which are also part of this change in ownership request. There will be no change in beds or services provided. Upon approval by the Public Health and Health Planning Council (PHHPC), the applicant will operate the facility under the name The Hamlet Rehabilitation and Healthcare Center at Nesconset.

On September 1, 2017, Nesconset Acquisition LLC, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Nesconset Operating LLC for the sale and acquisition of the operating interests of the RHCF and the two ADHCPs for a purchase price of $1,500,000. In a separate transaction that closed on January 19, 2018, Nesconset NC Realty, LLC entered into a Real Estate Purchase Agreement (REPA) with Nesconset Property NY LLC for the sale and acquisition of the real property interests of the skilled nursing facility. The applicant will lease the premises from Nesconset Property NY LLC. There is a relationship between Nesconset Operating LLC and Nesconset Property NY LLC in that the entities have identical membership.

Concurrent with the RHCF real property transaction, the ADHCP real property owners, Islip DC Realty, LLC (Central Islip site) and MDDC Realty, LLC (Middle Island site) entered into REPAs with 575 Clayton Street Realty LLC and 45 Rocky Point Realty LLC, respectively, for the sale and acquisition of the real property associated with the ADHCP sites. The applicant will lease the Central Islip facility from 575 Clayton Street Realty LLC and the Middle Island facility from 45 Rocky Point LLC. There is a relationship between Nesconset Operating LLC, 575 Clayton Street Realty LLC and 45 Rocky Point Realty LLC in that the entities have identical membership.

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

Current Operator Nesconset Acquisition LLC	
Members	%
Anupadevi Lamba	33.33%
Smita Lodha	33.33%
Robert Heppenheimer	33.34%

Proposed Operator Nesconset Operating LLC	
Members	%
Neil Einhorn*	43.5%
Mark Friedman*	43.5%
Yossie Zucker	5.0%
Akiva Rudner	4.0%
Steven Sax	4.0%

**Initial Managing Members*

BFA Attachment B is an organization chart of the operating and realty entities after the proposed change in operator. The applicant members have ownership interest in various New York State RHCFs. BFA Attachment D provides the ownership interests and financial summaries of the proposed members' affiliated RHCFs.

Concurrently under review, the applicant members are seeking approval to acquire the operating interests in Waters Edge at Port Jefferson for Rehabilitation and Nursing (CON 181366) and Glengariff Health Care Center (CON 181367).

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

Financial Summary

There are no project costs associated with this proposal. The purchase price for the operations is $1,500,000 and will be met with equity from the proposed members of Nesconset Operating LLC. The projected Year One budget is as follows:

	RHCF	ADHCP	Total
Revenues	$26,501,200	$8,087,500	$34,588,700
Expenses	$31,075,111	$1,613,189	$32,688,300
Gain/(Loss)	($4,573,911)	$6,474,311	$1,900,400

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
<u>Approval contingent upon</u>:

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

Approval conditional upon:

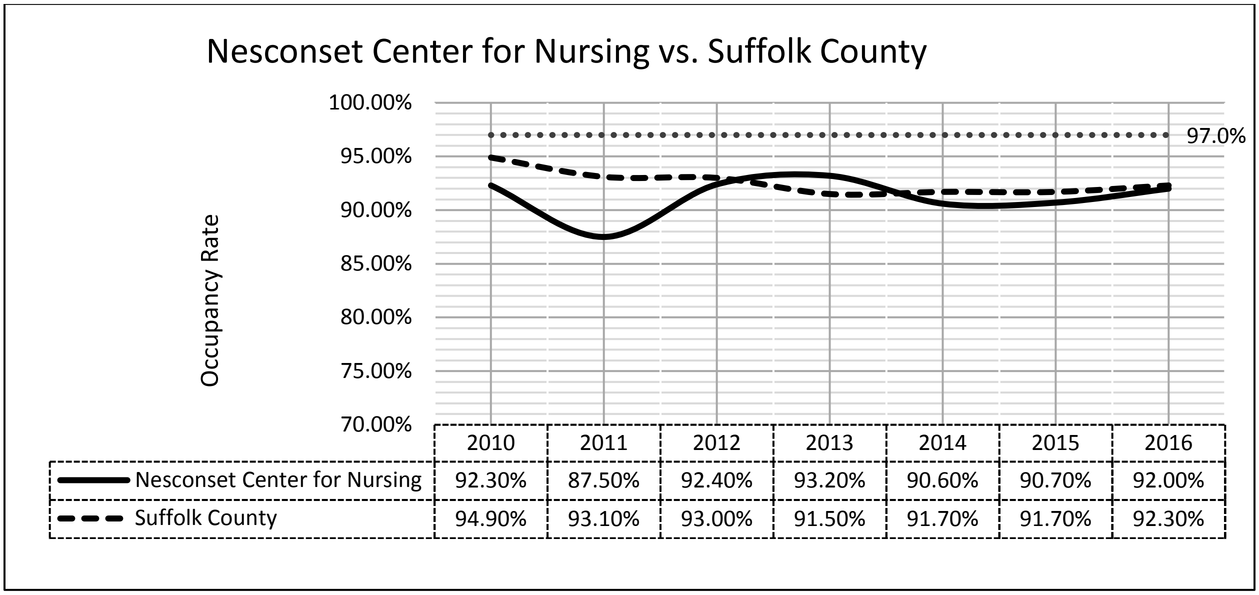
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date
October 11, 2018

Need Analysis

Analysis

The planning optimum for occupancy is 97% in New York State. The overall occupancy was 95.9% for Suffolk County and 92% for Nesconset Center for Nursing and Rehabilitation for the latest certified year of data.



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.

Nesconset Center for Nursing and Rehabilitation's Medicaid admissions rate for 2015 (16.2%) was below Suffolk County's threshold of 18.4%. In 2016 Nesconset Center for Nursing and Rehabilitation Medicaid admissions rate of 15% was also below the County's threshold of 18.9%.

Conclusion

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

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Nesconset Center for Nursing and Rehabilitation	The Hamlet Rehabilitation and Nursing Center at Nesconset
Address	100 Southern Boulevard Nesconset, NY	Same
RHCF Capacity	240	Same
ADHCP Capacity	2 offsite programs (90 and 75 registrants)	Same
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary
Operator	Nesconset Acquisition, LLC	Nesconset Operating, LLC Mark Friedman* 43.50 % Neal Einhorn* 43.50% Yossi Zucker 5% Akiva Rudner 4% Steven Sax 4% *Managing Members*

Character and Competence - Background

Facility Reviewed

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center	07/2012 to present
St. James Rehabilitation and Health Care Center	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortladt Healthcare	03/2014 to present
The Emerald Peak Rehab and Nursing Center	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Center	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center	02/2017 to present
Crown Center for Nursing and Rehabilitation	01/2015 to 8/2016
The Paramount at Somers Rehab and Nursing Center	01/2018 to present
Beeghly Oaks Center for Rehab and Healing(OH)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care (OH)	11/2014 to April 2018
Hospitality Center for Rehabilitation and Healing (OH)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL)	03/2016 to present
Bristol at Tampa Rehabilitation and Nursing Center (FL)	06/2017 to present
Encore at Boca Raton Rehabilitation and Nursing Center (FL)	01/2018 to present
Palmetto Sub- Acute Care Center (FL)	02/2018 to present
Chatham Hills Subacute Care Center (NJ)	02/2015 to present
Gallitan Health Care Center for Rehabilitation and Healing, LLC (TN)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN)	10/2016 to present
Bethany Center for Rehabilitation and Healing (TN)	10/2016 to present
Signature Healthcare of Nashville Rehabilitation and Wellness (TN)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA)	01/2014 to present

Individual Background Review

Mark Friedman discloses employment as a managing member of San Souci Rehabilitation & Nursing Center since 2009. He has a BA Degree in accounting from Touro College. Mr. Friedman discloses the following health facility interests:

Sans Souci Rehab & Nursing Center (33%)	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center (8.50%)	07/2012 to present
Livingston Hills Nursing & Rehab	05/2006 to 9/2013
Beeghly Oaks Center for Rehab and Healing(OH) (37%)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH) (37%)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care(OH) (37%)	11/2014 to April 2018
Hospitality Center for Rehabilitation &and Healing (OH) (28%)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH) (41%)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL) (40%)	03/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)	06/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)	01/2018 to present
Palmetto Sub-Acute Care Center(FL) (40%)	02/2018 to present
Chatham Hills Subacute Care Center (NJ) (47.50%)	02/2015 to present
Gallatin Center for Rehabilitation and Healing, LLC(TN) (40%)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (40%)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)	03/2017 to present
Bethany Center for Rehabilitation and Healing(TN) (40%)	03/2017 to present
Signature Healthcare of Nashville Rehabilitation and Wellness (TN) (40%)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA) (19%)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)	01/2014 to present
Passionate Home Care, LLC	Pending

Neal Einhorn discloses employment as a managing member of San Souci Rehabilitation and Nursing since 2009. He also discloses that he is the Chief Executive Officer for Nesconset Center for Nursing and Rehabilitation since November 2017. Mr. Einhorn has a Bachelor of Science degree from Brooklyn College. Mr. Einhorn discloses the following health facility interests:

Sans Souci Rehab & Nursing Center (25%)	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center (8.50%)	07/2012 to present
Livingston Hills Nursing & Rehab	05/2006 to 09/2013
Beeghly Oaks Center for Rehab and Healing(OH) (37%)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH) (37%)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care(OH) (37%)	11/2014 to April 2018
Hospitality Center for Rehabilitation &and Healing (OH) (28%)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH) (41%)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL) (40%)	03/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)	06/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)	12/2017 to present
Chatham Hills Subacute Care Center (NJ) (47.50%)	02/2015 to present
Gallitan Center for Rehabilitation and Healing, LLC(TN) (40%)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (40%)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)	03/2017 to present
Bethany Center for Rehabilitation and Healing(TN) (40%)	03/2017 to present
Signature Healthcare of Nashville Rehabilitation & Wellness Center (TN) (40%)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA) (19%)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)	01/2014 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (40%)	01/2018 to present
Palmetto Sub-Acute Care Center (FL) (40%)	02/2018 to present
Passionate Home Care, LLC	Pending

Yossie Zucker is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker holds a BS degree from Touro College. Mr. Zucker discloses the following ownership interests in health facilities:

The Willows at Ramapo Rehabilitation and Nursing Center (2%)	07/2012 to present
St. James Rehabilitation and Healthcare Center (3%)	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Ctr (5%)	08/2012 to present
The Riverside (2%)	08/2013 to present
Cortlandt Healthcare (2%)	03/2014 to present
The Emerald Peek Rehab & Nursing Center (2%)	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation & Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (5%)	01/2018 to present
Beeghly Oaks Center for Rehabilitation and Healing (5%)	10/2016 to present
Oasis Center for Rehabilitation and Healing (5%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (5%)	10/2016 to present
Jupiter Rehabilitation and Healthcare Center (5%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing (5%)	10/2016 to present
Quality Center for Rehabilitation and Healing (5%)	10/2016 to present
Trevecca Center for Rehabilitation and Healing (5%)	10/2016 to present
Bethany Center for Rehabilitation and Healing (5%)	10/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (5%)	06/2017 to present
Harmony Center for Rehabilitation and Healing (5%)	07/2017 to 04/2018
Hospitality Center for Rehabilitation and Healing (5%)	02/2014 to 04/2018
Signature Healthcare of Nashville Rehabilitation &Wellness (5%)	12/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (5%)	01/2018 to present
Palmetto Sub-Acute Care Center (5%)	02/2018 to present

Akiva Rudner is employed as Chief Operating Officer at CareRite LLC, a nursing home consulting service located in Englewood Cliffs, NJ. He holds an MPA from Wagner College. Mr. Rudner discloses the following ownership interests in health facilities:

St. James Rehabilitation & Healthcare Center (1%)	08/2012 to present
Crown Center for Nursing and Rehab (2.50%)	01/2015 to 8/2016
The Emerald Peek Rehabilitation & Nursing Center (2%)	04/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (OH) (2%)	10/2016 to April 2018
Oasis Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Hospitality Center for Rehab and Healing (OH) (4%)	02/2014 to 4/2018
Harmony Center for Rehabilitation and Healing (4.00 %)	07/2017 to 4/2018
Jupiter Rehabilitation and Healthcare Center (FL) (4%)	10/2016 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	01/2018 to present
Palmetto Sub- Acute Center (FL) (4%)	02/2018 to present
The Bristol at Tampa Rehabilitation and Nursing Center (4%)	06/2017 to present
Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Signature Healthcare of Nashville Rehabilitation & Healthcare (TN) (4%)	12/2017 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (4%)	01/2018 to present

Steven Sax has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Mr. Sax holds a bachelor's degree from Israel Torah Research Institute in Jerusalem, Israel. He discloses the following ownership interests in health facilities:

St. James Rehabilitation and Healthcare Center (3%)	08/2012 to present
Cortlandt Healthcare (1%)	03/2014 to present
The Emerald Peek Rehab & Nursing Center (2%)	04/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (4%)	01/2018 to present
Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Oasis Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (OH) (2%)	10/2016 to April 2018
The Rehabilitation Center at Jupiter Gardens, LLC (FL) (4%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (4%)	06/2017 to present
Harmony Center for Rehabilitation and Healing (4%)	07/2017 to 4/2018
Hospitality Center for Rehab and Healing (OH) (4%)	02/2014 to 4/2018
Nashville Center for Rehabilitation and Healing (TN) (4%)	12/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	01/2018 to present
Palmetto Sub- Acute Center (FL) (4%)	02/2018 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (4%)	01/2018 to present

Character and Competence – Analysis

A review of Sans Souci Nursing Home for the period reveals the following:

- The facility was fined $10,000 pursuant to Stipulation and Order NH-12-015 for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

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 Beeghly Oaks Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of $9,500 for a Survey on February 17, 2017.

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 Oasis Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of $3,214 for a Survey on December 8, 2016.

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 Heritage Center for Rehabilitation and Specialty Care (OH) for the period above reveals the following:

- The facility incurred a civil money penalty of $4,550 for a survey finding on January 21, 2015
- The facility incurred a Civil Money Penalty of $35,815 for survey exit dates of October 6, 2017, October 8, 2017 and November 2, 2017.

A review of Squirrel Hill Center for Rehabilitation and Healing(PA) for the period identified above reveals the following:

- The facility was fined $5,500 for survey exit date 10/19/15 under Tags F 224 Prohibit Mistreatment/Neglect/Misappropriation and F279 Develop Comprehensive Care Plans.

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 Forbes Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined $21,250 for survey exit date 7/30/16 under tag 333 Residents Free of Significant Med Errors.
  - The facility incurred a Civil Money Penalty of $4,428 in relation to the same 7/30/16 survey.
- The facility was fined $9,000 for survey exit date 11/29/16 under tags 157 Notify of Changes & 224 Prohibit Mistreatment/Neglect/Misappropriation.

An assessment of the underlying causes of the above enforcements determined 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(s).

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

- The facility incurred a civil money penalty of $48, 655 on June 4, 2017.

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 the remaining facilities for the time periods identified above reveals that there were no enforcements.

Quality Review

Provider Name	***Ownership since***	***Overall***	***Health Inspection***	***Quality Measure***	***Staffing***	***NYS Quintile***
Sans Souci Rehabilitation and Nursing Center	10/2009	****	***	*****	**	3
The Willows at Ramapo Rehab and Nursing Center	07/2012	***	***	*****	*	5
The Grand Pavilion for R & N at Rockville Centre	08/2012	**	**	*****	*	5
St James Rehab & Health Care Center	08/2012	**	***	****	*	4
The Riverside	08/2013	**	**	*****	*	4
Cortlandt Healthcare LLC	03/2014	***	***	****	***	4
The Emerald Peek Rehab and Nursing Center	04/2016	****	***	*****	**	3
The Enclave at Port Chester Rehab and Nursing Ctr	07/2016	*****	****	*****	**	4
The Chateau at Brooklyn Rehab & Nursing Ctr	02/2017	****	***	*****	**	2
The Paramount at Somers Rehab and Nursing Center	1/2018	****	****	****	**	5
Ohio						
Beeghly Oaks Center for Rehabilitation & Healing	11/2014	*	*	**	**	N/A

Provider Name	Ownership since	Overall	Health Inspection	Quality Measure	Staffing	NYS Quintile
Oasis Center for Rehab and Healing	11/2014	*	*	***	**	N/A
Florida						
Jupiter Rehabilitation and Healthcare Center	03/2016	***	**	*****	***	N/A
Bristol at Tampa Rehab and Nursing Center LLC	06/2017	*****	***	*****	****	N/A
Encore at Boca Raton Rehabilitation and Nursing Ce	1/2018	**	*	*****	*****	N/A
Palmetto Subacute Care Center	02/2018	*****	*****	*****	*	N/A
New Jersey						
Chatham Hills Subacute Care Center	02/2015	***	**	*****	***	N/A
Tennessee						
Gallatin Health Care Center, LLC	07/2016	**	*	*****	**	N/A
Quality Center for Rehabilitation and Healing LLC	07/2016	***	****	***	*	N/A
Trevecca Center for Rehabilitation and Healing LLC	03/2017	*****	****	*****	***	N/A
Bethany Center for Rehabilitation and Healing LLC	03/2017	****	***	*****	***	N/A
*Signature Healthcare of Nashville Rehab & Wellness	12/2017	**	*	*****	***	N/A
Pennsylvania						
Forbes Center for Rehab and Healthcare LLC	10/2011	*	*	****	***	N/A
Platinum Ridge Ctr for Rehab & Healing	01/2014	**	**	*	****	N/A
Squirrel Hill Ctr for Rehabilitation and Healing	02/2014	**	**	***	***	N/A

Note: Greyed-out facilities are not applicable due to recent acquisition.

With regard to the overall 1- or 2-star ratings the applicant indicates that at some of the facilities they have initiated an action plan to recruit and retain staff to include such things as improved wages, structured bonus programs and staff education. They have made changes where necessary of Administrators and Directors of Nursing, which have resulted in a stronger cohesive team. They are using mock surveys to identify and correct issues. Corporate teams are providing support and oversight.

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

Asset Purchase Agreement

The applicant has submitted an executed APA for the operating interests of the RHCF and the two ADHCPs. The agreement will close upon PHHPC approval of this CON. The terms are as follows:

Date:	September 1, 2017
Seller:	Nesconset Acquisition, LLC
Purchaser:	Nesconset Operating LLC
Effective Date:	11/1/2017, the date of an executed employment agreement between proposed operator Neil Einhorn and Nesconset Acquisition, LLC.
Purchased Assets:	All rights, title and interest in the business assets lien free. The assets include: the business and operation of a 240-bed nursing home at 100 Southern Blvd, Nesconset ("Facility") and the ADHCPs at 575 Clayton Street, Central Islip, and 45 Rocky Point Road, Middle Island, leasehold improvements, furniture, fixtures and equipment, leases, inventory, supplies, personal property, all Assumed Contracts, resident funds held in trust, intellectual and information technology property, books and records, and all accounts receivable relating to services rendered after the Effective Date.
Excluded Assets:	Retroactive rate increases for services prior to the APA Effective Date, accounts receivable prior to the Effective Date, proceeds of the Universal Settlement payable to the Facility, securities, real estate tax funds prior to closing date and the assets in the 401(k) and deferred compensation plans.
Assumed Liabilities:	Buyer will assume at Closing all ongoing liabilities and obligations of Seller relating to the period on or after the Effective Date with respect to the purchased assets.
Purchase Price:	$1,500,000 cash paid at closing.
Additional Provisions:	Monthly escrow payments if transactions covered by the APA have not been consummated within 16 months of CON application filing, up to a maximum of $700,000, to be applied towards payment of the Purchase Price at closing.

The purchase price of the operations will be funded by equity from the members of Nesconset Operating LLC. BFA Attachment A is the net worth summary of the members of Nesconset Operating, LLC, which reveals sufficient resources to meet the equity requirement overall. Mark Friedman, Neil Einhorn and Yossie Zucker have also provided affidavits indicating that they are willing to contribute resources disproportionate to their membership interests in the operating entity to fund the equity requirement.

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

Lease Agreements

Draft leases have been submitted for the RHCF and ADHCP real properties. The terms are as follows:

Premises:	240-bed Skilled Nursing Facility located at 100 Southern Boulevard, Nesconset, NY 11767
Landlord:	Nesconset Property NY LLC
Lessee:	Nesconset Operating LLC
Term:	Five (5) years with two 5-year renewal options
Rent:	$4,250,000/year
Provisions:	Taxes, insurance, utilities, maintenance/repairs, replacement reserve

Premises:	90-registrant ADHCP located at 575 W. Lowell Ave a/k/a 575 Clayton Street, Central Islip, NY 11722
Landlord:	575 Clayton St Realty LLC
Lessee:	Nesconset Operating LLC
Term:	Five (5) years with two 5-year renewal options
Rent:	$473,600 for year 1 and increasing to $775,273 per year by year 3
Provisions:	Taxes, insurance, utilities, maintenance/repairs, replacement reserve

Premises:	75-registrant ADHCP located at 45 Rocky Point Road, Middle Island, NY 11953
Landlord:	45 Rocky Point Realty LLC
Lessee:	Nesconset Operating LLC
Term:	Five (5) years with two 5-year renewal options
Rent:	$445,589/ for year 1 and increasing to $775,273 per year by year 3
Provisions:	Taxes, insurance, utilities, maintenance/repairs, replacement reserve

The lease arrangements for the RHCF and the two ADHCPs are non-arm’s length agreements in that the proposed operating entity and the real property owners have identical members. The applicant has submitted an affidavit attesting to the relationship between Nesconset Operating LLC and the three lessor entities.

Accounts Management Agreement

The applicant has submitted a draft Accounts Management Agreement. The terms are as follows:

Company:	Nesconset Operating LLC
Contractor:	CareRite Services, LLC
Term:	No specified end date
Compensation:	$15,000/month
Services Provided:	Accounts payable, payroll, and cash management; monthly general ledger, trial balance and financial statements.

The Accounts Management Agreement is non-arm’s length in that CareRite Services LLC and Nesconset Operating LLC share common ownership. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers which must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement. The terms are as follows:

Company:	Nesconset Operating LLC
Contractor:	CareRite Centers LLC
Term:	Five (5) year term with subsequent two (2) year term renewal options.
Compensation:	Actual costs and expenses incurred by CareRite. Cost that cannot be directly attributed will be priced on a per bed allocation of CareRite's direct and indirect costs related to such services. Estimated annual cost = $344,000.
Services Provided:	Accounts payable, payroll, and cash management; monthly general ledger, trial balance and financial statements.

The Administrative Services Agreement is non-arm’s length in that CareRite Centers LLC and Nesconset Operating LLC share common ownership. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers which must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Billing and Support Services Agreement

Company:	Nesconset Operating LLC
Contractor:	Comprehensive Healthcare Solutions, LLC
Term:	No specified end date
Compensation:	$15,000/month billing fee plus $2,500/month software lease cost.
Services Provided:	Billing support, including ongoing software support, server hosting of software and data storage.

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

Operating Budget

The applicant provided the current year (2017) and first and third year of operations, in 2018 dollars, summarized below:

RHCF	Current Year		Year One		Year Three	
(240 beds)	Per Diem	Total	Per Diem	Total	Per Diem	Total
Revenues						
Medicaid	$294,82	$18,804,134	$291.45	$20,803,300	$291.45	$20,803,300
Medicare	$687.79	$4,100,578	$680.03	$1,733,400	$680.03	$1,733,400
Commercial	$447.49	$2,603,000	$325.06	$2,762,000	$325.06	$2,762,000
Private Pay	$357.93	$1,422,785	$460.06	$1,172,700	$460.06	$1,172,700
Other*		$380,516		$29,800		$30,600
Total Revenues		$27,311,016		$26,501,200		$26,502,000
Expenses						
Operating	$440.73	$35,052,110	$314.81	$26,750,111	$307.71	$26,147,465
Capital	$27.03	$2,149,699	$50.90	$4,325,000	$50.90	$4,325,000
Total Expenses	$467.76	$37,201,809	$365.71	$31,075,111	$358.61	$30,472,465
Net Income/Loss		($9,890,793)		($4,573,911)		($3,970,465)
Patient days		79,532		84,973		84,973
% Occupancy		90.8%		97.0%		97.0%

** Other income includes cash discounts/purchases, TV income, bad debt recoveries, respite care and other miscellaneous revenue.*

Reported revenues and direct expenses for the two ADHCPs are as follows:

ADHCP	Current Year		Year One		Year Three	
(165 slots)	Per Diem	Total	Per Diem	Total	Per Diem	Total
Total Revenues	$184.21	$8,307,802	$179.32	$8,087,500	$179.32	$8,087,500
Expenses						
Operating	$26.75	$1,206,365	$14.86	$694,000	$14.86	$694,000
Capital	$22.32	$1,006,652	$20.38	$919,189	$33.76	$1,522,535
Total Expenses	$49.07	$2,213,017	$35.24	$1,613,189	$48.62	$2,216,535
Net Income		$6,094,785		$6,474,311		$5,870,965
Utilization (Visits)		45,100		45,100		45,100
% of Capacity		87%		87%		87%

Combined revenues and expenses for the RHCF and the two ADHCPs are:

	Current Year	Year One	Year Three
Revenues	$35,618,818	$34,588,700	$34,589,500
Expenses	$39,414,826	$32,688,300	$32,689,000
Net Income	($3,796,008)	$1,900,400	$1,900,500

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

- Medicaid rates are based on the current reimbursement mechanism under statewide pricing.
- Medicare rates are projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2017. Commercial/Private Pay rates are based on 2017 results.
- Operating expense assumptions are based upon the historical experience of the proposed operators, with the elimination of non-recurring charges and implementation of cost containment measures
- Capital expense increases reflect property leases with the new realty owners. Required lease payments cover debt service costs, property taxes, and utilities/maintenance expenses.
- RHCF utilization for 2017 was 90.8%. Self-reported census data as updated August 1, 2018, identified occupancy at 98.8% with only three beds available for admissions. The RHCF's overall utilization is projected at 97%. The applicant intends to increase and maintain occupancy by:
  - Outreach/education program with Senior Planning Services to admit Medicaid-pending patients, enabling more residents to remain in their preferred service area;
  - Implementation of INTERACT (Interventions to Reduce Acute Care Transfers) model, including a congestive heart failure program;
  - Engagement with local physicians, hospitals and community leaders to identify gaps and expand service offerings, leveraging experience of the operators in managing RHCFs; and
  - Integration of palliative care into the care model.
- RHCF utilization by payor source reflects a shift from fee for service (FFS) to managed care (MC) reimbursement and relative growth in Medicaid patient volume:

Payor	Current Year	Year One
Medicare MC	0.0%	3.0%
Medicare FFS	7.5%	0.0%
Medicaid MC	0.0%	84.0%
Medicaid FFS	80.2%	0.0%
Commercial FFS	7.3%	10.0%
Private Pay/Other	5.0%	3.0%

The ADHCP revenues and expenses assume the following:

- ADHCP visits are 100% Medicaid and projections reflect both the Central Islip and Middle Island sites. Utilization is expected to remain unchanged at 45,100 visits/year. Revenue is forecast to drop by 2.7% due to an expected reduction in the Medicaid reimbursement rates for these services.
- Maximum capacity is 51,754 visits based on a seven-day week with reduced weekend capacity.
- Expense reductions reflect decreases in salaries/wages and employee benefits, offset in part by higher rent expenses.
- ADHCP expenses relating to transportation and other operating items are recorded under the RHCF totals above.

Capability and Feasibility

There are no project costs associated with this proposal. The purchase price for the operating interests in the RHCF and ADHCPs is $1,500,000, which will be funded from members' equity. The working capital requirement of $5,488,000 based on two months of first year expenses will be provided from proposed members' equity. BFA Attachment A, net worth of the proposed members of Nesconset Operating LLC, reveals sufficient resources exist for stated levels of equity. BFA Attachment E is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of $7,460,534 for the operation.

Total expenses are expected to decline by 17% or $6,726,526 in Year One based largely due to reductions in management and administrative salaries, employee benefit costs, purchased and contracted services, and administrative costs related to the elimination of a third-party back-office services contract. Current year expenses also include a one-time employee benefit accrual adjustment and non-recurring legal and other fees related to a prior proposed sale of the entity. The projected elimination of 21.7 FTEs in Year One involves administrative staff only and will not impact resident care staffing. The new owners operate multiple facilities with centralized management, administration and purchasing and expect to deliver efficiencies that will drive cost reductions and improve performance.

The submitted budget indicates net income of approximately $1,900,400 in the first year following the transfer of ownership. BFA Attachment F is the budget sensitivity analysis based on the RHCF utilization of 90.8% as of December 31, 2017, which shows that budgeted RHCF revenues would decrease by $1,724,711 resulting in net operating income of $175,689 in the first full year of operations. Current utilization at the facility (self-reported to the Department) was 98.8% as of August 1, 2018, which supports the applicant's 97% occupancy objective as projected. As previously noted, the applicant has planned initiatives to increase utilization and help maintain occupancy going forward. The budget appears reasonable.

BFA Attachment C, financial summary of Nesconset Acquisition, LLC d/b/a Nesconset Center for Nursing and Rehabilitation LLC indicates that the facility generated negative working capital and negative net assets in 2016 and 2017 and through the period ended 5/31/18. The facility also reported net operating losses of $3,671,966 for 2016 and $3,796,008 in 2017. The negative working capital included one-time legal expenses that have been settled and liabilities resulting from confessions of judgment in January 2015 and December 2016 with 1199 SEIU. In 2018, the facility began a construction project and recorded approximately $4M in associated debt as a short-term liability. This liability will be reclassified and amounts recognized as long-term in accordance with the multi-year construction period for the project. Net operating losses stem from declining utilization rates and staffing costs in excess of requirements to sustain projected utilization. Additionally, 2017 operations were negatively impacted by higher rent costs and a one-time increase in employee benefit escrow accruals. The current operators have taken steps to improve case mix and bring costs in line with budgeted occupancy, and the proposed operators will work to increase utilization while continuing to streamline costs.

BFA Attachment D, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown except for the following:

- The Enclave at Port Chester Rehab and Nursing Center was acquired in July 2016 and is in the process of transitioning under the new management. For the year ended December 31, 2017 (first full year of operation), and per the internal financials the five months ended May 31, 2018, the facility had a negative working capital position, positive net assets and positive operating income. The applicant indicated that the negative working capital position was due in part to one-time construction payables that will be satisfied by December 31, 2018 or reclassified as long-term liabilities. It is noted that per establishment CON 151089, working capital of $2,937,360 (50% financed, 50% members equity) was to be provided as of the first day of operation. However, a review of the certified financial statements for the six months ended December 31, 2016 (first six months under new operator) indicates that the members' equity contribution was only $1,504. The applicant indicated that the equity contribution was converted to debt through a non-interest-bearing note payable of $1,120,000 to a related party, PCMN Lender, LLC, for acquisition of the facility.
- The Emerald Peek Rehab and Nursing Center was acquired in April 2016. For the year ended December 31, 2017 (first full year of operation), and per the internal financials for the four months ended April 30, 2018, the facility had a negative working capital position, positive net assets, and operating income that turned positive in 2018. Management has renegotiated payer contracts and improved payer mix, both of which are expected to improve operations going forward. Utilization has since increased to over 95% for the seven months ended July 31, 2018, and net income was positive for the same period.
- The Willows at Ramapo Rehabilitation and Nursing Center reported an operating loss for the period ended December 31, 2016, stemming from a decrease in occupancy to 89.7%. In 2017, occupancy increased to 92.4% and the facility generated positive income. The 2018 internal financial statements indicate the facility continues to maintain positive operating income.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Nesconset Operating LLC Proposed Members Net Worth
BFA Attachment B	Organizational Chart
BFA Attachment C	Financial Summary, Nesconset Center for Nursing and Rehabilitation.
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Budget Sensitivity Analysis based on 2017 Utilization

Public Health and Health Planning Council

Project # 181366-E
Port Jefferson Operating, LLC d/b/a Waters Edge Rehab & Nursing at Port Jefferson

Program:	**Residential Health Care Facility**	***County:***	**Suffolk**
Purpose:	**Establishment**	***Acknowledged:***	**May 23, 2018**

Executive Summary

Description

Port Jefferson Operating, LLC, a New York limited liability company, is requesting approval to be established as the new operator of Waters Edge at Port Jefferson for Rehabilitation and Nursing (Waters Edge), a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 150 Dark Hollow Road, Port Jefferson (Suffolk County). Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the entity will do business as Waters Edge Rehab & Nursing Center at Port Jefferson. There will be no change in beds or services provided.

On March 29, 2018, Glen-Haven Residential Health Care Facilities, Inc. (Glen-Haven), the current operator of the RHCF, entered into an Operations Transfer Agreement (OTA) with Port Jefferson Operating, LLC for the acquisition of the operating interests of the RHCF for a purchase price of $10. Concurrently, Glen-Haven entered into an Asset Purchase Agreement (APA) with Port Jefferson Property NY, LLC for the sale and acquisition of certain assets of the corporation, excluding the real property, for a purchase price of $13,250,000. Simultaneously, Glen-Haven Holding Corp., the real property owner, entered into a Real Estate Purchase Agreement (REPA) with Port Jefferson Property NY, LLC for the sale and acquisition of the real property for a purchase price of $7,000,000. The OTA, APA and REPA will close simultaneously upon PHHPC approval if this application. There is a relationship between Port Jefferson Operating, LLC and Port Jefferson Property NY, LLC in that the entities have identical membership. Upon approval of the change in ownership of the operating interests, Port Jefferson Operating, LLC will lease the premises from Port Jefferson Property NY, LLC.

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

Current Operator	
Glen-Haven Residential Health Care Facilities Inc.	
Members	
Veena Ahuja	25%
Sanjay Ahuja	25%
Namita Mohan	25%
Vanita Mudgil	25%

Proposed Operator	
Port Jefferson Operating, LLC	
Members	
Mark Friedman *	43.5%
Neal Einhorn *	43.5%
Yossie Zucker	5.0%
Akiva Rudner	4.0%
Steven Sax	4.0%

**Managing members*

The proposed members have ownership interest in various New York State RHCFs. BFA Attachment C provides the ownership interest and financial summary of the proposed members' affiliated RHCFs.

Concurrently under review, the applicant members are seeking approval to acquire the operating interests in Glengariff Health Care

Center, a 262-bed RHCF located in Nassau County (CON 181367), and Nesconset Center for Nursing and Rehabilitation, a 240-bed RHCF also located in Suffolk County (CON 181050).

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

Financial Summary

Port Jefferson Operating, LLC will acquire the RHCF's operations under the terms of the OTA for $10 to be funded via equity. Under the terms of the REPA and APA, Port Jefferson Property NY, LLC will acquire the RHCF's realty property and certain assets for $20,250,000 to be funded via $4,050,000 in equity with the remaining $16,200,000 to be financed via a loan for a 10-year term, 25-year amortization, and interest at the 5 Year Treasury Rate plus 300 basis points (indicative rate of 5.78% as of 8/29/18). Metropolitan Commercial Bank has provided a letter of interest for the loan at the stated terms. The proposed property owner intends to seek HUD financing within the initial 30-60 months after the change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing not be available. There are no project costs associated with this application. The projected budget is as follows:

	Year One
Revenues	$14,616,500
Expenses	13,681,230
Net Income	$935,270

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the purchase of the RHCF realty property and certain assets, 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 Account Management Agreement, acceptable to the Department of Health. [BFA]
5. Submission of a Billing and Support Services Agreement, acceptable to the Department of Health. [BFA]
6. Submission of an Administrative Service Agreement, acceptable to the Department of Health. [BFA]
7. 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]
8. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Lease Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

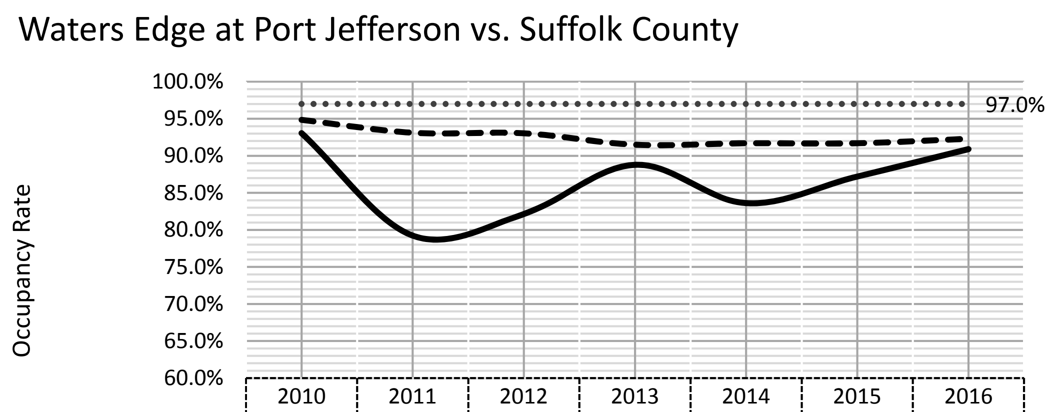
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 11, 2018

Need Analysis

Analysis



	2010	2011	2012	2013	2014	2015	2016
Waters Edge at Port Jefferson	93.1%	79.2%	82.2%	88.8%	83.6%	87.2%	90.9%
Suffolk County	94.9%	93.1%	93.0%	91.5%	91.7%	91.7%	92.3%

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.

Waters Edge's Medicaid admissions rate for 2015, 18.9%, exceed Suffolk County's threshold of 18.4%. In 2016, Waters Edge's Medicaid admissions rate of 23.8% was also above the County's threshold of 18.9%.

Conclusion

There will be no bed or service changes in Suffolk County as a result of this application.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Waters Edge at Port Jefferson for Rehabilitation and Nursing	Waters Edge Rehab & Nursing Center at Port Jefferson
Address	150 Dark Hollow Road Port Jefferson, NY 11777	Same
RHCF Capacity	120	Same
ADHCP Capacity	0	Same
Type of Operator	Corporation	LLC
Class of Operator	Proprietary	Proprietary
Operator	Glen-Haven Residential Health Care Facilities Inc.	Port Jefferson Operating, LLC Mark Friedman* 43.50 % Neal Einhorn* 43.50% Yossi Zucker 5% Akiva Rudner 4% Steven Sax 4% **Managing Members*

Character and Competence - Background

Facility Reviewed

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center	07/2012 to present
St. James Rehabilitation and Health Care Center	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortladt Healthcare	03/2014 to present
The Emerald Peak Rehab and Nursing Center	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Center	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center	02/2017 to present
Crown Center for Nursing and Rehabilitation	01/2015 to 8/2016
The Paramount at Somers Rehab and Nursing Center	01/2018 to present
Beeghly Oaks Center for Rehab and Healing(OH)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care (OH)	11/2014 to April 2018
Hospitality Center for Rehabilitation and Healing (OH)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL)	03/2016 to present
Bristol at Tampa Rehabilitation and Nursing Center (FL)	06/2017 to present
Encore at Boca Raton Rehabilitation and Nursing Center (FL)	01/2018 to present
Palmetto Sub- Acute Care Center (FL)	02/2018 to present
Chatham Hills Subacute Care Center (NJ)	02/2015 to present
Gallitan Health Care Center for Rehabilitation and Healing, LLC (TN)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN)	10/2016 to present
Bethany Center for Rehabilitation and Healing (TN)	10/2016 to present
Signature Healthcare of Nashville Rehabilitation and Wellness (TN)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA)	01/2014 to present

Individual Background Review

Mark Friedman discloses employment as a managing member of San Souci Rehabilitation & Nursing Center since 2009. He has a BA Degree in accounting from Touro College. Mr. Friedman discloses the following health facility interests:

Sans Souci Rehab & Nursing Center (33%)	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center (8.50%)	07/2012 to present
Livingston Hills Nursing & Rehab	05/2006 to 9/2013
Beeghly Oaks Center for Rehab and Healing(OH) (37%)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH) (37%)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care(OH) (37%)	11/2014 to April 2018
Hospitality Center for Rehabilitation &and Healing (OH) (28%)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH) (41%)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL) (40%)	03/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)	06/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)	01/2018 to present
Palmetto Sub-Acute Care Center(FL) (40%)	02/2018 to present
Chatham Hills Subacute Care Center (NJ) (47.50%)	02/2015 to present
Gallatin Center for Rehabilitation and Healing, LLC(TN) (40%)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (40%)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)	03/2017 to present
Bethany Center for Rehabilitation and Healing(TN) (40%)	03/2017 to present
Signature Healthcare of Nashville Rehabilitation and Wellness (TN) (40%)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA) (19%)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)	01/2014 to present
Passionate Home Care, LLC	Pending

Neal Einhorn discloses employment as a managing member of San Souci Rehabilitation and Nursing since 2009. He also discloses that he is the Chief Executive Officer for Nesconset Center for Nursing and Rehabilitation since November 2017. Mr. Einhorn has a Bachelor of Science degree from Brooklyn College. Mr. Einhorn discloses the following health facility interests:

Sans Souci Rehab & Nursing Center (25%)	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center (8.50%)	07/2012 to present
Livingston Hills Nursing & Rehab	05/2006 to 09/2013
Beeghly Oaks Center for Rehab and Healing(OH) (37%)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH) (37%)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care(OH) (37%)	11/2014 to April 2018
Hospitality Center for Rehabilitation &and Healing (OH) (28%)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH) (41%)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL) (40%)	03/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)	06/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)	12/2017 to present
Chatham Hills Subacute Care Center (NJ) (47.50%)	02/2015 to present
Gallitan Center for Rehabilitation and Healing, LLC(TN) (40%)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (40%)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)	03/2017 to present
Bethany Center for Rehabilitation and Healing(TN) (40%)	03/2017 to present
Signature Healthcare of Nashville Rehabilitation & Wellness Center (TN) (40%)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA) (19%)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)	01/2014 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (40%)	01/2018 to present
Palmetto Sub-Acute Care Center (FL) (40%)	02/2018 to present
Passionate Home Care, LLC	Pending

Yossie Zucker is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker holds a BS degree from Touro College. Mr. Zucker discloses the following ownership interests in health facilities:

The Willows at Ramapo Rehabilitation and Nursing Center (2%)	07/2012 to present
St. James Rehabilitation and Healthcare Center (3%)	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Ctr (5%)	08/2012 to present
The Riverside (2%)	08/2013 to present
Cortlandt Healthcare (2%)	03/2014 to present
The Emerald Peek Rehab & Nursing Center (2%)	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation & Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (5%)	01/2018 to present
Beeghly Oaks Center for Rehabilitation and Healing (5%)	10/2016 to present
Oasis Center for Rehabilitation and Healing (5%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (5%)	10/2016 to present
Jupiter Rehabilitation and Healthcare Center (5%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing (5%)	10/2016 to present
Quality Center for Rehabilitation and Healing (5%)	10/2016 to present
Trevecca Center for Rehabilitation and Healing (5%)	10/2016 to present
Bethany Center for Rehabilitation and Healing (5%)	10/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (5%)	06/2017 to present
Harmony Center for Rehabilitation and Healing (5%)	07/2017 to 04/2018
Hospitality Center for Rehabilitation and Healing (5%)	02/2014 to 04/2018
Signature Healthcare of Nashville Rehabilitation &Wellness (5%)	12/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (5%)	01/2018 to present
Palmetto Sub-Acute Care Center (5%)	02/2018 to present

Akiva Rudner is employed as Chief Operating Officer at CareRite LLC, a nursing home consulting service located in Englewood Cliffs, NJ. He holds an MPA from Wagner College. Mr. Rudner discloses the following ownership interests in health facilities:

St. James Rehabilitation & Healthcare Center (1%)	08/2012 to present
Crown Center for Nursing and Rehab (2.50%)	01/2015 to 8/2016
The Emerald Peek Rehabilitation & Nursing Center (2%)	04/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (OH) (2%)	10/2016 to April 2018
Oasis Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Hospitality Center for Rehab and Healing (OH) (4%)	02/2014 to 4/2018
Harmony Center for Rehabilitation and Healing (4.00 %)	07/2017 to 4/2018
Jupiter Rehabilitation and Healthcare Center (FL) (4%)	10/2016 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	01/2018 to present
Palmetto Sub- Acute Center (FL) (4%)	02/2018 to present
The Bristol at Tampa Rehabilitation and Nursing Center (4%)	06/2017 to present
Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Signature Healthcare of Nashville Rehabilitation & Healthcare (TN) (4%)	12/2017 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (4%)	01/2018 to present

Steven Sax has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Mr. Sax holds a bachelor's degree from Israel Torah Research Institute in Jerusalem, Israel. He discloses the following ownership interests in health facilities:

St. James Rehabilitation and Healthcare Center (3%)	08/2012 to present
Cortlandt Healthcare (1%)	03/2014 to present
The Emerald Peek Rehab & Nursing Center (2%)	04/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (4%)	01/2018 to present
Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Oasis Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (OH) (2%)	10/2016 to April 2018
The Rehabilitation Center at Jupiter Gardens, LLC (FL) (4%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (4%)	06/2017 to present
Harmony Center for Rehabilitation and Healing (4%)	07/2017 to 4/2018
Hospitality Center for Rehab and Healing (OH) (4%)	02/2014 to 4/2018
Nashville Center for Rehabilitation and Healing (TN) (4%)	12/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	01/2018 to present
Palmetto Sub- Acute Center (FL) (4%)	02/2018 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (4%)	01/2018 to present

Character and Competence – Analysis

A review of Sans Souci Nursing Home for the period reveals the following:

- The facility was fined $10,000 pursuant to Stipulation and Order NH-12-015 for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

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 Beeghly Oaks Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of $9,500 for a Survey on February 17, 2017.

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 Oasis Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of $3,214 for a Survey on December 8, 2016.

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 Heritage Center for Rehabilitation and Specialty Care (OH) for the period above reveals the following:

- The facility incurred a civil money penalty of $4,550 for a survey finding on January 21, 2015
- The facility incurred a Civil Money Penalty of $35,815 for survey exit dates of October 6, 2017, October 8, 2017 and November 2, 2017.

A review of Squirrel Hill Center for Rehabilitation and Healing(PA) for the period identified above reveals the following:

- The facility was fined $5,500 for survey exit date 10/19/15 under Tags F 224 Prohibit Mistreatment/Neglect/Misappropriation and F279 Develop Comprehensive Care Plans.

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 Forbes Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined $21,250 for survey exit date 7/30/16 under tag 333 Residents Free of Significant Med Errors.
  - The facility incurred a Civil Money Penalty of $4,428 in relation to the same 7/30/16 survey.
- The facility was fined $9,000 for survey exit date 11/29/16 under tags 157 Notify of Changes & 224 Prohibit Mistreatment/Neglect/Misappropriation.

An assessment of the underlying causes of the above enforcements determined 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(s).

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

- The facility incurred a civil money penalty of $48, 655 on June 4, 2017.

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 the remaining facilities for the time periods identified above reveals that there were no enforcements.

Quality Review

Provider Name	***Ownership since***	***Overall***	***Health Inspection***	***Quality Measure***	***Staffing***	***NYS Quintile***
Sans Souci Rehabilitation and Nursing Center	10/2009	****	***	*****	**	3
The Willows at Ramapo Rehab and Nursing Center	07/2012	***	***	*****	*	5
The Grand Pavilion for R & N at Rockville Centre	08/2012	**	**	*****	*	5
St James Rehab & Health Care Center	08/2012	**	***	****	*	4
The Riverside	08/2013	**	**	*****	*	4
Cortlandt Healthcare LLC	03/2014	***	***	****	***	4
The Emerald Peek Rehab and Nursing Center	04/2016	****	***	*****	**	3
The Enclave at Port Chester Rehab and Nursing Ctr	07/2016	*****	****	*****	**	4
The Chateau at Brooklyn Rehab & Nursing Ctr	02/2017	****	***	*****	**	2
The Paramount at Somers Rehab and Nursing Center	1/2018	****	****	****	**	5
Ohio						
Beeghly Oaks Center for Rehabilitation & Healing	11/2014	*	*	**	**	N/A

Provider Name	Ownership since	Overall	Health Inspection	Quality Measure	Staffing	NYS Quintile
Oasis Center for Rehab and Healing	11/2014	*	*	***	**	N/A
Florida						
Jupiter Rehabilitation and Healthcare Center	03/2016	***	**	*****	***	N/A
Bristol at Tampa Rehab and Nursing Center LLC	06/2017	*****	***	*****	****	N/A
Encore at Boca Raton Rehabilitation and Nursing Ce	1/2018	**	*	*****	*****	N/A
Palmetto Subacute Care Center	02/2018	*****	*****	*****	*	N/A
New Jersey						
Chatham Hills Subacute Care Center	02/2015	***	**	*****	***	N/A
Tennessee						
Gallatin Health Care Center, LLC	07/2016	**	*	*****	**	N/A
Quality Center for Rehabilitation and Healing LLC	07/2016	***	****	***	*	N/A
Trevecca Center for Rehabilitation and Healing LLC	03/2017	*****	****	*****	***	N/A
Bethany Center for Rehabilitation and Healing LLC	03/2017	****	***	*****	***	N/A
*Signature Healthcare of Nashville Rehab & Wellness	12/2017	**	*	*****	***	N/A
Pennsylvania						
Forbes Center for Rehab and Healthcare LLC	10/2011	*	*	****	***	N/A
Platinum Ridge Ctr for Rehab & Healing	01/2014	**	**	*	****	N/A
Squirrel Hill Ctr for Rehabilitation and Healing	02/2014	**	**	***	***	N/A

Note: Greyed-out facilities are not applicable due to recent acquisition.

With regard to the overall 1- or 2-star ratings the applicant indicate that at some of the facilities they have initiated an action plan to recruit and retain staff to include such things as improved wages, structured bonus programs and staff education. They have made changes where necessary of Administrators and Directors of Nursing, which have resulted in a stronger cohesive team. They are using mock surveys to identify and correct issues. Corporate teams are providing support and oversight.

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

Operations Transfer Agreement (OTA)

The applicant submitted an executed OTA 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 29, 2018
Transferor:	Glen-Haven Residential Health Care Facilities, Inc.
Transferee:	Port Jefferson Operating, LLC
Asset Acquired:	Business and operations of the facility, inventory, supplies, contracts, resident assets and funds held in trust, security deposits, computer software, patient records, employee records, accounts receivable, all plans, Medicare/Medicaid provider IDs, licenses & permits
Excluded Assets:	Personal Property; the name "Waters Edge at Port Jefferson for Rehabilitation and Nursing" and all other trade names and trademarks; all telephone and telefax numbers, email addresses and domain names; financial records; goodwill; leasehold improvements; furniture, fixtures and equipment; all payment adjustments made to the facility, and related accounts receivable, for services rendered prior to closing; cash/cash equivalents; Universal Settlement funds paid or to be paid.
Assumed Liabilities:	Employee Benefits, Accounts Payable, and Medicaid/Medicare liabilities.
Purchase Price:	$10 – Adjustments will be computed at closing upon the best available information. Buyer shall receive a credit for all liabilities assumed by applicant and Seller shall receive a credit for all accounts receivable relating to services rendered prior to the closing date.

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 September 12, 2018, the facility had a nominal outstanding Medicaid overpayment liability of $49,245.

Asset Purchase Agreement (APA)

The applicant has submitted an executed APA to acquire certain assets related to the RHCF. The terms are summarized below:

Date:	March 29, 2018
Seller:	Glen-Haven Residential Health Care Facilities Inc.
Buyer:	Port Jefferson Property NY LLC
Asset Acquired:	Personal Property, telephones, financial records, goodwill, leasehold improvements, furniture, fixtures and equipment, all other assets except excluded assets.
Excluded Assets:	Inventory, supplies, contracts, resident assets and funds held in trust, security deposits, computer software, patient records, employee records, all plans, Medicare/Medicaid provider IDs, Accounts receivable, cash.
Purchase Price:	$13,250,000
Payment of Purchase Price:	$285,000 Initial Deposit, held in escrow $12,965,000 remaining balance due at closing.

Real Estate Purchase Agreement (REPA)

The applicant has submitted an executed REPA to acquire the RHCF's realty property. The terms are summarized below:

Date:	March 29, 2018
Seller:	Glen-Haven Holding Corp.
Buyer:	Port Jefferson Property NY, LLC
Assets Acquired:	The RHCF Property including: all rights, title and interest in and to the parcel of Land known as 150 Dark Hollow, Port Jefferson, New York; the parking area, buildings, fixtures and other improvements situated on the Land; all equipment and other personal property used at the facility; all easements and appurtenances pertaining to the Land; all authorizations, waivers, licenses, permits and approvals from any governmental agency or quasi-governmental agency relating to the forgoing.
Purchase Price:	$7,000,000
Payment of Purchase Price:	Initial deposit of $150,000 to be held in escrow and the balance of $6,850,000 due at closing to be funded as indicated below

Financing Detail

The total purchase price is apportioned as follows:

Purchase	Proposed Owner	Total
Operating	Port Jefferson Operating, LLC	$10
Assets	Port Jefferson Property NY, LLC	$13,250,000
Realty	Port Jefferson Property NY, LLC	$7,000,000
Total		$20,250,010

The applicant's financing plan is as follows:

Equity *	$10
Equity #	$4,050,000
Loan (5.78% ^, 10-yr term w/ 25-yr amortization) #	$16,200,000
Total	$20,250,010

***** *Members of Port Jefferson Operating, LLC*
 # Members of Port Jefferson Property NY, LLC
^ Based on 5 Year U.S. Treasury Rate (indicative rate of 5.78 as of 8/29/18)

Metropolitan Commercial Bank has provided a letter of interest for the financing at the stated terms. The proposed property owner intends to seek HUD financing within the initial 30-60 months after the change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Majority members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing be unavailable. BFA Attachment A provides the realty members' net worth summaries. It is noted that liquid resources may not be available in proportion to the proposed members ownership interest. Majority operating and realty entity members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

Lease Agreement

A draft lease has been submitted to lease the RHCF realty property and certain assets. The terms are summarized below:

Premises:	120-bed skilled nursing home located at 150 Dark Hollow Road, Port Jefferson, NY
Landlord:	Port Jefferson Property NY, LLC
Lessee:	Port Jefferson Operating, LLC
Term:	10 Years (Initial term)
Rental:	2,200,000/Year
Provisions:	Triple Net

The lease is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant through common ownership

Account Management Agreement

A draft account management agreement has been submitted and the terms are summarized below:

Client:	Port Jefferson Operating, LLC
Provider:	CareRite Services, LLC *
Services:	**A/P** (receive/post vendor invoices, review/confirm accuracy, vendor correspondence), **Cash Management** (monitor bank balances, transfers & direct deposits, cash mgmt. & vendor disbursements, monthly bank reconciliations), **Payroll** (process payroll, transfer Federal & State taxes, file quarterly payroll & yearly W-2 taxes, payroll reports), and **Financial Statements** (prepare g/l, monthly trial balance & financial statements, review monthly financials to identify areas of opportunity, assist facility's CPA firm in completion of audited financials & cost report).
Fee:	$7,300/monthly

**Members of CareRite Services, LLC are Yossie Zucker (50%) and Chana D. Zucker (50%).*

Billing and Support Services Agreement

A draft billing and support services agreement has been submitted and the terms are summarized below:

Client:	Port Jefferson Operating, LLC
Provider:	Comprehensive Healthcare Solutions, LLC *
Services:	Maintain all client billing, collection and accounting data in a secure computer system and at the Client's request access to the Facility Computer Network (FCN) will be given. Access to the FCN will be "Read Only" as only Comprehensive can make changes in the system.
Fee:	$7,800/monthly ($5,300, Services & $2,500, lease of software/hardware)

**Sole member of Comprehensive Healthcare Solutions, LLC is Shaindl Shur (100%).*

Administrative Services Agreement

A draft administrative service agreement has been submitted and the terms are summarized below:

Client:	Port Jefferson Operating, LLC
Provider:	CareRite Centers, LLC *
Services:	Employee benefit & personnel services, oversee general maintenance & cleaning services, clerical services, public relations services, est. policies/procedures governing quality assurance, risk mgmt., etc., assistance with quality assurance activities, develop orientation & training plans to educate admin. Personnel on policies/procedures, and other services upon request.
Fee:	The admin. fee will reflect the actual costs/expenses incurred by CareRite (directly or indirectly) on behalf of or at the request of the Client (e.g., equipment costs, personnel costs, software, med/non-med supplies, maintenance, utilities, misc. expenses, etc.). Costs that cannot be directly attributed to the Client, services will be based upon a per bed allocation of CareRite's direct/indirect costs with respect to such services. The estimated annual cost will be $344,000.

**Members of CareRite Center, LLC are Mark Friedman (50%) and Neal Einhorn (50%).*

The Account Management and Administrative Service Agreements are non-arm's length in that the proposed operating entity has members in common with the service providers, CareRite Services, LLC and CareRite Centers, LLC. The applicant has submitted an executed attestation acknowledging their understanding that there are statutory and regulatory powers that cannot be delegated to a third party and the applicant will not engage in any illegal delegation of authority.

Operating Budget

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

	Current Year		Year One	
Revenues	Per Diem	Total	Per Diem	Total
Commercial - FFS	$403.43	$1,008,177	$357.13	$1,062,100
Medicare - FFS	$689.72	2,980,284	N/A	0
Medicare - MC	N/A	0	$663.03	3,520,700
Medicaid - FFS	$295.35	8,936,234	N/A	0
Medicaid - MC	N/A	0	$286.37	8,941,800
Private Pay	$375.00	1,031,625	$357.13	1,062,100
All Other	N/A	99,304	N/A	29,800
Total Revenue		$14,055,624		$14,616,500
Expenses				
Operating	$300.79	$11,979,708	$265.14	$11,263,800
Capital	$18.91	753,193	$56.90	2,417,430
Total	$319.71	$12,732,901	$322.04	$13,681,230
Net Income		$1,322,723		$935,270
Patient Days		39,827		42,483
Occupancy		91%		97%

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

- The Medicare rate is based on the facility's most current average rate of payment. The Medicaid rate is projected based on the reimbursement methodology under statewide pricing. Commercial, Private and Other rates are projected based on similar facilities in the same geographical area.
- All other revenue is based on the current operator's model and then adjusted based on the experience of the applicant.
- Expense assumptions are based on the current operator's model and then adjusted based on the applicant's experience. This includes:
  - Employee Benefits decrease by $199,945. This is based upon the benefit packages at other facilities operated by the proposed buyer.
  - Professional Fees decrease by $179,203 due to the current operator having incurred additional costs (legal and accounting expenses) related to the sale of the facility.
  - Non-medical, Non-surgical Supplies decrease by $80,500 based on the proposed operator's ability to secure better vendor pricing.
  - Other Direct Expenses decrease by $189,669 due to the current operator reducing insurance settlement costs, consultant fees and other non-recurring costs.
  - Rent/Deprecation increasing by $1,704,805 in Year One and $1,671,756 in Year Three, which is attributable to the new lease contract.
- The projected utilization for the facility is 97% in Year One and Year Three. Occupancy for 2016 and 2017 was at 91%. Occupancy is expected to increase due to the good relationships the operator has with upstream and downstream providers, including many of the local hospitals. They intend to leverage these relationships to the benefit of the facility. They are also seeking to introduce other programs that will be unique to the area to attract more consumers.
- Breakeven utilization is projected at 93.6% or 39,764 patient days for the Year One.
- Utilization by payor source for the first year after the change in ownership is summarized below:

Payor	Current Year	Year One
Commercial - FFS	6.3%	7.0%
Medicare - FFS	10.8%	0.0%
Medicare - MC	0.0%	12.5%
Medicaid - FFS	76.0%	0.0%
Medicaid - MC	0.0%	73.5%
Private Pay	6.9%	7.0%
Total	100.0%	100.0%

Capability and Feasibility

The RHCF's operating interest will be purchased for $10 and will be funded via members' equity. There are no project costs associated with this application. The realty property and certain assets will be purchased for $20,250,000 and will be funded via $4,050,000 in members' equity with the remaining $16,200,000 to be financed with a loan for a 10-year term, 25-year amortization at the 5-year treasury rate plus 300 basis points (indicative rate of 5.78 as of 8/29/18). Metropolitan Commercial Bank has provided a letter of interest. The proposed property owner intends to obtain HUD financing within the initial 30-60 months after change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Majority members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing be unavailable. BFA Attachment A provides the members' net worth summaries; however, liquid resources may not be available in proportion to the members proposed ownership interest. Majority operating and realty entity members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

The working capital requirement is estimated at $2,947,048, which is determined based on two months of Year One expenses of $2,280,205 plus $666,843 in assumed liabilities over assumed current assets. The applicant indicated they will provide $1,496,282 in working capital to be funded via members' equity with the remaining $1,450,766 to be satisfied via a loan for a three-year term at approximately 4.75% interest. Metropolitan Commercial Bank has provided a letter of interest. BFA Attachment A is the members' net worth summaries, which indicates sufficient liquid resources overall. Affidavits were provided from the majority members stating they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

The submitted budget projects net profit of $935,270 in Year One after the change in ownership. Revenues are estimated to increase by approximately $560k primarily due to an increase in occupancy. As of August 1, 2018, occupancy was reported at 99.1% with only one bed available for admissions. Expenses are expected to increase by approximately $900k due mostly to a $1.7m increase in depreciation/rent from a new lease agreement offset by decreases in employee benefits, professional fees, and other direct expenses that amount to approximately 800k. BFA Attachment D is the pro-forma balance sheet for Port Jefferson Operating, LLC, which shows the operation entity will start with positive members' equity. The budget appears reasonable.

BFA Attachment B is a Financial Summary of Glen-Haven Residential Health Care Facilities Inc.'s 2015-2017 certified financial statements and their internal financial statements through April 30, 2018. As shown, the entity had an average positive working capital position, average positive net assets, and an average positive income in 2017 through April 30, 2018. The facility had negative net assets and net income in 2015-2016. In 2016, the members contributed $4.6m additional paid-in-capital to better its net asset position. The facility also improved its operations from these years, as they have achieved net income in 2017 and the period ending April 30, 2018.
BFA Attachment C, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown except for the following:

- The Enclave at Port Chester Rehab and Nursing Center was acquired in July 2016 and is in the process of transitioning under the new management. For the year ended December 31, 2017 (first full year of operation), and per the internal financials the five months ended May 31, 2018, the facility had a negative working capital position, positive net assets and positive operating income. The applicant indicated that the negative working capital position was due in part to one-time construction payables that will be satisfied by December 31, 2018 or reclassified as long-term liabilities. It is noted that per establishment CON 151089, working capital of $2,937,360 (50% financed, 50% members equity) was to be provided as of the first day of operation. However, a review of the certified financial statements for the six months ended December 31, 2016 (first six months under new operator) indicates that the members' equity contribution was only $1,504. The applicant indicated that the equity contribution was converted to debt through a non-interest-bearing note payable of $1,120,000 to a related party, PCMN Lender, LLC, for acquisition of the facility.

- The Emerald Peek Rehab and Nursing Center was acquired in April 2016. For the year ended December 31, 2017 (first full year of operation), and per the internal financials for the four months ended April 30, 2018, the facility had a negative working capital position, positive net assets, and operating income that turned positive in 2018. Management has renegotiated payer contracts and improved payer mix, both of which are expected to improve operations going forward. Utilization has since increased to over 95% for the seven months ended July 31, 2018, and net income was positive for the same period.
- The Willows at Ramapo Rehabilitation and Nursing Center reported an operating loss for the period ended December 31, 2016, stemming from a decrease in occupancy to 89.7%. In 2017, occupancy increased to 92.4% and the facility generated positive income. The 2018 internal financial statements indicate the facility continues to maintain positive operating income.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members, Port Jefferson Operating, LLC and Port Jefferson Property NY, LLC
BFA Attachment B	Financial Summary of Glen-Haven Residential Health Care Facilities Inc.
BFA Attachment C	Proposed Members' Affiliated RHCF Ownership Interest and Financial Summary
BFA Attachment D	Pro Forma Balance Sheet, Port Jefferson Operating, LLC

Public Health and Health Planning Council

Project # 181367-E
Glengariff Operating, LLC d/b/a Glengariff Rehabilitation and Healthcare Center

Program:	**Residential Health Care Facility**	***County:***	**Nassau**
Purpose:	**Establishment**	***Acknowledged:***	**May 23, 2018**

Executive Summary

Description

Glengariff Operating, LLC, a New York limited liability company, requests approval to be established as the new operator of Glengariff Health Care Center, a 262-bed, proprietary, Article 28 residential health care facility (RHCF) located at 141 Dosoris Lane, Glen Cove (Nassau County). The Glengariff Corporation, a proprietary business entity, is the current operator of the facility. Upon approval of this application by the Public Health and Health Planning Council (PHHPC), the entity will do business as Glengariff Rehabilitation and Healthcare Center. There will be no change in beds or services provided.

On March 29, 2018, Glengariff Operating, LLC entered into an Operations Transfer Agreement (OTA) with The Glengariff Corporation to acquire the operating interests of the RHCF for a purchase price of $10. Concurrently, The Glengariff Corporation entered into an Asset Purchase Agreement (APA) with Glengariff Property NY, LLC for the sale and acquisition of certain assets of the corporation, excluding the real property, for a purchase price of $28,750,000. Simultaneously, Glengariff Holding Corp., the real property owner, entered into a Real Estate Purchase Agreement (REPA) with Glengariff Property NY, LLC for the sale and acquisition of the RHCF's real property for a purchase price of $21,000,000. The OTA, APA and REPA will close simultaneously upon PHHPC approval if this application. There is a relationship between Glengariff Operating, LLC and Glengariff Property NY, LLC in that the entities have identical membership. Upon approval of the change in ownership of the operations, Glengariff Operating, LLC will lease the premises from Glengariff Property NY, LLC.

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

Current Operator The Glengariff Corporation	
Members	
Veena Ahuja	25%
Sanjay Ahuja	25%
Namita Mohan	25%
Vanita Mudgil	25%

Proposed Operator Glengariff Operating, LLC	
Members	
Mark Friedman *	43.5%
Neal Einhorn *	43.5%
Yossie Zucker	5.0%
Akiva Rudner	4.0%
Steven Sax	4.0%

* Managing members

The proposed members have ownership interest in various New York State RHCFs. BFA Attachment C provides the ownership interest and financial summary of the proposed members' affiliated RHCFs.

Concurrently under review, the applicant members are seeking approval to acquire the operating interests in Waters Edge at Port Jefferson for Rehabilitation and Nursing, a 120-bed RHCF located in Suffolk County (CON

181366), and Nesconset Center for Nursing and Rehabilitation, a 240-bed RHCF also located in Suffolk County (CON 181050).

OPCHSM Recommendation

Contingent Approval

Need Summary

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

Program Summary

Based on the information review, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The applicant does not intend to utilize any staffing agencies upon their assumption of ownership.

Financial Summary

Glengariff Operating, LLC will acquire the RHCF's operations under the terms of the OTA for $10 to be funded via members' equity. Under the terms of the REPA and APA, Glengariff Property NY, LLC will acquire the RHCF's realty and certain assets for a total of $49,750,000 to be funded via $4,950,000 in equity, a $5,000,000 Promissory Note with the current property owner for a 60-month term at 6% interest, with the remaining $39,800,000 to be financed via a loan for a 10-year term, 25-year amortization, and interest at the 5 Year U.S. Treasury Rate plus 300 basis points (indicative rate of 5.78% as of 8/29/18), with one reset after the fifth year. Metropolitan Commercial Bank has provided a letter of interest for the loan at the stated terms. The proposed property owner intends to seek HUD financing within the initial 30-60 months after the change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing not be available. There are no project costs associated with this application. The proposed budget is as follows:

	Year One
Revenues	$37,207,200
Expenses	35,663,607
Net Income	$1,543,593

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

   The DOH reserves the right to require continued reporting beyond the two-year period. [RNR]
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 RHCF realty and certain assets, acceptable to the Department of Health. [BFA]
6. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
8. Submission of an Account Management Agreement, acceptable to the Department of Health. [BFA]
9. Submission of a Billing and Support Services Agreement, acceptable to the Department of Health. [BFA]
10. Submission of an Administrative Service Agreement, acceptable to the Department of Health. [BFA]
11. Submission of a photocopy of a Certificate of Amendment of Articles of Organization of Glengariff Operating LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of a facility lease, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the Glengariff Operating LLC Operating Agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

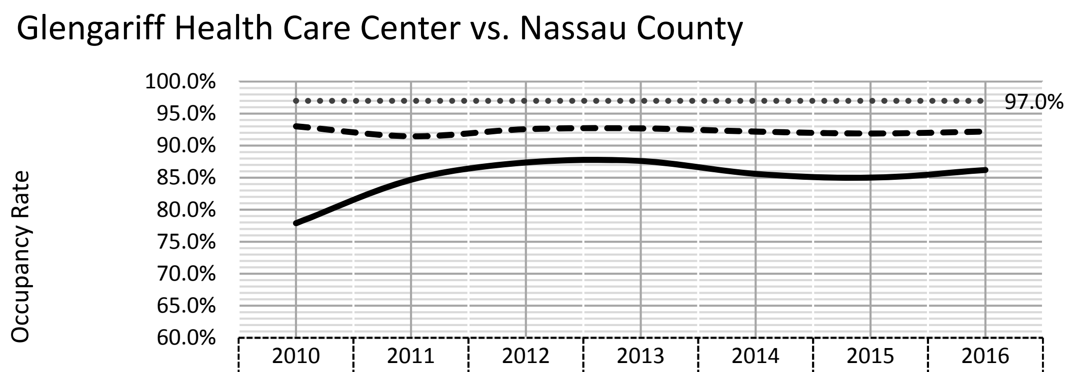
1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 11, 2018

Need Analysis

Analysis



	2010	2011	2012	2013	2014	2015	2016
Glengariff Health Care Center	77.9%	84.7%	87.4%	87.6%	85.6%	85.0%	86.2%
Nassau County	93.0%	91.5%	92.6%	92.7%	92.2%	91.9%	92.2%

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.

Glengariff Health Care Center's Medicaid admissions rate for 2015, 8.8%, was below Nassau County's threshold of 11.1%. In 2016, Glengariff Health Care Center's Medicaid admissions rate was 8.5%, which was also below the County's 2016 threshold of 9.2%.

Conclusion

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

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Glengariff Health Care Center	Glengariff Rehabilitation and Healthcare Center
Address	141 Dosoris Lane Glen Cove, NY	Same
RHCF Capacity	262	Same
ADHCP Capacity	0	Same
Type of Operator	Corporation	LLC
Class of Operator	Proprietary	Proprietary
Operator	The Glengariff Corporation	Glengariiff Operating, LLC Mark Friedman* 43.50 % Neal Einhorn* 43.50% Yossi Zucker 5% Akiva Rudner 4% Steven Sax 4% **Managing Members*

Character and Competence - Background

Facility Reviewed

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center	07/2012 to present
St. James Rehabilitation and Health Care Center	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortladt Healthcare	03/2014 to present
The Emerald Peak Rehab and Nursing Center	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Center	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center	02/2017 to present
Crown Center for Nursing and Rehabilitation	01/2015 to 8/2016
The Paramount at Somers Rehab and Nursing Center	01/2018 to present
Beeghly Oaks Center for Rehab and Healing(OH)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care (OH)	11/2014 to April 2018
Hospitality Center for Rehabilitation and Healing (OH)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL)	03/2016 to present
Bristol at Tampa Rehabilitation and Nursing Center (FL)	06/2017 to present
Encore at Boca Raton Rehabilitation and Nursing Center (FL)	01/2018 to present
Palmetto Sub- Acute Care Center (FL)	02/2018 to present
Chatham Hills Subacute Care Center (NJ)	02/2015 to present
Gallitan Health Care Center for Rehabilitation and Healing, LLC (TN)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN)	10/2016 to present
Bethany Center for Rehabilitation and Healing (TN)	10/2016 to present
Signature Healthcare of Nashville Rehabilitation and Wellness (TN)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA)	01/2014 to present

Individual Background Review

Mark Friedman discloses employment as a managing member of San Souci Rehabilitation & Nursing Center since 2009. He has a BA Degree in accounting from Touro College. Mr. Friedman discloses the following health facility interests:

Sans Souci Rehab & Nursing Center (33%)	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center (8.50%)	07/2012 to present
Livingston Hills Nursing & Rehab	05/2006 to 9/2013
Beeghly Oaks Center for Rehab and Healing(OH) (37%)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH) (37%)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care(OH) (37%)	11/2014 to April 2018
Hospitality Center for Rehabilitation &and Healing (OH) (28%)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH) (41%)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL) (40%)	03/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)	06/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)	01/2018 to present
Palmetto Sub-Acute Care Center(FL) (40%)	02/2018 to present
Chatham Hills Subacute Care Center (NJ) (47.50%)	02/2015 to present
Gallatin Center for Rehabilitation and Healing, LLC(TN) (40%)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (40%)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)	03/2017 to present
Bethany Center for Rehabilitation and Healing(TN) (40%)	03/2017 to present
Signature Healthcare of Nashville Rehabilitation and Wellness (TN) (40%)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA) (19%)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)	01/2014 to present
Passionate Home Care, LLC	Pending

Neal Einhorn discloses employment as a managing member of San Souci Rehabilitation and Nursing since 2009. He also discloses that he is the Chief Executive Officer for Nesconset Center for Nursing and Rehabilitation since November 2017. Mr. Einhorn has a Bachelor of Science degree from Brooklyn College. Mr. Einhorn discloses the following health facility interests:

Sans Souci Rehab & Nursing Center (25%)	10/2009 to present
The Willows at Ramapo Rehab and Nursing Center (8.50%)	07/2012 to present
Livingston Hills Nursing & Rehab	05/2006 to 09/2013
Beeghly Oaks Center for Rehab and Healing(OH) (37%)	11/2014 to present
Oasis Center for Rehabilitation & Healing (OH) (37%)	11/2014 to present
Heritage Center for Rehabilitation & Specialty Care(OH) (37%)	11/2014 to April 2018
Hospitality Center for Rehabilitation &and Healing (OH) (28%)	02/2014 to April 2018
Harmony Center for Rehabilitation and Healing (OH) (41%)	07/2017 to April 2018
Jupiter Rehabilitation and Healthcare Center (FL) (40%)	03/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (FL) (37%)	06/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (40%)	12/2017 to present
Chatham Hills Subacute Care Center (NJ) (47.50%)	02/2015 to present
Gallitan Center for Rehabilitation and Healing, LLC(TN) (40%)	07/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (40%)	07/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC(TN) (40%)	03/2017 to present
Bethany Center for Rehabilitation and Healing(TN) (40%)	03/2017 to present
Signature Healthcare of Nashville Rehabilitation & Wellness Center (TN) (40%)	12/2017 to present
Forbes Center for Rehabilitation and Healthcare (PA) (19%)	10/2011 to Present
Squirrel Hill Center for Rehabilitation and Healing (PA) (28%)	02/2014 to present
Platinum Ridge Center for Rehabilitation and Healthcare (PA) (22.75%)	01/2014 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (40%)	01/2018 to present
Palmetto Sub-Acute Care Center (FL) (40%)	02/2018 to present
Passionate Home Care, LLC	Pending

Yossie Zucker is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker holds a BS degree from Touro College. Mr. Zucker discloses the following ownership interests in health facilities:

The Willows at Ramapo Rehabilitation and Nursing Center (2%)	07/2012 to present
St. James Rehabilitation and Healthcare Center (3%)	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Ctr (5%)	08/2012 to present
The Riverside (2%)	08/2013 to present
Cortlandt Healthcare (2%)	03/2014 to present
The Emerald Peek Rehab & Nursing Center (2%)	03/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation & Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (5%)	01/2018 to present
Beeghly Oaks Center for Rehabilitation and Healing (5%)	10/2016 to present
Oasis Center for Rehabilitation and Healing (5%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (5%)	10/2016 to present
Jupiter Rehabilitation and Healthcare Center (5%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing (5%)	10/2016 to present
Quality Center for Rehabilitation and Healing (5%)	10/2016 to present
Trevecca Center for Rehabilitation and Healing (5%)	10/2016 to present
Bethany Center for Rehabilitation and Healing (5%)	10/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (5%)	06/2017 to present
Harmony Center for Rehabilitation and Healing (5%)	07/2017 to 04/2018
Hospitality Center for Rehabilitation and Healing (5%)	02/2014 to 04/2018
Signature Healthcare of Nashville Rehabilitation &Wellness (5%)	12/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (5%)	01/2018 to present
Palmetto Sub-Acute Care Center (5%)	02/2018 to present

Akiva Rudner is employed as Chief Operating Officer at CareRite LLC, a nursing home consulting service located in Englewood Cliffs, NJ. He holds an MPA from Wagner College. Mr. Rudner discloses the following ownership interests in health facilities:

St. James Rehabilitation & Healthcare Center (1%)	08/2012 to present
Crown Center for Nursing and Rehab (2.50%)	01/2015 to 8/2016
The Emerald Peek Rehabilitation & Nursing Center (2%)	04/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (OH) (2%)	10/2016 to April 2018
Oasis Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Hospitality Center for Rehab and Healing (OH) (4%)	02/2014 to 4/2018
Harmony Center for Rehabilitation and Healing (4.00 %)	07/2017 to 4/2018
Jupiter Rehabilitation and Healthcare Center (FL) (4%)	10/2016 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	01/2018 to present
Palmetto Sub- Acute Center (FL) (4%)	02/2018 to present
The Bristol at Tampa Rehabilitation and Nursing Center (4%)	06/2017 to present
Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Signature Healthcare of Nashville Rehabilitation & Healthcare (TN) (4%)	12/2017 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (4%)	01/2018 to present

Steven Sax has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Mr. Sax holds a bachelor's degree from Israel Torah Research Institute in Jerusalem, Israel. He discloses the following ownership interests in health facilities:

St. James Rehabilitation and Healthcare Center (3%)	08/2012 to present
Cortlandt Healthcare (1%)	03/2014 to present
The Emerald Peek Rehab & Nursing Center (2%)	04/2016 to present
The Enclave at Port Chester Rehabilitation and Nursing Ctr (2%)	07/2016 to present
The Chateau at Brooklyn Rehabilitation and Nursing Center (2%)	02/2017 to present
The Paramount at Somers Rehab and Nursing Center (4%)	01/2018 to present
Beeghly Oaks Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Oasis Center for Rehabilitation and Healing (OH) (2%)	10/2016 to present
Heritage Center for Rehabilitation and Specialty Care (OH) (2%)	10/2016 to April 2018
The Rehabilitation Center at Jupiter Gardens, LLC (FL) (4%)	10/2016 to present
Gallitan Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Quality Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Trevecca Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
Bethany Center for Rehabilitation and Healing, LLC (TN) (4%)	10/2016 to present
The Bristol at Tampa Rehabilitation and Nursing Center (4%)	06/2017 to present
Harmony Center for Rehabilitation and Healing (4%)	07/2017 to 4/2018
Hospitality Center for Rehab and Healing (OH) (4%)	02/2014 to 4/2018
Nashville Center for Rehabilitation and Healing (TN) (4%)	12/2017 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (FL) (4%)	01/2018 to present
Palmetto Sub- Acute Center (FL) (4%)	02/2018 to present
The Encore at Boca Raton Rehabilitation and Nursing Center (4%)	01/2018 to present

Character and Competence – Analysis

A review of Sans Souci Nursing Home for the period reveals the following:

- The facility was fined $10,000 pursuant to Stipulation and Order NH-12-015 for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

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 Beeghly Oaks Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of $9,500 for a Survey on February 17, 2017.

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 Oasis Center for Rehabilitation and Healing(OH) for the period reveals the following:

- The facility incurred a Civil Money Penalty of $3,214 for a Survey on December 8, 2016.

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 Heritage Center for Rehabilitation and Specialty Care (OH) for the period above reveals the following:

- The facility incurred a civil money penalty of $4,550 for a survey finding on January 21, 2015
- The facility incurred a Civil Money Penalty of $35,815 for survey exit dates of October 6, 2017, October 8, 2017 and November 2, 2017.

A review of Squirrel Hill Center for Rehabilitation and Healing(PA) for the period identified above reveals the following:

- The facility was fined $5,500 for survey exit date 10/19/15 under Tags F 224 Prohibit Mistreatment/Neglect/Misappropriation and F279 Develop Comprehensive Care Plans.

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 Forbes Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined $21,250 for survey exit date 7/30/16 under tag 333 Residents Free of Significant Med Errors.
  - The facility incurred a Civil Money Penalty of $4,428 in relation to the same 7/30/16 survey.
- The facility was fined $9,000 for survey exit date 11/29/16 under tags 157 Notify of Changes & 224 Prohibit Mistreatment/Neglect/Misappropriation.

An assessment of the underlying causes of the above enforcements determined 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(s).

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

- The facility incurred a civil money penalty of $48, 655 on June 4, 2017.

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 the remaining facilities for the time periods identified above reveals that there were no enforcements.

Quality Review

Provider Name	***Ownership since***	***Overall***	***Health Inspection***	***Quality Measure***	***Staffing***	***NYS Quintile***
Sans Souci Rehabilitation and Nursing Center	10/2009	****	***	*****	**	3
The Willows at Ramapo Rehab and Nursing Center	07/2012	***	***	*****	*	5
The Grand Pavilion for R & N at Rockville Centre	08/2012	**	**	*****	*	5
St James Rehab & Health Care Center	08/2012	**	***	****	*	4
The Riverside	08/2013	**	**	*****	*	4
Cortlandt Healthcare LLC	03/2014	***	***	****	***	4
The Emerald Peek Rehab and Nursing Center	04/2016	****	***	*****	**	3
The Enclave at Port Chester Rehab and Nursing Ctr	07/2016	*****	****	*****	**	4
The Chateau at Brooklyn Rehab & Nursing Ctr	02/2017	****	***	*****	**	2
The Paramount at Somers Rehab and Nursing Center	1/2018	****	****	****	**	5
Ohio						
Beeghly Oaks Center for Rehabilitation & Healing	11/2014	*	*	**	**	N/A

Provider Name	Ownership since	Overall	Health Inspection	Quality Measure	Staffing	NYS Quintile
Oasis Center for Rehab and Healing	11/2014	*	*	***	**	N/A
Florida						
Jupiter Rehabilitation and Healthcare Center	03/2016	***	**	*****	***	N/A
Bristol at Tampa Rehab and Nursing Center LLC	06/2017	*****	***	*****	****	N/A
Encore at Boca Raton Rehabilitation and Nursing Ce	1/2018	**	*	*****	*****	N/A
Palmetto Subacute Care Center	02/2018	*****	*****	*****	*	N/A
New Jersey						
Chatham Hills Subacute Care Center	02/2015	***	**	*****	***	N/A
Tennessee						
Gallatin Health Care Center, LLC	07/2016	**	*	*****	**	N/A
Quality Center for Rehabilitation and Healing LLC	07/2016	***	****	***	*	N/A
Trevecca Center for Rehabilitation and Healing LLC	03/2017	*****	****	*****	***	N/A
Bethany Center for Rehabilitation and Healing LLC	03/2017	****	***	*****	***	N/A
*Signature Healthcare of Nashville Rehab & Wellness	12/2017	**	*	*****	***	N/A
Pennsylvania						
Forbes Center for Rehab and Healthcare LLC	10/2011	*	*	****	***	N/A
Platinum Ridge Ctr for Rehab & Healing	01/2014	**	**	*	****	N/A
Squirrel Hill Ctr for Rehabilitation and Healing	02/2014	**	**	***	***	N/A

Note: Greyed-out facilities are not applicable due to recent acquisition.

With regard to the overall 1- or 2-star ratings the applicant indicate that at some of the facilities they have initiated an action plan to recruit and retain staff to include such things as improved wages, structured bonus programs and staff education. They have made changes where necessary of Administrators and Directors of Nursing, which have resulted in a stronger cohesive team. They are using mock surveys to identify and correct issues. Corporate teams are providing support and oversight.

Project Review

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

Conclusion
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

Operations Transfer Agreement (OTA)
The applicant submitted an executed OTA 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 29, 2018
Transferor:	The Glengariff Corporation
Transferee:	Glengariff Operating, LLC
Asset Acquired:	Business and operations of the facility, inventory, supplies, contracts, resident assets and funds held in trust, security deposits, computer software, patient records, employee records, all plans, Medicare/Medicaid provider IDs, licenses and permits.
Excluded Assets:	Personal Property; the name "Glengariff Health Care Center" and all other trade names and trademarks; all telephone and telefax numbers, email addresses and domain names; financial records; goodwill; leasehold improvements; furniture, fixtures and equipment; accounts receivable; cash/cash equivalents; Universal Settlement funds paid or to be paid.
Assumed Liabilities:	Employee Benefits, Accounts Payable, and Medicaid/Medicare liabilities.
Purchase Price:	$10 – Adjustments will be computed at closing upon the best available information. Buyer shall receive a credit for all liabilities assumed by applicant and Seller shall receive a credit for all accounts receivable relating to services rendered prior to the closing date.

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 September 1, 2018, the facility had no outstanding Medicaid overpayment liabilities.

Asset Purchase Agreement (APA)

The applicant has submitted an executed APA to acquire certain assets related to the RHCF. The terms are summarized below:

Date:	March 29, 2018
Seller:	The Glengariff Corporation
Buyer:	Glengariff Property NY LLC
Asset Acquired:	Personal Property, all telephone and telefax numbers and email addresses and domain names; financial records; goodwill; leasehold improvements; furniture, fixtures and equipment; accounts receivable, accounts receivable and proceeds of collections; all other assets except excluded assets.
Excluded Assets:	Inventory, supplies, contracts, resident assets and funds held in trust, security deposits, computer software, patient records, employee records, all plans, Medicare and Medicaid provider IDs, accounts receivable, cash.
Purchase Price:	$28,750,000
Payment of Purchase Price:	$615,000 Initial Deposit; $5,000,000 Promissory Note (60 months, 6% interest): $23,135,000 remaining balance due at closing.

Real Estate Purchase Agreement (REPA)

The applicant has submitted an executed REPA to acquire the RHCF's realty property. The terms are summarized below:

Date:	March 29, 2018
Seller:	Glengariff Holding Corp.
Buyer:	Glengariff Property NY, LLC
Assets Acquired:	The RHCF Property including: all rights, title and interest in and to the parcel of Land known as 141 Dosoris Lane, Glen Cove, New York; the parking area, buildings, fixtures and other improvements situated on the Land; all equipment and other personal property used at the facility; all easements and appurtenances pertaining to the Land; all authorizations, waivers, licenses, permits and approvals from any governmental agency or quasi-governmental agency relating to the forgoing.
Purchase Price:	$21,000,000
Payment of Purchase Price:	$450,000 Initial Deposit (held in escrow): $20,550,000 remaining balance due at closing.

Financing Details

The total purchase price is apportioned as follows:

Purchase	Proposed Owner	Total
Operations	Glengariff Operating, LLC	$10
Assets	Glengariff Property NY, LLC	$28,750,000
Realty	Glengariff Property NY, LLC	$21,000,000
Total		$49,750,010

The applicant's financing plan is as follows:

Members' Equity *****	$10
Members' Equity #	$4,950,000
Promissory Note with Glengariff Corp. (6% interest, 5-year term) #	$5,000,000
Loan (5.78% interest ^, 10-year term, 25-year amortization) #	$39,800,000
Total	$49,750,010

***** *Members of Glengariff Operating, LLC*

 # Members of Glengariff Property NY, LLC

^ Based on 5 Year U.S. Treasury Rate (indicative rate of 5.78 as of 8/29/18)

Metropolitan Commercial Bank has provided a letter of interest for the financing at the stated terms. The proposed property owner intends to seek HUD financing within the initial 30-60 months after the change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Majority members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing be unavailable. BFA attachment A is the proposed members' net worth summaries. It is noted that liquid resources may not be available in proportion to the propose members ownership interest. Majority operating and realty entity members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

Lease Agreement

A draft lease has been submitted to lease the RHCF realty property. The terms are summarized below:

Premises:	262-bed skilled nursing home located at 141 Dosoris Lane, Glen Cove, New York
Landlord:	Glengariff Property NY, LLC
Lessee:	Glengariff Operating, LLC
Term:	10 Years (Initial term)
Rental:	$4,900,000/Year
Provisions:	Triple Net

The lease is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant through common ownership.

Account Management Agreement

A draft account management agreement has been submitted and the terms are summarized below:

Client:	Glengariff Operating, LLC
Provider:	CareRite Services, LLC *
Services:	**A/P** (receive/post vendor invoices, review/confirm accuracy, vendor correspondence), **Cash Management** (monitor bank balances, transfers & direct deposits, cash mgmt. & vendor disbursements, monthly bank reconciliations), **Payroll** (process payroll, transfer Federal & State taxes, file quarterly payroll & yearly W-2 taxes, payroll reports), and **Financial Statements** (prepare g/l, monthly trial balance & financial statements, review monthly financials to identify areas of opportunity, assist facility's CPA firm in completion of audited financials & cost report).
Fee:	$16,000/monthly

**Members of CareRite Services, LLC are Yossie Zucker (50%) and Chana D. Zucker (50%).*

Billing and Support Services Agreement

A draft billing and support services agreement has been submitted and the terms are summarized below:

Client:	Glengariff Operating, LLC
Provider:	Comprehensive Healthcare Solutions, LLC *
Services:	Maintain all client billing, collection and accounting data in a secure computer system and at Client's request access to the Facility Computer Network (FCN) will be given. Access to the FCN will be "Read Only" as only Comprehensive can make changes in the system.
Fee:	$16,000/monthly ($13,500, Services & $2,500, lease of software/hardware)

**Sole member of Comprehensive Healthcare Solutions, LLC is Shaindl Shur (100%).*

Administrative Services Agreement

A draft administrative service agreement has been submitted and the terms are summarized below:

Client:	Glengariff Operating, LLC
Provider:	CareRite Centers, LLC *
Services:	Employee benefit & personnel services, oversee general maintenance & cleaning services, clerical services, public relations services, est. policies/procedures governing quality assurance, risk mgmt., etc., assistance with quality assurance activities, develop orientation & training plans to educate admin. Personnel on policies/procedures, and other services upon request.
Fee:	The admin. fee will reflect the actual costs/expenses incurred by CareRite (directly or indirectly) on behalf of or at the request of the Client (e.g., equipment costs, personnel costs, software, med/non-med supplies, maintenance, utilities, misc. expenses, etc.). Costs that cannot be directly attributed to the Client, services will be based upon a per bed allocation of CareRite's direct/indirect costs with respect to such services. The estimated annual cost will be $344,000.

**Members of CareRite Centers, LLC are Mark Friedman (50%) and Neal Einhorn (50%).*

The Account Management and Administrative Service Agreements are non-arm's length in that the proposed operating entity has members in common with the service providers, CareRite Services, LLC and CareRite Centers, LLC. The applicant has submitted an executed attestation acknowledging their understanding that there are statutory and regulatory powers that cannot be delegated to a third party and the applicant will not engage in any illegal delegation of authority.

Operating Budget

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

	Current Year		Year One	
Revenues	Per Diem	Total	Per Diem	Total
Commercial - FFS	$397.65	$3,929,221	$331.58	$2,768,000
Medicare - FFS	$703.21	13,312,442	N/A	0
Medicare - MC	N/A	0	$698.77	14,907,600
Medicaid - FFS	$301.30	14,529,477	N/A	0
Medicaid - MC	N/A	0	$288.65	15,797,400
Private Pay	$494.50	2,498,709	$443.75	3,704,401
All Other	N/A	112,982	N/A	29,800
Total Revenue		$34,382,831		$37,207,201
Expenses				
Operating	$371.82	$30,521,494	$323.63	$30,018,900
Capital	$28.52	2,340,969	$60.85	5,644,707
Total	$400.34	$32,862,463	$384.48	$35,663,607
Net Income (Loss)		$1,520,368		$1,543,594
Total Patient Days		82,087		92,758
Occupancy %		85.84%		97.00%

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

- The Medicare rate is based on the facility's most current average rate of payment. The Medicaid rate is projected based on the reimbursement methodology under statewide pricing. Commercial, Private Pay and Other rates are projected based on similar facilities in the same geographical area.
- Expense assumptions are based on the current operator's model and then adjusted based on the applicant's experience. The following is noted:
  - Salaries and Wages decrease by $774,719 due to removal of the current operator salaries.
  - Employee Benefits decrease by $1,645,123. This is based upon the benefit packages at other facilities operated by the proposed buyer. Per the applicant, no benefits are decreasing but they can get better pricing on health insurance, workers' compensation and the 401(k)-plan due to the number of related facilitates.

- Professional Fees decrease by $408,783 due to the current operator having incurred additional costs (legal and accounting expenses) related to the sale of the facility.
- Non-medical, Non-surgical Supplies increase by $238,701 due to budgeted investments in supplies to better support the residents.
- Other Direct Expenses increase by $2,066,298 due to the proposed operator utilizing certain support functions from related parties such as: Fiscal, Billing/Collections, IT, and Certain Nursing Administration functions.
- Rent/Deprecation increasing by $3,370,972 which is attributable to the new lease contract. The lease payment includes debt service coverage on the proposed realty loan, escrow contributions for taxes and insurance, reserve for replacement (estimated at $500 per bed per year) and overhead expenses ($964 K per year)

- The projected utilization is 97% in Year One and Year Three. Occupancy for 2016 and 2017 was 86.2% and 85.8%, respectively. Occupancy is expected to increase due to the applicant's good relationships with upstream and downstream providers, including many local hospitals. They intend to leverage these relationships to benefit the facility. End-stage renal disease services have recently been added to increase occupancy and they are also seeking to introduce other programs unique to the area such as: Art Therapy, Cardiovascular Care, Orthopedic Rehabilitation, Pulmonary Care, Urban Zen, Wound Care, and Amputee Care.
- Breakeven utilization is projected at 95.85% or 88,910 patient days for Year One.
- Utilization by payor source for the first year after the change in ownership is summarized below:

Payor	Current Year	Year One
Commercial - FFS	12.0%	9.0%
Medicare - FFS	23.1%	0.0%
Medicare - MC	0.0%	23.0%
Medicaid - FFS	58.7%	0.0%
Medicaid - MC	0.0%	59.0%
Private Pay	6.2%	9.0%
Total	100.0%	100.0%

Capability and Feasibility

The RHCF's operating interest will be purchased for $10 and will be funded via members' equity. There are no project costs associated with this application. The realty property and certain assets will be purchased for $49,750,000 and will be funded via $4,950,000 in members' equity, a $5,000,000 Promissory Note with the current property owner for a 60-month term at 6% interest, and the remaining $39,800,000 to be financed with a loan for a 10-year term, 25-year amortization, at the 5-year treasury rate plus 300 basis points (indicative rate of 5.78 as of 8/29/18). Metropolitan Commercial Bank has provided a letter of interest. The proposed property owner intends to obtain HUD financing within the initial 30-60 months after change in ownership. Should HUD financing be unsuccessful, the term loan will be refinanced after the 10-year term has expired. Majority members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources to fund the balloon payment should refinancing be unavailable. BFA Attachment A is the members' net worth summaries; however, liquid resources may not be available in proportion to the members' proposed ownership interest. Majority operating and realty entity members Mark Friedman and Neal Einhorn have each provided an affidavit attesting that they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

The working capital requirement is estimated at $5,943,935 based on two months of Year One expenses. The applicant indicated they will provide $2,050,112 in working capital to be funded via members' equity, $1,843,823 in assumed current assets over assumed liabilities as noted in the APA, and the remaining $2,050,000 to be satisfied via a three-year loan at approximately 5% interest. Metropolitan Commercial Bank has provided a letter of interest. BFA Attachment A is the members' net worth summaries, which indicates sufficient liquid resources overall. Affidavits were provided from the majority members stating they are willing to contribute personal resources disproportionate to their ownership interest to meet all equity requirements.

The submitted budget projects a net profit of $1,543,593 in Year One after the change in ownership. Revenues are estimated to increase by approximately $2.8 million primarily due to an anticipated increase in occupancy and expenses are expected to increase by approximately $2.8 million due predominantly to an increase in capital costs related to the new lease. As of August 1, 2018, occupancy was reported at 88.2%. BFA Attachment E is a budget sensitivity analysis based on the facility's latest utilization, which indicates that revenues would decrease by $3,575,895. Occupancy is expected to increase due to the applicant's relationships with upstream and downstream providers, and the addition of services such as end-stage renal disease services (recently added) and unique programs (Art Therapy, Cardiovascular Care, Orthopedic Rehabilitation, Pulmonary Care, Urban Zen, Wound Care, and Amputee Care). BFA Attachment D is the pro forma balance sheet for Glengariff Operating, LLC, which shows the operation entity will start with positive members' equity. The budget appears reasonable.

BFA Attachment B is a Financial Summary of The Glengariff Corporation's 2016-2017 certified financial statements and internal financial statements through May 31, 2018. As shown, the entity had an average positive working capital position, average positive net assets, and an average positive income for the periods shown.

BFA Attachment C, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown except for the following:

- The Enclave at Port Chester Rehab and Nursing Center was acquired in July 2016 and is in the process of transitioning under the new management. For the year ended December 31, 2017 (first full year of operation), and per the internal financials the five months ended May 31, 2018, the facility had a negative working capital position, positive net assets and positive operating income. The applicant indicated that the negative working capital position was due in part to one-time construction payables that will be satisfied by December 31, 2018, or reclassified as long-term liabilities. It is noted that per establishment CON 151089, working capital of $2,937,360 (50% financed, 50% members equity) was to be provided as of the first day of operation. However, a review of the certified financial statements for the six months ended December 31, 2016 (first six months under new operator) indicates that the members' equity contribution was only $1,504. The applicant indicated that the equity contribution was converted to debt through a non-interest bearing note payable of $1,120,000 to a related party, PCMN Lender, LLC, for acquisition of the facility.
- The Emerald Peek Rehab and Nursing Center was acquired in April 2016. For the year ended December 31, 2017 (first full year of operation), and per the internal financials for the four months ended April 30, 2018, the facility had a negative working capital position, positive net assets, and operating income that turned positive in 2018. Management has renegotiated payer contracts and improved payer mix, both of which are expected to improve operations going forward. Utilization has since increased to over 95% for the seven months ended July 31, 2018, and net income was positive for the same period.
- The Willows at Ramapo Rehabilitation and Nursing Center reported an operating loss for the period ended December 31, 2016, stemming from a decrease in occupancy to 89.7%. In 2017, occupancy increased to 92.4% and the facility generated positive income. The 2018 internal financial statements indicate the facility continues to maintain positive operating income.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members, Glengariff Operating, LLC and Glengariff Property NY, LLC
BFA Attachment B	Financial Summary of The Glengariff Corporation
BFA Attachment C	Proposed Members’ Affiliated RHCF Ownership Interest and Financial Summary
BFA Attachment D	Pro Forma Balance Sheet, Glengariff Operating, LLC
BFA Attachment E	Budget Sensitivity Analysis

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Public Health and Health Planning Council

Project # 181387-E
Verrazano Nursing Home

Program:	**Residential Health Care Facility**	***County:***	**Richmond**
Purpose:	**Establishment**	***Acknowledged:***	**June 8, 2018**

Executive Summary

Description

Verrazano Nursing Home, Inc., a New York Proprietary Business Corporation that operates a 120-bed, Article 28 residential health care facility (RHCF) located at 100 Castleton Avenue, Staten Island (Richmond County), requests approval to transfer 30.5% stock ownership (30.5 shares) from one withdrawing member to one current member, and transfer 7% stock ownership from one current member to another current member. Henry Schon, a current 30.5% shareholder, will withdraw his interest in the facility via a transfer of his ownership interest (30.5 shares) to his daughter, Heidi Gelley. Heidi Gelley will transfer her existing 7% ownership interest (seven shares) to her husband, David Gelley. After the transfers, Heidi Gelley will own 30.5% and David Gelley will own 14.625% of the outstanding shares. There will be no change in beds or services provided as a result of the change in ownership.

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

	Current	Proposed
Simon Kraus	54.875%	54.875%
David Gelley	7.625%	14.625%
Heidi Gelley	7.000%	30.500%
Henry Schon	30.500%	0.000%

OPCHSM Recommendation

Approval

Need Summary

There will be no Need recommendation of this application.

Program Summary

No negative information has been received concerning the character and competence of the members requiring Public Health and Health Planning Council (PHHPC) approval. No changes in the program or physical environment are proposed in this application.

Financial Summary

There are no project costs associated with this application. The purchase price for the 30.5 shares in Verrazano Nursing Home, Inc. is $100,000 and will be funded via cash. The seven shares will be gifted between two current members.

No budget analysis was necessary as this is an assignment of 30.5% and 7.0% ownership interest in the RHCF via Assignment and Assumption Agreements between the withdrawing member and two current members. Simon Kraus, the current shareholder with majority ownership interest in the facility, remains in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

<u>Approval conditional upon</u>:

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

Council Action Date

October 11, 2018

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Verrazano Nursing Home	Same
Address	100 Castleton Avenue Staten Island, NY 10301	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Verrazano Nursing Home Inc. Simone Kraus 54.875% Henry Schon 30.500% Heidi Gelley 7.000% David Gelley 7.625%	Same Simone Kraus 54.875% Heidi Gelley* 30.500% David Gelley** 14.625% *Vice President and Secretary **President and Treasurer

Character and Competence-Background

Facilities Reviewed

Lawrence Nursing Care Center	08/08 – current
Verrazano Nursing Home	08/08 – current

Individual Background Review

Heidi Gelley discloses employment in the Marketing and Billing Departments at Verrazano Nursing Home. She has held this position since March of 2007. Ms. Gelley discloses the following nursing home ownership interests:

Lawrence Nursing Care Center [25%]	1993 – current
Verrazano Nursing Home [7%]	04/07 – current

David Gelley discloses employment as the Chief Executive Office at Verrazano Nursing Home. He has held this position since 1996. Mr. Gelley discloses the following nursing home ownership interest:

Verrazano Nursing Home [7.625%]	01/07 – current

Character and Competence - Analysis

No negative information has been received concerning the character and competence for those stockholders whose shares are increasing in Verrazano Nursing Home Inc.

A review of the operations of Lawrence Nursing Care Center for the period identified above reveals the following:

- The facility was fined $16,000 pursuant to Stipulation and Order NH-11-42 for surveillance findings on 3/10/10 and 6/15/10. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care Free of Accidents Hazards/Supervision/Devices 415.26 Effective Administration/ Resident Well Being, 415.15(a) Responsibilities of Medical Director, 415.12(i)(l) Maintain Nutritional Status Unless Unavoidable
- The facility was fined $10,000 pursuant to Stipulation and Order NH-16-198 for surveillance findings on 9/20/2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care Free of Accident Hazards/Supervision/Devices
- The facility was fined $2,000 pursuant to Stipulation and Order NH-16-199 for surveillance findings on 2/20/13. Deficiencies were found under NYCRR 415.12 Quality of Care – Highest Practicable Potential – Provide Care Service for Highest Well Being.

The review of operations of Verrazano Nursing Home for the period identified above reveals there were no enforcements.

Quality Review

Provider Name	***Ownership Since***	***Overall***	***Health Inspection***	***Quality Measure***	***Staffing***	***NYS Quintile***
Lawrence Nursing Care Center	**1993**	***	***	*****	*	**3**
Verrazano Nursing Home	**01/07**	****	****	*****	*	**1**

NOTE: The subject facility is included, because the applicant already has ownership interest.

Project Review

Ms. Heidi Gelley, and Mr. David Gelley both have current ownership interest in this facility. These interests were acquired through separate 90-day notices and did not require presentation to PHHPC. The acquisition of the additional shares necessitates PHHPC approval because the Operator type is a Corporation.

No changes in the program or physical environment are proposed in this application.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. The individual background review indicates the applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Assignment and Assumption Agreement

The applicant has submitted two executed Assignment and Assumption Agreements for the transfer of shares in the RHCF, to be effectuated simultaneously upon PHHPC approval. The terms are summarized below:

Date:	March 5, 2018
Assignor:	Henry Schon
Assignee:	Heidi Gelley
Shares Acquired	30.5 shares of stock
Purchase Price:	$100,000
Payment of Purchase Price:	$10,000 deposit $90,000 due at closing

The balance due on the 30.5% stock transfer will be funded via equity.

Date:	March 5, 2018
Assignor:	Heidi Gelley
Assignee:	David Gelley
Purchase Price:	Gift
Payment of Purchase Price:	N/A

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the 30.5 shares in Verrazano Nursing Home, Inc. is $100,000 and will be funded via cash. The seven shares will be gifted between two current members. BFA Attachment A is the personal net worth statement of the current members, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is an assignment of 30.5% and 7.0% ownership interest in the RHCF via Assignment and Assumption Agreements between one withdrawing member and two current members. The other current shareholder remains in the ownership structure with majority interest, and the facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is the financial summary of Verrazano Nursing Home, Inc. As shown, the facility has positive working capital in the amount of $623,978, a positive net asset position of $1,277,048, and a net income of $233,368 for the period January 1, 2018 through April 30, 2018.

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	Verrazano Nursing Home, Inc – Current Members Net Worth
BFA Attachment B	Verrazano Nursing Home, Inc – Financial Summary 2015-2018

Public Health and Health Planning Council

Project # 181348-E
North Shore Home Care

Program:	**Certified Home Health Agency**	***County:***	**Westchester**
Purpose:	**Establishment**	***Acknowledged:***	**May 16, 2018**

Executive Summary

Description

North Shore University Hospital, Inc. d/b/a North Shore Home Care (NSHC), a voluntary not-for-profit, Article 36 Certified Home Health Agency (CHHA) located at 972 Brush Hollow Road, Westbury (Nassau County), requests approval to acquire and merge the license and assets of Visiting Nurse Association of Hudson Valley (VNAHV), a voluntary not-for-profit, Article 36 CHHA located at 540 White Plains Road, Tarrytown (Westchester County), into its operations. NHSC will be the surviving entity and will add VNAHV's office locations in Westchester and Putnam Counties to its operating certificate. Northwell Healthcare Inc. is the sole member and co-operator of North Shore University Hospital, Inc. Under CON 162447, Northwell Healthcare, Inc. became the sole corporate member of Visiting Nurse Association of Hudson Valley. There will be no interruption to services.

VNAHV will remain in business as a separate corporate body, remaining as the member and operator of Hospice Care in Westchester and Putnam, Inc. and VNA Home Health Services, Inc., a Licensed Home Care Services Agency (LHCSA) in Tarrytown that serves Bronx, Putman and Westchester counties. Northwell Healthcare, Inc. became the grandparent of VNAHV's Hospice and LHCSA operations under CONs 162451 and 162459, respectively.

Currently, NSHC is authorized to provide CHHA services in Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties. Upon approval of the merger, NSHC will add Putnam County to its authorized geographic service area. NHSC is certified to provide Home Health Aide, Medical Social Services, Medical Supply, Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Speech-Language Pathology, Respiratory Therapy and Personal Care. As VNAHV does not currently offer Nutritional, Personal Care and Respiratory Therapy services, the merger will expand the CHHA services available to VNAHV's current patients to include these services.

Northwell Health, Inc., is a comprehensive, integrated health care delivery system that is comprised of numerous hospitals across the New York metropolitan area, as well as physician practices and providers of subacute care, including home care, long-term care, and hospice services. The purpose of this transaction is to increase operational efficiencies, improve regional delivery of care, improve the wellness of the communities served, and deliver value to patients and payors.

OPCHSM Recommendation

Contingent Approval

Need Summary

This proposal is seeking approval for a merger and acquisition whereby North Shore Home Care will acquire and merge the license and assets of the Visiting Nurse Association of Hudson Valley CHHA. North Shore Home Care is certified to operate in Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester Counties. Upon approval of the merger, NSHC will add Putnam County to its authorized service area.

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 or acquisition price associated with this application. The projected budget is as follows:

	Year One	Year Three
Revenues	$77,620,000	$82,708,000
Expenses	76,334,461	80,987,155
Gain/(Loss)	$1,285,539	$1,720,845

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 from the applicant, acceptable to the Department. [CSL]
2. Submission of a copy of the asset purchase agreement from 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

October 11, 2018

Need and Program Analysis

Program Description

North Shore University Hospital, Inc. d/b/a North Shore Home Care, a not for profit business corporation, seeks approval to acquire and merge the assets of the Visiting Nurse Association of Hudson Valley Certified Home Health Agency (CHHA).

Currently, the operator of the Visiting Nurse Association of Hudson Valley CHHA is Visiting Nurse Association of Hudson Valley, which also operates a Licensed Home Care Services Agency (LHCSA) and a Hospice. Post-transaction, Visiting Nurse Association of Hudson Valley will remain the operator of the LHCSA and Hospice and the CHHA license will be surrendered.

Vising Nurse Association of Hudson Valley and North Shore University Hospital, Inc. d/b/a North Shore Home Care are both parented by Northwell Healthcare, Inc., which is parented by Northwell Health, Inc. This parent structure will remain the same following the completion of this merger and acquisition. Please see Programmatic Attachment A: Northwell Health, Inc. Organizational Chart for further detail regarding this structure.

Character and Competence

The Board of Trustees of North Shore Home Care is comprised of the following individuals:

Frank J. Besignano – Trustee Manager Business Development, Signature Bank <u>Affiliation</u> Visiting Nurse Associates of Staten Island (CHHA)	**Roger A. Blumencranz** – Trustee President, BWD Group, LLC, an NFP Co. <u>Affiliation</u> John T. Mather Memorial Hospital
Robert W. Chasanoff – Trustee Retired	**Mark L. Claster** – Chairman of the Board of Trustees, Trustee President, Carl Marks & Co, Inc. <u>Affiliation</u> Staten Island University Hospital
Michael J. Dowling – President, Chief Executive Officer, Trustee President, CEO – Northwell Health, Inc.	**Michael A. Epstein, Esq**. – Trustee Partner, Weil Gotshal & Manges, LLP <u>Affiliation</u> Jewish Board of Family & Children Services
Michael E. Feldman, Esq. – Trustee Retired	**Catherine C. Foster** – Trustee Faculty, Columbia University
Loyd Keith Friedlander, Esq. – Trustee Managing Director, Acisure, LLC	**Lloyd M. Goldman** – Trustee President, BLDG Management Co.
Richard D. Goldstein, Esq. – Immediate Past Chairman, Trustee Chairman, CEO, AEP Capital LLC <u>Affiliations</u> Staten Island University Hospital Northern Westchester Hospital Phelps Memorial Hospital Peconic Bay Medical Center	**Alan I. Greene** – Treasurer, Trustee Managing Director, Neuberger Berman, LLC <u>Affiliation</u> Eisenhower Medical Center (CA)
Paul B. Guenther – Trustee Retired	**William O. Hiltz** – Trustee Senior Managing Director, Evercore Partners

Kenneth A. Jacoppi, Esq. – Trustee Attorney, Kenneth Jacoppi & Associates Affiliation John T. Mather Memorial Hospital/Memorial Health System	**Saul B. Katz, CPA** – Trustee President, Chief Operating Officer, Sterling Equities, Inc.
Cary A. Kravet – Trustee President, Kravet, Inc.	**Jeffrey B. Lane** – Trustee Partner, York Bridge Wealth Partners Chairman, Casa Columbia
Seth B. Lipsay – Trustee Executive Managing Director, New World Realty Management, LLC	**William L. Mack** – Vice Chairman, Trustee Chairman, Founder, Mack Real Estate Group President, Senior Managing Partner, The Mack Company
F.J. McCarthy – Trustee President, Site Selection Advisory Group, Inc.	**Patrick F. McDermott,** Financial Planner – Trustee Senior Vice President, Cook Maran Associates d/b/a McDermott & Thomas
Ralph A. Nappi – Executive Vice Chairman, Trustee Executive Vice Chairman, Northwell Health, Inc. Affiliations Staten Island University Hospital Northern Westchester Hospital Phelps Memorial Hospital Peconic Bay Medical Center John T. Mather Memorial Hospital	**Richard B. Nye** – Trustee President, Baker Nye Advisors
Sharon Patterson – Trustee Real Estate Broker, Edwin Fishel Tuccio RE Affiliations Peconic Bay Medical Center	**Lewis S. Ranieri** – Trustee Chairman, Senior Managing Partner, Ranieri Partners Management LLC Chairman, Chief Executive Officer, Managing Director, Ranieri & Co, Inc.
Robert D. Rosenthal, Esq. – Trustee Chairman, Chief Executive Officer, First Long Island Investors, LLC	**Barry Rubenstein** – Vice Chairman, Trustee Managing Partner, Wheatley Partners
Michael I. Schwartz, Esq. – Trustee Co-Founder, Co-Managing Partner, Trilynx Partners LLC	**Kenneth W. Taber, Esq**. – Trustee Partner, Pillsbury Winthrop Shaw Pittman, LLP Affiliation Phelps Hospital
Donald Zucker – Secretary, Trustee Chairman of the Board, Donald Zucker Company	**Roy J. Zuckerberg** – Trustee Senior Director, Goldman Sachs Group, Inc.

Each member of the Board of Trustees submitted identical information regarding legal actions in which North Shore University Hospital, Inc. has been involved. Please see Programmatic Attachment B: North Shore University Hospital Record of Legal Action.

Lloyd M. Goldman disclosed that as the owner and operator of several hundred properties throughout the United States, including hotels, apartment houses, office buildings, and industrial and retail properties, he has been named as a defendant in many civil actions. All of the cases in which he has been named have been resolved and he has never been found to be personally liable in any of these cases. Additionally, Mr. Goldman stated that these cases have never involved a claim of fraud, malpractice, misrepresentation and/or breach of a fiduciary duty.

Richard D. Goldstein also disclosed that he was a director and shareholder of American Community Newspapers, Inc., a corporation in Delaware, which filed for bankruptcy in May 2009.

Kenneth W. Taber disclosed that he was named as a defendant in a civil action in which a former law firm Partner sued him and all other former partners.

Barry Rubenstein disclosed that, due to his position as General Partner in an investment partnership and member of a corporate board, he is sometimes named in security action suits. He stated that none of these have ever settled or been lost.

Roger A. Blumencranz disclosed action taken against him by the New York State Insurance Department. It was stipulated and agreed that Sections 2103, 2104, 2105, and 2110 of the Insurance Law were violated when Mr. Blumencranz and other respondents failed to renew their corporate and individual licenses while continuing to do business as agents, brokers and excess lines brokers. As a result of the Stipulation, a $1,600 penalty was imposed and paid in lieu of any other disciplinary action.

Michael A. Epstein sits on the Board of Trustees of the Jewish Board of Family and Children's Services. He disclosed that this agency recently entered into a settlement with the NYS Office of the Medicaid Inspector General.

Michael E. Feldman disclosed that during his time as an Attorney/Partner at Proskauer Rose, LLP, from June 1985 to June 2010, he was involved in various business claims.

William O. Hiltz also disclosed that his employer, Evercore Partners, an investment banking firm, is frequently a defendant in various civil proceedings due to their active engagement in the merger and acquisition business. Mr. Hiltz stated that the firm has never been found liable in any civil action. He also stated that, on two occasions, the firm has agreed to the imposition of regulatory fines rather than pursuing a dispute resolution process.

Kenneth A. Jacoppi disclosed that John T. Mather Memorial Hospital, Inc. has been involved in malpractice actions and employee issues during the course of ordinary business.

Saul B. Katz disclosed that he was named as a defendant in an action related to the liquidation of Bernard L. Madoff Investment Securities, LLC. Also, Mr. Katz once held stock and was director of a company which was placed into receivership.

Lewis S. Ranieri disclosed a record of legal actions in which he has been involved. Nothing disclosed caused concern from a character and competence perspective.

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Northern Westchester Hospital was fined ten thousand dollars ($10,000.00) pursuant to a stipulation and order dated October 17, 2016 for inspection findings on April 25, 2016 for violations of 10 NYCRR Part 405. Specifically, 405.21(c)(1)(iv) – Perinatal Services; General Requirements.

The state of California reports that Eisenhower Medical Center was fined $4,312.00 for an adverse event. The penalty was paid on March 16, 2018. The provider was also fined $1,800.00 for late self-reporting, these fines were settled between 2013 and 2015. Additionally, Eisenhower Medical Center has pending administrative fines totaling $15,100.00 for late self-reporting of the adverse event and breaches of protected health information.

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 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.

Programmatic Description

North Shore Home Care, currently serves the following counties from an office located at located at 972 Brush Hollow Road, Westbury, New York 11590:

Bronx	Kings	Nassau
New York	Queens	Richmond
Suffolk	Westchester	

As a result of this merger, North Shore Home Care will add Putnam county to their service area.

North Shore Home Care provides the following services.

Home Health Aide	Occupational Therapy	Respiratory Therapy
Personal Care	Nursing	Nutrition
Medical Social Services	Physical Therapy	Speech Language Pathology
Medical Supplies & Equipment		

This project will have no impact on the services being offered by North Shore Home Care.

CHHA Quality of Patient Care Star Ratings as of September 7, 2018 **New York Average:** 3 out of 5 stars **National Average:** 3.5 out of 5 stars	
CHHA Name	**Quality of Care Rating**
Visiting Nurse Associates of Staten Island	4 out of 5 stars
Visiting Nurse Association of Hudson Valley	2.5 out of 5 stars
North Shore University Hospital, Inc. d/b/a North Shore Home Care	3.5 out of 5 stars

Recommendation

From a need and programmatic perspective, approval is recommended.

Financial Analysis

Bill of Sale

The applicant has submitted a signed Bill of Sale between VNAHV and NSHC to be effectuated upon Public Health and Health Planning Council approval. The terms are summarized below:

Date:	May 1, 2018
Seller:	Visiting Nurse Association of Hudson Valley
Buyer:	North Shore University Hospital, Inc., d/b/a North Shore Home Care
Assets Acquired:	All rights, title and interest in the CHHA’s business assets including copies of records relating to and used in the CHHA operations, leases and goodwill.
Purchase Price:	$ -0-

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 a no outstanding Medicaid Assessment liability as of July 9, 2018.

Operating Budget

The applicant has submitted their current year (2017) and projected operating budgets for the first and third years, in 2018 dollars, summarized below:

	Current Year	First Year	Three Year
Revenues			
Medicaid	$438,093	$377,000	$389,000
Medicare	54,554,463	60,770,000	$64,605,000
Commercial	18,712,444	19,158,000	20,561,000
Other Income *	396,000	0	0
Bad Debt	-2,532,000	-2,685,000	-2,847,000
Total Revenue	$71,569,000	$77,620,000	$82,708,000
Expenses			
Operating	$69,641,150	$75,054,153	$79,628,402
Capital	1,074,850	$1,280,308	$1,358,753
Total Expenses	$70,716,000	$76,334,461	$80,987,155
Net Income	$853,000	$1,285,539	$1,720,845
Patient Visits	396,962	429,819	455,644

** Includes DSRIP funding of $200,000 plus Intercompany transfers & payments for providing medical records.*

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2017 revenue and expenses.
- Reimbursement rates for Medicare was based on episodic payment rate of $2,684.17 with a case mix index (CMI) of 0.9. The Medicaid episodic payment rate is $2,357.72 with a CMI of 0.75. Commercial and manage care rates were based on existing NSHC rates.
- Expenses are based on historical experience adjusted for projected volume.
- Breakeven is projected at 98.3% and 97.9% of estimated 1st and 3rd year visits.
- Utilization by payor for the current, first and third years is summarized below:

	Current Year		First Year		Third Year	
Payor	Visits	%	Visits	%	Visits	%
Medicaid	2,063	.52%	2,258	.53%	2,394	.53%
Medicare	260,169	65.54%	282,226	65.66%	299,182	65.66%
Commercial	131,905	33.23%	142,354	33.12%	150,907	33.12%
Charity	2,825	.71%	2,981	.69%	3,161	.69%
Total	396,962	100%	429,819	100%	455,644	100%

- The applicant states they accept all Charity referrals and plans to capture these referrals by working with the hospitals in Westchester, Putnam and Brooklyn. NSHC has established a standard financial assistance fee schedules using the federal poverty thresholds (household income is less than 200%).

Capability and Feasibility

They are no projects costs or issues with capability and feasibility. The working capital requirement is estimated at $936,410 based on two months of first year incremental expenses (change between current year and first year). Funds will be provided from ongoing operations of NSHC or cash on hand. BFA Attachment B is a summary of North Shore University Hospital, Inc.'s 2017 certified financial statements, which shows sufficient liquid resources to meet this requirement.

The applicant's budget projects a first and third year surplus of $1,285,539 and $1,720,845, respectively. The budget appears to be reasonable.

Review of BFA Attachment B, North Shore University Hospital's 2017 audited financial statements shows positive working capital, positive net assets and operating surplus of $81,863,000. BFA Attachment C is Visiting Nurse Association of Hudson Valley's 2016 certified financial statements and December 31, 2017 internal financial statements, both of which show positive working capital and positive net assets. There was a loss of $680,579 in 2016 and for 2017 internals show a surplus of $122,774.

BFA Attachment D is a summary of Northwell Health, Inc.'s 2017 certified financial statements which shows positive working capital, positive assets, and positive excess of revenue and gains and losses over expenses.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart for Northwell Healthcare, Inc.
BFA Attachment B	Financial Summary for North Shore University Hospital, Inc. 2017 (Audited)
BFA Attachment C	Financial Summary for Visiting Nurse Association of Hudson Valley 2016 (Audited) and 2017 (Unaudited)
BFA Attachment D	Financial Summary for Northwell Health, Inc. 2017 (Audited)
Program Attachment A:	Northwell Health, Inc. Organizational Chart
Program Attachment B:	North Shore University Hospital Record of Legal Action

Application Number:	**181421**
Name of Agency:	**Brookhaven Home Care, LLC**
Address:	**Brookhaven**
County:	**Suffolk**
Structure:	**Limited Liability Company**

Brookhaven Home Care, LLC, a proposed 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 to be operated by Brookhaven Care Center. The LHCSA and the ALP will have identical membership.

The proposed membership of Brookhaven Home Care, LLC is comprised of the following individuals:

Rachel Lifshutz – 20% Compliance Consultant, Surfside Manor Home for Adults Compliance Officer, Kings Adult Care Center	**Tammy Kahane** – 10% Speech Language Pathologist; Service Coordinator – Self Employed
Ethan Marcovici, Esq. – 20% General Counsel, Blake Partners LLC	**Elias Marcovici** – 20% Managing Member, Blake Properties LLC
Esther Zeidman – 20% Compliance Consultant, Surfside Manor Home for Adults Compliance Officer, Mermaid Home for Adults <u>Affiliation</u> Beacon Rehabilitation and Nursing Center (NH, 2006-2016)	
Eric Mendel – 10% Operator, Metrostar Home Care, LLC Operator, Assisted Home Care, LLC d/b/a Prime Assisted Home Care Operator, Prime Home Health Services, LLC Operator, Prime Health Choice, LLC Operator, Central Assisted Living, LLC Operator, Central Assisted Living, LLC d/b/a Central Home Care <u>Affiliations</u> Metrostar Home Care, LLC (LHCSA, 2015 – Present) Assisted Home Care, LLC d/b/a Prime Assisted Home Care (LHCSA, 2016 – Present) Prime Home Health Services, LLC (CHHA, 2007 – Present) Central Assisted Living, LLC (ALP, 2008 – Present) Central Assisted Living, LLC d/b/a Central Home Care (LHCSA, 2008 – Present)	

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Suffolk County from an office located at 111 Beaver Dam Road, Brookhaven, New York 11719.

The applicant proposes to provide Nursing, Home Health Aide, and Personal Care services.

A seven-year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Beacon and Nursing Rehabilitation Center (NH)
Metrostar Home Care, LLC (LHCSA, 2015-present)
Assisted Home Care, LLC d/b/a Prime Assisted Home Care (LHCSA, 2016-present)
Central Assisted Living, LLC (ALP)
Central Assisted Living, LLC d/b/a Central Home Care (LHCSA)
Prime Home Health Services, LLC (CHHA)

CHHA Quality of Patient Care Star Ratings as of August 28, 2018 **New York Average:** 3 out of 5 stars **National Average:** 3.5 out of 5 stars	
CHHA Name	**Quality of Care Rating**
Prime Home Health Services, LLC	4.5 out of 5 stars

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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 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.

OPCHSM Recommendation**: Contingent Approval with Condition**

Contingency:
1. Submission of a copy of the operating agreement of the applicant, acceptable to the Department. [CSL]

Condition:
1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

Application Number:	**181266**
Name of Agency:	**The Eliot at New Rochelle LLC**
Address:	**New Rochelle**
County:	**Westchester**
Structure:	**Limited Liability Company**

The Eliot at New Rochelle LLC, 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 to be operated by The Eliot at New Rochelle LLC. The LHCSA and the ALP will have identical membership.

The membership of The Eliot at New Rochelle LLC comprises the following individual:

Eric Newhouse, Esq. – 100% member	Affiliations
CEO, The Eliot at Erie Station	Marquis Home Care, LLC (LHCSA)
CEO, MedWiz Solutions, Inc.	The Eliot at Catskill (Assisted Living)
CFO, Adult Care Management, LLC	The Eliot at Erie Station (Assisted Living)
President, Marquis Home Care LLC	The Sentinel at Amsterdam (Assisted Living)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. A Certificate of Good Standing has been received.

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Westchester County from an office located at 41 Lockwood Avenue, New Rochelle, New York 10801.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven-year review of the operations of the following facilities/ agencies was performed:

Facility Name	Agency Type	Affiliation Dates
Marquis Home Care, LLC	LHCSA	2013-present
The Eliot at Catskill	Assisted Living	2010-present
The Eliot at Erie Station	Assisted Living	2007-present
The Sentinel of Amsterdam	Assisted Living	2016-present

The Eliot at Catskill, LLC was fined:

- $7,770.00 pursuant to a stipulation and order dated October 16, 2017 for inspection findings on October 25, 2016, May 11, 2017, and August 30, 2017 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.11(a).
- $2,500.00 pursuant to a stipulation and order dated December 19, 2016 for inspection findings on June 8, 2016 and July 29, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.
- $5,700.00 pursuant to a stipulation and order dated August 30, 2016 for inspection findings on July 24, 2015, December 8, 2015, and April 8, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

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 violation.

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.

OPCHSM Recommendation: Approval with Condition

Condition

1. The Agency is restricted to serving the residents of the associated Assisted Living Program

Application Number: **1814236**
Name of Agency: **The Sentinel of Mohegan Lake LLC**
Address: **Mohegan Lake**
County: **Westchester**
Structure: **Limited Liability Company**

The Sentinel of Mohegan Lake, LLC, 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 to be operated by the Sentinel of Mohegan Lake, LLC. The LHCSA and the ALP will have identical membership.

The membership of The Sentinel of Mohegan Lake, LLC is comprised of the following individual:

Eric Newhouse, Esq. – 100% member	Affiliations
CEO, The Eliot at Erie Station	Marquis Home Care, LLC (LHCSA)
CEO, MedWiz Solutions, Inc.	The Eliot at Catskill (Assisted Living)
CFO, Adult Care Management, LLC	The Eliot at Erie Station (Assisted Living)
President, Marquis Home Care LLC	The Sentinel at Amsterdam (Assisted Living)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List. A Certificate of Good Standing has been received.

The applicant will be restricted to serving the residents of the associated Assisted Living Program in Westchester County from an office located at 3441 Lexington Avenue, Mohegan Lake, New York 10547.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven-year review of the operations of the following facilities/ agencies was performed:

Facility Name	**Agency Type**	**Affiliation Dates**
Marquis Home Care, LLC	LHCSA	2013-present
The Eliot at Catskill	Assisted Living	2010-present
The Eliot at Erie Station	Assisted Living	2007-present
The Sentinel of Amsterdam	Assisted Living	2016-present

The Eliot at Catskill, LLC was fined:

- $7,770.00 pursuant to a stipulation and order dated October 16, 2017 for inspection findings on October 25, 2016, May 11, 2017, and August 30, 2017 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.11(a).
- $2,500.00 pursuant to a stipulation and order dated December 19, 2016 for inspection findings on June 8, 2016 and July 29, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.
- $5,700.00 pursuant to a stipulation and order dated August 30, 2016 for inspection findings on July 24, 2015, December 8, 2015, and April 8, 2016 for violations of Article 7 of the Social Services Law and 18 NYCRR Part 487.

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 violation.

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.

OPCHSM Recommendation: Approval with Condition

Condition:

1. The Agency is restricted to serving the residents of the associated Assisted Living Program.

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MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Richard J. Zahnleuter
General Counsel

Date: September 18, 2018

Subject: Faxton-St. Luke's Healthcare Foundation: Restated Certificate of Incorporation

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Faxton – St. Luke's Healthcare Foundation (Foundation) is a not-for-profit tax-exempt corporation established and operated to solicit, receive and maintain contributions to support Faxton- St. Luke's Healthcare (FSLH) and St. Lukes Home Residential Health Care Facility Inc. (SLH). FSLH and SLH exist under an active parent, Mohawk Valley Health System (MVHS). St. Elizabeth Medical Center (SEMC) also exists under the active parent of MVHS.

MVHS, FSLH and SEMC have decided to unify their fundraising activities to a single entity and to change the name to the FSLH Foundation to the "Mohawk Valley Health Systems Foundation."

The proposed Restated Certificate of Incorporation would reflect this name change, in addition to adding SEMC, MVHS, and such other Article 28 not-for-profit corporations that may be established as beneficiaries to the Foundation.

PHHPC approval is required pursuant to Not-for-Profit Corporation Law § 804 and 10 NYCRR § 600.11(a)(2).

There is no legal objection to the proposed Restated Certificate of Incorporation nor is there an objection to the name change. The proposed Restated Certificate of Amendment is in legally acceptable form.

Attachments.

MVHS

Scott H. Perra, FACHE, President/CEO

Mohawk Valley Health System
PO Box 479 | Utica, NY 13503-0479
(315) 624-6000 | www.mvhealthsystem.org

Traci A. Boris
Vice President and General Counsel

315-624-5164

Heather A. Haglund
Assistant General Counsel

Fax 315-624-5055

facsimile
TRANSMITTAL

[redacted]

to:	**General Counsel – NYS Department of Health**
fax #:	(518) 473-2802
from:	**Heather A. Haglund, Esq.**
re:	Faxton-St. Luke's Healthcare Foundation
Date:	September 12, 2018
pages:	69 page(s) total, including this cover sheet
cc:	

THIS MATERIAL BEING TRANSMITTED IS CONFIDENTIAL, IS SUBJECT TO PRIVILEGE, AND IS SOLELY FOR THE PERSON OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE DO NOT READ THE COMMUNICATION. IF YOU HAVE RECEIVED THE MATERIAL IN ERROR, PLEASE NOTIFY US BY TELEPHONE AND RETURN THE COMMUNICATION TO US AT THE ADDRESS BELOW BY MAIL, OR DESTROY SAME.

Message:

Please find attached Faxton-St. Luke's Healthcare Foundation's Request for a Letter of Consent and supporting documentation.

Please contact our offices should you have any questions concerning receipt of this transmission or the provided letter and documentation.

Thank you.

MVHS

Scott H. Perra, FACHE, President/CEO

Mohawk Valley Health System
PO Box 479 | Utica, NY 13503-0479
(315) 624-6000 | www.mvhealthsystem.org

September 12, 2018

Richard J. Zahnleuter, Esq. *(Via Facsimile (518) 473-2802)*
General Counsel
Division of Legal Affairs
New York State Department of Health
Corning Tower, Room 2438
Empire State Plaza
Albany, New York 12237

Re: Faxton-St. Luke's Healthcare Foundation Request for a Letter of Consent

Dear Mr. Zahnleuter:

We write on behalf of Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation" or the "Corporation") to request the Public Health and Health Planning Council issue a letter of consent to permit the filing with the Secretary of State of the Restated Certificate of Incorporation attached hereto as **Exhibit A.**

FSLH Foundation is a not-for-profit tax exempt corporation established and operated to solicit, receive, and maintain contributions to support Faxton-St. Luke's Healthcare ("FSLH") and St. Lukes Home Residential Health Care Facility, Inc. ("SLH"). FSLH is a not-for-profit tax exempt corporation that operates a duly licensed general acute care hospital located in Utica, New York. SLH is a not-for-profit tax exempt corporation that operates a duly licensed residential health care facility that is also located in Utica, New York.

FSLH and SLH exist under an active parent, Mohawk Valley Health System ("MVHS"). MVHS is a not-for-profit tax exempt Article 28 corporation. St. Elizabeth Medical Center ("SEMC") also exists under the active parent MVHS. SEMC is a not-for-profit tax exempt corporation that operates a duly licensed general acute care hospital located in Utica, New York. SEMC is the supported beneficiary of St. Elizabeth Medical Center Foundation ("SEMC Foundation"), which is also a not-for-profit tax exempt corporation.

The "New Hospital" and Plan to Unify Fundraising Activities

MVHS, FSLH, and SEMC are in the process of planning for, financing, and constructing a new, state-of-the-art hospital in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

MVHS, FSLH, and SEMC have determined that the most expedient and efficient way to promote fundraising for the New Hospital, and to best support the charitable beneficiaries of FSLH

Foundation and SEMC Foundation, is to unify the fundraising activities of the two Foundations to a single entity. To accomplish this, we plan to change the name of FSLH Foundation to "Mohawk Valley Health System Foundation" ("MVHS Foundation") and to expand its supported beneficiaries to include MVHS, SEMC, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital. The attached Restated Certificate of Incorporation is drafted to effectuate these changes.

With respect to SEMC Foundation, the plan is that upon approval of SEMC as a beneficiary of the MVHS Foundation, the fundraising activities of the SEMC Foundation shall be suspended and the corporation shall be maintained until such time as its existing funds and/or assets are distributed to SEMC and, at that time, dissolve or merge it into the MVHS Foundation. Any such dissolution or merger shall be accomplished in compliance with all legal requirements, including the applicable requirements of the Not-for-Profit Corporation Law.

Approval Request

We request Public Health and Health Planning Council approval of the attached Restated Certificate of Incorporation per the requirements of subsections (o) and (t) of Section 404 of the Not-for-Profit Corporation Law and 10 NYCRR § 600.11(a)(2). To support this request, we provide the following information and documents:

1. Restated Certificate of Incorporation

A photocopy of the signed and dated proposed Restated Certificate of Incorporation of FSLH Foundation is attached hereto as **Exhibit A.**

Paragraph "FIRST" of the proposed Restated Certificate of Incorporation changes the name to "Mohawk Valley Health System Foundation".

Paragraph "THIRD" of the proposed Restated Certificate of Incorporation adds to the named beneficiaries of the Corporation: SEMC, MVHS, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital.

Paragraph "FOURTH" of the proposed Restated Certificate of Incorporation adds to the named beneficiaries on behalf of which the Corporation has the power to carry on activities and perform acts to benefit: SEMC, MVHS, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital.

Paragraph "SEVENTH" of the proposed Restated Certificate of Incorporation adds to the named distributees of the Corporation: SEMC, MVHS, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital.

Paragraph "TWELTH" of the proposed Restated Certificate of Incorporation changes the address for service of process on the Corporation.

2. Current Certificate of Incorporation

A photocopy of the current filed Restated Certificate of Incorporation of FSLH Foundation is attached hereto as **Exhibit B.**

3. Board Resolutions Authorizing Plan

Photocopies of (i) Resolutions of the Board of Directors of MVHS, FSLH, and SEMC, adopted at their respective meetings held December 15, 2016, and (ii) Resolutions of FSLH Foundation and SEMC Foundation, adopted at their respective meetings held October 27, 2016, all of which authorize the herein plan, are attached hereto as **Exhibit C.**

4. Bylaws

A photocopy of the Bylaws of the renamed Mohawk Valley Health System Foundation, approved by Members of the Board of the Corporation at a regular meeting conducted December 13, 2016, are attached hereto as **Exhibit D.**

5. Generalized Description of Fundraising Activities

The Corporation's purposes shall be exclusively charitable, educational, and scientific in nature, to wit:

A. To solicit, receive and maintain funds, real or personal property and to develop and maintain philanthropic relations for the benefit of FSLH, SLH, MVHS, SEMC, and such other Article 28 not-for-profit corporation as may be established to operate the New Hospital (the "Beneficiaries");

B. To maintain, use and apply these funds and property, and the income therefrom, exclusively for the benefit of the Beneficiaries;

C. Any funds or real or personal property raised for the specific benefit of the Beneficiaries shall at all times be exclusively used for the benefit of such entity; and

D. Such other and further general powers as are enumerated in Section 202 of the Not-For-Profit Corporation Law.

Over the course of the next few years, it is anticipated that the fundraising activities of the renamed MVHS Foundation will include annual solicitation efforts aimed at securing philanthropic donations toward the New Hospital. This includes a Comprehensive Campaign to raise money to build the New Hospital and truly transform healthcare in our community. The Campaign will consist of regular communications and personal outreach to the community. Beyond the New Hospital project, however, Foundation programs include, but are not limited to:

our Children's Miracle Network, the Grateful Patient program, annual Employee Giving, Lights of Love to honor loved ones who have passed, and Stomp Out Cancer which helps fund our battle against this terrible disease. These efforts focus on raising money to help support specific needs of the hospital allowing us to help provide the best patient care possible.

6. Information regarding the Corporation's Board of Directors

Attached as **Exhibit** E is a list of the following information regarding the Corporation's Board of Directors: (1) Name and address; (2) occupation; and (3) employer name and address.

7. Identification of the Organizational Relationship between the Corporation and the Supported Beneficiaries

FSLH Foundation is a separately incorporated not-for-profit corporation. MVHS is the Corporation's sole Corporate Member. MVHS is the active parent over FSLH and SLH, the current supported beneficiaries of the Corporation.

MVHS is also the active parent over SEMC and is intended to be the active parent over any Article 28 not-for-profit corporation as may be established to operate the New Hospital, which are proposed supported organizations to be added pursuant to the proposed Restated Certificate of Incorporation attached hereto as Exhibit A.

8. Affiliates: Entities which Control, or are Controlled by, the Corporation

- Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation" or the "Corporation"), the requestor herein, is a not-for-profit tax exempt corporation established and operated to solicit, receive, and maintain contributions to support Faxton-St. Luke's Healthcare ("FSLH") and St: Lukes Home Residential Health Care Facility, Inc. ("SLH").
- FSLH is a not-for-profit tax exempt corporation that operates a duly licensed general acute care hospital located in Utica, New York. FSLH is the sole corporate member of FSLH Foundation. FSLH is one of the supported beneficiaries of FSLH Foundation.
- SLH is a not-for-profit tax exempt corporation that operates a duly licensed residential health care facility located in Utica, New York. SLH is one of the Corporation's supported beneficiaries.
- St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a separately incorporated not-for-profit corporation. St. Elizabeth Medical Center ("SEMC") is its supported beneficiary.
- SEMC is a not-for-profit tax exempt corporation that operates a duly licensed general acute care hospital located in Utica, New York. SEMC is the sole corporate member of SEMC Foundation and is its supported beneficiary.
- Mohawk Valley Health System ("MVHS") is a not-for-profit tax exempt Article 28 corporation. MVHS is the active parent of:
    - FSLH;
    - SLH;

- SEMC;
- Mohawk Valley Home Care, LLC, a licensed home care services agency;
- Senior Network Health, LLC, a Medicare Long Term Care Plan;
- Visiting Nurse Association of Utica and Oneida County, Inc., a certified home health agency.

Accordingly, we respectfully request that this matter be processed at the September 27, 2018 meeting of the Public Health and Health Planning Council. Please forward to the undersigned the Public Health and Health Planning Council's approval of the filing of the Restated Certificate as soon as this action is taken. If you need any further information, please contact me at (315) 624-5164 (office phone) or (315) 624-5166 (direct line).

Sincerely,

Heather A. Haglund, Esq.
Assistant General Counsel

Enclosures

EXHIBIT "A"

RESTATED CERTIFICATE OF INCORPORATION OF FAXTON-ST. LUKE'S HEALTHCARE FOUNDATION

Pursuant to Section 805 of the Not-for-Profit Corporation Law.

We, the undersigned, being respectively the President and Secretary of Faxton-St. Luke's Healthcare Foundation, certify:

1. The name of the corporation is: Faxton-St. Luke's Healthcare Foundation. The Corporation was originally formed under the name of St. Luke's-Memorial Hospital Center Foundation.

2. The corporation's Certificate of Incorporation was filed in the Department of State on the 8th day of December 1989, pursuant to the Not-for-Profit Corporation Law. A Restated Certificate of Incorporation was filed in the Department of State on the 23rd day of December, 1999.

3. The corporation's Certificate of Incorporation, as previously filed, is hereby further amended to effectuate the following:

A. To change the name of the Corporation to Mohawk Valley Health System Foundation;

B. To change the description of the Corporation from a type B not-for-profit corporation to a charitable corporation, pursuant to the 2014 amendment of section 201 of the Not-for-Profit Corporation Law, as provided in paragraph "SECOND" of the Certificate of Incorporation.

C. To add St. Elizabeth Medical Center, Mohawk Valley Health System, and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System as named beneficiaries of the Corporation's funds and activities as provided in Paragraph "THIRD" of the Certificate of Incorporation;

D. To add St. Elizabeth Medical Center, Mohawk Valley Health System, and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System as beneficiaries for which the Corporation has the power to carry on activities and perform acts to benefit as provided in Paragraph "FOURTH" of the Certificate of Incorporation;

E. To add St. Elizabeth Medical Center, Mohawk Valley Health System and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System as named distributees of the Corporation's assets upon dissolution, as provided in paragraph "SEVENTH" of the Certificate of Incorporation.

F. To change the address for service of process of the Corporation as provided in Paragraph "TWELFTH" of the Certificate of Incorporation.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as herein set forth in full:

FIRST: The name of the corporation is: Mohawk Valley Health System Foundation (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York and is a charitable corporation under Section 201 of the said Law.

THIRD: The purposes for which the Corporation is formed are exclusively charitable, educational, and scientific in nature, to wit:

A. To solicit, receive and maintain a fund of real or personal property, or both, exclusively for the benefit of: Faxton-St. Luke's Healthcare ("Faxton"), a New York State Not-for-Profit Corporation, which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; St. Lukes Home Residential Health Care Facility, Inc. ("St. Luke's Home"), a New York State Not-for-Profit Corporation, which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; St. Elizabeth Medical Center ("St. Elizabeth"), a New York State Not-for-Profit Corporation, which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; Mohawk Valley Health System ("MVHS"), a New York State Not-for-Profit Corporation, which is exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System established pursuant to the New York State Not-for-Profit Corporation, which are exempt from Federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and

B. To maintain, use and apply this fund of property and the income therefrom exclusively for the benefit of Faxton, St. Luke's Home, St. Elizabeth, MVHS, and such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitation and condition that, notwithstanding any provision of this paragraph FOURTH, the Corporation shall not have the power to carry on any activity or do any act which is not in furtherance of the purpose of benefiting Faxton, St. Luke's Home, St. Elizabeth, MVHS, or such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System, and which is not permitted to be carried on or done by a corporation exempt from Federal income taxation under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or the corresponding provision of any future United States Internal Revenue Law (hereinafter referred to as the "Code").

FIFTH: No part of the activities of the Corporation shall include carrying on propaganda, or otherwise attempting to influence legislation or participating in or intervening in (including the publication or distribution of statements) any campaign on behalf of any candidate for public office.

SIXTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation).

SEVENTH: In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses, be distributed to Faxton, St. Luke's Home, St. Elizabeth, MVHS, and/or such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System if at that time they qualify as exempt organizations under Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal tax laws, or if Faxton, St. Luke's Home, St. Elizabeth, MVHS, and/or such other Article 28 not-for-profit corporation as may be established under the active parent Mohawk Valley Health System do not qualify, to another corporation exempt under Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal tax laws, or to the federal, state or local government for a public purpose, subject to the approval of a Justice of the

Supreme Court of the State of New York. Any assets raised specifically for the benefit of any of these entities shall, upon dissolution, be distributed to that entity.

EIGHTH: In any taxable year in which the Corporation is a private foundation as described in Code Section 509 (a), the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Code Section 4942, and the Corporation shall not (A) engage in any act of self-dealing as defined in Code Section 4941 (d); (B) retain any excess business holdings as defined in Code Section 4943 (c); (C) made any investments in such manner as to subject to Corporation to tax under Code Section 5944; or (D) made any taxable expenditures as defined in Code Section 4945 (d) or corresponding provisions of any subsequent Federal tax laws.

NINTH: Nothing contained herein shall authorize the Corporation to establish or operate a hospital or to provide hospital services or health-related service or to operate a certified home health agency, a hospice, or a health maintenance organization, or to provide a comprehensive health services plan as defined in Articles 28, 36, 40 and 44, respectively of the Public Health Law.

TENTH: The office of the Corporation is to be in the County of Oneida, State of New York.

ELEVENTH: The territory in which the Corporation's activities are principally to be conducted is in Oneida County, New York.

TWELFTH: The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him/her is:

Mohawk Valley Health System Foundation
1656 Champlin Avenue
New Hartford, New York 13413.

5. This Restated Certificate of Incorporation, and the foregoing amendments of the Certificate of Incorporation, were authorized by a unanimous vote of all the Members of the Corporation in accordance with the provisions of the New York State Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned have subscribed this Restated Certificate of Incorporation this 11 day of September, 2018, and hereby affirm that the statements contained herein are true under the penalties of perjury.

Terry Mielnicki

Terry Mielnicki, President

Mary Malone McCarthy

Mary Malone McCarthy, Secretary

EXHIBIT "B"

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: FAXTON-ST. LUKE'S HEALTHCARE FOUNDATION

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP) COUNTY: ONEI
PURPOSES NAME PROVISIONS RESTATED

SERVICE COMPANY: SERVICO -- SERVICE CODE: 35

FILED:12/23/1999 DURATION:********* CASH#:991223000710 FILM #:991223000681

ADDRESS FOR PROCESS

REGISTERED AGENT

FILER	FEES	55.00	PAYMENTS	55.00
	FILING	30.00	CASH	0.00
THOMAS SOJA	TAX	0.00	CHECK	0.00
ST. LUKES MEMORIAL	CERT	0.00	CHARGE	0.00
P.O. BOX 479	COPIES	0.00	DRAWDOWN	55.00
UTICA, NY 13503	HANDLING	25.00	BILLED	0.00
			REFUND	0.00

13358 DOS-1025 (11/89)

State of New York
Department of State } *ss:*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on DEC 24 1999

Special Deputy Secretary of State

DOS-1266 (5/96)

F991223000681

SERVICO 35

RESTATED CERTIFICATE OF INCORPORATION OF ST. LUKE'S-MEMORIAL HOSPITAL CENTER FOUNDATION

Pursuant to Section 805 of the Not-For-Profit Corporation Law.

We, the undersigned, being the President and Secretary of St. Luke's-Memorial Hospital Center Foundation, hereby certify:

1. The name of the Corporation is *St. Luke's-Memorial Hospital Center Foundation.*

2. The Corporation's Certificate of Incorporation was filed by the Department of State on the 8th day of December 1989, pursuant to the Not-For-Profit Corporation Law.

3. The Corporation's Certificate of Incorporation, as previously filed, is hereby amended to affect the following amendments:

A. To change the name of the Corporation to Faxton-St. Luke's Healthcare Foundation;

B. To add Faxton Hospital as a named beneficiary of the Corporation's funds and activities as provided in paragraph "THIRD" of the Certificate of Incorporation;

C. To add Faxton Hospital as a named distributee of the Corporation's assets upon dissolution, as provided in paragraph "SEVENTH" of the Certificate of Incorporation;

D. To add St. Lukes Home Residential Health Care Facility, Inc. as a named beneficiary of the Corporation's funds and activities, as provided in paragraph "THIRD" of the Certificate of Incorporation;

E. To add St. Lukes Home Residential Health Care Facility, Inc. as a named distributee of the Corporation's assets upon dissolution, as provided in paragraph "SEVENTH" of the Certificate of Incorporation; and

F. To delete unnecessary material regarding the initial directors and the incorporator, as provided in paragraphs "TWELFTH" and "FOURTEENTH," respectively, of the Certificate of Incorporation.

4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as herein set forth in full:

FIRST: The name of the corporation is Faxton-St. Luke's Healthcare Foundation (the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York and is a Type B corporation under Section 201 of the said Law.

THIRD: The purposes for which the Corporation is formed are exclusively charitable, educational and scientific in nature, to wit:

A. To solicit, receive and maintain a fund of real or personal property, or both, exclusively for the benefit of: St. Luke's-Memorial Hospital Center (St. Luke's), a New York State Not-For-Profit Corporation which is exempt from Federal income taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended; Faxton Hospital (Faxton), a New York State Not-For-Profit Corporation which is exempt from Federal income taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended; and the St. Lukes Home Residential Health Care Facility, Inc. (the Home), a New York State Not-For-Profit Corporation which is exempt from Federal income taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended; and

B. To maintain, use and apply this fund of property and the income therefrom exclusively for the benefit of St. Luke's, Faxton, and the Home.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the Not-For-Profit Corporation Law. The Corporation shall have the right to exercise such other powers as now are, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitation and condition that, notwithstanding any provision of this paragraph FOURTH, the Corporation shall not have the power to carry on any activity or do any act which is not in furtherance of the purpose of benefiting St. Luke's, Faxton or the Home, and which is not permitted to be carried on or done by a corporation exempt from Federal income taxation under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or the corresponding provision of any future United States Internal Revenue Law (hereinafter referred to as the "Code").

FIFTH: No part of the activities of the Corporation shall include carrying on propaganda, or otherwise attempting to influence legislation or participating in or intervening in (including the publication or distribution of statements) any campaign on behalf of any candidate for public office.

SIXTH: No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation).

SEVENTH: In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses, be distributed to St. Luke's, Faxton and/or the Home if at that time they qualify as exempt organizations under Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal tax laws, or if St. Luke's, Faxton and/or the Home do not qualify, to another corporation exempt under Code Section 501 (c) (3), or corresponding provisions of any subsequent Federal tax laws, or to the federal, state or local government for a public purpose, subject to the approval of a Justice of the Supreme Court of the State of New York. Any assets raised specifically for the benefit of any of these entities shall, upon dissolution, be distributed to that entity.

EIGHTH: In any taxable year in which the Corporation is a private foundation as described in Code Section 509 (a), the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Code Section 4942, and the Corporation shall not (A) engage in any act of self-dealing as defined in Code Section 4941(d); (B) retain any excess business holdings as defined in Code Section 4943(c); (C) make any investments in such manner as to subject the Corporation to tax under Code Section 4944; or (D) make any taxable expenditures as defined in Code Section 4945(d) or corresponding provisions of any subsequent Federal tax laws.

NINTH: Nothing contained herein shall authorize the Corporation to establish or operate a hospital or to provide hospital services or health-related service or to operate a certified home health agency, a hospice, or a health maintenance organization or to provide a comprehensive health services plan as defined in Articles 28, 36, 40 and 44, respectively, of the Public Health Law.

TENTH: The office of the Corporation is to be located in the Town of New Hartford, County of Oneida, State of New York.

ELEVENTH: The territory in which the Corporation's activities are principally to be conducted is in Oneida County.

TWELFTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is as follows:

Faxton-St. Luke's Healthcare Foundation
Champlin Avenue
New Hartford, New York 13413

This restated Certificate of Incorporation, and the foregoing amendments of the Certificate of Incorporation, were authorized by a unanimous vote of all of the Members of the Corporation in accordance with the provisions of the New York State Not-For-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned have subscribed this restated Certificate of Incorporation this 4th day of January, 1999, and hereby affirm that the statements contained herein are true under the penalties of perjury.

Donald Edmunds, President

Rocco Arcuri, Secretary

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

July 1, 1999

Mr. Thomas S. Soja
Counsel
St. Luke's - Memorial
The Hospital Center
P.O. Box 479
Utica, New York 13503-0479

Re: Restated Certificate of Incorporation of St. Luke's - Memorial Hospital Center Foundation

Dear Mr. Soja:

AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 25th day of June, 1999, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of St. Luke's - Memorial Hospital Center Foundation Hereafter to be known as Faxton - St. Luke's Healthcare Foundation, dated January 4, 1999.

Sincerely,

Donna Peterson for

Karen S. Westervelt
Executive Secretary

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RESOLUTION

RESOLVED, that the Public Health Council, on this 25th day of June, 1999, approves the filing of the Restated Certificate of Incorporation of St. Luke's-Memorial Hospital Center Foundation, for the purpose of changing its name to Faxton-St. Luke's Healthcare Foundation and to amend and expand its purposes to solicit funds for two additional Article 28 facilities: Faxton Hospital, a general hospital located in Oneida County, and St. Luke's Home Residential Healthcare Facility, a residential health care facility also located in Oneida County dated January 4, 1999.

8

CERTIFIED COPY

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONEIDA

In the Matter of the Application of St. Luke's-Memorial Hospital Center Foundation for Permission to file a Certificate of Amendment of its Certificate of Incorporation Pursuant to Sections 803 and 804 of the New York State Not-For-Profit Corporation Law.

ORDER

Index No.
RJI No. 32-99-835UC

Upon reading the Petition of St. Luke's-Memorial Hospital Center Foundation (the Foundation), by Thomas S. Soja, Esq., duly verified the 16th day of December 1999, the undersigned, a Justice of the Supreme Court of the State of New York for the Fifth Judicial District, in which the office of the Foundation is located, does hereby approve the Amendment to the Certificate of Incorporation and the Restated Certificate of Incorporation of St. Luke's-Memorial Hospital Center Foundation, and consents to its filing.

Dated: December 17th, 1999
Utica, New York

FILED
ONEIDA COUNTY
CLERK
99 DEC 20 AM 10:34

ENTER

Anthony F. Shaheen

Hon. Anthony F. Shaheen
Justice of the Supreme Court

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
(518) 473-4863

ELIOT SPITZER
Attorney General

DIETRICH L. SNELL
Deputy Attorney General
Division of Public Advocacy

April 19, 1999

St. Luke's-Memorial
The Hospital Center
Thomas S. Soja, Esq.
PO Box 479
Utica, NY 13503-0479

RE: Approval of Amendment to the Certificate of Incorporation of
St. Luke's-Memorial Hospital Center Foundation

Dear Mr. Soja:

Thank you for your April 8, 1999 letter in response to our letter of March 2, 1999 with amendments to the proposed Restated Certificate of Amendment, and a supporting affidavit from Donald Edmunds, President of St.Luke's-Memorial Center Foundation regarding the segregation of funds before and after the certificate amendment, distribution of funds upon dissolution, and allocation of administrative expenses in the future, as they may relate to each of the benefited corporations.

Based upon a review of the said affidavit of Donald Edmunds, the proposed Restated Certificate of Incorporation of St. Luke's-Memorial Hospital Center Foundation, containing the requested changes, and the Certificate of Incorporation and bylaws of Mohawk Valley Network, Inc., as requested in my said letter, please be advised that the Attorney General has no objection to the entry of an order of the Supreme Court, Oneida County, approving the Restated Certificate of Incorporation of your client. Please provide our office with proof of filing of the restated certificate so we may close our file in this matter.

Thank you for your cooperation and courtesies extended to this office throughout this matter.

Very truly yours,

DONALD P. SEGAL
Assistant Attorney General

cc: Frederick Degan, Esq.

DPS/saz

BY-LAWS

OF

FAXTON - ST. LUKE'S HEALTHCARE FOUNDATION

Amended as of February 25, 2010

BY-LAWS
FAXTON-ST. LUKE'S HEALTHCARE FOUNDATION

ARTICLE I

NAME.

The name of the Corporation is *Faxton-St. Luke's Healthcare Foundation*, hereinafter referred to as the "*Foundation.*"

ARTICLE II

PURPOSES.

The purposes for which the Foundation is formed are exclusively charitable, educational, and scientific in nature, to wit:

a. to solicit, receive and maintain funds, real or personal property for the benefit of Faxton - St. Luke's Healthcare ("Healthcare"), a New York State not-for-profit hospital corporation which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and the St. Lukes Home Residential Health Care Facility, Inc. (the Home), a New York State not-for-profit corporation which is exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code; and

b. to maintain, use and apply these funds and property, and the income therefrom, exclusively for the benefit of Healthcare and the Home.

c. any funds or real or personal property raised for the specific benefit of Healthcare or the Home shall at all times be exclusively used for the benefit of such entity.

d. such other and further general powers as are enumerated in Section 202 of the Not-For-Profit Corporation Law.

ARTICLE III

MEMBERSHIP.

Section 1. - Members.

The Chairperson, President, Secretary and Treasurer of Healthcare shall be the sole Members of this Foundation. At such time that a Member is no longer the Chairperson, President, Secretary or Treasurer of Healthcare then he or she shall immediately cease to be a Member of this Foundation, and his or her successor shall automatically, without vote or appointment, become a Member of this Foundation.

Section 2. - Annual Meeting.

The Annual Meeting of the Members of the Foundation shall be held in April of each year at such place in Oneida County as may be designated by the President of the Board.

Section 3. - Notice of the Annual Meeting.

Notice of the time, date and place of the Annual Meeting of the Members of the Foundation shall be served either personally or by first class mail on each Member of the Foundation not less than ten (10) days nor more than thirty (30) days before the meeting, and if served by mail, shall be addressed to the Member at the Member's address as it appears on the records of the Foundation.

Section 4. - Special Meeting.

A Special Meeting of the Members of the Foundation may be held from time to time as necessary at such place in Oneida County as may be designated by the caller(s) of the meeting. A Special Meeting may be called by the Chairperson of Healthcare or by a majority of the Members at any time.

Section 5. - Notice of Special Meetings of Foundation.

Notice of the time, date, place and purpose of Special Meetings of the Members shall be served personally or by first class mail, facsimile or, where authorized by the Member, by e-mail, not less than three (3) days nor more than thirty (30) days before the meetings, and if served by mail, shall be addressed to the Member at the Member's address as it appears on the records of the Foundation. The notice shall also indicate by whom it is issued or at whose direction.

Section 6. - Quorum.

At all Annual and Special Meetings of the Members there shall be present in person at least three (3) Members of the Foundation entitled to vote at such meeting in order to constitute a quorum for the transaction of business, but less than a quorum may adjourn a meeting from time to time without notice until a quorum is present.

Section 7. - Vote.

At any meeting of the Members, the vote of two-thirds of the members present at the time of the vote, if a quorum is present at that time, shall be the act of the Members.

Section 8. - Presence at Meetings.

Any one or more Members of the Foundation may participate in a meeting of the Members by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 9. - Written Action.

Any action required or permitted to be taken by the Members under any provision of law, the Articles of Incorporation, or these By-Laws may be taken without a meeting by the unanimous written consent of the Members, setting forth the action so taken. Such written consent shall be filed with the proceedings of the members. Such action by written consent shall have the same force and effect as a unanimous vote of the Members at a meeting.

Section 10. - Membership Termination.

Membership in this Foundation may only be terminated as provided in Section 1 of this Article.

ARTICLE IV

BOARD OF DIRECTORS.

Section 1. - Number.

The Board of Directors shall consist of the President of Healthcare, and not less than three (3) additional Directors ("*Elected Directors*"). The Board of Directors of the Foundation shall hereinafter be referred to as the "Board."

Section 2. - Term.

a. Healthcare President

At such time that the President of Healthcare no longer holds that office, then his or her membership on the Board shall cease immediately and his or her successor shall become immediately, without vote or appointment, a Director of this Foundation.

b. Elected Directors.

The Elected Directors shall be divided into three classes of approximately equal size. The term of office of the first class shall expire at the First Annual Meeting of the Foundation after their election, the term of the second class shall expire at the second succeeding Annual Meeting, and the third class at the third succeeding Annual Meeting. At each Annual Meeting after the election of the first classified board, Elected Directors shall be elected for a term of three years to replace those whose terms shall expire. No Elected Director shall serve more than three consecutive terms of three years..

Section 3. - Election of Elected Directors.

Elected Directors of the Foundation shall be elected at the Annual Meeting of the Members each year by a plurality of the votes of the Members.

Section 4. - Vacancies.

Newly created Directorships resulting from an increase in the number of Elected Directors and vacancies among the Elected Directors for any reason, shall be elected at any meeting properly called and convened by the Members by a plurality of the votes of the Members.

Section 5. - Powers and Duties.

The Board shall have charge, control, and management of the property, funds, and affairs of the Foundation and shall be responsible for the establishment of its policies and the management and operation of the Foundation.

Section 6. - Dismissal.

Any Elected Director of the corporation may be removed, with or without cause, at any meeting of the Members by an affirmative vote of two-thirds of the Members present, if a quorum is present at the time of the vote.

Section 7. - Annual Meeting of the Board.

The Annual Meeting of the Board shall be held in April each year following the Annual Meeting of the Members of the Foundation.

Section 8. - Regular Meetings of the Board.

The Board shall hold at least eight (8) regular meetings annually. All regular meetings of the Board shall be held at the office of the Foundation or such other place in the County of Oneida as may be designated by the President of the Board.

Section 9. - Special Meetings of the Board.

A Special Meeting of the Board may be called as necessary from time to time by the President of the Board or by a majority of the Directors of the Foundation to be held at the Office of the Foundation or such other place within the County of Oneida as may be designated by the caller(s) of the meeting.

Section 10. - Notice of Meetings of the Board.

Notice of the time, date and place of the annual and regular meetings of the Board shall be served by first class mail, facsimile or, where authorized by the Director, by e-mail, at least ten (10) days nor more than thirty (30) days before the date of such meeting, and in the case of special meetings not less than three (3) days, and shall be addressed to the Director at the Director's address as it appears on the records of the Foundation.

Section 11. - Quorum.

At any meeting of the Board there shall be at least ten (10) members present in person entitled to vote at such meeting to constitute a quorum for the transaction of business, but less than a quorum may adjourn such meeting from time to time without notice until a quorum is present.

Section 12. - Vote.

The vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

Section 13. - Presence at Meetings.

Any one or more members of the Board, or any Committee thereof, may participate in a meeting of the Board or such Committee by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 14. - Attendance at Meetings.

The Board shall establish requirements for attendance by Directors at meetings of the Board and Board Committees. Failure, without good cause, to satisfy those requirements shall be grounds for removal from the Board, or the Committee, or both.

ARTICLE V

OFFICERS OF THE BOARD.

Section 1. - Officers.

The Board shall have a President, a Vice President, a Secretary and a Treasurer.

Section 2. - Term.

All Officers shall be chosen at the Annual Meeting of the Board. Each Officer shall hold office until the next Annual Meeting or until his or her successor shall have been duly elected and qualified. Any vacancy in any of the Offices may be filled for the unexpired portion of the term by the Board at any Regular or Special Meeting.

Section 3. - President of the Board.

The President of the Board shall be the Chief Executive Officer of the Foundation and shall preside at all meetings of the Board, and shall be an ex officio member of all committees. He or she shall have general management authority over the affairs of the Foundation and shall also perform all other acts and duties incidental to the office.

Section 4. - Vice-President.

In the absence or inability to act of the President of the Board, or if the office of President of the Board is vacant, the Vice-President may exercise all the power of the President of the Board.

Section 5. - Secretary.

The Secretary shall be responsible for keeping the Minutes of Members and the Board. He or she shall be responsible for the giving and serving of all notices of meetings of the Members and the Board. He or she shall be the custodian of the Foundation records and of the Corporate Seal of the Foundation, and shall see that the Corporate Seal is affixed to all documents, execution of which, on behalf of the Foundation under its Seal, is duly authorized, and when so affixed may attest the same. He or she shall also perform all other acts and duties usually incident to the office of the Secretary and such other duties as may, from time to time, be assigned by the Board.

Section 6. - Treasurer.

The Treasurer shall have general supervision over the care and custody of all funds and securities of the Foundation, except as expressly provided otherwise, and shall deposit and invest the same or cause the same to be deposited and invested in the name of the Foundation as directed by the Board. He or she shall keep or cause to be kept, full and accurate accounts of all receipts and disbursements of the Foundation and whenever required by the Board, he or she shall render, or cause to be rendered, financial statements of the Foundation. He or she shall also perform all such other acts or duties usually incident to the Office of the Treasurer and such other duties as may from time to time be assigned by the Board.

Section 7. - Bonds.

The Board shall have power to require any officer or employee of the Foundation to give bond for the faithful discharge of his or her duties in such form and with such surety as the Board may deem advisable.

Section 8. - Dismissal.

Any Officer of the Foundation may be removed with or without cause at any Regular or Special Meeting of the Board.

ARTICLE VI

COMMITTEES OF THE BOARD OF DIRECTORS

Section 1. - Structure.

There shall be five (5) standing committees of the Board: Executive Committee, Finance Committee, Annual Giving Committee, Planned Giving Committee, and Nominating Committee. The Board may, by resolution, create such other standing or special committees as it shall, from time to time, deem appropriate. Any Committee may, by resolution, create such subcommittees as it shall, from time to time, deem appropriate.

Section 2. - Powers.

Each Board Committee shall have and exercise only such Board delegated powers and authority as are granted in these By-Laws, or in a resolution adopted by the full Board. Each Committee shall keep minutes of its proceedings and report its activities, conclusions and recommendations to the Board. Unless powers have been delegated by the Board, actions and recommendations of a Committee shall be subject to Board approval.

Section 3. - Committee Members.

a. Tenure. Each member of a Board Committee shall hold office until the next annual election of Directors and until his or her successor is elected., unless he or she sooner ceases to be a Director or resigns or is removed from the Committee.

b. Resignation. Any member of a Board Committee may resign at any time by giving written notice to the Chairperson of the Committee. Such resignation shall take effect on the date of receipt, or at such later time as may be specified therein.

c. Removal. Any member of a Board Committee may be removed at any time by a resolution adopted by a majority of the Board of Directors. Any member of a Board Committee who is a member by virtue of holding a designated position or office shall cease to be a Committee member if he or she ceases to hold the designated position or office which is the basis of Committee membership.

d. Vacancies. Any vacancy on any Board Committee resulting from resignation, removal, or increase in the membership of a Committee, may be filled for the unexpired portion of the term by the President of the Board, subject to the approval of the Board.

Section 4. - Advisors/Ex Officio Members.

The Chairperson of any Board Committee may invite additional individuals with expertise in a pertinent area to meet with and assist the Board Committee either as advisors or ex officio members of the Committee. Such advisors and/or ex officio members shall not vote or be counted in determining the existence of a quorum and may be excluded from any Executive session of the Committee by a majority vote of the Committee members present. Advisors and ex officio members need not be Directors of the Foundation.

Section 5. - Manner of Action.

a. Meetings. Each Committee shall meet as provided for in these By-Laws and at such additional times as may be necessary to perform its duties. Meetings of a Board Committee shall be called by the President of the Board, the Chairperson of the Committee, or any two of the Committee's voting members. Oral or written notice of the time and place of any meeting of a Board Committee shall be given, except in an emergency, at least 72 hours prior to the meeting.

b. Agenda/Minutes. There shall be an agenda prepared for Committee meetings, and Minutes of the meeting shall be recorded and shall include the Committee's findings, conclusions and recommendations. The Minutes of Committee meetings shall be available to the Board of Directors when requested or as required.

c. Quorum. A majority of the voting members of a Board Committee shall constitute a quorum for the transaction of business at any meeting of such Committee.

d. Action. The act of a majority of the members of a Board Committee present at a meeting, at which a quorum is present, shall be the act of the Committee. No act taken at a meeting at which less than a quorum is present is valid unless approved in writing by the absent members. Any action required or permitted to be taken by a Committee may be taken without a meeting if all Committee members file written consents to a resolution authorizing the action with the relevant Minutes of the Committee.

e. Conference Telephone. Any one or members of any Committee may participate in any meeting of the Committee by conference telephone or similar communications equipment allowing all participants in the meeting to hear each other. Participation by this means shall constitute actual presence at the meeting.

Section 6. - Executive Committee.

a. Composition. The Executive Committee shall be composed of the President, Vice President, Secretary, Treasurer and such additional voting Directors as shall be selected by the President of the Board.

b. Functions. When the Board is not in session the Executive Committee shall have and exercise the powers and authorities of the Board to transact all regular business of the Foundation, subject to any prior limitations imposed by the Board, these By-Laws, or statute. The Executive Committee shall review the activities of the other Board Committees and shall review future programs and activities of the Foundation.

c. Meetings. The Executive Committee shall meet as necessary to conduct the business of the Foundation while the full Board is not in session.

Section 7. - Finance Committee.

a. Composition. The Finance Committee shall consist of the Treasurer of the Foundation, as Committee Chairperson, the President, and at least five (5) voting Directors. The Senior Vice President/Finance of the Hospitals shall serve as an advisor to the Committee.

b. Functions. The Finance Committee shall be responsible for monitoring the financial operations of the Foundation which shall include the establishment of an income budget, the review of expenditures, and performance of such other financial duties/responsibilities as may be directed by the Foundation Board. The Committee shall prepare and submit financial reports to the Board and Finance Committee of Healthcare and Mohawk Valley Network, Inc. as requested.

c. Meetings. The Finance Committee shall meet as needed, but not less than two (2) times per year.

Section 8. - Annual Giving Committee.

a. Composition. The Annual Giving Committee shall consist of not less than five (5) voting members of the Board of Directors.

b. Functions. The Annual Giving Committee shall be responsible for generating funds for the Foundation through individual and corporate contributions.

c. Meetings. The Annual Giving Committee shall meet as needed, but not less than two (2) times per year.

Section 9. - Planned Giving Committee.

a. Composition. The Planned Giving Committee shall consist of not less than five (5) Directors.

b. Function. The Planned Giving Committee is responsible for working with potential donors who wish to make major gifts or planned gifts to the Foundation.

c. Meetings. The Planned Giving Committee shall meet as needed, but not less than two (2) times per year.

Section 10. - Nominating Committee.

a. Composition. The Nominating Committee shall consist of not less than five (5) members of the Board of Directors as appointed by the President of the Board.

b. Functions. The Nominating Committee shall receive the names of potential candidates for membership on the Board, review such nominations and, if approved, forward the names to the President of the Board for submission to the Members. The Nominating Committee shall also be responsible for submitting a recommended slate of officers for election at the Annual Meeting. The Nominating Committee shall also be responsible for monitoring the attendance records of Foundation Board Members.

c. Meetings. The Nominating Committee shall meet as necessary to perform its functions.

ARTICLE VII

INDEMNIFICATION AND INSURANCE.

Section 1. - Indemnification.

It is expressly provided that any and every person or his or her estate that has made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a Director or officer of this Foundation, or served such other corporation in any capacity at the request of this Foundation, will be completely indemnified by the Foundation to the full extent permitted by law. If permitted by law, this indemnification shall include, but shall not be limited to, the payment of one or more of the following: judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein.

Section 2. - Insurance.

The Foundation may purchase and maintain insurance to completely and fully indemnify any and every such person, whether or not this Foundation has the power to indemnify him or her against such liability under the laws of this or any other State.

ARTICLE VIII

CONFLICT OF INTEREST.

Section 1. - Policy.

Any Director, officer, key employee or Committee member having an existing or potential interest in a contract or other transaction presented to the Board of Directors or a Committee thereof for deliberation, authorization, approval, or ratification, or any such person who reasonably believes such an interest exists in another such person, shall make a prompt, full and frank disclosure of the interest to the Board or Committee prior to its acting on such contract or transaction which might reasonably be construed to be adverse to the Foundation's interests.

Section 2. - Effect.

The body to which such disclosure is made shall determine, by majority vote, whether the disclosure shows that the non-voting and non-participation provisions contained in any Board approved conflicts of interest policy, or these By-Laws, may be observed, if so, such person shall not vote, nor use his or her personal influence on, nor participate (other than by presenting factual information or responding to questions) in the discussions or deliberations with respect to such contract or transaction. Such person may not be counted in determining the existence of a quorum at any meeting where the contract or transaction is under discussion or is being voted upon. The Minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

Section 3. - Conflict of Interest Policy.

The Board may adopt a formal Conflict of Interest Policy requiring disclosure of potential or existing conflicts of interest, mechanisms for addressing actual and potential conflicts of interest, and corrective and disciplinary action with respect to transgressions of such policies.

ARTICLE IX

AMENDMENTS TO BY-LAWS.

The Bylaws may only be amended or repealed by an affirmative vote of the majority of the Members of this Foundation provided the proposed amendment shall have been set forth in the notice calling the meeting. The Board of Directors of the Foundation may recommend amendments to the Members, but shall not have the power to amend or repeal these Bylaws.

EXHIBIT "C"

RESOLUTION
OF THE
BOARD OF DIRECTORS OF
MOHAWK VALLEY HEALTH SYSTEM
(hereinafter the "Corporation" or "MVHS")

Adopted at a Meeting Held December 15, 2016

RECITALS:

1. St. Elizabeth Medical Center ("SEMC") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").

2. Faxton-St. Luke's Healthcare ("FSLH") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.

3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.

4. MVHS is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.

5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").

6. Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.

7. St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.

8. FSLH is the sole corporate member of the FSLH Foundation.

9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").

10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
b. To change the name of the FSLH Foundation to the MVHS Foundation;
c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of , among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

14. The FSLH and SEMC Foundations did each individually approve the Plan at a meeting of its Board of Directors held on October 27, 2016, a copy of said Resolutions are attached hereto (hereinafter the "FSLH Foundation Resolution" and "SEMC Foundation Resolution").

NOW, THEREFORE, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

RESOLVED, that the Plan as set forth in the FSLH Foundation Resolution is hereby approved; and it is further

RESOLVED, that the officers of the Corporation are hereby authorized and empowered to prepare and file such documents, and undertake such other activities as shall be necessary to support and assist the FSLH Foundation in accomplishing the Plan; and it is further

RESOLVED, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

RESOLVED, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

This Resolution shall take effect immediately.

Gregory Evans, Secretary

RESOLUTION
OF THE
BOARD OF DIRECTORS OF
FAXTON-ST. LUKE'S HEALTHCARE
(hereinafter the "Corporation" or "FSLH")

Adopted at a Meeting Held December 15, 2016

RECITALS:

1. FSLH is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").

2. St. Elizabeth Medical Center ("SEMC") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.

3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.

4. Mohawk Valley Health System ("MVHS") is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.

5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").

6. Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.

7. St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.

8. FSLH is the sole corporate member of the FSLH Foundation.

9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").

10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
b. To change the name of the FSLH Foundation to the MVHS Foundation;
c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of , among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

14. The FSLH Foundation did approve the Plan at a meeting of its Board of Directors held on October 27, 2016, a copy of said Resolution is attached hereto (hereinafter the "FSLH Foundation Resolution").

NOW, THEREFORE, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

RESOLVED, that the Plan as set forth in the FSLH Foundation Resolution is hereby approved; and it is further

RESOLVED, that the officers of the Corporation are hereby authorized and empowered to prepare and file such documents, and undertake such other activities as shall be necessary to support and assist the FSLH Foundation in accomplishing the Plan; and it is further

RESOLVED, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

RESOLVED, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

This Resolution shall take effect immediately.

Gregory Evans, Secretary

**RESOLUTION
OF THE
BOARD OF DIRECTORS OF
ST. ELIZABETH MEDICAL CENTER
(hereinafter the "Corporation" or "SEMC")**

Adopted at a Meeting Held December 15, 2016

RECITALS:

1. SEMC is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").

2. Faxton-St. Luke's Healthcare ("FSLH") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.

3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.

4. Mohawk Valley Health System ("MVHS") is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.

5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").

6. Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.

7. St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.

8. FSLH is the sole corporate member of the FSLH Foundation.

9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").

10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
b. To change the name of the FSLH Foundation to the MVHS Foundation;
c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of , among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

14. The SEMC Foundation did approve the Plan at a meeting of its Board of Directors held on October 27, 2016, a copy of said Resolution is attached hereto (hereinafter the "SEMC Foundation Resolution").

NOW, THEREFORE, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

RESOLVED, that the Plan as set forth in the FSLH Foundation Resolution is hereby approved; and it is further

RESOLVED, that the officers of the Corporation are hereby authorized and empowered to prepare and file such documents, and undertake such other activities as shall be necessary to support and assist the FSLH Foundation in accomplishing the Plan; and it is further

RESOLVED, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

RESOLVED, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

This Resolution shall take effect immediately.

Gregory Evans, Secretary

RESOLUTION
OF THE
BOARD OF DIRECTORS OF
FAXTON-ST. LUKE'S HEALTHCARE FOUNDATION
(hereinafter the "Corporation" or the " FSLH Foundation")

Adopted at a Meeting Held October 27, 2016

RECITALS:

1. Faxton-St. Luke's Healthcare ("FSLH") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").

2. St. Elizabeth Medical Center ("SEMC") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.

3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.

4. Mohawk Valley Health System ("MVHS") is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.

5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").

6. FSLH Foundation is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.

7. St. Elizabeth Medical Center Foundation ("SEMC Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.

8. FSLH is the sole corporate member of the FSLH Foundation.

9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").

10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
b. To change the name of the FSLH Foundation to the MVHS Foundation;
c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of , among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

NOW, THEREFORE, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

RESOLVED, that the officers of the Corporation are hereby authorized and directed to seek and obtain the approvals of PHHPC, the New York State Supreme Court (on Notice to the New York State Attorney General), and the New York State Secretary of State; and it is further

RESOLVED, that the officers of the Corporation are hereby authorized and directed to prepare and file such documents, and undertake such other activities as shall be necessary to obtain such approvals; and it is further

RESOLVED, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

RESOLVED, that upon receipt of all required approvals that the officers of the Corporation are authorized and directed to file with the New York State Secretary of State an Amended and Restated Certificate of Incorporation of the FSLH Foundation setting forth its new purposes; and it is further

RESOLVED, that these Resolutions be presented to the Boards of Directors of MVHS, FSLH and SEMC for their consideration and approval; and it is further

RESOLVED, that any funds heretofore raised for the benefit of FSLH, SLH or SEMC shall be maintained, distributed or used for the benefit of the beneficiary for whom the funds were raised; and it is further

RESOLVED, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

This Resolution shall take effect immediately.

Mary Malone McCarthy

Mary Malone McCarthy, Secretary

RESOLUTION
OF THE
BOARD OF DIRECTORS OF
ST. ELIZABETH MEDICAL CENTER FOUNDATION
(hereinafter the "Corporation" or "SEMC Foundation")

Adopted at a Meeting Held October 27, 2016

RECITALS:

1. St. Elizabeth Medical Center ("SEMC") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the New York Public Health Law ("PHL").

2. Faxton-St. Luke's Healthcare ("FSLH") is a New York State not-for-profit acute care hospital duly established and operated pursuant to Article 28 of the PHL.

3. St. Lukes Home Residential Health Care Facility, Inc. ("SLH") is a New York State not-for-profit residential health care facility duly established and operated pursuant to Article 28 of the PHL.

4. Mohawk Valley Health System ("MVHS") is a New York State not-for-profit corporation duly established pursuant to Article 28 of the PHL.

5. MVHS is the active parent and sole corporate member of FSLH and SEMC (collectively "the Hospitals").

6. Faxton-St. Luke's Healthcare Foundation ("FSLH Foundation") is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of FSLH and SLH.

7. SEMC Foundation is a New York State not-for-profit 501(c)(3) charitable corporation whose purposes include the solicitation, receipt and maintenance of funds for the benefit of SEMC.

8. FSLH is the sole corporate member of the FSLH Foundation.

9. SEMC is the sole corporate member of the SEMC Foundation (the FSLH Foundation and the SEMC Foundation being collectively referred to as "the Foundations").

10. MVHS and its affiliated Hospitals are in the process of planning for, financing and constructing a new, state of the art, hospital facility in Oneida County, New York (the "New Hospital"). Financing for the New Hospital is anticipated to include funds to be provided from the State of New York, tax-exempt bond financing, and charitable contributions from the community to be served by the New Hospital.

11. In furtherance of the above, the Boards of Directors of MVHS, the Hospitals and Foundations (collectively, "the Boards") believe it is in the best interest of the community to coordinate and consolidate the fundraising activities of the Foundations under a single corporation.

12. Toward that end, the Boards believe the most efficient and expeditious method for achieving the above is to:

a. Expand the charitable beneficiaries of the FSLH Foundation to include SEMC, MVHS, and such other Article 28 not-for-profit 501(c)(3) Corporation as may be established to operate the New Hospital;
b. To change the name of the FSLH Foundation to the MVHS Foundation;
c. To maintain the SEMC Foundation until such time as its funds and/or other assets are distributed to SEMC, and at that time, to either dissolve the SEMC Foundation or to merge it into the MVHS Foundation;
d. To substitute MVHS for FSLH as the sole corporate member of the MVHS Foundation. (The activities set forth in Paragraphs 12.a through 12.d above, shall be referred to as the "Plan")

13. To accomplish the foregoing, the FSLH Foundation will require the approval and consent of , among others, the Public Health and Health Planning Council ("PHHPC"), the New York State Supreme Court on Notice to the New York State Attorney General, and New York State Secretary of State.

14. The FSLH Foundation did approve the Plan at a meeting of its Board of Directors held on October 27, 2016, a copy of said Resolution is attached hereto (hereinafter the "FSLH Foundation Resolution").

NOW, THEREFORE, on motion duly made, seconded and carried, the following Resolutions were adopted by an Affirmative vote of the majority of the Board of Directors present at the time of the vote, a quorum being present at such time:

RESOLVED, that the Plan as set forth in the FSLH Foundation Resolution is hereby approved; and it is further

RESOLVED, that the officers of the Corporation are hereby authorized and empowered to prepare and file such documents, and undertake such other activities as shall be necessary to support and assist the FSLH Foundation in accomplishing the Plan; and it is further

RESOLVED, that the officers of the Corporation are authorized and directed to engage such consultants and/or advisors as shall be reasonable and necessary to accomplish the foregoing; and it is further

RESOLVED, that upon SEMC being added as a named beneficiary of the MVHS Foundation, independent fundraising activities by this Corporation for the benefit of SEMC shall be suspended; and it is further

RESOLVED, that the Corporation hereby adopts and incorporates by reference any form of specific resolution to carry into effect the purpose and intent of the foregoing resolutions, or covering authority included in matters authorized in the foregoing resolutions, including forms of resolutions in connection therewith that may be required by any state, institution, person or agency and the Corporation be, and hereby is, directed to insert a copy thereof in the minute book of the Corporation following this written action and to certify the same as having been duly adopted thereby.

This Resolution shall take effect immediately.

Barbara Brodock

Barbara Brodock, Secretary

EXHIBIT "D"

BY-LAWS
MOHAWK VALLEY HEALTH SYSTEM FOUNDATION

ARTICLE I
NAME

The name of the Corporation is *Mohawk Valley Health System Foundation,* hereinafter referred to as the "*Foundation.*"

ARTICLE II
PURPOSES

The purposes for which the Foundation is formed are exclusively charitable, educational, and scientific in nature, to wit:

a. to solicit, receive and maintain funds, real or personal property and to develop and maintain philanthropic relations for the benefit of Mohawk Valley Health System ("MVHS"); a New York State not-for-profit hospital corporation which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954; Faxton-St. Luke's Healthcare ("Healthcare"), a New York State not-for-profit hospital corporation which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and the St. Lukes Home Residential Health Care Facility, Inc. (the "Home"), a New York State not-for-profit corporation which is exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended; and St. Elizabeth Medical Center "(SEMC"), a New York State not-for-profit hospital corporation which is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; and such other Article 28 not-for-profit 501(c)(3) corporation as may be established by MVHS to operate a New Hospital in Oneida County, New York (the "New Hospital Corporation"); and any other 501(c)(3) entity that is owned or controlled by MVHS; ("The Beneficiaries"); and

b. to maintain, use and apply these funds and property, and the income therefrom, exclusively for the benefit of The Beneficiaries.

c. any funds or real or personal property raised for the specific benefit of The Beneficiaries shall at all times be exclusively used for the benefit of such entity.

d. such other and further general powers as are enumerated in Section 202 of the Not-For-Profit Corporation Law.

ARTICLE III
CORPORATE MEMBERSHIP

Section 3.1.Member.

The sole Corporate Member (hereinafter referred to as "MVHS" or the "Corporate Member") shall be Mohawk Valley Health System.

Section 3.2. – Reserved Powers.
MVHS shall retain unto itself the reserved powers which are set out in the Foundation's Certificate of Incorporation.

Section 3.3. - Annual Meeting.

The Annual Meeting of the Corporate Member of the Foundation shall be held in April or May of each year at such place as may be designated by the President of the Board.

Section 3.4. - Notice of the Annual Meeting.

Notice of the time, date and place of the Annual Meeting of the Corporate Member shall be served either personally, by first class mail or, if authorized by the Corporate Member, by facsimile, email or other communication method not less than ten (10) days nor more than thirty (30) days before the meeting, and if served by mail, shall be addressed to the Corporate Member at the Corporate Member's address as it appears on the records of the Foundation.

Section 3.5. - Special Meeting.

A Special Meeting of the Corporate Member of the Foundation may be held from time to time as necessary at such place as may be designated by the Chairperson of the Member.

Section 3.6. - Notice of Special Meetings of Corporate Member of Foundation.

Notice of the time, date, place and purpose of Special Meetings of the Corporate Member shall be served personally or by first class mail, facsimile or, where authorized by the Corporate Member, by e-mail or other communication method, not less than two (2) days nor more than thirty (30) days before the meetings, and if served by mail, shall be addressed to the Corporate Member at the Corporate Member's address as it appears on the records of the Foundation. The notice shall also indicate by whom it is issued or at whose direction.

Section 3.7. - Quorum.

At all Annual and Special Meetings of the Corporate Member there shall be present in person at least a majority of the Board of Directors of the Corporate Member of the Foundation, entitled to vote at such meeting in order to constitute a quorum for the transaction of business, but less than a quorum may adjourn a meeting from time to time without notice until a quorum is present.

Section 3.8. - Vote.

At any meeting of the Corporate Member, the vote of a majority of the Directors present at the time of the vote, if a quorum is present at that time, shall be the act of the Corporate Member.

Section 3.9. - Presence at Meetings.

Any one or more individuals on the Board of Directors of the Corporate Member may participate in a meeting of the Corporate Member by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear/communicate with each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 3.10. - Written Action.

Any action required or permitted to be taken by the Corporate Member under any provision of law, the Articles of Incorporation, or these By-Laws may be taken without a meeting by the unanimous written consent of the Board of Directors of the Corporate Member, setting forth the action so taken. Such written consent shall be filed with the proceedings of the members. Such action by written consent shall have the same force and effect as a vote of the Corporate Member taken at a meeting.

ARTICLE IV
FOUNDATION BOARD OF DIRECTORS

Section 4.1. - Number.

The Board of Directors shall consist of the President of MVHS, and not less than eight (8) additional Directors ("*Elected Directors*"). The Board of Directors of the Foundation shall hereinafter be referred to as the "Board."

Section 4.2. - Term.

a. MVHS President

At such time that the President of MVHS no longer holds that office, then his or her membership on the Foundation Board shall cease immediately and his or her successor shall become immediately, without vote or appointment, a Director of this Foundation.

b. Elected Directors.

The Elected Directors shall be divided into three classes of approximately equal size. The term of office of the first class shall expire at the First Annual Meeting of the Foundation after their election; the term of the second class shall expire at the second succeeding Annual Meeting; and the third class at the third succeeding Annual Meeting. At each Annual Meeting after the election of the first classified board, Elected Directors shall be elected for a term of three years to replace those whose terms shall expire. No Elected Director shall serve more than three consecutive terms of three years.

Directors and ex-officio members of the Foundation Board of Directors shall serve without compensation except for reimbursement of reasonable expenses incurred on behalf of and pursuant to legitimate business purposes of the Foundation.

Section 4.3. - Election of Elected Directors.

Elected Directors of the Foundation shall be elected at the Annual Meeting of the Corporate Member.

Section 4.4. - Vacancies.

Newly created Directorships resulting from an increase in the number of Elected Directors and vacancies among the Elected Directors for any reason, shall be elected at any meeting properly called and convened by the Corporate Member.

Section 4.5. - Powers and Duties.

The Foundation Board shall have charge, control, and management of the property, funds, and affairs of the Foundation and shall be responsible for the establishment of its policies and the management and operation of the Foundation.

Section 4.6. - Dismissal.

Any Elected Director of the Foundation may be removed, with or without cause, at any meeting of the Corporate Member by an affirmative vote of two-thirds of the Board of Directors of the Corporate Member present at the meeting if a quorum is present at the time of the vote.

Section 4.7. - Annual Meeting of the Foundation Board.

The Annual Meeting of the Foundation Board shall be held in April or May of each year following the Annual Meeting of the Corporate Member of the Foundation.

Section 4.8. - Regular Meetings of the Foundation Board.

The Foundation Board shall hold at least six (6) regular meetings annually. All regular meetings of the Foundation Board shall be held at the office of the Foundation or such other place as may be designated by the President of the Foundation Board.

Section 4.9. - Special Meetings of the Foundation Board.

A Special Meeting of the Foundation Board may be called as necessary from time to time by the President of the Foundation Board or by a majority of the Directors of the

Foundation to be held at the Office of the Foundation or such other place as may be designated by the caller(s) of the meeting.

Section 4.10. - Notice of Meetings of the Foundation Board.

Notice of the time, date and place of the annual and regular meetings of the Foundation Board shall be served by first class mail, facsimile, e-mail, or other communication method at least three (3) day nor more than thirty (30) days before the date of such meeting, and in the case of special meetings not less than three (3) days, and shall be addressed to the Director at the Director's address as it appears on the records of the Foundation.

Section 4.11. - Quorum.

At any meeting of the Foundation Board there shall be at least a majority of the Directors present entitled to vote at such meeting to constitute a quorum for the transaction of business, but less than a quorum may adjourn such meeting from time to time without notice until a quorum is present.

Section 4.12. - Action.

The vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Foundation Board.

Any action required or permitted to be taken by the Foundation Board may be taken without a meeting if all Members of the Foundation Board consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the Director by signing such consent or causing his/her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

Section 4.13. - Presence at Meetings.

Any one or more members of the Foundation Board, or any Committee thereof, may participate in a meeting of the Foundation Board or such Committee by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear/communicate with each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 4.14. - Attendance at Meetings.

The Foundation Board may establish requirements for attendance by Directors at meetings of the Foundation Board and Foundation Board Committees. Failure, without good cause, to satisfy those requirements shall be grounds for removal from the Foundation Board, or the Committee, or both.

ARTICLE V
OFFICERS OF THE FOUNDATION BOARD

Section 5.1. - Officers.

The Foundation Board shall have a President, a Vice President, a Secretary and a Treasurer.

Section 5.2. - Term.

All Officers shall be chosen at the Annual Meeting of the Foundation Board. Each Officer shall hold office until the next Annual Meeting or until his or her successor shall have been duly elected and qualified. Any vacancy in any of the Offices may be filled for the unexpired portion of the term by the Foundation Board at any Regular or Special Meeting.

Section 5.3. - President of the Foundation Board.

The President of the Foundation Board shall be the Chief Executive Officer of the Foundation and shall preside at all meetings of the Foundation Board, and shall be an ex officio member of all committees. He or she shall have general management authority over the affairs of the Foundation and shall also perform all other acts and duties incidental to the office.

Section 5.4. - Vice-President.

In the absence or inability to act of the President of the Foundation Board, or if the office of President of the Foundation Board is vacant, the Vice-President may exercise all the power of the President of the Foundation Board.

Section 5.5. - Secretary.

The Secretary shall keep, or cause to be kept, the minutes of the Foundation Board of Directors. The Secretary shall have custody of the seal of the Foundation and shall affix and attest the same to documents when duly authorized by the Board of Directors. The Secretary shall attend to the giving and serving of all notices of the Foundation, and shall have charge of such books and papers as the Foundation Board of Directors may direct; the Secretary shall attend to such correspondence as may be assigned to the Office of the Secretary, and perform all the duties incidental to the Secretary's office.

Section 5.6. - Treasurer.

The Treasurer shall have general supervision over the care and custody of all funds and securities of the Foundation, except as expressly provided otherwise, and shall deposit and invest the same or cause the same to be deposited and invested in the name of the Foundation as directed by the Foundation Board. He or she shall keep or cause to be kept, full and accurate accounts of all receipts and disbursements of the Foundation and whenever required by the Foundation Board, he or she shall render, or cause to be rendered, financial statements of the Foundation. He or she shall also perform all such other acts or duties usually incident to the Office of the Treasurer and such other duties as may from time to time be assigned by the Foundation Board.

Section 5.7. - Bonds.

The Foundation Board shall have power to require any officer or employee of the Foundation to give bond for the faithful discharge of his or her duties in such form and with such surety as the Foundation Board may deem advisable.

Section 5.8. - Dismissal.

Any Officer of the Foundation may be removed with or without cause at any Regular or Special Meeting of the Foundation Board, by an affirmative vote of two-thirds (2/3) of the Foundation Board of Directors present at the meeting, if a quorum is present at the time of the vote.

ARTICLE VI
COMMITTEES OF THE FOUNDATION BOARD OF DIRECTORS

Section 6.1. - Structure.

There shall be two (2) standing committees of the Foundation Board: Executive Committee and Nominating Committee. The Foundation Board may, by resolution, create such other standing or special committees as it shall, from time to time, deem appropriate. Any Committee may, by resolution, create such subcommittees as it shall, from time to time, deem appropriate.

Section 6.2. - Powers.

Each Foundation Board Committee shall have and exercise only such Foundation Board delegated powers and authority as are granted in these By-Laws, or in a resolution adopted by the full Board. Each Committee shall keep minutes of its proceedings and report its activities, conclusions and recommendations to the Foundation Board. Unless powers have been delegated by the Board, actions and recommendations of a Committee shall be subject to Foundation Board approval.

Section 6.3. - Committee Members.

a. Tenure. Each member of a Foundation Board Committee shall hold office until the next annual election of Directors and until his or her successor is elected, unless he or she sooner ceases to be a Director or resigns or is removed from the Committee.

b. Resignation. Any member of a Foundation Board Committee may resign at any time by giving written notice to the Chairperson of the Committee. Such resignation shall take effect on the date of receipt, or at such later time as may be specified therein.

c. Removal. Any member of a Foundation Board Committee may be removed at any time by a resolution adopted by a majority of the Foundation Board of Directors. Any member of a Foundation Board Committee who is a member by virtue of holding a designated position or office shall cease to be a Committee member if he or she ceases to hold the designated position or office which is the basis of Committee membership.

d. Vacancies. Any vacancy on any Foundation Board Committee resulting from resignation, removal, or increase in the membership of a Committee, may be filled for the unexpired portion of the term by the President of the Foundation Board, subject to the approval of the Board.

Section 6.4. - Advisors/Ex Officio Members.

The Chairperson of any Foundation Board Committee may invite additional individuals with expertise in a pertinent area to meet with and assist the Foundation Board Committee either as advisors or ex officio members of the Committee. Such advisors and/or ex officio members shall not vote or be counted in determining the existence of a quorum and may be excluded from any Executive session of the Committee by a majority vote of the Committee members present. Advisors and ex officio members need not be Directors of the Foundation.

Section 6.5. - Manner of Action.

a. Meetings. Each Committee shall meet as provided for in these By-Laws and at such additional times as may be necessary to perform its duties. Meetings of a Foundation Board Committee shall be called by the President of the Foundation Board, the Chairperson of the Committee, or any two of the Committee's voting members. Oral or written notice of the time and place of any meeting of a Foundation Board Committee shall be given, except in an emergency, at least three (3) days prior to the meeting.

b. Agenda/Minutes. There shall be an agenda prepared for Committee meetings, and Minutes of the meeting shall be recorded and shall include the Committee's findings, conclusions and recommendations. The Minutes of Committee meetings shall be available to the Foundation Board of Directors when requested or as required.

c. Quorum. A majority of the voting members of a Foundation Board Committee shall constitute a quorum for the transaction of business at any meeting of such Committee.

d. Action. The act of a majority of the members of a Foundation Board Committee present at a meeting, at which a quorum is present, shall be the act of the Committee. No act taken at a meeting at which less than a quorum is present is valid unless approved in writing by the absent members. Any action required or permitted to be taken by a Committee may be taken without a meeting if all Committee members consent to a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the Director by signing such consent or causing his/her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Director.

e. Conference Telephone. Any one or more members of any Committee may participate in any meeting of the Committee by conference telephone or similar communications equipment allowing all participants in the meeting to hear / communicate with each other. Participation by this means shall constitute actual presence at the meeting.

Section 6.6. - Executive Committee.

a. Composition. The Executive Committee shall be composed of the President, Vice President, Secretary, Treasurer and such additional voting Directors as shall be selected by the Foundation Board.

b. Functions. When the Foundation Board is not in session the Executive Committee shall have and exercise the powers and authorities of the Foundation Board to transact all regular business of the Foundation, subject to any prior limitations imposed by the Foundation Board, these By-Laws, or statute. The Executive Committee shall review the activities of the other Foundation Board Committees and shall review future programs and activities of the Foundation.

c. Meetings. The Executive Committee shall meet as necessary to conduct the business of the Foundation while the full Foundation Board is not in session.

Section 6.7. - Nominating Committee.

a. Composition. The Nominating Committee shall consist of not less than three (3) members of the Foundation Board of Directors as appointed by the President of the Foundation Board. At least one (1) Member must not be a current officer.

b. Functions. The Nominating Committee shall receive the names of potential candidates for membership on the Foundation Board, review such nominations and, if approved, forward the names to the President of the Foundation Board for submission to the Corporate Member. The Nominating Committee shall also be responsible for submitting a recommended slate of officers for election at the Annual Meeting. The Nominating Committee shall also be responsible for monitoring the attendance records of Foundation Board Members.

c. Meetings. The Nominating Committee shall meet as necessary to perform its functions.

ARTICLE VII
INDEMNIFICATION AND INSURANCE

Section 7.1. - Indemnification.

It is expressly provided that any and every person or his or her estate that has made or is threatened to be made a party to any action, suit or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a Director or officer of this Foundation, or served such other corporation in any capacity at the request of this Foundation, will be completely indemnified by the Foundation to the full extent permitted by law. If permitted by law, this indemnification shall include, but shall not be limited to, the payment of one or more of the following: judgments, fines, amounts paid in settlement, and reasonable expenses, including attorney's fees actually and necessarily incurred as a result of such action, suit or proceeding, or any appeal therein.

Section 7.2. - Insurance.

The Foundation may purchase and maintain insurance to completely and fully indemnify any and every such person, whether or not this Foundation has the power to indemnify him or her against such liability under the laws of this or any other State.

ARTICLE VIII
CONFLICT OF INTEREST

Section 8.1. - Policy.

Any Director, officer, key employee or Committee member having an existing or potential interest in a contract or other transaction presented to the Foundation Board of Directors or a Committee thereof for deliberation, authorization, approval, or ratification, or any such person who reasonably believes such an interest exists in another such person, shall make a prompt, full and frank disclosure of the interest to the Foundation Board or Committee prior to its acting on such contract or transaction which might reasonably be construed to be adverse to the Foundation's interests.

Section 8.2. - Effect.

The body to which such disclosure is made shall determine, by majority vote, whether the disclosure shows that the non-voting and non-participation provisions contained in any Foundation Board approved conflicts of interest policy, or these By-Laws, may be observed, if so, such person shall not vote, nor use his or her personal influence on, nor participate (other than by presenting factual information or responding to questions) in the discussions or deliberations with respect to such contract or transaction. Such person may not be counted in determining the existence of a quorum at any meeting where the contract or transaction is under discussion or is being voted upon. The Minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

Section 8.3. - Conflict of Interest Policy.

The Foundation Board shall adopt a formal Conflict of Interest Policy requiring disclosure of potential or existing conflicts of interest, mechanisms for addressing actual and potential conflicts of interest, and corrective and disciplinary action with respect to transgressions of such policies.

ARTICLE IX
AMENDMENTS TO BY-LAWS

The Bylaws may only be amended or repealed by an affirmative vote of the majority of the Board of Directors of the Corporate Member provided the proposed amendment shall have been set forth in the notice calling the meeting. The Board of Directors of the Foundation may recommend amendments to the Corporate Member, but shall not have the power to amend or repeal these Bylaws.

EXHIBIT "E"

2018 – 2019 Board of Directors
Mohawk Valley Health System Foundation
1676 Sunset Ave., Utica, NY 13502 – Phone 624-5600

Terms limits expire at the Annual Meeting in April

Name & Address of Board Member		Occupation	Employer Name & Address
Terrance J. Mielnicki 1603 Main Street P.O. Box 471 Sylvan Beach, NY 13157	Board President	Social Worker	Midstate Correctional Facility River Road Marcy, NY 13403
John Hobika, Jr. 4 Galway Road New Hartford, NY 13413	Board Vice President	Regional Insurance Specialist, Vice President	M&T Bank 105 South Salina Street Syracuse, NY 13202
Mary Malone McCarthy 3310 Fountain Street Clinton, NY 13323	Board Secretary	President/Founder (Staffing Firm)	M3 Business Service Network P.O. Box 205 Clinton, NY 13323
Stephen Surace 251 Ramblewood Drive Deerfield, NY 13502	Board Treasurer	Chief Financial Officer	Adjusters International, Inc. 126 Business Park Drive Utica, NY 13502
Marlene Anderson 15 Mallard Brook Lane New Hartford, NY 13413	Board Member	Director of Client Relations	Adirondack Financial Services 185 Genesee Street Utica, NY 13501
Sam F. Berardino 206 Bittern Court New Hartford, NY 13413	Board Member	Financial Advisor	Morgan Stanley 106 Business Park Drive Utica, NY 13502
William M. Borrill 10 Eagle Ridge Drive New Hartford, NY 13413	Board Member	Attorney	Law Offices of William M. Borrill 23 Oxford Road New Hartford, NY 13413 City of Utica 1 Kennedy Plaza Utica, NY 13501 (Corporate Counsel's Office)
Barbara Brodock 798 Higby Road New Hartford, NY 13413	Board Member	Chief Operating Officer	Brodock Press, Inc. 502 Court Street Utica, NY 13413

		Owner/President	CBB Realty, LLC 502 Court Street Utica, NY 13413
Valerie T. Brown 18 Jonathan Court Whitesboro, NY 13492	Board Member	Assistant Vice President	Utica National Insurance Group 180 Genesee Street New Hartford, NY 13413
Blair N. Jones 1021 Hedge Row Clinton, NY 13323	Board Member	Partner (Management Consultant)	Semler Brossy Consulting Group, LLC 11755 Wilshire Blvd. Los Angeles, CA 90025
Joseph Latella 26 Kingsley Court Whitesboro, NY 13492	Board Member	Regional Sales Manager	Astellas Pharma US 1 Astellas Way Northbrook, IL 60062
William Anthony Mandour 13 Hubbardton Road New Hartford, NY 13413	Board Member	Urologist (Retired)	AMP 2 Ellinwood Road New Hartford, NY 13413
David M. Manzelmann 6 Wildwood Road New Hartford, NY 13413	Board Member	Market President	M&T Bank 233 Genesee Street Utica, NY 13501
James P. McCarthy 5180 Leverett Lane Fayetteville, NY 13066	Board Member	President	Northland Communications 9560 Main Street Holland Patent, NY 13354
Stephen G. Teti 5970 Cooper Street Vernon, NY 13476	Board Member	President	SGT Consulting Services 5970 Cooper Street Vernon, NY 13476